

An illustration of soccer players in action on a green field. The players are depicted in a stylized, almost abstract manner with bold outlines and a limited color palette of blues, oranges, and greens. Confetti in the same colors is scattered across the field. The background is a solid green. A dark green rectangular area on the right side contains the title and subtitle in white and orange text. A white rectangular area below the dark green one contains the authors' names in black text. At the bottom, the text 'WORKING PAPER 11' is written in white on a green background, and the 'Dejusticia' logo is in dark blue on a white background.

Gender Discrimination in Football

Building a Toolbox Toward Gender Equity in the Beautiful Game

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WORKING PAPER 11

Dejusticia

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Gender Discrimination and the Fight for Equity in the World of Football

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GENDER DISCRIMINATION

AND THE FIGHT FOR EQUITY IN THE WORLD OF FOOTBALL

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Acronyms

AFA:	Argentine Football Association
AFF:	Afghanistan Football Federation
ANJUFF:	[Chilean] Association of Women Football Players
CAS:	Court of Arbitration for Sport
CBA:	collective bargaining agreement
CEDAW:	Convention on the Elimination of All Forms of Discrimination against Women
DRC:	Dispute Resolution Chamber
FAI:	Football Association of Ireland
FFA:	Football Federation of Australia
FIFA:	Fédération Internationale de Football Association
ICESCR:	International Covenant on Economic, Social and Cultural Rights
IWG:	International Working Group on Women and Sport
NBA:	National Basketball Association
NDRC:	national dispute resolution chamber
NWSL:	[US] National Women's Soccer League
PSC:	Players' Status Committee
RSTP:	Regulations on the Status and Transfer of Players
UDHR:	Universal Declaration of Human Rights
UEFA:	Union of European Football Associations
UN:	United Nations
UNESCO:	United Nations Educational, Scientific, and Cultural Organization
USSF:	United States Soccer Federation
USWNT:	United States Women's National Team
WNBA:	[US] Women's National Basketball Association

INTRODUCTION

The importance of gender and gender-based categorizations cling to the world of sport like no other realm of culture or society in the twenty-first century. While presented as natural, logical, and innate, the differential treatment of men and women and boys and girls in the world of sport is largely the product of over a century of global socialization intent on preserving sport as a male-dominated pastime, lifestyle, and avenue of opportunity.

As the most popular sport worldwide, football (or soccer) may be the poster child for lingering gender disparities in sport. Despite women's presence on the pitch since the turn of the twentieth century, governments and football associations have proactively suppressed their ability to participate in the game through gender stereotypes, underinvestment, precarious professional opportunities, and disrespect.

In part 1 of this report, we describe the forms of gender-based discrimination that female footballers suffer in varying degrees worldwide. Part 2 then frames this discrimination through a human rights lens, outlining the international and regional human rights principles that enshrine the right to sport and the right to nondiscrimination in sport. Part 3 describes the structure of the football industry, which is shaped and governed entirely by the Fédération Internationale de Football Association (FIFA). This section focuses on FIFA's governance framework, gender-related reforms, and preferred (or mandated) dispute resolution mechanisms. Each of these components of the football world highlights FIFA's monopoly, complexity, opacity, and resistance to concrete change. Part 4 then highlights efforts around the world, largely outside of FIFA's internal structure, where women and their allies have leveraged domestic courts, boycotts, sit-ins, and media campaigns to achieve gender parity and greater respect for female footballers. Finally, part 5 concludes with

key takeaways and lessons learned based on the aforementioned aspects of women's football experience: discrimination, institutional resistance, and the successes and failures of grassroots initiatives.

Existing scholarship by lawyers, social scientists, and historians addresses aspects of the power dynamics and inequalities surrounding FIFA. Scholars and practitioners have highlighted FIFA's sovereign and "law-like" private order,¹ the association's impact on the realization (or deterioration) of the human rights of its contract workers² and players,³ FIFA's ability to shape social constructs within the world of sport,⁴ the entrenched nature of gender discrimination in football,⁵ and FIFA's general refusal to materially improve its practices when made aware of the abuses and inequities it instigates or perpetuates.⁶ This report adds to this

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- 1 See Suren Gomtsian, Annemarie Balvert, Branislav Hock, & Oguz Kirman, *Between the Green Pitch and the Red Tape: The Private Legal Order of FIFA*, 43 YALE J. INT'L L. 85 (2018); see also Samuel Morris, *FIFA World Cup 2022: Why the United States Cannot Successfully Challenge FIFA Awarding the Cup to Qatar and How the Qatar Controversy Shows FIFA Needs Large-Scale Changes*, 42 CAL. W. INT'L L.J. 541 (2012) (discussing the inability of countries to challenge many of FIFA's decisions despite their massive impact on residents and national economies).
 - 2 See David Hess & Norman D. Bishara, *Beyond Peace Doves: Respecting Human Rights and Combatting Corruption in Mega-Sporting Events*, 37 B.U. INT'L L.J. 245 (2019); Azadeh Erfani, *Kicking Away Responsibility: FIFA's Role in Response to Migrant Worker Abuses in Qatar's 2022 World Cup*, 22 JEFFREY S. MOORAD SPORTS L.J. 623 (2015).
 - 3 Daniela Heerdt, *Mapping Accountability and Remedy Mechanisms for Sports-Related Human Rights Grievances: Background Paper for Strategic Dialogue on Remedy*, CENTRE FOR SPORT AND HUMAN RIGHTS (Apr. 2019), https://www.sporhumanrights.org/media/dsflbmtq/mapping_accountability_remedy_mechanisms_cshr_april_2019.pdf; Zach Schreiber, *The Right to Play: How Sports Leagues Worldwide Interfere with the Fundamental Right to Work*, 25 SPORTS LAW. J. 19 (2018) (focusing on the right to work).
 - 4 See PAUL DARBY, *AFRICA, FOOTBALL, AND FIFA: POLITICS, COLONIALISM, AND RESISTANCE* (2002) (discussing how FIFA has shaped a misleading worldview regarding football in the African continent).
 - 5 BRENDA ELSEY & JOSHUA NADEL, *FUTBOLERA: A HISTORY OF WOMEN AND SPORTS IN LATIN AMERICA*, 81-82 (2019); Cassandra Clark, *Leading or Losing? Women Challenging Male Hegemony in South African football and in the FIFA World Cup*, 12 SOCCER & SOCIETY 834 (2011) (discussing the urgent need for greater women's representation among FIFA administrators and World Cup ambassadors).
 - 6 Yaron Covo, *Beyond Individual Discrimination: Why FIFA Fails to Address Discriminatory Practices in World Football*, 20 TEX. REV. ENT. & SPORTS L. 133 (2019).

relatively nascent but growing body of scholarship by underscoring the ongoing issue of gender-based discrimination in football, with a focus on its various manifestations and existing avenues for remedy. Most significantly, by applying a human rights lens to the pervasive issue of gender discrimination, and by documenting the recent efforts to achieve gender parity in sport, we hope this report will help lay the foundation for a realistic playbook toward gender justice in the world of football.

PART 1

GENDER DISCRIMINATION IN FOOTBALL

A Century of Discrimination

Women have played football since before the turn of the twentieth century.⁷ However, ever since women first took to the pitch, they have faced systematic discrimination and ridicule. Reports of the first matches—in England in the late nineteenth century and in Brazil in the early twentieth century—are filled with low expectations, derisive commentary, and concerns over gender nonconformity.⁸ These and other criticisms have long characterized women’s football wherever it is played, with commentators, politicians, and the general public asserting that

- exercise is bad for women’s health and fertility;⁹
- women are too high strung or lazy to play football;¹⁰
- football erodes a woman’s marriageability;¹¹
- sweating in public is unfeminine;¹²
- muscular women are ugly and masculine;¹³
- football promotes lesbianism;¹⁴ and

7 See, e.g., Jim Weeks, *1921: The Year When Football Banned Women*, HistoryExtra (May 9, 2019), <https://www.historyextra.com/period/first-world-war/1921-when-football-association-banned-women-soccer-dick-kerr-ladies-lily-parr/>.

8 ELSEY & NADEL, *supra* note 5, at 81–82; Matthew Wills, *The Origins of Women’s Soccer*, JSTOR DAILY (July 5, 2019), <https://daily.jstor.org/the-origins-of-womens-soccer/>.

9 *Id.* at 8, 10, 24–26.

10 *Id.*

11 *Id.* at 39.

12 *Id.* at 24.

13 *Id.* at 24, 31.

14 *Id.* at 30.

- women are too weak, physically and mentally, to play football.¹⁵

Historically, some countries used stigmatization and practical barriers to stifle women in football, and others—including Brazil, Germany, Scotland, and Spain—went as far as to ban the sport for women entirely.¹⁶

Today, no country officially outlaws women's football, but systematic discrimination persists in force. Female footballers face gender-based discrimination in various forms, from steep pay disparities to severely restricted professional opportunities to workplace-related sexual assault. While some manifestations of gender-based discrimination are quite blatant, others are more discrete though no less damaging to women's sense of place in the world of football. It is also important to note that women's football is underreported and understudied. Consequently, it is likely that the following discussion does not capture the full extent of gender-based discrimination experienced by female footballers around the world.

Financial Compensation

Recent estimates place the number of professional women football players at 878 globally, with many more women qualifying as semi-professional or amateur.¹⁷ FIFA defines “professional player” as someone who “has a written contract with a club and is paid more for his footballing activity than the expenses he effectively incurs. All other players are considered to be amateurs.”¹⁸ The greatest percentage of professionalized female players are found in Germany (75.5%), England (57%), and Sweden (55%), while Bulgaria, Cyprus, Ireland, Kyrgyzstan, Montenegro, and the overwhelming

¹⁵ *Id.* at 21, 35, 47–48.

¹⁶ James Dator, *A Short History of the Banning of Women's Soccer*, SB NATION (July 6, 2019), <https://www.sbnation.com/soccer/2019/7/6/18658729/banning-womens-soccer-world-cup-effects>. Notably, while not making women's football entirely illegal, Britain's Football Association issued a decision in 1921 banning its members from allowing women's football to be played on their grounds—“effectively killing the game overnight.” Jim Weeks, *supra* note 7.

¹⁷ Aristeia Koukiadaki & Geoff Pearson, *2017 FIFPro Global Employment Report: Working Conditions in Professional Women's Football* (2017), https://www.academia.edu/36496145/Working_Conditions_in_Professional_Womens_Football (drawing on data from 3,499 survey respondents representing 55 nationalities and playing in 55 countries).

¹⁸ FIFA, *FIFA Regulations on the Status and Transfer of Players*, art. 2 (Oct. 27, 2017), <https://resources.fifa.com/image/upload/regulations-on-the-status-and-transfer-of-players-2018-2925437.pdf?cloudid=c83ynehmkp62h5vgwg9g>.

majority of the African continent report no professionalized female footballers.¹⁹ Beyond FIFA's official definition of professionalization, women are sometimes compensated through the national team, corporate sponsors, government agencies, universities, or the Olympic committee, among other sources.²⁰ These various avenues of compensation complicate calculations of player salary and players' own sense of professional status.²¹

In 2017, FIFPro (the international football players' union) and researchers at the University of Manchester conducted the first global survey of elite female footballers.²² According to the resulting *Global Employment Report on Working Conditions in Professional Women's Football*, women presently participate in the world of football "for the love of the game—in an amateur way, but at a professional level."²³ This blurred amateur-professional status profoundly characterizes women's football. Though the level of play for many women is professional in terms of time commitment, skill set, and national or international pressure to perform, the overwhelming majority of elite female football players are not adequately compensated for their time. Even those who would be considered "professional" under FIFA's definition rarely earn a living wage.²⁴ The 2017 survey found that about one-third of elite female players receive zero compensation and that the most common salary range was US\$100 per month or less.²⁵ Women football players notoriously must hold down multiple jobs to support themselves financially, with some teams even charging them to play.²⁶ While male footballers face certain insecurities in their employment status as well, the equivalent survey of male players made no mention of the problems of amateurism or non-compensation and measured player salaries at an entirely different scale—lamenting the fact that 45% of male players receive less than US\$1,000 per month.²⁷

19 Koukiadaki & Pearson, *supra* note 17, at 16–17.

20 *Id.* at 19.

21 *Id.* at 10, 16–17 (citing significant differences between players' perceptions and their actual professional status, as defined by FIFA).

22 *Id.* at 6.

23 *Id.* at 2.

24 *Id.* at 59 (finding that only 25% of respondents said they were paid enough to cover their expenses).

25 *Id.* at 49.

26 *Id.* at 59.

27 FIFPRO, 2016 FIFPRO GLOBAL EMPLOYMENT REPORT: WORKING CONDITIONS IN PROFESSIONAL FOOTBALL (2016), <https://www.fifpro.org/media/xdjhlwb0/working-conditions-in-professional-football.pdf>.

The professionalization of women's football varies immensely from one national member association (or "federation") to another, with those in Europe, the United States, and Oceania leading the way, followed by parts of Asia and Latin America, and with Africa and the Middle East trailing behind. In Europe, participation in elite women's football is on a dramatic rise. Europe is home to the first fully professional women's league, fifty-one senior domestic women's leagues, and more than 1.3 million registered female players.²⁸ However, while world-renowned European football clubs, such as Barcelona and Manchester City, have begun investing heavily in their own female squads,²⁹ only one club in the world compensates male and female players equally—Lewes FC, a lower-tier English club.³⁰

Overwhelmingly, women continue to receive a fraction of what their male counterparts are paid, even in Europe, where female footballers fare the best in terms of compensation and opportunities. For example, men who play in England's Football Association earn an average of ninety-nine times the amount of their female counterparts.³¹ In Norway—a country that recently achieved pay parity among the men's and women's national squads and is home to the world's top female footballer, Ada Hegerberg—even the lowest-ranking players in the men's division earn on average more than 3.5 times the amount earned by players on the top female team in the country.³² Similarly, in the United States, the minimum salary for male players in Major League Soccer is higher than the maximum salary

28 UEFA, UEFA WOMEN'S FOOTBALL STRATEGY DOCUMENT 2019–24 (2018), https://www.uefa.com/MultimediaFiles/Download/uefaorg/Womensfootball/02/60/51/38/2605138_DOWNLOAD.pdf.

29 See, e.g., Joshua Robinson, *The Biggest Threat to U.S. Women's Soccer Dominance: European Superclubs*, WALL ST. J. (June 13, 2019), <https://www.wsj.com/articles/the-biggest-threat-to-u-s-womens-soccer-dominance-the-european-superclubs-11560420003>.

30 Alex Bell, *Alex Bell: Equal Pay for Equal Work? The Scotland Women's World Cup Squad Will Be Paid a Fraction of Male Counterparts*, THE COURIER (June 6, 2019), <https://www.thecourier.co.uk/fp/opinion/alex-bell/908848/alex-bell-equal-pay-for-equal-work-the-scotland-womens-world-cup-squad-will-be-paid-a-fraction-of-male-counterparts/>.

31 Martha Kelner, *Football's Gender Pay Gap Worse Than in Politics, Medicine and Space*, GUARDIAN (Nov. 26, 2017), <https://www.theguardian.com/football/2017/nov/26/football-gender-pay-gap-worse-than-in-politics-medicine-and-space>.

32 AFP, *Equal Pay in Football? Norway Still Far from the Goal*, BANGKOK POST (June 11, 2019), <https://www.bangkokpost.com/world/1693160/equal-pay-in-football-norway-still-far-from-the-goal>.

for the National Women's Soccer League (NWSL), with some men earning millions per season.³³ Even players on the long-time world champion US Women's National Team (USWNT) make about thirty-eight cents for every dollar earned by the US men's team, which failed to qualify for the 2018 World Cup.³⁴ Finally, in 2018, various news sources published what is arguably the most illustrative statistic of the vast compensation disparity in football: Neymar da Silva Santos Júnior, star player for Paris Saint-Germain and the Brazilian national team, earned as much as 1,693 top-earning female players combined.³⁵

One of the most contentious issues in the realm of compensation is FIFA's repeated decision to uphold vast prize disparities between the men's and women's World Cup tournaments. In advance of the 2019 Women's World Cup, FIFA doubled the tournament's prize money—settling on an amount that was still 7.5 times less than the men's 2018 World Cup prize.³⁶ At present, the 2023 Women's World Cup award is set at US\$60 million, whereas the 2022 Men's World Cup award is worth US\$440 million.³⁷ One of the most troubling aspects of FIFA's distribution scheme is the fact that its increases in prize money for women have not kept pace with those for men, resulting in ever-growing inequity.³⁸

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- 33 Thomas Barrabi, *As USWNT Fights for Equal Pay, League Revenue Slows Efforts to Close Salary Gap*, Fox BUSINESS (July 8, 2019), <https://www.fox-business.com/features/uswnt-equal-pay-pro-sports-wage-gap>.
 - 34 Katherine Ellen Foley & Dan Kopf, *Women Soccer Players Are Younger Than Men Because They Can't Afford Longer Careers*, QZ (June 18, 2019), <https://qz.com/1647265/female-soccer-players-are-younger-because-cant-afford-to-play-longer/>; FIFA, GLOBAL CLUB FOOTBALL 2018 REPORT (2018), 85, 101, <https://resources.fifa.com/image/upload/fifa-global-club-football-report-2018-web.pdf?cloudid=plstmtbjzbps7c2vkfir>.
 - 35 See, e.g., Livvi Sefton, *Neymar Earns More Than Top Seven Women's Football Leagues Combined as Study Reveals Shocking Gender Pay Gap*, THE SUN (Nov. 26, 2017), <https://www.thesun.co.uk/sport/5003239/neymar-womens-football-leagues-gender-pay-gap/>.
 - 36 Abigail Hess, *US Viewership of the 2019 Women's World Cup Final Was 22% Higher Than the 2018 Men's Final*, CNBC (July 10, 2019), <https://www.cnbc.com/2019/07/10/us-viewership-of-the-womens-world-cup-final-was-higher-than-the-mens.html>.
 - 37 Laural Wamsley, *Under New Deal, Australia Women's and Men's Soccer Will Get Equal Share of Revenue*, NPR (Nov. 6, 2019), https://www.npr.org/2019/11/06/776973749/under-new-deal-australian-womens-and-men-s-soccer-will-get-equal-share-of-revenu?utm_medium=social&utm_term=nprnews&utm_source=twitter.com&utm_campaign=npr.
 - 38 AP, *FIFA Has \$2.74 Billion in Cash, but Still Gives Very Little Money to*

Opportunities and Investment

Beyond financial compensation, the world of football is equally characterized by a comparative dearth of opportunities for female players.³⁹ According to a 2018 survey conducted by FIFA, there are 1,692 top-tier women's clubs worldwide and 2,671 top men's clubs.⁴⁰ In every regional FIFA confederation, there is a shortfall of women's clubs, with half of the confederations containing at least 230 more men's teams than women's teams.⁴¹ The women's clubs that do exist are frequently forced to play condensed seasons that last only a few months of the year,⁴² which exacerbates the already financially insecure nature of this profession. While the women may not play year round, they are nonetheless expected to train and remain in top physical shape for far more than the length of their season if they hope to continue to compete.

Among national teams, there are 159 women's squads, compared to 211 men's teams worldwide.⁴³ The disparities in opportunity vary greatly from confederation to confederation, with the African confederation trailing behind the rest—only half of the member associations in Africa field women's national teams to date.⁴⁴ Many women's national teams also maintain a precarious existence, with teams occasionally being forced to go inactive due to lack of resources and support from their respective FIFA member association. This includes associations that boast some of

Women Compared with Men, MarketWatch (Mar. 7, 2019), <https://www.marketwatch.com/story/fifa-now-has-almost-3-billion-in-cash-2019-03-06> [hereinafter *FIFA Gives Very Little Money to Women*].

- 39 Foley & Kopf, *supra* note 34; see also Yigal Schleifer, *In Turkey, Women Playing Soccer Vie for Acceptance*, N.Y. TIMES (Mar. 3, 2009) (explaining that “for the players in the women’s league, just finding their way to a team can be a monumental challenge”).
- 40 FIFA, *Global Club Football 2018 Report*, 85, 101 (2018), <https://resources.fifa.com/image/upload/fifa-global-club-football-report-2018-web.pdf?cloudid=plstmbjzbp7c2vkfir>.
- 41 *Id.* at 84–85, 100–101.
- 42 See, e.g., Jeff Kassouf, *Women’s Soccer in Colombia Is at Risk of Regressing*, THE EQUALIZER (Jan. 7, 2019), <https://equalizersoccer.com/2019/01/07/colombia-womens-soccer-moving-backward-dimayor-professional-league-future-uncertain/> (noting that the Colombian women’s football season is only four months long).
- 43 FIFA, *World Ranking*, <https://www.fifa.com/fifa-world-ranking>.
- 44 FIFA, *Women’s Football Member Associations Survey Report 2019*, 16 (2019), <https://resources.fifa.com/image/upload/fifa-women-s-survey-report-confederations-global-mas.pdf?cloudid=nq3ensohyxpuxovcovj0> [hereinafter *2019 Women’s MA Survey*].

the world's most successful men's teams, such as the Argentine Football Association (AFA)⁴⁵ and the Chilean Football Federation.⁴⁶ Even among active teams, the scheduling of games and practices can be irregular and infrequent. For example, in January 2019, the Colombian women's national team had not played a game in over six months and had no known matches scheduled.⁴⁷

Furthermore, women's clubs and national teams rarely receive adequate material investment in terms of personnel, gear, travel compensation, training, and playing conditions. For example, in 2017, the Irish women's national squad held a press conference outing the Football Association of Ireland (FAI) for having the team change in public restrooms on the way to matches and share gear with the youth team.⁴⁸ Similarly, in Argentina, the women's national team was forced to play on inferior turf fields while the youth men's team played on natural grass.⁴⁹ In terms of personnel, according to a 2014 FIFA survey, no more than 14% of employees at any of the six FIFA confederations dedicated time to the issue of women's football, and among these employees, about half were part time.⁵⁰

As with World Cup prize money, FIFA is culpable of significantly favoring male over female teams when it comes to investment. In preparation for the World Cup, FIFA provides all teams money for training and other tournament-related expenses, but women are given about half the amount received by their male counterparts.⁵¹ FIFA's total planned investment in women's football programming for 2020, which is lumped into the "other projects" category of FIFA's budget, was US\$14

45 Gabriela Garton & Nemesia Hijós, *A Battlefield for Gender Equality*, NACLA (July 31, 2018), <https://nacla.org/news/2018/07/31/battlefield-gender-equality>.

46 Brenda Elsey & Joshua Nadel, *South American Soccer Is Ignoring Its Women*, VICE (Aug. 12, 2016), https://www.vice.com/en_us/article/pgnazz/south-american-soccer-is-ignoring-its-women.

47 Kassouf, *supra* note 42.

48 Press Association, *Republic of Ireland Women's Game Back after Public Toilet Changing Grievance*, GUARDIAN (Apr. 6, 2017), <https://www.theguardian.com/football/2017/apr/06/republic-of-ireland-womens-team-call-off-strike-talks-fai>.

49 *Id.*

50 FIFA, *Women's Football Survey*, 10–11 (2014), https://www.fifa.com/mm/document/footballdevelopment/women/02/52/26/49/womensfootballsurvey2014_e_english.pdf.

51 Foley & Kopf, *supra* note 34.

million—US\$2 million less than it allocated toward training referees on new technologies and just 3% of the association's total budget.⁵²

The disparity in opportunities and investment for elite female players trickles down to future generations of athletes, with far fewer opportunities for girls than for boys.⁵³ While girls' football is prevalent throughout the United States, girls in many countries must find their way onto boys' teams if they want to compete and progress as players.⁵⁴ In some countries, these disparities even translate to restricted opportunities for female fans. In Iran, women are excluded from entering football stadiums and run the risk of arrest if they attempt to view a match in person—this was also the case in Saudi Arabia until 2018.⁵⁵ FIFA President Gianni Infantino has done little to discourage this practice; indeed, he recently presided over a match in Tehran and attended a public, male-only event at the 100,000-seat Azadi Stadium.⁵⁶ In 2019, FIFA further endorsed these discrimina-

52 FIFA, *FIFA FINANCIAL REPORT 2018* (2018), <https://resources.fifa.com/image/upload/fifa-financial-report-2018.pdf?cloudid=xzshsoe2ayttyquuxhq0> [hereinafter *FINANCIAL REPORT 2018*].

53 See, e.g., Michael Sokolove, *How a Soccer Star Is Made*, N. Y. TIMES MAGAZINE (June 2, 2010), <https://www.nytimes.com/2010/06/06/magazine/06Soccer-t.html> (discussing a top youth football academy referred to as “the future,” which is open exclusively to boys; see generally WOMEN'S SPORTS FOUNDATION, *Do You Know the Factors Influencing Girls' Participation in Sports?*, <https://www.womenssportsfoundation.org/do-you-know-the-factors-influencing-girls-participation-in-sports/> (discussing the various barriers preventing girls from participating in sports).

54 See, e.g., Kevin Baxter, *Column: Dutch Treat: Increased Investment in Women's Game Paying Off*, LOS ANGELES TIMES (Sept. 29, 2018), <https://www.latimes.com/sports/soccer/la-sp-netherlands-martens-baxter-20180929-story.html> (discussing the fact that when elite women's football star Lieke Martens was growing up in Holland, playing against girls “wasn't an option”); EL PAÍS, *¿Por qué el caso de María Paz representa un gran precedencia de la equidad de género?* (Aug. 16, 2019), <https://www.elpais.com.co/deportes/futbol-colombiano/por-que-el-caso-de-maria-paz-mora-representa-un-gran-precedente-en-la-lucha-por-la-equidad-de-genero.html> (addressing a ten-year-old girl whose team was sanctioned for having a girl play on a boys' team).

55 Minky Worden & Tara Sepehri Far, *Banned from Watching Soccer, the Women of Iran Are Being Failed by FIFA*, HUMAN RIGHTS WATCH (Mar. 8, 2018), <https://www.hrw.org/news/2018/03/08/banned-watching-soccer-women-iran-are-being-failed-fifa#>.

56 *Id.*

tory policies by promoting Iran's Football Federation president, Mehdi Taj, to vice president of the region-wide Asian Football Confederation.⁵⁷

Sexual Harassment, Assault, and Gender-Based Discrimination

Across the world, female footballers are marginalized, oversexualized, attacked, and threatened.⁵⁸ This discriminatory treatment poses a prohibitive barrier to participation for some women, such as those in France, Iran, and Singapore, who are not allowed to play if they wear a hijab—a policy that was endorsed by FIFA until 2012.⁵⁹ Other women continue to play in the face of death threats and ostracization.⁶⁰ Still others face the threat of losing their position—and even their league—due to rampant homophobia. In 2018, a leader in Colombian football, Gabriel Camargo, argued that the Colombian women's league was not worth investing in because it serves merely as a “lesbianism breeding ground.”⁶¹ Similarly, players on Afghanistan's national team were allegedly accused of being lesbians before being kicked off the team.⁶² These homophobic and sexist statements, actions, and policies expose a shocking lack of progress within the industry over the past century.

Sexual assault also remains a pervasive problem. Male coaches in Canada, Colombia, and Ecuador and football managers and executives in Afghanistan and Gabon have faced accusations of and investigations into widespread sexual assault and abuse of female players.⁶³ For example, in

57 Minky Worden, *Football Leaders Stand by as Human Rights Abuses Pile Up*, HUMAN RIGHTS WATCH (Apr. 7, 2019), <https://www.hrw.org/news/2019/04/08/football-leaders-stand-human-rights-abuses-pile>.

58 Xanthe Ackerman & Christina Asquith, *Soccer Is Still Out of Reach for Half the World's Women*, TIME (July 8, 2015), <https://time.com/3949377/world-cup-women-global-equality/>.

59 *Id.*

60 Nick Walsh, *I'll Take the Death Threats*, SOCCER WITHOUT BORDERS (Apr. 15, 2015), <https://soccerwithoutborders.wordpress.com/2015/04/15/ill-take-the-death-threats/>.

61 Kassouf, *supra* note 42.

62 Minky Worden, *Women's Soccer Players' Biggest Challenges Is Changing FIFA Itself*, HUMAN RIGHTS WATCH (June 28, 2019), <https://www.hrw.org/news/2019/06/28/women-soccer-players-biggest-challenge-changing-fifa-itself> [hereinafter *Biggest Challenge*].

63 Saba Aziz, *World Cup: Women Footballers Fight for Even Playing Field*, AL JAZEERA (June 6, 2019), <https://www.aljazeera.com/indepth/features/world-cup-women-footballers-fight-playing-field-190603094539380.html?xif=>.

2018, various members of the Afghan women's national team came forward with details of violent sexual assaults committed by the president of the Afghanistan Football Federation (AFF), Keramuudin Karim, whom FIFA later banned for abusing his power.⁶⁴ However, Karim's general secretary, who was suspended for his involvement in the assaults, was subsequently promoted to the powerful Asian Football Confederation's governing executive committee.⁶⁵

In the first six months of 2019 alone, coaches and administrators in at least five countries were accused of inappropriate behavior and sexual misconduct toward their players, including allegations of rape.⁶⁶ Khalida Popal, former captain of the Afghan women's national team, expressed a lack of surprise at the reports of sexual assault and violence, explaining that "not much has been done to protect players in terms of safety ... The system is broken; it's not made to support players."⁶⁷

Marketing and Media Attention

Women's football has long suffered from systematic inattention from the media, which diminishes the game's visibility and its place in world history.⁶⁸ Moreover, women's teams receive subpar promotion within FIFA, lackluster marketing by their own member associations, and muted enthusiasm from sponsors. Exemplary of this problem, the United States—home to the world champion national team—does not provide season-long television coverage of the NWSL,⁶⁹ and in 2019, the biggest game in women's football—the Women's World Cup final—coincided with two major men's football matches. It is almost impossible to imagine the Men's World Cup final facing similar competition for viewers.⁷⁰

A 2019 survey of FIFA member associations with active women's teams revealed that fewer than half of the associations provide weekly TV

64 *Biggest Challenge*, *supra* note 62.

65 *Id.*

66 Tariq Panja, *A #MeToo Wave Hits Global Soccer as the Women's World Cup Begins*, N. Y. TIMES (June 7, 2019), <https://www.nytimes.com/2019/06/07/sports/metoo-soccer-sexual-harassment.html>.

67 Aziz, *supra* note 63.

68 ELSEY & NADEL, *supra* note 8, at 86–87.

69 Thomas Barrabi, *As USWNT Fights for Equal Pay, League Revenue Slows Efforts to Close Salary Gap*, FOX BUSINESS (July 8, 2019), <https://www.fox-business.com/features/uswnt-equal-pay-pro-sports-wage-gap>.

70 Aziz, *supra* note 63.

exposure for women's football and only 81 of the 159 active member associations stream games on the internet.⁷¹ In the words of the executive director of the antidiscriminatory collective Fare network:

If you present [women's football] on the same level as men's football with the same level of hype, high-level commentary, TV presentation, then it's going to look equal to the men ... Give women's football the same standards that men's football have [*sic*] and we will soon reach the levels of sponsorship and interest that we get in men's football.⁷²

Representation within Football Leadership

Finally, there is almost no female representation among football leadership. From referees to coaches to FIFA officials, women play a miniscule role in spaces that shape their ability to have a future in the sport. A 2019 survey conducted by FIFA found that only 7% of coaches in women's football are themselves women and that women account for only 10% of referees.⁷³ The same survey also found that worldwide, women make up only 9% of FIFA executives, 25% of football "leaders" (defined as a member association president, general secretary, or department head), and 28% of football administration staff.⁷⁴

There is also an astonishing lack of gender parity within FIFA's internal dispute resolution system. For example, in the FIFA Dispute Resolution Chamber (DRC)—FIFA's primary body for resolving employment-related disputes between clubs and players—only one of its twenty-six members is a woman.⁷⁵ There are only three female members in the nineteen-person FIFA Disciplinary Committee—responsible for assigning sanctions to players, clubs, and FIFA affiliates—and only one woman sits on the FIFA Appeals Committee.⁷⁶

71 2019 Women's MA Survey, *supra* note 44, at 11.

72 Aziz, *supra* note 63.

73 2019 Women's MA Survey, *supra* note 44.

74 *Id.* at 12.

75 *Members of the Dispute Resolution Chamber*, FIFA Legal, <https://resources.fifa.com/image/upload/members-of-the-dispute-resolution-chamber.pdf?cloudid=gmjwpe06xujqkz1ztaah>.

76 FIFA, *Who We Are*, FIFA Disciplinary Committee, FIFA Legal, <https://www.fifa.com/who-we-are/committees/committee/1882042/>; FIFA, *Who We Are*, FIFA Appeals Committee, FIFA Legal, <https://www.fifa.com/who-we-are/committees/committee/1882043/>.

The general absence of women at the top of the football industry stunts women's sense of opportunity, ability to pursue career paths off the pitch, and protection from discrimination and violence.

Despite the pervasive and diverse inequities suffered by female football players, increasing numbers of women are taking up the sport worldwide. In 2019, FIFA tallied 3.12 million registered youth and 945,068 registered adult female footballers.⁷⁷ There are more women's national teams today than ever before.⁷⁸ Along with growing participation among athletes, fans and sponsors are beginning to jump on the women's football bandwagon. The 2019 Women's World Cup broke viewership records at every level—1.12 billion viewers watched the official live broadcast of the tournament final (a 56% increase from 2015), and an average of 17.27 million live viewers watched each match (a 106% increase from 2015).⁷⁹

However, FIFA's support—from executives to confederations to membership associations to clubs and coaches—continues to lag behind. Modern-day justifications for the gender-based disparities cite profitability, fan base, and other market factors,⁸⁰ but gender stereotypes, homophobia, and male chauvinism are more than just historical relics. Associations and executives attempt to frame the discrimination as a rational result of objective financial considerations, while failing to provide clear numbers on investments and revenue, failing to acknowledge the symbiotic relationship between resource allocation and success, and failing to accept ownership for football's entrenched gender-based stereotypes.

77 2019 Women's MA Survey, *supra* note 44, at 7.

78 *Id.* at 10.

79 Alana Glass, *FIFA Women's World Cup Breaks Viewership Records*, *FORBES* (Oct. 21, 2019), <https://www.forbes.com/sites/alanaglass/2019/10/21/fifa-womens-world-cup-breaks-viewership-records/#56160c641884>.

80 ELSEY & NADEL, *supra* note 8, at 10.

PART 2

A HUMAN RIGHTS LENS ON GENDER EQUITY IN SPORT

The challenges and inequities described in part 1 encapsulate discrimination against women in the football context. Discrimination, including discrimination on the basis of gender, is prohibited under international human rights law as codified in international and regional agreements. State parties to these agreements have legally binding duties to ensure that discrimination does not take place within their borders, as a result of their actions, or in activities they regulate. Through a largely self-imposed framework of agreements, policies, and guidelines, nonstate actors (such as transnational sports governance bodies) also have a responsibility to ensure that they do not engage in discriminatory practices. The obligations placed on state and nonstate actors through these written agreements make the human rights framework a critical tool in the fight to end discrimination—including discrimination in women’s football.

The right to be free from discrimination and the right to engage in sport invoke several different human rights enshrined within core international human rights instruments. Read together, international conventions, treaties, and sports bodies’ policies establish a normative prohibition against gender-based discrimination in sport. These documents invoke sport, both explicitly and implicitly, as core to the realization of various human rights, creating a flexible and complementary patchwork of norms pertaining to nondiscrimination, sport, and gender. Put another way, norms establishing the rights to sport, freedom from discrimination, and, most specifically, freedom from discrimination in sport are all present in this international framework. Notably, the right to sport, including the related right to sport free from discrimination, can be conceptualized as part

of the rights to free association, culture, education, and labor, or as its own stand-alone right.⁸¹

Embracing a human rights lens allows advocates, practitioners, players, and other stakeholders to access this framework of binding and compelling legal tools in sports-related disputes, advocacy, and campaigns for change. The following subsections describe from where these rights and norms originate within the various relevant legally binding international and regional agreements, as well as the nonbinding (but nevertheless important) commitments and policies made by global sports bodies.

Global System

International organizations, most prominently the United Nations (UN), facilitate legally binding multilateral treaties, often called conventions, between states. Many of the foundational human rights documents are conventions; in some states, these human rights treaties are considered to be an elevated or supreme source of law. Signatories to these agreements are bound by the duties and obligations within the documents.

Universal Declaration of Human Rights

Chapter 1, article 1 of the UN Charter describes the purposes of the UN, including “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”⁸² Reflecting this purpose, the Universal Declaration of Human Rights (UDHR) describes these rights in greater detail.⁸³ Article 7 establishes that “all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”⁸⁴

International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights expands on the UDHR’s prohibition against discrimination. Article 26 states that “all

81 See generally Amy Burchfield, *International Sports Law*, HAUSER GLOBAL L. SCH. PROGRAM (2018), https://www.nyulawglobal.org/globalex/International_Sports_Law1.html (updated by Hunter Whaley & R. Martin Witt).

82 Charter of the United Nations, art. 1(3).

83 Universal Declaration of Human Rights, G.A. Res. 217A (III) (1948).

84 *Id.* at art. 7.

persons are equal before the law and are entitled without any discrimination to the equal protection of the law.” A UN Human Rights Committee general comment—an authoritative source of guidance on UN human rights norms—construes article 26 to prohibit discrimination in any field regulated and protected by public authorities. Given states’ lawmaking power over sport, this suggests a prohibition on discrimination in sport.

International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR) enshrines the rights to nondiscrimination based on sex, to participation in cultural life, to just and favorable working conditions, and to the protection and nondiscrimination of family, mothers, and children.⁸⁵ Article 3 establishes that all of the rights present in the ICESCR are equal rights of men and women.⁸⁶ This clearly establishes that all of the rights related to labor and employment apply equally to men and women; theoretically, this would include women and men employed as athletes. Article 15 includes the right to participate in all forms of cultural life, which includes sport.⁸⁷ Notably, article 10 establishes special protection for working mothers and children, which are also relevant to the issue of gender discrimination in sport.⁸⁸

Convention on the Elimination of All Forms of Discrimination against Women

Echoing the ICESCR, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) mentions sport in two instances: in the right to education (article 10) and in the right to participate in recreational activities, sport, and cultural life (article 13).⁸⁹ Other articles related to nondiscrimination and labor also pertain when sport is pursued as a career path. For example, article 11 requires states to take steps to eliminate discrimination in employment, including the right to

⁸⁵ International Covenant on Economic, Cultural and Social Rights, arts. 3, 7, 10, G.A. Res. 2200A (XXI) (1966).

⁸⁶ *Id.* at art. 3.

⁸⁷ *Id.* at art. 15.

⁸⁸ *Id.* at art. 10.

⁸⁹ Convention on the Elimination of All Forms of Discrimination against Women, arts. 10, 13, G.A. Res. 34/180 (1979).

equal employment opportunities, job security, benefits, treatment, paid leave, and safe working conditions.”⁹⁰ In addition to the language of the treaty, a general recommendation issued by the Committee on the Elimination of Discrimination against Women recommends that state parties to CEDAW take specific steps to

- provide equal opportunities in educational institutions for women and girls to engage in sport;
- address stereotypes and provide facilities to facilitate women and girls’ participation in male-dominated sports in both coeducational and all-female educational institutions; and
- “institute positive actions, preferential treatment or quota systems” in sports.⁹¹

Despite the strong language in CEDAW and its accompanying recommendations, human rights advocates note that CEDAW’s article 13, guaranteeing the right to participate equally in sport, is widely ignored.⁹² In particular, there has been limited legal discussion and development of the right, suggesting an uphill battle for advocates seeking to use article 13 to hold state parties accountable.⁹³

Other Examples

Other international agreements pertaining to specific groups and issues reflect these norms as well; this includes the Declaration on the Rights of Indigenous Peoples and the Convention on the Rights of Persons with Disabilities.⁹⁴ The former provides that indigenous peoples have the “right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as

90 *Id.* at art. 11(b)–(f).

91 Committee on the Elimination of Discrimination against Women, General Recommendation No. 36, para. 63, UN Doc. CEDAW/C/GC/36 (2017).

92 Emma Blakely, *Women’s Participation in Sport: How Is It Regulated in International Human Rights Law, and Is Australia Meeting Its International Obligations?*, 24 *AUSTL. J. HUM. RTS.* 292, 292–95 (2018).

93 *Id.*

94 Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295 (2007); Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106 (2006); see also the International Convention against Apartheid in Sports, G.A. Res. 40/64 (1985) (referencing the “Olympic principles of non-discrimination” and prohibiting discrimination on the basis of race, religion, and political affiliation, thereby reemphasizing the general norm of nondiscrimination generally in sport).

manifestations of their ... sports and traditional games.”⁹⁵ The latter includes extensive discussion of the rights of persons with disabilities to access and participate in sport, including obligations of state parties to provide mainstreamed and disability-specific sporting activities, accessible sporting venues, and opportunities for children with disabilities.⁹⁶ Notably, in a speech before the 2016 Paralympic Games, referencing the Convention on the Rights of Persons with Disabilities, former UN Secretary-General Ban Ki-moon called access to sport a “fundamental human right” of all people.⁹⁷

In addition to agreements that include sport in their obligations, there are also specific international conventions relating to certain sports norms, several of which are under the umbrella of the United Nations Educational, Scientific and Cultural Organization (UNESCO). These include the UNESCO Anti-Doping Convention⁹⁸ and the UNESCO International Charter of Physical Education, Physical Activity and Sport, the latter of which also provides a general prohibition against discrimination by reference to the UDHR in its preface.⁹⁹ UNESCO specifically recognizes gender inequality in sport as an issue of concern. In response, the organization’s physical education and sports programs aim to “mainstream the gender dimension” in sport in order to increase women’s and girls’ participation.¹⁰⁰

Additionally, in 2016, the UN Special Rapporteur on the Right to Health issued a report discussing the need to end discriminatory practices in access to sport.¹⁰¹ Special rapporteurs are independent experts with mandates from the Commission on Human Rights to study, report

95 Declaration on the Rights of Indigenous Peoples, art. 31, G.A. Res. 61/295 (2007).

96 Convention on the Rights of Persons with Disabilities, art. 50(5)(a)–(e), G.A. Res. 61/106 (2006); see Burchfield, *supra* note 81.

97 UN Secretary-General, *Access to Sport “a Fundamental Human Right”, Says Secretary-General in Video Message for Summit of Rio Paralympic Games*, UN Doc. SG/SM/18063 (Sept. 15, 2016).

98 International Convention against Doping in Sport, UNESCO (2005).

99 International Charter of Physical Education, Physical Activity and Sport, UNESCO (2015).

100 *Women and Sport*, UNESCO, <http://www.unesco.org/new/en/social-and-human-sciences/themes/physical-education-and-sport/women-and-sport/>.

101 Report of the Special Rapporteur on the Right to Health, UN Doc. A/HRC/32/33 (2016).

on, and advise on specific human rights topics. While their reports and recommendations are not legally binding, they are persuasive sources of legal interpretation of international human rights. The 2016 report asserts that states are obligated to respect the right to health, which includes equal access to state-run sporting facilities.¹⁰² It also suggests that states must conduct “inclusive, participatory, and transparent audit[s]” relating to sport and the right to health to ensure that they are nondiscriminatory and in compliance with human rights standards.¹⁰³

Regional Systems

Regional systems also contain relevant legally binding human rights norms. These institutions provide distinct interpretations, enforcement mechanisms, and monitoring processes, which can serve as useful tools for advocates utilizing the human rights framework and norms to counter discrimination.

Inter-American Human Rights System

The Organization of American States protects the rights to sport and to nondiscrimination in sport in two main documents: the American Convention on Human Rights and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights. In addition to prohibiting gender-based discrimination, the American Convention on Human Rights enshrines a right to sport within the right to freedom of association protected in article 16, which states that “everyone has the right to associate freely for ideological, religious, economic, labor, social, cultural, sports, or other purposes.”¹⁰⁴ Echoing the ICESCR, the Additional Protocol codifies a range of rights related to labor and employment that cannot be infringed based on gender.¹⁰⁵

European System

The European Convention on Human Rights prohibits discrimination on the basis of gender and other identities and traits, but does not specifically

102 *Id.*

103 *Id.*

104 American Convention on Human Rights, art. 16, OAS Treaty Series No. 36 (1969).

105 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, arts. 6–7, OAS (1999).

mention sport.¹⁰⁶ However, article 4(1) of the European Sports Charter expressly prohibits discrimination in access to sports facilities or sports activities on the grounds of sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, or birth or other status.¹⁰⁷ Additionally, the courts of the European Union and the European Court of Justice have ruled on sport-related matters for more than three decades.¹⁰⁸ Although these rulings do not speak directly to the issue of gender discrimination in sport, they illustrate the power of courts within the European system to regulate the world of sport. Importantly, these decisions influence supranational sports bodies, including FIFA, and shape national and transnational norms around sport.¹⁰⁹

African System

The preeminent human rights treaty of the African Union—the African Charter on Human and Peoples’ Rights—establishes an implicit right to sport and sport free from discrimination, with several articles even including the right to sport as a means of employment.¹¹⁰ Article 2 prevents discrimination on the basis of sex.¹¹¹ Articles 10 and 11 establish freedom of association, which in some cases is read to cover the context of sport.¹¹² Similarly, article 17 includes the right to participate in the cultural life of one’s community, and article 22 includes the right to economic, social, and cultural development, where culture is also considered to implicitly encompass the right to sport.¹¹³ Article 15 includes the right to work and fair employment, which should apply to athletes who rely on sport for all or part of their livelihood.¹¹⁴ Finally, article 16 includes the right to “enjoy

¹⁰⁶ European Convention on Human Rights, European Treaty Series No. 5 (1950).

¹⁰⁷ European Sports Charter, art. 4(1) (revised 2001).

¹⁰⁸ Borja García, *The European Union and Sport*, Sports, POL. & PUB. POL. WORKSHOP 1, 1–2 (2006),

¹⁰⁹ See *id.*

¹¹⁰ African Charter on Human and Peoples’ Rights, OAU Doc. CAB/LEG/67/3 rev. 5 (1981).

¹¹¹ *Id.* at art. 2.

¹¹² *Id.* at arts. 10–11.

¹¹³ *Id.* at arts. 17, 22.

¹¹⁴ *Id.* at art. 26.

the best attainable state of physical and mental health,” which strongly implies a right to participate in sport.¹¹⁵

Additionally, the African Union’s Agenda 2063 (analogous to the UN’s Sustainable Development Goals) “calls for an African cultural renaissance,” which includes sport as “an element of culture and a major contributor in human development and strengthening national cohesion and rapprochement of people.”¹¹⁶

International Sports Bodies

Unlike international and regional human rights systems, international sports bodies are not a source of binding international law. Nevertheless, these organizations—voluntarily, or normatively compelled by the aforementioned international human rights laws—have established their own set of policies and guidelines that commit them to upholding a variety of human rights norms, including that of nondiscrimination. Most notably, under the Fundamental Principles of Olympism, the Olympic Charter establishes sport as a human right and prohibits discrimination of any kind:

The practice of sport is a human right. Every individual must have the possibility of practising sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play.¹¹⁷

Other transnational sports governance bodies have also adopted human rights frameworks. For example, FIFA’s Human Rights Policy includes a commitment to respect human rights “in accordance with the UN Guiding Principles on Business and Human Rights” and “embraces all internationally recognized human rights,” specifically mentioning the UDHR, ICESCR, and the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.¹¹⁸ The association notes that its most “salient human rights risks” include labor rights and discrimination.¹¹⁹

¹¹⁵ *Id.* at art. 16.

¹¹⁶ African Union, *Promoting Sports & Culture*, <https://au.int/en/promoting-sports-culture>.

¹¹⁷ Olympic Charter, International Olympic Committee (2019).

¹¹⁸ FIFA, *FIFA’s Human Rights Policy*, 5–6 (May 2017), https://resources.fifa.com/mm/document/affederation/footballgovernance/02/89/33/12/fifashumanrightspolicy_neutral.pdf.

¹¹⁹ *Id.* at 6.

In addition to sports governance bodies, advocacy organizations such as the International Working Group on Women and Sport (IWG), the International Association of Physical Education and Sport for Girls and Women, and Women Sport International place the right to nondiscrimination in sport at the center of their international programming.¹²⁰ Most notably, the IWG’s foundational document, the Brighton plus Helsinki 2014 Declaration, is a multilateral transnational pledge that commits organizations to promoting the involvement of women and girls in the world of sport. The declaration is directed at all governments, public authorities, organizations, businesses, and other establishments “who are responsible for, or who directly influence, the conduct, development or promotion of sport or who are in any way involved in the employment, education, management, training, development or care of women in sport.”¹²¹ Through the declaration, the IWG aims to promote equity and equality (as defined by the UDHR and CEDAW) in sport, improve sports-related facilities and opportunities for girls and women, enhance the representation of women within sports leadership, and increase investment in female athletes, among other goals.¹²² The IWG also believes in the importance of including the knowledge, experiences, and voices of female athletes in all decision-making processes for the future of sport.¹²³

* * *

International human rights law is not at the center of discussions on gender equity in sport, but it should be. The framework of laws, rules, and norms established by binding international conventions and self-imposed sports doctrine clearly demonstrates that women have a right to be treated with dignity, respect, and equity in the world of sport. The institutions that fail to uphold these principles are willfully violating widely codified laws and norms and should be held to account. The discussion below illustrates the difficulty in raising such claims through FIFA’s designated dispute resolution system. However, international human rights laws and norms may prove more successful in domestic courts, which are increasingly an avenue for advocacy and reform, as discussed in further detail in part 4.

¹²⁰ See Burchfield, *supra* note 81.

¹²¹ WOMENSPORT INTERNATIONAL *Brighton Declaration on Women and Sport*, http://www.sportsbiz.bz/womensportinternational/conferences/brighton_declaration.htm.

¹²² *Id.*

¹²³ *Id.*

PART 3

FIFA AND DISPUTE RESOLUTION IN THE WORLD OF FOOTBALL

FIFA’s dominance over the world of football positions the association as either a powerful adversary or an essential partner in the fight for gender justice. Its monopoly over the sport permeates every level of the game—from the individual player at a local club to multinational, multibillion-dollar tournaments. Consequently, understanding FIFA’s structure, incentives, and preferred (or mandated) avenues for dispute resolution is essential to assessing how female players and their allies can most effectively advocate their interests and express their grievances.

Structural Overview of Football

Governance

FIFA has administered football worldwide since 1904. The association is a nonprofit organization governed by Swiss law and based in Zurich, but with sweeping international reach through its global, multi-tiered structure.

FIGURE 1
Hierarchy of FIFA's governing bodies



At the top of the FIFA pyramid of control lie its Congress,¹²⁴ Council,¹²⁵ General Secretariat,¹²⁶ and various standing and ad hoc committees.¹²⁷ Next, there are the six FIFA confederations, which consist of regional groupings of the 211 FIFA-recognized national membership associations.¹²⁸ In exchange for financial and logistical support from FIFA, these associations are required to abide by the FIFA Statutes and relevant rulings of the Court of Arbitration for Sport (CAS).¹²⁹ Within

¹²⁴ FIFA, *FIFA Statutes*, arts. 25–32 (June 2019), <https://resources.fifa.com/image/upload/fifa-statutes-5-august-2019-en.pdf?cloudid=ggyamhxxv8jrdfbekrrm> [hereinafter *FIFA Statutes*]. The FIFA Congress is the supreme legislative body of FIFA and the only body with the power to change the FIFA Statutes.

¹²⁵ *Id.* at arts. 33–38. The FIFA Council is the strategic and oversight body of FIFA, with thirty-seven members—one president, eight vice presidents, and twenty-eight members selected from the confederations.

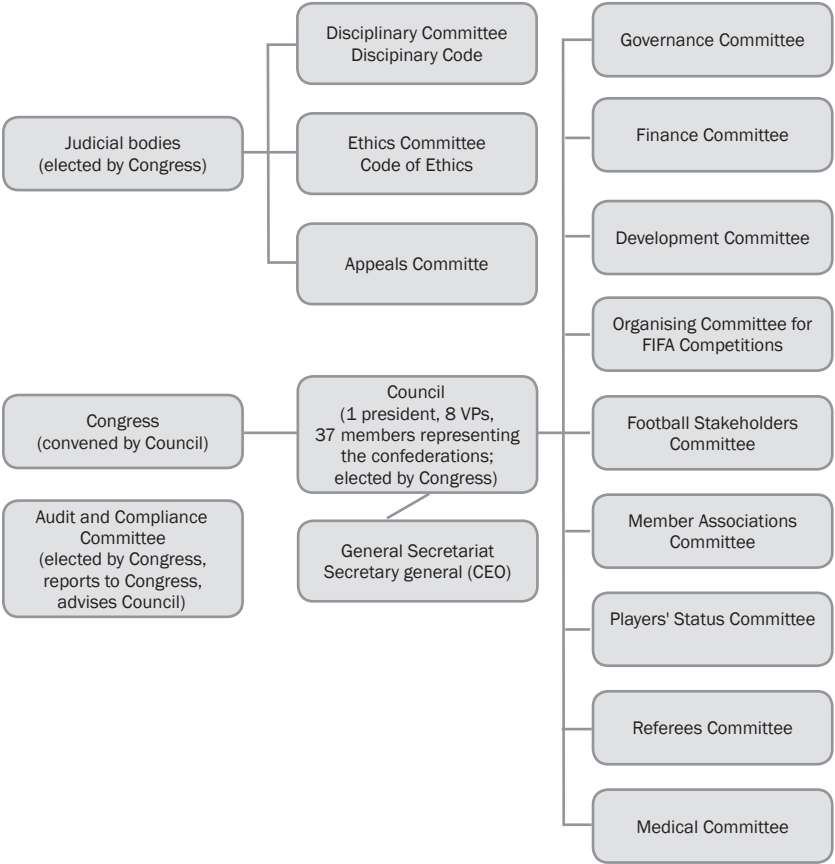
¹²⁶ *Id.* at arts. 36–37. The FIFA General Secretariat serves as the executive, operational, and administrative body operating under the authority and supervision of the FIFA Council. This body executes contracts, competitions, and all other business matters. It is led by the FIFA secretary general, who is appointed by the Council and serves as the CEO of FIFA.

¹²⁷ *Id.* at arts. 39–48. The Standing and Ad Hoc Committees report to, advise, and assist the FIFA Council and General Secretariat on various matters. For example, the Players' Status Committee is responsible for the work of FIFA's Dispute Resolution Chamber. *Id.* at art. 46.

¹²⁸ *Id.* at art. 2.

¹²⁹ *FIFA Statutes*, *supra* note 126, at arts. 10–19.

FIGURE 2
FIFA's organizational structure



each membership association, there is a male, and sometimes female, national squad, as well as leagues consisting of various club teams.¹³⁰ At the individual level, there are officials and players. The former includes all persons responsible for technical, medical, and administrative matters, such as committee members, referees, and coaches,¹³¹ while the latter includes only football players who are licensed by a FIFA association.¹³² Finally, the FIFA structure provides for a number of independent committees, which are tasked with significant oversight

¹³⁰ *Id.* at Definitions, paras. 3, 14.
¹³¹ *Id.* at Definitions, para. 13.
¹³² *Id.* at Definitions, para. 15.

responsibilities, including auditing,¹³³ discipline,¹³⁴ and ethics review.¹³⁵ Independent committee members are prohibited from serving as a member in any other FIFA body.¹³⁶

The FIFA Statutes and accompanying regulations form “the Constitution” of FIFA and provide the basic laws for world football.¹³⁷ The statutes aim to constantly improve the game of football, organize international competitions, establish regulations for governing the game of football, control every type of football association, ensure the game is available to all, promote the development of women’s football, and advocate integrity, ethics, and fair play.¹³⁸ They also promote certain normative values, including promoting and protecting all “internationally recognized human rights”¹³⁹ and prohibiting discrimination of any kind.¹⁴⁰ In reality, the most powerful effect of the FIFA Statutes is standardization and stability. Managing 211 associations across six continents places a high premium on anything that reduces operational costs and mitigates risks. For example, in the context of dispute resolution, the FIFA Statutes expressly prohibit “recourse to ordinary courts of law”—instead mandating internal dispute resolution mechanisms or recourse to the CAS—and demand that member associations insert a similar prohibition in their own statutes.¹⁴¹ While such measures increase the predictability and simplicity of this multifaceted system, they significantly restrict the freedoms of the actors involved.

¹³³ *Id.* at 51. Notably, members of the independent Audit and Compliance Committee are elected by, and report to, the FIFA Congress.

¹³⁴ *Id.* at 53. The independent Disciplinary Committee is governed by the FIFA Disciplinary Code.

¹³⁵ *Id.* at 54. The independent Ethics Committee is governed by the FIFA Code of Ethics.

¹³⁶ *Id.* at 51–55.

¹³⁷ FIFA, *The FIFA Statutes: Football’s Constitution* (May 8, 2009), <https://www.fifa.com/who-we-are/news/the-fifa-statutes-football-constitution-1055443>. These statutes and regulations are distinct from the laws of the game of football, which lay out the rules on the proper way to play the sport. The laws of the game are issued by the International Football Association Board, of which FIFA is a member, in accordance with article 7 of the FIFA Statutes. *FIFA Statutes*, *supra* note 126, at art. 7.

¹³⁸ *FIFA Statutes*, *supra* note 126, at art. 2.

¹³⁹ *Id.* at art. 3.

¹⁴⁰ *Id.* at art. 4.

¹⁴¹ *Id.* at art. 59.

Financial Incentives

Critical to understanding FIFA's structure and institutional decision-making—especially around its investment in women's football and adherence to human rights norms—are the association's financial incentives. Despite being a nonprofit organization, FIFA functions as a profit-making corporation and frequently uses market-based arguments in defense of its discriminatory practices.

FIFA's revenue has grown dramatically since it first began issuing financial reports in 2003.¹⁴² In fiscal year 2018, FIFA reported record-high revenue of over US\$6.4 billion.¹⁴³ Additionally, FIFA's assets were 50% higher than the previous year, totaling almost US\$4.4 million, and its reserves were valued at approximately US\$2.75 million.¹⁴⁴ Television, licensing, and marketing rights from the FIFA World Cup and Women's World Cup generate most of this revenue.¹⁴⁵ Illustratively, the 2018 Men's World Cup brought FIFA US\$6 billion in revenue, accounting for 83% of FIFA's entire annual revenue that year.¹⁴⁶ The 2019 Women's World Cup is projected to have raised US\$131 million.¹⁴⁷

FIFA's impressive World Cup revenue streams are partially the result of strategically designed financial relationships with tournament host countries and sponsors. Host countries pay for the majority of tournament costs, keeping FIFA's expenses low and profits high.¹⁴⁸ Additionally, FIFA requires host nations to provide a "full tax exemption" for FIFA and its subsidiaries during the "preparation, delivery and wrap-up of the Competition."¹⁴⁹ FIFA's three-tiered sponsorship system—comprising

142 FIFA, *Financial Reports*, <https://www.fifa.com/about-fifa/what-we-do/governance/finances/>.

143 FINANCIAL REPORT 2018, *supra* note 52.

144 *Id.*

145 *Id.*

146 *Id.*

147 *Id.* Official figures for the 2019 Women's World Cup were not available at the time of writing.

148 See, e.g., Shafi Musaddique, *FIFA Looks to the East as It Struggles to Find Sponsors for Russia World Cup*, CNBC (Apr. 17, 2018) (describing FIFA's sponsorship tiers and FIFA's urgency to fill each sponsorship spot before the World Cup).

FIFA, Overview of Government Guarantees and the Government Declaration (2017), <https://img.fifa.com/image/upload/ufybnqOf1kd2g1nhw-5pc.pdf>. While only recently made public, FIFA has long imposed similar, if not more expansive, tax requirements on its host nations. See, e.g., Ian Pollock, *World Cup: To Tax or Not to Tax?*, BBC (May 11, 2010) (describing

FIFA partners, World Cup Partners, and regionally based national supporters¹⁵⁰—also boosts its profits.¹⁵¹ Each sponsor pays FIFA to advertise at the World Cup and promote its products at FIFA events.¹⁵² In 2018, the highest-level sponsors (FIFA partners) each paid FIFA approximately US\$37.4 million to advertise at the World Cup and other global championship events.¹⁵³ Finally, as an “association”—the Swiss equivalent of a nonprofit organization—FIFA is taxed at half the standard business rate,¹⁵⁴ is exempt from national financial reporting requirements, and maintains heightened legal flexibility and governance autonomy.¹⁵⁵ Consequently, while FIFA does not directly use public money, it derives massive financial benefits from taxpayer dollars at home in Switzerland and around the world. In exchange for this menu of benefits, “associations” are technically barred from conducting business practices.

Gender-Focused FIFA Reforms

The role and importance of women within FIFA has expanded in recent years.¹⁵⁶ The first FIFA Women’s World Cup was held in 1991, and the

FIFA’s tax-related requirements, as well as the association’s desire to keep such conditions confidential).

150 See FIFA, *FIFA World Cup Sponsorship Strategy*, <https://www.fifa.com/what-we-do/marketing/sponsorship/#commercial-diagram-2472245> [hereinafter *FIFA Sponsorship Strategy*].

151 See, e.g., Lars Becker, *These Are the Official Sponsors at the World Cup*, ISPO.COM (June 14, 2018), <https://www.ispo.com/en/trends/2018-world-cup-overview-fifa-sponsors>.

152 See *FIFA Sponsorship Strategy*, *supra* note 152.

153 Becker, *supra* note 153 (converting 32 million euros to 2018 dollars).

154 Henrik Böhme, *FIFA’s Controversial Business Model*, DEUTSCHE WELLE (May 27, 2015) <https://www.dw.com/en/fifas-controversial-business-model/a-18479441>.

155 *FIFA Retains Low-Tax, Non-Profit Status Despite Billions*, SWISS INFO (Nov. 5, 2018) https://www.swissinfo.ch/eng/law-change-rejected_fifa-retains-low-tax-non-profit-status-despite-billions/44522840. Recent leaks indicate that the relationship between FIFA and Switzerland is souring and also suggest that FIFA seeks the same legal status as the United Nations and International Committee of the Red Cross. See, e.g., Matthew Allen, *FIFA Asks to Rub Shoulders with UN and Red Cross*, SWISS INFO (June 12, 2019), https://www.swissinfo.ch/eng/legal-status_fifa-asks-to-rub-shoulders-with-un-and-red-cross/45026236; see also Tariq Panja, *FIFA Quietly Considering Plan to Leave Switzerland*, N.Y. TIMES (July 31, 2019) <https://www.nytimes.com/2019/07/31/sports/soccer/fifa-headquarters-zurich.html>.

156 See, e.g., M.S., *Women’s Football Is Flourishing, On the Pitch and Off*

tournament continues to grow in size, competitiveness, and popularity.¹⁵⁷ This mirrors growth at the confederation, member association, league, and club level.¹⁵⁸

Over the past five years, FIFA has taken a number of steps to remedy its historic and ongoing gender disparities. First, in 2015, FIFA signed the aforementioned Brighton plus Helsinki 2014 Declaration—the foundational document of the IWG.¹⁵⁹ Upon signing the declaration, FIFA’s then president Sepp Blatter declared that FIFA’s endorsement was part of a “concerted push” for greater development and empowerment of women in football and sport more generally.¹⁶⁰

Shortly after FIFA became embroiled in a massive corruption scandal,¹⁶¹ the association asked John Ruggie—the UN Special Representative on Business and Human Rights and author of the UN Guiding Principles on Business and Human Rights—to develop recommendations aimed at ensuring greater respect for human rights within FIFA.¹⁶² While broad in scope, Ruggie’s report specifically refers to “endemic discrimination against women in the world of association football” as a “deep-seated” and underreported human rights violation.¹⁶³ In commissioning the report, newly appointed FIFA president Gianni Infantino stated that “FIFA is fully committed to respecting human rights ... and to being a leader among international sports organizations in this important area.”¹⁶⁴

It, *ECONOMIST* (June 24, 2019) <https://www.economist.com/game-theory/2019/06/24/womens-football-is-flourishing-on-the-pitch-and-off-it>.

157 WOMEN’S FOOTBALL STRATEGY BROCHURE, FIFA, <https://resources.fifa.com/image/upload/women-s-football-strategy.pdf?cloudid=z7w21ghir8jb9tguvb cq> [hereinafter FIFA WOMEN’S FOOTBALL STRATEGY].

158 *Id.*

159 BOTSWANA DAILY NEWS, *FIFA Signs Brighton Plus Helsinki 2014 Declaration* (Mar. 11, 2015), <https://www.botswanaonlinenews.com/fifa-signs-brighton-plus-helsinki-2014-declaration/>.

160 *Id.*

161 See, e.g., Kevin McFarland, *Everything You Need to Know About FIFA’s Corruption Scandal*, *WIRED* (May 27, 2015), <https://www.wired.com/2015/05/fifa-scandal-explained/> (describing the details of the FIFA corruption scandal involving a forty-seven-count indictment against fourteen defendants for corrupt practices associated with marketing contracts cumulatively worth more than US\$150 million).

162 John Ruggie, *“For the Game. For the World.”: FIFA & Human Rights* (2016), https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/cri/files/Ruggie_humanrightsFIFA_reportApril2016.pdf.

163 *Id.* at 4, 25.

164 Doug Gavel, *Independent Report Recommends How FIFA Needs to Man-*

Also in response to the corruption crisis, FIFA established a 2016 FIFA Reform Committee.¹⁶⁵ The members, consisting of representatives from each of the six confederations, were tasked with proposing a menu of reforms to help the organization “renew itself” and “restore confidence in FIFA.”¹⁶⁶ While many of the reforms spoke to broader issues of integrity and transparency, the committee called on FIFA to expressly embrace its responsibility to respect all human rights and to incorporate the promotion of women as an explicit objective.¹⁶⁷ Both recommendations are now embedded in the FIFA Statutes as article 3 and article 2(f), respectively.¹⁶⁸ FIFA’s Executive Committee also embraced the Reform Committee’s proposed policy of establishing a minimum of one female council member per confederation, which helps guarantee at least some representation of women among the organization’s decision-making elite.¹⁶⁹

In 2018, FIFA issued its first women’s football strategy, which details FIFA’s goals to “enhance the commercial value” of, and generally grow and strengthen, women’s football worldwide.¹⁷⁰ The strategy sets various short-term and long-term goals, some of which are more concrete than others. Specific goals include devising a clear women’s football communication strategy, further developing youth tournaments for girls, ensuring that at least one-third of FIFA committee members are women by 2022, and reaching sixty million female players by 2026.¹⁷¹ However, there are some glaring omissions from this strategy, including zero commitment to increase investment in women’s football and zero mention of increasing or equalizing pay, compensation, or prize money for female players.

age the Far-Reaching Human Rights Risks of Its Global Enterprise, HARVARD KENNEDY SCHOOL (Apr. 14, 2016), <https://www.hks.harvard.edu/announcements/independent-report-recommends-how-fifa-needs-manage-far-reaching-human-rights-risks>.

165 FIFA, *FIFA Executive Committee Unanimously Approves Extensive Reforms* (Dec. 3, 2015), <https://www.fifa.com/who-we-are/news/fifa-executive-committee-unanimously-approves-extensive-reforms-2741812> [hereinafter *FIFA Executive Committee Approves Reforms*].

166 2016 FIFA Reform Committee Report, FIFA (Dec. 2, 2015), <https://img.fifa.com/image/upload/mzzxqw0dabgx8ljmhxwr.pdf>.

167 *FIFA Executive Committee Approves Reforms*, *supra* note 167.

168 *FIFA Statutes*, *supra* note 126, at arts. 2(f), 3.

169 *FIFA Executive Committee Approves Reforms*, *supra* note 167.

170 FIFA WOMEN’S FOOTBALL STRATEGY, *supra* note 159, at 2–3.

171 *Id.* at. 10, 12, 14, 16.

Most recently, in 2019, FIFA signed a memorandum of understanding with UN Women. The memorandum promotes three key joint areas of work: (1) sports policy development; (2) the promotion and support of sustainable projects to increase the longevity of women's football and its positive impact on the lives of women and girls; and (3) awareness-raising campaigns about gender equality through sport.¹⁷² FIFA President Infantino asserted that in signing the memorandum, FIFA was combining “forces with UN Women to realise gender equality for women both on and off the pitch.”¹⁷³

These pledges and plans are an essential step toward greater gender equity in the world of football, but they have, unfortunately, not translated into concrete improvements for female players. As mentioned above, none of these agreements or strategies commits quantifiable resources to the realm of women's football. Furthermore, given FIFA's monopoly over the governance of the football world, there are few (if any) clear mechanisms for holding the association accountable to its own commitments.

Dispute Resolution Mechanisms in the World of Football

The dispute resolution mechanisms within the world of football are governed by many rules and regulations, including the FIFA Statutes, the Regulations on the Status and Transfer of Players (RSTP), the Commentary on the Regulations for the Status and Transfer of Players (Commentary on the RSTP), the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (Rules Governing PSC and DRC), the National Dispute Resolution Chamber Standard Regulations (NDRC Standard Regulations), and various circulars sent to FIFA affiliates.

The FIFA Statutes are the most expansive, discussing the organization of FIFA as a whole. The RSTP details player status, registration, and transfer. Further explanation of these rules is included in the Commentary on the RSTP. Article 22 of the RSTP also mentions dispute resolution between various parties (for example, between players and leagues). The rules governing these dispute resolution bodies are found in the Rules

172 FIFA, *FIFA and UN Women Sign First-Ever Memorandum of Understanding* (June 7, 2019), <https://www.fifa.com/womens-football/news/fifa-and-un-women-sign-first-ever-memorandum-of-understanding>.

173 *Id.*

Governing PSC and DRC and the NDRC Standard Regulations. These rules are sometimes first published in circulars (or memos) to FIFA affiliates, but the most comprehensive account of relevant rules is found in the official rules documents.

Though each of these documents has a specific purpose, an issue or substantive area may be covered, inconsistently, in multiple documents. This is especially true of the dispute resolution structure. For example, while FIFA's RSTP explicitly states that players or clubs may, without prejudice, seek redress before a civil court for employment-related disputes,¹⁷⁴ many players' contracts include an exhaustion clause that requires players to seek resolution within the FIFA dispute settlement structure before bringing a case before civil court.¹⁷⁵ In contrast to the seemingly permissive RSTP, the FIFA Statutes specifically prohibit "recourse to ordinary courts of law ... unless specifically provided for in the FIFA regulations."¹⁷⁶ Instead, the FIFA Statutes direct complaints through internal dispute resolution chambers, allowing arbitration as a last resort.

Given FIFA's apparent aversion toward traditional courts of law, the below subsections provide insight into prominent dispute forums used by footballers and other actors who are bound by FIFA's rules and regulations: FIFA's DRC, FIFA Players' Status Committee (PSC), national dispute resolution chambers (NDRCs), and the CAS.

FIFA's Dispute Resolution Chamber

The DRC was created in 2001 in response to a 1995 finding by the Court of Justice of the European Union that the Treaty of Rome did not allow for the application of rules created by sporting associations.¹⁷⁷ With no enforcement mechanism for player transfers, the Union of European Football Associations (UEFA), FIFA, and the European Commission met to

¹⁷⁴ FIFA, Regulations on the Status and Transfer of Players, art. 22 (Mar. 2020), <https://resources.fifa.com/image/upload/regulations-on-the-status-and-transfer-of-players-march-2020.pdf?cloudid=pljykaliyao8b1hv3mnp> [hereinafter *RSTP*].

¹⁷⁵ *Id.*

¹⁷⁶ *FIFA Statutes*, *supra* note 126, at art. 59; but see Steven A. Bank, *FIFA, Forced Arbitration, and the U.S. Soccer Lawsuits*, 42 J. LEGAL ASPECTS OF SPORT 1 (2020) (discussing why so many lawsuits against FIFA exist in US federal court despite arbitration requirements).

¹⁷⁷ See Case C-415/93, *Union Royale Belge des Societes de Football Association ASBL and Others v. Jean-Marc Bosman et al.* (Eur. Ct. Just.).

FIGURE 3
Overview of FIFA and affiliated dispute resolution bodies

Forum	FIFA fora		Non-FIFA fora	
	Dispute Resolution Chamber	Players' Status Committee	National dispute resolution chambers	Court of Arbitration for Sport
<i>FIFA affiliation</i>	FIFA governed	FIFA governed	Quasi-FIFA governed	Independent appellate body
<i>Key functions and features</i>	Applies FIFA Statutes regularly and primarily	Lesser jurisdictional reach than DRC	"Independent" tribunals to hear cases instead of DRC	Parties must agree to jurisdiction
	Disputes with international dimensions between players and clubs	Disputes between clubs and coaches	Employment-related disputes with international dimensions	No binding precedent
	26 members (clubs, players, FIFA representatives)	PSC chairperson (determined by FIFA Council) makes jurisdictional decisions	Must prove they are independent and duly constituted, but have jurisdictional problems	Appeals must be filed within 21 days with an exhaustion requirement

reform the transfer system and create binding principles on which to base transfer regulations. One of the resulting principles included a provision for an “effective, quick, and objective arbitration body ... [that] does not prevent recourse to the national courts.”¹⁷⁸ This arbitration body would become the DRC.

Articles 22 and 24 of the RSTP govern the DRC.¹⁷⁹ These provisions outline the DRC’s jurisdiction and composition. The DRC hears four types of disputes: (1) disputes between clubs and players in relation to the maintenance of contractual stability; (2) employment-related disputes between a club and player of an international dimension; (3) disputes relating to training compensation; and (4) disputes relating to the solidarity mechanism between clubs belonging to the same member association.¹⁸⁰ The primary requirement for DRC jurisdiction is an international dimension to the conflict. This prerequisite is interpreted broadly and can be fulfilled by a simple difference in nationality between a player and the location of his club.¹⁸¹ However, even a player and club of the same nationality can satisfy the internationality requirement if the dispute is international in nature—for example, a dispute about an international transfer.¹⁸²

The DRC is made up of twenty-eight members. According to RSTP requirements, these members include thirteen club representatives, thirteen player representatives, a chairperson, and a deputy chairperson.¹⁸³ While the RSTP requires an equal number of club and player representatives, it makes no mention of gender-based representation requirements. Currently only one member of the DRC is a woman.¹⁸⁴

178 EUROPEAN COMMISSION, *Outcome of Discussions between the Commission and FIFA/UEFA on FIFA Regulations on International Football Transfers* (Mar. 6, 2001), https://ec.europa.eu/commission/presscorner/detail/en/IP_01_314.

179 RSTP, *supra* note 176, at arts. 22, 24

180 RSTP, *supra* note 176, at art. 22(a), (b), (d), (e).

181 See *id.*

182 *Id.*

183 FIFA, Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber, art. 4 (Oct. 2017), <https://resources.fifa.com/image/upload/rules-governing-the-procedures-of-the-players-status-committee-and-the-2925428.pdf?cloudid=we0yfc1stfoxgv29k97v> [hereinafter *Rules Governing FIFA Dispute Procedures*]. Players’ associations and club leagues nominate their respective representatives, but the FIFA Council selects the chairperson and deputy chairperson. *Id.*

184 FIFA, *Composition of the Members of the Dispute Resolution Chamber*,

The DRC applies the FIFA Statutes and regulations while “taking into account all relevant arrangements, laws and/or collective bargaining agreements that exist at national level, as well as the specificity of sport.”¹⁸⁵ Though the tribunal includes twenty-eight members, only five members (two club representatives, two player representatives, and the chairperson) meet to hear cases. Cases are heard every four to six weeks at FIFA’s headquarters in Zurich, Switzerland, and up to thirty cases are heard and decided at each meeting.¹⁸⁶

Beginning in June 2018, the DRC was given the ability to impose sanctions on parties who fail to comply with its decisions. These sanctions include restrictions on players from participating in official matches for up to six months and restrictions on clubs from registering new players for up to three registration periods.¹⁸⁷

Players’ Status Committee

The PSC, like the DRC, is governed by the FIFA’s RSTP. However, the PSC differs from the DRC in its substantive jurisdictional reach. The PSC hears cases related primarily to disputes between clubs and coaches, instead of player-related disputes.¹⁸⁸ Though this jurisdictional difference is explained in article 22 of the RSTP, the chairman of the PSC determines the proper forum for borderline cases.

The PSC is currently composed of a chairperson, a deputy chairperson, and twenty-two members—only three of whom are women.¹⁸⁹ Cases in front of the PSC are heard by a panel of at least three members, but in

<https://resources.fifa.com/image/upload/composition-of-the-members-of-the-dispute-resolution-chamber.pdf?cloudid=pxc12gjtwx4fdkvrqbrt>.

185 *Rules Governing FIFA Dispute Procedures*, *supra* note 185, at art. 2.

186 *Id.* at art. 10.

187 It is unclear how FIFA dispute resolution determinations are received by national courts. While players are strongly incentivized to keep cases within the FIFA/CAS system, many questions remain about their jurisdictional power. A 2017 decision by the First Civil Law Court of the Swiss Federal Tribunal emphasized that FIFA tribunals are not arbitral tribunals vested with real jurisdictional power but only internal decision-making bodies, whose decisions are mere embodiments of the will of the federations concerned. *FC A. v. B.*, Case No. 4A_492/2016, at 8 (First Civ. L. Ct., Feb. 7, 2017), <http://www.swissarbitrationdecisions.com/sites/default/files/7%20février%202017%204A%20492%202016%20.pdf>.

188 See *RSTP*, *supra* note 176, at art. 22(c), (e).

189 FIFA, *Players’ Status Committee*, <https://www.fifa.com/about-fifa/who-we-are/committees/committee/1882032/>.

many instances they are heard by a single judge. Like the chairman and deputy chairman of the DRC, the FIFA Council selects the members of the PSC.

National Dispute Resolution Chambers

Article 59 of the FIFA Statutes and article 22 of the RSTP describe the jurisdictional scope and effect of FIFA's dispute resolution chambers, including NDRCs.¹⁹⁰ Together, these provisions created "independent" and "duly constituted" arbitration tribunals that can hear cases instead of the DRC. NDRCs were intended to improve the efficacy of player and club dispute resolution, but they have caused a significant amount of confusion and arbitration over the proper forum for any given dispute.

NDRCs have several prerequisites.¹⁹¹ According to FIFA,¹⁹² for an arbitration tribunal to at least minimally qualify as "independent" and "duly constituted," it must embrace the following principles:

- **Principle of parity.** Like the DRC, parties must have equal influence over the tribunal. In an NDRC, this equal influence is achieved by ensuring that there are the same number of player representatives and club representatives. Similarly, in arbitration proceedings, parties may each appoint an arbitrator. The two appointed arbitrators then select the chairperson of the arbitration tribunal. In the alternative, parties can jointly select a single arbitrator.
- **Right to independent and impartial tribunal.** Arbitrators are rejected if there is a legitimate question concerning their independence. If an arbitrator is rejected, the replacement procedure must be controlled by a contractual agreement, the rules of arbitration, or state rules of procedure to ensure objectivity.
- **Principle of fair hearing.** Each party is granted the right to speak on all facts essential to the ruling, file relevant motions to take evi-

¹⁹⁰ *FIFA Statutes*, *supra* note 126, at art. 59; *RSTP*, *supra* note 176, at art. 22.

¹⁹¹ FIFA, National Dispute Resolution Chamber (NDRC) Standard Regulations (Jan. 1, 2008), https://www.fifa.com/mm/document/affederation/administration/drc_regulations_en_33736.pdf [hereinafter *NDRC Regulations*].

¹⁹² See FIFA, Circular no. 1010 (Dec. 20, 2005) http://goldengate-law.com/pdf/fifa_circular/fifa_circular_1010.pdf; FIFA, Circular no. 1129 (Dec. 28, 2007) https://www.fifa.com/mm/document/affederation/administration/circular_1129_en_33849.pdf.

dence, and represent their legal points of view. Each party has the right to representation by an attorney or other expert.

- **Right to contentious proceedings.** Each party is entitled to examine and comment on the allegations filed by the other party and provide a rebuttal backed by allegations and evidence.
- **Principle of equal treatment.** Arbitrators must ensure that parties are treated equally.

In regard to the jurisdiction of NDRCs, article 22 of the RSTP describes the two types of disputes that NDRCs are permitted to hear: employment-related disputes of an international dimension and employment-related disputes of an international dimension between a club or member association and a coach.¹⁹³ Both of these provisions are worded such that the DRC has jurisdiction over the dispute unless an NDRC exists and “guarantee[s] fair proceedings, [respects] the principle of equal representation of players and clubs, has been established at the national level, [and was created] within the framework of the association [FIFA] or a collective bargaining agreement.”¹⁹⁴ Similarly, the 2008 NDRC Standard Regulations state that an NDRC shall “examine ex officio whether it has jurisdiction ... if [the NDRC] should deem itself legally incompetent, it shall refer the case ex officio ... to an authority it deems competent and inform the parties immediately.”¹⁹⁵

Despite this generous grant of jurisdiction, the jurisdiction of an NDRC can be quite contentious. The CAS has, on multiple occasions, had to decide between the DRC and an NDRC when determining the proper forum for a dispute. Though CAS decisions are non-precedential, as a general rule, the CAS considers the DRC to have jurisdiction over all employment-related disputes of an international dimension. Thus, all such disputes are submitted to the DRC before petitioning for the jurisdiction of an NDRC.¹⁹⁶ If a party chooses to seek resolution through an NDRC, the party must submit a copy of all applicable national regulations

¹⁹³ RSTP, *supra* note 176, at art. 22(b), (c).

¹⁹⁴ *Id.*

¹⁹⁵ NDRC Regulations, *supra* note 193, at art. 4.

¹⁹⁶ S.C. Sporting Club S.A. Vaslui v. Marko Ljubinkovic, CAS 2010/A/2289, at para. 78 (Ct. Arb. Sport Aug. 2011), <https://jurisprudence.tas-cas.org/Shared%20Documents/2289.pdf>; Ionikos FC v. L., CAS 2008/A/1518, at para. 128 (Ct. Arb. Sport Feb. 2009), https://arbitrationlaw.com/sites/default/files/free_pdfs/CAS%202008-A-1518%20IFC%20v%20L%20Award.pdf.

that define the jurisdiction and composition of the NDRC, as well as documentation confirming the NDRC's compliance with the aforementioned prerequisites.¹⁹⁷ Without these documents, the DRC typically retains jurisdiction.

Based on the FIFA Commentary on the RSTP,¹⁹⁸ the CAS also requires that the relevant player's contract or collective bargaining agreement (CBA) contain an arbitration clause that, in clear and unambiguous terms, refers players to a specific national dispute resolution body and expressly prohibits the jurisdiction of other competent bodies. This means that unless NDRC jurisdiction is asserted *and* the DRC is excluded, DRC jurisdiction is maintained.¹⁹⁹

Despite FIFA's purported desire to expedite dispute resolution through national bodies, the reality of FIFA's regulatory framework continues to funnel cases through the singular DRC—thus sacrificing efficiency for tighter control.

Court of Arbitration for Sport

FIFA recognizes the CAS as an appellate body and independent judicial authority.²⁰⁰ To trigger CAS jurisdiction, the FIFA Statutes state that appeals against final decisions passed by FIFA's legal bodies and confederations must be filed within twenty-one days of the receipt of the decision and only after all other internal channels have been exhausted.²⁰¹

The CAS was created in 1984 as a response to the increase in specialized sport-related disputes.²⁰² It began as a collaboration between the president of the International Olympic Committee and a judge who was

197 S.C.S. Fotbal Club CFR 1907 Cluj S.A. v. Ferdinando Sforzini & Fédération Internationale de Football Association (FIFA), CAS 2014/A/3483, at para. 61 (Ct. Arb. Sport Mar. 2015), <https://jurisprudence.tas-cas.org/Shared%20Documents/3483.pdf>.

198 FIFA, Commentary: Regulations for the Status and Transfer of Players, 66, n.101 (Sept. 1, 2005), <https://resources.fifa.com/image/upload/fifa-rstp-commentary-2006.pdf?cloudid=eeorr2eogoidxzlwhr8> ("The player needs to be aware at the moment of signing the contract that the parties shall be submitting potential disputes related to their employment relationship to this body.").

199 See *RSTP*, *supra* note 176, at art. 22(a), (b), (d), (e).

200 See *FIFA Statutes*, *supra* note 126, at arts. 57–58.

201 See *id.*

202 Louise Reilly, *An Introduction to the Court of Arbitration for Sport (CAS) & the Role of National Courts in International Sports Disputes*, 2012 J. Disp. Res. 1, 1 (2012).

both a committee member and judge on the International Court of Justice.²⁰³ While the CAS's Olympic origins initially raised questions about its independence, a 1993 case about an equestrian resulted in recognition of the CAS's independence by the Swiss Federal Tribunal.²⁰⁴ Nonetheless, some critics still question whether the close-knit nature of the sports community and the repeated presence of a few power players may affect the court's impartiality.

The CAS is based in Lausanne, Switzerland, and has branches in Sydney and New York.²⁰⁵ It is governed through the CAS Code—a set of operating procedures for the arbitration court.²⁰⁶ This code allows CAS to offer four distinct services: (1) international commercial arbitration, including over sponsorship contracts; (2) appeal arbitration; (3) ad hoc arbitration offered by on-call arbitrators during Olympic games and other major sporting events; and (4) mediation.²⁰⁷ Of the four services, appeal arbitration is by far the most popular. Almost 90% of cases brought before the CAS are heard by the appeals division.²⁰⁸

Like all arbitral bodies, the CAS obtains jurisdiction through explicit agreement between contractual parties. Absent such an agreement, it possesses no jurisdiction over a dispute. However, as previously mentioned, the CAS's status as a court of last resort within the FIFA Statutes presents significant procedural barriers for players seeking redress from this forum. Similarly, like all arbitral bodies, the CAS does not produce binding precedent. This presents potential litigants with the daunting factor of unpredictability. Additionally, CAS decisions and awards are kept confidential unless all parties agree or the CAS division

203 *Id.*

204 *Id.* at 1–2.

205 COURT OF ARBITRATION FOR SPORT, *Addresses and Contacts*, <https://www.tas-cas.org/en/general-information/addresses-and-contacts.html>.

206 Ian Blackshaw, *ADR and Sport: Settling Disputes through the Court of Arbitration for Sport, the FIFA Dispute Resolution Chamber, and the WIPO Arbitration & Mediation Center*, 24 MARQ. SPORTS L. REV. 1, 5 (2013).

207 COURT OF ARBITRATION FOR SPORT, *Code: Procedural Rules*, <https://www.tas-cas.org/en/arbitration/code-procedural-rules.html> [hereinafter CAS Code].

208 *Id.* (explaining further that FIFA-related appeals make up about 45% of CAS appeals); see also Blackshaw, *supra* note 208, at 65.

president²⁰⁹ so decides.²¹⁰ While some awards are published, there is no way to know whether additional case law on a certain topic exists.

The remaining arbitration terms can be contractually established by the parties. However, two default rules exist—three arbitrators will oversee the dispute and Swiss law will govern—in the event that parties do not come to an alternative arrangement.

* * *

The various FIFA regulations present a conflicting network of dispute resolution forums available to players. The RSTP states that players and clubs can seek redress before civil courts for employment-based disputes, while the FIFA Statutes prohibit outside recourse in most cases and subject permissible disputes to an exhaustion clause. The RSTP states that employment-based disputes of an international nature are the domain of NDRCs, yet FIFA regulation commentary and CAS case law (though allegedly non-precedential) require elaborate procedures to divest the DRC of jurisdiction. Each of the dispute mechanisms available to players seems shrouded in contractual complexity and only nominally impartial. This is perhaps why players have turned to external mechanisms, despite their contractual obligations requiring otherwise.

Unfortunately, the insular nature of FIFA's dispute resolution system, paired with the complexity of players' contractual terms, stunts access to justice—and all the more so for women. Only players unafraid of potentially career-ending backlash or reprisal may risk using external mechanisms to pursue redress otherwise unattainable in FIFA's internal web.²¹¹

209 COURT OF ARBITRATION FOR SPORT, *Code: Statutes of ICAS and CAS*, <https://www.tas-cas.org/en/icas/code-statutes-of-icas-and-cas.html> (noting that the division president is an elected position on the International Council of Arbitration for Sport, the body that governs the CAS and manages its administration and finances). There are three CAS division presidents: "the President of the Ordinary Arbitration Division, the President of the Anti-Doping Division and the President of the Appeals Arbitration Division of the CAS." *Id.*

210 CAS Code, at R43.

211 While gender discrimination issues affect women football players worldwide, not all women have the resources to pursue legal action in an outside court. This type of action usually requires significant financial resources, an applicable legal framework, community support, and favorable media coverage. As the cases in part 4 of this report illustrate, these hurdles may be easier to overcome for women footballers in certain countries than others. FIFA is in a unique position to reduce this type of inequality by providing all women footballers a fair, balanced, and accessible forum for

All others are forced to turn to the inaccessible structure described above. Most players will not have the legal training required to navigate this internal system, and those who do will face male-dominated committees and panels. While FIFA may argue that its dispute resolution system actually provides players with greater access to justice than a costly arbitral body or court, such a claim ignores the sequestered nature of FIFA's system. Players who wish to access some sort of legal counsel may do so only through FIFA-approved pro bono counsel, only to face committees and panels whose members are all affiliated with FIFA in some way.²¹² Without an outside force to act as a "check," FIFA makes the rules, interprets them, and enforces them.

Though players may eventually gain access to an outside body through the CAS, this occurs only after players have exhausted all internal options. There are fees associated with arbitration at the CAS (above and beyond the cost of legal representation), which not all players will be able to afford—especially women who are systematically paid little to nothing.

In its current form, FIFA's internal dispute resolution framework exacerbates the inequality that female players already face in the world of football. Furthermore, accessing information on relevant cases in FIFA's dispute resolution bodies can be challenging. Not all cases are released to the public, and most are not organized or archived by topic. This presents an insurmountable hurdle for players who wish to understand how similar cases have been handled in the past, and prevents oversight of, or accountability for, arbitrary or inconsistent decision-making. Additionally, these bodies are governed by internal rules and regulations and pay little attention to other sources of law, including international human rights law. Without recognition and resolution of these issues, FIFA's internal dispute resolution system does not provide fruitful grounds for the pursuit of justice and gender equity in football, regardless of FIFA's alleged recent commitments to women's empowerment.

pursuing redress.

212 FIFA, *FIFA Introduces New Legal Aid System* (Sept. 2, 2019), <https://www.fifa.com/who-we-are/news/fifa-introduces-new-legal-aid-system-and-opens-applications-for-pro-bono-counsel>.

PART 4

TOWARD GENDER EQUITY: DOMESTIC CASE STUDIES

Due to the various hurdles presented by FIFA's internal or preferred dispute resolution mechanisms, when players do seek remedy for acts of discrimination, they generally do so through domestic courts or through protest—frequently boycotting matches and publicly voicing their grievances. The case studies below highlight legal and nonlegal actions promoting gender equality and labor rights and decrying sexual violence and harassment. While these cases focus on the football context, we also provide illustrative examples of parallel efforts in other sports.

This discussion does not propose to capture the entire universe of actions toward gender parity in sports but rather aims to provide examples of notable and well-documented cases. Relatedly, as both a symptom and a source of gender inequality in sports, the poor documentation that characterizes women's football increases the likelihood that important efforts toward parity go unnoted by the international community. The cases are listed chronologically, beginning with the most recent.

Equal Protection and Labor Rights

Legal Action in Football

■ **United States Women's National Team v. United States Soccer Federation (2019–2020):** On March 8, 2018, twenty-eight USWNT players filed a gender discrimination lawsuit against their employer, the United States Soccer Federation (USSF).²¹³ The complaint, filed in US

²¹³ Andrew Das, *U.S. Women's Soccer Team Sues U.S. Soccer for Gender Discrimination*, N. Y. TIMES (Mar. 8, 2019), <https://www.nytimes.com/2019/03/08/sports/womens-soccer-team-lawsuit-gender-discrimination.html>.

federal court, described various violations of the Equal Pay Act and Title VII of the Civil Rights Act of 1964.²¹⁴ Congress passed the Equal Pay Act in 1963 to combat discrimination in the workplace, with a particular focus on wage-based gender discrimination.²¹⁵ The following year, Congress enacted Title VII, which provides for more sweeping protections against workplace discrimination based on race, sex, religion, or national origin.²¹⁶

The core allegations against USSF included (1) significant pay disparities between the men's and women's teams, despite performing the same job as—and frequently outperforming—their male counterparts; (2) unfounded and discriminatory gender-based compensation policies; and (3) lesser training, resources, and investment compared to the men's national team.²¹⁷ As an example of existing gross disparities, the complaint alleged that “a 20-game winning top tier [US]WNT player would earn only 38% of the compensation of a similarly situated [US Men's National Team] player.”²¹⁸

The players requested financial relief for all damages incurred from USSF's discriminatory practices (including, but not limited to, back pay, front pay, and compensation and benefits that the players would have received in the absence of discriminatory practices), punitive damages to deter repetition of such discriminatory practices and policies, injunctive relief prohibiting USSF and its employees and agents from engaging in these unlawful policies and practices, and an adjustment of wage rates moving forward.²¹⁹

On November 8, 2019, a federal judge certified the players' request for class action status, thus allowing the suit to include all USWNT players since 2015, as specified in the complaint.²²⁰ While speaking only to the

214 Morgan v. United States Soccer Federation, 2019 NDCA para. 4, 2:19-CV-01717 (complaint), N.Y. TIMES (Mar. 8, 2019), <https://int.nyt.com/data/documenthelper/653-us-womens-soccer-complaint/f9367608e2e-af10873f4/optimized/full.pdf#page=1> [hereinafter *USWNT 2019 Complaint*].

215 Ali Jessani, *Shooting for Equality: An Analysis of the Market Force Defense as Applied to the U.S. Women's Soccer Team's Equal Pay Claim*, 25 DUKE J. GENDER L. & POL'Y 221, 224 (2018).

216 *Id.*

217 *USWNT 2019 Complaint*, *supra* note 216, at paras. 44–78.

218 *Id.* at para. 58.

219 *Id.* at Prayer for Relief.

220 Andrew Das, *U.S. Women's Soccer Team Granted Class Status in Equal Pay*

players' ability to move forward with the suit as a class, the judge asserted that USSF cited no case law to support its premise that there could be no discrimination under federal law if some women earned more than top-earning male players.²²¹ The judge further explained that "the current pay structure could yield an 'absurd result' in which a woman could be paid half as much as a man as long as she overcame the disparity by working twice as many hours."²²² Beyond validating the systematic nature of the discrimination and opening the possibility for widespread relief, the class certification also created additional leverage for the USWNT to negotiate a more favorable deal with USSF if it so chose.²²³

In early 2020, the dispute between the USWNT and USSF escalated. In February, both sides filed motions for summary judgment—an action that would end all or parts of the litigation if granted to either party by the court. The players argued that there was no genuine dispute regarding the existence of illegal wage discrimination. In their opinion, the discrimination was expressly contained in the differing terms of the women's and men's contracts, despite evidence showing that the men and women were similarly situated in terms of (1) skill, as defined by athleticism, tactical IQ, tactical proficiency, and mental fortitude; (2) effort, as defined by "physical and mental exertion needed to perform a job"; and (3) responsibility.²²⁴ Based on the contractual terms and number of affected players, the women argued that USSF owed USWNT players over US\$66 million in compensatory damages alone, with punitive damages to be determined at trial.²²⁵

Lawsuit, N.Y. TIMES (Nov. 8, 2019), <https://www.nytimes.com/2019/11/08/sports/uswnt-equal-pay-lawsuit.html> [hereinafter *U.S. Women's Soccer Team Granted Class Status*]; Michael McCann, *Inside USWNT's New Equal Pay Lawsuit vs. U.S. Soccer and How CBA, EEOC Relate*, SPORTS ILLUSTRATED (Mar. 8, 2019), <https://www.si.com/soccer/2019/03/08/uswnt-lawsuit-us-soccer-equal-pay-cba-eeoc-gender-discrimination>.

221 *U.S. Women's Soccer Team Granted Class Status*, *supra* note 222.

222 *Id.* (quoting the *New York Times* with internal quotes indicating the judge's own words).

223 *Id.*

224 Michael McCann, *The USWNT Cannot Strike and More Revelations from Latest U.S. Soccer Lawsuit Filings*, SPORTS ILLUSTRATED (Feb. 21, 2020), <https://www.si.com/soccer/2020/02/21/uswnt-us-soccer-lawsuit-filings-strike-analysis-damages> [hereinafter *USWNT Cannot Strike*].

225 Jeff Kassouf, *U.S. Soccer, USWNT Players File Motions for Summary Judgments in Equal Pay Lawsuit*, EQUALIZER (Feb. 20, 2020), <https://equalizersoccer.com/2020/02/20/us-soccer-federation-uswnt-players-file-motions-for-summary-judgments-equal-pay-lawsuit/>; Rachel Bachman, *Both*

Meanwhile, USSF argued that the women's discrimination claims were unfounded because the players had negotiated the terms of their CBA and could have settled on a different set of terms if they had felt so inclined.²²⁶ USSF emphasized that the women were offered a pay-to-play-based CBA, like that of the men's national team, but instead opted for greater financial stability and additional benefits, such as paid pregnancy and parental leave.²²⁷ However, a spokesperson for the UWSNT responded to these assertions by USSF by stating that USSF's proposed pay-to-play CBA had expressly rejected the possibility of equal pay.²²⁸

Beyond the arguments for full or partial resolution of the case, the summary judgment motions presented disagreements between the parties over what counted as "compensation"—an issue made complicated by the fact that professional athletes often benefit from various sources of income associated with their sport, including sponsors, media contracts, national teams, and club teams. On the one hand, USSF argued that its financial support for the NWSL should count toward the compensation calculations.²²⁹ However, the players responded that although some USWNT players do compete with the NWSL—a right expressly included in the USSF-USWNT CBA—their work for USSF is entirely separate from their work for the NWSL and thus demands separate compensation.²³⁰ Notably, the motions for summary judgment also revealed that as part of their CBA, the women were prohibited from going on strike, leaving litigation as one of the only bargaining chips at their disposal.²³¹

In response to the USWNT's motion for partial summary judgment, USSF submitted a memorandum on March 9, 2020, arguing that female and male players do not perform equal work in terms of effort, skill, and responsibility.²³² The attorney representing USSF cited the fact that the women have fewer opportunities to compete in tournaments, do not play

Sides of U.S. Women's Pay Discrimination Suit File Motions to End it, WALL ST. J. (Feb. 21, 2020), <https://www.wsj.com/articles/both-sides-of-u-s-womens-pay-discrimination-suit-file-motions-to-end-it-11582305934>.

226 Bachman, *supra* note 227.

227 *Id.*

228 Kassouf, *supra* note 227.

229 *Id.*

230 *Id.*

231 *USWNT Cannot Strike*, *supra* note 226.

232 Michael McCann, *In Quest to Win Equal Pay Case, U.S. Soccer Belittles USWNT Players*, SPORTS ILLUSTRATED (Mar. 10, 2020), <https://www.si.com/soccer/2020/03/10/uswnt-us-soccer-arguments-court-filings>.

in widely televised matches, and benefit from fewer fans.²³³ Thus, “the job of MNT [Men’s National Team] player carries more responsibility within US Soccer than the job of WNT [Women’s National Team] player, from an Equal Pay Act standpoint.”²³⁴ The attorney attempted to bolster this argument by further asserting that the women do not face the same level of hostility that the men face when playing teams in Mexico and Central America and that there are “scientific” differences between the speed and strength of men and women.²³⁵

The federation received immediate backlash for these claims from players, the USWNT legal team, industry leaders, and sponsors. Representatives of top sponsors—including Coca-Cola, Visa, and Deloitte—publicly criticized USSF’s stance, referring to the comments as “unacceptable” and “offensive” and calling on the federation to do more to ensure gender equality in US soccer.²³⁶ The misstep of leveraging discriminatory arguments in support of the notion that USSF does not discriminate against women prompted an apology from USSF’s president, Carlos Cordeiro, within days of the filing of the controversial memorandum.²³⁷ Almost immediately thereafter, Cordeiro stepped down as president and handed the role over to then vice president, Cindy Parlow Cone, a former USWNT player.²³⁸

On May 1, 2020, the federal judge presiding over the case granted USSF’s summary judgment motion, dismissing “the players’ arguments that they were systematically underpaid by U.S. Soccer in comparison with the men’s national team.”²³⁹ However, the judge’s ruling preserved

233 *Id.*

234 *Id.*

235 *Id.*

236 Rachel Bachman, *U.S. Soccer Federation Says Male Players Carry “More Responsibility”: Backlash Follows*, WALL ST. J. (Mar. 11, 2020), <https://www.wsj.com/articles/u-s-soccer-federation-says-male-players-carry-more-responsibility-backlash-follows-11583943624>.

237 Amy Tenner, *U.S. Soccer Apologizes after Court Filing Remarks Sparks Outrage*, REUTERS (Mar. 11, 2020), <https://www.reuters.com/article/us-soccer-usa/u-s-soccer-apologizes-after-court-filing-remarks-spark-outrage-idUSKBN20ZOHG>.

238 Steven Goff, *Carlos Cordeiro Resigns as President of U.S. Soccer*, WASH. POST (Mar. 12, 2020), <https://www.washingtonpost.com/sports/2020/03/12/carlos-cordeiro-resigns-as-ussf-president/>.

239 Andrew Das, *U.S. Women’s Soccer Team’s Equal Pay Demands Are Dismissed by Judge*, N. Y. TIMES (May 1, 2020), <https://www.nytimes.com/2020/05/01/sports/soccer/uswnt-equal-pay.html>.

the players' claims regarding under-resourcing and under-investment.²⁴⁰ The players also indicated that they would appeal the judge's decision.²⁴¹

This litigation is the latest step in a multiyear legal battle for gender parity in US football. In 2016, USNWT players filed a complaint with the Equal Employment Opportunity Commission—a federal agency that enforces civil rights in the workplace—raising the same complaints that would be made in the 2019 suit.²⁴² Initially, USSF stiffly rejected the claims, citing market realities, despite evidence of USWNT's superior financial performance in 2015.²⁴³ While the parties eventually reached a new CBA on January 1, 2017, USSF expressly refused to provide equal compensation for male and female players.²⁴⁴

■ **Macarena Sánchez v. UAI Urquiza/Argentine Football Association (2019):** In January 2019, Argentine football player Macarena Sánchez brought a lawsuit against her former club, UAI Urquiza, and the AFA for failing to recognize women as professional players.²⁴⁵ While men's football was professionalized almost ninety years ago in Argentina, women receive little to no money for doing the same job as their male counterparts.²⁴⁶ The lack of status as club employees also prevents women from receiving training facilities, equipment, clothing, and medical coverage, with some women's clubs charging players monthly fees to participate.²⁴⁷

Halfway through the 2018–2019 season, UAI Urquiza informed Sánchez—who had been playing for the club since 2012—that it no longer needed her services, leaving her with nothing to lose by speaking

240 *Id.*

241 *Id.*

242 Andrew Das, *Top Female Players Accuse U.S. Soccer of Wage Discrimination*, N. Y. TIMES (Mar. 31, 2016), <https://www.nytimes.com/2016/04/01/sports/soccer/uswnt-us-women-carli-lloyd-alex-morgan-hope-solo-complain.html>.

243 *Id.*

244 *USWNT 2019 Complaint*, *supra* note 216, at para. 62.

245 Suzanne Wrack, *Macarena Sánchez: The Argentinian Who Is Suing Her Club and Federation*, GUARDIAN (Feb. 7, 2019), <https://www.theguardian.com/football/blog/2019/feb/07/macarena-sanchez-legal-action-against-uai-urquiza-and-argentinian-football-federation> [hereinafter *Macarena Sánchez*].

246 Associated Press, *AFA Faces Lawsuit from Female Player to Make Women's League Pro in Argentina*, ESPN (Feb. 7, 2019), <https://www.espn.com/soccer/argentina/story/3769339/afa-faces-lawsuit-from-female-player-to-make-womens-league-pro-in-argentina>.

247 *Macarena Sánchez*, *supra* note 247.

out against the discrimination that she had experienced personally and that she knew was prevalent throughout Argentina.²⁴⁸ In her complaint, Sánchez requested financial compensation for her seven years with UAI Urquiza, as well as the professionalization of women's football.²⁴⁹ Sánchez tied her fight to the broader battle for gender parity and women's rights in Argentine society, particularly the legalization of abortion.²⁵⁰ She explained that, given football's status as the nation's pastime, she has always associated the sport with core political and social structures in Argentina.²⁵¹

Subsequently, in March 2019, the AFA declared that it would professionalize women's football. As of August 2019, an agreement between the AFA and the Argentine Football Union requires clubs in the sixteen-team elite women's division to provide professional contracts to eight players per squad.²⁵² The AFA will pay these players a salary of about US\$350 per month—just above minimum wage in Argentina—and provide social security benefits and annual medical check-ups.²⁵³ As part of this agreement, the AFA and Argentine Football Union will jointly ensure that players train and compete in high-quality facilities.²⁵⁴ In recognition of her efforts toward gender equality, Argentine President Alberto Fernández named Sánchez head of the National Youth Institute.²⁵⁵

While Argentine football players and gender activists are celebrating the progress embodied in the recent agreement between the AFA and the Argentine Football Union, they note that the top-tier women's teams will receive the same salary and treatment as fifth-tier players in the men's

248 *Id.*

249 Associated Press, *supra* note 248.

250 Macarena Sánchez, *futbolista despedida de UAI Urquiza: "Que la AFA se haga cargo"*, LA VACA (Dec. 2, 2019), <https://www.lavaca.org/notas/macarena-sanchez-futbolista-despedida-de-uai-urquiza-que-la-afa-se-haga-cargo/>.

251 *Id.*

252 *Argentine Women's League Turns Professional*, VOX PLAY (Mar. 26, 2019), <http://www.voxplay.com/en/football/argentine-womens-league-turns-professional>.

253 *Id.*

254 *Id.*

255 Juan Piscetta, *Alberto Fernández designó a la futbolista Macarena Sánchez en el Instituto de la Juventud*, Infobae (Dec. 13, 2019), <https://www.infobae.com/politica/2019/12/13/alberto-fernandez-designo-a-la-futbolista-macarena-sanchez-en-el-instituto-de-la-juventud/>.

league.²⁵⁶ In addition to calling for improved conditions for professional female football players, Sánchez and others are now pushing Argentine football clubs to run youth academies for girls—a program that has long existed for boys.²⁵⁷

■ **María Paz Mora of Colombia (2019):** After winning their first three matches and securing the top seed in Colombia's elite under-10 football tournament, the Dinhsos were disqualified for being a mixed-gender team—consisting of ten boys and María Paz Mora.²⁵⁸ Shortly after the team's disqualification, the tournament organizers updated their rules to make the ban against co-ed teams more explicit. Nonetheless, Mora's father decided to file suit (a *tutela*) against the Bogotá Football League, Difutbol (Colombia's youth league), and Dimayor (the organization responsible for organizing and operating professional football in Colombia).²⁵⁹ He argued that at the time the Dinhsos registered for the tournament, no such prohibition against co-ed teams existed and that the team was thus impermissibly and arbitrarily disqualified—an act of discrimination against a young girl solely for being herself.²⁶⁰ While the trial court held that the tournament's rules fell in line with FIFA's prohibition against mixed-gender tournaments, upon *sua sponte* appeal, the Colombian Constitutional Court ruled strongly in favor of Mora, the Dinhsos right to participate in the tournament, and gender inclusion in football writ large.²⁶¹ Through reference to various FIFA policy documents and press releases, the court held that FIFA does not, in fact, prohibit mixed-gender youth tournaments but rather endorses them.²⁶² The court further dug into the reasons why gender stereotypes play an overblown role in

256 *Argentine Women's League Turns Professional*, *supra* note 254.

257 *Id.*

258 María Ximena Dávila C, ¿El torneo de la desigualdad?, *EL TIEMPO* (July 29, 2019), <http://blogs.eltiempo.com/no-hay-derecho/2019/07/29/torneo-la-desigualdad/>.

259 *Id.*

260 *Id.*

261 Corte Constitucional de Colombia, Sentencia T-366/19 (Aug. 13, 2019), <https://www.corteconstitucional.gov.co/relatoria/2019/T-366-19.htm>.

262 *Id.*; see also Colprensa, *Corte falla a favor de una menor en presunto caso de exclusión en torneo de fútbol*, *RADIO NACIONAL COLOMBIA* (Aug. 14, 2019), <https://www.radionacional.co/noticia/actualidad/liga-pony-maria-paz-futbol>.

the world of sport and called on the industry to more effectively promote gender equality, as demanded by the Colombian Constitution.²⁶³

■ **Hope Solo v. United States Soccer Federation (2018):** In August 2018, former USWNT player Hope Solo filed a lawsuit against USSF alleging that the federation's compensation structure violated the Equal Pay Act and Title VII.²⁶⁴ While in many ways similar to the aforementioned 2019 class action, Solo's complaint focused exclusively on the pay disparity between the women's and men's national teams—at friendlies, World Cup matches, the Olympic Games, and other work-related appearances—which she attributed to willful sex-based discrimination on the part of USSF.²⁶⁵ Solo's complaint requested relief in the form of compensatory damages, general and special damages, punitive damages, liquidated damages, the costs of the suit, and any other relief deemed proper by the court.²⁶⁶

Notably, despite the fact that Solo was part of the aforementioned 2016 Equal Employment Opportunity Commission complaint against USSF, she alleged that USWNT players rebuked invitations to join her 2018 lawsuit.²⁶⁷ These players included vocal advocates and leaders of the 2019 class action, such as Megan Rapinoe, Carli Lloyd, and Alex Morgan.²⁶⁸ Though the cause of this split between USWNT players and the resulting parallel lawsuits is unknown, journalists point to Solo's tainted past as a potential justification.²⁶⁹ This included, most notably, Solo's contract termination in 2016 following a series of infractions committed by the player.²⁷⁰

Given the similarity between the 2018 and 2019 lawsuits, USSF attempted, unsuccessfully, to consolidate the two cases.²⁷¹ Similarly, Solo

263 *Id.*

264 *Hope Solo v. United States Soccer Federation*, 2018 NDCA 3:18-cv-05215 (complaint), para. 21, Ct. House News, <https://www.courthousenews.com/wp-content/uploads/2018/08/female-soccer-players.pdf>.

265 *Id.* at paras. 5–21, 29–34.

266 *Id.* at Prayer.

267 Kevin Blackistone, *Hope Solo Spearheaded the USWNT Lawsuit for Equal Pay. She Won't Stop Now.*, WASH. POST (July 12, 2019), https://www.washingtonpost.com/sports/soccer/hope-solo-started-the-uswnt-fight-for-equal-pay-she-wont-stop-now/2019/07/12/b5877dc6-a4ad-11e9-b732-41a79c2551bf_story.html.

268 *Id.*

269 *Id.*

270 *Id.*

271 *Id.*

unsuccessfully attempted to join mediation efforts between USSF and USWNT during the summer of 2019.²⁷² However, these mediation talks later deteriorated.²⁷³

■ **Wombach and Players on National Teams Participating in the FIFA Women's World Cup Canada 2015 v. Canadian Soccer Association/FIFA (2014):** Led by US football star Abby Wambach, a group of over sixty women's national team players from various countries filed suit at the Ontario Human Rights Tribunal on October 1, 2014.²⁷⁴ The complaint accused the Canadian Soccer Association and FIFA of gender-based discrimination, citing the fact that all Men's World Cup games have been played on grass, while the women were asked to play on turf fields for the 2015 tournament. The suit alleged violations of section 1 of the Ontario Human Rights Code, which guarantees people the right to treatment "with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, marital status, family status or handicap."²⁷⁵ Canadian case law also provided strong precedent for the players' argument that this provision captures participation in athletic activity, such as football competitions,²⁷⁶ and that even ostensibly neutral policy decisions may

272 Rachel Bachman, *Hope Solo Attempts to Join U.S. Women's Soccer Suit Mediation*, WALL ST. J. (July 22, 2019), <https://www.wsj.com/articles/hope-solo-attempts-to-join-u-s-womens-soccer-suit-mediation-11563841409>.

273 Hannah Albarazi, *Hope Solo Can't Gate-Crash Pay Gap Talks with US Soccer*, LAW360 (Aug. 15, 2019), <https://www-law360-com.proxy01.its.virginia.edu/articles/1188840/hope-solo-can-t-gate-crash-pay-gap-talks-with-us-soccer>.

274 Associated Press, *Wambach and Other Players File Suit against FIFA over World Cup Turf*, GUARDIAN (Oct. 2, 2014), <https://www.theguardian.com/football/2014/oct/02/abby-wambach-file-suit-fifa-world-cup-turf>; Marissa Payne, *Women's World Cup Players Withdraw "Turf War" Lawsuit against FIFA, Canada Soccer Association*, WASH. POST (Jan. 21, 2015), <https://www.washingtonpost.com/news/early-lead/wp/2015/01/21/womens-world-cup-players-withdraw-turf-war-lawsuit-against-fifa-canada-soccer-association/>.

275 *Players on National Teams Participating in the FIFA Women's World Cup Canada 2015 v. Canadian Soccer Association and Federation Internationale de Football Association* (application), at para. 45, EQUALIZER SOCCER, http://equalizersoccer.com/wp-content/uploads/2014/10/141001_2_Application-Sec-24-Schedule-A.pdf [hereinafter *CSA Application*].

276 *Id.* (citing *Blainey v. Ontario Hockey Association*, (1986) 54 Or. (2d) 513; *Casselman v. Ontario Soccer Association* (1993), 23 CHRR D/397, 407 (Ont. Bd. Of Inquiry)).

nonetheless violate the Human Rights Code if they produce discriminatory outcomes.²⁷⁷ As relief, the players demanded the defendants cease their discriminatory practice and ensure that the Women's World Cup tournament is played exclusively on grass fields.²⁷⁸ The players also requested an expedited hearing to resolve the matter with enough time for the turf to be changed for the 2015 World Cup.²⁷⁹

The complaint described a history of gender discrimination within the Canadian Soccer Association, despite its express policies prohibiting and punishing "discrimination of any kind."²⁸⁰ Specifically, claimants cited a 2010 altercation between the Canadian Soccer Association and the Canadian women's national team over gender-based pay disparities.²⁸¹ The players had allegedly retained counsel and considered filing suit but ultimately did not take the disagreement to court.²⁸² With regard to FIFA, the complaint called out the association's male-dominated culture and sexist leadership, citing various damaging comments by former president Sepp Blatter.²⁸³

Less than one month after submitting the initial complaint, the players filed a subsequent document with the tribunal alleging that as a result of the lawsuit, the Canadian Soccer Association and FIFA engaged in "unlawful reprisal threats under the Human Rights Code."²⁸⁴ The plaintiffs requested an interim remedy enjoining the two football associations from their retaliatory outreach.²⁸⁵ The judge found these alleged threats concerning enough to amend the initial complaint to cover the reprisals.²⁸⁶

Due to the jurisdictional complexity of the case and finite resources available to the court, the Ontario Human Rights Tribunal rejected the

277 *Id.* (citing *Hawkins obo Beacon Hill Little League Major Girls Softball Team – 2005 v. Little League Canada* (No. 2), 2008 BCHRT 12).

278 *Id.* at 69–73.

279 Associated Press, *supra* note 276.

280 *CSA Application*, *supra* note 277, at Introduction.

281 *Id.* at paras. 37–40.

282 *Id.*

283 *Id.* at paras. 41–44.

284 Abby Wambach and Players on National Teams Participating in the FIFA Women's World Cup Canada 2015 v. CSA and FIFA (request for interim remedy), Tribunal File 2014-18923-I, EQUALIZER SOCCER (Oct. 27, 2014), https://equalizersoccer.com/wp-content/uploads/2014/10/141027_re-taliation_claim.pdf.

285 *Id.*

286 Payne, *supra* note 276.

players' request for an expedited hearing.²⁸⁷ Instead, the tribunal proposed early mediation "to provide the parties with an opportunity to resolve the matter in a timely way."²⁸⁸ However, negotiations proved futile.²⁸⁹ Ultimately, the players withdrew their suit in January 2015 and resigned themselves to playing the 2015 World Cup on artificial turf.²⁹⁰ Notably, the players never threatened to boycott the 2015 World Cup,²⁹¹ which reduced—if not eliminated—the players' leverage over their employers.²⁹²

While litigation did not move forward, the players' complaints were nonetheless vindicated. The 2019 Women's World Cup was played entirely on grass fields—a situation that appears to be the new norm for the foreseeable future.

Nonlegal Action in Football

■ **Primera Iberdrola of Spain (2019):** On February 19, 2020, the Association of Women's Football Clubs of Spain and the premier squad of Spanish women's football players, the Primera Iberdrola, reached the first CBA in the history of Spanish women's football after two hundred players²⁹³ across sixteen first division clubs—93% of the league—initiated an indefinite strike on November 16, 2019.²⁹⁴ After thirteen months of failed negotiations, the players had decided to resort to protest, an effort that was dramatically strengthened by league-wide solidarity.²⁹⁵ The strike

287 Associated Press, *World Cup Turn Complaint Won't Get Human Rights Hearing*, CANADIAN BROADCASTING CORPORATION (Nov. 7, 2014), <https://www.cbc.ca/sports/soccer/world-cup-turf-complaint-won-t-get-human-rights-hearing-1.2827921>.

288 *Id.* (quoting the tribunal directly).

289 Payne, *supra* note 276.

290 *Id.*

291 Associated Press, *supra* note 276.

292 Payne, *supra* note 276.

293 Molly McElwee, *Footballers in Spain Make Their Stand and It Pays Off as Clubs Cede in Player-Wages Dispute*, TELEGRAPH (Nov. 18, 2019), <https://www.telegraph.co.uk/football/2019/11/18/footballers-spain-make-stand-pays-clubs-cede-player-wages-dispute/>.

294 Rik Sharma, *Soccer: Spanish Women Footballers to Strike over Pay and Conditions*, REUTERS (Oct. 28, 2019), <https://www.reuters.com/article/us-soccer-spain-women-strike/soccer-spanish-women-footballers-to-strike-over-pay-and-conditions-idUSKBN1X71ZE>.

295 *Huelga histórica de las jugadoras de la Primera Iberdrola por el bloqueo en la firma del convenio*, HERALDO (Oct. 22, 2019), <https://www.heraldo.es/noticias/deportes/2019/10/22/huelga-historica-de-las-jugadoras-de-la-primera-iberdrola-por-el-bloqueo-en-la-firma-del-convenio-1340028>.

and its success are particularly significant given the fact that these efforts promoted gender equity in the club context, whereas equal-pay initiatives have otherwise largely benefited national teams exclusively.²⁹⁶

Among its terms, the CBA guarantees that 75% of players in the premier women's division will receive contracts. It also raises the base salary for both part-time and full-time players and provides an additional US\$2,160 per year to players who already earn more than the floor rate.²⁹⁷ These pay increases are said to affect about 40% of the premier women's division.²⁹⁸ The agreement also establishes a thirty-five-hour work week (which includes organizational and promotional events) and allows thirty vacation days and various holidays.²⁹⁹

Primera Iberdrola players will now be guaranteed full salary while on temporary injury leave and, if permanently injured, will receive approximately US\$97,075 as compensation.³⁰⁰ However, the agreement does not provide for maternity leave, as specifically requested by the Spanish Footballer's Association and the players.³⁰¹ Instead, it allows pregnant players who are on the last year of their contract to renew the contract for an additional year.³⁰² Finally, the agreement emphasizes the responsibility of clubs and players' unions alike to take measures to avoid the sexual and psychological harassment of players and mistreatment on the basis of national origin, religion, or race.³⁰³

■ **Matildas of Australia (2019):** Just after the 2019 World Cup, the Football Federation of Australia (FFA) and the Australian players' union, Professional Footballers Australia, reached a new four-year CBA that raises the pay of the women's national team, the Westfield Matildas, to

<http://www.theguardian.com/football/blog/2019/oct/30/spanish-club-strike-female-footballers-living-standards>

296 Suzanne Wrack, *Spanish Club Strike Signposts Huge Attitude Change by Female Footballers*, GUARDIAN (Oct. 30, 2019), <https://www.theguardian.com/football/blog/2019/oct/30/spanish-club-strike-female-footballers-living-standards>.

297 Ángela Castañeda, *El convenio del fútbol femenino en España: Lo que pedían y lo que consiguen las jugadoras*, EL ESPAÑOL (Feb. 19, 2020), https://www.lespanol.com/deportes/futbol/20200219/convenio-futbol-femenino-espana-pedian-consiguen-jugadoras/468704356_0.html.

298 *Id.*

299 *Id.*

300 *Id.*

301 *Id.*

302 *Id.*

303 *Id.*

equal that of the men's national team, the Caltex Socceroos.³⁰⁴ Like the US women's team, the Australian women consistently outperform their male counterparts, exposing the hollowness of any justifications for the previously pervasive gender-based pay disparities. The injustice of FFA's compensation structure was most recently highlighted when the Socceroos, ranked 44th globally, took home approximately US\$5.5 million for merely qualifying for the 2018 World Cup, while the Matildas, ranked 8th globally, were awarded just under US\$700,000 for making it to the final knockout rounds of the 2019 World Cup.³⁰⁵

Under the new deal, players on the women's team will earn about US\$57,000 per year—a 90% increase in guaranteed payment.³⁰⁶ The federation has also agreed to improve its parental leave policies, equalize training conditions between the men's and women's teams, and provide the women with business-class travel on all international flights—a privilege long guaranteed to their male counterparts.³⁰⁷ Furthermore, the FFA will now award the Matildas 40% of the World Cup prize money for qualifying for the tournament and 50% for making it to the knockout round, compared to the 30% granted in previous years.³⁰⁸ While an improvement, this aspect of the agreement highlights the degree to which pay parity must be addressed by FIFA itself: The 2023 Women's World Cup award is set at US\$60 million, whereas the men will divide a pot worth US\$440 million in 2022.³⁰⁹ In fact, just a few months prior to the agreement reached between FFA and Professional Footballers Australia, the latter group launched a campaign demanding that FIFA's global governing body increase the prize money at the next Women's World Cup.³¹⁰

304 Madeleine Keck, *Australia's Women's Team Earns Soccer's First Equal Pay Deal in the World*, GLOBAL CITIZEN (Nov. 8, 2019), <https://www.globalcitizen.org/en/content/australias-womens-soccer-team-equal-pay/>.

305 *Id.*

306 Laural Wamsley, *Under New Deal, Australia Women's and Men's Soccer Will Get Equal Share of Revenue*, NPR (Nov. 6, 2019), https://www.npr.org/2019/11/06/776973749/under-new-deal-australian-womens-and-men-s-soccer-will-get-equal-share-of-revenue?utm_medium=social&utm_term=nprnews&utm_source=twitter.com&utm_campaign=.

307 *Id.*

308 *Id.*

309 *Id.*

310 Ian Ransom, *Australia's Women Soccer Players to Get Same Base Pay as Men*, REUTERS (June 7, 2019), https://www.npr.org/2019/11/06/776973749/under-new-deal-australian-womens-and-men-s-soccer-will-get-equal-share-of-revenue?utm_medium=social&utm_term=nprnews&utm_source=twitter.com&utm_campaign=.

While Australia's most recent CBA appears to have resulted largely from closed-door negotiations, the previous CBA (reached in 2015) was the result of vocal protests from female footballers. After discussions with the FFA had repeatedly disintegrated—leaving the players without pay for two months—the Australian women's squad announced that they would not be participating in a previously scheduled US tour unless the FFA addressed their concerns.³¹¹ The players requested adequate pay, improved training conditions, a basic pregnancy policy, and health and safety standards.³¹² At the time, the Matildas were paid a maximum annual salary of US\$21,000—far below the national minimum wage.³¹³

■ **Ada Hegerberg of Norway (2019):** Ada Hegerberg, one of the world's most talented football players, has refused to compete with her national team since 2017 and boycotted the 2019 World Cup, all in the name of gender parity.³¹⁴ Hegerberg was named Footballer of the Year in 2017 and 2019 by the BBC and is the first player to actively boycott the World Cup.³¹⁵ She also became the face of the UEFA's initiative to more effectively promote women's football—"Time for Action"—which was launched in 2019.³¹⁶

While Hegerberg's home country made headlines in 2017 when the Norwegian Football Federation became the first member association in the world to agree to compensate the men's and women's national teams

term=nprnews&utm_source=twitter.com&utm_campaign=npr.

- 311 Kiley Kroh, *Australian Women's Soccer Team Fights for Respect, Goes on Strike*, THINKPROGRESS (Sept. 10, 2015), <https://thinkprogress.org/australian-womens-soccer-team-fights-for-respect-goes-on-strike-ea247c09a220/>.
- 312 Francis Awaritefe, *Matildas Player Strike: What Are the Key Pay Demands and Disputes Ahead?*, GUARDIAN (Sept. 20, 2015), <https://www.theguardian.com/football/2015/sep/11/matildas-player-strike-what-are-the-key-pay-demands-and-disputes-ahead>.
- 313 *Id.*
- 314 Steve Douglas, *Seeking More Respect, Superstar Hegerberg Out of World Cup*, AP News (May 23, 2019), <https://apnews.com/af07f3cf6d-9c49fd9b938c6517785db3>.
- 315 Sarah Midkiff, *This Norwegian Soccer Superstar Is Sitting Out the Women's World Cup to Fight for Equality*, REFINERY29 (June 1, 2019), <https://www.refinery29.com/en-us/2019/06/234285/ada-hegerberg-protests-world-cup-inequity-for-women>.
- 316 Graham Dunbar, *UEFA Launch Women's Soccer Strategy Plan Ahead of World Cup*, AP News (May 17, 2019), <https://apnews.com/ef5bb88df918422fb7dce96c56c72c2b>.

equally (discussed below),³¹⁷ she cites gross income inequality between male and female club players in Norway and general disregard for women's football as the bases for her protest.³¹⁸ Almost eight out of ten players in Norway's top women's football league earn less than US\$11,590 per year, with 13.6% earning nothing at all.³¹⁹ Even the lowest-ranking players in the men's division earn, on average, more than 3.5 times the amount earned by the players on the top female team in the country.³²⁰ Representative of the disrespect experienced by many female footballers, upon receiving the 2018 Ballon d'Or—what is generally regarded as the most prestigious individual award in football—Hegerberg was asked to “twerk” on stage; a request that she flatly rejected.³²¹ Particularly given her notoriety within the game of football, Hegerberg's singular and sustained acts of protest have received significant attention within the industry and widespread approval from female leadership within UEFA.³²²

■ **Nigerian National Team (2019):** The Nigerian women's national team threatened a sit-in protest at their hotel in Paris during the 2019 World Cup. The team was owed payment from international games played between 2016 and 2017—totaling approximately US\$2,800 per player—and five days of their World Cup allowance.³²³ The players claimed to have unsuccessfully reached out to the Nigeria Football Federation in advance of the World Cup tournament to discuss their bonuses, just as the federation had done with the men's team the year prior.³²⁴ An overnight discussion with the president of the Nigeria Women Football League led the players to call off the protest, with the understanding that the payment in question would finally be distributed.³²⁵

317 Aimee Lewis, *Norway's Footballers Sign Historic Equal Pay Agreement*, CNN (Dec. 14, 2017), <https://www.cnn.com/2017/12/14/football/norway-football-equal-pay-agreement/index.html>.

318 Douglas, *supra* note 316; AFP, *Equal Pay in Football? Norway Still Far from the Goal*, BANGKOK POST (June 11, 2019), <https://www.bangkokpost.com/world/1693160/equal-pay-in-football-norway-still-far-from-the-goal>.

319 AFP, *supra* note 320.

320 *Id.*

321 Douglas, *supra* note 316.

322 Dunbar, *supra* note 318.

323 Colin Udoh, *Nigeria Stage Sit-In at WWC over Unpaid Bonuses*, ESPN (June 22, 2019), <https://www.espn.com/soccer/fifa-womens-world-cup/story/3882567/nigeria-stage-sit-in-at-wwc-over-unpaid-bonuses>.

324 *Id.*

325 *Nigeria's Women's World Cup Team Threaten Sit-In Protest at Team Hotel over Unpaid Bonuses*, RT (June 21, 2019), <https://www.rt.com/>

■ **German National Team (2019):** In advance of the 2019 World Cup, the German women’s national football team released an ad with the support of the team’s sponsor, Commerzbank.³²⁶ The ad’s title was “We don’t have balls, but we know how to use them!” In the video, the eight-time European Cup champions asked viewers if they knew the names or faces of any of the football players, and then proceeded to highlight many of the prejudices they had experienced—“women are just there to have babies,” “they belong in the laundry room,” and “it’s like watching amateurs ... in slow motion.”³²⁷ They presented themselves as feminine yet fierce and empowered, explaining that “when it comes to role models ... we just have to look in the mirror.”³²⁸ While no concrete action resulted from the video’s release, it drew the German public’s attention to the disparities and discrimination that characterize German football.

■ **Football Ferns of New Zealand (2018):** In May 2018, New Zealand’s national women’s football team, the Football Ferns, and their players’ union, the New Zealand Professional Footballers’ Association, reached a CBA with New Zealand Football.³²⁹ The women’s team, ranked 20th globally, will now receive the same pay, prize money share, rights for image use, and travel budget as their male counterparts, the All Whites, who are ranked 133rd globally.³³⁰ The men’s team was allegedly “especially passionate” about achieving pay parity.³³¹ Taking a step farther than the Norwegian Football Association’s parity agreement reached just six months prior (discussed below), the Football Ferns’ agreement specifically guarantees that, like their male counterparts, the women will be able to travel in business class on flights longer than six hours.³³² The agreement, hailed as the first of its kind internationally, was the result of closed-door,

[sport/462520-nigeria-world-cup-sit-in-protest/](https://www.sport/462520-nigeria-world-cup-sit-in-protest/).

326 Jenna West, *Germany Women’s National Team Defiant in Inspiring Women’s World Cup Ad*, *SPORTS ILLUSTRATED* (May 14, 2019), <https://www.si.com/soccer/2019/05/14/germany-womens-national-team-ad-prejudice-womens-world-cup-video>.

327 *Id.*

328 *Id.*

329 Chris Gelardi, *The New Zealand Women’s Soccer Team Won Equal Pay*, *GLOBAL CITIZEN* (May 8, 2018), <https://www.globalcitizen.org/en/content/new-zealand-womens-soccer-equal-pay/>.

330 *Id.*

331 *Id.*

332 *Id.*

“respectful” negotiations between the New Zealand Professional Footballers’ Association and New Zealand Football.³³³

■ **Norwegian National Team (2017):** In December 2017, the Norwegian Football Federation, the Norwegian Players’ Association, and the captains of the men’s and women’s national teams signed an agreement establishing pay parity.³³⁴ Prior to the agreement, the men’s squad collectively earned approximately US\$530,000 more than their female counterparts, despite the fact that the women consistently outperformed them on the international stage.³³⁵ However, starting in 2018, each team agreed to receive US\$726,900, divided among the players—a 93% pay increase for the women.³³⁶ Pay parity was made possible by the fact that the men’s team agreed to contribute US\$60,000 to the women’s team—money they receive for commercial activities.³³⁷ Notably, the pay parity plan was proposed by the federation itself.³³⁸ However, Hegerberg’s aforementioned boycott of the Norwegian national team, which began in August 2017, might have played a role in the decision.³³⁹

Like the aforementioned parity progress in Australia, FIFA’s international gender-based compensation disparity exposes the limits to Norway’s historic agreement. While the agreement addresses baseline pay for Norway’s national teams, it does not equalize the men’s and women’s World Cup prize money.

■ **Danish National Team (2017):** After the Danish Football Association’s proposed framework for running the league—which would strip female players of their status as association employees—led to ten months

333 Michael Burgess, *New Zealand Football Announce Parity for Football Ferns and All Whites*, NZ HERALD (May 8, 2018), https://www.nzherald.co.nz/sport/news/article.cfm?c_id=4&objectid=12047294.

334 Samuel Lovett, *Norway’s Male and Female Footballers Sign Historic Equal-Pay Agreement*, INDEPENDENT (Dec. 15, 2017), <https://www.independent.co.uk/sport/football/international/norway-footballers-equal-pay-agreement-a8112016.html>.

335 *Id.*

336 Suzanne Wrack, *Norway’s Historic Pay Deal for Women’s Team Show It Can be Done*, GUARDIAN (Oct. 17, 2017), <https://www.theguardian.com/football/blog/2017/oct/17/norway-historic-pay-deal-for-womens-team-shows-it-can-be-done> [hereinafter *Norway’s Historic Pay Deal*].

337 Aimee Lewis, *Norway’s Footballers Sign Historic Equal Pay Agreement*, CNN (Dec. 14, 2017), <https://www.cnn.com/2017/12/14/football/norway-football-equal-pay-agreement/index.html>.

338 *Norway’s Historic Pay Deal*, *supra* note 338.

339 *Id.*

of failed negotiations, the Danish women's national team boycotted their key World Cup qualifying match against Sweden in 2017.³⁴⁰ As a result of the strike, Denmark's team forfeited the match. UEFA also fined the Danish Football Association approximately US\$22,000 dollars and gave the Danish women's team a conditional penalty—threatening exclusion from all UEFA tournaments if they failed to play another game over the following four-year period.³⁴¹ The women subsequently called off the strike.³⁴²

■ **Argentine National Team (2017):** In 2017, after experiencing years of neglect by the AFA, the women's national team wrote a public letter to the head of the association complaining of institutionalized sexism and threatening to strike unless the AFA provided compensation of US\$8.50 per day for training and regularly scheduled matches.³⁴³ In addition to financial support, the women sought improved conditions and access to basic resources. For example, the women were forced to play on turf fields while the youth men's team played on natural grass.³⁴⁴

The AFA had previously provided US\$10 per day to female players who competed with the national team.³⁴⁵ However, between 2015 and 2017, the AFA had not scheduled the women to play a single match, allowing the team to fall into "inactive" status according to FIFA's guidelines.³⁴⁶ After reactivating the women's team in 2017, the AFA refused to compensate the players.³⁴⁷

Rather than meet the women's demands, the AFA decided to play the under-23 squad, instead of the national team, in the next women's

340 Duncan Wright, *On Strike Denmark Women's Team Refusing to Play Sweden in Key World Cup Qualifier over Payment Row*, SUN (Oct. 18, 2017), <https://www.thesun.co.uk/sport/football/4711763/denmark-womens-sweden-cancelled-strike/>.

341 Asa, *Denmark's Women Received a Four Year Suspended Ban from UEFA*, WOMEN'S SOCCER UNITED (Nov. 18, 2019), <https://www.womenssoccerunited.com/denmarks-women-received-a-four-year-suspended-ban-from-uefa/>.

342 AFP, *Denmark's Women's National Team Calls Off Strike*, LOCAL (Oct. 20, 2018), <https://www.thelocal.dk/20171020/denmarks-womens-national-team-calls-off-strike>.

343 Joshua Nadel & Brenda Elsey, *How Argentina's Women Took on Blatant Sexism to Reach the World Cup*, GUARDIAN (June 13, 2019), <https://www.theguardian.com/football/2019/jun/13/argentina-womens-world-cup-sexism-england>.

344 Garton & Hijo's, *supra* note 45.

345 *Id.*

346 *Id.*

347 *Id.*

match.³⁴⁸ Meanwhile, Argentina's star player, Lionel Messi, was earning an estimated US\$111 million at the time.³⁴⁹

Despite the lackluster response from the AFA, the player's open letter and boycott caught the attention of the Argentine media. Public attention further increased when, in advance of their first televised match at the 2018 Copa América, the Argentine women's team posed with their right hands cupped behind their ears—symbolizing their demands for respect repeatedly going unheard.³⁵⁰ Though some progress can be seen in the recent professionalization of a small subset of women's football in Argentina³⁵¹—propelled by the aforementioned efforts of Macarena Sánchez—certain star players were allegedly excluded from participating in the 2019 Pan-American Games due to their vocal protests against the mistreatment of female footballers in Argentina.³⁵²

■ **Scottish National Team (2017):** In 2017, the Scottish women's national team won concessions from the Scottish Football Association after initiating a “media blackout” over “financial, commercial, and equality” issues.³⁵³ The details of the complaints were never made public.³⁵⁴ While the players did not partake in a full-on strike, continuing to play in all of their scheduled matches,³⁵⁵ during the media blackout they refused to conduct any media or commercial activities.³⁵⁶ The concessions constitute the first CBA between the Scottish women's national team and the

348 Nadel & Elsey, *supra* note 345.

349 Garton & Hijós, *supra* note 45.

350 *Id.*

351 Nadel & Elsey, *supra* note 345.

352 Pablo Alabarces & Brenda Elsey, *Argentina Players Pay the Price for Demanding Change*, EQUALIZER (July 19, 2019), <https://equalizersoccer.com/2019/07/19/argentina-womens-players-demanding-change-cut-pan-american-games-estefania-banini/>.

353 *Scottish FA and Scotland Women's National Team Resolve Dispute*, BBC (June 24, 2017), <https://www.bbc.com/sport/football/40395004> [hereinafter *Scottish FA*].

354 *Scotland: Why Are the Women's Squad in Dispute with the SFA?*, BBC (June 20, 2017), <https://www.bbc.com/sport/football/40344365>.

355 Suzanne Wrack, *Scotland Wring Concessions from SFA after Taking Stand on Pay*, GUARDIAN (June 27, 2017), <https://www.theguardian.com/football/blog/2017/jun/27/scotland-womens-football-pay-sfa>.

356 *Scotland's Women Refuse to Speak to the Media Due to Dispute with Scottish FA*, BBC (June 10, 2017), <https://www.bbc.com/sport/football/40230767>.

football association, which the players' union described as a "major step" toward gender parity.³⁵⁷

■ **Republic of Ireland National Team (2017):** In April 2017, the Irish women's national team went public with their grievances against their employer, the FAI, and boycotted an FAI training camp.³⁵⁸ Despite threats from the FAI that going public would "endanger their careers at [the] club and international level," about a dozen members of the national squad attended a press conference in which they aired a laundry list of discriminatory treatment.³⁵⁹ Their primary complaints included inadequate pay, having to change in public restrooms on the way to matches, and sharing their tracksuits with the youth team.³⁶⁰ Just two days after the players' press conference, the FAI reached an agreement with the women's national team, and the players called off the strike.³⁶¹

■ **National Association of Women Football Players of Chile (2016):** In June 2016, FIFA declared the Chilean women's national football team "inactive" due to the fact that the team had not played an official match in two years.³⁶² In response, Chilean players founded the National Association of Women Football Players (ANJUFF).³⁶³

The organization aspires to challenge decades of neglect experienced by women's football players on the national and club teams in Chile and to build a culture of respect for female athletes.³⁶⁴ While the South American Football Confederation and the Chilean Football Federation funnel money into the men's team, they underfund and neglect women players—despite repeated pleas from FIFA, players, and grassroots groups regarding the need for additional resources.³⁶⁵ As part of its pressure campaign,

357 *Scottish FA, supra* note 355.

358 Guardian Sport, "We've Been Changing in Public Toilets": Republic of Ireland Women Threaten to Strike, *GUARDIAN* (Apr. 4, 2017), <https://www.theguardian.com/football/2017/apr/04/republic-ireland-women-strike>.

359 *Id.*

360 Press Association, *Republic of Ireland Women's Game Back After Public Toilet Changing Grievance*, *GUARDIAN* (Apr. 6, 2017), <https://www.theguardian.com/football/2017/apr/06/republic-of-ireland-womens-team-call-off-strike-talks-fai>.

361 *Id.*

362 Brenda Elsey & Joshua Nadel, *South American Soccer Is Ignoring Its Women*, *VICE* (Aug. 12, 2016), https://www.vice.com/en_us/article/pgnazz/south-american-soccer-is-ignoring-its-women.

363 *Id.*

364 *Id.*

365 *Id.*; Paige Sutherland, *Chile's Historic First World Cup Appearance Tells a*

ANJUFF reached out to male and female players and government officials, which caused the Chilean Football Federation to hire an employee to exclusively oversee women's football. The federation also reinstated the women's national team.³⁶⁶ In 2018, Chile hosted and placed second in the women's Copa América tournament, and in 2019, the team flew business class to the team's first World Cup appearance.³⁶⁷

Though some of the improvement for female footballers is attributable to ANJUFF's pressure campaign, the Chilean Football Federation experienced a significant change in leadership that coincided with the evolution of the grassroots movement.³⁶⁸ In 2019, the federation invested 150% more money into women's football than the previous year, which facilitated concrete improvements experienced by the women's team.³⁶⁹ Outside of the federation, improvements at the club level are also coming to fruition, with a number of women receiving paid, professional contracts for the first time ever in 2019. Further, the Chilean government recently mandated girls' football in schools—signaling a more comprehensive pivot toward respect for, and acceptance of, women in the sport.³⁷⁰ ANJUFF continues to grow and promote improved conditions for women football players throughout Latin America.³⁷¹

Similar Efforts in Other Sports

■ **Women's National Basketball Association (2018–2020):** In November 2018, the US Women's National Basketball Association (WNBA) players' union broke off its CBA with the WNBA, which was set to remain in force through 2021.³⁷² The agreement governed the allocation of money between the league and its players.³⁷³ While the players were

Much Larger Story of Women's Soccer, PRI (June 6, 2019), <https://www.pri.org/stories/2019-06-06/chile-s-historic-first-world-cup-appearance-tells-much-larger-story-women-s>.

366 Sutherland, *supra* note 377.

367 *Id.*

368 *Id.*

369 *Id.*

370 *Id.*

371 Asociación Nacional de Jugadoras de Fútbol, ANJUFF, <https://anjuff.cl/asociacion/>.

372 Christian Similien, *Gender Plays Key Role in WNBA Pay Equity Battle*, EBONY (Nov. 9, 2018), <https://www.ebony.com/entertainment/gender-plays-key-role-in-wnba-pay-equality-battle/>.

373 *Id.*

not demanding pay equity with their male counterparts in the US National Basketball Association (NBA), they felt that the terms of the existing agreement were excessively discriminatory.³⁷⁴ For example, they highlighted the fact that WNBA players receive 22% of shared league revenue, while NBA players receive 50%.³⁷⁵ Allowing the women to receive a similar share of the WNBA's revenue would significantly increase player salaries.³⁷⁶ Players also cited more structural concerns, such as lackluster marketing and systematically poor investment.³⁷⁷

After months of negotiation, the players' union and the WNBA established a new CBA on January 14, 2020. The new agreement increases players' minimum salary by at least US\$10,000 and their maximum salary by US\$100,000.³⁷⁸ It guarantees 100% of a player's base salary during maternity leave and provides up to US\$750 per month for childcare and US\$20,000 for adoption, surrogacy, or other enumerated fertility-related procedures.³⁷⁹ The agreement also improves work-related travel and lodging, allows players greater movement between teams, recognizes the importance of mental health resources, and expands the WNBA's marketing budget to an aggregate of at least US\$1 million.³⁸⁰ The progress embodied in the new CBA is said to be the result of steadfast advocacy on the part of the players' union and thoughtful leadership from the newly appointed WNBA commissioner, Cathy Engelbert.³⁸¹

While the agreement sparked widespread celebration, there is still much work to be done. Most notably, the women were denied the requested 50% of shared league revenue. Instead, if the players achieve

374 Mary Paige Nesfeder, *WNBA Star Candace Parker Doesn't Want to Be One of the Boys*, REFINERY29 (June 21, 2019), <https://www.refinery29.com/en-us/candace-parker-wnba-gender-equality-basketball-interview>.

375 Similien, *supra* note 374.

376 *Id.*

377 *Id.*

378 Kelsey Trainor, *Analysis of the Full WNBA CBA: What Does It Say?* (Jan. 25, 2020), <https://highposthoops.com/2020/01/25/wnba-collective-bargaining-agreement-actually-says/>; Maitreyi Anantharaman, *WNBA Players' New Contract Is a Good Step—but It's Not Enough* (Jan. 21, 2020), <https://slate.com/culture/2020/01/wnba-cba-contract-critique-progressive-inadequate.html>.

379 *Id.*

380 Trainor, *supra* note 380.

381 Howard Megdal, *How the W.N.B.A. Deal Got Done* (Jan. 26, 2020), <https://www.nytimes.com/2020/01/26/sports/basketball/wnba-collective-bargaining-agreement.html>.

established revenue growth targets, they will be awarded 25% of league revenue, with an additional 25% going toward league marketing and promotional agreements.³⁸²

■ **World Surf League (2018):** In September 2018, the World Surf League announced that it would award equal prize money to male and female competitors beginning in 2019.³⁸³ The league also announced that it would host an all-female surf clinic at every championship tour stop in 2019.³⁸⁴ The decision came after a photograph of the winners of a boys' and girls' junior surf competition in South Africa went viral—the boy held a check worth twice that of his female counterpart.³⁸⁵ The photograph, posted on the competition's Facebook page, was intended to celebrate the two champions but instead sparked widespread accusations of sexism within the World Surf League.³⁸⁶

Furthermore, over the past few years, a number of high-profile women surfers and pro-equality surfing organizations have begun to expose the sexist culture that pervades the sport.³⁸⁷ In 2017, seven-time world champion Layne Beachly wrote an op-ed in *The Guardian* describing years of gender-based discrimination, including massive disparities in prize money and her sense that the only path to surfing success was to “act like men, dress like men and surf like men.”³⁸⁸ When Beachly won the first of her world titles in 1988, the total prize purse available to women was US\$155,000, while men had the opportunity to win as much as US\$1.26 million.³⁸⁹

382 Trainor, *supra* note 380.

383 World Surf League, *The World Surf League (WSL) Announces Prize Money Equality* (Sep. 5, 2018), <https://www.worldsurfleague.com/posts/345569/the-world-surf-league-wsl-announces-prize-money-equality>.

384 Saxon Baird, *Why Female Surfers Are Finally Getting Paid Like Their Male Peers*, ATLANTIC (Apr. 14, 2019), <https://www.theatlantic.com/entertainment/archive/2019/04/how-female-surfers-won-pay-equity-fight/587065/>.

385 Chris Bell, *Surf Competition Accused of “Sexism” over Prize Money*, BBC (June 27, 2018), <https://www.bbc.com/news/blogs-trending-44627959>.

386 *Id.*

387 Baird, *supra* note 386.

388 Layne Beachley, *Layne Beachley: How We Fought Back against Surfing’s Sexist Bullies*, GUARDIAN (Mar. 13, 2017), <https://www.theguardian.com/sport/2017/mar/14/layne-beachley-how-we-fought-back-against-surfing-sexism>.

389 *Id.*

Paradoxically, top surfers such as Rebecca Woods of Australia have highlighted another manifestation of sexism within the surfing world—the over-sexualization of female surfers. After years in the industry, Woods sensed that sponsors favored models over talent. In 2010, she was dropped by her sponsor Billabong and had to self-fund until her retirement three years later.³⁹⁰ In an interview, Woods explained that she felt pressured to wear tiny bikinis to maintain her sponsors and that she “didn’t particularly feel like [she] wanted to get naked to become more famous.”³⁹¹

In 2017, the Committee for Equity in Women’s Surfing—an organization created and run by female surfers—successfully lobbied the organizers of the iconic big wave surf competition Mavericks to include a women’s division.³⁹² The twenty-year-old surf competition hosted in Northern California originally boasted the tagline “Men Who Ride Mountains.”³⁹³ Nonetheless, ever since its inaugural competition in 1999, female surfers have been riding the same mammoth waves as the men—just without the prospect of fame or fortune.³⁹⁴ Echoing the criticism levied by Woods, some of the women who began riding big waves long before women were allowed to officially participate in the competitions attribute their exclusion, at least in part, to the over-sexualized stereotypes promoted by industry sponsors—“lithe, young, blonde, thong-bikini-clad surf babes” who are not taken seriously as athletes.³⁹⁵ In stark contrast, male big wave surfers must be muscular, tough, and fully covered in a hooded wetsuit.³⁹⁶

Having achieved the inclusion of a women’s division in the 2017 Mavericks competition, the Committee for Equity in Women’s Surfing convinced the California Coastal Commission to include a pay-parity condition in the 2018 World Surf League’s Mavericks permit.³⁹⁷ The

390 Michael Atkin, *Female Pro Surfers Want Industry to Get on Board Regarding Sexism Concerns*, ABC (Apr. 15, 2016), <https://www.abc.net.au/news/2016-04-15/female-surfers-call-for-end-to-sexist-culture-in-sport/7329932>.

391 *Id.*

392 Baird, *supra* note 386.

393 Joanna Jolly, *Fighting for Equality in Big-Wave Surfing*, BBC (May 7, 2017), <https://www.bbc.com/news/magazine-39634590>.

394 *Id.*

395 *Id.*

396 *Id.*

397 Marco della Cava, *Women Surfers Fight for Gender Pay Equality in Killer Wave Competition*, USA TODAY (Dec. 16, 2018), <https://www.usatoday.com/story/sports/2018/12/16/women-surfers-fight-for-gender-pay-equality-in-killer-wave-competition/5711110002>.

league initially responded to this request by withdrawing its permit application. However, shortly thereafter, the league announced its decision to guarantee pay equity across all of its events globally.³⁹⁸

■ **USA Hockey (2017):** In March 2017, the women’s national hockey team announced that it would boycott the upcoming International Ice Hockey Federation world championship if USA Hockey failed to increase compensation and support for its female athletes.³⁹⁹ The team—ranked number one in the world at the time—was reported to receive less than a living wage.⁴⁰⁰ Support for the boycott flooded in from a variety of prominent actors and institutions, including tennis star and gender rights activist Billie Jean King, various US professional sports leagues, and twenty US senators—the latter of whom wrote a letter to USA Hockey supporting the players’ cause.⁴⁰¹

Initially, USA Hockey refused to budge, explaining that it does not employ athletes. Members of the men’s national team largely play for the US National Hockey League, where they benefit from seven-figure salaries and thus do not require the same financial support from USA Hockey.⁴⁰² The National Hockey League also provides US\$9 million annually to USA Hockey in support of training and development for boys.⁴⁰³ Rather than equal pay, the women’s team primarily requested that they receive

[com/story/news/2018/12/16/women-surfers-win-equal-pay-battle-while-risking-death-alongside-men/2297228002/](https://www.nytimes.com/story/news/2018/12/16/women-surfers-win-equal-pay-battle-while-risking-death-alongside-men/2297228002/).

398 *Id.*

399 Seth Berkman, *U.S. Women’s Team Strikes a Deal with U.S.A. Hockey*, N. Y. TIMES (Mar. 28, 2017), <https://www.nytimes.com/2017/03/28/sports/hockey/usa-hockey-uswnt-boycott.html> [hereinafter *U.S.A. Hockey Strikes a Deal*].

400 Seth Berkman, *U.S. Women’s Hockey Team Plans to Boycott World Championship over Pay Dispute*, N. Y. TIMES (Mar. 15, 2017), <https://www.nytimes.com/2017/03/15/sports/hockey/team-usa-women-boycott-world-championships.html> [hereinafter *U.S. Women’s Hockey Plans Boycott*]; Alex Langone, *Before Team USA Women’s Hockey Won Olympic Gold, They Won Equality Off the Ice*, MONEY (Feb. 22, 2018), <https://money.com/usa-olympics-womens-hockey-boycott-gold/>.

401 *U.S.A. Hockey Strikes a Deal*, *supra* note 401; see also Elizabeth Warren, *Senators Call on USA Hockey to Treat Women’s National Hockey Team Fairly*, SENATE.GOV (Mar. 27, 2017), <https://www.warren.senate.gov/newsroom/press-releases/senators-call-on-usa-hockey-to-treat-women-and-039s-national-hockey-team-fairly>.

402 *U.S. Women’s Hockey Plans Boycott*, *supra* note 402.

403 *Id.*

the same investment and treatment as the men's team, including marketing, promotion, and development of girls' hockey programs.⁴⁰⁴

After years spent trying to raise the issues of gender discrimination and inadequate compensation with the International Ice Hockey Federation,⁴⁰⁵ the women's team secured nearly instant results through the 2017 strike.⁴⁰⁶ The new four-year contractual agreement guarantees female players travel and insurance equal to what their male counterparts receive, a US\$2,000 monthly training stipend, larger performance bonuses for winning Olympic medals, maternity leave, and the formation of a Women's High Performance Advisory Group to more effectively promote girls' hockey.⁴⁰⁷

■ **Tennis (1973–2007):** Tennis has long been ahead of the curve when it comes to gender parity, though there remains room for improvement. In 1973, women's tennis superstar Billie Jean King successfully led the push toward equal prize money at the US Open tennis championships, making it the first major international tennis tournament to compensate men and women equally.⁴⁰⁸ The year prior, the male champion earned 2.5 times more than his female counterpart.⁴⁰⁹ Interestingly, award parity was ultimately achieved thanks to Ban Deodorant, which donated US\$55,000 to the women's purse.⁴¹⁰

More than forty years later, tennis stars Venus Williams and Maria Sharapova led an advocacy campaign to equalize prize money at the oldest tennis tournament in the game: Wimbledon.⁴¹¹ While the prize money for women had, in recent years, amounted to 95% of that awarded to the men, Wimbledon officials still refused repeated appeals for parity, citing

404 Langone, *supra* note 402.

405 Juliet Macur, *U.S. Women's Hockey Team Boycott Echoes a Fight That Isn't Over*, N. Y. TIMES (Mar. 15, 2017), <https://www.nytimes.com/2017/03/15/sports/hockey/us-women-world-championship-boycott-contract.html>.

406 U.S.A. Hockey Strikes a Deal, *supra* note 401.

407 *Id.*

408 Parton Keese, *Tennis Decides All Women Are Created Equal, Too*, N. Y. TIMES (July 20, 1973), <https://www.nytimes.com/1973/07/20/archives/tennis-decides-all-women-are-created-equal-too.html>.

409 *Id.*

410 *Id.*

411 Christopher Clarey, *Wimbledon to Pay Women and Men Equal Prize Money*, N. Y. TIMES (Feb. 22, 2007), <https://www.nytimes.com/2007/02/22/sports/tennis/23cnd-tennis.html>.

market principles as their primary justification.⁴¹² However, mounting pressure from negative media attention, tennis superstars, and then British prime minister Tony Blair ultimately forced the hand of the tournament organizers.⁴¹³

Although the four Grand Slam tournaments now equally compensate male and female champions,⁴¹⁴ other tennis competitions have yet to achieve gender parity.⁴¹⁵ On average, female tennis players earn about eighty cents on each US dollar earned by their male counterparts.⁴¹⁶ Nonetheless, the progress in women's tennis serves as an inspiration and guiding light in the fight toward pay parity in, and beyond, the realm of sports.⁴¹⁷

Sexual Violence and Harassment⁴¹⁸

Many, if not most, of the actions described below emerged in the wake of the #MeToo movement, which achieved international notoriety beginning in 2017 and which seeks to hold perpetrators of sexual violence—particularly those in positions of power—accountable.⁴¹⁹ While a growing

⁴¹² *Id.*

⁴¹³ *Id.*

⁴¹⁴ Peter Bodo, *Follow the Money: How the Pay Gap in Grand Slam Tennis Finally Closed*, ESPN (Sep. 6, 2018), https://www.espn.com/tennis/story/_/id/24599816/us-open-follow-money-how-pay-gap-grand-slam-tennis-closed.

⁴¹⁵ Courtney Connley, *The US Open Awards Men and Women Equal Prize Money—but Tennis Still Has a Pay Gap*, CNBC (Sep. 11, 2019), <https://www.cnbc.com/2019/09/11/despite-equal-grand-slam-tournament-prizes-tennis-still-has-a-pay-gap.html>.

⁴¹⁶ Ben Rothenberg, *Roger Federer, \$731,000; Serena Williams, \$495,000: The Pay Gap in Tennis*, N. Y. TIMES (Apr. 12, 2016), <https://www.nytimes.com/2016/04/13/sports/tennis/equal-pay-gender-gap-grand-slam-majors-wta-atp.html>.

⁴¹⁷ AP, *Venus, Serena Williams Join Billie Jean King Equal Pay Push*, USA TODAY (Apr. 10, 2018), <https://www.usatoday.com/story/sports/tennis/2018/04/10/venus-serena-williams-join-billie-jean-king-equal-pay-push/33696109/>.

⁴¹⁸ Given the range of terms and legal definitions worldwide for behavior constituting sexual misconduct, harassment, assault, or violence, this report echoes the terms used in original sources where appropriate and encourages the reader to consider these differences in any future use of the information in this report.

⁴¹⁹ See Tariq Panja, *A #MeToo Wave Hits Global Soccer as the Women's World Cup Begins*, N.Y. TIMES (June 7, 2019), <https://www.nytimes.com/2019/06/07/sports/metoo-soccer-sexual-harassment.html>.

number of allegations have been made public,⁴²⁰ the taboo around sexual violence coupled with general indifference toward women's football make underreporting likely. As a result, the list below is prone to severe under-inclusivity. It is also important to note the intersection of criminal and civil law in these cases, as well as the particular vulnerability of minors, which brings added complexity.

Legal Action in Football

■ **Afghanistan Football Federation (2017–2019):** The AFF is currently facing global criticism for its culture of abuse against women. In January 2017, at least five players on the women's national team were physically and sexually abused by two male officials representing the AFF during a weeklong training camp.⁴²¹ Apparently, the men were not part of team's the regular coaching staff, which consists almost entirely of women.⁴²² The men targeted players based in Afghanistan rather than abroad, who are typically more vulnerable and likely to stay silent about abuse.⁴²³

During and after the training camp, Khalida Popal, a pioneering figure in Afghan football and the women's national team program organizer, saw women in tears and with bruises, and overheard the men commenting inappropriately on players' bodies during practice.⁴²⁴ Popal said that she tried unsuccessfully to address the issues and argued that men should not be involved in the women's football association.⁴²⁵ Shamila Kohestani, captain of the first Afghan women's team in 2006, said that she experienced similar abuse during her tenure on the team,⁴²⁶ highlighting the AFF's longstanding, open secret of abuse.

Popal and Kelly Lindsey, the team's head coach and former USNWT player, began investigating the AFF's culture of abuse toward women and girl players.⁴²⁷ They discovered that AFF's president, Keramuudin Karim,

420 *Id.*

421 Matias Grez, *FIFA Investigates Afghan Football Body over Women's Team Abuse Claims*, CNN (Dec. 4, 2018), <https://edition.cnn.com/2018/11/30/football/afghanistan-womens-football-abuse-allegations-hummel-spt-intl/index.html> [hereinafter *FIFA Investigates Afghan Football Body*].

422 *Id.*

423 *Id.*

424 *Id.*

425 *Id.*

426 *Id.*

427 Siobhán O'Grady & Sharif Hassan, *Afghanistan Seeks to Arrest Top Soccer Figure amid Sexual Abuse Allegations*, WASH. POST (June 9, 2019), <https://>

was directly responsible for a “huge extent of the abuse,” including “physical abuse, sexual abuse, death threats, and rape cases.”⁴²⁸ Human Rights Watch reported in February 2019 that at least twenty women had accused Karim and other officials of abuse.⁴²⁹ Yet when Popal and Kelly brought the issue to the Asian Football Confederation, they were told to have the AFF president—the accused, in this case—or the general secretary speak with the confederation instead.⁴³⁰

Meanwhile, the AFF had been taking steps to keep players from reporting the abuse. Nine players—all based in Afghanistan and among the best on the team—were accused of being lesbians and were kicked off the national team.⁴³¹ Popal said that Karim personally beat players and labeled them as lesbians to stop them from speaking to the media about the sexual abuse at the training camp and beyond.⁴³² In Afghanistan, being labeled as lesbian or gay places players and their families in danger.⁴³³ The AFF also began requiring women on the national team to sign contracts described as “aggressive,” “one-way,” and aimed at “silencing’ players.”⁴³⁴

Eventually, news of the abuse spread internationally. In response to the allegations, Hummel, AFF’s Danish sponsor, canceled its sponsorship and called for Karim’s resignation.⁴³⁵ FIFA’s Ethics Committee initiated an investigation and found Karim “guilty of having abused his position and sexually abused female players, in violation of the FIFA code of ethics.”⁴³⁶ He was banned for life and fined the equivalent of US\$1 mil-

www.washingtonpost.com/world/afghanistan-seeks-to-arrest-top-soccer-figure-amid-sexual-abuse-allegations/2019/06/09/a146aef4-8a86-11e9-98c1-e945ae5db8fb_story.html.

428 *Id.*

429 *Id.*

430 *Id.*

431 Suzanne Wrack, *FIFA Examining Claims of Sexual and Physical Abuse on Afghanistan Women’s Team*, *GUARDIAN* (Nov. 30, 2018), <https://www.theguardian.com/football/2018/nov/30/fifa-examining-claims-sexual-physical-abuse-afghanistan-womens-team>.

432 *Id.*

433 *Id.*

434 *Id.*

435 See *FIFA Investigates Afghan Football Body*, *supra* note 423.

436 Independent Ethics Committee, *Adjudicatory Chamber of the Independent Ethics Committee Sanctions Mr Keramuudin Karim* (June 8, 2019), <https://www.fifa.com/about-fifa/who-we-are/news/adjudicatory-chamber-of-the-independent-ethics-committee-sanctions-mr-keramuudin>.

lion.⁴³⁷ FIFA also banned former AFF general secretary, Sayed Aghazada, and Karim's secretarial assistant, Mohammad Hanif Sediqi Rustam, for five years for failing to report complaints and allowing the abuse to continue for years.⁴³⁸ Rustam and Aghazada were each fined the equivalent of US\$10,125.⁴³⁹ Aghazada was also removed from his elected position on the Asian Football Confederation's executive committee, though not immediately.⁴⁴⁰

At the country level, Karim and five other officials were suspended from the AFF by Afghanistan's attorney general. Afghan President Ashraf Ghani also ordered a government probe, the findings of which were pending at the time of writing.⁴⁴¹ In June 2019, Afghan officials issued an arrest warrant for Karim, but it is unclear whether he was in fact arrested.⁴⁴² The AFF appears to still support its former president.⁴⁴³

■ **Colombian National Teams (2019):** In early 2018, the League Against Silence—a network of journalists in Colombia—reported that women's football was “plagued by abuses of power,” including harassment, blackmail, and sexual assault of underage female players.⁴⁴⁴ Two players pressed charges against the national team's director, Didier Luna, and trainer, Sigifredo Alonso.⁴⁴⁵ Another player, Carolina Roza, came forward

437 Matias Grez, *FIFA Bans Afghan Football Official for Failure to Act on Sexual Abuse Scandal*, CNN (Oct. 14, 2019), <https://www.cnn.com/2019/10/11/football/fifa-bans-sayed-aghazada-afghanistan-general-secretary-spt-intl/index.html> [hereinafter *FIFA Bans Afghan Football Official*].

438 O'Grady & Hassan, *supra* note 429.

439 *FIFA Bans Afghan Football Official*, *supra* note 439; see also *Afghanistan Football Official Banned by FIFA over Sex Abuse Scandal*, BBC SPORT (Oct. 11, 2019), <https://www.bbc.com/sport/football/50012428>.

440 AP, *FIFA Bans 3rd Afghan Soccer Official in Sexual Abuse Scandal*, USA TODAY (Dec. 3, 2019), <https://www.usatoday.com/story/sports/soccer/2019/12/03/fifa-bans-3rd-afghan-soccer-official-in-sexual-abuse-scandal/40748123/>.

441 O'Grady & Hassan, *supra* note 429.

442 *Id.*

443 *Id.*

444 Emily Hart, *Women's Football in Colombia: Harassment, Blackmail, and Sexual Assault of Minors*, COLOMBIA REPORTS (Feb. 28, 2019), <https://colombiareports.com/womens-football-in-colombia-harassment-blackmail-and-sexual-assault-of-minors/>; see also *Denuncian acoso sexual en la selección femenina de fútbol de Colombia*, LA LIGA CONTRA EL SILENCIO (Feb. 21, 2019), <https://ligacontraelsilencio.com/2019/02/21/denuncian-acoso-sexual-en-la-seleccion-femenina-de-futbol/> [hereinafter *LA Liga*].

445 Hart, *supra* note 446.

publicly, sharing that she was targeted by Luna and that he groomed girls on the national under-17 team for abuse.⁴⁴⁶

Players reported efforts to silence and intimidate them following the allegations.⁴⁴⁷ Players and their parents also told the media that they had complained to the national football federation but received no response or assistance.⁴⁴⁸ Seeking to raise awareness about the ongoing situation, US-based Colombian players Melissa Ortiz and Isabella Echeverri launched the #MenosMiedoMásFútbol (“less fear, more football”) social media campaign.⁴⁴⁹

In February 2020, Luna entered a plea deal with prosecutors, which allowed him to avoid prison and admit guilt to a lesser charge—essentially that of harassment.⁴⁵⁰ While Luna publicly apologized to Rozo and was required to pay a fine,⁴⁵¹ in an interview, Rozo expressed frustration with the outcome of the case: “absolutely nothing has changed ... Even though the government is monitoring the case they really haven’t done anything to make life easier for female footballers.”⁴⁵²

■ **Ecuadorean National Team (2019):** On April 18, 2019, a player on Ecuador’s national women’s football team filed a legal complaint against three members of the team’s coaching staff, including a coach known publicly as Luis P., for sexual harassment.⁴⁵³ The coach harassed her continuously from May 2018 until March 2019 and made threats to kick the player and her sister off the team if she did not comply with his

446 Rodrigo Almonacid, *Colombian Football Rocked by Allegations Girls Were Sexually Abused*, JAKARTA POST (Apr. 10, 2019), <https://www.thejakartapost.com/news/2019/04/10/colombian-football-rocked-by-allegations-girls-were-sexually-abused.html>.

447 See Hart, *supra* note 446.

448 Almonacid, *supra* note 448.

449 LA LIGA, *supra* note 446.

450 AS.COM, *Didier Luna acepta cargos de acoso sexual hacia Carolina Rozo* (Feb. 2, 2020), https://colombia.as.com/colombia/2020/02/12/futbol/1581526443_389164.html; Suzanne Wrack, *Carolina Rozo: “It Started with Words. He Would Tell Me I Was Very Pretty”*, GUARDIAN (June 28, 2020), <https://www.theguardian.com/football/2020/jun/28/carolina-rozo-colombia-under-17-women-didier-luna> [hereinafter *It Started with Words*].

451 AS.COM, *supra* note 452.

452 *It Started with Words*, *supra* note 452.

453 *Una futbolista denunció al cuerpo técnico de la Tri Femenina por acoso sexual*, EL COMERCIO (Apr. 21, 2019), <https://www.elcomercio.com/deportes/ecuador-denuncia-acoso-futbol-femenino.html>.

demands.⁴⁵⁴ The player also said that the team's doctor attempted to kiss her while checking her for injuries.⁴⁵⁵

Nonlegal Action in Football

■ **Ahmad Ahmad (2019):** In April 2019, the media brought to light multiple sexual assault accusations against Ahmad Ahmad, president of the Confederation of African Football.⁴⁵⁶ On March 31, 2019, FIFA received a complaint about Ahmad, which was almost certainly sent by his former confederation general secretary, Amr Fahmy.⁴⁵⁷ FIFA referred the complaint to its ethics body, and Ahmad abruptly replaced Fahmy with his “fixer,” Hajji Mouad.⁴⁵⁸ The March 31 complaint alleged that four female confederation employees had been sexually harassed by Ahmad. Due to the conservative culture in Egypt, where the Confederation of African Football is headquartered, the victims indicated that they wanted to remain anonymous but were keen to assist with any ensuing investigations.⁴⁵⁹ Reports indicate that all of the women targeted were Muslim and that many were married, which likely kept the victims silent, due to fear of stigma or other adverse treatment.⁴⁶⁰ Separately, a British woman who worked as a contracted translator for the confederation filed a police report in London raising her own sexual harassment allegations against Ahmad.⁴⁶¹ However, because the assault took place in Morocco, United Kingdom officials were unable to act.⁴⁶²

In June 2019, Ahmad was detained and questioned by legal authorities in Paris but was subsequently released.⁴⁶³ Notably, this brief detention

454 *Id.*

455 *Id.*

456 Paul Nicholson, *CAF Chief Ahmad Hit with Multiple Sexual Harassment Allegations*, INSIDE WORLD FOOTBALL (Apr. 12, 2019), <http://www.insideworld-football.com/2019/04/12/exclusive-caf-chief-ahmad-hit-multiple-sexual-harassment-allegations/>.

457 *Id.*; see also Mark Gleeson, *African Soccer Whistleblower Fired after Accusing Boss of Corruption*, REUTERS (Apr. 15, 2019), <https://www.reuters.com/article/us-soccer-africa-caf/african-soccer-whistleblower-fired-after-accusing-boss-of-corruption-idUSKCN1RR1CW>.

458 *Id.*

459 *Id.*

460 *Id.*

461 *Id.*

462 *Id.*

463 See RFI, *African Football President Ahmad Questioned in Paris*, RFI (June 6, 2019), <http://www.rfi.fr/en/africa/20190606-african-football-presi->

related to concurrent corruption allegations rather than his alleged sexual assault of numerous women.⁴⁶⁴ Ahmad is the first active high-level FIFA executive to be implicated in #MeToo-related accusations.

■ **Gabonese under-20 Team (2019):** In May 2019, with prompting from the country's sports minister, authorities from the Gabonese Football Federation announced that they were launching an internal investigation of sexual assault and mistreatment of members of the under-20 women's team by its managers.⁴⁶⁵ At an international tournament in France, the players were allegedly forced to share mattresses, turn over their phones and passports, and endure sexual assaults.⁴⁶⁶ When asked for a statement on the issue, the federation noted that it had offered players a "lump sum bonus"⁴⁶⁷ but did not offer any meaningful indication of accountability, reform, or remedy.⁴⁶⁸ Additionally, while limited media reports indicate that the case was referred to the public prosecutor, it is unclear if any legal action has been or will be taken.⁴⁶⁹

■ **Sepp Blatter (2017):** In 2017, Hope Solo revealed that former FIFA president Sepp Blatter had groped her at the 2013 Ballon d'Or award ceremony in Switzerland.⁴⁷⁰ Throughout his tenure, Blatter made numerous sexist comments, including suggesting that women should wear more revealing uniforms in 2004.⁴⁷¹ FIFA banned Blatter in 2015 for corruption.⁴⁷²

dent-ahmad-ahmad-questioned-paris.

464 See, e.g., David Cohn, *African Football President under Questioning over Corruption Allegations*, *GUARDIAN* (June 6, 2019), <https://www.theguardian.com/football/2019/jun/06/african-football-president-ahmad-ahmad-under-questioning-corruption-allegations>.

465 AFP, *Gabon Investigate Alleged Rape of Women Footballers*, *SPORTSTAR* (May 25, 2019), <https://sportstar.thehindu.com/football/football-gabon-authorities-to-investigate-sexual-abuse-allegations-women-players-managers-news/article27241087.ece>; see also Panja, *supra* note 421 (describing the investigation in Gabon as a recent example in the wave of post-#MeToo revelations in women's football worldwide).

466 *Id.*

467 *Id.*

468 *Id.*

469 *Id.*

470 *Hope Solo Says She Was Sexually Assaulted by Sepp Blatter*, *ESPN* (Nov. 10, 2017), https://www.espn.com/espnw/sports/story/_/id/21366266/hope-solo-says-ex-fifa-president-sepp-blatter-sexually-assaulted-her.

471 *Id.*

472 *Id.*

Similar Efforts in Other Sports

■ **USA Gymnastics (1990s–2018):** Larry Nassar was a prominent doctor for young and talented female gymnasts, with connections to prestigious private training facilities, a contract with USA Gymnastics, and a permanent position at Michigan State University. Investigative reporting in 2016 first brought the allegations of sexual abuse to light, revealing that Nassar had inappropriately touched and penetrated hundreds of girls with his fingers under the guise of “medical procedures” and examinations.⁴⁷³

His medical license was suspended in January 2017, and he pleaded guilty to criminal charges in November 2017.⁴⁷⁴ Finally, in January 2018, Nassar received two prison sentences from two separate US courts for similar sex crimes—one for 40–175 years imprisonment and one for 40–125 years.⁴⁷⁵ More than 150 women—including multiple Olympic medalists—testified in court, revealing the sexual abuse and harassment they had experienced as children or young adults.⁴⁷⁶ One US Olympic gold-medalist gymnast said, “I thought that training for the Olympics would be the hardest thing that I would ever have to do. But, in fact, the hardest thing I would ever have to do is process that I am a victim of Larry Nassar.”⁴⁷⁷

A vocal mix of institutional members, funders, and the general public demanded resignations at both USA Gymnastics and Michigan State University in the scandal’s wake.⁴⁷⁸ The university’s president and its athletic director both resigned. The entire USA Gymnastics board of directors stepped down after the head of the US Olympic Committee threatened to decertify the federation if it did not comply with the committee’s demand for their resignations.⁴⁷⁹ USA Gymnastics also severed its relationship with a private training center where the abuse had occurred.⁴⁸⁰ However,

473 Christine Hauser & Maggie Astor, *The Larry Nassar Case: What Happened and How the Fallout Is Spreading*, N.Y. Times (Jan. 25, 2018), <https://www.nytimes.com/2018/01/25/sports/larry-nassar-gymnastics-abuse.html>.

474 *Id.*

475 *Id.*

476 Panja, *supra* note 421; see also *id.*

477 Carla Correa & Meghan Louttit, *More Than 160 Women Say Larry Nassar Sexually Abused Them*, N. Y. TIMES (Jan. 24, 2018), <https://www.nytimes.com/interactive/2018/01/24/sports/larry-nassar-victims.html>.

478 See Hauser & Astor, *supra* note 475.

479 *Id.*

480 *Id.*

many stakeholders saw the federation's response as inadequate. Key sponsors—including AT&T, Procter & Gamble, Hershey's, Under Armour, and Kellogg's—consequently chose to end or not renew their contracts with USA Gymnastics.⁴⁸¹

One widely reported dimension of the scandal was the numerous missed opportunities to stop Nassar sooner. The Federal Bureau of Investigation began investigating Nassar in July 2015, but no real progress was made until media coverage exposed the scandal two years later. During that time, he abused at least forty women and girls.⁴⁸² Today, many media and sports commentators consider the Nassar scandal a shock or “wake-up call” for the sports world broadly.⁴⁸³

481 *Id.*

482 *Id.*

483 See Hauser & Astor, *supra* note 475; see also Panja, *supra* note 421 (citing the scandal in a discussion of the role of #MeToo in women's football).

PART 5

KEY TAKEAWAYS: HURDLES, OPPORTUNITIES, AND NEXT STEPS

This report highlights the diversity of legal arguments, participants, and contexts that characterize the fight toward greater respect for women's football, as well as gender equality in sport more broadly. Women face disparities in their labor and contract agreements, their treatment by officials and coaching staff, and their evaluation by the media and public. Issues such as corruption, racism, and armed conflict may also exacerbate some of these hardships.⁴⁸⁴ Nevertheless, whether in Afghanistan, Colombia, Nigeria, Spain, or the United States, a playbook on progressing gender parity in football is emerging worldwide. Key aspects of the playbook include the following takeaways:

1. FIFA's internal and preferred dispute resolution mechanisms fail to provide adequate recourse or remedy for women experiencing violations of inalienable and universal human rights.

FIFA's current internal dispute system places unreasonable burdens on players and hinders their ability to obtain redress. Players are forced to navigate a complex series of regulations that are written, interpreted, enforced, and applied by FIFA. In order to obtain review by an outside body, players must first exhaust all internal dispute mechanisms and even then may seek an appeal only at the CAS. Adhering to this system imposes both financial and personal costs on female players. In a system where the overwhelm-

⁴⁸⁴ See Shireen Ahmed, *This Is the Most Anticipated Women's World Cup Ever. But Corruption and Abuse Still Block Women from Soccer*, TIME (June 5, 2019), <https://time.com/5601154/women-world-cup-abuse-sexism/>.

ing majority of the members of the DRC, Disciplinary Committee, Appeals Committee, and other bodies are men, women do not have adequate representation within FIFA's centers of power. Similarly, the prevalence of disrespect and disregard for women in football may chill female footballers from pursuing justice if they fear backlash and ridicule. While inadequate access to justice within FIFA's internal system has led some players to pursue cases in outside courts, this is also a risky strategy. Most players may be contractually obligated to resolve issues through FIFA's internal process or through arbitration. Those who are willing to risk violating this type of provision must find the resources, support, and bravery to withstand potential negative consequences.

2. Progress results from years of organizing, advocacy, and negotiation. Newspaper headlines may give the impression that many of the aforementioned efforts and victories were the brainchild of current players or football association leadership. Particularly since the explosion of the #MeToo movement, it is easy to view these efforts as part of a new wave of gender equality worldwide. However, most, if not all, of the recent progress in women's football is the result of years of organizing, advocacy, and negotiation. For example, the USWNT has been fighting the pay gap since 1999, when the team went on strike months after winning the World Cup.⁴⁸⁵ The extended timeline of these efforts highlights the essentiality of player resilience and dedication to the cause and emphasizes the importance of building institutional knowledge around players' rights and organizations' responsibilities.

3. Employment structures can inhibit or facilitate litigation. The ability to hold FIFA, confederations, member associations, or clubs legally accountable for certain types of discriminatory treatment of women depends largely on existing employment structures. For example, FIFA's deep hierarchical framework largely shields its top governing bodies and executives from accountability to players, as there are too many intermediary actors. Particularly given the low level of professionalization among female foot-

⁴⁸⁵ Molly Longman, *Every Time the Women's National Team Has Fought (and Won) for Equality*, REFINERY29 (July 2, 2019), <https://www.refinery29.com/en-us/2019/07/236862/uswnt-equal-pay-fight>.

ball players, many clubs and member associations may also not be legally accountable to players in the way USSF is accountable to the USWNT—an employment relationship that enabled the 2019 class action lawsuit. While this may narrow the applicability of employment law in certain contexts, it does not close the door to activism targeting these same actors. For example, players can instead pivot toward constitutional or international principles of nondiscrimination, among other tactics.

4. Buy-in and consensus among players are essential. It is, and likely will always be, a privilege to play sports at an elite level. This means that many individuals are vying to take the spots of the women who currently play for national teams and top clubs. The highly competitive and coveted nature of this profession make buy-in and consensus among players (and potential players) crucial to the success of gender equity advocacy. Especially in the context of extralegal efforts, such as boycotts, if clubs and member associations are able to field a team, they may be far less receptive to the concerns of individual players. For example, the 200-player boycott among the Primera Iberdrola propelled the signing of their first CBA.⁴⁸⁶ In contrast, the Argentine women's national team's wage-related strike fell flat when the AFA was able to play the under-23 squad in their stead.⁴⁸⁷

5. Capitalizing on international leverage brings employers to the table. More often than not, players leverage one or both of the following factors to bring clubs and member associations to the negotiation table: performance in the international arena or refusal to perform in the international arena. Female players who outperform their male counterparts on the international stage—such as those in the United States, Australia, New Zealand, and Norway—present a particularly compelling argument in favor of equal treatment. Many teams also leverage the investment in, and attention around, international matches and tournaments to progress the issue of gender equality. For example, Ada Hegerberg's boycott of the World Cup has helped buoy the conversa-

⁴⁸⁶ Sharma, *supra* note 296.

⁴⁸⁷ Elsey & Nadal, *supra* note 364.

tion around gender-based disparities in Norway and beyond.⁴⁸⁸ In contrast, during the 2015 World Cup turf-related lawsuit, the players' inability or refusal to boycott and thus leverage the tournament ultimately caused the plaintiffs to withdraw their complaint and table the dispute.⁴⁸⁹

6. Underreporting and “closed-door” contractual negotiations make it difficult to learn crucial details. Many player-driven efforts toward respect and equity occur outside of the courtroom. While the terms of CBAs are sometimes made public, the negotiation process itself rarely is. Consequently, without speaking to the individuals directly involved in each victory, it is nearly impossible to know what specifically brings parties to the table or what exactly allows players' demands to be enshrined in legally binding documents. Additionally, compared to their male counterparts, women's victories, defeats, and battles—on and off the pitch—go vastly underreported. This is particularly the case in the southern hemisphere, where female players face the greatest degree of discrimination. All of these factors make it incredibly difficult for women and their allies to learn from one another without proactively building direct lines of communication.

7. FIFA's leadership quietly perpetuates inequality, injustice, and discrimination. As the overlord of the industry, FIFA plays a central role in the perpetuation of gender discrimination in football. The association's multi-tiered structure allows it to dismiss blame and shirk responsibility for inequities that are closely tied to actors at the bottom of the totem pole—coaches, clubs, member associations, and even confederations. In recent years, FIFA's leaders have embraced the following approach toward the pervasive injustices that characterize women's football: they express sympathy for the players' frustrations,⁴⁹⁰ issue bold statements and colorful photos illustrating their commitment to women's football,⁴⁹¹ and make little to no concrete progress toward recti-

⁴⁸⁸ Douglas, *supra* note 316.

⁴⁸⁹ Payne, *supra* note 276.

⁴⁹⁰ *FIFA Gives Very Little Money to Women*, *supra* note 38 (quoting FIFA President Infantino as saying that critics who cite the disparity in World Cup prize money are “perfectly justified” and have a “fair point”).

⁴⁹¹ See, e.g., FIFA WOMEN'S FOOTBALL STRATEGY, *supra* note 159.

ifying decades of systematic and institutionalized gender-based discrimination. In the alternative, FIFA could equalize World Cup prize money, adopt more transparent investment practices to promote institutional accountability, and, through strong financial incentives and sanctions, more proactively encourage member associations and confederations to increase compensation for and investment in female players. While working through FIFA's internal mechanisms and dispute resolution system may not be the most effective avenue for change at present, the role of FIFA's top executives in the ongoing problem of gender discrimination in football must remain a central part of the conversation.

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The importance of gender and gender-based

categorizations cling to the world of sport like no other realm of culture or society in the twenty-first century. While presented as natural, logical, and innate, the differential treatment of men and women and boys and girls in the world of sport is largely the product of over a century of global socialization intent on preserving sport as a male-dominated pastime, lifestyle, and avenue of opportunity.

As the most popular sport worldwide, football (or soccer) may be the poster child for lingering gender disparities in sport. Despite women's presence on the pitch since the turn of the twentieth century, governments and football associations have proactively suppressed their ability to participate in the game through gender stereotypes, underinvestment, precarious professional opportunities, and disrespect.

This report describes the various manifestations of gender-based discrimination that shape the game of football today, the role that the Fédération Internationale de Football Association (FIFA) plays in perpetuating this discrimination, and the existing avenues for remedy (or lack thereof). The report concludes with key takeaways from the fight for gender equality to date, with an eye toward building a more just world of sport in the years to come.