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**The Gender Pay Gap: How FIFA Dropped the Ball**

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# **The gender pay gap: how FIFA dropped the ball**

Claire Poppelwell-Scevak

## Abstract

The pursuit for equal pay has been a struggle for those striving for gender equality. This struggle is no different in football where female players face an uphill battle in gaining equal remuneration. The Fédération Internationale de Football Association (FIFA) has remained markedly silent on the issue of the pay gap. However, FIFA's recent adoption of an extensive human rights framework explicitly includes gender equality, and thus, equal pay.

This article examines how FIFA's new human rights framework and investment programmes can support efforts to close the pay gap. The investment and revenue of the men's and women's World Cup tournaments will be examined to illustrate both the pay gap's existence and the difficulties in addressing it. This article argues this human rights framework is a positive step towards gender equality, however, it must be embedded in FIFA's governing bodies before equal pay can be remedied.

Whilst FIFA may be responsible for the World Cup prize money, FIFA's member associations are accountable for distributing money to the players. Considering this, this article looks to the Football Federation Australia (FFA) as an example of the difficulties facing member associations that try to close the pay gap nationally. On this basis, this article finds that due to the dynamics between FIFA and its member associations, pay parity cannot be achieved by a member association when its purse strings are controlled by FIFA.

## 1. Introduction

It can be difficult to imagine that football, a sport enjoyed by billions of people globally, is also the source of various human rights concerns ranging from racial discrimination to

exploitation of workers and children.<sup>1</sup> Women's treatment by football's global governing body, the Fédération Internationale de Football Association (FIFA), has likewise attracted harsh criticism from a broad array of commentators in both legal scholarship and popular media.<sup>2</sup> FIFA has recently taken significant steps to comply with its human rights commitments through the establishment of an independent human rights advisory board (the Board) in 2017 and the recent adoption of the Women's Football Strategy (Strategy) in 2018.

However, the difference in pay, a quantifiable indicator of gender inequality,<sup>3</sup> appears not to have been considered by FIFA despite the glaring figures supporting a real and clear inequality among female and male players. This is evident in the prize money awarded in the women's World Cup in 2019: USD 30 million compared to the USD 400 million awarded at the men's 2018 World Cup.<sup>4</sup> FIFA's most recent measure, the Strategy, claims

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<sup>1</sup>John Ruggie, *For the Game. For the World.* FIFA Human Rights (2016), available at [https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/crj/files/Ruggie\\_humanrightsFIFA\\_reportApril2016.pdf](https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/crj/files/Ruggie_humanrightsFIFA_reportApril2016.pdf); Sanctis, 'Requirements for the 2014 FIFA World Cup in Brazil and Requirements of Governmental Bodies to Deter Financial Crimes in the Football Sector', 21 *Southwestern Journal of International Law* (2014) 27, at 31-32.

<sup>2</sup>Schwab, 'Embedding the human rights of players in world sport', 17 *The International Sports Law Journal* (2018), 214, at 223; J. Coakley, *Sports in Society Issues and Controversies* (2017); Jones, 'Women's national leagues: does CEDAW go far enough?' 13 *International Sports Law Journal* (2013), 35, at 39; S. Scraton *et al.*, 'It's Still a Man's Game? The Experiences of Top-Level European Women Footballers' in G. Pfister and S. Pope (eds), *Female Football Players and Fans: Intruding into a Man's World* (2018) 19, at 31; Krech, 'Towards Equal Rights in the Global Game? FIFA's Strategy for Women's Football as a Tightly Bounded Institutional Innovation', 25 *Tilburg Law Review* (2020) 12, at 14; Anya Alvarez, *I thought the main issue in women's sports was equal pay. I was wrong* (9 May 2019), available at <https://www.theguardian.com/sport/2019/may/09/i-thought-the-main-issue-in-womens-sports-was-equal-pay-i-was-wrong>; Jack Skelton, *Gender pay gap: Football Association figures show 23.2% gap* (2 March 2018), available at <https://www.bbc.com/sport/43240059>.

<sup>3</sup>Lemmon, 'Evening the playing field: women's sport as a vehicle for human rights', 19 *The International Sports Law Journal* (2019), 238, at 245; L. Capranica *et al.*, 'The Gender Gap in Sport Performance: Equity Influences Equality', 8 *International Journal of Sports Physiology and Performance* (2013), 99, at 99-100; Jones, *supra* note 2, at 39.

<sup>4</sup>FIFA *Financial Report* (2018), available at <https://resources.fifa.com/image/upload/fifa-financial-report-2018.pdf?cloudid=xzshsoe2ayttyquuxhq0>, at 37, 56.

it will achieve gender equality in football.<sup>5</sup> However, it is questionable how effective this Strategy, as part of FIFA’s human right’s framework, can be when it does not formally mention the gaping pay disparity between female and male players. The primary aim of this paper is to, therefore, examine how FIFA’s governance structure, including its human rights legal framework, addresses pay equality in football.

Before moving forward, it must be underscored that the pay gap in football is measured differently from other occupations. In football, there are three – instead of one – possible avenues of income for football players: prize winnings, sponsorship deals and salary. This means that there are three different ways that female players can experience a difference in pay. To provide a holistic analysis, this paper will examine *all three* possible revenue streams because the solutions offered by national governing football bodies and FIFA may not adequately address all income streams. It should be clarified that equal pay does not equate to gender equality in sport. However, it is a measurable form of differential treatment between men and women that must be addressed before gender equality can be achieved.<sup>6</sup>

This paper does not adopt the approach that the ‘male norm as the standard’ is the goal for female players.<sup>7</sup> However, it cannot be ignored that a significant discrepancy in pay exists between female and male players. For this reason, this paper focuses on this disparity, with the understanding that further research needs to be conducted to explore FIFA’s remuneration structure as a whole. Further, the discussion of whether female and male football players perform equal work is outside the scope of this paper.<sup>8</sup> This paper’s starting point is that, in football, men and women perform the same work. This follows

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<sup>5</sup> FIFA, *Women’s Football Strategy (Strategy)* (2018), available at <https://resources.fifa.com/image/upload/women-s-football-strategy.pdf?cloudid=z7w21ghir8jb9tguvbcq>.

<sup>6</sup> For example, the different requirements found in: Article 11(1) (a), (b), (c), (e) and (f) in the Convention on the Elimination of All Forms of Discrimination Against Women 1979, 1249 UNTS 13. Please note that for this article, the author is aware that gender is not binary, however, due to the context of the discussion, gender will be referred to in the binary.

<sup>7</sup> Knop, ‘Re/Statements: Feminism and State Sovereignty in International Law’ 3 *Transnational Law and Contemporary Problems* (1993) 293, at 304; MacKinnon, ‘Reflections on Sex Equality under Law’ 100 *Yale Law Journal* (1991) 1281, at 1287; Charlesworth and Chinkin, ‘The New United Nations “Gender Architecture”’, in A. von Bogdandy, A. Peters and R. Wolfrum (eds), *Max Planck Yearbook of United Nations* (2013) 1, at 33.

<sup>8</sup> For a summary of this debate see Haile, ‘An Even Playing Field: The Goal of Gender Equity in World Cup Soccer’ 98 *Oregon Law Review* (2020) 427, at 461.

the recent adoption by the International Football Association Board's 2019-2020 revision of the Law of the Game that 'women's football is no longer a separate category and now has the same status as men's football'.<sup>9</sup>

FIFA, however, does not operate alone in its governance of football. There are 211 affiliated associations (also known as member associations) which operate at the national level. FIFA supports its member associations financially and logistically, and accordingly, the member associations are required to uphold the values – including those relating to human rights – enshrined in FIFA's Statutes. Concerning the pay gap, FIFA plays a role in prize winnings, media rights and sponsorship negotiations. However, it does not directly set the salaries of the players in member associations. In this sense, the member association is responsible for the salary of their club and national players. Therefore, when examining the existence of the pay gap in football, the focus cannot solely be placed on FIFA but also on the interplay between this international body and its national division.

This paper draws on the gender equality policy adopted by the Football Federation of Australia (FFA). This federation was selected because it recently included a specific objective to close the pay gap in Australia football in its latest gender policy: the Gender Equality Action Plan (the Action Plan). Australia was not the first national federation to provide for equal pay.<sup>10</sup> However, the Australian model is the first time that equality has been the stimulus for equal pay.<sup>11</sup> This dual-level analysis is an important factor in understanding the pay gap in football because the sources of income for the players – regardless of gender – cannot be easily traced. The aim here is to not compare the different approaches taken by FIFA and the FFA as there is a hierarchical divide which prevents an accurate comparison. Rather, this paper intends to outline what can be achieved at the national level and the effect this can have on the relationship between a national association and FIFA. In other words, if the FFA decides to take direct action in closing the pay gap, is this achievable in light of FIFA's measures? Moreover, from FIFA's

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<sup>9</sup> International Football Association Board, *Law of the Game 2019/20* (2019), available at <https://perma.cc/JR2N-ZL9D>, at 26.

<sup>10</sup> Both Norway and New Zealand have policies granting equal pay between its national teams.

<sup>11</sup> In Norway, the women's national team was granted equal pay when the men took a pay cut. In New Zealand, for example, they do not have a shared remuneration scheme.

perspective, are there elements of the FFA's Action Plan which should be adopted in its human rights framework?

It is important to note that both policies are in their infancy and so much of the discussion is based on financial reports and general meeting reports submitted before and during (in the case of FIFA) these plans' implementation. Nevertheless, this paper will critically analyse whether the methods sought in the respective policies can meet their proposed outcomes. Furthermore, this paper focuses on the revenue of football players when they play at the international level. This is to avoid the inclusion of variables that cannot be easily measured when discussing the gender pay gap, such as club salaries or *individual* sponsorship deals. The case study of the FFA will thus concentrate only on those players who are in the female or male national teams, the Matildas and Socceroos, respectively. The author is aware that it is difficult to achieve pay parity from solely examining the national teams, particularly as most male national players earn more money from their club salary than national service.<sup>12</sup> However, this perspective still encapsulates the differential treatment female players receive when representing their home countries. Furthermore, female players are more reliant than their male counterparts on the income they receive for national service,<sup>13</sup> and thus, the existence of the pay gap at the international level only exacerbates gender inequality.

To examine the pay gap, discussion of FIFA's expenditure will focus on the men's and women's 2018 and 2015 World Cup tournaments, respectively. This is because they demanded the most investment from FIFA over any other event in FIFA's schedule; the member associations 'benefit from part of the revenues from the FIFA World Cup';<sup>14</sup> and the prize money awarded to national teams is reinvested back into their respective member associations. For these reasons, the men's and women's World Cup tournaments, rather than other international competitions, will be examined in this paper.

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<sup>12</sup> Haile, *supra* note 8, at 446; Kate O'Halloran, *The Matildas pay deal could set a precedent for women's sport – but the devil will be in the detail* (5 November 2019), available at <https://www.abc.net.au/news/2019-11-05/matildas-pay-deal-equality-devil-is-in-the-detail/11673412>.

<sup>13</sup> FIFPRO, *Raising Our Game: Women's Football Report* (2020), available at [https://www.fifpro.org/media/vd1pbthj/fifpro-womens-report\\_eng-lowres.pdf](https://www.fifpro.org/media/vd1pbthj/fifpro-womens-report_eng-lowres.pdf), at 40.

<sup>14</sup> FIFA, *FIFA Forward Development Programme* (FIFA Forward 1.0) (2016), available at <https://resources.fifa.com/image/upload/fifa-forward-development-programme-regulations-2790869.pdf?cloudid=vnar7zbscpvdncc47h27>, at Article 4.1.

Lastly, FIFA is classified as an ‘international non-governmental, non-profit organisation in the form of an association under Swiss law’.<sup>15</sup> Due to this not-for-profit status, FIFA has not been obliged to take steps to remedy gender inequality in football. It is the position of this paper that due to the influence of Professor John Ruggie’s 2016 report,<sup>16</sup> coupled with FIFA’s codification in its Statute to respect core human rights legal instruments,<sup>17</sup> FIFA has now taken the initiative to realize gender equality in football.

With these considerations in mind, this paper has been divided into three sections. The first section maps the human rights framework that has been adopted by FIFA. It then seeks to understand *why* there is a pay gap in football. In other words, what factors affect the decisions in FIFA’s governance that find female players should be paid at a dramatic reduction to male players. This first section will then conclude by analysing how FIFA is capable of closing the pay gap. The second section will move to address the FFA’s Action Plan, examining the steps taken by the FFA to achieve pay parity in Australian football. The final section of this paper will examine the relationship between FIFA and the FFA and the role that their respective international and national governing structures play in hindering or supporting a common goal of achieving gender equality.

## 2. FIFA’s Global Governance and the Pay Gap

The FIFA Statutes (Statutes) direct FIFA’s governing bodies as well as ‘every person and organisation involved in the game of football’.<sup>18</sup> The Statutes outline the rights and obligations of member associations. In particular, they set out that all member associations must ‘comply fully with the Statutes, regulations, directives and decisions of FIFA bodies’ as well as obliging members to do the same.<sup>19</sup> Importantly, if a member association does not comply with their obligations, then FIFA can suspend or expel the member association.<sup>20</sup>

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<sup>15</sup> Financial Report, *supra* note 4, at 74; Jorge, ‘Fixing FIFA: The experience of the Independent Governance Committee’ 21 *Southwestern Journal of International Law* (2014), 165, at 169-170.

<sup>16</sup> Ruggie, *supra* note 1.

<sup>17</sup> Rietiker, ‘The European Court of Human Rights and FIFA: Current issues and Potential Challenges’ 1 *European Convention on Human Rights Law Review* (2020), 62, at 70-74.

<sup>18</sup> FIFA, *FIFA Statutes (Statutes)* (June 2019 edition), available at <https://resources.fifa.com/image/upload/fifa-statutes-5-august-2019-en.pdf?cloudid=ggyamhxxv8jrdfbekrrm>, at Article 8.3.

<sup>19</sup> *Ibid.*, at Article 14.1(a) and (d).

<sup>20</sup> *Ibid.*, at Articles 16 and 17.

*A. Setting the stage for gender equality: the adoption of a human rights legal framework*

In 2015, FIFA was seen to be experiencing the ‘worst crisis of its history’ due to the prevalence of fraud and corruption scandals.<sup>21</sup> Consequently, in 2016, major reforms were implemented throughout FIFA’s organisation that significantly modified ‘its institutional structure and operational processes’.<sup>22</sup> Importantly, before these major reforms were implemented, FIFA’s Statutes did state that ‘[d]iscrimination of any kind against a country, private person or group of people on account of....gender...is strictly prohibited and punishable by suspension or expulsion’.<sup>23</sup> However, the 2016 reforms motivated FIFA to take greater steps in creating a legal framework which would support gender equality in football.<sup>24</sup>

This reform is most notably seen in the inclusion of Article 2 (f) of the FIFA Statutes, which focuses on the promotion and development of women’s football. Article 2 (e) also places an emphasis on ensuring football is available to all, regardless of gender.

An additional important statutory reform was the inclusion of Article 3, which states, ‘FIFA is committed to respecting all internationally recognised human rights and shall strive to promote the protection of these rights’. Consequently, the Board was created in 2017 to provide ‘advice and recommendations on all issues that it considers relevant to the implementation of FIFA’s human rights responsibilities under article 3’.<sup>25</sup> The Board followed Professor John Ruggie’s 2016 report to FIFA that outlined the steps FIFA needed to take to respect human rights. Ruggie’s report focused on the United Nations Guiding Principles on Business and Human Rights (UNGPs) as the authoritative standard FIFA

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<sup>21</sup> FIFA, *2016 FIFA Reform Committee Report* (2015), available at <https://img.fifa.com/image/upload/mzzxqw0dabgx8ljmhxwr.pdf>, at 1; Ruggie, *supra* note 1, at 4; Peltz-Steele and Benavides, ‘World Cup Dreaming: Sporting Activism and the Incrementalist Advancement of Sexual Equality through Association Football’ 118 *West Virginia Law Review* (2015), 95, at 96.

<sup>22</sup> *Ibid.*

<sup>23</sup> Prohibition of discrimination was initially codified in Article 3 of FIFA Statute’s 2015 version. It is now Article 4 of the June 2019 version.

<sup>24</sup> 2016 FIFA Reform Committee Report, *supra* note 21, at 9.

<sup>25</sup> FIFA Human Rights Advisory Board, ‘Report by the FIFA Human Rights Advisory Board: First Report with the Advisory Board’s Recommendations and an update by FIFA’ (2017), available at <https://img.fifa.com/image/upload/ab2ywftc8qle92nghiee.pdf>, at 2. None of the reports have directly discussed the pay gap, however, the issue of gender equality in general has been a priority for the Board.

would be required to follow.<sup>26</sup> Within, the UNGPs, there is a specific section which states the

‘responsibility of business enterprises to respect human rights refers to international recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work’.<sup>27</sup>

The realisation of gender equality is manifestly included in all of these international human rights treaties.<sup>28</sup>

Ruggie identified that FIFA had taken steps before his report to address gender inequality. However, Ruggie noted that realising gender equality in football ‘will require additional standards and targeted measures’.<sup>29</sup>

Ruggie’s first recommendation was for FIFA to ‘adopt a clear and coherent Human Rights Policy’,<sup>30</sup> which was formally adopted by FIFA’s Congress in May 2017.<sup>31</sup> FIFA’s Human Rights Policy highlights gender inequality in football by stating that it ‘places particular emphasis on identifying and addressing differential impacts based on gender and on promoting gender equality and preventing all forms of harassment, including sexual harassment’.<sup>32</sup>

Thus, with these statutory reforms and the creation of the Board, FIFA’s legal framework now incorporates an expansive and inclusive human rights framework which places a significant emphasis on gender equality.

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<sup>26</sup> Ruggie, *supra* note 1, at 4.

<sup>27</sup> Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework (Guiding Principles), UN Doc. HR/PUB/11/04 (2011), available at [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf), at Section II, A. 12.

<sup>28</sup> Article 2, Universal Declaration of Human Rights 1948, 217A (III); Article 3, International Covenant on Civil and Political Rights 1966, 999 UNTS 171; Article 3, International Covenant on Civil and Political Rights 1966, 993 UNTS 3.

<sup>29</sup> *Ibid.*, at 24-25.

<sup>30</sup> *Ibid.*, at 29.

<sup>31</sup> FIFA Human Rights Advisory Board, *supra* note 24, at 6.

<sup>32</sup> FIFA, *FIFA Human Rights Policy* (2017), available at <https://img.fifa.com/image/upload/kr05dqyhwr1uhqy2lh6r.pdf>, at 6.

## B. Cracking the gap: FIFA's distribution of resources

FIFA's expenses for the 2015-2018 financial cycle totalled USD 5,368 million,<sup>33</sup> with the men's 2018 World Cup being the most demanding investment requiring a budget of USD 1, 824 million.<sup>34</sup> For the men's 2018 Russia World Cup, 'USD 400 million in prize money was paid to the participating member associations, an increase of 11%' compared to the men's World Cup in 2014.<sup>35</sup> Importantly, for the men's national teams participating in the 2018 World Cup, they also received *another two streams of revenue*. The first was USD 48 million to be distributed among participating member associations to help them prepare for the 2018 World Cup, and the second was USD 209 million for the Clubs Benefits Programme. This latter revenue stream is where 'USD 8,530 per player per day was paid to the clubs [of the participating players] so that they could benefit from the success of the FIFA World Cup'.<sup>36</sup> In stark contrast, FIFA invested just USD 82 million in the women's 2015 World Cup,<sup>37</sup> of which only USD 15 million was allocated for the *total* prize money awarded to the 24 teams.<sup>38</sup> Furthermore, there were no sources of revenue to subsidise clubs that were losing female players to national duty nor funds for the national association in terms of organising preparation matches.<sup>39</sup>

For 'Marketing and TV Broadcasting', FIFA invested USD 211 million during the 2015-2018 cycle, of which USD 68 million was specifically dedicated to broadcasting and marketing rights.<sup>40</sup> There is no clear indication as to how much was spent on the women's World Cup 2015, however, FIFA noted that 55% of this USD 211 million for the four years was spent in 2018 for 'commercialising marketing rights, media and TV broadcasting rights' for the men's 2018 World Cup.<sup>41</sup> When one looks at the different streams of prize money FIFA has created for the men's World Cup tournament and the revenue gained

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<sup>33</sup> Financial Report, *supra* note 4, at 21.

<sup>34</sup> *Ibid.*, at 14; 21; 29.

<sup>35</sup> *Ibid.*, at 36.

<sup>36</sup> *Ibid.*, at 36.

<sup>37</sup> *Ibid.*, at 29.

<sup>38</sup> *Ibid.*, at 57.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*, at 21.

<sup>41</sup> *Ibid.*, at 20.

from the sales of the men's television broadcasting rights, it is apparent that FIFA's expenditures reflect a prioritisation in promoting men's football.

Moving to FIFA's investment in programmes specific to women's football, one can see a greater push from FIFA, as evidenced by FIFA's investment of USD 24 million into the promotion of women's football between 2015-2018.<sup>42</sup> However, it is unclear how much has been targeted towards women's football in total as FIFA has invested money into women's football through the promotion of other non-gender-specific programmes such as its Football for Schools Programme.<sup>43</sup> This grouping of women's football with other, non-gender-specific investments is a common occurrence. In 2017, FIFA established the Women's Football Division,<sup>44</sup> yet the amount of money invested in this specific division is also unclear, as it has been grouped with FIFA's overall investment in its governance.<sup>45</sup>

It is clear from the figures presented in this section that there is a disparity in FIFA's treatment of female and male football players at their respective World Cups in terms of prize money and the sale of TV and broadcasting rights. FIFA has taken steps to invest in women's football but it remains to be seen how much investment into separate women's development programmes can rectify the extensive difference in investments seen in the World Cup tournaments.

### *C. Why are men disproportionately favoured?*

A popular reason proposed in literature examining why men are paid more in sport is market forces: 'external conditions that an employer argues are driven by consumer preferences'.<sup>46</sup> In other words, that greater revenue comes from men's football and the players should, therefore, be remunerated accordingly. Indeed, FIFA's revenue for the 2015-2018 cycle demonstrates that the men's World Cup was fundamental to FIFA's survival.

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<sup>42</sup> *Ibid.*, at 30.

<sup>43</sup> *Ibid.*, at 29-30.

<sup>44</sup> *Ibid.*, at 20.

<sup>45</sup> *Ibid.*, at 20-21.

<sup>46</sup> Jessani, 'Shooting for Equality: An Analysis of the Market Force Defence As Applied to the U.S. Women's Soccer Team's Equal Pay Claim', 25 *Duke Journal of Gender Law and Policy* (2018) 221, at 225; D. Brake, 'Revisiting Title IX's Feminist Legacy: Moving Beyond the Three-Part Test', 12(3) *Journal of Gender, Social Policy and the Law* (2004) 453, at 471; Lemmon, *supra* note 3, at 247.

The financial success of the 2015-2018 cycle is not to be understated, as 'FIFA's revenue reached a new high of USD 6,421 million, of which USD 5,357 million or 83% was delivered' by the men's 2018 FIFA World Cup in Russia.<sup>47</sup> It is apparent that throughout this four-year cycle, FIFA's 'saving grace' was the men's 2018 World Cup tournament as it 'made up the negative results of the first three years of this cycle, leading to the net result for the whole 2015-2018 cycle standing at USD 1,201 million'.<sup>48</sup>

FIFA has credited this surplus to 'the beyond-expectation performance of sales of TV broadcasting rights, marketing rights, licensing rights and hospitality rights and tickets'.<sup>49</sup> When looking to these revenue streams, one can see the unprecedented role of the men's World Cup in Russia. For example, the sale of television broadcasting rights is described as the 'lion's share of the full-cycle revenue' where 'the 2018 FIFA World Cup Russia contributed to 95% of the income from TV broadcasting rights'.<sup>50</sup> That being said, the television rights for the men's World Cup were also packaged with the women's World Cup television rights, however, there is no mention of women being included in FIFA's revenue from these sales.<sup>51</sup>

The marketing rights were also a significant contributor to FIFA's revenue, generating total earnings of USD 1,660 million over the four-year cycle for the 2018 men's World Cup.<sup>52</sup> This amount was derived from the success of the creation of a new commercial model – implemented for the first time in the 2018 World Cup – in the sponsorship packages offered by FIFA. This new sponsorship programme enabled FIFA to better cater to the demands of possible sponsors by creating a three-tiered sponsorship structure that offered certain rights to sponsors depending on how much money they were willing to invest.

Importantly, the rights sold by FIFA to these different sponsors included events in women's football. However, FIFA states that the 'pulling power' of the men's World Cup

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<sup>47</sup> *Ibid.*, at 2.

<sup>48</sup> *Ibid.*, at 14.

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*, at 16.

<sup>51</sup> *Ibid.*; FIFPRO, *supra* note 13, at 46.

<sup>52</sup> *Ibid.*, at 17.

is why it could attract such a high level of sponsorship.<sup>53</sup> In contrast, this sponsorship structure is not available to the women's World Cup, where they have only a two-tier structure that pales in comparison to the revenue brought in by the men's improved sponsorship structure.<sup>54</sup>

It is, therefore, clear that the men's 2018 World Cup tournament, and through association with this event, male football players are instrumental to the success of FIFA's future. In this sense, it could be argued that FIFA has divided its expenses in relation to the expected revenue it would receive from the men's 2018 World Cup tournament. The market defence may initially appear to be a strong argument for favouring men's football, however, two key criticisms of this are that it does not account for unequal investment between men's and women's football and that structural discrimination shapes the market.

### *1. Investment*

Moving to this first criticism, whilst the men's 2018 World Cup brought in 83% of FIFA's total revenue for the 2015-2018 financial cycle, it was also the most demanding investment, requiring almost a third of FIFA's total expenditure. It is thus not difficult to see the connection FIFA has made that by investing large amounts of money into the men's game it will receive significant returns.

Arguably, if FIFA was to change the way it invests in women's football, it could achieve success at levels similar to the men's game. How much investment is needed to make women's football more commercially competitive is difficult to ascertain, especially when FIFA sells television and broadcasting rights in the same package as the men's World Cup.<sup>55</sup> Crucially, however, evidence has already begun to emerge from the women's 2019 World Cup demonstrating that when FIFA significantly increased its investment in this event, television viewership and ticket sales dramatically increased. For example, a combined viewership of 1.12 billion people watched the official broadcast coverage of the 2019 women's World Cup.<sup>56</sup> In particular, the final match was the 'most-watched' match

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<sup>53</sup> *Ibid.*, at 16.

<sup>54</sup> FIFPRO, *supra* note 13, at 47.

<sup>55</sup> FIFPRO, *supra* note 13, at 46.

<sup>56</sup> *Ibid.*, at 39.

in the tournament's history, 'up 56% from the 2015 edition in Canada'.<sup>57</sup> Further, more people in the USA watched the women's 2019 World Cup final than the men's 2018 World Cup final, despite the scheduling clash with two other men's regional cup finals (discussed further in 2.D).

Another noteworthy point is that this success was not limited geographically, as both Africa, the Middle East and South America saw their respective viewership more than double compared to the 2015 tournament.<sup>58</sup> South America experienced the 'largest increase in reach, up by 560% on 2015...due [in part] to the availability of FTA [Free To Air] coverage in competing markets Argentina and Chile which previously had enjoyed coverage on Pay TV Broadcaster DirecTV only'.<sup>59</sup> This dramatic increase in viewership in Argentina and Chile is thus caused by the switch to make female matches more accessible, instead of low viewing figures being caused by a lack of interest in women's football. As such, the legitimacy of the market defence as an explanation for pay disparities in football is questionable, as women's football clearly has the potential for greater revenue generation when receiving comparable investment.

## *2. Systematic Discrimination*

The second criticism is that 'the market itself is often shaped by discriminatory decisions made by the employers themselves...relying on market value may reinforce these decisions and the institutional disparities that follow, as well as discrimination by consumers that employers may have cultivated'.<sup>60</sup> Regarding football, this can be identified in the prevalent assumption that nobody wants to watch women play football.<sup>61</sup> Brake finds that '[t]he revenue rationale for retaining the status quo in sports draws on deeply ingrained beliefs about differences in men's and women's bodies. It assumes that the preference for watching men's sports is natural, rather than socially or institutionally constructed'.<sup>62</sup> In other words, more people may watch men's football, however, that

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<sup>57</sup> Publicis Sport and Entertainment, FIFA Women's World Cup France 2019: Global Broadcast and Audience Report, available at <https://img.fifa.com/image/upload/rvgxekduqpeo1ptbgcng.pdf>, at 2.

<sup>58</sup> *Ibid.*, at 8.

<sup>59</sup> *Ibid.*

<sup>60</sup> Jessani, *supra* note 46, at 226-7.

<sup>61</sup> Lemmon, *supra* note 3, at 239; Sherry, Nicholson, and Osborne, 'Images of Sports Women: A review', 74 *Sex Roles* (2015), 299, at 2.

<sup>62</sup> Brake, *supra* note 46, at 480.

demand is based on the way society, including organisations such as FIFA, has shaped viewers to prioritise men's football.

Additionally, this market defence does not account for the fact that the 'popularity and revenue-producing potential of [football] is certainly not natural'; it is affected by institutional and social factors such as 'longstanding investments in facilities, personnel programs, recruiting, marketing and coaching.'<sup>63</sup> FIFA could respond to this by investing in every level of women's football, from grassroots to the top levels of FIFA's governance structures, as well as its member associations. Brake argues that leadership and competence in a sport are linked with maleness, which 'reinforces women's marginal place in sports and reinserts a risk that the empowering potential of sports will be thwarted by gender dynamics that reinforce male dominance'.<sup>64</sup> From this angle, investment and representation of women are key to making women's football flourish.

An additional hurdle women face in football is the social barriers which are prevalent in FIFA's member associations.<sup>65</sup> An example of this is the consideration given to the Brazilian women's national team winning silver at the 2004 Olympic Games. Despite this notable success, the Football Museum in Rio de Janeiro did not mention this feat – nor any female footballers – until a special exhibit eleven years later highlighting the 'women who fought for the right to play', as women had been legally prohibited from playing football from 1941 to 1979.<sup>66</sup> According to Lemmon, the danger with such erasure is that 'it denies girls and women role models to emulate in their own quest for athletic success'.<sup>67</sup> Even when women are recognised in football, they experience gendered challenges not faced by men, namely, objectification by the media and observers.<sup>68</sup>

According to scholars, there is a strategy in the media where 'descriptions and/or lauding of female athletes typically relate to their sexual attractiveness and desirability rather than

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<sup>63</sup> *Ibid.*, at 481.

<sup>64</sup> *Ibid.*, at 461.

<sup>65</sup> Lemmon, *supra* note 3, at 251; see further R. Boyle and R. Haynes, *Power Play: Sport, the Media and Popular Culture* (2<sup>nd</sup> ed., 2009), at 122-143.

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*, at 251.

<sup>68</sup> *Ibid.*; Sherry, Nicholson, and Osborne, *supra* note 61, at 301; Shugart, 'She Shoots, She Scores: Mediated Constructions of Contemporary Female Athletes in Coverage of the 1999 US Women's Soccer Team', 67(1) *Western Journal of Communication* (2003) 1, at 2.

their athletic prowess'.<sup>69</sup> Female athletes, unlike male athletes, 'are policed in their beauty and presentation'.<sup>70</sup> Sherry, Nicholson and Osbourne find that the visual representation of women's sport 'contributes to the maintenance of male hegemony on the sportsfield and perpetuates inaccurate perceptions of female athletes' performance and status that are argued likely to impact on perceptions of sportswomen and also on the value of women's sport'.<sup>71</sup> Another, less passive, example can be seen in interviews with female and male athletes where 'men are asked about the game, women are often asked about their family and how they cope juggling the two or, if they do not have a family, they are often portrayed as being quite masculine'.<sup>72</sup> Thus, the emphasis here is on women having to conform to a stereotype of femininity when playing football. If FIFA wishes to achieve gender equality and to promote women's football, it may need to combat such stereotypes.

Whilst FIFA's revenue from the men's World Cup does help explain the division of its expenses to overwhelmingly favour men's football, there is a disconnect in understanding why FIFA could not invest more into women's football when it can be more lucrative. If FIFA wanted to do this, it would not be sufficient to focus investment solely on the World Cup tournament; it would have to reach each level of the sport due to the 'countless social and institutional factors' that have suppressed the women's game's financial advancement.<sup>73</sup> In particular, women face a type of structural discrimination from the media that relegates their athleticism to a fetish rather than a sport. The alluring dependence on market forces to correct pay is due to the premise that market forces are 'an external, objective measure of value'.<sup>74</sup> However, this also means that the market does not take into consideration the discrimination that female players endure. As a result, these discriminatory factors continue to shape the seemingly value-neutral market to perpetuate discrimination under the guise of neutrality. It is true that women's football is not – yet – as commercially successful as men's football. However, it appears that the

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<sup>69</sup> Shugart, *supra* note 68, at 7.

<sup>70</sup> Lemmon, *supra* note 3, at 251.

<sup>71</sup> Sherry, Nicholson, and Osbourne, *supra* note 61, at 301.

<sup>72</sup> T. Evens, P. Iosifidis, and P. Smith, *The Political Economy of Television Sports Rights* (2013), at 63.

<sup>73</sup> Brake, *supra* note 46, at 481.

<sup>74</sup> Jessani, *supra* note 46, at 226.

reason is not a lack of interest or market demand but rather a lack of investment, from FIFA, into the promotion of women's football.

*D. How can FIFA close the pay gap?*

This first section began by outlining the extensive parameters of FIFA's newly adopted human rights framework which will help address gender inequality in football (A). It then identified that the root causes of the pay gap are the discrepancy between FIFA's investment in men's and women's football, as well as the social and institutional discrimination faced by women in football (B and C). With these countering factors in mind, this section will examine how FIFA can close the pay gap.

*1. Human Rights Framework*

It was outlined above that FIFA has adopted an extensive human rights framework which includes a commitment to realise gender equality. Schwab argues that an organisation such as FIFA has a 'duty, made clear by the UNGPs, to respect human rights' and points out that '[w]ithout limitation, the relevant instruments [recognised by the UNGPs] entitle everyone, including professional athletes, to the:... (4) right to equal pay for equal work'.<sup>75</sup> Indeed, FIFA's adoption of Article 3 outlines the commitment FIFA has made to respecting, protecting and promoting human rights throughout its organisation. Furthermore, FIFA's statutory objectives include the promotion and development of the women's game<sup>76</sup> and a prohibition of gender-based discrimination.<sup>77</sup> Lastly, FIFA is seen to be bound by these human rights commitments.<sup>78</sup> From this perspective, FIFA has a solid legal framework to not only assist, but to encourage, its efforts in closing the pay gap.

This framework is an encouraging sign, and thus a convincing argument could be made that FIFA's decision to award substantially less prize money at the women's World Cup is a breach of FIFA's Statute.<sup>79</sup> However, the issue of equal pay has not been specifically

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<sup>75</sup> Schwab, 'Embedding the human rights of players in world sport', 17 *The International Sports Law Journal* (2018) 214, at 222; 225.

<sup>76</sup>FIFA Statutes, *supra* note 18, Article 2(f).

<sup>77</sup> *Ibid.*, Article 4.

<sup>78</sup> FIFA, *supra* note 32, at Pillar IV (13).

<sup>79</sup> Doughty Street Chambers, *Professional Footballers Australia raises gender discrimination concern with FIFA over unequal prizemoney for the Women's World Cup 2019* (2019), available at

addressed by FIFA, nor has this human rights framework been embedded into FIFA's governance structures.<sup>80</sup>

In this sense, FIFA's newly adopted human rights framework provides FIFA with the tools to close the pay gap. However, FIFA has not yet taken the necessary steps to implement this framework throughout its organisation. There is no doubt that the 2016 reforms in FIFA have had a significant effect on the reshaping of FIFA's Statutory objectives and aims from a human rights perspective. This is a remarkable first step into the human rights field more generally. From the perspective of the pay gap, however, this framework remains a stepping stone until FIFA embeds these human rights principles into its governance structures.

## *2. Investing in Development Programmes*

It was discussed above (C) that if FIFA were to invest more heavily into the women's game, then women's football could be a greater commercial success, and could, therefore, have a greater claim to pay parity. This section examines what FIFA has, to date, done for gender equality, in terms of investment, and whether this can lead to indirectly closing the pay gap.

FIFA's Forward Development Programme (FDP) was unveiled on 13 October 2016, less than six months after the Statute was amended to include gender equality provisions. In the FDP, gender equality is incorporated into FIFA's vision of growing the game and building a stronger institution in its 'efforts to develop and promote the game of football worldwide'.<sup>81</sup>

### (a) FIFA Forward

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<https://www.doughtystreet.co.uk/news/professional-footballers-australia-raises-gender-discrimination-concern-fifa-over-unequal>; Schwab, *supra* note 75, at 226.

<sup>80</sup> FIFA Human Rights Advisory Board, *Fourth Report by the FIFA Human Rights Advisory Board*, available at <https://img.fifa.com/image/upload/pyume2cahuue2szxgjwq.pdf>, at 11.

<sup>81</sup> FIFA, *FIFA 2.0: The vision for the future*, available at <https://img.fifa.com/image/upload/drnd5smfl6dhxgiyqmx.pdf>, at 19; 24.

The FDP's first cycle, FIFA Forward 1.0, was implemented on 9 May 2016 and has been succeeded by FIFA Forward 2.0 for the following 2019-2022 cycle. The FDP aims to direct FIFA's governing bodies in the global promotion of football whilst protecting its integrity.<sup>82</sup> Under the FDP, there is a 'single contract of agreed objectives between FIFA and each member association' that ensures FIFA will provide the financial, technological and administrative means for a member association to pursue programmes – in line with the aims of FIFA's Statute – which can help the global development of football.<sup>83</sup>

In terms of the role of member associations who wish to participate in the FDP, it is seen as a *right* rather than an obligation or a responsibility.<sup>84</sup> Thus, a member association is only *bound* to act according to the FDP's aims once it has *chosen* to first enter into this contract.

Under its successor, FIFA Forward 2.0, member associations will be granted up to USD 6 million over the four-year cycle.<sup>85</sup> FIFA has divided this amount by granting member associations up to USD 1 million per year for operational costs and up to USD 2 million for specific projects.<sup>86</sup> Importantly, half of the operational costs being granted are predicated on the member association organising an equal amount of competitions for male and female players.<sup>87</sup> This is a noticeable step towards gender equality, however, for the remaining USD 2 million, which can be distributed across specific programmes during 2019-2022, there is little emphasis on women's football. Rather, this remaining money is granted depending on the 'specific needs and priorities of the member association as established in the relevant contract of agreed objectives'.<sup>88</sup> The onus is, therefore, on the member association to prioritise women's football in its contract with FIFA, rather than

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<sup>82</sup> FIFA, *FIFA Governance Report* (2016), available at <https://resources.fifa.com/image/upload/governance-report-2016-2878923.pdf?cloudid=gkpaxp18nq4kphki81gk>, at 24-5; *Strategy*, *supra* note 5, 2; FIFA Council, *Circular no. 1659* (2019), available at <https://resources.fifa.com/image/upload/1659-fifa-forward-development-programme-regulations-fifa-forward-2-0.pdf?cloudid=qdot1ebd3e4k9fmimmke>.

<sup>83</sup> FIFA, *Forward Development Programme Regulation: Forward 2.0* (2019), available at <https://resources.fifa.com/image/upload/1659-fifa-forward-development-programme-regulations-fifa-forward-2-0.pdf?cloudid=qdot1ebd3e4k9fmimmke>, at 2.

<sup>84</sup> *Ibid.*

<sup>85</sup> *Ibid.*, at Article 6.

<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.*, at Article 6.3(b).

<sup>88</sup> *Ibid.*, at Article 6.4(a).

FIFA demanding it is an obligatory element in the proposed projects of the member association.

(b) The Strategy

The FDP helped lay the foundation for the 2018 Strategy to achieve gender equality throughout FIFA and its member associations.<sup>89</sup> The Strategy sets out an ambitious goal of achieving gender equality globally through three objectives: to grow participation (i); to enhance the commercial value of women's football (ii); and to build the foundations of women's football (iii).<sup>90</sup> To achieve these three objectives, the Strategy follows a five-pronged approach to raise awareness and increase women's participation in football ('Develop and Grow'); improve the women's international match calendar ('Showcase'); introduce a women's football commercial programme ('Communicate and commercialise'); oblige FIFA member associations to have at least one woman present on their executive committee by 2026, as well as having one-third of FIFA committee members be women by 2022 ('Govern and lead'); and improving the lives of women and girls through educational and awareness programmes ('Educate and empower'). These objectives – and the five different approaches to achieve these objectives – are significant milestones in FIFA's quest for gender equality; however, a question remains as to *how* the pay gap will be addressed by the objectives set out in its Strategy.

i) Prize Money

For the World Cup, the prize money differs not only in the *amount* but also in the *type* of prize money. As has been mentioned, FIFA is not directly responsible for how much a player earns. The prize earnings are awarded to the member association. However, FIFA is responsible for dividing and distributing the prize money for both the women's and men's World Cups. For the former, FIFA awarded USD 15 million, as opposed to the latter,

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<sup>89</sup> *Strategy*, *supra* note 5, at 6.

<sup>90</sup> *Ibid.*, at 5-9.

which received USD 657 million at the men's 2018 World Cup from the three revenues of prize money, preparation money and the Clubs Benefit Programme.

Looking to the Strategy, it may be argued that if FIFA fulfils its second objective – enhancing commercial value – as well as its third – building the foundations – it could have the enormously positive effect of passing an equal amount of money to member associations, thus preventing the emergence of the pay gap. Indeed, one of FIFA's approaches, 'Showcase', directly deals with increasing the promotion of the Women's World Cup. Further, there was an observable change at the most recent women's World Cup in 2019 where FIFA increased the overall amount of prize money from USD 15 million to USD 50 million.<sup>91</sup> Even more striking is that FIFA expanded its *types* of revenue, just like the men's World Cup, to introduce preparation money for the national teams as well as a Club Benefits Programme.<sup>92</sup> The adoption of the Strategy can be seen as the impetus for the introduction of these additional revenues,<sup>93</sup> yet despite this, there remains a glaring gap in the *amount* of prize money. It cannot be overlooked that, to date, there have been 32 men's teams as opposed to 24 in the women's World Cup. However, the *level* of investment draws into question whether the Strategy can help FIFA close the pay gap if it does not specifically state that the World Cup prize money must change in accordance with FIFA's human rights framework.

ii) Commercialising the Women's Game

Moving away from the prize money aspect of the World Cup, one cannot ignore the sizeable revenue that FIFA earns from the sale of television and broadcasting rights for the men's 2018 World Cup. According to the Strategy's third approach, 'Communicate and Commercialise', FIFA aims to develop a commercial programme for women's football that will include developing a 'strategy to sell broadcast, digital and media rights'.<sup>94</sup> However, there has been little discussion of incorporating the same sponsorship structure that was introduced into the men's 2018 World Cup. This same vagueness is replicated in the Strategy's second approach, 'Showcase', which states that FIFA will 'raise the profile'

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<sup>91</sup> Financial Report, *supra* note 4, at 57.

<sup>92</sup> *Ibid.*, at 56.

<sup>93</sup> *Ibid.*

<sup>94</sup> *Strategy*, *supra* note 5, at 14-15.

of the women's World Cup but the implementation of this approach focuses on regional qualifiers and new competitions as well as the international match calendar.<sup>95</sup>

Interestingly, this last aspect of strengthening the women's match calendar has already experienced problems as was seen in the scheduling clash of the women's 2019 World Cup final with the South and North American confederation men's finals on the same day.<sup>96</sup> FIFA has stated that from 2020 to 2023, there will be a 'period each year between July and August blocked for women's national team competitions (including confederation final tournaments and the FIFA Women's World Cup)'.<sup>97</sup> The hope is that this scheduling will not be affected by future clerical errors.

It is precisely due to revenue from the men's World Cup that FIFA was able to invest so much into development programmes that have directly impacted the women's game. It could be suggested that it is, therefore, difficult to criticise the amount of money FIFA invested in negotiating these broadcasting deals when women's football profited from this revenue. However, there is also the argument that if FIFA had taken a greater step in negotiations with corporate sponsors, the women's World Cup could have benefited from the same structure as the men's 2018 World Cup.

### iii) Financing the women's game

Lastly, FIFA has begun to invest in women's football by allocating funding to female-only development programmes, although this investment appears to be in its infancy. During the 2015-2018 cycle, USD 24 million was invested in the promotion of women's football.<sup>98</sup> Unfortunately, it is difficult to understand exactly how much has been dedicated solely to women's development programmes due to FIFA's financial reports merging the amount invested into these women's football programmes with other development programmes.<sup>99</sup> Despite this lack of clarity, the Strategy is perhaps at its most potent in

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<sup>95</sup> *Ibid.*, at 12-13.

<sup>96</sup> FIFPRO, *supra* note 13, at 32.

<sup>97</sup> FIFA, *FIFA Activity Report* (2018), available at <https://resources.fifa.com/image/upload/yjibhdqzfwz5onqsz00.pdf>, at 31.

<sup>98</sup> Financial Report, *supra* note 4, at 30.

<sup>99</sup> *Ibid.*, at 21.

this area as each of its objectives stresses the need for investment in every area of football, whether it be players, coaches, referees or leadership.

It has been mentioned that there needs to be a shift in the perception of women in football for the game to attract greater revenue and more fans. The Strategy, in particular, its third, fourth and fifth approaches, has accepted this challenge in every part of the game. For example, there are now mentoring programmes for female coaches or leadership workshops for women working at the national team level.<sup>100</sup> Further, the Strategy has dedicated an entire approach – Govern and Lead – to increasing representation of women in leadership positions throughout FIFA and its member associations, and the professionalization of women’s football.<sup>101</sup> It is this area where one can see concrete aims that map how many leadership positions are to be held by women, such as a minimum of one-third of FIFA committee members being women by 2022.<sup>102</sup> In respect to objectification by the media, the Strategy sets to remedy this issue by identifying ambassadors of the game to ‘raise the profile of women’s football and advocate for access, equal opportunities, health benefits and positive social change’.<sup>103</sup> The Strategy has taken a concrete stance in improving societal attitudes towards women playing football, as well as introducing measurable goals such as quotas. From this perspective, the Strategy is a positive step in a more holistic approach to the promotion of women’s football.

iv) Avoiding equal pay?

It is clear that FIFA has taken its FDP one step further with the Strategy’s outline for achieving gender equality in football. However, three issues, in the context of equal pay, cannot be overlooked. The first is that the pay gap is not mentioned as a real concern that FIFA is trying to address. FIFA may appear one step removed from a player’s paycheque as the prize earnings from the World Cup are not paid directly to players but rather to the member association that decides how the funds are distributed. However, it is FIFA who decides the *worth* of a player by designating the amount to be awarded in terms of prize money. As such, FIFA cannot excuse its inaction on this issue on the grounds that it pays

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<sup>100</sup> *Activity Report*, *supra* note 97, at 35.

<sup>101</sup> *Strategy*, *supra* note 5, at 17.

<sup>102</sup> *Ibid.*, at 16.

<sup>103</sup> *Ibid.*, at 14.

the member associations rather than the player. Further, by not focusing specifically on the pay gap in the Strategy, FIFA sends a strong message to its member associations that their gender equality priorities can lay elsewhere.

The second issue is the absence of enforcement in the Strategy's wording and implementation. The Strategy stems from the FDP, which is a regulation to be followed by all member associations. The investment FIFA is dedicating to women's programmes is based on the FDP being *an incentive* for member associations to earn more money for programmes, rather than being a *requirement* to achieve gender equality. There is little indication from FIFA of the lengths it will go to push a member association to fall in line with its regulations (see section four). When one looks at FIFA's attitude to gender equality, the Strategy can be seen as a step beyond a purely incentivising process as is the case with the FDP. However, the Strategy's language is too ambiguous to truly impact how much female players earn.

Lastly, the lack of transparency surrounding FIFA's deliberations regarding investment into women's football raises further questions on the future of women in the sport. Publically, FIFA has shifted its tone to openly advocating for women's football as can be observed by FIFA's President Gianni Infantino stating that 'it's time to implement gender equality in football - on the pitch and off, or outside the pitch in the rooms, in the meetings rooms, in management'.<sup>104</sup> FIFA also doubled the prize earnings in the 2019 women's World Cup, however, the rationale for this is unclear. Were more television and broadcasting rights sold which could equate to such a number? Does the quality of women's football warrant more money? How does FIFA know that the men's game is the 'pulling power' in its television and broadcasting deals when it bundles the women's World Cup in these same deals? How arbitrary – or not – are FIFA's deliberations concerning the amount of prize money it will award the participating teams? FIFA has not provided any outline to such calculations for either the men's or the women's game.

The Strategy represents a long-term commitment to gender equality that has already started to create change in FIFA's governance and development programmes. However,

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<sup>104</sup> Chibuogwu Nnadiogbulam, *AIPS meets Gianni Infantino: "My mission is to make football global"* (2020), available at <https://www.aipsmedia.com/index.html?page=artdetail&art=27053&83rd-AIPS-CongressGianni-InfantinoGianni-Merlo>.

it is difficult to argue that the Strategy's objectives can implement FIFA's human rights framework if it does not highlight the existing pay gap. There is momentum for change in the women's game, as has been seen by FIFA's investment boost into the 2019 women's World Cup. The problem with FIFA's governance on this issue is that the current financial plan to promote women's football, pursued in combination with women's development programmes, is not enough to achieve equal pay for female players.

### *E. Conclusion*

This section has demonstrated that there is a clear pay gap between male and female football players at the international level. This stems from a variety of factors including FIFA's distribution of resources significantly favouring men; FIFA's opaque financial reporting which bundles the revenue of the women's World Cup with the men's respective tournament as well as women-specific investment with non-gender specific programmes; and FIFA's focus on incentivising – rather than making these investment policies mandatory – member associations to realise gender equality.

FIFA's recent adoption of Ruggie's UNGPs has provided a legal framework to support FIFA in closing the pay gap. This framework is a solid foundation for FIFA's realisation of gender equality, however, it remains to be embedded into FIFA's governing bodies. Regarding FIFA's current policies that have tried to tackle gender equality, the FDP and the recent Strategy, neither have outlined a clear pathway to equal pay for female footballers. It is difficult to see how FIFA can achieve gender equality if its adopted human rights framework is unable to enforce equal pay standards, and FIFA's investment schemes are circumventing the issue of addressing the pay gap.

### 3. Case Study: Football Federation Australia

It was only in 2003 that the FFA was formally created in an attempt to stabilise the governance of football in Australia, and since its formation, its leadership has placed little focus on gender equality. With this in mind, it is remarkable that the FFA adopted the Action Plan in 2019 to address gender inequality in Australian football.

### A. FFA's Action Plan: Addressing the Australian Pay Gap

The Action Plan identifies two key objectives for reform. The first is the structure and governance of the FFA, which needs to be reviewed and reformed to avoid the reinforcement of negative gender stereotypes. The second is the development of female football players to be more competitive on the world stage, as well as encouraging women into leadership roles at all levels of the sport.<sup>105</sup> The Action Plan identifies five 'focus areas' that will help achieve gender equality under these two objectives. One of these is labelled the 'gender pay gap' and is directly related to the FFA's commitment to close the pay gap between male and female football players.<sup>106</sup> The outcome is to achieve gender equality, including closing the pay gap, within the next 10 years. Unsurprisingly, there are many areas of overlap between FIFA's Strategy and the FFA's Action Plan, as the latter is based on the Strategy's five approaches.<sup>107</sup> Despite this, the pay gap is only explicitly mentioned in the Action Plan.

Importantly, the Action Plan is in its infancy in terms of implementation but also in its concept of what equal pay *means* in football terms. This is evidenced by the language used in the Action Plan when discussing the 'journey' to equal pay, whereby the first step for the FFA is to 'develop a methodology' before formulating a solution.<sup>108</sup> There is little more stated in the Action Plan on closing the pay gap, however, a reference is made to the Male Champions of Change (MCC),<sup>109</sup> which outlines a strategy to achieve equal pay for female athletes.<sup>110</sup>

The MCC's plan outlines three stages that the FFA must develop if it is to close this pay gap. The first stage is to develop and retain 'a critical mass of elite female players'; the second is to define football 'as a viable career pathway' for female professional players; and the third is to generate 'sufficient commercial revenue to self-fund female athletes at

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<sup>105</sup> FFA, *Gender Equality Action Plan (Action Plan) 2019*, available at <https://www.ffa.com.au/sites/ffa/files/2019-04/FFA%20Gender%20Equality%20Action%20Plan%202019.pdf>, at 6.

<sup>106</sup> *Ibid.*, at 7; 17.

<sup>107</sup> FFA, 'New Leagues Working Group: Recommendations Report' (2019), available at [https://www.ffa.com.au/sites/ffa/files/2019-04/NLWG%20Recommendations%20Report\\_0.pdf](https://www.ffa.com.au/sites/ffa/files/2019-04/NLWG%20Recommendations%20Report_0.pdf), at 22.

<sup>108</sup> *Action Plan*, *supra* note 105, at 17.

<sup>109</sup> The MCC is a not-for-profit institute which works with leaders across the private sector and the Australian government. Its aim is to influence and support male leaders to achieve gender equality in their respective organisations.

<sup>110</sup> The FFA is a member of the MCC Sports Group.

a competitive level'.<sup>111</sup> MCC uses Cricket Australia's model for pay equity to illustrate that male and female players can be paid equally as long as the prize money, sponsor bonuses and terms and conditions of a male football player's contract is the same as his female counterparts.<sup>112</sup> The FFA has yet to achieve pay parity between Australia's men's and women's national teams nor has it followed the MCC's strategy in developing a methodology to achieve pay parity.<sup>113</sup>

However, in 2019, the collective representative body of Australia's professional footballers, the Professional Footballers Australia (PFA), negotiated a four-year collective bargaining agreement (CBA) with the FFA to promote the earnings of Australian football players. Regarding earnings, this CBA tackles the pay gap three-fold.

First, players are to be paid a percentage of 'the revenue that their work and their value generates for FFA'.<sup>114</sup> Here, both the Socceroos and the Matildas will receive a 24% share of the agreed aggregate from the 2019-20 revenues, rising by 1% each year', however, 5% of this 24% will be invested into the youth national teams.<sup>115</sup> Importantly, the remaining 19% will be divided *equally* between the female and male national teams.<sup>116</sup> Thus, player remuneration (regardless of gender) will be 'directly tied to the revenues generated by [the] National teams' from areas such as sales of broadcasting, sponsorship and merchandising which 'will create a sustainable financial model that incentivises players and FFA to collaborate and grow the commercial pie together'.<sup>117</sup> Second, *how* the Matildas will be paid under this new CBA has decisively changed, with a new three-tiered centralised contract system.<sup>118</sup> Here, female players categorised in Tier 1 will earn the same amount, in terms of guaranteed minimums, as the top male players for the

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<sup>111</sup> MCC, *Pathway to Pay Equality: Elite Women Athletes* (2019), available at <https://malechampionsofchange.com/wp-content/uploads/2019/02/MCC-Sport-Pathway-to-Pay-Equality-Report-2019.pdf>, at 9.

<sup>112</sup> *Ibid.*, at 13.

<sup>113</sup> *Ibid.*, at 31.

<sup>114</sup> PFA, *CBA Facts Sheets* (2019), available at [https://www.ffa.com.au/sites/ffa/files/2019-11/PFA%20CBA%20Facts%20Sheet\\_v3.pdf](https://www.ffa.com.au/sites/ffa/files/2019-11/PFA%20CBA%20Facts%20Sheet_v3.pdf), at 1.

<sup>115</sup> *Ibid.*

<sup>116</sup> *Ibid.*

<sup>117</sup> FFA, Historic CBA to close football's gender pay gap, available at <https://www.ffa.com.au/news/historic-cba-close-footballs-gender-pay-gap>.

<sup>118</sup> PFA, *supra* note 114, at 1.

Socceroos.<sup>119</sup> Lastly, in terms of prize money,<sup>120</sup> both the Matildas and the Socceroos' share of their respective World Cup prize money will increase from 30% to 40%, with the share rising to 50% if they progress to the knockout stage.<sup>121</sup> However, once the Matildas have taken their 40% share of the prize money, the remaining 60% share is taken by the FFA, with no guarantee that it will be reinvested back into women's football.<sup>122</sup>

This CBA has made a concerted effort to close the pay gap between the female and male national teams. It tackles the core issues surrounding investment in women's football such as the renegotiation of sponsorship contracts by the FFA as well as coaching and development support to 'mirror' that of the male national team.<sup>123</sup>

### B. Conclusion

This CBA is an important step in the FFA's objective to close the pay gap, yet it is not the Action Plan that has resulted in this change but rather the FFA *agreeing* to the collective agreement. The work of the player's union, the PFA, was key to this. The PFA's negotiations to push equal pay for its female members has helped pave the way for gender equality. It should be noted that the Action Plan is in its early stages and thus the current focus should be on the FFA now having a more welcoming attitude to gender equality. However, the Action Plan acknowledges the fact that it must first create a methodology to close the pay gap. It appears that it will follow in the footsteps of the MCC's policy, which has been quite successful in other Australian sporting codes.<sup>124</sup> To date, the CBA between the Australian national teams and the FFA is the closest any member association has achieved in pay parity for their national teams. However, this most recent CBA has yet to result in pay parity, the realisation of which continues to progress at a slower rate despite the attention given by the Action Plan.

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<sup>119</sup> *Ibid.*

<sup>120</sup> Note that the World Cup prize earnings are not included in the revenue pool equally divided by the Matildas and the Socceroos.

<sup>121</sup> PFA, *supra* note 114, at 2.

<sup>122</sup> Kate O'Halloran, *Matildas v Socceroos: The gender pay gap is real* (2019), available at <https://www.abc.net.au/news/2019-06-18/matildas-vs-socceroos-gender-pay-gap-is-real/11218580>.

<sup>123</sup> PFA, *supra* note 114, at 2.

<sup>124</sup> MCC, *supra* note 111, at 13; 30.

#### 4. FIFA vs. FFA: Why can't we all get along?

This final section examines the relationship between FIFA and the FFA in the context of closing the pay gap. This section takes a two-pronged approach, the first is the relationship of governance (A.), and the second is the flow of money between these two organisations (B.). This section has been divided by these two approaches to illustrate the hierarchical power dynamics between FIFA and the FFA. Further, these two approaches also demonstrate that the issue of pay requires action to be taken at both levels – international and national – of governance.

##### A. *Governing a Relationship*

As a member association of FIFA, the FFA has committed in its Constitution to comply with the rules and regulations set forth by FIFA.<sup>125</sup> There is, at the very least, a formal understanding that FIFA will be the arbiter of the FFA if it does not agree with how the FFA conducts itself.

In 2018, FIFA took advantage of this authority when it pushed the FFA to implement gender reform measures, which were created through the establishment of a Congress Review Working Group (CRWG), as the FFA's voting practices were repeatedly breaching FIFA's Statute.<sup>126</sup> The issue for FIFA was that the FFA's voting structure did not comply with the requirements of FIFA's Statutes.

A recommendation from the CRWG was for the FFA to create a new stakeholder group, the Women's Council, which would have ten votes in the FFA's Congress.<sup>127</sup> Freeburn points out that this recommendation is a 'strange way to address gender equality in football'.<sup>128</sup> He acknowledges that before the CRWG's recommendation, there was no direct voice for women's football in the voting structure of the FFA's Congress. However,

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<sup>125</sup> FFA, *Constitution*, available at <https://www.ffa.com.au/sites/ffa/files/2017-09/FFA%20Constitution.pdf>, at Article 2.1(c).

<sup>126</sup> Freeburn, 'The fiction of democracy in FIFA's governance of football and the case of Football Federation Australia' 19 *The International Sports Law Journal* (2019) 184, at 196.

<sup>127</sup> CRWG, *Report of the Congress Review Working Group Australia for FIFA and the AFC* (July 2018), available at <http://pfa.net.au/wp-content/uploads/CRWG-Report-final-31-07-2018-For-Publication.pdf>, at 31.

<sup>128</sup> Freeburn, *supra* note 126, at 199.

he correctly states that ‘[i]f gender equality was made a serious requirement, rather than an objective, then this [minority] voting allocation [of 10%] would be redundant’.<sup>129</sup>

Freeburn’s position highlights the difficulty FIFA, and to some extent, the FFA,<sup>130</sup> have had in prioritising gender equality. Considering the CRWG recommendations, the creation of the Women’s Council would ‘cover all levels of the women’s game’ including ‘marketing, promotion, sponsorship and commercialisation’.<sup>131</sup> An important takeaway from this is that the CRWG was aware of the importance of commercialising women in football; however, it designated only 10% of votes to the Women’s Council. In this sense, Freeburn stresses that this approach ‘detracts from the achievement of real gender equality’.<sup>132</sup> In response to such criticism, the CRWG recommended, as part of domestic and international best practice,<sup>133</sup> a 40/40/20 gender balance across the Board and Standing Committees.<sup>134</sup> While, significantly, this recommendation has been adopted by the FFA into its Constitution,<sup>135</sup> it remains an ‘objective’, rather than a ‘requirement’.

Importantly, this example of the FFA’s voting reconfiguration demonstrates the power FIFA can wield over a member association. This example also proves that FIFA’s statutory powers can cause real change. However, it is curious that FIFA can intervene in a member association’s voting procedures on the basis of gender equality but does not internally reflect on its obligations regarding equal pay. Indeed, there is a disconnect between FIFA’s comprehension of its statutory provisions to respect human rights and the relationship it has with its member associations. Similarly, from the point of view of the member association, there is a lack of clarity on what tools are available to them if they wish to hold FIFA to account for its adopted human rights framework.

For example, FIFA requires all member associations to adopt a non-discrimination clause in their Constitutions.<sup>136</sup> The FFA has done so,<sup>137</sup> and thus, FIFA has shaped the

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<sup>129</sup> *Ibid.*, at 200.

<sup>130</sup> Note that the FFA was reluctant at first to adopt a 10% vote for the Women’s Council. The FFA preferred a special interest group.

<sup>131</sup> CRWG, *supra* note 127, at 30.

<sup>132</sup> Freeburn, *supra* note 126, at 200.

<sup>133</sup> CRWG, *supra* note 127, at 46.

<sup>134</sup> 40/40/20 means 40% men, 40% women and 20% open.

<sup>135</sup> FFA Constitution, *supra* note 125, at Article 44.

<sup>136</sup> FIFA Statute, *supra* note 18, at Article 15 (b).

<sup>137</sup> FFA Constitution, *supra* note 125, at Article 2.1 (h).

stipulation that the FFA must not discriminate on the basis of gender. Regarding the pay gap, the FFA has made a significant attempt to grant equal pay to its female football players. However, the FFA's ability to do so is considerably affected by the prize earnings decided (and granted) by FIFA at the World Cup tournaments (discussed in greater detail below). It is not clear what legal avenues are available to the FFA to oblige FIFA to comply with their own measures. It appears that the power dynamics between FIFA and the FFA have been created to benefit the former. As a result, the ability of a member association to realise gender equality is limited by FIFA's cherry-picking attitude to the fulfilment of its human rights commitments. In this sense, the FFA has tried to comply with its Constitutional objective to not discriminate on the basis of gender, however, the ability to realise gender equality is thwarted by FIFA's distribution of prize money.

### *B. The flow of money: Can the pay gap be closed from one end?*

The relationship of transnational governance is further complicated by the movement of money from FIFA, the overarching global organisation, to the national associations, in this instance, the FFA. FIFA does not directly pay football players; rather, it invests money in specific events, such as the World Cup, as well as the national associations through development programmes and additional funding (2.D). This top-down approach of the flow of money in the sport is crucial in this section as it seeks to understand how this trickle-down flow of money affects either organisation from closing the gap.

For example, the discrepancy in the prize money *awarded by* FIFA means that unless the percentages of the CBA are significantly in favour of the Matildas, there will never be equal pay from prize earnings. For example, if the CBA had been agreed upon for the men's 2018 World Cup, the Socceroos would have received USD 3.2 million for their performance of not moving past the group stages.<sup>138</sup> Contrastingly, the Matildas would have had to split USD 400,000 between their 23-person squad for their result at the 2019 World Cup in France, where they reached the top 16.<sup>139</sup> Despite the prize money for the 2019 World Cup being doubled by FIFA, in terms of the World Cup prize money and the

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<sup>138</sup> Financial Report, *supra* note 4, at 37.

<sup>139</sup> *Ibid.*, at 57.

*current momentum* of 100% growth of the prize earnings, equal pay would not be achieved until 2039.<sup>140</sup>

Moreover, this increase in prize money has been described, for both the men's and women's World Cup, to be "an opaque political process where an arbitrary figure is allocated to the tournament."<sup>141</sup> The PFA has stated that they are 'seeking...FIFA's acknowledgement that they will engage in conversation as to what equality looks like and how we get there', however, their requests for consultation were ignored in the lead up to FIFA's announcement on doubling the prize money for the 2019 women's World Cup.<sup>142</sup> This lack of transparency is unsurprising when looking to FIFA's handling of the financial aspects of women's football in general (2.C and 2.D).

Both the Action Plan and the most recent CBA are historic in identifying the pay gap in Australian football as well as a possible solution for other member associations to follow. However, without a change of policy from FIFA, for the FFA to close the gender pay gap with this CBA, it would require the Matildas being overwhelmingly favoured in the percentage share of the prize earnings due to the amount the Socceroos will receive. Such a tactic could result in the Matildas being ostracised for 'taking' money earned by the Socceroos rather than sharing the same amount of the *same* pool of money.

This possible solution would mean that both the Matildas and Socceroos continue to receive an *equal percentage* as per the CBA; the onus would be on the FFA identifying that the pay gap cannot be solved if FIFA does not amend its prize earnings. This approach has been adopted by other sporting codes, such as Cricket Australia,<sup>143</sup> and it is likely that due to its membership of the MCC, the FFA would have to follow suit. It is, therefore, *possible* for the Action Plan to be successful in closing the pay gap, however, it is either dependent on FIFA leading by example and closing the gap that it has created at the World Cup tournaments or the FFA amending FIFA's poor valuation of women's football.

Importantly, the PFA does not advocate for the latter option as such an approach would follow a model of regressive equality whereby the Socceroos would be reduced to

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<sup>140</sup> Our Goal Is Now, available at <https://ourgoalisnow.com/#>.

<sup>141</sup> O'Halloran, *supra* note 122.

<sup>142</sup> *Ibid.*

<sup>143</sup> MCC, *supra* note 111, at 13.

experiencing 'the level previously endured by the Matildas or find some middle ground where each team *kept a foot on the throat of the other*'.<sup>144</sup> From the perspective of the PFA, the current CBA pursues a model of *progressive* equality, which aims to give the Matildas not only equal rights but 'equal duties, equal possibilities, and the foundation for equal contribution'.<sup>145</sup> In other words, the Matildas need to be elevated to the level of the Socceroos rather than the Socceroos brought down to meet the Matildas. The PFA correctly finds that the pay gap can only be solved by FIFA stepping in and changing its in-house practices, aligning with the human rights principles it adopted in its Statute.

### C. *Going Forward*

This paper has identified that this gap begins with FIFA and ends with the member association, the FFA. Therefore, it is argued that even by outlining the pay gap as a core objective of its Action Plan, it is unlikely that the FFA can close the pay gap within its goal of ten years without FIFA also adopting a similar objective. Closing the pay gap requires *both* global and national policies that have transparent and definite actions. Neither of these policies currently have such traits. However, there are other options available to FIFA to close the gap, such as publicly announcing it is taking steps to close the pay gap. From this position, FIFA has numerous options at its disposal, such as amending the Strategy or its Statute to include the pay gap or creating its own regulation obliging member associations to adopt policies which will engage with their respective pay gaps. If FIFA were to adopt some of these options, it would create a demonstrable commitment from which it could base its decision to grant equal pay at its women's World Cup tournaments.

A temporary middle ground between the PFA's push for progressive equality and FIFA's inertia would be for the FFA to follow other sporting codes, such as tennis, which have taken significant steps in closing the pay gap. Crucially, whilst Tennis Australia has awarded equal pay at tournaments hosted in Australia, female tennis players, in general, are paid significantly lower than their male counterparts in other international

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<sup>144</sup> Didiluca and Gill, 'Gender Equality in Football: How we negotiated equal rights for the Matildas and Socceroos' *Law in Sports* (2019), <https://www.lawinsport.com/topics/item/gender-equality-in-football-how-we-negotiated-equal-rights-for-the-matildas-socceroos>, at 4.

<sup>145</sup> *Ibid.*, at 3. Brake, 'When Equality Leaves Everyone Worse Off: The Problem of Leveling down in Equality Law' 46 *William and Mary Law Review* (2004) 513, at 515-516.

tournaments.<sup>146</sup> Similarly, the FFA can authorise equal prize earnings for domestic tournaments, however, the FFA cannot remedy the pay gap caused by FIFA at the international level. This middle approach could – until FIFA adjusts the prize money for the World Cup tournaments – set a standard for other member associations.

##### 5. Conclusion: Picking up the ball

This paper sought to examine whether FIFA's newly adopted human rights framework can help FIFA close the pay gap in football. The first section identified the existence of the pay gap in football and looked to the steps FIFA has taken to address pay disparity. It concluded that FIFA's human rights framework does offer FIFA the tools to realise gender equality, however, FIFA will not harness the full potential of this framework unless it is embedded into FIFA's governing bodies. Additionally, FIFA's current development programmes and gender equality policies, namely the Strategy, are ill-equipped to close the pay gap when FIFA continues to disproportionately invest in the men's World Cup. The second section examined the FFA's Action Plan and found that its objective directly confronting the pay gap remains to be implemented. However, the Action Plan is newly created and thus some time remains before criticism can be fairly levelled at the FFA. In the meantime, the FFA has taken great strides by agreeing to a new CBA with the PFA, which pushes women's football onto a more equal footing. Whilst this CBA has substantially narrowed the pay gap between the Australian national teams, it will not be able to definitively close the pay gap when male and female football players can only access the revenue their team is directly responsible for.

Problematically for the FFA, FIFA controls the amount of prize money allocated to its World Cup tournaments (as well as other competitions which will be collected and shared under the CBA's player revenue share model), and thus any methodology addressing the pay gap from the FFA level is already severely debilitated by FIFA's allocation of revenue. With these factors in mind, FIFA would benefit from adopting the Action Plan's objective to close the pay gap in football. It is theoretically possible for the FFA to close the pay gap

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<sup>146</sup> Daniel Levitt, *State of Play: Tennis has huge gender gap in earning power* (2018), available at <https://www.theguardian.com/sport/ng-interactive/2018/jul/14/tennis-pay-gap-shouldnt-be-gender-based>.

if it adopts the MCC's methodology. However, this approach would only apply within Australia, one member association out of 211.

The human rights framework, adopted by FIFA, as well as its development programmes and the Strategy, are positive signs that FIFA is realigning its values to strive for the fulfilment of the human rights responsibilities set out in the UNGPs. However, without human rights being embedded throughout FIFA's governance structures, there remains little accountability for FIFA to take definite action regarding gender equality, in particular, closing the pay gap. Further, FIFA's current funding of women's football remains opaque and is bundled together with sponsorship contracts and broadcasting sales involving men's football, making it difficult to comprehend the resources needed to make women's football as commercially successful as the men's game.

FIFA appears to now be pushing a human rights agenda, one that it wishes its member associations also follow. However, there is no guidebook on what member associations can do when FIFA is lagging behind in terms of human rights. If FIFA wants its member associations to follow in its footsteps under its human rights framework of achieving gender equality, then it must take *all* steps to address *all* forms of discrimination women face in football.