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**THE ROLE OF LATIN AMERICAN CONSTITUTIONALISM IN GENDER JUSTICE IN  
WOMEN'S SOCCER**

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# THE ROLE OF LATIN AMERICAN CONSTITUTIONALISM IN GENDER JUSTICE IN WOMEN'S SOCCER

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**Abstract.** In this article, we analyse if some of the characteristics of New Latin American Constitutionalism can open a path to achieve gender justice in women's soccer. Based on a study of the Colombian case, we seek to establish what type of opportunities and challenges are derived from the tools of regional constitutionalism for women soccer players who seek to vindicate their rights. We find the opportunities focus on the role the Constitutional Court has exercised in defending the rights of women soccer players, while the main challenge is the absence of a social movement that supports the demands of women in soccer.

## 1. Introduction

In Latin America, women's soccer continues to be contested terrain. In their book *Futbolera: A History of Women and Sports in Latin America*,<sup>4</sup> professors Brenda Elsey and Joshua Nadel recount the difficult path Latin American women soccer players have had to tread to claim their place in a profession historically dominated by men. The authors highlight that the trajectory of women's soccer has been marked by stereotypes, discrimination, and violence. Specifically, *futboleras* have had to support degrading work conditions, salary inequality, and disregard from soccer authorities for decades.<sup>5</sup> However, in recent years, many women have broken the silence imposed on women's

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<sup>4</sup> Brenda Elsey and Joshua Nadel, *Futbolera: A History of Women and Sports in Latin America* (Austin: University of Texas Press, 2019).

<sup>5</sup> *Ibid.*

soccer in Latin America and denounced practices that include labor and sexual harassment from directors or trainers, as well as nonexistent salaries, the lack of opportunities to professionalize, and precarious labor conditions.<sup>6</sup>

However, soccer players' raised voices and their demands have not been accompanied by a similar claim in the legal sphere. Although in some countries of the region players have begun to turn to the courts to protect their rights,<sup>7</sup> this is not yet a common nor generalized strategy. Thus, it is important to ask if the systems of rights protection of Latin America offer the necessary opportunities for women soccer players to obtain improved conditions through courts and other mechanisms. Specifically, in this article we ask what Latin American constitutionalism can do to protect women soccer players.

During recent decades, the language of rights in constitutional texts and judicial practice has been increasing in the Latin American region. This trend has led to some authors referring to these processes of constitutionalization as "New Latin American Constitutionalism." This title refers to the characteristics of this new wave of constitutionalism in Latin America, such as the creation of broad bills of rights, protection mechanisms for these rights and the creation of tribunals responsible for deciding exclusively constitutional controversies.

Since the promulgation of the Political Constitution of 1991, Colombia is a reference point for this new constitutionalism in Latin America. With the expansion of constitutional rights, the promulgation of a political charter with a prospective vision, the creation of mechanisms like the constitutional writ (*acción de tutela*), and of tribunals such as the Constitutional Court, Colombia seems to offer fertile routes for the protection of the fundamental rights of soccer players. For this reason, in this article we use the Colombian case to ask about the opportunities and challenges the repertoire of elements of New Latin American Constitutionalism offer to resolve the complaints of women's soccer in the region. In particular, we note the role of the Colombian Judiciary in the Colombian system

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<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

has been crucial to protect the most vulnerable populations and has had an important role in the recognition of soccer as a field permeated by fundamental rights.

In this article, we argue the centrality of constitutional justice emerges as a field of opportunities to advance in the protection of women's soccer, and that there are at least three reasons to believe this: first, thanks to constitutional justice, soccer has been recognized as an endeavor that is not exempt from rights' protection. Second, constitutional justices have imposed limits on the regulatory freedom of individuals in soccer. Third, in the past year, the first case regarding gender discrimination in soccer within the constitutional sphere was decided favorably. These elements lead us to think that in future cases regarding women's soccer and rights' protection, constitutional justice may rule in favor of the players and, in this way, improve the current conditions of this sport. However, we do not ignore the challenges that persist. The absence of a social movement of women in soccer that could elevate the players' demands to a constitutional sphere is one of the greatest challenges at this time. Social and legal mobilization has been central for courts and tribunals to consider vulnerable groups. In this case, the movement of women soccer players in Colombia is incipient and there are still concrete obstacles for its consolidation, which may have a concrete impact in the way the judiciary approaches cases regarding women's soccer.

To demonstrate this, this article is divided into five sections. In the first, we briefly explain the characteristic features of New Latin American Constitutionalism. In the second, we present the current context of women's soccer in Colombia and the social demands women players have begun to raise against discrimination and inequality. Later, we mention some particularities of the Colombian constitutional system to illustrate why it is a characteristic case of what some have called New Latin American Constitutionalism. In the fourth section we analyse the three opportunities of Colombian constitutional system to achieve some type of justice in the sphere of women's soccer. Finally, we overview some of the challenges that persist and present our conclusions.

## **2. Constitutional justice as a potential catalyst for gender equality in Latin American soccer**

The language of rights in constitutional texts and in judicial practice have experienced an incremental relevance in recent decades.<sup>8</sup> Latin America has been a particularly receptive region to this constitutional trend. A group of authors have even made use of the term “New Latin American Constitutionalism” to refer to certain constitutional reforms and processes in countries such as Argentina, Colombia, Brazil, Mexico, Peru, Ecuador, Venezuela, and Bolivia, arguing that all these have in common innovative, promising, and even transformative characteristics.<sup>9</sup> Although other authors contest the novelty and viability of these constitutional changes,<sup>10</sup> there is a certain consensus that the current regional constitutionalism has certain common characteristics, among which include the expansion of bills of rights, the creation or strengthening of legal mechanisms to judicially implement these rights without the need to turn to legislative branches, and the introduction of doctrine and legal theories of expansion of constitutional rights, such as the ways of integrating international human rights law into the constitutional debate and doctrines regarding the human rights duties of private actors.<sup>11</sup>

The discussion regarding the appropriateness of the expansion of constitutional rights has provoked an academic debate that goes beyond Latin American constitutional transformations. Currently, the specialized academia debate questions such as what has been the impact of including these rights in constitution, what have been the effects of these rights on the effective guarantee of rights, what have been their effects on the changes in government conduct, or how they have impacted democratic institutions, if in effect they have.<sup>12</sup>

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<sup>8</sup> David S. Law & Mila Versteeg, *The Evolution and Ideology of Global Constitutionalism*, 99 Cal. L. Rev. 1163 (2011).

<sup>9</sup> Armin von Bogdandy, Eduardo Ferrer Mac-Gregor, Mariela Morales Antoniazzi, & Flavia Piovesan (eds.) *Transformative Constitutionalism in Latin America: The Emergence of a New Ius Commune* (2019).

<sup>10</sup> Roberto Gargarella, Sobre el “Nuevo Constitucionalismo Latinoamericano,” 27 *Revista Uruguaya de Ciencia Política* (2018).

<sup>11</sup> Rodrigo Uprimny, *The Recent Transformation of Constitutional Law in Latin America Trends and Challenges*, 89 Tex. L. Rev. 1587, 1591 (2011).

<sup>12</sup> For a very complete bibliographical review of the responses to these questions from the specialized literature, see: Adam Chilton & Mila Versteeg, *How Constitutional Rights Matter* 79 (2020).

Taking this discussion as a backdrop, in this chapter we seek to analyse if some of the characteristics of Latin American constitutionalism can provide an intervention route, and what the best options to do so are. Our interest is not in evaluating the effectiveness of constitutional rights in the satisfaction of rights, nor evaluating the impact of the inclusion of these rights in institutional debates. Rather, our objective is more modest: use a case study to establish what type of opportunities and challenges are derived from this regional constitutionalism for women who seek gender equality in the world of soccer through domestic justice. We will focus mainly on five elements that mark this constitutional trend, and which, *prima facie*, seek to provide options for justice for women soccer players.

*Bills of rights.* Latin America has been at the vanguard of the expansion of the catalogue of rights of new constitutions. An example is the Constitution of Ecuador, which, according to Chilton & Versteeg, “enumerates more rights than any other constitution currently in force.”<sup>13</sup> The region's constitutions have also been an object of interest due to their “exceptional commitment to social, economic, and cultural rights.”<sup>14</sup>

Three characteristics of these bills of rights are particularly relevant for the discussion of equity in the world of soccer. First, the commitment with equality that these constitutional systems exude. Second, the protection of social rights as justiciable rights (including the rights to work, social security, and recreation).<sup>15</sup> Third, the protection of innominate rights such as the vital minimum and the free development of one's personality.<sup>16</sup>

*Integration of international human rights law.* Because of the convergence of international human rights norms and constitutional rights, it is increasingly frequent

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<sup>13</sup> Adam Chilton & Mila Versteeg, *How Constitutional Rights Matter* 79 (2020).

<sup>14</sup> Roberto Gargarella, *Latin American Constitutionalism: Social Rights and the “Engine Room” of the Constitution*, 4 *Notre Dame Journal of International & Comparative Law* 10, 9-18 (2014).

<sup>15</sup> Oscar Parra, *The Protection of Social Rights*, in *The Latin American Casebook: Courts, Constitutions, and Rights* 147-171 (Juan F. Gonzalez-Bertomeu & Roberto Gargarella, eds. 2016).

<sup>16</sup> Rodrigo Uprimny, *The Recent Transformation of Constitutional Law in Latin America Trends and Challenges*, 89 *Tex. L. Rev.* 1587, 1591 (2011).

that international law has direct relevance in domestic legal systems. The direct application of international human rights law in Latin America has had an important impact on the protection of rights in recent decades, through figures such as “constitutional block,” treaty compliant interpretation, and “control of conventionality.”<sup>17</sup>

For the case of the litigation of rights related to gender justice in soccer, this constitutional characteristic is promising for two reasons. On one hand, the role of regional bodies like the Inter-American Commission and Court of Human Rights can generate a positive support to continue confronting the international power of soccer authorities who tend to shut down local legal processes. On the other hand, jurisprudence regarding reparations in the Inter-American System, which stands out among international systems of rights protection, can open opportunities in the search for effective solutions to the problems women soccer players face.<sup>18</sup>

*Horizontality of rights.* Latin American constitutionalism has been at the fore of the debate regarding the horizontal effects of rights. Non-state actors have been subject to regulation in diverse areas, and constitutions and constitutional tribunals have demanded their compliance with obligations derived from fundamental constitutional rights.<sup>19</sup> These obligations have not only been extended to private actors that exercise public functions,<sup>20</sup> but also to those that have a given power over other private actors that may be in a condition of vulnerability (employer/employee),<sup>21</sup> or even to the relationships between actors, such as that between clubs and private associations and their members.<sup>22</sup>

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<sup>17</sup> Fernando Basch & Jorge Contese, International Law and Domestic Adjudication, in *The Latin American Casebook: Courts, Constitutions, and Rights* 248-264 (Juan F. Gonzalez-Bertomeu & Roberto Gargarella, eds. 2016).

<sup>18</sup> Ruth Rubio-Martin & Clara Sandoval, *Engendering the Reparations Jurisprudence of the Inter-American Court of Human Rights: The Promise of the Cotton Field Judgment* 1062-1091, 33 Hum. Rts. Q. (2011).

<sup>19</sup> William Rivera, *International Human Rights Law and the Horizontal Effect of Constitutional Rights in Latin America: A Look at the Direct Application of Constitutional Rights in Argentina, Colombia, and Puerto Rico* (2010).

<sup>20</sup> Constitutional Court of Colombia. Judgment T-558-06.

<sup>21</sup> Constitutional Tribunal of Peru. File No. 1124-2001-AAT/TC (Case of Sindicato Unitario de Trabajadores de Telefónica del Perú S.A. & FETRATEL vs. Telefónica del Perú S.A.A. & Telefónica Perú Holding S.A.

<sup>22</sup> Constitutional Court of Colombia. Judgment T-433-08.

This regional jurisprudence may be key in disputes between players and clubs. One of the main barriers women and girls who play soccer have faced in accessing justice has been the lack of mechanisms that legally bind the clubs, associations, and federations.

*Rapid judicial recourse.* The constitutional reforms of recent years have reaffirmed and reinforced the regional legal tradition of the protective action (*acción de amparo*). Generally, the protective action is a constitutional process that allows any person to request legal protection of their fundamental rights. Its purpose is for the justice system to prevent the continuation of the violation of fundamental rights alleged by the petitioner through a quick and accessible process.<sup>23</sup>

This action can open important entry points to justice for women who seek equality in the world of soccer. Whether they are amateurs, professionals, or women in directive positions in soccer, they can access this action when their rights are violated and request an effective judicial remedy to revert that situation.

*The active intervention of constitutional tribunals.* A final characteristic of this new regional constitutionalism is the proactive and leading role constitutional tribunals and high courts have played in rights protection in recent decades.<sup>24</sup> Given the political and economic power of the soccer authorities that women have confronted both at the international and local level, the support of strong judiciaries is fundamental not only to obtain favorable decisions, but also to guarantee the effective fulfilment of those decisions.

### **3. The Colombian case: discrimination and inequality in women's soccer**

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<sup>23</sup> Allan Brewer-Carias, The Amparo as an instrument of a Ius Constitutionale Commune, in *Transformative Constitutionalism in Latin America: The Emergence of a New Ius Commune*, 171-190 (Armin von Bogdandy, Eduardo Ferrer Mac-Gregor, Mariela Morales Antoniazzi, & Flavia Piovesan, eds., 2019).

<sup>24</sup> Julio Rios-Figueroa, Institutions for Constitutional Justice in Latin America, in *Courts in Latin America*, 27-54 (Gretchen Helmke & Julio Rios-Figueroa, eds., 2011).

“We are here and we are standing up.” These were the words of Isabella Echeverri, one of the players of the women’s soccer selection, at the beginning of a press conference on March 7, 2019. There, in front of the cameras and microphones of the national press, the players of the selection gathered to publicly denounce the precarious work conditions permeating women’s soccer in Colombia. An auditorium full of journalists, civil society organizations, and soccer experts were witness to the players’ stories of inadequate salaries, old uniforms, corruption, unfulfilled promises, and episodes of sexual harassment.<sup>25</sup> For more than three hours, the players spoke directly to the authorities that regulate soccer in the country, and demanded the promotion of dignified working conditions. Based on a review of the facts in recent years, in this section we sketch a panorama of the current situation of women’s soccer in Colombia, to show the difficulties facing the women who dare to colonize a traditionally male dominated sport.

In Colombia, the history of women’s soccer has been characterized by precariousness and informality. However, the wave of complaints is a recent phenomenon and is due, above all, to a collective effort between players, civil society organizations, and independent journalists. In February 2019, for example, a group of journalists called the League Against Silence (*La Liga Contra el Silencio*) brought to light a report that depicted the employment conditions the players faced and the situations of workplace harassment, including sexual harassment, to which they were exposed.<sup>26</sup> One of the irregularities that came to light was that, for years, the directors of the Selection had been calling parallel training sessions they charged the players 600,000 pesos (approximately 200 dollars) to attend. Many players traveled throughout the country without insurance, without employment contracts, and covering their own travel expenses.<sup>27</sup> Additionally, it was reported that the players who attended the U-17 World Cup in Azerbaijan and the South

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<sup>25</sup> FUTBOLRED. Jugadoras ratifican irregularidades y exigen equidad. In: Futbolred [online]. March 8, 2019 [Viewed January 24, 2020] Available at: <https://www.futbolred.com/futbol-colombiano/futbol-femenino/rueda-de-prensa-de-la-jugadoras-de-la-seleccion-colombia-tras-el-inconformismo-por-la-decision-de-la-federacion-94703>

<sup>26</sup> LA LIGA CONTRA EL SILENCIO. El machismo y la corrupción amenazan el fútbol femenino en Colombia. In: La Liga Contra el Silencio [online]. February 6, 2019 [Viewed January 24, 2020] Available at: <https://ligacontraelsilencio.com/2019/02/06/el-machismo-y-la-corrupcion-amenazan-al-futbol-femenino-en-colombia/>

<sup>27</sup> Ibid.

American U-20 in Uruguay has charged them accommodations and the sportswear they used in the games.<sup>28</sup>

Players from across the country supported these denouncements, including Isabella Echeverri and Melissa Ortiz, who on February 18, 2019 ratified, via their social media accounts,<sup>29</sup> the conditions they witnessed during more than five years with the women's soccer selection. They expressed feeling threatened by the directors, of being victims of blacklisting and discrimination for reporting, having to pay their own plane tickets, and witnessing the irregularities in the provision of sportswear during national and international tournaments.<sup>30</sup> Other players, including Tatiana Ariza, denounced the lack of regularity in collective training sessions and the lacklustre investment of resources on the part of the Colombian Soccer Federation<sup>31</sup> (hereinafter, FCF), the highest authority of this sport in the country. For example, after the London Olympic Games in 2012, the players of the women's selection had to wait 700 days to begin training again. Four years later, after the Rio de Janeiro Olympic Games, history repeated itself and they were not called to training for more than 400 days.

However, while the voices of women football players amplified, the first reprisals also followed them. On March 6, 2019, the FCF, Dimayor,<sup>32</sup> and Difutbol<sup>33</sup> - the three organizations responsible for regulating soccer in Colombia, announced the cancelation of the Women's Professional League.<sup>34</sup> As a replacement, these authorities announced the creation of an amateur league in which the players would not have an employment

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<sup>28</sup> Ibid.

<sup>29</sup> EL FUTBOLISTA. -Miedo, + Fútbol. In: El Futbolista [print edition]. January-March 2019 Edition [viewed January 26, 2020].

<sup>30</sup> Ibid.

<sup>31</sup> The Colombian Soccer Federation (FCF) is the highest organizing and regulating authority of soccer in Colombia. It is responsible for the national women's and men's selection, as well as other lower levels. Its website may be consulted using the following link: <https://fcf.com.co>.

<sup>32</sup> Major Division of Colombian Professional Soccer (DIMAYOR) is the entity responsible for administering and regulating professional Colombian soccer leagues and tournaments. Its website can be consulted at the following link: <https://dimayor.com.co/>

<sup>33</sup> The Amateur Division of Colombian Soccer (DIFUTBOL) is the entity responsible for administrating and regulating amateur Colombian soccer leagues and tournaments. Its website can be consulted at the following link: <https://difutbol.org/>

<sup>34</sup> The Professional Soccer League is the highest category (Category A) professional tournament in Colombia. There is a men's and women's category.

contract and would not play as professionals.<sup>35</sup> The then president of Dimayor, Jorge Enrique Vélez, stated there were not enough women players in the country to hold a professional tournament, and additionally, women's soccer was not attractive for sponsors. These arguments, however, hide the fact that the lack of players and the lack of sponsors are direct consequences of the lack of support from authorities. For this reason, the players saw the cancelation of the league as an act of retaliation for their public denouncements.

With the help of Acolfutpro,<sup>36</sup> an organization responsible for looking out for the rights of soccer players, the women players began a strategy to improve their employment conditions. They met with authorities and brought evidence of each of the denounced violences and irregularities. Their complaints were supported by various social organizations, women's organizations, and public authorities, such as the Vice Presidency of the Republic, the Ministry of Labor, the National Ombudsman, and the Colombian Family Welfare Institute.<sup>37</sup> Thus, on March 12, 2019, it was announced that the Women's Professional League would not be suspended and the professional soccer teams had decided to continue the League.<sup>38</sup>

As a result of the complaints and the mobilization of soccer players and other sectors of civil society, in August 2019, the Women's Professional League was held. However, again, irregularities were the center of the tournament, which was held between July 14 and September 30, 2019. The first difficulty was its organization. The professional teams interested in participating only had two months to put together their teams, train, and prepare. Additionally, the way in which the games were held prevented all the teams from playing against all the others, as is the case in the men's version of the league.<sup>39</sup>

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<sup>35</sup> EL FUTBOLISTA. -Miedo, + Fútbol. In: El Futbolista [print edition]. January-March 2019 Edition [Viewed January 26, 2020].

<sup>36</sup> Acolfutpro is a Colombian organization affiliated with FIFPRO and responsible for defending the rights of professional soccer players. Its website can be consulted at the following link: <http://acolfutpro.org/>

<sup>37</sup> EL FUTBOLISTA. -Miedo, + Fútbol. In: El Futbolista [print edition]. January-March 2019 Edition [Viewed January 26, 2020].

<sup>38</sup> Ibid.

<sup>39</sup> ACOLFUTPRO. Informe Liga Águila Profesional Femenina 2019: análisis de las condiciones de trabajo en el fútbol profesional femenino. Available at: <http://acolfutpro.org/wp-content/uploads/2019/11/Informe-Fu%C3%ACtbol-Profesional-Femenino-2019-Final-1.pdf>

Second, the championship did not provide the conditions for soccer players to develop their activities professionally. Since the league only lasts two months, it is the only professional tournament in the country and offers low salaries, the players cannot depend on soccer as a profession, much less dedicate themselves to soccer as their only activity. Additionally, the tournament does not provide employment stability for the players. Thanks to a report by Acolfutpro, we know that 12 of the 20 teams that participated in the league played only six games, and 61 percent of the players (288 players) participated only 37 days. Worse even, only 64 percent of the players had an employment contract and could participate as professionals. The rest of the women played as amateurs without an employment contract, and therefore did not have access to social security or protection in the case of accidents related to the tournament. Finally, the results of the league showed that the current design of the tournament does not guarantee the promotion of women's soccer. Eighty-one percent of the games were not transmitted on television, which limits the possibility of generating interest, following the championship, or the interest of sponsors.

**Table 1. Statistics of the Women's Professional League 2019**

|   |   |
|---|---|
| <b>Dates played</b>                     | 12 dates  |
| <b>Games played</b>                     | 74 games  |
| <b>Registered players</b>               | 476 players   |
| <b>Times of game</b>                    | Games transmitted between 10:00 and 13:00 = 17%<br>Games transmitted between 13:00 and 16:00 = 60%<br>Games transmitted between 16:00 and 20:00 = 23% |
| <b>Television transmission</b>          | Games transmitted: 19% (14 games)<br>Games not transmitted: 81% (60 games)  |
| <b>Player contracts</b>                 | With employment contracts: 64% (307 players)<br>Without employment contracts: 36% (169 players)   |
| <b>Duration of employment contracts</b> | 2 months: 10%<br>3 months: 58%  |

|  |               |
|--|---------------|
|  | 4 months: 21% |
|  | 6 months: 11% |

Source: Acolfutpro (2019). Informe Liga Aguila Profesional Femenina 2019.

The precarious conditions in which women’s soccer is carried out in Colombia have direct consequences on the players. Due to the absence of guarantees to play soccer professionally, the majority of players must involve themselves in other employment or academic activities in order to support themselves. The majority decide to migrate to the United States or Europe in search of possibilities in foreign soccer clubs that guarantee dignified employment conditions and a prosperous professional development. In the past four years, more than ten players from the women’s selection decided to leave their national teams and play in clubs such as Atlético de Madrid, Inter of Milan, and Deportivo La Coruña.<sup>40</sup> The players that remain in Colombia must face the uncertainty of local tournaments, the lack of resources for women’s soccer, and the arbitrariness of the authorities that manage this sport in the country.

The panorama we have outlined here does not seem like it will change soon. Although the players of the selection have been recognized for their effort to try to change women’s soccer,<sup>41</sup> the authorities responsible for materializing these changes lack the will and processes to do so. The FCF, Dimayor, and Difutbol have procedures, policies, and leaders that have left women players trapped in a no-win situation. The FCF and Dimayor have responded disparagingly to player complaints and have downplayed them by calling them “hot topics.”<sup>42</sup> Additionally, these institutions lack appropriate and safe complaint mechanisms that allow soccer players to make complaints without fear of possible retaliations. If one reviews the regulations of these authorities, one can see that none have protocols or policies against harassment, violence, or discrimination, which disincentivizes players from denouncing such actions. Finally, as the entities responsible

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<sup>40</sup> Ibid.

<sup>41</sup> SEMANA. Con los guayos puestos. In: Revista Semana [online]. August 12, 2019 [Viewed January 27, 2020]. Available at: <https://www.semana.com/contenidos-editoriales/los-mejores-lideres-de-colombia-2019/articulo/los-mejores-lideres-de-colombia-2019-seleccion-femenina-de-futbol-de-colombia/643649>

<sup>42</sup> EL FUTBOLISTA. -Miedo, + Fútbol. In: El Futbolista [print edition]. January-March 2019 Edition [Viewed January 26, 2020].

for regulating domestic soccer, to date they have had the power to create norms behind closed doors, without any vigilance from the government and without the participation of those affected.

#### **4. Constitutionalism in Colombia**

Although constitutionalism in Colombia has a history more than two centuries long,<sup>43</sup> in this section we will concentrate on sketching out the principal lines of what could be called the recent wave of Colombian constitutionalism. It could be said that this more recent history had its foundational moment at the end of the 1990s, with the adoption of the Constitution of 1991. The product of mobilization of the student sector and grassroots groups,<sup>44</sup> this bill of rights originated as a political pact that sought to include the demands of the most vulnerable sectors, respond to the wrongs of political violence, and seek effective ways to protect citizens' fundamental rights.<sup>45</sup>

The Constitution of 1991, its axiological project, and the institutions it founded are expressions of what we have described as Latin American constitutionalism. The Constitution not only contains a broad bill of rights, at least for its time, but it also creates mechanisms to protect those rights and institutions responsible for their safeguarding. As various authors have stated, its orientation and content give this Constitution a prospective view. It is a text that does not look toward the past, but rather toward the future,<sup>46</sup> as "more than attempting to codify existing power relations, this legal document tends to project a model of society to be built."<sup>47</sup> It could be said that this prospective vision of the Constitution of 1991 implies not only a view toward the future, but also a practical view that allows this "society to be built" to be possible. For this reason, this

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<sup>43</sup> Bernd Marquardt, *El bicentenario del constitucionalismo moderno en Colombia* (Bogota: National University of Colombia, 2011).

<sup>44</sup> Julieta Lemaitre, *El derecho como conjuro* (Bogota, Los Andes University, 2011).

<sup>45</sup> *Ibid.*

<sup>46</sup> Ruti Teitel, "Transitional jurisprudence: the role of law in political transformation", *Yale L.J.*, 106 (1997).

<sup>47</sup> Mauricio García Villegas & Rodrigo Uprimny, "Corte Constitucional y emancipación social en Colombia" in *Democratizar la democracia: los caminos de la democracia participativa*, ed. Boaventura de Sousa Santos (Bogota: Economic Culture Fund, 2005).

Constitution gives an important place to the creation of routes and institutions that make fundamental rights effective.

The Constitution of 1991 consecrated the creation of a judicial mechanism called the action of *tutela*, which is expressly intended to avoid any harm to the fundamental rights of citizens. Since the promulgation of the Constitution, all residents of Colombia can present an action of *tutela* to avoid that public institutions, State agents, or even private actors (in exceptional cases) violate any of the consecrated or derived rights of the political charter. The action of *tutela* has at least two particularities that make this mechanism one of the most efficient institutional figures in Latin America. First, it is informal in nature, meaning it does not require strict submission requirements. Any citizen in Colombia can present an action of *tutela* without need of a lawyer, and need only recount the facts that give rise to the violation of his or her fundamental rights, a brief mention of what those rights are, and their personal information. Additionally, this action may be presented, in principle, before any judge in the country and through various formats. To this end, the action breaks the equivalence between specialized legal knowledge, formalism, and access to justice: independently of his or her legal expertise, any person may present an action of *tutela* on behalf of him or herself or another person and the judges must study the case. Second, the action of *tutela* is an instrument marked by promptness. From the moment it is presented, the judges have ten business days to issue a decision, and in the event they find a rights violation, issue the necessary orders for the violation to cease.

The action of *tutela*, as a mechanism of rights protection, has had its institutional equivalent in the Constitutional Court. With the Constitution of 1991, a judicial apparatus of constitutional character was created, which includes all the judges in the country and whose head is the Constitutional Court, one of the three high courts in Colombia.<sup>48</sup> The Court has a two-fold function. On one hand, it is responsible for hearing constitutional challenges, which are actions that any citizen may present against laws it considers do not adhere to the Political Constitution. On the other hand, it must review all the actions of

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<sup>48</sup> The other two high courts are the Supreme Court of Justice (maximum body of ordinary justice) and the Council of State.

*tutela* decided in the country, to determine if judges truly protect the fundamental rights of citizens. Usually, in this review, the Court studies the actions of *tutela* that can set a positive precedent for the defense of rights.

Although the action of *tutela* and the Constitutional Court are not the only referents of Colombian constitutionalism, they have been particularly important in the recognition of the rights of the most vulnerable and in the protection of historically discriminated against populations. For example, it has been thanks to the Constitutional Court that many legal achievements for women have been obtained. In its nearly thirty years of work, the Constitutional Court has consolidated a precedent on gender-based violence and discrimination and on women's rights that has given a new dimension to the principles of the Constitution of 1991 and has recognized the life experience of those who inhabit the world as women.

## **5. Opportunities**

Until now, the Constitutional Court has been the institution responsible for discussing soccer from a human rights lens. The minimal rights women soccer players have today are the result of judicial interventions and the irradiation of constitutionalism over a sphere that for a long time was viewed as an issue between private actors. Although this Court has only decided one case regarding gender discrimination in soccer, in its nearly thirty years of existence it has issued decisions that have been central to balance power relations between players, clubs, and private regulatory agencies. In this respect, we consider Colombian constitutional jurisdiction, which acts as a materialization of Latin American constitutionalism, has opened various paths so that in future cases women soccer players can claim their rights through this route.

In this section, we will concentrate on showing what these paths or opportunities are. Our objective is to review the greatest achievements in terms of recognition and protection of fundamental rights in the field of soccer. Although many cases we review do not have a direct relationship with women's soccer or with gender discrimination in soccer, this is

because these cases have arrived timidly and recently into the constitutional arena. For this reason, jurisprudence and the cases mentioned form part of a fertile genealogy that allows one to think the next cases brought to this jurisdiction may be decided favorably, improving the serious conditions women soccer players face today in Colombia.

With the objective of substantiating this argument, this section is divided into three parts, which, in turn, refer to the opportunities the Colombian constitutional system currently offers for obtaining and safeguarding the rights of women soccer players in Colombia. These three opportunities are the following: i) on several occasions the Constitutional Court has recognized that soccer is a professional activity that should be protected like any other, which involves defending the labor and fundamental rights of soccer players; ii) constitutional jurisprudence has recognized that private actors, such as soccer clubs and federations, have a regulatory power that is limited by the protection of the fundamental rights of soccer players; and iii) in a recent decision, the Constitutional Court studied the case of a girl soccer player who was expelled from a youth tournament simply for being female. This case, decided in 2019, is the first to reach a constitutional forum and specifically refer to the violation of a woman's rights in the context of soccer. It is still premature to make affirmations regarding the impact of this decision, but we consider it a first step that demonstrates the possibilities of constitutionalism to advance gender justice in soccer.

#### ***A. Soccer as a professional activity: the right to work of soccer players***

Constitutional jurisprudence has set robust precedent regarding labor and constitutional rights of soccer players in Colombia. For more than twenty years, the Court has strengthened its jurisprudence and reiterated that soccer is not only a form of entertainment, but also a job like any other. The Court has recognized that soccer, like any professional sport, occupies a complex place in the legal framework, as it is an activity with diverse dimensions: "it is a performance, a form of realization, a work activity, and a

business.”<sup>49</sup> Starting from this complexity, the Court has developed a precedent that recognizes the multifaceted nature of soccer, and, thus, its necessary regulation within the constitutional framework.

One of the contributing principles with respect to the professionalization of soccer has to do with the protection of freedom to work, a right closely related to human dignity, free development of one's personality, and freedom of expression. In several cases,<sup>50</sup> professional clubs or private actors have violated these rights, which has led to some soccer players to turn directly to the constitutional jurisdiction to protect themselves under the framework of fundamental rights. In these cases, the Court has made relatively pacific decisions, in which it indicates private clubs may not, under any circumstance, affect the freedom to work of soccer players, and consequently, any limitation to this respect will be understood as contrary to the Political Constitution.<sup>51</sup>

In regards to the freedom of work and the guarantee of the right to choose a profession,<sup>52</sup> one of the topics that has most elicited discussions by the Constitutional Court is the transfer of players, which is the transfer realized when a professional player moves from one sporting club to another. In these cases, it is common for the first club to receive an amount of money from the club that receives the player, in recognition of the club's training. Judgment T-498 of 1994 was the first case the Constitutional Court decided regarding player transfers, and was also the first constitutional decision that discusses the professional and employment aspects of soccer in Colombia.<sup>53</sup> In this case, a young soccer

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<sup>49</sup> Constitutional Court of Colombia. Judgment C-320 of 1997. Presiding Justice Alejandro Martínez Caballero.

<sup>50</sup> See: Constitutional Court of Colombia. Judgment C-320 of 1997. Presiding Justice Alejandro Martínez Caballero; Judgment T-498 of 1994. Presiding Justice Eduardo Cifuentes; Judgment T-740 of 2010. Presiding Justice Juan Carlos Henao Pérez.

<sup>51</sup> Constitutional Court of Colombia. Judgment C-320 of 1997. Presiding Justice Alejandro Martínez Caballero.

<sup>52</sup> This right is derived from article 25 of the Political Constitution of Colombia, according to which, “work is a right and a social obligation, and enjoys, in all its modalities, the special protection of the State. Each person has the right to work in dignified and fair conditions.”

<sup>53</sup> This is the first decision the Constitutional Court issued, which does not mean there were not previous decisions from other tribunals in the country. In fact, in the decision cited (T-498 of 1994), the Court takes up an argument put forward by the Council of State, another Colombian high court, in 1976. On that occasion, the Council of State indicated that “there is no constitutional support for the norm that demands

player presented a constitutional writ against the “Armero Sports Club,” an amateur team for which he played at the time. The young man stated that “Armero Sports Club” was obstructing his transfer to the professional team “Santa Fé Independent Sports,” as the former was demanding economic compensation from the latter for the training and money it had invested in the player’s development. Despite this, the player maintained “Armero Sports Club” never invested “a single cent in his training.”<sup>54</sup>

When the Court reviewed this case, it noted that by then the player had freed himself from his former team and was now playing with “Santa Fé Independent Sports.” Thus, the Court noted that any violation of his fundamental rights had ceased. However, it took advantage of this first case to discuss some ideas regarding soccer as a profession and the transfer of players as a constitutional controversy. On this occasion, the Court noted although clubs have power over the sporting and patrimonial rights of their soccer players, which include assets like their capacities and qualities, they cannot arbitrarily limit their personal freedom and freedom to choose a profession or trade.<sup>55</sup> To this respect, the Court explained “the forced permanence in a club for exclusively economic aspects sacrifices the value of liberty in general (...) and the free development of the personality of he whose vocation is the practice of a sport upon which his realization as a person depends.”<sup>56</sup> Since then, the Court set a precedent, which would become more robust over the years, according to which the will of the player is the key element to make decisions regarding transfer from one team to another. Conditioning the transfer to the whim of the clubs, thus, would be equivalent to establishing a “charter of slavery.”<sup>57</sup>

Later, in *Judgment C-320 of 1997*, the Court studied a complaint against Law 181 of 1995, also known as the law that created the national system of sports in Colombia. On this occasion, the Court took up what it stated in *Judgment T-498 of 1994* and discussed some aspects related to the transfer of players and sporting rights. The judgment recognized

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an employee – professional athlete – obtain the consent of his previous employer to form a new employment contract once the previous contract is completed.”

<sup>54</sup> Constitutional Court of Colombia. Judgment T-498 of 1994. Presiding Justice Eduardo Cifuentes.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

the legislators' language was a problem, as it stated, "transfers and sporting rights confer on clubs real property over their players."<sup>58</sup> For this reason, the Court had to interpret various articles of Law 181 of 1995 in light of constitutional principles and rights. In particular, it stated the law must be applied with the understanding that "the players can be holders of their sporting rights"<sup>59</sup> and, therefore, their will was central in making decisions about any issue that affects those rights, including transfers. This decision, additionally, marked an important moment in the regulation of soccer in Colombia, as it stated the sporting rights of clubs depended on the existence of a contractual relationship between the player and the club. This means only those clubs that had an employment relationship mediated by a contract could claim any benefit for the sporting rights related to the capacities and abilities of the players.

The Court has reiterated the incipient constitutionalization of soccer in Colombia and its recognition as an employment activity in various subsequent decisions. For example, in *Judgment T-740 of 2010*, the Court decided an action of *tutela* a player presented against DIMAYOR, the Colombian Soccer Federation, and the professional team "Tolima Sports," for which he played at the time. The objective of the action was to terminate the employment contract the player had with this team, in order to accept an offer with a foreign club. In this case, the Court compiled its jurisprudence on the fundamental rights of professional soccer players and reiterated, "sporting rights cannot be found solely at the head of clubs, as it violates the protection of the dignity, autonomy, and freedom of the players."<sup>60</sup> In this respect, the Court stated that by denying the players the change from one team to another, professional clubs truncated their professional paths and imposed a restriction that tends to "objectify the player by converting him into a mere business asset."<sup>61</sup>

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<sup>58</sup> Constitutional Court of Colombia. Judgment C-320 of 1997. Presiding Justice. Alejandro Martínez Caballero.

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

<sup>60</sup> Constitutional Court of Colombia. Judgment T-740 of 2010. Presiding Justice Juan Carlos Henao Pérez.

<sup>61</sup> *Ibid.*

We consider these advances the Constitutional Court has made have laid the foundations for recognizing soccer as an employment and professional activity, which is important progress in terms of the protection of players' fundamental rights. Currently, the Court has a robust jurisprudence on issues such as the transfer of players from one team to another, the centrality of their will when making these decisions, and the ownership of sporting rights. With this first terrain laid, there is reason to think women could mobilize other similar cases in the constitutional sphere and the result of these eventual efforts would be positive.

***B. Private actors do not have the final word: fundamental rights as limits to soccer regulation***

The Court has recognized the freedom of regulation of private entities, such as clubs and federations. However, it has not been neutral regarding aspects that may violate the fundamental rights of soccer players. Specifically, the Court has stated the regulation of this sport, as well as the controversies that arise between players and clubs, are in principle under the jurisdiction of the private entities responsible for their functioning. However, it has also insisted these regulations may not ignore the Political Constitution and must always work in favor of the dignity and freedom of the players.<sup>62</sup> Thus, the Court has made clear that respect for constitutional principles and fundamental rights are a limit to the regulatory independence of clubs and federations.

Sports clubs, as bodies of private law that fulfil functions of public and social interest,<sup>63</sup> as is the promotion of sports and advancement of culture, necessarily must respect constitutional norms and are not exempt from the oversight and control the State must exercise over them. The fact that sporting clubs are constituted under the premise of the freedom of business constitutionally guarantees their authorities, “without prejudice to the limits created by the fundamental rights of persons and the social purpose they are called to fulfil.”<sup>64</sup> These same limits are applicable to other private institutions

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<sup>62</sup> Ibid.

<sup>63</sup> Constitutional Court of Colombia. Judgment T-498 of 1994. Presiding Justice. Eduardo Cifuentes.

<sup>64</sup> Constitutional Court of Colombia. Judgment C-287 of 2012. Presiding Justice. María Victoria Calle.

responsible for the regulation of soccer and sports in general, such as the Colombian Soccer Federation, whose principal task is determining the rules of the practice of professional soccer in Colombia.

One of the aspects in which the Constitutional Court has intervened to impose limits to private interference in soccer has been the regulations issued by clubs and statutes issued by the private authorities that regulate this sport. In the aforementioned *Judgment T-740 of 2010*, the Constitutional Court decided to leave without legal effects some of the decisions of the Commission of the Player's Statute of the DIMAYOR, which is the private dispute resolution institution of professional soccer in Colombia. Specifically, the Court noted the provisions of this agency were against the Constitution and the law, and thus must be modified to coincide with respect for fundamental rights. This was not the first time the Court decided this way. In 1997 the Court made clear that both the State and private actors can act as regulatory and overseers of soccer and sports in general, provided that any regulation (both public and private) are in conformity with constitutional principles.

The limitation of regulations is also evident in cases related to access to justice. This was the situation that gave rise to *Judgment T-302 of 1998*, in which the Constitutional Court stated private regulations could not hinder or prohibit access to constitutional justice in cases of the violation of fundamental rights. The Court studied the case of four professional soccer players who presented actions of *tutela* against COLDEPORTES, the Colombian Soccer Federation and the Major Division of Colombian Soccer (DIMAYOR). One of the motives for these legal actions was the fact that these institutions prohibited them from turning to ordinary and state justice mechanisms. To justify this prohibition, COLDEPORTES, the Colombian Soccer Federation and DIMAYOR stated that, according to FIFA Statutes, controversies should not be taken to ordinary judges, but rather be addressed through the justice mechanisms of this institution. The Court rejected this argument and noted that "the independence of sports federations cannot reach the extreme of hindering the fundamental right of athletes to access justice to claim their

labor rights.”<sup>65</sup> In this case, not only did the Court state private authorities could not violate the right to access to justice of players, but also FIFA admonished the Colombian Soccer Federation and stated players who turn to ordinary tribunals to claim their labor rights do not violate the Statutes of this organization.

Limitations on the authority of private actors is another opportunity the Constitutional Court has opened. Although this Court recognizes the freedom of regulation of clubs and federations, it has made clear this freedom is limited by soccer players’ constitutional principles and fundamental rights. Future cases, both in women and men’s soccer, may benefit from these precedents and avoid arbitrariness on the part of the private entities. In other words, these decisions send a message to soccer players that this sport is not only a business between big clubs or private agencies, and they can turn to judges to protect their fundamental and labor rights.

### ***C. A first step for women in soccer: the case of María Paz***

In 2019, the Constitutional Court issued the first decision regarding gender discrimination within football and, in doing so, took an important step towards protecting the rights of women players. In Decision T-366 of 2019, the Court addressed the case of Maria Paz Mora, a ten-year-old girl who decided to participate with the *Dinhos*, a mixed team comprised of her and ten boys, in the under-10 category of a children’s league called *Pony Fútbol*. María Paz was accepted in the league as a member of the team, she played in three games, and even received a batch that accredited her as part of the league. However, in October 2018, María Paz and her team were expelled from the championship, despite the fact that they had won the first three games and occupied first place in their age category. The reason: The “irregular registration” of María Paz. The championship directors argued that *Pony Fútbol* regulations only allowed gender-segregated teams and prohibited mixed teams, like that of María Paz.<sup>66</sup> According to the championship

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<sup>65</sup> Constitutional Court of Colombia. Judgment T-302 of 1998. Presiding Justice Alejandro Martínez Caballero.

<sup>66</sup> Maria Ximena Davila, ¿El Torneo de la Desigualdad?, *El Tiempo* (July 29, 2019).

directors, if María Paz wanted to participate, she must do so as part of a girls team.<sup>67</sup> And they went further: To ensure non-repetition, the company that created the championship modified the league's regulations to explicitly prohibit the participation of mixed teams moving forward.

María Paz's father decided to file a complaint with a trial court, alleging the violation of various fundamental rights of his daughter, including the right to equality, dignity, and recreation. The trial court denied the requested protection, arguing "the Fédération Internationale de Football Association, FIFA, prohibits mixed category soccer championships, which the petitioner should be aware of."<sup>68</sup> While María Paz's father did not appeal the decision, Colombia's Constitutional Court used its powers of *sua sponte* review to address the matter itself. The Court's decision touches on various matters essential to this debate over gender discrimination in soccer. To start, the Court undertakes a rather broad review of the reasons for which "sports is a field in which gender stereotypes have been all too evident,"<sup>69</sup> highlighting the need to promote industry-wide transformation so as to better serve as a "space for the emancipation and empowerment of women and girls."<sup>70</sup>

The Court's navigation of FIFA's alleged prohibition of mixed-gender teams—central to the arguments of both the Company that created the championship and the Bogota Soccer League—was unexpected and enlightening. In its decision, the Court considered a series of public statements and policy documents released by FIFA, which highlight the benefits derived from mixed soccer in childhood.<sup>71</sup> Accordingly, the Court found that FIFA does

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<sup>67</sup> This is in spite of the fact that she had always played with *Dinhos* and that at this point it was impossible for her to join a girls' team in the league.

<sup>68</sup> Constitutional Court of Colombia, Decision T-366 of 2019, August 13, 2019.

<sup>69</sup> The Court makes use of reports, statistics, and literature from gender studies to conclude "in sports, as a cultural expression that transmits values and defines identities, stereotypes focused on delineating the personality and behavior of men and women from infancy have been reinforced, which has constituted a barrier for [women] to participate in disciplines of physical activity on equal terms with men." Constitutional Court of Colombia, Decision T-366 of 2019, August 13, 2019.

<sup>70</sup> Constitutional Court of Colombia, Decision T-366 of 2019, August 13, 2019.

<sup>71</sup> Within the FIFA documents the Court cited are the following: Grassroots, 2016. FIFA Grassroots Soccer Program; Futsal, FIFA guidelines and development programs; Regulations of the Forward Development Program of FIFA. Forward 2.0 FIFA Guidelines and Development Programs of Women's Soccer 2015-2018, and FIFA Conference for Equality and Inclusion 2017. The Court highlighted, for example, this paragraph

not prohibit mixed-gender youth tournaments, but rather recommends them. Thus, the Court used FIFA's inclusion philosophy—which tends to achieve pro-social optics more than practical application—as normative content that translated into a favorable decision for the girl and her team.

As a result, the Court found the team's exclusion had violated the human rights of María Paz and her teammates. The Court then ordered the Company, The Amateur Soccer Division, and the Bogota Soccer League to make a joint statement recognizing that their actions were contrary to the Colombian Constitution, to re-register the *Dinhos* team, and to begin a process for the open and democratic creation of spaces for mixed competition among players under 18.

The case of María Paz temporarily coincides with the claims of Colombian football players for better working conditions. Although the history of women's football in Colombia and Latin America has been marked by inequality, the players' legal and social claims are starting to be heard. Thus, the Constitutional Court's decision on the case of María Paz and her team opens a new chapter in football case-law in which discussions on gender discrimination seem to have a key role to play.

## **6. Challenges**

In Colombia, the feminist and women's movements have been behind the biggest legal and judicial achievements regarding gender equality. Their social and legal activism has made these demands for freedom and equality reach the high courts with results in their favor. To mention a few examples, among their emblematic achievements is *Judgment C-355 of 2006*, which partially decriminalized abortion, the Quotas Law (or Law 581 of 2000), which provides thirty percent of high government appointments must be filled by

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of the Grassroots policy: "Allowing boys and girls to play together contributes to the emancipation of the two genders, improves tolerance and promotes mutual respect. By playing alongside boys, girls gain a more positive image of themselves, increase their self-confidence and become more aware of their abilities".

women, and Law 1257 of 2008, which regulates norms for the sensitization, prevention, and sanction of forms of violence and discrimination against women.

In the case of Colombian women's soccer, the women's movement has not been very active, and male soccer players have maintained a sepulchral silence in their support for their women peers enjoying the same rights as them. Additionally, the social denouncements regarding the situation of women's soccer are, until now, nascent. Many players still fear speaking out due to the reprisals clubs and federations have taken against players who have spoken out. Those who today speak publicly about the situation of discrimination, work and sexual harassment, and precarious work conditions are mainly women who are playing in professional leagues in other countries and do not depend on Colombian soccer authorities.

In this context, on one hand, Colombian clubs and federations that regulate women's soccer still maintain unchecked political and economic power, and, on the other hand, there is not a women's movement or unions of women soccer players that fight for the protection of labor rights and the eradication of gender violence in this sport in the judicial arena. Furthermore, there is also a lack of solidarity from male soccer players that their female peers have the same rights as them. Unfortunately, the silence that today is breaking is the same that has curtailed collective action of women soccer players for years.

This lack of collective action causes serious challenges for the materialization of the opportunities Latin American constitutionalism offers. First, although Colombia has a broad bill of rights, which prohibits inequality based on gender and conceives the protection of social rights as justiciable, one of the most effective ways of accessing these is through the action of *tutela*. This recourse, as we explained, is an informal mechanism that allows one to request the judicial protection of fundamental rights, and requires a petitioner turn to courts and demand her rights. In the case of women's soccer in Colombia, the first challenge we see is that, due to the constant threats and intimidation from soccer authorities and the lack of collective support from the women's movement

and its men supporters, the players have not made frequent use of this ***judicial recourse*** to demand their rights.

The non-use of the action of *tutela* by women soccer players to prevent the violation of their fundamental rights prevents ***the active intervention of the constitutional tribunal*** in the protection of their rights. The Constitutional Court, a tribunal that has been characterized for its proactive and leading role in the defense of fundamental rights of historically discriminated against groups could only generate an important precedent regarding fundamental rights and ***control of non-state actors*** in the protection of women's soccer, to the extent that cases regarding the violation of the rights of girl and women soccer players reach it.

As a result, without petitions for the protection of rights from women soccer players before the high courts, there is no possibility for integration of international human rights law in support of a gender justice in women's soccer. On one hand, there is no opportunity for judges to directly apply international human rights law through the constitutional block in their decisions. On the other hand, there is also no place for a case under trial of rights related to women's soccer to reach regional bodies such as the Inter-American Commission on Human Rights or the Inter-American Court of Human Rights.

In this vein, for Colombian constitutionalism to activate in support of gender justice in soccer, we face this first challenge: the lack of a movement of women soccer players, in addition to the lack of collective support by women's movements and their male peers. This first challenge is not small, and for this reason, actions of those who advocate for the rights of women soccer players must be aimed at the players learning and owning their rights, at male players supporting their women peers having the same rights, and at the feminist movement adding to its agenda women's soccer. Only in this way will the cases of women players reach legal channels and will the existing fear of the political and economic power of Colombian soccer authorities be at least partially mitigated.

## **7. Conclusion**

In recent decades, the language of rights in constitutional texts and in legal practice has been on the rise in Latin America. Elements such as the expansion of bills of rights, the creation of judicial mechanisms to demand these rights without the need to turn to the legislative branch, and the introduction of legal doctrines of expansion of constitutional guarantees are some of the characteristics of what has been called New Latin American Constitutionalism. In our case study, this constitutional movement emerges in domestic Colombian law as a field of opportunities, but also challenges, to advance the protection of women's soccer. Regarding opportunities, we highlight the role the Constitutional Court has played by studying the violation of fundamental rights of male soccer players, where it has recognized soccer as a profession that is not exempt from the protection of constitutional rights, and has imposed limits on the regulatory freedom of private entities in soccer. Additionally, in 2019 it studied the first case regarding gender discrimination in soccer, where it restored the rights of a girl soccer player and ordered measures of reparation.

However, there are also challenges to address. As we have indicated, due to the constant threats from soccer authorities against women players, and the lack of collective support by the feminist movement and its men allies, the players have not made frequent use of the action of *tutela* to assert their rights. The non-use of this legal recourse prevents the active intervention of the constitutional tribunal in the protection of their fundamental rights and the control of non-state actors' actions, such as soccer clubs and federations. Thus, without judicial recourses that reach the high courts, there is not the possibility to create a robust constitutional precedent regarding gender equality in soccer, much less the opportunity of integration of international human rights law on this topic.

In synthesis, although Latin American constitutionalism provides opportunities for historically discriminated against groups, like women soccer players, to obtain their rights through judicial channels, in our case study important challenges persist for this right to truly be an opportunity. For Latin American constitutional law to be activated in favor of women soccer players, actions should be aimed at: i) raising legal consciousness of soccer players so they know their rights, appropriate them, and use available legal resources in

the Colombian constitutional system; ii) awaken the solidarity of male soccer players to support their women peers in equality of rights, and iii) encourage the feminist movement to put the promotion and defense of women's soccer on their agenda. This could mitigate the fear that exists of the political and economic power that Colombian soccer authorities have and there would be greater possibilities that rights were claimed through judicial channels.

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