

Football Trafficking: A Socio-Legal Study on the Trade of African Football Minors

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ABSTRACT

There is a child trafficking problem in football which exists beneath public awareness. The problem involves African minors being transported to foreign countries by unscrupulous intermediaries who either abandon them to fend for themselves or control their mobility for the explicit purpose of exploitation. Child trafficking in football occurs within a football environment that benefits from the increased commodification of children, but football does not provide the requisite protections to prevent the African minors from being trafficked and exploited within the sport. Though football trafficking is a subset of the wider child trafficking issue, particular consideration must be given to the specificity of sport and the unique incentives which football provides to both the perpetrators and potential victims of the crime.

This research aims to understand the key factors which leads to football trafficking, to evaluate the efficacy of FIFA's anti-trafficking policy responses, and to propose recommendations which improve the performance of FIFA's regulations and offer better safeguards to the African minors. The study uses an interdisciplinary research method, by combining the legal doctrinal and socio-legal approaches to better analyse the core drivers of football trafficking, and to offer solutions which are tailored to the circumstances of the at-risk child players.

Moreover, by examining the problem through the theoretical lens of regulatory theory, the analysis uncovers that there are several social, systemic, and structural factors in and around football's regulatory environment which have undermined the performance of FIFA's anti-trafficking policies. The study concludes that FIFA's regulatory shortfalls can be remedied by adopting procedures aligned with effective regulation, applying a child-centred approach to further anti-trafficking policies, and introducing practices which can tackle some of the fundamental vulnerabilities of the African minors. When combined, these measures could lead to a reduction in the prevalence of football trafficking.

LIST OF ABBREVIATIONS

BRTF	Better Regulation Task Force
CAF	Confederation of African Football
CAS	Court of Arbitration for Sport
CFS	Culture Foot Solidaire
CFU	Caribbean Football Union
CONCACAF	Confederation of North, Central America and Caribbean Association Football
DFA	Danish Football Association
DIS	Danish Immigration Service
DOJ	Department of Justice
DRC	Dispute Resolution Chamber
DREAM	Detection, Responding, Enforcing, Assessing, and Modifying
EC	European Commission
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
EEA	European Economic Area
EU	European Union
FA	Football Association
FAQ	Frequently Asked Questions
FC	Football Club
FIFA	Fédération Internationale de Football Association
FIFPRO	Fédération Internationale des Associations de Footballeurs Professionnels
FPO	For-Profit Organisation
HRIA	Human Rights Impact Assessment

IGO	Intergovernmental Organisations
ILO	International Labour Organisation
IOC	International Olympic Committee
IPEC	International Programme on the Elimination of Child Labour
ITC	International Transfer Certificate
ITM	International Transfer of Minors
MA	Member Associations
NGO	Non-Governmental Organisation
NPO	Non-Profit Organisation
NTU	Nottingham Trent University
OECD	Organisation for Economic Co-operation and Development
PSC	Player Status Committee
RIA	Regulatory Impact Assessment
RSTP	Regulations on the Status and Transfer of Players
RTD	Right to Dream
SDP	Sport for Development and Peace
SGB	Sports Governing Bodies
SRA	Self-Regulatory Association
TFEU	Treaty on the Functioning of the European Union
TMS	Transfer Matching System
TPR	Transnational Private Regulator
UEFA	Union of European Football Associations
UK	United Kingdom
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child

UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNGA	United Nations General Assembly
UNGP	United Nations Guiding Principles
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
UNSDG	United Nations Sustainable Development Goals
UNTOC	United Nations Convention against Transnational Organised Crime
USA	United States of America

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Chapter 1 - INTRODUCTION

The issue of the human trafficking of African minors within football is belatedly gaining recognition in both academic and non-academic circles. Talented children are recruited by football agents as a means of making profit by selling them to bigger European football clubs. This problem has existed for a sufficient period of time that it can no longer be referred to as “a new form of labour exploitation”,¹ as was noted by the Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography, during her visit to Belgium in 1998.² In the years gone by, the legal responses to the growing instances of the crime have remained slow and largely ineffective, thus continuing to place African minors at risk of exploitation. Though this thesis focuses on the increased risks to African minors specifically, it is acknowledged that football trafficking exists beyond Africa and has occurred in parts of South America and Asia over the years. It is argued that these occurrences are indicative of football being a global sport that is by far the most watched and followed sport in the world.³ Thus, in turning attention back to the African minors, it is significant that football also has a good (recent) history of showcasing players from Africa.⁴ For example, in the English Premier League, the most watched league in the world,⁵ the award for the highest goal scorer in the 2018/19 football season was shared by 3 players, Mohamed Salah (Egypt), Pierre-Emerick Aubameyang (Gabon), and Sadio Mané (Senegal).⁶ With the common factor between these players being their African heritage/nationalities.

The images of the players holding up their respective golden boot awards was broadcast around the world, and this undoubtedly motivated aspiring African footballers to dream about equally succeeding at top European football clubs. Considering football is sold to the

¹ Scarpa, Silvia. "Child trafficking: International instruments to protect the most vulnerable victims." *Family Court Review* 44, no. 3 (2006): 429-447. p/432

² United Nations, Economic and Social Council, Commission on Human Rights, Rights of the Child: Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, Ms. Ofelia Calcetas-Santos—Addendum—Report on the Mission of the Special Rapporteur to Belgium and the Netherlands on the issue of Commercial Sexual Exploitation of Children, 56th Sess., Agenda Item 13, at 4–5, §§ 14– 16, U.N. Doc. E/CN.4/2000/73/Add.1 (1999).

³ Sawe, Benjamin, “The Most Popular Sports in the World” (*WorldAtlas*, April 2018) <<https://www.worldatlas.com/articles/what-are-the-most-popular-sports-in-the-world.html>> accessed 11/06/2020

⁴ Okpara, Christian, “Why African players are dominating European leagues” (*The Guardian*, May 2019) <<https://guardian.ng/sport/why-african-players-are-dominating-european-leagues/>> accessed 11/06/2020

⁵ Premier League, “Entertaining Audiences” <<https://www.premierleague.com/this-is-pl/the-fans/686489?articleId=686489#:~:text=The%20Premier%20League%20is%20the,90%20minutes%20of%20unpredictabl e%20action.>>> accessed 11/06/2020

⁶ Goal, “Premier League top scorers 2018-19: Salah, Mane & Aubameyang share Golden Boot” (*Goal*, May 2019) <<https://www.goal.com/en/news/premier-league-top-scorers-2018-19-salah-mane-aubameyang/1uwar9gb81cdt1f1hxsjtdngv>> accessed 11/06/2020

public as a sport for every and anyone,⁷ there are consequently limited mental barriers regarding the possibilities of becoming a professional player abroad. However, unfortunately for the aspiring players, the practical barriers to entering professional football at the top level are high, and the images representing the success of the few African players outshines the failures of the vast majority who have had similar dreams.⁸ The overriding situation indicates that only one in thousands of aspiring players will realise anything resembling their sporting aspirations in Europe.⁹ Yet, notwithstanding the apparent myriad of obstacles in the way of their success, the aspirations of the African players largely remain undeterred. The players persist in the pursuit of a footballing career abroad because they see football as a means of escaping some of the intrinsic socio-economic and developmental issues they face in their home countries.

The eagerness to escape can be aligned with the migratory disposition of the African minors, and their decision is often supported by their parents, and the sporting and football environment which benefits from the commodification of child participants. On the one hand, in sport, the livelihoods of many adults (parents, coaches, and trainers) depend on children and the performances of the children in sports competitions.¹⁰ These pressures could bring about instances of child labour and exploitation, as several forms of maltreatment are known to take place when children are over-trained and abused in the name of improving their sporting performance.¹¹ Whereas, on the other hand, and in football specifically, the abuse of child players generally leads to the sale of such players to foreign clubs, as the players are viewed as potential sources of revenue.¹² This creates an incentive for persons looking to benefit from the profits involved in selling a young player abroad. Thus, unscrupulous intermediaries are able to leverage the eagerness of the child players who want to escape, by promising them a professional contract at a major European club, before requesting a facilitative fee for the trip to be made possible.¹³ Though the players' families consider the

⁷ FIFA, 'Our Strategy' (*Explore FIFA*, 13 October 2016) <<https://www.fifa.com/about-fifa/who-we-are/explore-fifa.html>> accessed on 03/10/2019. And see UEFA, "#EqualGame – Football is open to everyone" (December 2018) <<https://www.uefa.com/insideuefa/social-responsibility/news/newsid=2587064.html>> accessed on 09/01/2020

⁸ Ungruhe, Christian. "Mobilities at play: the local embedding of transnational connections in West African football migration." *The International Journal of the History of Sport* 33, no. 15 (2016): 1767-1785. p/1776

⁹ McGee, Darragh. "Displacing childhood: Labour exploitation and child trafficking in sport." In *Labour Migration, Human Trafficking and Multinational Corporations: The Commodification of Illicit Flows*, (Routledge, 2012) pp. 71-90. p/73

¹⁰ Weber, Romana. "Protection of children in competitive sport: Some critical questions for London 2012." *International Review for the Sociology of Sport* 44, no. 1 (2009): 55-69. p/64

¹¹ Ibid. p/61

¹² Darby, Paul. "Moving players, traversing perspectives: Global value chains, production networks and Ghanaian football labour migration." *Geoforum* 50 (2013): 43-53. p/49

¹³ Pete Pattison, 'Football's broken dreams: The African teenagers sold a Premier League lie' *The Guardian* (London, 16 May 2018) <<https://www.theguardian.com/global-development/2018/may/16/football-broken-dreams-african-teenagers-sold-premier-league-lie-nepal>> accessed on 19 November 2018

fee to be a small price to pay to be a successful professional footballer in Europe,¹⁴ the transaction often triggers a series of events culminating in the minor being trafficked and either abandoned or exploited in the foreign country.¹⁵

The International Labour Office (ILO) reported that of the 40 million victims of modern slavery in 2016, 1 in 4 were children.¹⁶ Of this number, there are reportedly 15,000 African football minors who are trafficked and exploited every year by unscrupulous persons using false pretences and deceptive practices.¹⁷ In some cases, the African minors are taken to a European country for trials but are subsequently abandoned when they are unable to secure a professional football contract.¹⁸ In other situations, upon arriving in Europe, the players are made to train and play football for long hours without being paid for their work.¹⁹ These instances illustrate that the vulnerabilities of the African boys and their eagerness to escape puts them at a significant risk of trafficking and exploitation, irrespective of the laws and regulations introduced to prevent such practices from taking place. This thesis focuses on the conditions faced by the young males because the current football landscape does not have a similarly burgeoning market for young foreign female talent. However, with growing calls for gender equality and bridging the pay gap in female football,²⁰ young girls may soon be subjected to the same adverse treatment as the young boys.²¹

Much of the recent commentary on trafficking refers to trafficked persons as “survivors”, as this gives the power back to the individual.²² Yet, in this thesis, the trafficked boys are referred to as victims of football trafficking because their power and autonomy is arguably never returned to them. To explain, the trafficked African minors are found in precarious

¹⁴ Esson, James. “10-step guide to football trafficking” (*Loughborough News Blog*, 2015) <<http://blog.lboro.ac.uk/news/politics/10-step-guide-to-football-trafficking/5/>> accessed on 1st June 2016

¹⁵ Poli, Raffaele, “The migrations of African football players to Europe: human trafficking and neo-colonialism in question” (2010) Football for Development, Vienna, Austria. <http://www.footballfordevelopment.net/uploads/tx_drblot/storage/Poli_migration-of-African-football-players_01.pdf>.

¹⁶ International Labour Organization, “Global estimates of Modern Slavery: Forced Labour and Forced Marriage” Geneva 2017. p/5 <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf> accessed on 28/07/2020

¹⁷ Rowe, Mark, “Dossier: The human game – tackling football’s ‘slave trade’” (*Geographical*, July 2018) <<https://geographical.co.uk/people/development/item/2817-football-trafficking>> accessed on 16/07/2020

¹⁸ Esson, James, and Eleanor Drywood. “Challenging popular representations of child trafficking in football.” *Journal of Criminological Research, Policy and Practice* (2018).p/62

¹⁹ Edwards, Piers. ‘Underage African footballers ‘trafficked’ to Laos’ (*BBC Africa sport*, 21 July 2015) <<http://www.bbc.co.uk/news/world-africa-33595804>> accessed on 01/11/2017

²⁰ Murray, Caitlin, and Sam Morris, “Revealed: the \$730,000 gender pay gap in US World Cup bonuses” (*The Guardian*, June 2019) <<https://www.theguardian.com/football/ng-interactive/2019/jun/28/revealed-the-731003-gender-pay-gap-in-us-world-cup-bonuses#:~:text=So%20while%20the%20US%20men's,backed%20National%20Women's%20Soccer%20League.>>> accessed on 04/06/2020

²¹ Brackenridge, C. H. “Children’s rights in football: Welfare and work.” (2010) <<https://idrottsforum.org/articles/brackenridge/brackenridge110608.html>> accessed on 02/03/2020

²² Gozdzia, Elzbieta, and N. Micah. *Victims No Longer: Research on Child Survivors of Trafficking for Sexual and Labor Exploitation in the United States, Final Report*. (2008) Washington, DC: Institute for the Study of International Migration, Georgetown University.

situations such as homelessness, slavery, child prostitution, and they are sometimes forced to engage in criminal activities to repay their “debt”²³ for passage into the foreign country.²⁴ However, upon detection, the African minors are treated as irregular migrants or criminals, rather than as the victims of this human rights violation. This results in them being stripped of any power or status applicable to their circumstances as victims, often resulting in them being returned home to face the same conditions that prompted their being trafficked in the first instance.²⁵ Hence, the African boys cannot be termed as “survivors” of human trafficking, as they are barely even treated as “victims”.

The occurrence of football trafficking persists despite FIFA’s regulations imposing significant restrictions on the international transfer of minors.²⁶ *Mala fide* intermediaries, football academies, and football clubs, all continue to find loopholes within FIFA’s rules to traffic, transfer, and exploit young African boys to the more lucrative leagues in Europe.²⁷ The football trafficking situation is furthered by the lowly stature of West African football within the global game, where there is a limited range of revenue streams for the teams, so children are increasingly seen as vital assets that can be groomed and sold for profit. As Esson succinctly explained, “the structural logic of a football industry that promotes movement as a prerequisite to financial success merges with the migratory disposition in West Africa, and it is in this context that exploitative and irregular migratory practices are able to occur.”²⁸

The growing prominence of irregular migration and the football trafficking phenomenon suggests that there may be a gap between what the relevant laws are “on paper”, and how the laws are being interpreted and applied in practice. To examine this disparity, the thesis adopts a socio-legal approach which involves understanding a specific social situation by considering the relationship between the situation and the laws which directly apply to it.²⁹ Thus, the thesis will explore football trafficking by putting into perspective the relationship

²³ Zimmerman, C. and M. B. Schenker, “Human trafficking for forced labour and occupational health” (2014) *Occup Environ Med* 71(12) 807. p. 807

²⁴ Esson, James, “Better Off at Home? Rethinking Responses to Trafficked West African Footballers in Europe”, (2015) *Journal of Ethnic and Migration Studies* 512. p/519

²⁵ Lisborg, Anders, Sine Plambech, “Going Back• Moving On: A synthesis report of the trends and experiences of returned trafficking victims in Thailand and the Philippines” ILO, Bangkok, 2009. Cited in Paasche, Erlend, May-Len Skilbrei, and Sine Plambech. “Vulnerable Here or There? Examining the vulnerability of victims of human trafficking before and after return.” *Anti-trafficking review* (2018): 34-51. p/35

²⁶ FIFA, ‘Regulations on the Status and Transfer of Players’ (2020) Article 19 & 19bis

²⁷ FIFPro, “FIFPRO AND FIFA IMPROVE PROTECTION OF MINORS” (28 January 2015) <<https://www.fifpro.org/news/fifpro-and-fifa-improve-protection-of-minors/en/>> accessed on 11 May 2017

²⁸ Esson, James. “Playing the victim? Human trafficking, African youth, and geographies of structural inequality.” *Population, Space and Place* (2020): e2309. p/6

²⁹ Schiff, David N. “Socio-legal theory: social structure and law.” (1976) *The Modern Law Review* 39, no. 3: 287-310. p/287

between the relevant anti-trafficking laws (at FIFA and international law levels) and the social situation to which the laws are ordinarily supposed to apply (i.e., the prevention of child trafficking). A socio-legal approach will enable the thesis to highlight the role the relevant laws have played in the creation, maintenance, and/or changes, to the social circumstances of the at-risk minors.³⁰

The following analysis of anti-trafficking laws is aimed at demonstrating that football trafficking is a poorly understood phenomenon. Despite it being a subset of the broader child trafficking issue, football trafficking, in particular, has been under-examined. This lack of an in-depth understanding has significantly limited the efficacy of FIFA's regulatory responses to its occurrence. As it is commonly noted that effective regulations cannot be formed when the regulator does not understand the full extent of the problem being regulated against. The thesis argues that FIFA's current anti-trafficking regulations have been modelled on incomplete information, and this has been to the detriment of the African (and other foreign) minors involved with the sport. Thus, obtaining an understanding of the full extent of the football trafficking problem is pertinent for FIFA to be able to develop effective anti-trafficking policies in the long-term.

1.1 GAPS IN THE LITERATURE

There are several gaps in the policies and research on football trafficking which this thesis looks to bridge.

At an international law level, there are instruments which should limit the occurrence of trafficking, such as the UN Convention against Transnational Organised Crime (UNTOC),³¹ the UN Convention on the Rights of the Child,³² and the UN Sustainable Development Goals, which aims to eradicate forced labour and human trafficking.³³ Despite the strength and global applicability of these instruments, there are two core limitations to their usefulness within the context of football trafficking. First, these regulations do not explicitly deal with the specificity of sport, instead, they view the occurrence of trafficking through the prism of human rights, immigration, or criminality. The anti-trafficking regulations therefore do not account for the unique incentives and rewards (pull factors) which football offers to the aspiring African minors. These incentives consequently amplify the vulnerabilities and

³⁰ Ibid.

³¹ United Nations Office on Drugs and Crime, "United Nations Convention against Transnational Organized Crime and The Protocols Thereto" of 25 December 2003

³² UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol.1577. (1999) The Preamble.

³³ United Nations, "The Sustainable Development Agenda: 17 Goals to Transform Our World" <<https://www.un.org/sustainabledevelopment/development-agenda/>> accessed 20/11/2019

inherent factors pushing the African minors into the hands of unscrupulous persons. Second, the applicability of international law in this sporting context is hindered by the insularity of FIFA and football's regulatory environment. FIFA, the global regulator of the sport, is a unique self-regulatory organisation which does not openly welcome external interference in football matters. FIFA has its own internal legal mechanisms and determines how all matters related to the sport are to be resolved, thus limiting the use of wider regulatory instruments for tackling this football related problem.

There have been several gaps in FIFA's regulatory responses to football trafficking. Instruments such as its current ban on the international transfer of minors (ITMs), shows a lack of understanding of football trafficking and the root causes leading to its occurrence. For example, FIFA's ban does not account for the peculiarity of the push and pull factors faced by the aspiring African players. FIFA's regulations and the practices fostered within football has incentivised the intense recruitment of foreign child players, and has created loopholes which unscrupulous persons and teams have been able to use to traffic and exploit players, both within and beneath FIFA's radar. FIFA believed that the ban on ITMs would protect minors from the adverse human rights risks related to trafficking, but in practice, the ban has pushed minors into positions of heightened vulnerability in their quest to go abroad and attain professional playing contracts. Considering the significant supply of willing African football talent looking to leave, FIFA's regulatory responses has neither created a model to quell their football related migratory disposition, nor has FIFA introduced policies to significantly deter the foreign clubs from demanding the "cheap" labour which the African players are eager to provide. FIFA created a global football transfer market which makes it possible for players to be signed on a transnational basis, but FIFA's policies have been unable to offer the requisite protections for some football minors. This lack of protection continues to occur whilst the sport benefits from the commodification of child players, and the constant development of "cheap" football labour into profitable assets.

At an academic level, sociologists Esson³⁴ and Darby³⁵ have explored football trafficking in depth. And from a legal standpoint, Drywood considered the role the EU could play in correcting this human rights issue in sport.³⁶ Yilmaz and others proposed that FIFA's anti-

³⁴ Esson, James. "Better off at home? Rethinking responses to trafficked West African footballers in Europe." *Journal of Ethnic and Migration Studies* 41, no. 3 (2015): 512-530.

³⁵ Darby, Paul, Gerard Akindes, and Matthew Kirwin. "Football academies and the migration of African football labor to Europe." *Journal of Sport and Social Issues* 31, no. 2 (2007): 143-161.

³⁶ Drywood, Eleanor. "'When we buy a young boy...': Migrant Footballers, Children's Rights and the Case for EU Intervention." *Stalford, Helen and Iusmen, Ingi (eds.)* (2015): 191-220.

trafficking policies have not been formed in the best interests of the child.³⁷ Najarian provided a range of regulatory recommendations which FIFA could adopt to offer better protections to the at-risk minors.³⁸ Of the academic discourse on football trafficking, this thesis fills a gap by combining the use of the socio-legal research method, and the theoretical lens of “regulatory theory”, to conduct a thorough analysis of the problem and propose tailored solutions.

1.2 RESEARCH QUESTIONS

The gaps in the literature led to the following research questions:

1. What are the key factors leading to the trafficking and exploitation of African minors?
2. Are current regulatory responses to the problem adequate?
3. How could an alternate regulatory framework succeed in limiting football trafficking?

1.3 RESEARCH AIMS AND OBJECTIVES

With the research questions in mind, the thesis aims to achieve the following core objectives:

1. To understand the football trafficking problem and the factors that have contributed to its prominence from the perspective of FIFA, the football teams, and the African minors.
2. To locate FIFA’s position within football’s regulatory space, and to highlight the organisation’s legal authority over all matters related to the sport.
3. To evaluate the legal and regulatory context of FIFA’s anti-trafficking laws, and to uncover the systemic, structural, and social factors affecting the performance of its policies in practice.
4. To understand when regulatory failure occurs, and what remedies are available for correcting such failures.
5. To propose essential amendments to FIFA that will enable the organisation to produce more effective anti-trafficking policies that can prevent football trafficking and safeguard the African minors from exploitation.

³⁷ Yilmaz, Serhat, James Esson, Paul Darby, Eleanor Drywood, and Carolynne Mason. "Children’s rights and the regulations on the transfer of young players in football." *International Review for the Sociology of Sport* 55, no. 1 (2020): 115-124.

³⁸ Najarian, Alex C. "The Lost Boys: FIFA’s Insufficient Efforts to Stop Trafficking of Youth Footballers." *Sports Law. J.* 22 (2015): 151.

6. To recommend a nuanced alternate regulatory model, able to curb football trafficking by limiting some of the core vulnerabilities of the African minors.

1.4 RESEARCH DESIGN

A model framework for this type of social and regulatory research was developed by Crotty³⁹ and refined by Losoncz.⁴⁰ The framework proposes that researchers address three questions which would guide the analysis and aid the development of a coherent and consistent research design. These are:

1. *What is my theoretical perspective? That is, in my view, what theoretical rationale would capture effectively the interplay between actors, events and mechanisms?*
2. *What is my overarching research strategy or methodology?*
3. *What methods or tools will I use for my data collection?*⁴¹

1.4.1 Theoretical Perspective

This thesis adopts the use of regulatory theory as the chosen theoretical perspective. Through this lens, the evaluation of FIFA and the football trafficking problem will be able to go beyond traditional legal tools and mechanisms.⁴² In addition, the study will benefit from the interdisciplinary and flexible nature of the chosen theory, as the ensuing analysis will account for the specific context of sport. This capacity of the theory stems from the fact that much of what is commonly referred to as “sports law” coincides with regulation and regulatory theory. Therefore, regulatory theory is significant for the analysis of the specific factors contributing to football trafficking. The theory will aid the exploration of FIFA’s anti-trafficking policies and the examination of FIFA’s position in football’s regulatory space. Then, the theory will be used in a diagnostic capacity to evaluate the performance of FIFA’s anti-trafficking policies. Finally, the theory is adopted as a remedial tool to apply social, political, and economic pressures on FIFA to remedy the performance and failure of its anti-trafficking regulations.⁴³

³⁹ Crotty, Michael. *The foundations of social research: Meaning and perspective in the research process*. Sage, 1998.

⁴⁰ Losoncz, Ibolya. "Methodological approaches and considerations in regulatory research." *Regulatory Theory: Foundations and Applications* (2017): 77. p/80

⁴¹ Ibid.

⁴² Charlesworth, Hilary. "A regulatory perspective on the international human rights system." *Regulatory theory* (2017): 357. p/368

⁴³ Charlesworth, Hilary. "A regulatory perspective on the international human rights system." *Regulatory theory* (2017): 357. p/361

1.4.2 Methodology

The methodology for this project is primarily legal doctrinal, with a significant socio-legal dimension that enables the further analysis of the relevant anti-trafficking policies in context. Within the law discipline, the legal doctrinal methodology is the most accepted due to the distinctive element it brings to legal research.⁴⁴ The methodology consists of deriving arguments from authoritative sources and presenting the law as a coherent set of principles and rules.⁴⁵ Conversely, the socio-legal methodology allows the research to provide new perspectives on the law, in a manner that complements the doctrinal research and contributes to law's critical awareness of itself.⁴⁶ The socio-legal dimension allows for the incorporation of key analysis from other academic disciplines into legal research, in order to offer innovative solutions for tackling a problem.⁴⁷ For example, by using the socio-legal approach, the research will be able to examine the social factors underlying the effectiveness of FIFA's anti-trafficking regulations.⁴⁸ Such an examination will consider the "social origins, social conditions of existence, and social consequences"⁴⁹ of FIFA's policies, to determine how its rules are being implemented in the real world.

This type of legal research that combines the legal doctrinal and the socio-legal research methodologies often benefits from the insight drawn from consulting varied but relevant intellectual sources.⁵⁰ The combined methodologies allows this analysis to be more balanced,⁵¹ and able to transcend the limitations of the individual approaches.⁵² The overriding positive of the combination is that this research will be able to propose quality solutions and regulatory recommendations which are informed by the factors that undermine the performance of FIFA's anti-trafficking policies.

⁴⁴ Hutchinson, Terry, and Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research" (2012) 17 *Deakin Law Review* 83, p/102

⁴⁵ Hutchinson, Terry, "Doctrinal research: researching the jury". In Watkins, D. & Burton, M. (Eds.) *Research Methods in Law*. (Routledge, UK. 2013), pp. 7-33. p/10

⁴⁶ Jessica Guth and Chris Ashford, 'The Legal Education and Training Review: regulating socio-legal and liberal legal education?' (2014) 48 *The Law Teacher* 5, p/14

⁴⁷ Cotterrell, Roger, "Subverting orthodoxy, making law central: a view of sociolegal studies" (2002) *Journal of Law and Society* 29, no. 4: 632-644. p/634

⁴⁸ Argyrou, Aikaterini. "Making the case for case studies in empirical legal research." *Utrecht L. Rev.* 13 (2017): 95. p/97

⁴⁹ Siems, Mathias M, and Daithí Mac Síthigh. "Mapping legal research." (2012) *The Cambridge Law Journal* 71, no. 3: 651-676. p/655

⁵⁰ Cotterrell, Roger, "Subverting orthodoxy, making law central: a view of sociolegal studies" (2002) *Journal of Law and Society* 29, no. 4: 632-644. p/635

⁵¹ Banakar, Reza and Travers, Max, *Theory and Method in Socio-Legal Research* (Oxford: Bloomsbury Publishing; 2005), p/20

⁵² *Ibid.* p/25

1.5 RESEARCH METHOD AND STRATEGY

1.5.1 Research Question 1 – Literature Review

To answer the first research question and determine the key factors leading to the trafficking and exploitation of African minors, this thesis will illustrate a comprehensive literature review of the academic discourse pertaining to the trafficking of persons, the continued emigration of talented personnel from Africa, and the regulatory environment surrounding football. However, it should be noted that the data (both qualitative and quantitative) on trafficking is generally sketchy, so many of the sources relied upon when discussing this phenomenon are perhaps more anecdotal than academically robust. To compensate for this, the thesis will draw from a wide range of sources, disciplines, and documents,⁵³ as relevant to the occurrence of football trafficking. The research method involves using sources such as case law, FIFA regulations, UN reports, journal articles (both law and non-law), sports law textbooks, relevant websites, and media reports. This research method coincides with the expectation that doctrinal researchers are to conduct an in-depth literature review,⁵⁴ in order to have a structured reasoning of the available literature.⁵⁵

The following chapters will provide an answer to the first research question:

2. **The Trafficking of Persons:** understanding human trafficking and discussing relevant anti-trafficking laws at an international law level; and analysing football trafficking, explaining how it occurs, and identifying the factors that have contributed to the growth of the problem in the sport.
3. **The Migration of the African Labour Force:** considering the impact of labour migration on Africa and the migratory disposition of the African football minors.
4. **Regulation, Regulatory Space and FIFA's Anti-Trafficking Policies:** exploring the importance of regulation in understanding FIFA's regulatory structure and strategies; analysing FIFA's role as the global regulator of football; and discussing FIFA's anti-trafficking regulatory responses.

1.5.2 Research Question 2 – Analysis of Regulatory Responses

To answer the second research question and determine the adequacy of FIFA's anti-trafficking policies, regulatory theory is used as a diagnostic tool in combination with the

⁵³ Argyrou, Aikaterini. "Making the case for case studies in empirical legal research." (2017) *Utrecht L. Rev.* 13, 95. p/109

⁵⁴ Hutchinson, Terry, and Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research" (2012) 17 *Deakin Law Review* 83. p/113

⁵⁵ Fourie, Andria Naudé. "Expounding the Place of Legal Doctrinal Methods in Legal-Interdisciplinary Research." (2015) *Erasmus L. Rev.* 8: 95. p/96

socio-legal approach. Regulatory theory will help to provide a critical insight into the conditions and consequences of FIFA's anti-trafficking policies,⁵⁶ by highlighting the structural, systemic, and social factors which have affected its policy performance thus far.⁵⁷ To conduct this diagnosis a list of amenable benchmarks, which are based on the "general currency" areas of regulation, are going to be used.⁵⁸ The benchmarks offer a means of assessing how regulation should work,⁵⁹ such as by ascertaining: the policy objectives; the aspect of regulation; the assessed party; and the decentred regulatory regime. With the socio-legal approach, the evaluation of FIFA's policies will address issues that neither a legal doctrinal,⁶⁰ nor a strict social science methodology, would be able to address individually.⁶¹ Through this research method, the thesis will determine the true impact of FIFA's anti-trafficking rules,⁶² and will highlight the gaps between the operation of the policies in theory, and that which occurs in practice.⁶³

The analysis will draw on existing empirical football trafficking sources of data.⁶⁴ For example, Esson, a leading academic in the field, has undergone substantial empirical fieldwork with African football minors in Ghana (conducting 211 informal interviews)⁶⁵ and France (interviewing Guinean, Ivorian, and Cameroonian minors who had been involved in irregular football migration),⁶⁶ to identify the full extent of the football trafficking problem first-hand. Esson's findings will inform the examination of the social factors negatively impacting the performance of FIFA's anti-trafficking policies. Additionally, the thesis will expand on other systemic and structural factors to illustrate how these contribute to the ineffective performance of FIFA's anti-trafficking policies.

The analysis will be conducted through the following chapters:

5. Evaluating the performance of FIFA's policies in attaining its policy objectives.

⁵⁶ Siems, Mathias M, and Daithí Mac Síthigh. "Mapping legal research." (2012) *The Cambridge Law Journal* 71, no. 3: 651-676. p/655

⁵⁷ Argyrou, Aikaterini. "Making the case for case studies in empirical legal research." (2017) *Utrecht L. Rev.* 13: 95. p/97

⁵⁸ Baldwin, Robert, Martin Cave, and Martin Lodge. *Understanding regulation: theory, strategy, and practice*. Oxford University Press on Demand, 2012. p/35

⁵⁹ Prosser, Tony, *The regulatory enterprise: Government, regulation, and legitimacy* (OUP Oxford, 2010). p/3

⁶⁰ Banakar, Reza. "Reflections on the Methodological Issues of the Sociology of Law." *Journal of Law and Society* 27, no. 2 (2000): 273-295. p/274. Cited in Argyrou, Aikaterini. "Making the case for case studies in empirical legal research." (2017) *Utrecht L. Rev.* 13: 95. p/96

⁶¹ Banakar, Reza and Travers, Max, *Theory and Method in Socio-Legal Research* (Oxford: Bloomsbury Publishing; 2005) p/25

⁶² Jessica Guth and Chris Ashford, 'The Legal Education and Training Review: regulating socio-legal and liberal legal education?' (2014) 48 *The Law Teacher* 5, p/13

⁶³ Drahos, Peter, and Martin Krygier. "Regulation, institutions and networks." (2017) *Regulatory Theory: Foundations and Applications*: 1-24. p/6

⁶⁴ Banakar, Reza and Max Travers, *Theory, and method in socio-legal research* (Bloomsbury Publishing, 2005) 25

⁶⁵ Esson, James. "You have to try your luck: male Ghanaian youth and the uncertainty of football migration." (2015) *Environment and Planning A* 47, no. 6: 1383-1397. p/1384

⁶⁶ Esson, James. "Better Off at Home? Rethinking Responses to Trafficked West African Footballers in Europe", (2015) *Journal of Ethnic and Migration Studies*, 41:3, p/514

6. **Evaluating FIFA's regulations - Aspects and Assessed Party:** examining the social and systemic factors which impinge upon the effectiveness of 'aspects' of FIFA's anti-trafficking policies. Also, discussing FIFA as the 'assessed party' to determine the structural factors preventing optimal regulatory performance.
7. **Evaluating FIFA as a decentred body/non-state regulator,** to understand the common regulatory problems such bodies face, and to explain how an organisation's set up can influence the performance of its policies.
8. **FIFA's regulatory failure?** – exploring the circumstances around failing regulations and drawing inferences with the performance of FIFA's anti-trafficking policies.

1.5.3 Research Question 3 – Proposed Solutions

To address the third research question and justify how the proposed alternate regulatory framework could succeed in limiting football trafficking, regulatory theory is deployed in a remedial capacity. The discussions will expand on the findings from the evaluation of FIFA's laws, to propose remedies for countering regulatory failure, and to propose adequate regulatory recommendations to FIFA. Hutchinson argued that "good quality doctrinal research goes well beyond description, analysis, and critique, and invariably suggests ways the law could be amended, or [...] improved".⁶⁷ Hence, the regulatory recommendations and alternate model being proposed will be informed by the analysis into the internal and external factors which have affected FIFA's policy performance. Thereby allowing FIFA to produce more effective anti-trafficking policies in the future.

The following chapters will discuss the third research question of this thesis:

9. **Remedying FIFA's Regulatory Failure** and the performance of its anti-trafficking policies. Analysing how organisational reform and improved legitimacy and accountability practices could result in better protection for the at-risk minors.
10. **Creating Effective anti-trafficking regulations:** Discussing the core facets of effective regulation and modelling this to the regulatory environment of football and FIFA, illustrating how the proposed practices could fit the specific circumstances around football trafficking. In addition, the UNCRC is considered as an important yardstick to proffer a child-centred regulatory approach to better anti-trafficking policies, whilst a legal route into professional football is also discussed.

⁶⁷ Hutchinson, Terry. "The doctrinal method: Incorporating interdisciplinary methods in reforming the law." (2015) *Erasmus L. Rev.* 8: 130. p/132

11. **Alternate Regulatory Model** for tackling football trafficking. Analysing how the development of African football, through the adoption of Sport for Development and Peace programmes, could lead to the eradication of some of the intrinsic factors that contribute to the occurrence of football trafficking amidst the African minors.

1.6 CONTRIBUTION TO KNOWLEDGE

This research provides a two-fold contribution to the literature on football trafficking: the theoretical perspective being used to analyse the problem, and the alternate regulatory model being proposed.

The use of regulatory theory as both a diagnostic and remedial tool has not previously occurred within football trafficking research. With the area ordinarily being under-researched and having a limited range of law related academic discourse, this project offers a significant contribution to the knowledge and understanding of football trafficking from this legal and regulatory perspective. This perspective views the problem as occurring beyond the confined prisms of human rights, immigration, or criminality. The diagnostic application of regulatory theory paves the way for a thorough evaluation of FIFA's anti-trafficking laws in a different manner to the pre-existing literature in the field. Moreover, the examination and assessment of FIFA's relevant policies provides an in-depth insight into the internal and external factors which have contributed to the underperformance of FIFA's anti-trafficking policies over the years. This level of examination into FIFA's regulations will inform future research and policy actions pertaining to football trafficking. Leading to more tailored and effective regulatory responses to the problem.

The adoption of regulatory theory as a remedial tool allows this research to contribute to the football trafficking field in three ways: 1) through the proposed remedies to correct FIFA's organisational and structural failures, as a means of improving the performance of its anti-trafficking policies; 2) by offering a comprehensive range of regulatory recommendations to FIFA that will result in it improving its regulatory practices, and enable it to create more effective anti-trafficking policies; and 3) by using the socio-legal approach as an underlying basis to offer regulatory recommendations to FIFA, which are reflective of the social factors that undermine its policy performance (i.e., the alternate regulatory model being proposed).

The alternate regulatory model represents a contribution to knowledge when considered and applied as a specific means of curbing football trafficking. It provides a nuanced solution to the problem that uses the resources, globality, and popularity of football, to counter the vulnerabilities of the at-risk African minors. By using football to tackle the root causes of

the problem, it is argued, that the minors would be less likely to enter the precarious football trafficking related circumstances, thereby limiting the occurrence of the crime in the long-term.

Chapter 2 - THE TRAFFICKING OF PERSONS

Prior to discussing football trafficking, it is essential to understand human trafficking on a general basis and to examine some of the relevant international law instruments related to trafficking. This is to contextualise football trafficking and explore the peculiarities of its occurrence as a subset of the wider literature on human trafficking. After which, the steps involved in football trafficking can be considered, before analysing the factors that contributed to the initiation of the trafficking problem within the sport.

2.1 DEFINING HUMAN TRAFFICKING

Human trafficking occurs when an individual, by himself or through an intermediary, assists the illegal entry of another person into a foreign territory. The trafficker subjects the “alien” to fraudulent practices, violence, threats, or other forms of constraint to take advantage of the individual’s illegal administrative status.⁶⁸ In various instances, the trafficker also looks to profit from the sale of the trafficked individual’s labour or sexual services in the destination country.⁶⁹ The prevalence of trafficking is known to be driven by economic gain, and human trafficking, in particular, is considered to be an especially lucrative trade. This is because unlike the one-time profits of drug and arms trafficking, a single human trafficking “investment” generally yields consistent future profits for the traffickers.⁷⁰ In addition to these profits, human trafficking has notoriously low risks of detection, apprehension, prosecution, and penalties for traffickers. In some cases, this is due to insufficient laws against trafficking in persons in a given region.⁷¹ Whilst in other instances, the impunity of the traffickers can be ascribed to the decidedly “soft” approach adopted by state authorities when dealing with human traffickers at the prosecution stage.⁷² Hence, human trafficking has been described as the “perfect crime”⁷³ because of an apparent absence of criminal liability.

⁶⁸ Dedecker, Jean-Marie, “Belgium: Player trafficking in Belgium: analysis” (2006) WSLR Volume 4 Issue 11

⁶⁹ Gallagher, Anne. “Trafficking, smuggling and human rights: tricks and treaties.” *Forced migration review* 12, no. 25 (2002) p/25

⁷⁰ Fredette, Kalen. “Revisiting the UN protocol on human trafficking: Striking balances for more effective legislation.” *Cardozo J. Int’l & Comp. L.* 17 (2009): 101. p/108

⁷¹ Adesina, Olubukola S. “Modern day slavery: poverty and child trafficking in Nigeria.” *African Identities* 12, no. 2 (2014): 165-179. p/178

⁷² Fredette, Kalen. “Revisiting the UN protocol on human trafficking: Striking balances for more effective legislation.” *Cardozo J. Int’l & Comp. L.* 17 (2009): 101. p/121

⁷³ Gallagher, Anne. “Recent legal developments in the field of human trafficking: A critical review of the 2005 European Convention and related instruments.” *European Journal of Migration and Law* 8, no. 2 (2006): 163-189. p/163

For several years, there was no internationally accepted definition of trafficking.⁷⁴ However, the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons (Trafficking Protocol) provided a globally accepted definition for the problem. According to “The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016”,⁷⁵ the Trafficking Protocol is one of the most prominent international instruments introduced to abolish human trafficking.⁷⁶ Hyland explained that the Trafficking Protocol is the first international instrument to comprehensively define trafficking, and that “the Protocol reflects the first international consensus on the definition of trafficking, which is the first step toward a concerted international effort to combat trafficking”.⁷⁷

Thus, Article 3 paragraph (a) of the Trafficking Protocol defines trafficking in persons as the:

*Recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or the use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.*⁷⁸

It has been contended that the definition is intentionally broad so it can be applied flexibly to multiple contexts of exploitation.⁷⁹ This empowers the Protocol’s definition to address other yet-to-be-conceived forms of trafficking and guarantees the instrument’s longevity.⁸⁰ The trafficking definition has a threefold structure:

1. An ACT, consisting of: Recruitment; transportation; transfer; harbouring or receipt of persons.
2. By MEANS of: Threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or position of vulnerability, giving or receiving payments or benefits to achieve consent of a person having control over another. Article 3(b)

⁷⁴ Gallagher, Anne, and Paul Holmes. "Developing an effective criminal justice response to human trafficking: Lessons from the front line." *International criminal justice review* 18, no. 3 (2008): 318-343. p/319

⁷⁵ European Commission's "The EU Strategy towards the eradication of trafficking in human beings 2012-2016" p. 4

⁷⁶ UN General Assembly, 'Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations convention against transnational organized crime' (2000) 55 GA res 25.

⁷⁷ Hyland, Kelly E., 'The Impact of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children' (2001) 8(2) *Human Rights Brief* 12. p. 31

⁷⁸ UN General Assembly, 'Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations convention against transnational organized crime' (2000) 55 GA res 25

⁷⁹ Saner, Raymond, Lichia Yiu, and Laurel Rush. "The measuring and monitoring of human trafficking." *Public Administration and Policy* (2018). p/95

⁸⁰ Fredette, Kalen. "Revisiting the UN protocol on human trafficking: Striking balances for more effective legislation." *Cardozo J. Int'l & Comp. L.* 17 (2009): 101. p/114

of the Trafficking Protocol states that consent on the part of the victim is irrelevant if one of the means is used.⁸¹

3. For the PURPOSE of: Exploitation (including, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs, the exploitation of the prostitution of others, or other forms of sexual exploitation).⁸²

All three elements must be present for the Trafficking Protocol to become operational. Therefore, for trafficking to have occurred, there would need to be an ‘act’ through a ‘means’ and with a ‘purpose of exploitation’,⁸³ such as when the victims of trafficking are recruited through the means of deception for exploitative labour. The only exception to this rule is in the case of minors (under 18 persons), wherein the ‘means’ requirement is waived,⁸⁴ as codified in Articles 3(c) of the Trafficking Protocol.⁸⁵ This exception was added to acknowledge the fact that a child is “unable to consent to certain types of activities”.⁸⁶ Consequently, a minor is a victim of trafficking once they have suffered the above ‘act’ and ‘purpose’ elements of the Trafficking Protocol. For the child, coercion, deceit, abuse of power or any other “means” of trafficking does not need to be proven, as is often the case when dealing with adult victims.⁸⁷ Thus, this thesis focuses on the trafficking of minors due to their specific vulnerabilities, and the “ruthless exploitation” trafficked children generally face, according to UNICEF.⁸⁸

2.2 INTERNATIONAL LEGAL INSTRUMENTS ON ANTI-TRAFFICKING

International law is an essential tool in the fight against human trafficking, especially considering the number of regulatory instruments introduced to combat this epidemic.⁸⁹ The

⁸¹ UN General Assembly, 'Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations convention against transnational organized crime' (2000) 55 GA res 25.

⁸² Gallagher, Anne. "Human rights and the new UN protocols on trafficking and migrant smuggling: A preliminary analysis." *Hum. Rts. Q.* 23 (2001): 975. p/986-7

⁸³ Van Dijk, Jan, Maarten Cruyff, Peter Van Der Heijden, and Suzanne LJ Kragten-Heerdink. "Monitoring Target 16.2 of the United Nations sustainable development goals: a multiple systems estimation of the numbers of presumed human trafficking victims in the Netherlands in 2010-2015 by year, age, gender, form of exploitation and nationality." (2018) UNODC. p/6

⁸⁴ Gallagher, Anne. "Human rights and the new UN protocols on trafficking and migrant smuggling: A preliminary analysis." *Hum. Rts. Q.* 23 (2001): 975. p/986-7

⁸⁵ UN General Assembly, 'Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations convention against transnational organized crime' (2000) 55 GA res 25.

⁸⁶ Lelliott, Joseph, 'Smuggled and Trafficked Unaccompanied Minors: Towards a Coherent, Protection-Based Approach in International Law' (2017) 29(2) *International Journal of Refugee Law* 238. p/243

⁸⁷ Save the Children, 'Young Invisible Enslaved: Children victims of trafficking and labour exploitation in Italy' (2017) <https://resourcecentre.savethechildren.net/node/12527/pdf/young_invisible_enslaved_2017.pdf> accessed on 21/02/2018. p/15

⁸⁸ UNICEF 'Child Trafficking: More Precious than Gold' (2007) Cited in O'Connell Davidson, Julia. "Moving children? Child trafficking, child migration, and child rights." *Critical social policy* 31, no. 3 (2011): 454-477. p/459

⁸⁹ King, Lindsey, "International Law and Human Trafficking" (*Human Rights and Human Welfare*) <<http://www.du.edu/korbel/hrhw/researchdigest/trafficking/InternationalLaw.pdf>> accessed on 29 August 2016. p/88

United Nations (UN), along with other governmental bodies and states recognised the importance of protecting children from precarious circumstances related to human rights and trafficking, and have consequently produced several declarations and resolutions to aid this objective. Similar to the international regulatory and legal environment, FIFA also commissioned an independent report by John Ruggie, Professor in Human Rights and International Affairs at Harvard Kennedy School, and former top United Nations official on business and human rights.⁹⁰ Ruggie was tasked with developing recommendations on how FIFA can embed respect for human rights across its global operations,⁹¹ and his report consequently led to FIFA's commitment to respect all internationally recognised human rights through its first Human Rights Policy in 2017.⁹² FIFA's Human Rights Policy is considered further in chapter 7.⁹³

Nonetheless, this section focuses on three international instruments from the UN that will be most relevant to the analysis of football trafficking. The section discusses the provisions and their relevance by way of an introduction, whereas further analysis on the adaptability of the instruments within the specific context of football trafficking is discussed later in chapter 5.⁹⁴

2.2.1 UN Convention against Transnational Organised Crime (UNTOC)

The UNTOC is a multilateral treaty that was adopted by the UN General Assembly (UNGA) on 15 November 2000, it came into effect on 25 December 2003,⁹⁵ and has been ratified by 147 countries.⁹⁶ States that ratify this instrument commit themselves to taking a series of measures against transnational organised crime.⁹⁷ The treaty represents the first serious attempt by the international community to invoke the weapon of international law in the battle against transnational organised crime.⁹⁸ The treaty is commonly referred to as the Palermo Protocols, and it is supplemented by the Protocol to Prevent, Suppress and Punish

⁹⁰ Gavel, Doug, "Independent Report Recommends how FIFA Needs to Manage the Far-Reaching Human Rights Risks of its Global Enterprise" (2016) Harvard Kennedy School <<https://www.hks.harvard.edu/announcements/independent-report-recommends-how-fifa-needs-manage-far-reaching-human-rights-risks>> accessed on 18/08/2021

⁹¹ Ruggie, John, "For the game. For the world. FIFA and human rights" (2016) Harvard Kennedy School <https://www.hks.harvard.edu/sites/default/files/Ruggie_humanrightsFIFA_reportApril2016.pdf> accessed on 31/08/19.

⁹² FIFA, "FIFA's Human Rights Policy" (May 2017 edition)

⁹³ 7.4.2: Lack of recognition of wider human rights

⁹⁴ 5.3: Comparing Performance

⁹⁵ United Nations Office on Drugs and Crime, "United Nations Convention against Transnational Organized Crime and The Protocols Thereto" of 25 December 2003

⁹⁶ United Nations Treaty Collection, "12. United Nations Convention against Transnational Organized Crime" New York, 15 November 2000 <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12&chapter=18&lang=en> accessed 30/07/2020

⁹⁷ UNODC, "United Nations Convention against Transnational Organized Crime and the Protocols Thereto" <<https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>> accessed on 19/11/2020

⁹⁸ Gallagher, Anne. "Human rights and the new UN protocols on trafficking and migrant smuggling: A preliminary analysis." *Hum. Rts. Q.* 23 (2001): 975. p/976

Trafficking in Persons, especially Women and Children (Trafficking Protocol);⁹⁹ the Protocol against the Smuggling of Migrants by Land, Sea and Air (Smuggling Protocol);¹⁰⁰ and the Protocol against the Illicit Manufacturing and Trafficking in Firearms (Firearms Protocol).¹⁰¹ Of the three protocols, the Trafficking and Smuggling protocols are the most important to this discussion on human trafficking.

Trafficking Protocol

The Trafficking Protocol is a multifaceted instrument which is considered to be the most comprehensive and explicitly articulated international legal framework on human trafficking.¹⁰² The United Nations Office on Drugs and Crime (UNODC) is responsible for implementing the protocol, and offers the practical help to nation states regarding drafting their laws, creating comprehensive national anti-trafficking strategies, and assisting with implementation.¹⁰³

There are two overriding accomplishments of the Trafficking Protocol. The first is in developing a global legally binding instrument with an agreed definition on trafficking in persons.¹⁰⁴ The second is by replacing a strict, traditional law enforcement approach to anti-trafficking, with a three-pronged (3-P) approach that takes into account trafficking prevention, punishment of traffickers, and protection of victims.¹⁰⁵ As Fredette explained, the 3-P approach enjoys considerable overlap, because successful prosecution which results in incarceration will not only operate as a specific deterrent and, hence, prevent future offenses, but it will simultaneously protect the victims.¹⁰⁶

Prosecution

The Protocol sets out mandatory criminal law enforcement provisions for state parties, directed at successfully apprehending and prosecuting traffickers. Article 5 of the protocol requires nation states to adopt necessary measures to criminalise trafficking, attempted trafficking, and other intentional participation in a trafficking scheme, in order to protect and deter the further trafficking of women and children.¹⁰⁷

⁹⁹ United Nations Trafficking in Persons Protocol (UN TIP Protocol) of 25 December 2003

¹⁰⁰ United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air of 28 January 2004

¹⁰¹ United Nations Firearms Protocol of 3 July 2005

¹⁰² Fredette, Kalen. "Revisiting the UN protocol on human trafficking: Striking balances for more effective legislation." *Cardozo J. Int'l & Comp. L.* 17 (2009): 101. P.112

¹⁰³ United Nations, "Legal Tools" <<https://www.unodc.org/unodc/en/legal-tools/index.html>> accessed on 19/11/2020

¹⁰⁴ UNODC, "United Nations Convention against Transnational Organized Crime and the Protocols Thereto" <<https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>> accessed on 19/11/2020

¹⁰⁵ Fredette, Kalen. "Revisiting the UN protocol on human trafficking: Striking balances for more effective legislation." *Cardozo J. Int'l & Comp. L.* 17 (2009): 101. P.112

¹⁰⁶ Ibid. p/120

¹⁰⁷ Article 5 of the UN Trafficking in Persons Protocol

Prevention

The Protocol contains provisions which are purportedly "victim-focused"¹⁰⁸ and directed at preventing trafficking offenses. Article 9 of the Trafficking Protocol calls on state parties to develop comprehensive programs policies and measures to combat and prevent trafficking and protect victims from re-victimisation. The provision requires states to "take or strengthen measures ... to alleviate the factors that make...women and children [especially] vulnerable to trafficking, such as poverty, underdevelopment, and lack of equal opportunities."¹⁰⁹

Though the identified aspects are well-known push factors that influence the occurrence of trafficking, the provision only requests that member states "endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons".¹¹⁰ This requirement does not provide a concrete framework for tackling the listed push factors, nor does it provide instructions on how the measures are going to be implemented in practice. As acknowledged in the Travaux Préparatoires of the Trafficking Protocol, "the high costs of these benefits and the fact that they apply equally to all State parties in which victims are found, regardless of the level of socio-economic development or availability of resources, precluded these from being made obligatory."¹¹¹ Thus, without making the Article 9 requirement obligatory and collaborating with state parties to devise a concrete way to level the resource, structural, and general socio-economic gap between the source and destination countries, the propensity of the Trafficking Protocol to actually *prevent* the occurrences of human trafficking is likely to be limited.

Protection

For anti-trafficking legislation to be thorough and effective, it is commonly held that there must be strong provisions for the protection of trafficked persons. To this end, Article 6(1) of the Trafficking Protocol requires that state parties protect the privacy and identity of victims by making legal proceedings confidential. Article 6(2) requires that States provide victims with relevant information and legal assistance during any criminal proceedings against offenders. Article 6(3) provides that state parties consider implementing measures to

¹⁰⁸ Fredette, Kalen. "Revisiting the UN protocol on human trafficking: Striking balances for more effective legislation." *Cardozo J. Int'l & Comp. L.* 17 (2009): 101. p/127

¹⁰⁹ Article 9 of the UN Trafficking in Persons Protocol

¹¹⁰ Article 9(2) of the UN Trafficking in Persons Protocol

¹¹¹ United Nations, General Assembly, Report of the Ad Hoc Committee on the Elaboration of a Convention Against Transnational Organized Crime on the work of its first to eleventh sessions, Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, UN GAOR 55th Sess., § 3, UN Doc. A/55/383/Add.1 (2000) p/288, § 62

provide for the physical, psychological, and social recovery of victims of trafficking in persons. Article 6(4) requires that state parties consider the age, gender, and special needs of victims of trafficking in persons. Article 6(5) adds further that each Party "shall endeavour to provide for" the physical safety of victims of trafficking while they are within its territory. Article 6(6) mandates legislation affording victims compensation, which provides additional incentives for victims to cooperate with the prosecution.¹¹² Article 7 calls on member states to consider measures for allowing trafficked victims to remain in the state into which they were trafficked.¹¹³ Article 8 deals with the repatriation of the trafficking victim, and notes that this should be done with regard for the safety of the person.¹¹⁴

Despite the inclusion of these protection provisions, the Protocol has received criticism for being overly oriented towards the protection and assistance of victims primarily due to their utility as witnesses for trials.¹¹⁵ This is further validated by the fact that some of the measures are mandatory for the member states, whilst others are only optional.¹¹⁶ Coincidentally, Articles which de-emphasise the victim's role as a witness, like Article 6(3),(4) and Article 7, carry markedly diminished State obligations.¹¹⁷ Article 6(3) requires that States only "consider" the aforementioned measures, rather than directly compelling them to provide such victim assistance.¹¹⁸

Article 7 requires that states "consider" adopting measures to permit stay for trafficked persons. Without making this a mandatory requirement,¹¹⁹ States can refuse a person from staying, especially when the individual's "victim" status is still in dispute. In this instance, the child runs the risk of being removed from the destination country as part of a State's claim to protecting the victim.¹²⁰ However, the decision to return a trafficked child to their home country is often made without consideration of the complex circumstances that led to their being trafficked in the first instance. For example, trafficking victims who are returned

¹¹² Article 6 of the UN Trafficking in Persons Protocol

¹¹³ Article 7 of the UN Trafficking in Persons Protocol

¹¹⁴ Article 8 of the UN Trafficking in Persons Protocol

¹¹⁵ Ray, Nilanjana. "Looking at trafficking through a new lens." *Cardozo JL & Gender* 12 (2005) 909. p/918-919. Cited in Fredette, Kalen. "Revisiting the UN protocol on human trafficking: Striking balances for more effective legislation." *Cardozo J. Int'l & Comp. L.* 17 (2009): 101. p/130

¹¹⁶ Scarpa, Silvia. "Child trafficking: International instruments to protect the most vulnerable victims." *Family Court Review* 44, no. 3 (2006): 429-447.p/437

¹¹⁷ Fredette, Kalen. "Revisiting the UN protocol on human trafficking: Striking balances for more effective legislation." *Cardozo J. Int'l & Comp. L.* 17 (2009): 101. p/130

¹¹⁸ Allain, Jean. "No Effective Trafficking Definition Exists: Domestic Implementation of the Palermo Protocol' (2014)." *Albany Government Law Review* 7: 111. p/122. Cited in Haynes, Dina Francesca. "Used, abused, arrested and deported: Extending immigration benefits to protect the victims of trafficking and to secure the prosecution of traffickers." *Hum. Rts. Q.* 26 (2004): 221. p/240

¹¹⁹ Haynes, Dina Francesca. "Used, abused, arrested and deported: Extending immigration benefits to protect the victims of trafficking and to secure the prosecution of traffickers." *Hum. Rts. Q.* 26 (2004): 221. p/240

¹²⁰ Brennan, Denise, and Sine Plambeck. "Moving forward—Life after trafficking." *Anti-Trafficking Review* 10 (2018). p/3

potentially face the same “pressures upon return that had prompted their departure.”¹²¹ They are deported to a “home” and family circumstances filled with anxiety and disappointment.¹²² In the case of victims of football trafficking, the players are left to face their families or wider communities who likely financed the ultimately unsuccessful clandestine trip abroad.¹²³ Some parents of the trafficking victims have even asked their children not to come back to Africa and to stay abroad, even under precarious circumstances, just so they could achieve their footballing aspirations.¹²⁴ Outside football, returned victims have faced additional problems, such as being mocked for coming back with no money, receiving demands for the repayment of debts, and being shamed for the type of work engaged in whilst abroad.¹²⁵ Hence, sending child victims of trafficking back home may not be in the child’s best interest, and may contravene Article 9(b) of the Trafficking Protocol, which compels States to protect the child victims from re-victimisation.

Smuggling Protocol

The Smuggling Protocol adopted by the UN General Assembly resolution 55/25 entered into force on 28 January 2004. The Protocol deals with the growing problem of organised criminal groups who smuggle migrants, often at substantial risk to the migrants and at great profit for the smugglers. The major achievement of the Protocol was that, for the first time in a global international instrument, a definition of smuggling of migrants was developed and agreed upon.¹²⁶ The Protocol aims to prevent smuggled migrants from facing the worst forms of exploitation which often characterises the smuggling process,¹²⁷ by protecting the rights of smuggled migrants.¹²⁸

Unlike trafficking, smuggling does not entail coercion or deception, indicating that smuggling is often a voluntary act on the part of those smuggled.¹²⁹ Smugglers are said to

¹²¹ Lisborg, Anders, Sine Plambech, "Going Back• Moving On: A synthesis report of the trends and experiences of returned trafficking victims in Thailand and the Philippines" ILO, Bangkok, 2009. Cited in Paasche, Erlend, May-Len Skilbrei, and Sine Plambech. "Vulnerable Here or There? Examining the vulnerability of victims of human trafficking before and after return." *Anti-trafficking review* (2018): 34-51. p/35

¹²² Brennan, Denise, and Sine Plambech. "Moving forward—Life after trafficking." *Anti-Trafficking Review* 10 (2018). p/3

¹²³ Esson, James. "Better off at home? Rethinking responses to trafficked West African footballers in Europe." *Journal of Ethnic and Migration Studies* 41, no. 3 (2015): 512-530. p/521

¹²⁴ Edwards, Piers. 'Underage African footballers 'trafficked' to Laos' (*BBC Africa sport*, 21 July 2015) <<http://www.bbc.co.uk/news/world-africa-33595804>> accessed on 01/11/2017

¹²⁵ Adams, Cherish. "Re-trafficked victims: How a human rights approach can stop the cycle of re-victimization of sex trafficking victims." *Geo. Wash. Int'l L. Rev.* 43 (2011): 201. p/201-202

¹²⁶ UNODC, "United Nations Convention against Transnational Organized Crime and the Protocols Thereto" <<https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>> accessed on 19/11/2020

¹²⁷ UNODC, "United Nations Convention against Transnational Organized Crime and the Protocols Thereto" <<https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>> accessed on 19/11/2020

¹²⁸ Article 2 of the UN Smuggling Protocol

¹²⁹ Stoyanova, Vladislava. "Complementary protection for victims of human trafficking under the European Convention on Human Rights." *Goettingen J. Int'l L.* 3 (2011): 777. p/781-2

be present and participate actively during the recruitment and transportation processes.¹³⁰ The services of smugglers end when those smuggled have reached their destination, whereas trafficking would result in the persons being exploited upon arrival in the destination country.¹³¹ In some situations where smuggled migrants are forced into dependency through mental and/or physical violence, or where they are exploited, this could be seen as trafficking rather than smuggling.¹³² This is because when exploitation occurs, the smuggled migrant is arguably no longer willingly taking part in the activities that are imposed upon them.

2.2.2 UN Convention on the Rights of the Child (UNCRC)

The UNCRC was adopted by the United Nations General Assembly in 1989, and it came into force on 2 September 1990. The UNCRC is the most highly ratified instrument in international law (196 parties), with the USA isolated as the principal dissenter.¹³³ The UNCRC was the first comprehensive, internationally binding treaty to give full recognition to the individual rights of children.¹³⁴ The instrument was the driving and decisive force in mobilising the international community in favour of respecting and protecting the rights of children.¹³⁵ It has 54 articles that cover all aspects of a child's life and sets out the civil, political, economic, social, and cultural rights that all children everywhere are entitled to.¹³⁶ Through the UNCRC, child rights would penetrate all sectors of society, such as, from the schools to the military, from the family to the sport context, and applying in public as well as private domains, "with no exception."¹³⁷ The UNCRC is the main reference regarding the situation of trafficked children, considering its provisions deal with the illicit transfer of children, their exploitation, and trafficking.¹³⁸ It is expected that signatories to the treaty adapt their laws, policies, programmes, and institutions, to the minimum standards and requirements enshrined within the UNCRC.¹³⁹

¹³⁰ Ellis, Tom and James Akpala, 'Making sense of the relationship between trafficking in persons, human smuggling, and organised crime: the case of Nigeria' (2011) 84(1) *The Police Journal* 13. p/3

¹³¹ Stoyanova, Vladislava. "Complementary protection for victims of human trafficking under the European Convention on Human Rights." *Goettingen J. Int'l L.* 3 (2011): 777. p/781-2

¹³² King, Lindsey, "International Law and Human Trafficking" (*Human Rights and Human Welfare*) <<http://www.du.edu/korbel/hrhw/researchdigest/trafficking/InternationalLaw.pdf>> accessed on 29 August 2016, p. 89

¹³³ Killkelly, Ursula, and Laura Lundy. "Children's rights in action: using the UN Convention on the Rights of the Child as an auditing tool." *Child & Fam. lq* 18 (2006): 331. p/331

¹³⁴ Kinkelly, Ursula. "Protecting children's rights under the ECHR: the role of positive obligations." *N. Ir. Legal Q.* 61 (2010): 245. p/246

¹³⁵ Doek, Jaap E. "The CRC 20 years: An overview of some of the major achievements and remaining challenges." *Child abuse & neglect* 33, no. 11 (2009): 771-782. p/772

¹³⁶ UNICEF, "How We Protect Children's Rights with the UN Convention on the Rights of the Child" <<https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>> accessed on 22/11/2020

¹³⁷ David, Paulo. "Respecting the rights of the child in sports: Not an option." In *International Handbook on Child Rights and School Psychology*, pp. 377-388. Springer, Cham, 2020. p/378

¹³⁸ Scarpa, Silvia. "Child trafficking: International instruments to protect the most vulnerable victims." *Family Court Review* 44, no. 3 (2006): 429-447. p/439

¹³⁹ David, Paulo. "Respecting the rights of the child in sports: Not an option." In *International Handbook on Child Rights and School Psychology*, pp. 377-388. Springer, Cham, 2020. p/378

The United Nations Committee on the Rights of the Child monitors the Convention's implementation.¹⁴⁰ The committee consists of 10 experts (Art. 43 UNCRC), and state parties are expected to regularly submit reports on the measures they have taken to enforce the UNCRC's provisions. The Committee in turn produces a set of concluding observations on the extent to which a State is complying with its obligations.¹⁴¹

The UNCRC defines a child as "every human being below the age of eighteen years", and recognises that children require special consideration based on their increased susceptibility to exploitation.¹⁴² The UNCRC contains specific provisions concerning the well-being of minors, including their rights to:

- Being protected from abduction, sale or moved illegally to a different place in or outside their country for the purpose of exploitation.¹⁴³ This provision is augmented by the optional Protocol on the Sale of Children, Child prostitution and Child Pornography (2000), which prohibits trafficking in children for any purpose, including for exploitation and forced labour.¹⁴⁴
- Protection from all forms of mistreatment, physically, or mentally;¹⁴⁵
- Special care for the child when deprived of family environment;¹⁴⁶
- Protection from economic exploitation and from performing work that will interfere with the child's education;¹⁴⁷
- A standard of living adequate for the child's physical, mental, spiritual, moral, and social development;¹⁴⁸
- Rehabilitation, as a victim of trafficking;¹⁴⁹
- Protection from all other forms of exploitation prejudicial to any aspects of a child's welfare.¹⁵⁰

¹⁴⁰ Kinkelly, Ursula. "Protecting children's rights under the ECHR: the role of positive obligations." *N. Ir. Legal Q.* 61 (2010): 245. p/246

¹⁴¹ Tobin, John, and Judy Cashmore. "Thirty years of the CRC: child protection progress, challenges and opportunities." *Child abuse & neglect* (2020): 104436. p/5

¹⁴² UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol.1577. (1999) The Preamble.

¹⁴³ Article 35 of the UNCRC

¹⁴⁴ UN Office of the High Commissioner for Human Rights, "International Instruments Concerning Trafficking in Persons" (2014) *Women's Rights and Gender Section.* p/1 <https://www.ohchr.org/Documents/Issues/Women/WRGS/OnePaggers/IntInstrumentsconcerningTraffickingpersons_Aug2014.pdf> accessed on 25/11/2018

¹⁴⁵ Article 19 of the UNCRC

¹⁴⁶ Article 20 of the UNCRC

¹⁴⁷ Article 32(1) of the UNCRC

¹⁴⁸ Article 27 of the UNCRC

¹⁴⁹ Article 39 of the UNCRC

¹⁵⁰ Article 36 of the UNCRC

The "Best Interests of the Child" principle

Outside the provisions that protect children from trafficking, an additional area of specific interest within this study is Article 3(1) UNCRC, which provides that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.¹⁵¹ The best interest principle recognises the vulnerability of children and the need to offer them special protections by adopting a paternalistic approach.¹⁵² However, the choice of terminology used by the drafters suggests that the child's best interests are not to be considered as the single overriding factor,¹⁵³ but rather, are to be translated as “a” primary consideration instead of “the” primary or paramount factor in matters relating to a child.¹⁵⁴ In considering the best interests of the child, Article 3 UNCRC is often read in conjunction with the autonomy principle in Article 12 UNCRC. Article 12 establishes the right of every child to freely express his or her views in all matters affecting them, and the subsequent right for those views to be given due weight according to the child's age and maturity.¹⁵⁵ The autonomy principle is discussed in greater detail in Chapter 10.¹⁵⁶

Zermatten explained that there are three elements to the best interest principle. First, it is a rule of procedure, as whenever a decision is to be taken that will affect a specific child or a group of children, the decision-making process must consider the possible impacts of the decision (positive or negative) on the child/children concerned.¹⁵⁷ Second, the best interests of the child is the foundation for a substantive right,¹⁵⁸ as State parties have an obligation to put in place the necessary mechanisms needed to apply the principle “in relation to all actions concerning children”, rather than only in legal and administrative proceedings or other narrowly defined contexts.¹⁵⁹ Third, the best interests of the child is a fundamental,

¹⁵¹ Article 3 of the UNCRC

¹⁵² Esson, James, and Eleanor Drywood. "Challenging popular representations of child trafficking in football." *Journal of Criminological Research, Policy and Practice* (2018). p/64

¹⁵³ Alston, Philip. "The best interests principle: towards a reconciliation of culture and human rights." *International Journal of Law, Policy and the Family* 8, no. 1 (1994): 1-25. p/12

¹⁵⁴ Parker, Stephen. "The best interests of the child-principles and problems." *International Journal of Law, Policy and the Family* 8, no. 1 (1994): 26-41. p/28

¹⁵⁵ Article 12(1) of the UNCRC

¹⁵⁶ 10.3.2: The voice of the child

¹⁵⁷ Zermatten, Jean. "The best interests of the child principle: literal analysis and function." *The International Journal of Children's Rights* 18, no. 4 (2010): 483-499. p/485

¹⁵⁸ Ibid.

¹⁵⁹ Alston, Philip. "The best interests principle: towards a reconciliation of culture and human rights." *International Journal of Law, Policy and the Family* 8, no. 1 (1994): 1-25. p/4

interpretive legal principle, based on the recognition that an adult is only in a position to take decisions on behalf of a child because of the child's lack of experience and judgment.¹⁶⁰

The UNCRC committee continues to issue recommendations to State parties, requesting that they fully operationalise the best interests of the child in all the policies, projects, and programmes which have an impact on the daily life of children.¹⁶¹ The best interest provision has at times been criticised for being a “vague principle”,¹⁶² because no one really knows what is in the best interest of a child, or a group of children.¹⁶³ Though, as Doek argued, the thorough implementation of the UNCRC to its full potential will undoubtedly be in the child's best interest.¹⁶⁴

2.2.3 UN Sustainable Development Goals (UNSDGs)

At the UN Summit in September 2015, world leaders accepted to adopt the 17 SDGs, and on 1 January 2016 the SDGs came into force. The SDGs apply to all countries and is an attempt to mobilise efforts to end all forms of poverty, fight inequalities, and tackle climate change, whilst ensuring that no one is left behind.¹⁶⁵ The SDGs' are considered to be a uniquely powerful international mechanism,¹⁶⁶ not only because of its exhortation to leave no one behind, but also due to the universality of the instrument. This universality and emphasis on human rights has led to praise for the SDGs because the goals are presented in a manner that makes it applicable to both developing and developed countries.¹⁶⁷ In line with the SDGs human rights emphasis, the goal of eradicating human trafficking is listed under Goal 5, Gender Equality; Goal 8, Decent Work and Economic Growth; and Goal 16, Peace, Justice and Strong Institutions. Regarding the specific task of stopping child trafficking, goals 8.7 and 16.2 provide that nation states:

8.7 Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and

¹⁶⁰ Zermatten, Jean. "The best interests of the child principle: literal analysis and function." *The International Journal of Children's Rights* 18, no. 4 (2010): 483-499. p/485

¹⁶¹ Ibid. p/499

¹⁶² Kelly, Joan B. "The best interests of the child: A concept in search of meaning." *Family Court Review* 35, no. 4 (1997): 377-387. p/377

¹⁶³ Esson, James, and Eleanor Drywood. "Challenging popular representations of child trafficking in football." *Journal of Criminological Research, Policy and Practice* (2018). p/64

¹⁶⁴ Doek, Jaap E. "The CRC 20 years: An overview of some of the major achievements and remaining challenges." *Child abuse & neglect* 33, no. 11 (2009): 771-782. p/380

¹⁶⁵ United Nations, "The Sustainable Development Agenda: 17 Goals to Transform Our World" <<https://www.un.org/sustainabledevelopment/development-agenda/>> accessed 20/11/2019

¹⁶⁶ Holliday, Jenna, Jenna Hennebry, and Sarah Gammage. "Achieving the sustainable development goals: surfacing the role for a gender analytic of migration." (2019): 2551-2565. p/2552-3

¹⁶⁷ Kotiswaran, Prabha. "Trafficking: A development approach." *Current Legal Problems* 72, no. 1 (2019): 375-416. p/383-4

elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms

16.2 End abuse, exploitation, trafficking, and all forms of violence against and torture of children.¹⁶⁸

In addition to putting the end of child trafficking on the agenda, the SDGs also target the facilitation of safe mobility in Goal 8.8, which addresses the need to protect labour rights and promote safe and secure working environments for all migrant workers.¹⁶⁹

2.3 WHAT IS FOOTBALL TRAFFICKING?

Unlike the accepted definition of human trafficking provided by the Trafficking Protocol, there is no universal definition for football trafficking. However, when the circumstances faced by several African football minors are considered alongside the criteria for the occurrence of trafficking as set by the Protocol, it is apparent that football trafficking is merely a subset of the much larger human trafficking issue. In football, unscrupulous persons adopt the “means” of coercion and deceptive practices to commit the “act” of trafficking and transporting minors from Sub-Saharan Africa to Europe for exploitative “purposes” and financial gain.¹⁷⁰ FIFA, the world governing body of football, admitted that:

Every country is affected by human trafficking, whether as a country of origin, transit or destination for victims... The world of sport, including football, has not been spared from this problem. Every year, thousands of young people, particularly from Africa, Asia and South America, are at risk of being sold a false dream of a career in Europe by those who may aim to exploit them for profit and economic gain.¹⁷¹

The people at the heart of the crime are often the fraudulent football agents/intermediaries looking for a means to make profit through football. The high competition amongst the thousands of licensed and unlicensed agents operating around the world has forced several of them to adopt deceitful means to locate and contract promising young players.¹⁷² The

¹⁶⁸ General Assembly, "Sustainable Development Goals." *SDGs, Transforming our world: the 2030 Agenda* (2015).

¹⁶⁹ Holliday, Jenna, Jenna Hennebry, and Sarah Gammage. "Achieving the sustainable development goals: surfacing the role for a gender analytic of migration." (2019): 2551-2565. p/2553

¹⁷⁰ Esson, James, "10-step guide to football trafficking" (Loughborough News Blog, 2015) <<http://blog.lboro.ac.uk/news/politics/10-step-guide-to-football-trafficking/5/>> accessed on 1st June 2016

¹⁷¹ FIFA, "World Day Against Trafficking in Persons: It's up to all of us" (*FIFA.com*, July 2020) <<https://www.fifa.com/who-we-are/news/it-s-up-to-all-of-us>> accessed on 30/07/2020

¹⁷² McGee, Darragh. "Displacing childhood: Labour exploitation and child trafficking in sport." In *Labour Migration, Human Trafficking and Multinational Corporations: The Commodification of Illicit Flows*, (Routledge, 2012) pp. 71-90. p/72

agents use illegal and unethical methods to acquire the rights to African minors,¹⁷³ often focusing on the Sub-Saharan region (i.e., Nigeria, Ivory Coast, Ghana, and Senegal) because the area exports the greatest number of footballers.¹⁷⁴ The agents mislead the player's parents to make them the child's representative,¹⁷⁵ putting the agent in a position where they can promise the child high paying salaries at top clubs in Europe in order to transport them abroad. Upon arrival in the destination country, the players find themselves earning below the minimum wage requirements (if they are paid at all), whilst having their professional mobility monitored and controlled.¹⁷⁶ Poli reported that some of the African players are made to accept contractual terms which their EU counterparts would otherwise reject.¹⁷⁷

To this end, there are two parts to football trafficking, human trafficking occurring *in* football, and human trafficking occurring *through* football.

2.3.1 Human trafficking in football

This occurs when an intermediary takes advantage of their position with a football minor. Whereby, after the intermediary has received money to procure a contract or trial with a foreign club, the intermediary provides a contract of an exploitative nature, which is to the detriment of the young player.¹⁷⁸ Poli identified that human trafficking *in* football takes place in various circumstances, these include: when there are inconclusive trials abroad and the player is subsequently withdrawn and abandoned; when the player is kept in a football related illegal situation and labour exploitation occurs (for instance, when the player is not paid for his work); and other occasions, such as when there is exclusive control over a player's professional mobility, which may be due to the exploitative contract terms that unknowingly binds them to an intermediary.¹⁷⁹

It can be argued that such instances of human trafficking *in* football are allowed to exist and thrive when the minor is coerced into signing an employment (or legal representation) contract that he or his parents do not thoroughly understand. As Castle and others reported,

¹⁷³ Willenbacher, Eric. "Regulating sports agents: Why current federal and state efforts do not deter the unscrupulous athlete-agent and how a national licensing system may cure the problem." . *John's L. Rev.* 78 (2004): 1225. p/1225-6

¹⁷⁴ Poli, Raffaele. "African migrants in Asian and European football: hopes and realities." *Sport in Society* 13, no. 6 (2010): 1001-1011. p/1008

¹⁷⁵ McGee, Darragh. "Displacing childhood: Labour exploitation and child trafficking in sport." In *Labour Migration, Human Trafficking and Multinational Corporations: The Commodification of Illicit Flows*, (Routledge, 2012) pp. 71-90. p/72

¹⁷⁶ Dedecker, Jean-Marie, "Belgium: Player trafficking in Belgium: analysis" (2006) WSLR Volume 4 Issue 11

¹⁷⁷ Poli, Raffaele. "African migrants in Asian and European football: hopes and realities." *Sport in Society* 13, no. 6 (2010): 1001-1011. p/1007

¹⁷⁸ Esson, James, 'Better off at home? Rethinking responses to trafficked West African footballers in Europe' (2015) 41(3) *Journal of Ethnic and Migration Studies* 512, p. 516

¹⁷⁹ Poli, Raffaele, "The migrations of African football players to Europe: human trafficking and neo-colonialism in question" (2010) *Football for Development*, Vienna, Austria. <http://www.footballfordevelopment.net/uploads/tx_drbllob/storage/Poli_migration-of-African-football-players_01.pdf>.

African minors have been known to sign contracts in foreign languages, resulting in them “diverting a large proportion of their earnings to an agent” without being aware of the terms and consequences of the agreement.¹⁸⁰ These contracts allow the unscrupulous agents to take advantage of young players for a considerable number of years, as the players are kept in situations of debt bondage. Zimmerman and Schenker explained that debt bondage occurs when a victim of trafficking is told that they are in debt to the lending agents or traffickers, and that they must pay for undeclared expenses.¹⁸¹ Such expenses could include demanding money back for travel costs, or money for the documents procured during the course of undertaking the clandestine trip. The costs are demanded as a means of pushing the victims to work beyond fatigue to repay the supposed debt. In a football context, this translates to scenarios whereby children are expected to play and train – under instruction from their trafficker – for a substantial period of time, without appropriate care or regard given to the child.¹⁸² These circumstances are detrimental to the child’s physical and mental well-being, and most of all, are not in the child’s best interest.¹⁸³

Admittedly, there is a significant overlap between trafficking *in* football and other forms of labour exploitation. Within football, the unscrupulous intermediaries and economically powerful multinational sports franchises combine to obtain ownership of and control over the life of the young players.¹⁸⁴ Whereas with labour exploitation, boys are trafficked by local syndicates that use false papers to transport them, as they threaten the boys with disclosure to the immigration authorities if the boys try to escape.¹⁸⁵ The victims of trafficking *in* football, modern slavery, and labour exploitation, mostly find themselves in circumstances that are comparable to one another.

¹⁸⁰ Castle, Stephen, Alex Duval Smith and Lloyd Rundle. 'Inquiry into 'slave trade' in African footballers' (*Independent*, November 2000) <<http://www.independent.co.uk/news/world/europe/inquiry-into-slave-trade-in-african-footballers-622877.html>> accessed on 02/11/2017.

¹⁸¹ Zimmerman, C. and M. B. Schenker, 'Human trafficking for forced labour and occupational health' (2014) *Occup Environ Med* 71(12) 807. p. 807

¹⁸² Edwards, Piers. 'Underage African footballers 'trafficked' to Laos' (*BBC Africa sport*, 21 July 2015) <<http://www.bbc.co.uk/news/world-africa-33595804>> accessed on 01/11/2017

¹⁸³ Article 3 of the “Convention on the Rights of a Child” of 2 September 1990

¹⁸⁴ McGee, Darragh. "Displacing childhood: Labour exploitation and child trafficking in sport." In *Labour Migration, Human Trafficking and Multinational Corporations: The Commodification of Illicit Flows*, (Routledge, 2012) pp. 71-90. p/72

¹⁸⁵ IPEC, *Combating trafficking in children for labour exploitation: A resource kit for policy-makers and practitioners* (International Labour Office; ILO International Programme on the Elimination of Child Labour, Geneva 2008). Book 1, pg. 24

2.3.2 Human trafficking through football

Human trafficking *through* football transpires in an indirect but nevertheless more prevalent manner, as the evidence from the vast majority of human trafficking instances reveal.¹⁸⁶ Human trafficking *through* football occurs when the promises made by an intermediary of the existence of an interested foreign football team is a charade, and on arrival in the destination country, the intermediary abandons the player, having appropriated his fees from the player and his family prior to the journey.¹⁸⁷ The unscrupulous persons involved here are essentially smugglers who give false promises to young players and their families. To convince them to pay large sums of money for expatriation, only to then leave these minors to their own devices on arrival in the foreign country.¹⁸⁸

The trafficking *through* football literature can be divided into two components.

Retain to Exploit

In the first component, the traffickers or smugglers do not abandon the minors on arrival in the destination country, as they are at times part of a wider criminal network who seek to exploit the victim beyond the initial migration, and in order to make continued profits in a non-football sector in the destination country.¹⁸⁹ This component cannot be classed as trafficking *in* football because the minor is trafficked for a different sector, but the child has been trafficked *through* football, with exploitation occurring in a non-football related field. There are various examples of sectors which witness this example of retained labour exploitation when a young player arrives in a foreign country, these could include the agricultural, construction, manufacturing, hospitality, care, prostitution, and domestic work sectors.

When luring the football players into the precarious trafficking *through* football circumstances, “football” is often the key tool that persuades the boys and causes them to pursue the opportunity which may lead to their exploitation. In the general trafficking literature, the luring techniques are often similar. Football is replaced with other promises that hint at prosperity and a better life abroad for the persons being trafficked. Hence, the

¹⁸⁶ Poli, Raffaele, “The migrations of African football players to Europe: human trafficking and neo-colonialism in question” (2010) Football for Development, Vienna, Austria. <http://www.footballfordevelopment.net/uploads/tx_drblob/storage/Poli_migration-of-African-football-players_01.pdf>

¹⁸⁷ Esson, James, 'Better off at home? Rethinking responses to trafficked West African footballers in Europe' (2015) 41(3) Journal of Ethnic and Migration Studies 512, p. 516

¹⁸⁸ Poli, Raffaele, 'The migrations of African football players to Europe: human trafficking and neo-colonialism in question' (2010) Football for Development, Vienna, Austria. <http://www.footballfordevelopment.net/uploads/tx_drblob/storage/Poli_migration-of-African-football-players_01.pdf>

¹⁸⁹ Guild, E., B. Andrees and M. Linden, *Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement* (Geneva: International Labour Office, 2005). p. 3

false promises of a playing contract at a professional European football club are substituted with other key employment or educational opportunities to sway the young persons.¹⁹⁰ These promised employment opportunities could range from working in restaurants and domestic work, accountancy roles, and even education or training opportunities.¹⁹¹ In addition, there are also promises made to the family to persuade them to give their child to the trafficker, such as claims that their child will send money back home and that he will return with valuable experience and savings.¹⁹² The false promises to the individual about foreign work opportunities, and to families about subsequent remittance, aligns these scenarios with the circumstances being replicated in a footballing context. However, football provides a peculiar case because of the parties involved and the uniquely high monetary incentives on offer.

Abandonment

In the second component, the player is abandoned in the foreign country, which creates a further array of problems. Some players are given the opportunity to attend trials in the foreign country whilst others are abandoned upon arrival. Players who are given trial opportunities but do not secure playing contracts, and players who secure short term contracts but their contracts are not renewed by the club, also run the risk of being abandoned upon arrival. This often occurs after the intermediary has taken the “finder’s fee” paid to him by the player’s family, along with the player’s documentation and any money left for the welfare of the player.¹⁹³ FIFA illustrated this example when they explained that “the trafficking of young players to clubs, mainly in Europe, by unscrupulous persons led to some minors, whose talent may not have met the expectations of the respective clubs, being virtually abandoned on the streets in foreign countries.”¹⁹⁴ Abandonment in football trafficking is consistent with general trafficking and smuggling literature, as a large majority of the young players are left in precarious positions, devoid of educational qualifications, and abandoned in a foreign country with little or no means of supporting themselves.¹⁹⁵

¹⁹⁰ Ellis, Tom and James Akpala, 'Making sense of the relationship between trafficking in persons, human smuggling, and organised crime: the case of Nigeria' (2011) 84(1) *The Police Journal* 13. p. 4

¹⁹¹ *Ibid.* p. 6

¹⁹² IPEC, *Combating trafficking in children for labour exploitation: A resource kit for policy-makers and practitioners* (International Labour Office; ILO International Programme on the Elimination of Child Labour, Geneva 2008). Book 1, p. 21

¹⁹³ Esson, James. '10-step guide to football trafficking' <<http://blog.lboro.ac.uk/news/politics/10-step-guide-to-football-trafficking/>> accessed on 02/11/2017. Step 9.

¹⁹⁴ FIFA, “Protection of Minors: FAQ” (September 2016) <<https://img.fifa.com/image/upload/xbnooh14lcaxzadstknx.pdf>> accessed on 10/07/2020

¹⁹⁵ McGee, Darragh. "Displacing childhood: Labour exploitation and child trafficking in sport." In *Labour Migration, Human Trafficking and Multinational Corporations: The Commodification of Illicit Flows*, (Routledge, 2012) pp. 71-90. p/73

The European Commission's (EC) White Paper on Sport attempted to address this issue that sport was facing in a comprehensive manner.¹⁹⁶ Article 4.5 of the White Paper acknowledged that "the most serious problem concerns children who are [...] abandoned in a foreign country [as the circumstances could] foster their further exploitation".¹⁹⁷ Further exploitation, in this instance, could be when the trafficked player is taken abroad and subjected to homelessness, slavery, child prostitution, or has no option but to engage in enforced criminal activity to survive.¹⁹⁸ In reaching its findings, the EC cited reports of the existence of international networks which were managed by unscrupulous intermediaries who conducted the business of transferring young players from Africa to Europe.¹⁹⁹ The EC White Paper noted that "although in most cases this phenomenon [of players being abandoned] does not fall into the legal definition of trafficking in human beings, it is unacceptable."²⁰⁰

With the definition of human trafficking in the Trafficking Protocol, the less common and more direct human trafficking *in* football is in line with the legal definition of human trafficking. Whereas the indirect and more prevalent human trafficking *through* football, may not always amount to human trafficking according to the regulation.²⁰¹ This is because, though the "act" occurs as the player is transported, the subsequent abandonment will not ordinarily amount to being an exploitative "purpose" for the trafficked person. However, there may be other precarious and exploitative circumstances that the player could be subjected to as a consequence of their being abandoned in the destination country.

2.4 THE FOOTBALL TRAFFICKING PROCESS

Esson used his expertise gained from conducting empirical research in this subject area to provide a ten-step guide on the process of football trafficking.²⁰² He interviewed several players from Sub-Saharan Africa who had first-hand experience of football trafficking or irregular football migration, to determine the commonly reported processes.²⁰³

¹⁹⁶ European Commission, "White Paper - White Paper on Sport" Brussels, COM (2007) 391 final. Article 1

¹⁹⁷ European Commission, "White Paper - White Paper on Sport" Brussels, COM (2007) 391 final.

¹⁹⁸ Esson, James, 'Better off at home? Rethinking responses to trafficked West African footballers in Europe' (2015) 41(3) *Journal of Ethnic and Migration Studies* 512, p. 519

¹⁹⁹ Minderhoud, P., and Helen Oosterom-Staples, "Obstacles to free movement of young workers" (2011) *European network on free movement of workers*, p. 4

²⁰⁰ European Commission, "White Paper - White Paper on Sport" Brussels, COM (2007) 391. Article 4.5

²⁰¹ Esson, James. '10-step guide to football trafficking' <<http://blog.lboro.ac.uk/news/politics/10-step-guide-to-football-trafficking/>> accessed on 02/11/2017.

²⁰² Esson, James, "Better Off at Home? Rethinking Responses to Trafficked West African Footballers in Europe", (2015) *Journal of Ethnic and Migration Studies*, 41:3, p. 514

²⁰³ Esson, James, "You have to try your luck: male Ghanaian youth and the uncertainty of football migration" (2015) *Environment and Planning*, vol. 47, p. 1384

Step 1:

*An intermediary, claiming to be a football agent or talent scout, identifies a player in a match or trial and offers him the opportunity to be signed by a foreign club. Recruitment could take place in person or via the internet.*²⁰⁴

The intermediary/agent could be legitimate in some instances, and other instances they are not.²⁰⁵ Their aim is to lure boys from their homes, they produce fake letters which detail lucrative contracts worth thousands of pounds each week.²⁰⁶ Similar to the promises made on the existence of a high paying job abroad, the intermediary offers the young player trials and contracts at emerging Asian and lower tier European clubs,²⁰⁷ and at times at top European and Premier League sides.²⁰⁸ The children are targeted in and around African clubs or academies, on the streets, during informal football tournaments, and via social networking sites.²⁰⁹

Step 2:

*The intermediary asks the player for money in exchange for securing this opportunity: this is akin to a 'finder's fee'. Additional funds are also requested to cover living costs and spending money in the destination country.*²¹⁰

The unscrupulous intermediary stresses to the child and their family that payment must be made to secure the trial or playing contract, and to pay for visas prior to the trip.²¹¹ The intention of the intermediary here is to extract as much money from the family as possible.²¹²

Step 3:

²⁰⁴ Esson, James, and Eleanor Drywood. "Challenging popular representations of child trafficking in football." *Journal of Criminological Research, Policy and Practice* 4, no. 1 (2018): 60-72. 62-63

²⁰⁵ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/181

²⁰⁶ Warburton, Dan, "Fake agents tricking thousands of football-loving kids into child trafficking hell" (*Mirror Online*, 2018) <<https://www.mirror.co.uk/sport/football/news/kids-young-13-dreams-football-12995874>> accessed on 29/7/2018

²⁰⁷ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/181

²⁰⁸ Warburton, Dan, "Fake agents tricking thousands of football-loving kids into child trafficking hell" (*Mirror Online*, 2018) <<https://www.mirror.co.uk/sport/football/news/kids-young-13-dreams-football-12995874>> accessed on 29/7/2018

²⁰⁹ *Ibid.*

²¹⁰ Esson, James, and Eleanor Drywood. "Challenging popular representations of child trafficking in football." *Journal of Criminological Research, Policy and Practice* 4, no. 1 (2018): 60-72. 62-63

²¹¹ Warburton, Dan, "Fake agents tricking thousands of football-loving kids into child trafficking hell" (*Mirror Online*, 2018) <<https://www.mirror.co.uk/sport/football/news/kids-young-13-dreams-football-12995874>> accessed on 29/7/2018

²¹² Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/181

*The player's immediate and extended family often sell family possessions, remove siblings from schooling or take out a loan to meet the costs. This is typically in the region of €/\$ 3-5,000.*²¹³

McGee corroborated Esson's assertion, as he suggested that the unscrupulous intermediaries demand up to \$5,000 from the player's parents in order to transport their child abroad.²¹⁴ To raise these funds, the family is forced into desperate measures to pay the intermediary and secure passage to Europe, and potentially a more prosperous life for their child via professional football.²¹⁵

Step 4:

*The player arrives in a destination country often on a short-term tourist visa. Players sometimes arrive via legal channels, or in other instances, through conventional modes of transportation but with false travel documents.*²¹⁶

Some young players enter the destination country via legal routes and means with short-term valid visas suited for travel, whilst others are transported under more precarious circumstances, for example, in small boats that are unfit for long distance travel.²¹⁷ A number of players are also trafficked abroad using fake passports.²¹⁸ These passports are at times made by forgers who charge the equivalent of 500 Euros in some cases,²¹⁹ and in other instances, the passports are officially produced and released by an embassy. It is also not uncommon for embassy workers to be in collusion with the traffickers to aid the transfer of players abroad. In July 2017, some young African players with entry visas and other documents that were falsified arrived in the Tuscan city of Prato to play for Italian third division side, AC Prato. They were presented as promising players and were brought with the intention to transfer them to a top-ranking football club later, so they would be profitable

²¹³ Esson, James, and Eleanor Drywood. "Challenging popular representations of child trafficking in football." *Journal of Criminological Research, Policy and Practice* 4, no. 1 (2018): 60-72. 62-63

²¹⁴ McGee, Darragh. "Displacing childhood: Labour exploitation and child trafficking in sport." In *Labour Migration, Human Trafficking and Multinational Corporations: The Commodification of Illicit Flows*, (Routledge, 2012) pp. 71-90. p/75

²¹⁵ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/181

²¹⁶ Esson, James, and Eleanor Drywood. "Challenging popular representations of child trafficking in football." *Journal of Criminological Research, Policy and Practice* 4, no. 1 (2018): 60-72. 62-63

²¹⁷ Lembo, Christina. "FIFA transfer regulations and UEFA player eligibility rules: major changes in European football and the negative effect on minors." *Emory Int'l L. Rev.* 25 (2011): 539. p/569

²¹⁸ Warburton, Dan, "Fake agents tricking thousands of football-loving kids into child trafficking hell" (*Mirror Online*, 2018) <<https://www.mirror.co.uk/sport/football/news/kids-young-13-dreams-football-12995874>> accessed on 29/7/2018

²¹⁹ *Ibid.*

to their traffickers.²²⁰ The players were minors from the Ivory Coast, and the traffickers reportedly identified corrupt border guards²²¹ and bribed embassy employees to issue passports that raised the player's age.²²² Investigators subsequently found false documents at both the Italian Embassy in Abidjan, and at the Immigration Office of the Prato Police Department.²²³

Step 5:

*On arrival in the destination country, the intermediary takes the player's documents and any spending money for 'safe keeping'.*²²⁴

The act of taking the players documents is popular amongst traffickers, as it is done to gain control over the players physical and professional mobility.²²⁵ It prevents the trafficked persons from being able to seek help for fear of removal or imprisonment in the destination country. It allows the traffickers to watch over the trafficked children²²⁶ and place them in debt bondage as a means of keeping them captive.²²⁷

Step 6:

*While in a destination country, the player may or may not attend a trial with a club. In some cases, the agent abandons the player on arrival in a destination country.*²²⁸

In cases of abandonment, the trafficker/smuggler is often the primary beneficiary of the player being taken abroad for exploitation,²²⁹ as the trafficker would have made their profits

²²⁰ AIPS. 'Human trafficking in football: trading young players under pretences of false maternity and fake family reunions' <<http://www.aipsmedia.com/2017/07/28/21403/football-italy-africa-human-trafficking-match-fixing-fifa-corriere-della-sera>> accessed on 14/11/2017.

²²¹ IPEC, *Combating trafficking in children for labour exploitation: A resource kit for policy-makers and practitioners* (International Labour Office; ILO International Programme on the Elimination of Child Labour, Geneva 2008). Book 1: Understanding What Child Trafficking Is, pg. 25-6

²²² Lembo, Christina. "FIFA transfer regulations and UEFA player eligibility rules: major changes in European football and the negative effect on minors." *Emory Int'l L. Rev.* 25 (2011): 539. p/569

²²³ AIPS. 'Human trafficking in football: trading young players under pretences of false maternity and fake family reunions' <<http://www.aipsmedia.com/2017/07/28/21403/football-italy-africa-human-trafficking-match-fixing-fifa-corriere-della-sera>> accessed on 14/11/2017.

²²⁴ Esson, James, and Eleanor Drywood. "Challenging popular representations of child trafficking in football." *Journal of Criminological Research, Policy and Practice* 4, no. 1 (2018): 60-72. 62-63

²²⁵ Dedeker, Jean-Marie, "Belgium: Player trafficking in Belgium: analysis" (2006) WSLR Volume 4 Issue 11

²²⁶ IPEC, *Combating trafficking in children for labour exploitation: A resource kit for policy-makers and practitioners* (International Labour Office; ILO International Programme on the Elimination of Child Labour, Geneva 2008). Book 1: Understanding What Child Trafficking Is, pg. 25-6

²²⁷ Zimmerman, C. and M. B. Schenker, 'Human trafficking for forced labour and occupational health' (2014) *Occup Environ Med* 71(12) 807. p. 807

²²⁸ Esson, James, and Eleanor Drywood. "Challenging popular representations of child trafficking in football." *Journal of Criminological Research, Policy and Practice* 4, no. 1 (2018): 60-72. 62-63

²²⁹ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/181

through the arrangement of transportation for the player.²³⁰ Thus, after receiving their funds, the trafficker/smuggler could decide to abscond with the rest of the money paid to them by the player's family to procure the playing contract.²³¹

Step 7:

*If the player is not abandoned on arrival, they might be taken to multiple trials until a contract is offered and the agent is satisfied with the terms.*²³²

Some traffickers and criminal groups take control of the boys on arrival rather than abandon them,²³³ retaining the boy for exploitation. This occurs when the trafficking ring consists of intermediaries who aim to run the whole operation to maximise their gains and profits in the destination country. The International Labour Office explains that this could take the form of the trafficker trying to make money from: recruitment (by selling false papers and getting the family to pay for services provided); travel (by adding a margin to travel tickets, charging a fee for bribing authorities); and then at the point of exploitation in the destination country (by paying the individual low or no salaries, operating a sub-standard workplace, and charging for accommodation provided, and also putting the child in debt bondage).²³⁴ Regarding low salaries and sub-standard living and working conditions, some football clubs have at times forced young players to play under these circumstances as a means of reducing costs.²³⁵

Step 8:

*If the trials are successful, the player signs a contract with the club. Problematically, the contract is typically exploitative with unfavourable terms for the player.*²³⁶

The players at times sign exploitative contracts which guarantee the intermediary a considerable percentage of the child's subsequent career earnings, provided he continues to

²³⁰ IPEC, *Combating trafficking in children for labour exploitation: A resource kit for policy-makers and practitioners* (International Labour Office; ILO International Programme on the Elimination of Child Labour, Geneva 2008). Book 1: Understanding What Child Trafficking Is, pg. 25-6

²³¹ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/181

²³² Esson, James, and Eleanor Drywood. "Challenging popular representations of child trafficking in football." *Journal of Criminological Research, Policy and Practice* 4, no. 1 (2018): 60-72. 62-63

²³³ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/181

²³⁴ IPEC, *Combating trafficking in children for labour exploitation: A resource kit for policy-makers and practitioners* (International Labour Office; ILO International Programme on the Elimination of Child Labour, Geneva 2008). Book 1: Understanding What Child Trafficking Is, pg. 25-6

²³⁵ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/181

²³⁶ Esson, James, and Eleanor Drywood. "Challenging popular representations of child trafficking in football." *Journal of Criminological Research, Policy and Practice* 4, no. 1 (2018): 60-72. 62-63

play football professionally and successfully.²³⁷ The fact that the player performs successfully gives the exploitative contract a “positive” veneer for all the parties involved in the transaction. The transfer will be considered as beneficial to the intermediaries or unscrupulous persons who organised the deal; the club’s investors will get improved returns based on the better performance of their club; the club’s manager will be given plaudits for discovering and playing a talented player; the club’s owner(s) will be satisfied with their investment;²³⁸ and most of all, the trafficked player will be happy to have secured a professional playing contract, irrespective of any exploitative aspects. The successful transaction could also benefit the owner of the African team or academy where the boy was originally found. The club would reap the rewards of the profitable transfer business,²³⁹ and could make further trickle-down returns if the player is later sold on to a bigger club for a substantial transfer fee.

David contended that the instances of trafficking and child exploitation in sport are not new, as football clubs (and sports teams in general) are known to turn a blind eye to the origin of a player once the player is deemed to be successful. He explained that in these circumstances, “the law of silence prevails. [This law provides that] no one will denounce the fact that a child athlete was trafficked illegally if he or she becomes a sports star.”²⁴⁰ The law of silence, as occurs in football, provides an incentive for unscrupulous persons to continue trafficking and exploiting child players for profit.

Step 9:

*If the player is unsuccessful at his trials, or his contract is not renewed and another club is not found, the intermediary abandons him. In most cases the intermediary will also take his ‘finder’s fee’, the player’s documentation, and any remaining money with him.*²⁴¹

²³⁷ McGee, Darragh. "Displacing childhood: Labour exploitation and child trafficking in sport." In *Labour Migration, Human Trafficking and Multinational Corporations: The Commodification of Illicit Flows*, (Routledge, 2012) pp. 71-90. p/75

²³⁸ Poli, Raffaele. "African migrants in Asian and European football: hopes and realities." *Sport in Society* 13, no. 6 (2010): 1001-1011. p/1002

²³⁹ Ungruhe, Christian. "Mobilities at play: the local embedding of transnational connections in West African football migration." *The International Journal of the History of Sport* 33, no. 15 (2016): 1767-1785. p/1771

²⁴⁰ David, Paulo, *Human rights in youth sport: a critical review of children's rights in competitive sports* (London: Routledge, London 2005) p/162

²⁴¹ Esson, James, and Eleanor Drywood. "Challenging popular representations of child trafficking in football." *Journal of Criminological Research, Policy and Practice* 4, no. 1 (2018): 60-72. 62-63

When a player is abandoned as a result of the absence of a playing contract, he is left without money, legal papers or identification, and is given no means to return home if he pleases.²⁴² This opens the door to possible instances of exploitation in the destination country.

Step 10:

*Once the player realises the precarious nature of his situation, he is often reluctant to return to his country of origin and may decide to remain in the destination country illegally without any means of subsistence.*²⁴³

Some players would rather stay in the destination country than return home due to shame and feelings of failure. Thus, some of the players end up working on the streets to survive,²⁴⁴ and others fall victim to re-exploitation because of their precarious and vulnerable status.²⁴⁵

Ultimately, pursuant to the Trafficking Protocol, steps one to five of the football trafficking process would constitute an “act”, which is the recruitment and transportation of the young players, through the “means” of fraud, coercion, or other abuses of power or vulnerability. Whereas steps five to nine of the process are in line with the “exploitative purpose” of the traffickers, such as to sell the players for financial gain or make them sign exploitative playing contracts in the foreign country.

2.5 THE INITIATION OF FOOTBALL TRAFFICKING

There are several circumstances in football that have contributed to an increase in the instances of football trafficking.

2.5.1 The Bosman ruling

The problem started, in part, due to the decision made by the European Court of Justice (ECJ) in *UEFA v. Bosman*,²⁴⁶ and the ensuing amendments to football regulations that were set up to govern the transfer of players between clubs. In the case, the Belgian football player, Jean-Marc Bosman, played for the Belgian club side R.F.C Liege. When his contract expired, he was offered a new contract on less beneficial terms and he subsequently refused

²⁴² Lembo, Christina. "FIFA transfer regulations and UEFA player eligibility rules: major changes in European football and the negative effect on minors." *Emory Int'l L. Rev.* 25 (2011): 539. p/569

²⁴³ Esson, James, and Eleanor Drywood. "Challenging popular representations of child trafficking in football." *Journal of Criminological Research, Policy and Practice* 4, no. 1 (2018): 60-72. 62-63

²⁴⁴ Lembo, Christina. "FIFA transfer regulations and UEFA player eligibility rules: major changes in European football and the negative effect on minors." *Emory Int'l L. Rev.* 25 (2011): 539. p/569

²⁴⁵ Warburton, Dan, "Fake agents tricking thousands of football-loving kids into child trafficking hell" (*Mirror Online*, 2018) <<https://www.mirror.co.uk/sport/football/news/kids-young-13-dreams-football-12995874>> accessed on 29/7/2018

²⁴⁶ *Union Royale Belge Des Sociétés De Football Association ASBL v Jean-Marc Bosman, Royal Club Liégeois SA v Jean-Marc Bosman and others and Union Des Associations Européennes De Football (UEFA) v Jean-Marc Bosman* (C-415/93) [1995] ECR I-4921

to sign and renew his contract with R.F.C Liege. A French side U.S.L Dunkerque later came in to offer Bosman a one-year playing contract.²⁴⁷

The transfer negotiations between the Belgian and French clubs broke down and Bosman challenged the legality of his refused transfer, as it left him unable to practice his trade at either club.²⁴⁸ He argued that his rights guaranteed by Article 45 of the Treaty on the Functioning of the European Union (TFEU),²⁴⁹ were being breached by the football transfer system which hindered him from the freedom of movement to practice his trade in another EU member state.²⁵⁰ The case was brought before the Belgian courts and later referred to the ECJ, where the ECJ resolved that the restrictions on the freedom of movement imposed by previous FIFA transfer rules were unjustified.²⁵¹ FIFA subsequently amended its regulations and abolished the payment of transfer fees for EU nationals playing within the EU and moving to another EU team on expiration of their employment contracts.²⁵²

2.5.2 Aftermath of the Bosman ruling

The consequences of the Bosman judgment for the sport were far-reaching.²⁵³ The following are some of the key aspects as related to the initiation of football trafficking:

Loss in income

Following *Bosman*, various football stakeholders raised objections to the new rules and the detrimental effects it would have on smaller clubs, largely because of the loss of income from transfer fees for out-of-contract players. Their claim was that money leaving the clubs was going into the players' pockets by way of increased salaries and signing on fees, as the bigger clubs increasingly offered better-paying contracts to the best players by diverting and giving them the money that was supposed to be their transfer fee.²⁵⁴ This loss in revenue became a clear disadvantage for the smaller clubs which were majorly dependent on the income from transfer fees to survive. With the lost revenue going into players' pockets, the post-Bosman period generated an inflationary wage spiral, where many smaller clubs risked

²⁴⁷ *ibid.* para. 31

²⁴⁸ *ibid.* para. 45

²⁴⁹ Treaty, Lisbon, 'Consolidated Version of the Treaty on the Functioning of the European Union' (2008) TITLE IV: Free movement of persons, services, and capital.

²⁵⁰ Drywood, Eleanor, "'When we buy a young boy ...' Migrant Footballers, Children's Rights and the Case for EU Intervention' in Stalford, Helen and Ingi Iusmen (Eds), *The EU as a children's rights actor. Law, policy, and structural dimensions* (Barbara Budrich Publishers, Toronto 2015). p. 199

²⁵¹ Lewis, Adam and Jonathan Taylor, *Sport: law and practice* (3rd edn Bloomsbury Professional, 2014) p. 1500

²⁵² *Ibid.* p. 1174

²⁵³ Jarvie G, Thornton, James and Mackie, Hector, *Sport, Culture and Society: An Introduction* (Third edition., Routledge 2018) p/149

²⁵⁴ Lembo, Christina. "FIFA transfer regulations and UEFA player eligibility rules: major changes in European football and the negative effect on minors." *Emory Int'l L. Rev.* 25 (2011): 539. p/551

going into bankruptcy if they attempted to compete at a high standard.²⁵⁵ In addition, the revenues at clubs were being used to satisfy short term goals like paying the increased salaries, rather than long term improvements to grassroots football that would have helped to develop other talented players.²⁵⁶

Once it was confirmed that the ECJ's ruling in *Bosman* was not going to be overturned,²⁵⁷ some football clubs were left with no choice but to find other means of recovering their lost revenue.

Increased transfer fees

The smaller football clubs typically viewed the transfer market as the best means to recoup their loss of income and their investments made on players. They did this by locating and purchasing players at discounted rates to subsequently sell the players at the highest possible profit margins to other – mostly bigger – clubs, before the player's contract expired.²⁵⁸

However, the *Bosman* ruling led to a significant increase in the transfer fees for players who were still under contract,²⁵⁹ which made it harder for clubs to acquire talented players in Europe.²⁶⁰ This meant that the smaller clubs could no longer afford the transfer fees placed on players in less prominent teams and leagues across Europe, as long as the players were still under contract. Maguire explained that as a consequence of *Bosman*, there had been an inflation in the value of promising young players in the bigger EU leagues, as the ruling led to young players being offered attractive and lengthy contracts by clubs fearful of losing them on free transfers.²⁶¹ This fear of losing players also contributed to the smaller clubs' loss in income, as they were then bound to pay players' significant wages irrespective of their diminished revenue streams.

The bigger clubs, with their significant resources, were unaffected by the higher transfer fees for players who were under contract. In fact, several of the bigger clubs benefitted (and continue to benefit from) the *Bosman* ruling, as they are able to promise the best players of

²⁵⁵ Maguire, Joseph, and Robert Pearton. "The impact of elite labour migration on the identification, selection and development of European soccer players." *Journal of sports sciences* 18, no. 9 (2000): 759-769. p/768

²⁵⁶ Lewis, Adam and Jonathan Taylor, *Sport: law and practice* (3rd edn Bloomsbury Professional, 2014) p. 1174.

²⁵⁷ Opinion of Advocate-General Lenz, *Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman*, C-415/93 [1995], para. 239

²⁵⁸ Najarian, Alex C, 'The Lost Boys: FIFA's Insufficient Efforts to Stop Trafficking of Youth Footballers' (2015) 22 *Sports Law.J.* 151.p. 154-5

²⁵⁹ Jarvie G, Thornton, James and Mackie, Hector, *Sport, Culture and Society: An Introduction* (Third edition., Routledge 2018) p/149

²⁶⁰ Celen, Burcin, Leo Lederman, Angelo Rigopoulos, José Alfonso Rodriguez, and Piotr Sadowski. "International Transfers of Minors: Recommendations to Improve the Protections of Young Players in the Current Transfer System." (2010). CIES. p. 20

²⁶¹ Maguire, Joseph, and Robert Pearton. "The impact of elite labour migration on the identification, selection and development of European soccer players." *Journal of sports sciences* 18, no. 9 (2000): 759-769. p/767

smaller clubs improved salaries if the player does not renew their contract with their team. By running down their contract, the bigger club can get the player at a significantly reduced price.²⁶² David explained that after *Bosman* “clubs in countries such as Belgium, Denmark, France, Germany, the Netherlands, Sweden, and Switzerland, [saw] their young football talents ‘stolen’ by wealthier teams from England, Italy, and Spain who offer[ed] better-paid contracts.”²⁶³ With these circumstances, the smaller clubs sought for a cheaper means to obtain players outside the EU at an affordable rate, to develop the players themselves, and sell the players off to a bigger club for heightened profits later.

The “cheaper” (non-EU) markets

Magee and Sugden argued that the *Bosman* ruling acted as a lubricant which eased and accelerated the movement of players across European and worldwide frontiers.²⁶⁴ A study by the European Commission (EC) corroborated this claim, as the EC noted that there had been an increase in the use of non-EU markets by some EU clubs to acquire players for less.²⁶⁵ The EC confirmed that several EU clubs were looking to foreign countries (mainly the South American and African markets),²⁶⁶ so they could “acquire talented players at significantly lower prices than in Europe.”²⁶⁷

The fact that the young players in African football are valued at such a lowered sum has been attributed to the financial weaknesses in the footballing sector on the continent.²⁶⁸ These financial weaknesses allow the smaller and mid-ranged EU clubs to have the “pick of the bunch” of Africa’s talent. As they can freely choose the most talented players to purchase, export, and resell at a higher price and profit margin to a bigger and richer club later on in Europe.²⁶⁹ The financial weaknesses affecting the African football landscape are also a core reason why the players are willing to take any opportunity to play professionally in

²⁶² Press Association, “Liverpool confirm Schalke defender Joel Matip will join club in summer” (*The Guardian*, February 2016) <www.theguardian.com/football/2016/feb/15/joel-matip-liverpool-schalke-transfer-signing> accessed on 02/07/2020

²⁶³ David, Paulo. *Human rights in youth sport: a critical review of children's rights in competitive sport*. Routledge, 2005. p/174 Cited in Lembo, Christina. "FIFA transfer regulations and UEFA player eligibility rules: major changes in European football and the negative effect on minors." *Emory Int'l L. Rev.* 25 (2011): 539. p/551

²⁶⁴ Magee, Jonathan, and John Sugden. "The World at their Feet" Professional Football and International Labor Migration." *Journal of sport and social issues* 26, no. 4 (2002): 421-437. p/425

²⁶⁵ European Commission, KEA – CDES – EOSE: "Study on Sports Agents in the European Union" (November 2009) p. 120

²⁶⁶ Jarvie G, Thornton, James and Mackie, Hector, *Sport, Culture and Society: An Introduction* (Third edition., Routledge 2018) p/149

²⁶⁷ European Commission, KEA – CDES – EOSE: "Study on Sports Agents in the European Union" (November 2009) p. 120

²⁶⁸ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/181

²⁶⁹ Poli, Raffaele. "Africans' status in the European football players' labour market." *Soccer & society* 7, no. 2-3 (2006): 278-291. p/284

Europe.²⁷⁰ Poli referred to this eagerness as the “economic criteria in the country of origin”, and explained that this ensues when there are players who wish to play abroad whatever the cost.²⁷¹ The financial weakness of African football is similarly used to undervalue the most talented African players, thereby making African football and its players the “cheaper” option. Poli explained that the departures of the best African players abroad affects the transfer sums that foreign clubs are prepared to invest when signing other players from the region.²⁷² For example, though the recruitment of footballers from South America can cost more than 20 million Euros, transfers carried out for players from sub-Saharan Africa rarely cost more than 1 million Euros, for even the most promising players.²⁷³ Whereas, after signing such players from Africa, some EU teams have been able to sell the African footballers for sums as much as 81.3 million Euros later on.²⁷⁴

Celen and others argued that in the aftermath of *Bosman*, several EU clubs had two choices afforded to them.²⁷⁵ First, the EU clubs could obtain new talent from foreign clubs with lesser economic resources than them, and later sell the players for substantial profits. Second, the clubs could implement a more advanced youth and grassroots programme in their region which would aim to develop talented players to join their first team in the future.²⁷⁶ With the second option, the clubs would be taking a labour-intensive approach by investing in their academy in the hope of producing talented players, which would save millions in transfer fees.²⁷⁷ However, as Maguire explained, because the rewards for success and the cost of failure are so great in the sport, the managers of these smaller clubs cannot often afford the promise of longer-term youth development.²⁷⁸ Therefore, several teams within Europe chose the first option rather than the second. The first option was considered to be quicker, provided a wider access to a range of players, had an increased profit potential,²⁷⁹ and was

²⁷⁰ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/181

²⁷¹ Poli, Raffaele. "Africans' status in the European football players' labour market." *Soccer & society* 7, no. 2-3 (2006): 278-291. p/287

²⁷² Poli, Raffaele. "African migrants in Asian and European football: hopes and realities." *Sport in Society* 13, no. 6 (2010): 1001-1011. p/1002

²⁷³ *Ibid.*

²⁷⁴ BBC, "Napoli seal 'record deal' for Nigeria striker Victor Osimhen" (July 2020) <<https://www.bbc.co.uk/sport/africa/53609226>> accessed on 24/11/2020

²⁷⁵ Celen, Burcin, Leo Lederman, Angelo Rigopoulos, Jos6 Alfonso Rodriguez, and Piotr Sadowski. "International Transfers of Minors: Recommendations to Improve the Protections of Young Players in the Current Transfer System." (2010). CIES. p. 20

²⁷⁶ *Ibid.*

²⁷⁷ Mason, Carolynne, Paul Darby, Eleanor Drywood, James Esson, and Serhat Yilmaz. "Rights, Risks and Responsibilities in the Recruitment of Children within the Global Football Industry." *The International Journal of Children's Rights* 27, no. 4 (2019): 738-756. p/743

²⁷⁸ Maguire, Joseph, and Robert Pearton. "The impact of elite labour migration on the identification, selection and development of European soccer players." *Journal of sports sciences* 18, no. 9 (2000): 759-769. p/767

²⁷⁹ Celen, Burcin, Leo Lederman, Angelo Rigopoulos, Jos6 Alfonso Rodriguez, and Piotr Sadowski. "International Transfers of Minors: Recommendations to Improve the Protections of Young Players in the Current Transfer System." (2010) CIES. p. 20

also cheaper, considering the players came from outside the EU.²⁸⁰ By using the cheaper option, the EU clubs are able to build their squads in a cost-efficient manner,²⁸¹ whilst developing players and maximising their “sell-on” value.²⁸²

The aforementioned EC study also acknowledged that though several of the transfers that take place between EU clubs and their African counterparts are legal and official transfers, there are a number of players who fall victim to economic exploitation as a result of the EU clubs’ search for “cheap” talent.²⁸³ The risks to the minors increases when the search by the EU clubs is coupled with the players’ willingness to go abroad as a result of the financial weaknesses of African football.²⁸⁴ Thus, the investments and purchases made by EU clubs has contributed to the formation of the illegal market in which unscrupulous intermediaries acquire and traffic African minors to Europe for profit.²⁸⁵

Lack of protection for foreign players

In football, when an EU club purchases and transfers an EU minor to a new team there are additional regulatory burdens for which the buying club must comply, relating to the safety and well-being of the player. However, these regulatory burdens are not equally imposed on clubs who purchase other foreign/non-EU minors in the sport. Article 19(2)(b) of FIFA’s Regulations on the Status and Transfer of Players (RSTP), commonly referred to as “The EU Exception”, offers specific protections to EU minors. The provision imposes obligations in respect of football education, academic provision (as a plan-B for the player if he is unsuccessful in football) and living standards.²⁸⁶ The FIFA regulations do not reflect any such fail-safe measures and protections from sub-standard living and working conditions for the non-EU minors, who are equally playing their football away from home.²⁸⁷ This imbalance has created an opportunity for EU teams and unscrupulous intermediaries to

²⁸⁰ Maguire, Joseph, and Robert Pearton. "The impact of elite labour migration on the identification, selection and development of European soccer players." *Journal of sports sciences* 18, no. 9 (2000): 759-769. p/767

²⁸¹ Mason, Carolynne, Paul Darby, Eleanor Drywood, James Esson, and Serhat Yilmaz. "Rights, Risks and Responsibilities in the Recruitment of Children within the Global Football Industry." *The International Journal of Children's Rights* 27, no. 4 (2019): 738-756. p/743

²⁸² Celen, Burcin, Leo Lederman, Angelo Rigopoulos, Jos6 Alfonso Rodriguez, and Piotr Sadowski. "International Transfers of Minors: Recommendations to Improve the Protections of Young Players in the Current Transfer System." (2010) CIES. p. 20

²⁸³ European Commission, KEA – CDES – EOSE: "Study on Sports Agents in the European Union" (November 2009) p. 120

²⁸⁴ Ibid.

²⁸⁵ Lembo, Christina. "FIFA transfer regulations and UEFA player eligibility rules: major changes in European football and the negative effect on minors." *Emory Int'l L. Rev.* 25 (2011): 539. p/552

²⁸⁶ FIFA Regulations on the Status and Transfer of Players (2020).

²⁸⁷ Najarian, Alex C, 'The Lost Boys: FIFA's Insufficient Efforts to Stop Trafficking of Youth Footballers' (2015) 22 Sports Law.J. 151., p. 171

transfer and treat the African minors differently, with no long-term consideration regarding their well-being and safety from exploitation.

Home grown players rule

As a result of the *Bosman* ruling, small to medium sized clubs began recruiting more from the cheaper markets in Africa and South America, as the bigger clubs continued to purchase the best players from the smaller sides. The influx of players came because the *Bosman* ruling eliminated the old quota rule which restricted the number of foreign players within the leagues.²⁸⁸ Therefore, without the quota, the number of foreigners amongst the EU leagues subsequently rose,²⁸⁹ and this coincided with the larger sums of money caused by the commercialisation of football. This commercialisation increased revenues for the clubs, allowing the richer clubs to stockpile the best players from all over Europe in their squads.²⁹⁰ The bigger clubs were able to do this by entering into direct exchange agreements with clubs from other national associations within Europe, calculatedly choosing clubs in countries which had more flexible nationality and work permit rules.²⁹¹ Such agreements not only granted the bigger clubs access to a larger pool of non-EU talent which existed in the other leagues, but it importantly provided an avenue for the bigger clubs to sign foreign players and place them in an EU side so that they could achieve EU status quicker.²⁹² These agreements have been termed as “feeder” or “nursery” club links,²⁹³ where the elite clubs establish connections with teams in developing countries directly, or use a mid-level club in Europe as an intermediate shelter for their players.

An example of this took place when English Premier League side, Manchester United, entered into an agreement with Belgian club, Royal Antwerp. To establish the relationship, Manchester United loaned several of their players to get experience at Royal Antwerp. In exchange, Manchester United were able to exploit Belgium’s relaxed employment laws and immigration rules, by signing and sending players from outside the EU to Antwerp so that

²⁸⁸ Bullough, Steve, Richard Moore, Simon Goldsmith, and Lee Edmondson. "Player migration and opportunity: Examining the efficacy of the UEFA home-grown rule in six European football leagues." *International Journal of Sports Science & Coaching* 11, no. 5 (2016): 662-672. p/663

²⁸⁹ Jarvie G, Thornton, James and Mackie, Hector, *Sport, Culture and Society: An Introduction* (Third edition., Routledge 2018) p/149

²⁹⁰ UEFA, “Protection of young players” (*UEFA.com*, March 2019) <<https://www.uefa.com/insideuefa/protecting-the-game/protection-young-players/>> accessed 15/06/2020

²⁹¹ Lembo, Christina. "FIFA transfer regulations and UEFA player eligibility rules: major changes in European football and the negative effect on minors." *Emory Int'l L. Rev.* 25 (2011): 539. p/551

²⁹² *Ibid.*

²⁹³ Maguire, Joseph, and Robert Pearton. "Global sport and the migration patterns of France '98 World Cup finals players: Some preliminary observations." *Soccer & Society* 1, no. 1 (2000): 175-189. p/179

the players could work and attain a European work permit.²⁹⁴ Examples of direct feeder links have also occurred with Ajax of Amsterdam which “entered into a franchise agreement in South Africa”,²⁹⁵ and Danish side FC Midtjylland entered into an agreement with FC Ebodei, a Nigerian club, that provided the Danish club with exclusive access to the most talented players from the Nigerian side’s first team and youth academy.²⁹⁶ Other examples include Arsenal with Hellenic Cape Town, Paris St. Germain with Esperance of Tunis, and Monaco with ASEC Abidjan of the Ivory Coast.²⁹⁷

With these occurrences, several factors were said to play a contributory role in the formation of the home-grown rule, such as: the influx of foreign players representing European teams; the decrease in investment in youth training academies in Europe; the lower competitive balance in club competitions because the bigger clubs were able to stockpile the best players;²⁹⁸ the reduced playing chances for ‘locally’ trained players; and the circumstances that allowed “many European clubs to ‘poach’ young players from the age of 16 from across the European Union.”²⁹⁹ Thus, the Union of European Football Associations (UEFA), which is one of FIFA’s confederations and is the governing body of European football, created the “home-grown” player eligibility rules in 2005.³⁰⁰ UEFA explained that the home-grown rule aims to encourage the local training of young players and increase the openness and fairness of European competitions.³⁰¹ The rule aims to counter the trend for hoarding players, and tries to re-establish a ‘local’ identity at EU clubs.³⁰² The rule provides that each club under UEFA, on from the 2008/09 football season, must name a minimum of eight home-grown players in their 25-man squads.³⁰³ UEFA defines a home-grown player as a player who, regardless of their nationality, has been trained by their club or by another club in the same national association for at least three years, between the ages of 15 and 21. Up to half of the

²⁹⁴ Coral, “Five feeder clubs for Premier League teams from past and present” <https://news.coral.co.uk/trivia/five-feeder-clubs-for-premier-league-teams-from-past-and-present_103754.html> accessed on 15/06/2020

²⁹⁵ Lembo, Christina. “FIFA transfers regulations and UEFA player eligibility rules: major changes in European football and the negative effect on minors.” *Emory Int’l L. Rev.* 25 (2011): 539. p/551

²⁹⁶ CAS 2008/A/1485 *FC Midtjylland AS v FIFA*, para. 2.2

²⁹⁷ Maguire, Joseph, and Robert Pearton. “The impact of elite labour migration on the identification, selection and development of European soccer players.” *Journal of sports sciences* 18, no. 9 (2000): 759-769. p/762

²⁹⁸ Dalziel, Murray, Paul Downward, Richard Parrish, Geoff Pearson, and Anna Semens. “Study on the Assessment of UEFA’s Home-Grown Player Rule.” (2013) Brussels: European Commission, 138. Cited in Bullough, Steve, and James Jordan. “Youth academy player development in English football: The impact of regulation since 2006” *Sport, Business and Management: An International Journal* (2017) Vol. 7 No. 4, pp. 375-392. p/375-6

²⁹⁹ UEFA, “Protection of young players” (*UEFA.com*, March 2019) <<https://www.uefa.com/insideuefa/protecting-the-game/protection-young-players/>> accessed 15/06/2020

³⁰⁰ Lembo, Christina. “FIFA transfer regulations and UEFA player eligibility rules: major changes in European football and the negative effect on minors.” *Emory Int’l L. Rev.* 25 (2011): 539. p/558

³⁰¹ UEFA, “Protection of young players” (*UEFA.com*, March 2019) <<https://www.uefa.com/insideuefa/protecting-the-game/protection-young-players/>> accessed 15/06/2020

³⁰² UEFA, “Protection of young players” (*UEFA.com*, March 2019) <<https://www.uefa.com/insideuefa/protecting-the-game/protection-young-players/>> accessed 15/06/2020

³⁰³ *Ibid.*

home-grown players named by a club must be from the club itself, whilst the other half could be from the club or from another club within the same national association.³⁰⁴

The home-grown players rule was purported to be beneficial for several reasons. First, though there is a requirement to have the eight home-grown players, clubs were not obliged to play these players.³⁰⁵ Second, the rule was to decrease the financial disparity and competitive imbalance between the EU football teams.³⁰⁶ Third, the rule was to discourage clubs from spending money on outside talent, but rather encouraging them to invest in home-grown talent.³⁰⁷ Fourth, by investing in home-grown talent and training more young players so that they graduate the youth system and count towards the club's home-grown quota, the rule would also increase the profile and market value of home-grown players in Europe.³⁰⁸ With this increased value, clubs would be given an incentive to increase their interest, investments, and direct more resources towards internal talent development programmes rather than buying foreign talent.³⁰⁹

Notwithstanding these benefits, there have been a number of concerns raised about the home-grown rule. Such as, the possibility of the rule being adopted in a discriminatory manner or in a way which would be contrary to an individual's right to freedom of movement.³¹⁰ However, in May 2008, the European Commission stated that the home-grown rule was legal and compatible with the Treaty provisions on free movement of persons, as long as it does not lead to any direct discrimination based on nationality.³¹¹ By extension, some clubs are situated in countries which do not have a history of producing high quality youth players. Thus, relying on the ability of the club's scouts to find talented players based in the club's country and national association is a gamble centred around a limited pool of players.³¹² Several clubs began pursuing and recruiting younger and younger promising foreign players to gain a competitive advantage, and to meet the home-grown

³⁰⁴ Bullough, Steve, and James Jordan. "Youth academy player development in English football: The impact of regulation since 2006" *Sport, Business and Management: An International Journal* (2017) Vol. 7 No. 4, pp. 375-392. p/376

³⁰⁵ UEFA, "Protection of young players" (*UEFA.com*, March 2019) <<https://www.uefa.com/insideuefa/protecting-the-game/protection-young-players/>> accessed 15/06/2020

³⁰⁶ Lembo, Christina. "FIFA transfer regulations and UEFA player eligibility rules: major changes in European football and the negative effect on minors." *Emory Int'l L. Rev.* 25 (2011): 539. p/560

³⁰⁷ *Ibid.*

³⁰⁸ Bullough, Steve, and James Jordan. "Youth academy player development in English football: The impact of regulation since 2006" *Sport, Business and Management: An International Journal* (2017) Vol. 7 No. 4, pp. 375-392. p/378

³⁰⁹ Bullough, Steve, Richard Moore, Simon Goldsmith, and Lee Edmondson. "Player migration and opportunity: Examining the efficacy of the UEFA home-grown rule in six European football leagues." *International Journal of Sports Science & Coaching* 11, no. 5 (2016): 662-672. p/663

³¹⁰ *Ibid.*

³¹¹ European Commission, "UEFA rule on 'home-grown players': compatibility with the principle of free movement of persons" (Press release, 28 May 2008) IP/08/807 <https://ec.europa.eu/commission/presscorner/detail/en/IP_08_807> accessed on 15/06/2020

³¹² Lembo, Christina. "FIFA transfer regulations and UEFA player eligibility rules: major changes in European football and the negative effect on minors." *Emory Int'l L. Rev.* 25 (2011): 539. p/560

requirements.³¹³ The clubs targeted signing players while they are still young enough to meet the registration requirement of the home-grown rule, so the player would spend three seasons playing in the EU country while they are between the ages of 15 and 21.³¹⁴

Whilst the rule was introduced with a view to offering greater opportunities to young local players, the data suggests that in the years since the rule was introduced, the opportunities for the young local players in the major European leagues have not been protected.³¹⁵ In actuality, the rule has regularly been interpreted as a race by clubs to prioritise and secure the services of very young players so that they can be converted to home-grown players by the time they become 18.³¹⁶ This feeds into the supply networks and trafficking issues which affect the sport, as Bullough and others explained that circumventing the home-grown rule is “quite straightforward” from both a selection and recruitment perspective for the football clubs.³¹⁷ With this ease of circumvention, the bigger clubs and their larger resources are able to hinder the development of other smaller to medium sized clubs, as they can continuously purchase the younger players identified by the other clubs for themselves.³¹⁸ This is particularly the case when the academy of the bigger club is not producing the standard of players they require. The bigger clubs then poach and hoard young players from going to other clubs, as they have the resources and capacity to keep the players they recruit until the players qualify as home-grown talents. And in so doing, undermining the essence of the home-grown rule.

In England, studies have shown that there is a limited supply of indigenous players due to the *Bosman* ruling and the globalisation of football.³¹⁹ Therefore, with the elite indigenous players in short supply, the market value of the talented English players has increased significantly. This means that several English clubs have been keen on acquiring the most promising young foreign players, so that the players can qualify as home-grown, and later be sold as “locally trained” players with an increased market value. Additionally, with the

³¹³ Bullough, Steve, and James Jordan. "Youth academy player development in English football: The impact of regulation since 2006" *Sport, Business and Management: An International Journal* (2017) Vol. 7 No. 4, pp. 375-392. p/376

³¹⁴ Lembo, Christina. "FIFA transfer regulations and UEFA player eligibility rules: major changes in European football and the negative effect on minors." *Emory Int'l L. Rev.* 25 (2011): 539. p/560

³¹⁵ Bullough, Steve, Richard Moore, Simon Goldsmith, and Lee Edmondson. "Player migration and opportunity: Examining the efficacy of the UEFA home-grown rule in six European football leagues." *International Journal of Sports Science & Coaching* 11, no. 5 (2016): 662-672. p/671

³¹⁶ Esson, James, Paul Darby, Eleanor Drywood, Carolynne Mason, and Serhat Yilmaz. "Children before players: Current risks and future research agendas." <<https://hdl.handle.net/2134/11590800.v1>> accessed 2 March 2020. p/47

³¹⁷ Bullough, Steve, Richard Moore, Simon Goldsmith, and Lee Edmondson. "Player migration and opportunity: Examining the efficacy of the UEFA home-grown rule in six European football leagues." *International Journal of Sports Science & Coaching* 11, no. 5 (2016): 662-672. p/670

³¹⁸ Bullough, Steve, and James Jordan. "Youth academy player development in English football: The impact of regulation since 2006" *Sport, Business and Management: An International Journal* (2017) Vol. 7 No. 4, pp. 375-392. p/378

³¹⁹ Ibid.

increased financial burdens on the small to medium sized clubs, the football environment has created an avenue for unscrupulous intermediaries to introduce youth players from overseas as a cheap and viable alternative to the more expensive indigenous players.³²⁰

Outside the *Bosman* ruling, there have been other factors within football which have contributed to the prominence of the problem.

2.5.3 Commodification of Children

With several clubs intensifying their global search for young football talent, FIFA lowered the age limit for which an international transfer certificate (ITC) would need to be granted to 10-12 years,³²¹ to cope with the developments in the industry.³²² The ITC signifies that a player is free to join a new club,³²³ and without the ITC, a player's transfer is likely to be null and void.³²⁴ With this change, football clubs are able to sign players who are less than ten years of age without attaining an ITC from FIFA to confirm the transfer. This age reduction has had an adverse effect in the football transfer market, as the search for the next footballing star has put an even younger demographic of football minors at an increased risk of trafficking and exploitation. Football clubs and their scouts now focus on this younger demographic as part of their speculative commercial strategy.³²⁵ For example, Spanish club Real Madrid signed nine-year-old Takuhiro Nakai, from Japan;³²⁶ and FC Barcelona signed nine-year-old Sandro Reyes, from the Philippines.³²⁷ These transactions were calculated to extract the most commercial value and potential profits from the players, and to simultaneously circumvent FIFA's ITC requirement.³²⁸

The continued commodification of child footballers has brought forward a notion of the child as a worker, a unit of labour, and as a commodity to be traded in multinational markets.³²⁹ Some have argued that child athletes have been reduced to property and are no longer viewed

³²⁰ Ibid. p/387

³²¹ Dolles, Harald, and Birnir Egilsson. "Sports expatriates." In *Research handbook of expatriates*. Edward Elgar Publishing, 2017. p/362

³²² FIFA, Regulations on the Status and Transfer of Players (2020) Article 9 s3-4

³²³ Colucci, Michele, and Felix Majani. "The FIFA Regulations on the Labour Status and Transfer of Players." *Indonesian J. Int'l L.* 5 (2007): 681. p/689

³²⁴ FIFA, Regulations on the Status and Transfer of Players (2020) Article 9(1)

³²⁵ Esson, James, and Eleanor Drywood. "Challenging popular representations of child trafficking in football." *Journal of Criminological Research, Policy and Practice* (2018). p/66

³²⁶ Lang, Jack. "Real Madrid sign NINE-YEAR-OLD Japanese wonderkid Takuhiro Nakai." (*Mirror*, 2013) <<https://www.mirror.co.uk/sport/football/news/real-madrid-sign-nine-year-old-japanese-2354979>> accessed on 29/05/2020

³²⁷ Castillejo, Dyan. "9-year-old Pinoy joins FC Barcelona Academy". (*ABS-CBN News*, 2012) <<https://news.abs-cbn.com/sports/07/19/12/9-year-old-pinoy-joins-fc-barcelona-academy>> accessed on 29/05/2020

³²⁸ Dolles, Harald, and Birnir Egilsson. "Sports expatriates." In *Research handbook of expatriates*. Edward Elgar Publishing, 2017. p/362

³²⁹ Brackenridge, C. H. "Children's rights in football: Welfare and work." (2010) <<https://idrottsforum.org/articles/brackenridge/brackenridge110608.html>> accessed on 02/03/2020

as individuals, much less, as children.³³⁰ Subsequently, the increased commodification has contributed to children being used for exploitative practices by unscrupulous persons.³³¹ For instance, because clubs are conducting a wide search for young talented players, unscrupulous persons recruit and traffic child players in the hope that some of the players will become successful. Or in the hope that they can sell the players to the recruiting clubs for some profit. Thus, the unscrupulous persons are often aware that the financial and economic value of a football minor is only likely to be achieved when he is transferred or sold to another club,³³² and this creates an incentive to continue engaging in football trafficking.

2.5.4 Training Compensation

FIFA attempted to discourage the increased trading of foreign minors by deterring richer clubs from signing the talented young players based in Africa and South America.³³³ FIFA tried to do this by stipulating that clubs involved in the training and education of players between the ages of 12 and 23 would receive financial compensation from the buying club.³³⁴ The training compensation gives the labour and investment spent training a youth player monetary value,³³⁵ thereby forming an important source of revenue for the smaller clubs.³³⁶ The compensation acts as a reward for the training and football education given to the player, whilst simultaneously underlining to the clubs that young footballers are valuable assets within the global football marketplace,³³⁷ and could be a key resource.³³⁸

At its core, the training compensation was set up by FIFA for there to be a “trickle-down” effect to the money paid for players. This trickle-down effect would occur when the fees paid for a player trickles from the upper echelons and richer clubs in football towards the lower levels, such as when a big club purchases a player that was trained at a smaller club.³³⁹ The crucial point, however, is that this trickle-down effect – and the associated economic

³³⁰ Dolles, Harald, and Birnir Egilsson. "Sports expatriates." In *Research handbook of expatriates*. Edward Elgar Publishing, 2017. p/362

³³¹ Brackenridge, C. H. "Children's rights in football: Welfare and work." (2010) <<https://idrottsforum.org/articles/brackenridge/brackenridge110608.html>> accessed on 02/03/2020

³³² Esson, James, and Eleanor Drywood. "Challenging popular representations of child trafficking in football." *Journal of Criminological Research, Policy and Practice* (2018). p/68

³³³ Ungruhe, Christian, and James Esson. "A Social Negotiation of Hope: Male West African Youth." *Boyhood Studies* 10, no. 1 (2017): 22-43. p/30

³³⁴ FIFA, Regulations on the Status and Transfer of Players (2019) Annexe 4: Training Compensation. 1 – Objective, p/66

³³⁵ Ungruhe, Christian, and James Esson. "A Social Negotiation of Hope: Male West African Youth." *Boyhood Studies* 10, no. 1 (2017): 22-43. p/30

³³⁶ Lewis, Adam and Jonathan Taylor, *Sport: Law and Practice* (3rd edition, Bloomsbury, 2014) p. 1488

³³⁷ Mason, Carolynne, Paul Darby, Eleanor Drywood, James Esson, and Serhat Yilmaz. "Rights, Risks and Responsibilities in the Recruitment of Children within the Global Football Industry." *The International Journal of Children's Rights* 27, no. 4 (2019): 738-756. p/745

³³⁸ Ungruhe, Christian, and James Esson. "A Social Negotiation of Hope: Male West African Youth." *Boyhood Studies* 10, no. 1 (2017): 22-43. p/30

³³⁹ Lewis, Adam and Jonathan Taylor, *Sport: Law and Practice* (3rd edition, Bloomsbury, 2014) p. 1488

value of the player – can only be realised when he is transferred to a bigger club. Thus, the training compensation has had two important consequences on the lives of the football minors, and the recruitment habits of football clubs. First, the compensation payments give clubs an incentive to acquire many players at as young an age as possible to minimise their future economic liability.³⁴⁰ In recruiting and training the players, the clubs would not need to pay training compensation to another club if the player is successful and subsequently sold. Also, if the player is sold, the clubs would be able to maximise their profits as the training compensation would be calculated into the transfer fee they receive for the player.

Second, because of FIFA's classification system for football academies, the training compensation is often minimal for clubs and academies based in Africa, and the transfer fees are generally negotiated to try to maximise returns in lieu of this.³⁴¹ Therefore, with the smaller foreign clubs being denied the opportunity to increase their possible revenues, this has resulted in an intense financial speculation and an increase in the trading of young African players, in order to amass returns.³⁴² Which has in turn led to many young African players being recruited and developed to be sold to richer EU clubs, as a means of realising some of their financial value.³⁴³

2.5.5 Increase in Football Academies

After the *Bosman* ruling, FIFA introduced regulations to govern the international transfer of players. However, football saw a concurrent increase in the global recruitment of talented young foreign players, both as a means of complying and bypassing several FIFA laws. Some EU clubs consequently sought for innovative ways to source these players,³⁴⁴ and one of such methods was through forming football academies in celebrated football regions and nations outside Europe, i.e., in Africa and South America.³⁴⁵ The academies provided an avenue for the teams to identify the most talented young players, groom them, and thereafter export them to the parent EU club, to another club in the EU for work permit purposes, or to

³⁴⁰ Mason, Carolynne, Paul Darby, Eleanor Drywood, James Esson, and Serhat Yilmaz. "Rights, Risks and Responsibilities in the Recruitment of Children within the Global Football Industry." *The International Journal of Children's Rights* 27, no. 4 (2019): 738-756. p/749-750

³⁴¹ Mason, Carolynne, Paul Darby, Eleanor Drywood, James Esson, and Serhat Yilmaz. "Rights, Risks and Responsibilities in the Recruitment of Children within the Global Football Industry." *The International Journal of Children's Rights* 27, no. 4 (2019): 738-756. p/745

³⁴² Ungruhe, Christian, and James Esson. "A Social Negotiation of Hope: Male West African Youth." *Boyhood Studies* 10, no. 1 (2017): 22-43. p/30

³⁴³ Esson, James, and Eleanor Drywood. "Challenging popular representations of child trafficking in football." *Journal of Criminological Research, Policy and Practice* (2018). p/68

³⁴⁴ Esson, James, "Escape to victory: Development, youth entrepreneurship and the migration of Ghanaian footballers" (2015) *Geoforum* 64, p. 52

³⁴⁵ McGee, Darragh. "Displacing childhood: Labour exploitation and child trafficking in sport." In *Labour Migration, Human Trafficking and Multinational Corporations: The Commodification of Illicit Flows*, (Routledge, 2012) pp. 71-90. p/78

sell the player to another club for financial gain.³⁴⁶ With the home-grown rule, the commodification of children, and the training compensation initiatives adopted by EU football clubs, these factors all contributed to the idea that young foreign children are sources of monetary value and significance. Therefore, having an academy in a source country to locate these young foreign players, train them, and export them, was deemed a worthwhile investment for several clubs.³⁴⁷ Amidst the search for the talented players, four categories of football academies were regularly formed: African academies; Afro-European academies; Privately owned academies; and Unofficial academies.

African academies

The African academies are typically set up by local club sides or run by the national football federations. For example, most Ghanaian clubs have a youth academy or have a relationship with an existing academy, whether it is an official or unofficial one.³⁴⁸ The benefit of African academies is that they are required to be registered with the local government or local FA, in an attempt to ensure that all transactions conducted with players and minors within the region are on record and legal.³⁴⁹ Conversely, these academies may be seen as a money making scheme,³⁵⁰ as various clubs and academy owners in Africa recruit talented players for the purpose of selling them to foreign clubs for profit.

Many young boys from underprivileged backgrounds view football academies as sites enabling them to become agents of their own development.³⁵¹ As there is a perception that in joining the academy, the boys will have better opportunities to migrate and to be in control of their own destinies. Thus, because the academies nurture the dreams of making it in Europe for the young players in their regions, the academies attract many young boys and capitalise on their aspirations.³⁵² The fact that the academies are typically set up in thriving

³⁴⁶ Esson, James, "Escape to victory: Development, youth entrepreneurship and the migration of Ghanaian footballers" (2015) *Geoforum* 64, p. 52

³⁴⁷ Esson, James, "Modern slavery, child trafficking, and the rise of West African football academies" (Open Democracy, 15 January 2015) <<https://www.opendemocracy.net/beyondslavery/jamesesson/modernslaverychildtraffickingandriseofwestafricanfootballacademi>> accessed on 1 June 2016

³⁴⁸ Darby, Paul, "Moving players, traversing perspectives: Global value chains, production networks and Ghanaian football labour migration" (2013) *Geoforum* 50, p. 46

³⁴⁹ Apostolou, Angeline, "Football's illegal Trade in Children" (*Africa up Close*, 14 September 2015) <<https://africaupclose.wilsoncenter.org/footballsillegaltradeinchildren/>> accessed on 1 June 2016

³⁵⁰ Esson, James, "Modern slavery, child trafficking, and the rise of West African football academies" (Open Democracy, 15 January 2015) <<https://www.opendemocracy.net/beyondslavery/jamesesson/modernslaverychildtraffickingandriseofwestafricanfootballacademi>> accessed on 1 June 2016

³⁵¹ Darby, Paul, James Esson, and Christian Ungruhe. "Migration, sport for development and sports academies: The case of football in Africa." Routledge, 2018. p/14

³⁵² Ungruhe, Christian. "Mobilities at play: the local embedding of transnational connections in West African football migration." *The International Journal of the History of Sport* 33, no. 15 (2016): 1767-1785. p/1771

towns with aspiring players,³⁵³ provides them with the opportunities to effectively buy boys from their families.³⁵⁴ The academies either groom the players to partake in the local football league with their affiliated team, or if deemed as being of the requisite quality to go abroad, young players are sold to foreign clubs.³⁵⁵ The African academies notoriously do not provide educational training to the boys or prepare them for a possible life outside of football if they are unsuccessful,³⁵⁶ and this is notwithstanding the low success rates of players making it as professionals. Ultimately, the African academies are run by owners with their intentions of generating profit from the transfer of academy graduates,³⁵⁷ rather than on helping the vulnerable and disadvantaged boys in their regions.

Afro-European academies

Afro-European academies are commonly set up by European clubs looking to establish their presence in an African country through a football academy, or when an EU club decides to invest in an existing club or academy in Africa as a means of securing a position of first refusal for the African side's most talented players (e.g., a feeder link or agreement).³⁵⁸ The Afro-European academies are set up by clubs, agents, and other members of the football community in target countries known for producing young footballing talent.³⁵⁹ In some instances, a part of the government in an African country may set up an academy in collaboration with a European team, to foster better engagement with the people in the community, and to introduce the practices of the European youth coaches and academies to the African side.³⁶⁰ Examples of Afro-European academies include, Dutch team Feyenoord who created a residential academy in the Cape Coast of Ghana, and also Austrian club Red Bull Salzburg who opened another facility in Ghana back in 2008.³⁶¹ In 2016, FC Barcelona established their first academy in Africa in the most populous state and country on the

³⁵³ Poli, Raffaele. "African migrants in Asian and European football: hopes and realities." *Sport in Society* 13, no. 6 (2010): 1001-1011. p/1008

³⁵⁴ McGee, Darragh. "Displacing childhood: Labour exploitation and child trafficking in sport." In *Labour Migration, Human Trafficking and Multinational Corporations: The Commodification of Illicit Flows*, (Routledge, 2012) pp. 71-90. p/78

³⁵⁵ Darby, Paul, "Moving players, traversing perspectives: Global value chains, production networks and Ghanaian football labour migration" (2013) *Geoforum* 50, p. 46

³⁵⁶ Apostolou, Angeline, "Football's illegal Trade in Children" (*Africa up Close*, 14 September 2015) <<https://africaupclose.wilsoncenter.org/footballsillegaltradeinchildren/>> accessed on 1 June 2016

³⁵⁷ Ungruhe, Christian. "Mobilities at play: the local embedding of transnational connections in West African football migration." *The International Journal of the History of Sport* 33, no. 15 (2016): 1767-1785. p/1771

³⁵⁸ Darby, Paul, "Moving players, traversing perspectives: Global value chains, production networks and Ghanaian football labour migration" (2013) *Geoforum* 50. p. 46

³⁵⁹ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/181

³⁶⁰ Punch, "Wike unveils Real Madrid football academy, tuition-free for Rivers indigenes" (*Punchng*, September 2019) <<https://punchng.com/wike-unveils-real-madrid-football-academy-tuition-free-for-rivers-indigenes/>> accessed on 17/06/2020

³⁶¹ Darby, Paul, "Moving players, traversing perspectives: Global value chains, production networks and Ghanaian football labour migration" (2013) *Geoforum* 50. p. 46

continent, Lagos, Nigeria.³⁶² And in 2019, Real Madrid launched their academy in Nigeria in collaboration with the Rivers state government.³⁶³

On the one hand, these Afro-European academies could be said to have several benefits, not only in terms of the production and export of talented footballers, but as institutions that contribute to the development of football locally, which could also have an impact on other development agendas.³⁶⁴ The academies train and teach African players about key footballing attributes which highlight their technical abilities, whilst simultaneously providing schooling geared towards preparing the players for the overseas market.³⁶⁵ With the advanced training provided, there could be long-term advancements to the African country and its people, such as: developments in African football and the local African economies; improvements in performances from African teams in their leagues and national sides during international competitions; and, with more technical players produced by the academies, there would be increased opportunities for talented African players to go and play professionally abroad and earn higher wages, which they could then remit back home to the benefit of their family and local communities.³⁶⁶ With the education that is given to the players through the academies, they would be provided with key skills and knowledge that will give them essential character traits that aid their careers in Europe, or give them alternative options if they are unsuccessful playing football.³⁶⁷ To illustrate, in Barcelona's Lagos academy, the players are taught in accordance with a curriculum that is modelled after the Nigerian and British educational systems.³⁶⁸ The players are also exposed to language training, including English, Spanish, and French, as well as a plethora of other subjects.

On the other hand, despite all the benefits in terms of technical training and educational provisions for the African players, the academies themselves admit that their primary aim is the production of professional footballers, as opposed to academically sound individuals.³⁶⁹

³⁶² Premium Times, "FC Barcelona to set up soccer academy in Nigeria" (*Premium Times*, 22 February 2016) <<http://www.premiumtimesng.com/sports/football/198828-fc-barcelona-set-soccer-academy-nigeria.html>> accessed on 18 August 2016

³⁶³ Punch, "Wike unveils Real Madrid football academy, tuition-free for Rivers indigenes" (*Punchng*, September 2019) <<https://punchng.com/wike-unveils-real-madrid-football-academy-tuition-free-for-rivers-indigenes/>> accessed on 17/06/2020

³⁶⁴ Darby, Paul, James Esson, and Christian Ungruhe. "Migration, sport for development and sports academies: The case of football in Africa." Routledge, 2018. p/7

³⁶⁵ Darby, Paul, "Moving players, traversing perspectives: Global value chains, production networks and Ghanaian football labour migration" (2013) *Geoforum* 50. p. 48

³⁶⁶ Darby, Paul, G. Akindes and M. Kirwin, "Football Academies and the Migration of African football Labor to Europe", (2007) *Journal of Sport and Social Issues* Volume 31/2, p. 154

³⁶⁷ Darby, Paul, "Moving players, traversing perspectives: Global value chains, production networks and Ghanaian football labour migration" (2013) *Geoforum* 50. p. 48

³⁶⁸ FCBEScola, "FCBESCOLA LAGOS" <<http://fcbescola.fcbarcelona.com/lagos/>> accessed on 17/06/2020

³⁶⁹ Darby, Paul, "Moving players, traversing perspectives: Global value chains, production networks and Ghanaian football labour migration" (2013) *Geoforum* 50 p. 48

Therefore, the involved European clubs collaborating with African academies continue to profit from the great number of aspiring and cheap talent available in Africa.³⁷⁰ Their strategic positioning in the populated regions in the target countries³⁷¹ means that they are able to recruit several players at once.³⁷² Though the players who enrol in these academies traditionally escape the typical children's rights violations that are common in other types of academies on the continent, it is argued that the fact the successful graduates still go on to represent EU teams fuels the incentive to traffic young boys into these academies.

Some have argued that the European clubs are using the Afro-European academies to profit from the young African players without any obligation for them to reinvest in the communities in which the talented players have been discovered and developed.³⁷³ As demand for highly skilled but cheap football labour in Europe accelerated post-Bosman, the presence of the football academies in Africa has increased as part of the export-oriented football industry.³⁷⁴ The continued transfer of players has in turn led to the depletion of the pool of talented African players on the continent, which underlines the fact that the main interest of the EU teams is the exportation and exploitation of the young African players.³⁷⁵ The Afro-European academies have subsequently been likened to "farms" in which players are groomed for export,³⁷⁶ and as "nurseries that allow [EU clubs] to reserve African talent until the player can be legally transferred to Europe", thereby strengthening European football at the expense of the African game,³⁷⁷ and leaving African leagues "bereft of talent".³⁷⁸

³⁷⁰ Ungruhe, Christian, and James Esson. "A Social Negotiation of Hope: Male West African Youth." *Boyhood Studies* 10, no. 1 (2017): 22-43. p/36

³⁷¹ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/181

³⁷² Lembo, Christina. "FIFA transfer regulations and UEFA player eligibility rules: major changes in European football and the negative effect on minors." *Emory Int'l L. Rev.* 25 (2011): 539. p/563

³⁷³ Esson, James, "Modern slavery, child trafficking, and the rise of West African football academies" (*Open Democracy*, 15 January 2015) <<https://www.opendemocracy.net/beyondslavery/jamesesson/modernslaverychildtraffickingandriseofwestafricanfootballacademi>> accessed on 1 June 2016

³⁷⁴ Darby, Paul, James Esson, and Christian Ungruhe. "Migration, sport for development and sports academies: The case of football in Africa." Routledge, 2018. p/7

³⁷⁵ Darby, Paul, "Moving players, traversing perspectives: Global value chains, production networks and Ghanaian football labour migration" (2013) *Geoforum* 50 p. 49

³⁷⁶ Darby, Paul, "Gains versus Drains: Football Academies and the Export of Highly Skilled Football Labor" (2011) *Brown J. World Affairs* 18, p. 266

³⁷⁷ Darby, Paul, "Gains versus Drains: Football Academies and the Export of Highly Skilled Football Labor" (2011) *Brown J. World Affairs* 18, p. 155

³⁷⁸ Darby, Paul, James Esson, and Christian Ungruhe. "Migration, sport for development and sports academies: The case of football in Africa." Routledge, 2018. p/7

Privately owned academies

The privately owned academies are formed by individuals or foreign governments with the intention of grooming African players for profit or other gains. With these academies, there are two differing models of operation.

The first is the Right to Dream (RtD) academy situated in Ghana. The academy is a non-profit enterprise founded in 1999 by the former scout of Manchester United, Tom Vernon.³⁷⁹ Vernon explained that the aim of the academy is to provide children from low income earning families with the opportunity to change their lives, their community and their country through football.³⁸⁰ RtD provides its entrants with accommodation, school and training facilities, and football pitches, so they are fit to go abroad.³⁸¹ RtD places an equal emphasis on education as it does on football training,³⁸² which is an approach modelled from the American athlete scholarship system.³⁸³ The advantages of this model is that if a player does not progress along the path of being a professional athlete, his options of success do not become limited, as there could be scholarships to international schools to continue advancing his prospects.³⁸⁴ To this effect, RtD has raised more than \$40m in scholarships,³⁸⁵ as there are more boys in their academy who receive and use the scholarships than there are boys who end up playing football professionally.³⁸⁶ It has been reported that 34 of RtD's graduates have gone on to become professional footballers, whereas 51 of their graduates have gone on to study at colleges and universities in the US and UK.³⁸⁷ The RtD model focuses on player development, and when players are sold, it limits the effect of a muscle drain by providing avenues for reinvestment in Africa. RtD makes its graduates sign a

³⁷⁹ Darby, Paul, "Moving players, traversing perspectives: Global value chains, production networks and Ghanaian football labour migration" (2013) *Geoforum* 50 p. 50

³⁸⁰ Dalleres, Frank. 'Meet Tom Vernon, the former Manchester United scout and founder of Africa's top football academy out to turn the sport on its head' <<http://www.cityam.com/256037/meet-tom-vernon-former-manchester-united-scout-and-founder>> accessed on 14/11/2017.

³⁸¹ Darby, Paul, "Moving players, traversing perspectives: Global value chains, production networks and Ghanaian football labour migration" (2013) *Geoforum* 50 p. 50

³⁸² Darby, Paul, "Moving players, traversing perspectives: Global value chains, production networks and Ghanaian football labour migration" (2013) *Geoforum* 50 p. 50

³⁸³ Paramasivan, Mel. 'Right to Dream': African academy aims to curb exploitation of young footballers' <<https://www.reuters.com/article/us-soccer-africa-academy/right-to-dream-african-academy-aims-to-curb-exploitation-of-young-footballers-idUSKCN1BO0Z7>> accessed on 14/11/2017.

³⁸⁴ Paramasivan, Mel. 'Right to Dream': African academy aims to curb exploitation of young footballers' <<https://www.reuters.com/article/us-soccer-africa-academy/right-to-dream-african-academy-aims-to-curb-exploitation-of-young-footballers-idUSKCN1BO0Z7>> accessed on 14/11/2017.

³⁸⁵ Gyamfi, Bright, "Right to Dream Academy founder Tom Vernon writes on why football could lose its global appeal" (*Football Ghana*, February 2019) <<https://footballghana.com/right-to-dream-academy-founder-tom-vernon-writes-on-why-football-could-lose-its-global-appeal>> accessed on 18/06/2020

³⁸⁶ Darby, Paul, "Moving players, traversing perspectives: Global value chains, production networks and Ghanaian football labour migration" (2013) *Geoforum* 50 p. 50

³⁸⁷ Schneider-Weiler, Josh, "Interview with Tom Vernon: A Radical Approach to Running a 21st Century Academy" (Jan 2019) <<https://www.thisfootballlife.com/post/tom-vernon-a-radical-approach-to-running-a-21st-century-academy>> accessed on 18/06/2020

“Declaration to Give Back to Africa”,³⁸⁸ so that successful players reinvest their profits in their respective communities and provide a means for other young players to equally benefit from the opportunities they were given. For example, David Accam, a RtD graduate who plays in America’s Major League Soccer, came back to fund a community pitch in Ghana.³⁸⁹

In 2015, Vernon bought Danish side FC Nordsjælland and became the chairman of the club. Vernon bought the club as a ready-made destination for RtD’s graduates via the formation of this new “supply chain”,³⁹⁰ as he considered it to be a way to give more African players opportunities to play and experience life abroad. Prior to the purchase of the Danish club, Vernon explained that RtD’s graduates were being sold for \$150,000 to \$200,000 to Swedish clubs, and then 18 months later, the players were sold on for a further \$3m or \$4m to other EU clubs. Vernon believed that the manner in which the transfers were occurring meant that RtD’s graduates were being undervalued because they were based in Africa, which is also what Poli previously corroborated.³⁹¹ Therefore, the purchase of the Danish club was to reshape the supply chain, and to enable Vernon conduct the initial transfers to Europe by himself. In doing so, RtD can demand and receive more representative transfer fees for their players, and the money can then be reinvested into their academy to improve facilities and cater to other boys in the community.³⁹²

The second privately owned academy to be discussed is the Aspire Academy by the Qatari government. The Aspire academy cherry-picked the most talented African footballers, having conducted trials in which a sum of approximately 750,000 children across Africa participated.³⁹³ Qatar claimed that the motive behind the establishment of such an academy was for humanitarian reasons, and to provide adequate competition for the Qatari boys in preparation for the 2022 World Cup.³⁹⁴

³⁸⁸ Darby, Paul, “Moving players, traversing perspectives: Global value chains, production networks and Ghanaian football labour migration” (2013) *Geoforum* 50 p. 50

³⁸⁹ Paramasivan, Mel. "Right to Dream: African academy aims to curb exploitation of young footballers" <<https://www.reuters.com/article/us-soccer-africa-academy/right-to-dream-african-academy-aims-to-curb-exploitation-of-young-footballers-idUSKCN1BO0Z7>> accessed on 14/11/2017.

³⁹⁰ Dalleres, Frank. 'Meet Tom Vernon, the former Manchester United scout and founder of Africa's top football academy out to turn the sport on its head' <<http://www.cityam.com/256037/meet-tom-vernon-former-manchester-united-scout-and-founder>> accessed on 14/11/2017.

³⁹¹ Poli, Raffaele. "African migrants in Asian and European football: hopes and realities." *Sport in Society* 13, no. 6 (2010): 1001-1011. p/1002

³⁹² Dalleres, Frank. 'Meet Tom Vernon, the former Manchester United scout and founder of Africa's top football academy out to turn the sport on its head' <<http://www.cityam.com/256037/meet-tom-vernon-former-manchester-united-scout-and-founder>> accessed on 14/11/2017.

³⁹³ McDougall, Dan, “The scandal of Africa’s trafficked players” (*The Guardian*, 6 January 2008) <<https://www.theguardian.com/football/2008/jan/06/newsstory.sport4>> accessed on 21/07/2020

³⁹⁴ Eder, Steve, Christopher Harress, Sam Borden and Jack Williams, “Is this the academy of dreams or exploitation?” (*Irish Times* August 23 2014) <<http://www.irishtimes.com/sport/soccer/isthistheacademyofdreamsorexploitation1.1906302>> accessed on 1/6/2016, p. 2

Aspire is considered to be the greatest talent-scouting operation in football history,³⁹⁵ due to the financial outlay to develop talent for their academy.³⁹⁶ However, there were reports that the academy, despite providing highly lucrative football scholarships for the players, targeted young players in a bid to exploit and naturalise them after some years.³⁹⁷ Qatar in itself has a history of naturalising foreign athletes to raise their level of competitiveness internationally, and many who have brought it sporting success have had little or no previous ties to the country.³⁹⁸ In 2017, Qatar's football squad was made up of players from ten different countries – including two from Senegal and one from Ghana.³⁹⁹ The players were naturalised and allowed to play because of FIFA's Statutes which state in Article 7(d) that a player will be eligible to play for a representative team if he has "lived continuously for at least five years after reaching the age of 18 on the territory of the relevant association."⁴⁰⁰ The Aspire academy subsequently played a significant role in Qatar's success at the 2019 Asian Cup, as 13 of the country's 23-man squad graduated from the academy.⁴⁰¹ Though it was reported that only four of the players were not born in Qatar.⁴⁰²

The differences between the privately owned academies highlights the opposing ways in which African football minors are treated. One approach prioritises the Africans in a community, their well-being, and prepares the players for a professional footballing career, or a back-up career opportunity. This approach also limits the effect of a muscle drain of African football talent, seeks a means to reinvest into African football and its communities, and limits avenues for unscrupulous persons to identify and take advantage of the aspiring African players. Whereas the second approach was aimed at exporting and possibly exploiting African players to naturalise them. This latter approach leaves Africa and African

³⁹⁵ Blaschke, Ronny, "Asian Cup: Qatar's final berth the product of developing young talent" (January 2019) <<https://www.dw.com/en/asian-cup-qatars-final-berth-the-product-of-developing-young-talent/a-47300964>> accessed on 18/06/2020

³⁹⁶ Harding, David, "Qatar Asian Cup soccer victory may deepen Gulf tensions, experts warn" (February 2019) <<https://www.timesofisrael.com/qatar-asian-cup-soccer-victory-may-deepen-gulf-tensions-experts-warn/>> accessed on 18/06/2020

³⁹⁷ Eder, Steve, Christopher Harress, Sam Borden and Jack Williams, "Is this the academy of dreams or exploitation?" (Irish Times 23 August 2014) <<http://www.irishtimes.com/sport/soccer/isthistheacademyofdreamsorexploitation1.1906302>> accessed on 1/6/2016 p. 2

³⁹⁸ Blaschke, Ronny, "Asian Cup: Qatar's final berth the product of developing young talent" (January 2019) <<https://www.dw.com/en/asian-cup-qatars-final-berth-the-product-of-developing-young-talent/a-47300964>> accessed on 18/06/2020

³⁹⁹ Robinson, James, "Qatar's current football squad is made up of players from ten different countries" <<https://www.dreamteamfc.com/c/news-gossip/235119/qatar-2022-world-cup/>> accessed on 18/06/2020

⁴⁰⁰ FIFA STATUTES, August 2018 edition <<https://resources.fifa.com/image/upload/the-fifa-statutes-2018.pdf?cloudid=whhncbdzio03cuhmwfxa>> Article 7(d)

⁴⁰¹ Harding, David, "Qatar Asian Cup soccer victory may deepen Gulf tensions, experts warn" (February 2019) <<https://www.timesofisrael.com/qatar-asian-cup-soccer-victory-may-deepen-gulf-tensions-experts-warn/>> accessed on 18/06/2020

⁴⁰² Blaschke, Ronny, "Asian Cup: Qatar's final berth the product of developing young talent" (January 2019) <<https://www.dw.com/en/asian-cup-qatars-final-berth-the-product-of-developing-young-talent/a-47300964>> accessed on 18/06/2020

football worse off, by draining the continent of talented players, and potentially putting players who are not retained by the academy in precarious circumstances in the destination country.

Unofficial academies

The demand for inexpensive young players has resulted in an increase in unofficial and unregistered training academies in Africa, and an array of unlicensed agents who set up these academies to exploit and sell African football minors.⁴⁰³ The unofficial academies provide a substandard structure of football training to their players,⁴⁰⁴ and are generally run by unqualified coaches or fraudulent scouts with no credentials.⁴⁰⁵ The academies are seen by the roadside in Africa with no proper equipment or training facilities,⁴⁰⁶ as they are formed with the sole purpose of making financial gain.⁴⁰⁷ The growth in the number of unofficial academies in Africa can be attributed to the commodification of children in football, and the realisation by the local entrepreneurs that running an academy could be a plausible business opportunity to make significant profits.⁴⁰⁸ These local entrepreneurs know that in order to make their profits and realise the value of the player, any recruited player must be sold to a foreign team.⁴⁰⁹

With the limited number of official and accredited academies in Africa attracting many players from across the continent, the opportunity for the unofficial academies to capitalise on the players who do not make it into the accredited academies has risen significantly. For context, there were reportedly about 18,000 hopefuls who attended trials for 15 places at the Right to Dream Academy in Ghana.⁴¹⁰ These circumstances led to the situation described as “exploitation within exploitation”,⁴¹¹ as players were asked to pay money to procure a Ghanaian passport to increase the likelihood of their acceptance into the accredited

⁴⁰³ Lembo, Christina. "FIFA transfer regulations and UEFA player eligibility rules: major changes in European football and the negative effect on minors." *Emory Int'l L. Rev.* 25 (2011): 539. p/563

⁴⁰⁴ Darby, Paul, "Moving players, traversing perspectives: Global value chains, production networks and Ghanaian football labour migration" (2013) *Geoforum* 50 p. 46

⁴⁰⁵ Apostolou, Angeline, "Football's illegal Trade in Children" (*Africa up Close*, 14 September 2015) <<https://africaupclose.wilsoncenter.org/footballsillegaltradeinchildren/>> accessed on 1 June 2016

⁴⁰⁶ McGee, Darragh. "Displacing childhood: Labour exploitation and child trafficking in sport." In *Labour Migration, Human Trafficking and Multinational Corporations: The Commodification of Illicit Flows*, (Routledge, 2012) pp. 71-90. p/78

⁴⁰⁷ Esson, James. "Escape to victory: Development, youth entrepreneurship and the migration of Ghanaian footballers." *Geoforum* 64 (2015): 47-55. p. 53

⁴⁰⁸ Darby, Paul, "Moving players, traversing perspectives: Global value chains, production networks and Ghanaian football labour migration" (2013) *Geoforum* 50 p. 46

⁴⁰⁹ Esson, James, "Escape to victory: Development, youth entrepreneurship and the migration of Ghanaian footballers" (2015) *Geoforum* 64, p. 52

⁴¹⁰ Darby, Paul, James Esson, and Christian Ungruhe. "Migration, sport for development and sports academies: The case of football in Africa." Routledge, 2018. p/17

⁴¹¹ McDougall, Dan, "The scandal of Africa's trafficked players" (*The Guardian*, 6 January 2008) <<https://www.theguardian.com/football/2008/jan/06/newsstory.sport4>> accessed on 21/07/2020

academies. The fortunate players go into the official academies, whilst the unfortunate ones become subject to proposals from unofficial academies who offer them opportunities to take part in unregulated local football competitions.⁴¹² The players who join the unofficial academies would be unprotected by any club or federation whilst they take part in these activities. The players would fall outside all legal and administrative regulations that are aimed at safeguarding them from entry into what is effectively an 'underground' football economy.⁴¹³ Furthermore, by virtue of participating in these unregulated competitions, the players become increasingly exposed to the risks of trafficking by unscrupulous persons looking to sell them or manipulate them into signing exploitative contracts.

A secondary problem with the unofficial academies is that they do not prepare the young players for a life outside football, or the possibility of the player not securing a professional playing contract. The unscrupulous coaches and owners reportedly remove boys from school to enrol in these academies,⁴¹⁴ thereby emphasising that their exclusive focus is on football training.⁴¹⁵ Of the academies discussed, the unofficial academies are considered to be the most exploitative and extreme for the African players. As the players are only seen as commodities for financial gain and are not provided with any alternative prospects.

Conclusion

The issue of football trafficking cannot be understated, and there are several factors that have contributed to its continued occurrence. The trafficking problem occurs both *in* football and *through* football, but whilst trafficking *in* football is within the provisions of the Trafficking Protocol, trafficking *through* football may not always have an exploitative purpose for the player in the destination country. The football trafficking process showed that there are several core commonalities between the other forms of trafficking and football trafficking. The initiation of the football trafficking problem was also considered, as there was an analysis of the wide-ranging impact of the *Bosman* ruling for the EU teams, examining how their search for the next football star in the cheaper non-EU markets has fostered the illicit trade in African minors. Policies like the home-grown rule meant that EU clubs were also keen on recruiting an even younger demographic of foreign players, in order to develop them and allow them to later qualify as “local” players. This coincided with the increased

⁴¹² Ibid.

⁴¹³ McGee, Darragh. "Displacing childhood: Labour exploitation and child trafficking in sport." In *Labour Migration, Human Trafficking and Multinational Corporations: The Commodification of Illicit Flows*, (Routledge, 2012) pp. 71-90. p/78

⁴¹⁴ Apostolou, Angeline, "Football's illegal Trade in Children" (*Africa up Close*, 14 September 2015) <<https://africaupclose.wilsoncenter.org/footballsillegaltradeinchildren/>> accessed on 1 June 2016.

⁴¹⁵ Darby, Paul, G. Akindes and M. Kirwin, "Football Academies and the Migration of African football Labor to Europe", (2007) *Journal of Sport and Social Issues* Volume 31/2, p. 156

commodification of children in the sport, as more parties realised that minors could be an important source of revenue.

Lastly, the increase in the number of football academies in Africa ties in with the feeder links formed to “cherry pick” the country (and continent’s) most promising players. Though some of the academies have a developmental benefit for the players, their families, and the communities they are situated in, the overarching essence of the academies remain to export the most talented players, thereby causing a drain of Africa’s football talent. Moreover, certain academies do not give alternatives for players who are unable to attain professional contracts, which could leave some aspiring players in potentially precarious circumstances.

Chapter 3 - THE MIGRATION OF THE AFRICAN LABOUR FORCE

Migrant labour has been a key feature of the sports industry for several years, but as time has passed, the frequency in which it has taken place has increased, and so have the complexities involved in understanding the probable effects. An example of such complexities comes to the fore in the case of migrant African footballers and how aspects of their migration could be viewed as child and/or human trafficking.⁴¹⁶ Football migration is classified into regular or irregular migration. Regular football migration takes place when the migration complies with FIFA regulations on the transfer of players,⁴¹⁷ and this can occur on three levels. Players could move between clubs in the same nation; players could move between clubs from different nations but in the same continent; and, players could move between clubs from different continents.⁴¹⁸ The underlying factor of regular football migration is that it is conducted between officially registered clubs and associations.⁴¹⁹ By contrast, irregular football migration involves players being transferred to clubs in foreign countries outside FIFA's regulatory provisions, and contrary to the legal authority of the receiving country and government.⁴²⁰ Hence, irregular migration involves the moving of players between continents in a manner that includes smuggling or football trafficking.⁴²¹

3.1 HISTORY OF FOOTBALL LABOUR MIGRATION

Migration between continents can often be associated with historical ties.⁴²² For instance, a typical Senegalese or Ivorian player may seek to migrate and play professionally in France due to colonial, cultural, linguistic, social, and personal connections.⁴²³ The residual impact of colonial links between the African country and the former European imperialist state is often a key factor, owing to the shared history and other similarities between the countries.⁴²⁴

⁴¹⁶ Maguire, Joseph A. "'Real politic' or 'ethically based': Sport, globalization, migration and nation-state policies." *Sport in society* 14, no. 7-8 (2011): 1040-1055. p/1042

⁴¹⁷ Esson, James. "Escape to victory: Development, youth entrepreneurship and the migration of Ghanaian footballers." *Geoforum* 64 (2015): 47-55. p/47.

⁴¹⁸ Bullough, Steve, Richard Moore, Simon Goldsmith, and Lee Edmondson. "Player migration and opportunity: Examining the efficacy of the UEFA home-grown rule in six European football leagues." *International Journal of Sports Science & Coaching* 11, no. 5 (2016): 662-672. p/664

⁴¹⁹ Esson, James. "Escape to victory: Development, youth entrepreneurship and the migration of Ghanaian footballers." *Geoforum* 64 (2015): 47-55. p/47.

⁴²⁰ Ibid.

⁴²¹ Maguire, Joseph A. "'Real politic' or 'ethically based': Sport, globalization, migration and nation-state policies." *Sport in society* 14, no. 7-8 (2011): 1040-1055. p/1042

⁴²² Bullough, Steve, Richard Moore, Simon Goldsmith, and Lee Edmondson. "Player migration and opportunity: Examining the efficacy of the UEFA home-grown rule in six European football leagues." *International Journal of Sports Science & Coaching* 11, no. 5 (2016): 662-672. p/664

⁴²³ Taylor, Matthew. "Global players? Football, migration and globalization, c. 1930-2000." *Historical Social Research/Historische Sozialforschung* (2006): 7-30. p/30

⁴²⁴ Maguire, Joseph A. "'Real politic' or 'ethically based': Sport, globalization, migration and nation-state policies." *Sport in society* 14, no. 7-8 (2011): 1040-1055. p/1046

Therefore, as Taylor noted, to understand the migration of footballers in the ‘age of globalization’ we must be conscious of the historical elements involved.⁴²⁵ The history and colonial links between an aspiring African footballer and an EU team often evidences a broader sequence of labour flows, which can be analysed through the events that transpired during the colonial era, the post-colonial era, and the age of neo-colonialism.

3.1.1 Colonial era (early-mid 20th century)

In the colonial era, economic and trade links were established between Western European nations and the outer regions of the world which they had colonised.⁴²⁶ The European countries deemed their African colonies as being rich in natural resources, raw materials, and cheap labour.⁴²⁷ Since football was an established part of the Westernisation process during this era,⁴²⁸ the talented African footballers were considered to be under the umbrella of “cheap labour”. The European countries used football as a means of controlling their colonies,⁴²⁹ whilst their associated clubs exported African players as an economically logical decision able to yield substantial returns in the long term. This led to instances whereby European countries with significant imperial impact in Africa became the foremost beneficiaries of player migration,⁴³⁰ as African footballers were exported in large numbers.

From the 1930s, French professional clubs mined their colonies for football talent.⁴³¹ At the induction of the French professional league in 1932, several of the players who took part in the league originated from France’s North African colonies.⁴³² Players commonly came from Morocco, Tunisia, and Algeria, with the latter producing Ali Benouma and Kouider Dahou who were among the first employees in the new French league.⁴³³ The exploitation of African talent was more evident six years later in 1938, when 147 African players were recorded as playing in the French first and second divisions. This tally continued to rise after

⁴²⁵ Taylor, Matthew. "Global players? Football, migration and globalization, c. 1930-2000." *Historical Social Research/Historische Sozialforschung* (2006): 7-30. p/30

⁴²⁶ Magee, Jonathan, and John Sugden. "'The World at their Feet' Professional Football and International Labor Migration." *Journal of sport and social issues* 26, no. 4 (2002): 421-437. p/426

⁴²⁷ Darby, Paul, "African Football Labour Migration to Portugal: Colonial and Neo-Colonial Resource" (2007) *Soccer & Society*, 8:4, p. 497

⁴²⁸ Magee, Jonathan, and John Sugden. "'The World at their Feet' Professional Football and International Labor Migration." *Journal of sport and social issues* 26, no. 4 (2002): 421-437. p/426

⁴²⁹ Hutchison, Patrick M. "Breaking Boundaries: Football and colonialism in the British empire." *Inquiries Journal* 1, no. 11 (2009).

⁴³⁰ Darby, Paul, "African Football Labour Migration to Portugal: Colonial and Neo-Colonial Resource" (2007) *Soccer & Society*, 8:4, p. 497.

⁴³¹ Taylor, Matthew. "Global players? Football, migration and globalization, c. 1930-2000." *Historical Social Research/Historische Sozialforschung* (2006): 7-30. p/17

⁴³² Darby, Paul, "African Football Labour Migration to Portugal: Colonial and Neo-Colonial Resource" (2007) *Soccer & Society*, 8:4, p. 497.

⁴³³ Taylor, Matthew. "Global players? Football, migration and globalization, c. 1930-2000." *Historical Social Research/Historische Sozialforschung* (2006): 7-30. p/17

the Second World War, as between 1945 and 1962, a further 117 players of North African descent took part in France's professional leagues.⁴³⁴ The players were 76 Algerians, 34 Moroccans, and 7 Tunisian footballers.⁴³⁵ Additionally, the French national team benefitted from the exported African players, as some players became naturalised and played for their "adopted" countries, such as Larbi Ben Barek who was a player of Moroccan descent but represented the France national team 17 times.⁴³⁶

The exportation and exploitation of African football labour also occurred in Portugal in the 1950s,⁴³⁷ as the prevalent football teams in Portugal established scouting networks in their African colonies (Angola and Mozambique) to export the most talented players to the Portuguese league.⁴³⁸ Indeed, one of Portugal's greatest ever football players and the most prominent African-born player to represent a European side, Eusebio da Silva Ferreira, was a product of such an arrangement between an African colony and the European empire. Eusebio, who was originally from Mozambique,⁴³⁹ signed for the Portuguese league side Benfica in 1961, he was subsequently naturalised, and he went on to form a core part of the Portuguese national team for more than a decade, between 1961 and 1973.⁴⁴⁰ Eusebio gained international recognition as a symbol of Portuguese football and society, playing over sixty times for his nation during that period and becoming European Footballer of the Year in 1965, and winning the Golden Boot at the 1966 World Cup.⁴⁴¹

Like the French and Portuguese, the British were also involved in the exportation of African football talent, as there were a few Egyptian and South African players taking part in English professional football during the 1910s.⁴⁴² Between 1949-59, academics have argued that Britain's ruling class used football as a means of proffering the image of its superior political

⁴³⁴ Murray, Bill, *Football: A History of the World Game*, (Aldershot: Scholar Press, 1995). Cited in Darby, Paul, "African Football Labour Migration to Portugal: Colonial and Neo-Colonial Resource" (2007) *Soccer & Society*, 8:4, p. 497

⁴³⁵ Taylor, Matthew. "Global players? Football, migration and globalization, c. 1930-2000." *Historical Social Research/Historische Sozialforschung* (2006): 7-30. p/18

⁴³⁶ African Soccer, "Obituary: Death of a Star: Larbi Ben Barek" (*African Soccer 1*, December 1992) p. 22. Cited in Darby, Paul, "African Football Labour Migration to Portugal: Colonial and Neo-Colonial Resource" (2007) *Soccer & Society*, 8:4, p. 497

⁴³⁷ Taylor, Matthew. "Global players? Football, migration and globalization, c. 1930-2000." *Historical Social Research/Historische Sozialforschung* (2006): 7-30. p/18

⁴³⁸ Darby, Paul, "African Football Labour Migration to Portugal: Colonial and Neo-Colonial Resource" (2007) *Soccer & Society*, 8:4, p. 498

⁴³⁹ McOwan, Gavin, "Eusebio Obituary" (*The Guardian*, 5 January 2014) <<https://www.theguardian.com/football/2014/jan/05/eusebio>> accessed on 20/12/2020

⁴⁴⁰ Darby, Paul, "African Football Labour Migration to Portugal: Colonial and Neo-Colonial Resource" (2007) *Soccer & Society*, 8:4, p. 499

⁴⁴¹ Taylor, Matthew. "Global players? Football, migration and globalization, c. 1930-2000." *Historical Social Research/Historische Sozialforschung* (2006): 7-30. p/18

⁴⁴² Darby, Paul, "African Football Labour Migration to Portugal: Colonial and Neo-Colonial Resource" (2007) *Soccer & Society*, 8:4. p. 497

and economic system,⁴⁴³ whilst asserting its imperial hegemony and racist discrimination.⁴⁴⁴ The British settlers discouraged the local dance and physical activities prevalent amidst their colonies, as they chose to enforce European-approved leisure pursuits, such as sports, including volleyball, netball, track and field, and football.⁴⁴⁵ Njororai explained that the simplicity of football enhanced the popularity of the sport on the continent, as the Africans were willing and enthusiastic to participate, because their natural athleticism fit perfectly with this new sport.⁴⁴⁶

3.1.2 Post-Colonial era (late 20th – early 21st century)

The collapse of the colonial rule in Africa did little in the way of halting the exportation of African talent to European clubs, as the post-colonial connections were still strong.⁴⁴⁷ It has been suggested that the end of the colonial era resulted in a steady and more sustained flow of African football talent to the likes of France, Belgium, and Portugal, between the 1960s and 1970s.⁴⁴⁸ African players were increasingly recognised as the most cost-effective acquisitions for European clubs,⁴⁴⁹ as they were viewed as sources of labour for the “core” professional leagues of Europe.⁴⁵⁰ The migration of football talent to Europe occurred concurrently with the migration of Africa’s skilled tertiary-educated labour force during that period.⁴⁵¹ At the time, the migration of the skilled Africans increased in scale and patterns,⁴⁵² and this was due to the promises of higher wages made to the people. The migrations also served as a means for the Africans to escape the political unrest that existed in parts of the continent in the aftermath of the colonial era.⁴⁵³

Elite sports migrants were a considerable part of the highly skilled human capital who were migrating from Africa.⁴⁵⁴ The motivations for their emigration were often similar to the

⁴⁴³ Vasili, Phil. "Colonialism and football: the first Nigerian tour to Britain." *Race & Class* 36, no. 4 (1995): 55-70. p/55

⁴⁴⁴ Njororai, Wycliffe W. Simiyu. "Colonial legacy, minorities and association football in Kenya." *Soccer & Society* 10, no. 6 (2009): 866-882. p/869

⁴⁴⁵ Njororai, Wycliffe W. Simiyu. "Colonial legacy, minorities and association football in Kenya." *Soccer & Society* 10, no. 6 (2009): 866-882. p/869-870

⁴⁴⁶ Ibid.

⁴⁴⁷ Taylor, Matthew. "Global players? Football, migration and globalization, c. 1930-2000." *Historical Social Research/Historische Sozialforschung* (2006): 7-30. p/18-9

⁴⁴⁸ Darby, Paul, "'Go Outside': The History, Economics and Geography of Ghanaian Football Labour Migration" (2010) *African Historical Review*, 42:1, p. 29.

⁴⁴⁹ Taylor, Matthew. "Global players? Football, migration and globalization, c. 1930-2000." *Historical Social Research/Historische Sozialforschung* (2006): 7-30. p/18

⁴⁵⁰ Magee, Jonathan, and John Sugden. "'The World at their Feet' Professional Football and International Labor Migration." *Journal of sport and social issues* 26, no. 4 (2002): 421-437. p/427

⁴⁵¹ Darby, Paul, "Gains versus Drains: Football Academies and the Export of Highly Skilled Football Labor" (2011) 18 *Brown J. World Affairs*, p. 266

⁴⁵² Maguire, Joseph A. "'Real politic' or 'ethically based': Sport, globalization, migration and nation-state policies." *Sport in society* 14, no. 7-8 (2011): 1040-1055. p/1045

⁴⁵³ Darby, Paul, "Gains versus Drains: Football Academies and the Export of Highly Skilled Football Labor" (2011) 18 *Brown J. World Affairs*, p. 266

⁴⁵⁴ Maguire, Joseph A. "'Real politic' or 'ethically based': Sport, globalization, migration and nation-state policies." *Sport in society* 14, no. 7-8 (2011): 1040-1055. p/1045

reasons proffered by other skilled African migrant workers, but with an evident emphasis on receiving more sporting opportunities, participating in sporting events, and receiving better pay for their work.⁴⁵⁵ These reasons for sports labour migration are still relevant today, and it is evidenced by the globalised nature of the sporting industry.⁴⁵⁶

In football, the success of the continental European leagues of Italy, France, and Spain, accelerated the professionalisation of football, and prompted more instances of international labour migration.⁴⁵⁷ During the 1980s and 1990s, African talent began to cross European borders in larger numbers, as there was an estimated 350 Africans taking part in professional football across Europe at the time.⁴⁵⁸ By the 2000s, this figure had increased by over 100 per cent.⁴⁵⁹ In 2000, 69% of the Africans in Portuguese football were from the former Portuguese colonies of Angola, Mozambique, Cape Verde, and Guinea-Bissau, and 59% of the 162 African players in France came from their former French territories.⁴⁶⁰ Some have argued that the more sustained transfer of talented African players in the post-colonial era took place after the FIFA under-17 World Youth Championships in 1991, which was won by Ghana.⁴⁶¹ After the competition, more EU clubs were made aware of the potential offered by talented African players.⁴⁶²

During the post-colonial era, there was an increased representation of African players and players of African descent amongst European teams, and this was especially the case with teams from countries which had a significant imperial impact on the African continent. For example, the French national side at the 1998 FIFA World Cup won the competition with a team that was dubbed the “rainbow team”, due to several of its star players originating from the former colonies of France.⁴⁶³ The players had backgrounds ranging from North Africa, West Africa, the Caribbean, the Pacific islands, Armenia and the Basque country.⁴⁶⁴ Further

⁴⁵⁵ Darby, Paul, “Gains versus Drains: Football Academies and the Export of Highly Skilled Football Labor” (2011) 18 *Brown J. World Affairs*, p. 266.

⁴⁵⁶ Maguire, Joseph A. “‘Real politic’ or ‘ethically based’: Sport, globalization, migration and nation-state policies.” *Sport in society* 14, no. 7-8 (2011): 1040-1055. p/1045

⁴⁵⁷ Magee, Jonathan, and John Sugden. “‘The World at their Feet’ Professional Football and International Labor Migration.” *Journal of sport and social issues* 26, no. 4 (2002): 421-437. p/427

⁴⁵⁸ Darby, Paul, “African Football Labour Migration to Portugal: Colonial and Neo-Colonial Resource” (2007) *Soccer & Society*, 8:4. p. 497

⁴⁵⁹ F. Ricci, *African Football Yearbook 2000*, (3rd Edition, Rome: Prosports, 2000). Cited in Darby, Paul, “African Football Labour Migration to Portugal: Colonial and Neo-Colonial Resource” (2007) *Soccer & Society*, 8:4. p. 497

⁴⁶⁰ Taylor, Matthew. “Global players? Football, migration and globalization, c. 1930-2000.” *Historical Social Research/Historische Sozialforschung* (2006): 7-30. p/18-9

⁴⁶¹ FIFA, “Italy 1991: Ghana go all the way” (*FIFA.com*) <<https://www.fifa.com/u17worldcup/archive/italy1991/>> accessed on 22/06/2020

⁴⁶² Darby, Paul, “‘Go Outside’: The History, Economics and Geography of Ghanaian Football Labour Migration” (2010) *African Historical Review*, 42:1, p. 32

⁴⁶³ A. Hussey, “Euro 2016: Why France have everything to play for” (*The Guardian*, 29 May 2016)

⁴⁶⁴ Grez, Matias, “France’s ‘Rainbow Team’ looks back at historic World Cup triumph” (*CNN*, 2018) <<https://edition.cnn.com/2018/06/08/football/france-1998-world-cup-win-anniversary/index.html>> accessed on 22/06/2020

to this, since France's triumph in 1998, it has become even more regular for the French national team to contain players of African descent,⁴⁶⁵ as this was again the case in 2018 when France won their second FIFA World Cup.⁴⁶⁶

Some European clubs used their financial superiority to capitalise on their advantage and dictate transfer conditions with clubs in their former colonies in the post-colonial era.⁴⁶⁷ These transfers between the European and African clubs contributed to the brain/muscle drain of skilled African players.⁴⁶⁸ The muscle drain refers to the movement of talented players from clubs in poorer countries to clubs in the richer countries,⁴⁶⁹ as the poorer countries and football clubs are continuously de-skilled. The muscle drain is comparable to the brain drain of skilled health workers in the early 2000s, which left many former British colonies like Ghana, Kenya, and Zimbabwe, without sufficient medical personnel.⁴⁷⁰ Nevertheless, the muscle drain of footballers is characterised by the ability of the European clubs to flex their financial power in a manner which contributes towards the underdevelopment of African football,⁴⁷¹ and the continued dependence of African football on European clubs and finances.⁴⁷² A further characteristic of the muscle drain is that it occurs via the underpinning element of neo-colonial imperialism.⁴⁷³

3.1.3 Neo-Colonialism (21st century)

Neo-colonialism transpires when the economic and political policies of a great power (in this context, the European countries, football clubs and leagues⁴⁷⁴) indirectly maintain or extend their influence over other areas or people (the African countries and the associated clubs)⁴⁷⁵ without necessarily reducing the status of the subordinate nation to that of a

⁴⁶⁵ Lichfield, John, "Euro 2016: France accused of excluding players of North African origin from squad for tournament" (*Independent*, 31 May 2016) <<https://www.independent.co.uk/sport/football/international/euro-2016-france-accused-excluding-players-african-origin-squad-tournament-a7058371.html>> accessed on 20/12/2020

⁴⁶⁶ Beydoun, Khaled, "Standing with Trevor Noah: a World Cup for France is a win for Africa too" (*The Guardian*, July 2018) <<https://www.theguardian.com/commentisfree/2018/jul/22/trevor-noah-world-cup-france-africa>> accessed 11/06/2020

⁴⁶⁷ Darby, Paul, "African Football Labour Migration to Portugal: Colonial and Neo-Colonial Resource" (2007) *Soccer & Society*, 8:4. p. 504

⁴⁶⁸ Maguire, Joseph A. "'Real politic' or 'ethically based': Sport, globalization, migration and nation-state policies." *Sport in society* 14, no. 7-8 (2011): 1040-1055. p/1045

⁴⁶⁹ Poli, Raffaele. "Migrations and trade of African football players: historic, geographical and cultural aspects." *Africa Spectrum* (2006): 393-414. p/393

⁴⁷⁰ BBC, "Plugging the 'brain drain'" (*BBC News*, March 2005) <<http://news.bbc.co.uk/1/hi/world/africa/4339947.stm>> accessed 25/11/2020

⁴⁷¹ Darby, Paul, "African Football Labour Migration to Portugal: Colonial and Neo-Colonial Resource" (2007) *Soccer & Society*, 8:4. p. 504.

⁴⁷² Poli, Raffaele. "Africans' status in the European football players' labour market." *Soccer & society* 7, no. 2-3 (2006): 278-291. p/12

⁴⁷³ Poli, Raffaele. "Migrations and trade of African football players: historic, geographical and cultural aspects." *Africa Spectrum* (2006): 393-414. p/393

⁴⁷⁴ Magee, Jonathan, and John Sugden. "'The World at their Feet' Professional Football and International Labor Migration." *Journal of sport and social issues* 26, no. 4 (2002): 421-437. p/427

⁴⁷⁵ Merriam-Webster, "Neo-colonialism" <<http://www.merriam-webster.com/dictionary/neocolonialism>> accessed on 25 August 2016

colony.⁴⁷⁶ In neo-colonialism, the dominant country and economy is able to penetrate the poorer country and its economy by taking advantage of the latter's vulnerability.⁴⁷⁷

In a footballing context, neo-colonialism occurs through the constant exportation and exploitation of African footballers by the dominant European clubs, as they use their previous colonial links to undertake the muscle drain of the African football labour force.⁴⁷⁸ Several European clubs evidently subscribe to the increased commodification of children, and in so doing view Africa's football talent as "raw materials"⁴⁷⁹ and "cash crops" to be harvested on the European market.⁴⁸⁰ With the relatively cheap cost of acquiring the talented African players, some European clubs use their superior financial capabilities to lure the talented players in the poor regions of Africa to the richer and more dominant European countries and leagues.⁴⁸¹ Consequently, Africans remain prominent in the core European soccer leagues of England, France, Italy, and Spain.⁴⁸² Several European clubs have fuelled migratory flows and geographical patterns with African countries through formal links with their former colonial possessions.⁴⁸³ These links were established with the specific intention of outlasting the colonial rule, and they were aimed at promoting the colonial hegemony of the European countries to the African people long after the abolition of colonialism.⁴⁸⁴

To illustrate, Portugal used football as part of their wider imperialist narrative to facilitate their colonial power over the African countries, by importing European values to local populations who had little history of sport.⁴⁸⁵ One such practice involved naming African clubs after Portuguese teams, thereby creating a basis in which the members of the African country developed more of an affinity towards the more successful European side rather than

⁴⁷⁶ Dictionary, "neo-colonialism" <<http://www.dictionary.com/browse/neocolonialism>> accessed on 25 August 2016

⁴⁷⁷ Bowman, Benjamin. 'Is international football migration simply another type of labour migration?: The politics of migration through the lens of international football migration from Africa to Europe' <http://people.bath.ac.uk/bd203/docs/Bowman2011_internationalfootballmigration.pdf> accessed on 09/11/2017, p. 7

⁴⁷⁸ Poli, Raffaele, "The migrations of African football players to Europe: Human trafficking and neo-colonialism in question", (2010) presented at the Football for Development Conference, Vienna, Austria.

⁴⁷⁹ Darby, Paul, "African Football Labour Migration to Portugal: Colonial and Neo-Colonial Resource" (2007) *Soccer & Society*, 8:4. p. 503

⁴⁸⁰ Maguire, Joseph A. "'Real politic' or 'ethically based': Sport, globalization, migration and nation-state policies." *Sport in society* 14, no. 7-8 (2011): 1040-1055. p/1046

⁴⁸¹ Bowman, Benjamin. 'Is international football migration simply another type of labour migration?: The politics of migration through the lens of international football migration from Africa to Europe' <http://people.bath.ac.uk/bd203/docs/Bowman2011_internationalfootballmigration.pdf> accessed on 09/11/2017, p. 7

⁴⁸² Maguire, Joseph, and Robert Pearton. "The impact of elite labour migration on the identification, selection and development of European soccer players." *Journal of sports sciences* 18, no. 9 (2000): 759-769. p/761

⁴⁸³ Maguire, Joseph, and Robert Pearton. "The impact of elite labour migration on the identification, selection and development of European soccer players." *Journal of sports sciences* 18, no. 9 (2000): 759-769. p/764

⁴⁸⁴ Darby, Paul, "African Football Labour Migration to Portugal: Colonial and Neo-Colonial Resource" (2007) *Soccer & Society*, 8:4. p. 501-2.

⁴⁸⁵ Magee, Jonathan, and John Sugden. "'The World at their Feet' Professional Football and International Labor Migration." *Journal of sport and social issues* 26, no. 4 (2002): 421-437. p/426

their own teams in their home country and leagues.⁴⁸⁶ In such circumstances, the young African players in former Portuguese colonies would be more inclined to migrate abroad to represent the more famous and reputable Portuguese clubs, rather than remain in Africa and represent their own home teams. A secondary practice adopted by the prominent Portuguese clubs was to put in place recruitment networks and means of identifying and exporting African football labour that would withstand the collapse of colonialism.⁴⁸⁷

Former FIFA president, Sepp Blatter, once referred to some European clubs who benefitted from their previous colonial links to conduct their recruitment of players as neo-colonialists, as he argued that they “engage in social and economic rape by robbing the developing world of its best players”.⁴⁸⁸ When considered alongside academic studies on Africa’s football player migration to Europe in previous years, Blatter’s comments are not far-fetched, as the evidence shows the existence of neo-colonial practices through the exportation and exploitation of young African players.⁴⁸⁹ Therefore, the practices of the European clubs have contributed to the impoverishment of African football. As African players are viewed as commodities and are trafficked and transported abroad in ways that are not altogether dissimilar to the slave trade. Players find themselves in precarious situations as part of their quest to migrate and play professional football in Europe. Whilst the sport garners more global coverage, appeal, and increased profitability, often at the expense of these young boys.

3.2 MOTIVATIONS FOR PLAYER MIGRATION

African footballers have several motivations for wanting to emigrate from the continent. Africans could be described as having a “migratory disposition”⁴⁹⁰ because they view migrating abroad as an opportunity to be successful, attain wealth, and provide for their families.⁴⁹¹ The increased economic rewards available in Europe permeates the perception that life abroad is better than life in Africa. This perception is one which is engrained in the minds of Africans, to the extent that some of the footballers view merely making it out of

⁴⁸⁶ Darby, Paul, “African Football Labour Migration to Portugal: Colonial and Neo-Colonial Resource” (2007) *Soccer & Society*, 8:4. p. 502

⁴⁸⁷ Ibid. p. 503

⁴⁸⁸ Bradley, Mark, “Blatter Takes Swipe at G-14 ‘Colonialists’” (*Guardian*, 18 December 2003) <<https://www.theguardian.com/football/2003/dec/18/newsstory.sport8>> accessed on 22/06/2020

⁴⁸⁹ Darby, Paul, “African Football Labour Migration to Portugal: Colonial and Neo-Colonial Resource” (2007) *Soccer & Society*, 8:4, p. 496

⁴⁹⁰ Kalir, Barak. "The development of a migratory disposition: explaining a “new emigration”." *International Migration* 43, no. 4 (2005): 167-196.

⁴⁹¹ Esson, James. "Escape to victory: Development, youth entrepreneurship and the migration of Ghanaian footballers." *Geoforum* 64 (2015): 47-55. p. 50.

Africa and into Europe as success in itself, irrespective of whether or not they sign a professional playing contract at a foreign club.⁴⁹² Unfortunately, this migratory disposition puts the Africans at an increased risk of trafficking and exploitation.⁴⁹³

African players often associate spatial mobility with social mobility, and this makes them predisposed to leaving their home countries and continent.⁴⁹⁴ The African migrants conflate both spatial and social mobility as essential facets of success, even though there may not always be a link between the two.⁴⁹⁵ Nevertheless, the African players possess this predisposition to migration as part of a range of complex and multifaceted factors that motivate them to migrate.⁴⁹⁶ The relevant factors are deemed complex because they often entail not only economic, but also political, historical, geographical, social, and cultural factors which all affect the structuring of football migrant trails.⁴⁹⁷ These factors influence the decision-making of the players who choose to pursue certain migratory strategies, and in so doing accept the risks associated with labour migration.⁴⁹⁸

Motivating factors could include the import of Western media into Africa,⁴⁹⁹ which provides insight into the accomplishments of other successful African migrants and portrays the comparatively high standard of living they are able to achieve abroad.⁵⁰⁰ The prior colonial links and established migration routes between African countries and European teams could also be a motivating factor for the African migrants.⁵⁰¹ Examples of this include the feeder arrangements and links between EU teams and the clubs in developing countries. The migratory routes reinforce the perception that spatial mobility is the primary means in which the players can achieve social mobility. Hence, the players become convinced that migration

⁴⁹² Esson, James, "Better Off at Home? Rethinking Responses to Trafficked West African Footballers in Europe" (2015) *Journal of Ethnic and Migration Studies*, 41:3, p. 526

⁴⁹³ Saner, Raymond, Lichia Yiu, and Laurel Rush. "The measuring and monitoring of human trafficking." *Public Administration and Policy* (2018). p/95

⁴⁹⁴ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/181

⁴⁹⁵ Savage, Mike. "The missing link? The relationship between spatial mobility and social mobility." *British Journal of Sociology* (1988): 554-577. p/554

⁴⁹⁶ Maguire, Joseph A. "'Real politic' or 'ethically based': Sport, globalization, migration and nation-state policies." *Sport in society* 14, no. 7-8 (2011): 1040-1055. p/1046

⁴⁹⁷ Maguire, Joseph, and Robert Pearton. "Global sport and the migration patterns of France '98 World Cup finals players: Some preliminary observations." *Soccer & Society* 1, no. 1 (2000): 175-189. p/175

⁴⁹⁸ Carter, Thomas F. "Re-placing sport migrants: Moving beyond the institutional structures informing international sport migration." *International Review for the Sociology of Sport* 48, no. 1 (2011): 66-82. p/78-9

⁴⁹⁹ Acheampong, Ernest Yeboah. "The Journey of Professional Football Career: Challenges and Reflections." *Journal of Sport and Social Issues* (2020): <https://doi.org/10.1177/0193723520958341>. p/1

⁵⁰⁰ Esson, James. "Escape to victory: Development, youth entrepreneurship and the migration of Ghanaian footballers." *Geoforum* 64 (2015): 47-55. p. 50

⁵⁰¹ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/181

(even by irregular means) would be worth the risk, especially if the potential reward is an opportunity to become self-sufficient and provide for their families.

Maguire noted that to understand how football migration patterns, routes, and motivations are likely to develop in the future,⁵⁰² a broad approach must be taken. He explained that specific questions pertaining to the circumstances of the football migrants should be connected to wider sociological issues to gain an understanding.⁵⁰³ Thus, Stead and Maguire developed a range of these specific questions,⁵⁰⁴ but given that there may be motivational differences for football migrants coming from countries with economically strong and high-quality leagues (e.g., EU migrants moving within Europe),⁵⁰⁵ the questions have been limited to those that are of specific importance within the context of African football migrants.

- Is the move part of the ‘developmental’ stage in the personal life of the player?
- Is the player’s motive tied to financial lure or imperative?
- Does the player see migration as a ‘rite de passage’ that will enhance their playing development?⁵⁰⁶

From these questions, the development of the individual will be analysed in line with the player’s obligations to his family as a reason for migration; the financial lure of a lucrative footballing career abroad will be considered alongside the socio-economic circumstances of several African players; and migration will be discussed as a means of enhancing a player’s footballing development, through the push-pull dynamics of human migration.

3.2.1 Family

Families of African footballers typically play an influential role in the player’s decision to migrate to another country to play professionally.⁵⁰⁷ The families support the players and produce the capital to make the emigration and mobility to a foreign league a possibility.⁵⁰⁸

⁵⁰² Maguire, Joseph, and Robert Pearton. "Global sport and the migration patterns of France '98 World Cup finals players: Some preliminary observations." *Soccer & Society* 1, no. 1 (2000): 175-189. p/188

⁵⁰³ Maguire, Joseph. "Sport labor migration research revisited." *Journal of sport and social issues* 28, no. 4 (2004): 477-482. p/479

⁵⁰⁴ Stead, David, and Joseph Maguire. "'Rite De Passage' or passage to riches? The motivation and objectives of Nordic/Scandinavian players in English league soccer." *Journal of Sport and Social Issues* 24, no. 1 (2000): 36-60. Cited in Maguire, Joseph A. "'Real politic' or 'ethically based': Sport, globalization, migration and nation-state policies." *Sport in society* 14, no. 7-8 (2011): 1040-1055. p/1045-6

⁵⁰⁵ Maguire, Joseph, and David Stead. "Border crossings: Soccer labour migration and the European Union." *International Review for the Sociology of Sport* 33, no. 1 (1998): 59-73. p/69

⁵⁰⁶ Stead, David, and Joseph Maguire. "'Rite De Passage' or passage to riches? The motivation and objectives of Nordic/Scandinavian players in English league soccer." *Journal of Sport and Social Issues* 24, no. 1 (2000): 36-60. Cited in Maguire, Joseph A. "'Real politic' or 'ethically based': Sport, globalization, migration and nation-state policies." *Sport in society* 14, no. 7-8 (2011): 1040-1055. p/1045-6

⁵⁰⁷ Esson, James. "Escape to victory: Development, youth entrepreneurship and the migration of Ghanaian footballers." *Geoforum* 64 (2015): 47-55. p. 48

⁵⁰⁸ Carter, Thomas F. "Re-placing sport migrants: Moving beyond the institutional structures informing international sport migration." *International Review for the Sociology of Sport* 48, no. 1 (2011): 66-82. p/78-9

This migration often coincides with the player developing into a central figure in the household, as African families increasingly view their children as a symbol of hope.⁵⁰⁹ For these families who mostly associate spatial mobility with social mobility, the priority is for the young player to leave Africa by whatever means necessary. In leaving Africa, the young player is expected to become the family breadwinner,⁵¹⁰ and to meet “intergenerational obligations towards family”,⁵¹¹ such as alleviating the family out of any pre-existing poverty-stricken conditions.⁵¹² These pressures force the players and their families to search for routes to migrate which may be dangerous and detrimental to the child player.

Esson explained how the African player’s desire to use football to generate income and help their families financially is usually matched with their family's willingness for this to take place.⁵¹³ This subsequently plays a key role in how an unscrupulous person who offers an opportunity to play professional football abroad, can exercise and abuse power over the child and their family to facilitate football trafficking. African players have been trafficked to countries such as, India, Bangladesh, and Laos in search of professional football contracts,⁵¹⁴ just so they can receive remuneration and be able to remit money back home to their families.⁵¹⁵

3.2.2 Socio-economic circumstances

Sporting migration is influenced by the economic rewards available to owners, agents, and athletes.⁵¹⁶ From the perspective of the athletes, particularly, the aspiring African footballers, migration is considered as key to improve their socio-economic prospects.⁵¹⁷ Through migration, they would be better placed to take advantage of the increased sporting opportunities available abroad and social capital. The players believe that playing

⁵⁰⁹ McGee, Darragh. "Displacing childhood: Labour exploitation and child trafficking in sport." In *Labour Migration, Human Trafficking and Multinational Corporations: The Commodification of Illicit Flows*, (Routledge, 2012) pp. 71-90. p/72

⁵¹⁰ Bowman, Benjamin. 'Is international football migration simply another type of labour migration?: The politics of migration through the lens of international football migration from Africa to Europe' <http://people.bath.ac.uk/bd203/docs/Bowman2011_internationalfootballmigration.pdf> accessed on 09/11/2017.. p/3

⁵¹¹ Darby, Paul, James Esson, and Christian Ungruhe. "Migration, sport for development and sports academies: The case of football in Africa." Routledge, 2018. p/6

⁵¹² McGee, Darragh. "Displacing childhood: Labour exploitation and child trafficking in sport." In *Labour Migration, Human Trafficking and Multinational Corporations: The Commodification of Illicit Flows*, (Routledge, 2012) pp. 71-90. p/72

⁵¹³ Esson, James. "Playing the victim? Human trafficking, African youth, and geographies of structural inequality." *Population, Space and Place* (2020): e2309. p/6

⁵¹⁴ Edwards, Piers. 'Underage African footballers 'trafficked' to Laos' (*BBC Africa sport*, 21 July 2015) <<http://www.bbc.co.uk/news/world-africa-33595804>> accessed on 01/11/2017

⁵¹⁵ Esson, James, “You have to try your luck: male Ghanaian youth and the uncertainty of football migration” (2015) *Environment and Planning*, vol. 47, p. 1386

⁵¹⁶ Maguire, Joseph, and Robert Pearton. "The impact of elite labour migration on the identification, selection and development of European soccer players." *Journal of sports sciences* 18, no. 9 (2000): 759-769. p/761

⁵¹⁷ Darby, Paul, James Esson, and Christian Ungruhe. "Migration, sport for development and sports academies: The case of football in Africa." Routledge, 2018. p/16

professional football abroad will give them the opportunity to be “self-employed”, as they can depend on their own inherent abilities to provide economic and financial stability for themselves and their families.⁵¹⁸ The general perception amongst the African footballers, due to their migratory disposition, is that their lives would not improve if they were to remain in Africa.⁵¹⁹ Thus, the future development of Africa and African football is often not appealing to the players, as they assume that the only way they can attain social mobility and increase their quality of life and socio-economic circumstances is via spatial mobility.⁵²⁰ The African player’s intention to migrate towards the core football economies in Europe ties in with wider understanding of sports migration, whereby athletes are known to “follow the money”.⁵²¹

For the Africans, the key obstacle in tying their development and social mobility to spatial mobility is often an inability to migrate through regular channels. Thus, the motivations of the players to leave Africa to improve their social and financial status, is generally met with a lack of means to gain legitimate entry and professional football employment at a foreign football club.⁵²² This culminates in the situation whereby the aspiring players use irregular migration channels to travel, consequently leading to circumstances where they at times end up as victims of trafficking.⁵²³ Yet, owing to their prevailing socio-economic circumstances, the players and their families continue to deem irregular migration as a worthy risk, irrespective of the possible dangers involved.⁵²⁴

3.2.3 Push-pull dynamics

African players, like other elite sports migrants, regularly seek migration opportunities to enhance their development and trade their sport labour to attain a better livelihood.⁵²⁵ As a result of the lowly nature of African football,⁵²⁶ the player’s motivations for migration can

⁵¹⁸ Esson, James, “Modern slavery, child trafficking, and the rise of West African football academies” (*Open Democracy*, 15 January 2015) <<https://www.opendemocracy.net/beyondslavery/jamesesson/modernslaverychildtraffickingandriseofwestafricanfootballacademi>> accessed on 1 June 2016.

⁵¹⁹ Esson, James. "Escape to victory: Development, youth entrepreneurship and the migration of Ghanaian footballers." *Geoforum* 64 (2015): 47-55. p. 48 and 50

⁵²⁰ Ibid.

⁵²¹ Maguire, Joseph, and Robert Pearton. "The impact of elite labour migration on the identification, selection and development of European soccer players." *Journal of sports sciences* 18, no. 9 (2000): 759-769. p/761

⁵²² Esson, James, “Better Off at Home? Rethinking Responses to Trafficked West African Footballers in Europe” (2015) *Journal of Ethnic and Migration Studies*, 41:3, p. 527

⁵²³ Esson, James. "Escape to victory: Development, youth entrepreneurship and the migration of Ghanaian footballers." *Geoforum* 64 (2015): 47-55. p. 48

⁵²⁴ McGee, Darragh. "Displacing childhood: Labour exploitation and child trafficking in sport." In *Labour Migration, Human Trafficking and Multinational Corporations: The Commodification of Illicit Flows*, (Routledge, 2012) pp. 71-90. p/72

⁵²⁵ Magee, Jonathan, and John Sugden. "'The World at their Feet' Professional Football and International Labor Migration." *Journal of sport and social issues* 26, no. 4 (2002): 421-437. p/429

⁵²⁶ Esson, James. "Playing the victim? Human trafficking, African youth, and geographies of structural inequality." *Population, Space and Place* (2020): e2309. p/6

be examined and explained in line with the push-pull dynamics of human migration. The International Organisation for Migration defined this dynamic as “an analysis of migration [regular and irregular] which takes into consideration the push factors which drive people to leave their country against the pull factors attracting them to the country of destination.”⁵²⁷ Push factors in a general context include economic, social, or political problems that an individual faces in his home country, whilst the pull factors are a higher demand for labour and better social opportunities in a foreign or destination country.⁵²⁸ These factors feed into the process of football migration and the movement of sporting labour from the economic periphery (African football) to the economic core (European football).⁵²⁹ The African players look to leave the weak national economies and financial crises they face in African football which pushes them away from the continent. As they aim to take part and benefit from the financial rewards that pull them towards pursuing a better life in Europe. Since they are sports migrants who equally see the benefit in “following the money”,⁵³⁰ many of the African players believe that playing professional football in Europe is indeed a ‘rite de passage’. This is because the increased opportunities will enable them to develop in both a professional and personal capacity, subsequently giving them the ability to provide for themselves and their families.

The push-pull dynamics will be expanded upon in chapter 6,⁵³¹ as part of the discussion on the social factors that have affected FIFA’s anti-trafficking policy performance.

3.3 EFFECTS OF FOOTBALL LABOUR MIGRATION

There are arguments for and against the emigration of African youths, and as Maguire noted, examining the “good” or “bad” effects of football migration can be based on issues such as power, culture, and control of the sport.⁵³²

⁵²⁷ International Organization for Migration. 'Key Migration Terms' <<https://www.iom.int/key-migration-terms>> accessed on 25/07/2018.

⁵²⁸ Miller, Mark J., and Stephen Castles, *The Age of Migration: International Population Movements in the Modern World* (London: Macmillan Press, 1998), p. 20. Cited in Bowman, Benjamin. 'Is international football migration simply another type of labour migration?: The politics of migration through the lens of international football migration from Africa to Europe' <http://people.bath.ac.uk/bd203/docs/Bowman2011_internationalfootballmigration.pdf> accessed on 09/11/2017, p. 2

⁵²⁹ Taylor, Matthew. "Global players? Football, migration and globalization, c. 1930-2000." *Historical Social Research/Historische Sozialforschung* (2006): 7-30. p/16

⁵³⁰ Maguire, Joseph, and Robert Pearton. "The impact of elite labour migration on the identification, selection and development of European soccer players." *Journal of sports sciences* 18, no. 9 (2000): 759-769. p/761

⁵³¹ 6.1.1: Social Factors

⁵³² Maguire, Joseph. "Sport and migration." *The Encyclopedia of Global Human Migration* (2013). p/2

3.3.1 Advantages

Migration could potentially provide great benefits not only to the migrants and their families, but also to their host (EU) and home (African) countries. These benefits could be in the form of bringing much-needed skills and labour to their new teams and communities in the EU, or in the form of the transfer of remittance, knowledge, and other social capital to their families and communities back home in Africa.⁵³³

Africa

In African societies which are at times devoid of State welfare,⁵³⁴ the aspiring footballers see sporting migration as an opportunity to assert agency and control over important aspects of their lives and migratory movements.⁵³⁵ Migration offers them conditions which can improve rather than diminish some of the child's life chances,⁵³⁶ by offering them a means to earn money and become self-sufficient.⁵³⁷ The migrating players hope to gain opportunities to play football at a professional level, whilst being able to enjoy the accompanying benefits to their health and well-being that could come about as a consequence of a potentially lucrative footballing career.⁵³⁸ The lucrative career and better salaries would benefit the players and their families,⁵³⁹ and this exposure would provide them with the platform to become upwardly socially mobile.⁵⁴⁰

International migration could also contribute positively to the player's professional development.⁵⁴¹ Statistics show that a significant number of Africa's most talented footballers play professional football in Europe.⁵⁴² With opportunities provided to these players and the enhanced training facilities on offer in Europe, the African players are able

⁵³³ Klein Solomon, Michele, and Suzanne Sheldon. "The global compact for migration: From the sustainable development goals to a comprehensive agreement on safe, orderly and regular migration." *International Journal of Refugee Law* (2018). p/587

⁵³⁴ Darby, Paul, James Esson, and Christian Ungruhe. "Migration, sport for development and sports academies: The case of football in Africa." Routledge, 2018. p/15

⁵³⁵ Engh, Mari Haugaa, and Sine Agergaard. "Producing mobility through locality and visibility: Developing a transnational perspective on sports labour migration." *International Review for the Sociology of Sport* 50, no. 8 (2015). p/16

⁵³⁶ O'Connell Davidson, Julia. "Moving children? Child trafficking, child migration, and child rights." *Critical social policy* 31, no. 3 (2011): 454-477. p/467

⁵³⁷ Darby, Paul, James Esson, and Christian Ungruhe. "Migration, sport for development and sports academies: The case of football in Africa." Routledge, 2018. p/15

⁵³⁸ Drywood, Eleanor, "'When we buy a young boy ...' Migrant Footballers, Children's Rights and the Case for EU Intervention' in Stalford, Helen and Ingi Iusmen (Eds), *The EU as a children's rights actor. Law, policy, and structural dimensions* (Barbara Budrich Publishers, Toronto 2015) 191-220. p/195

⁵³⁹ Darby, Paul, "African Football Labour Migration to Portugal: Colonial and Neo-Colonial Resource" (2007) *Soccer & Society*, 8:4., p. 495

⁵⁴⁰ Darby, Paul, James Esson, and Christian Ungruhe. "Migration, sport for development and sports academies: The case of football in Africa." Routledge, 2018. p/5

⁵⁴¹ Bullough, Steve, Richard Moore, Simon Goldsmith, and Lee Edmondson. "Player migration and opportunity: Examining the efficacy of the UEFA home-grown rule in six European football leagues." *International Journal of Sports Science & Coaching* 11, no. 5 (2016): 662-672. p/664

⁵⁴² Darby, Paul, "African Football Labour Migration to Portugal: Colonial and Neo-Colonial Resource" (2007) *Soccer & Society*, 8:4. p. 497

to develop their footballing abilities and gain from playing alongside other talented players from elite leagues around the world.⁵⁴³ This experience is often termed as the ‘feet-exchange’, and it occurs when overseas players have a positive influence on the technical skill of other players around them.⁵⁴⁴ The feet-exchange could lead to more technically gifted African players, which would then influence the successes of Africa’s national football teams in international competitions.⁵⁴⁵

The performance of the African teams and the instances of successful migrant African footballers could have a reverberating effect on the continent. European teams, being impressed with the quality available in Africa, may choose to reinvest financial and intellectual capital back into the continent.⁵⁴⁶ This investment may be through the opening of more Afro-European academies which could have various positive long term effects in the communities they are situated, such as: free quality education for those within the academies; employment opportunities for local coaches, teachers, cleaners and administrative staff, and construction workers in the communities;⁵⁴⁷ opportunities to graduate from the academy and play professional football abroad for the most talented African players; and contributions to the quality of the country’s domestic and international teams.⁵⁴⁸ Some academies go further and attempt to contribute to wider development agendas by up-scaling individual benefits to the broader community and societal levels. This is done by encouraging trainees to take part in community projects and entrepreneurial activities in Africa and supporting the activities of several local micro-businesses.⁵⁴⁹

Europe

In Europe, several clubs and national teams have benefitted from African football labour migration over the years. In club football, African players are numerous in the smaller leagues such as Belgium, Cyprus, Greece, the Netherlands, Sweden, Switzerland, and Turkey, whilst leagues in Central and Eastern Europe also draw a fair number of footballers

⁵⁴³ Darby, Paul, “Gains versus Drains: Football Academies and the Export of Highly Skilled Football Labor” (2011) 18 *Brown J. World Affairs.*, p. 266

⁵⁴⁴ Bullough, Steve, Richard Moore, Simon Goldsmith, and Lee Edmondson. "Player migration and opportunity: Examining the efficacy of the UEFA home-grown rule in six European football leagues." *International Journal of Sports Science & Coaching* 11, no. 5 (2016): 662-672. p/664

⁵⁴⁵ Darby, Paul, “African Football Labour Migration to Portugal: Colonial and Neo-Colonial Resource” (2007) *Soccer & Society*, 8:4., p. 495

⁵⁴⁶ Darby, Paul, James Esson, and Christian Ungruhe. "Migration, sport for development and sports academies: The case of football in Africa." Routledge, 2018. p/5

⁵⁴⁷ Darby, Paul, James Esson, and Christian Ungruhe. "Migration, sport for development and sports academies: The case of football in Africa." Routledge, 2018. p/14

⁵⁴⁸ Darby, Paul, “Gains versus Drains: Football Academies and the Export of Highly Skilled Football Labor” (2011) 18 *Brown J. World Affairs.* p. 271-2

⁵⁴⁹ Darby, Paul, James Esson, and Christian Ungruhe. "Migration, sport for development and sports academies: The case of football in Africa." Routledge, 2018. p/14

from the African continent.⁵⁵⁰ During the 2019-20 football season of the English Premier League, there were at least 47 African players who featured across the competition.⁵⁵¹ Besides from European players, only South American players were represented more than Africans in the Premier League.

With European national teams, several nations have benefitted significantly from colonisation and the longstanding links they have with their former African colonies. During the 2016 UEFA European Championships, the squads of the two finalists (France and Portugal) contained 17 players of African descent, making 37% of both sides.⁵⁵² The French national side consisted of 11 players of African descent, whilst the Portuguese team had six. In fact, the deciding goal of the competition in the final was scored by Portuguese player Eder Lopes, who was born in Guinea-Bissau, West Africa.⁵⁵³ Further statistics from the 2016 UEFA Euros competition showed that 12 of the 24 countries which competed in the tournament comprised of at least one player of African heritage in their squad.⁵⁵⁴

In the 2018 FIFA World Cup, France benefitted from a second generation of its 1998 “rainbow team”. France won the World Cup in 2018 with 80% of its players being of African descent.⁵⁵⁵ Following the triumph, there were arguments about the identities of the players, as most of them were children of migrant parents. Some in the media termed France’s win as a World Cup won by Africa, whilst some of the French players and the US Ambassador to France were quick to refute this claim.⁵⁵⁶

3.3.2 Disadvantages

The various advantages of football migration for Africa and Europe could have a potentially precarious effect on the lives and aspirations of the African footballers who increasingly view migration as the primary means in which they can achieve success. The increased

⁵⁵⁰ Cornelissen, Scarlett, and Eirik Solberg. "Sport mobility and circuits of power: The dynamics of football migration in Africa and the 2010 World Cup." *Politikon* 34, no. 3 (2007): 295-314. p/303

⁵⁵¹ Gwegwe, Siseko, “This season's 47 African players in the English Premier League” (September 2019) <<https://futaa.com/article/190141/this-season-s-47-african-players-in-the-english-premier-league>> accessed on 24/06/2020

⁵⁵² Aarons, Ed, “France’s and Portugal’s colonial heritage brings African flavour to Euro 2016” (*The Guardian*, 9 July 2016) <<https://www.theguardian.com/football/2016/jul/09/france-portugal-colonial-history-african-flavour-euro-2016>> accessed on 20/12/2020

⁵⁵³ BBC, “Euro 2016: Portugal's Eder and his incredible life story” (*BBC News*, 11 July 2016) <<http://www.bbc.co.uk/news/world-africa-36763552>> accessed on the 18 July 2016.

⁵⁵⁴ Aarons, Ed, “France’s and Portugal’s colonial heritage brings African flavour to Euro 2016” (*The Guardian*, 9 July 2016) <<https://www.theguardian.com/football/2016/jul/09/france-portugal-colonial-history-african-flavour-euro-2016>> accessed on 20/12/2020

⁵⁵⁵ Beydoun, Khaled, “Standing with Trevor Noah: a World Cup for France is a win for Africa too” (*The Guardian*, July 2018) <<https://www.theguardian.com/commentisfree/2018/jul/22/trevor-noah-world-cup-france-africa>> accessed 11/06/2020

⁵⁵⁶ Williamson, Lucy, “Trevor Noah defends 'Africa won the World Cup' joke” (*BBC*, July 2018) <<https://www.bbc.co.uk/news/world-africa-44885923>> accessed 11/06/2020

opportunities to enrol in more football academies across the African continent and the possibility of playing professionally in Europe furthers the migratory disposition of the Africans about a career away from their home country and continent.⁵⁵⁷ The African players expend time and energy to try and earn a professional contract abroad,⁵⁵⁸ and their eagerness contributes to the illicit market of young players which leads to instances of football trafficking.

The aspirations of the African players are enhanced by the sight of their fellow African role models who represent big teams across Europe, without knowing that for a large majority of the African players, their aspirations are antithetical to the true circumstances which most football migrants face. Though there are African football migrants who are successful in securing professional contracts abroad, merely securing this contract does not always mean that the player is safeguarded from exploitative practices and situations that threaten their security and well-being in the foreign country.⁵⁵⁹ With majority of players being unable to secure playing contracts, the players could potentially end up on the streets and parks of Europe,⁵⁶⁰ and at times, in more precarious circumstances than they were in back in Africa.⁵⁶¹ Therefore, in discussing the downsides to football labour migration, these can be divided into the disadvantages for irregular migrants (questioned status), and the negative effects of regular migration on Africa and African football (muscle drain and football dependence).

Questioned Status

When unsuccessful players are identified on the streets of Europe they may be met with questions about their status. The differentiation between illegal migrant and trafficking victim may be key to their future. Players who are considered to have been trafficked by virtue of their fitting the legal definition of human trafficking,⁵⁶² could be categorised as

⁵⁵⁷ Darby, Paul, "Gains versus Drains: Football Academies and the Export of Highly Skilled Football Labor" (2011) 18 *Brown J. World Affairs*. p. 268

⁵⁵⁸ Esson, James, "Modern slavery, child trafficking, and the rise of West African football academies" (*Open Democracy*, 15 January 2015) <<https://www.opendemocracy.net/beyondslavery/jamesesson/modernslaverychildtraffickingandriseofwestafricanfootballacademi>> accessed on 1 June 2016.

⁵⁵⁹ Drywood, Eleanor, "When we buy a young boy ..." Migrant Footballers, Children's Rights and the Case for EU Intervention' in Stalford, Helen and Ingi Iusmen (Eds), *The EU as a children's rights actor. Law, policy, and structural dimensions* (Barbara Budrich Publishers, Toronto 2015) 191-220. p/196

⁵⁶⁰ Maguire, Joseph A. "'Real politic' or 'ethically based': Sport, globalization, migration and nation-state policies." *Sport in society* 14, no. 7-8 (2011): 1040-1055. p/1046

⁵⁶¹ Bowman, Benjamin. 'Is international football migration simply another type of labour migration?: The politics of migration through the lens of international football migration from Africa to Europe' <http://people.bath.ac.uk/bd203/docs/Bowman2011_internationalfootballmigration.pdf> accessed on 09/11/2017. p. 10

⁵⁶² Plambeck, Sine. "Between "Victims" and "Criminals": Rescue, deportation, and everyday violence among Nigerian migrants." *Social Politics* 21, no. 3 (2014): 382-402. p/383

“victims” and therefore granted some, albeit limited, form of assistance and protection.⁵⁶³ Whereas, other players who are trafficked and abandoned, or who do not suffer any form of exploitation in the destination country, could be categorised as smuggled and “undocumented” migrants, and subsequently be viewed as undeserving of protection.⁵⁶⁴ Though victims of trafficking can also be removed, illegal migrants are more likely to be criminalised and removed from the destination country.⁵⁶⁵ This is due to their lack of legal documents to reside or work,⁵⁶⁶ and also because of the prism of criminality which labels them as potential dangers to the public.

With the grey areas around the status of identified unsuccessful football migrants, and the shared characteristics between migrants and victims,⁵⁶⁷ law enforcement and social workers sometimes display an inability to differentiate between the two. This difficulty arguably stems from the isolated and covert nature of the crime,⁵⁶⁸ but more so, the overriding belief by law enforcement that within the continuum of abuse not all migrants would be “deserving” of the victim status.⁵⁶⁹ Such beliefs have negative consequences for the trafficked persons, as authorities have remained cynical and hardened to the plight of victims who are easier to treat as illegal immigrants.⁵⁷⁰ As Lin pointed out, “wrong expectations of how a victim should behave often leads to misinterpretations by both the authorities and service providers, which may often shift blame on to the trafficked persons.”⁵⁷¹ By shifting the blame, many victims of the egregious harm caused by trafficking, fall within the category of irregular or illegal migrants in the eyes of the state.⁵⁷²

Blazek and others noted that institutions in Europe (police and other support organisations) tended to encourage people who claim to have been trafficked to return to their country of

⁵⁶³ Stoyanova, Vladislava. "Complementary protection for victims of human trafficking under the European Convention on Human Rights." *Goettingen J. Int'l L.* 3 (2011): 777. p/778-9

⁵⁶⁴ Plambech, Sine. "Between “Victims” and “Criminals”: Rescue, deportation, and everyday violence among Nigerian migrants." *Social Politics* 21, no. 3 (2014): 382-402. p/385

⁵⁶⁵ Brennan, Denise, and Sine Plambech. "Moving forward—Life after trafficking." *Anti-Trafficking Review* 10 (2018). p/3

⁵⁶⁶ Plambech, Sine. "Between “Victims” and “Criminals”: Rescue, deportation, and everyday violence among Nigerian migrants." *Social Politics* 21, no. 3 (2014): 382-402. p/383

⁵⁶⁷ Bowersox, Zack. "International Sporting Events and Human Trafficking: Effects of Mega-Events on a State’s Capacity to Address Human Trafficking." *Journal of Human Trafficking* 2, no. 3 (2016): 201-220. p/203

⁵⁶⁸ Guild, E., B. Andrees and M. Linden, *Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement* (Geneva: International Labour Office, 2005). p/52

⁵⁶⁹ Plambech, Sine. "Between “Victims” and “Criminals”: Rescue, deportation, and everyday violence among Nigerian migrants." *Social Politics* 21, no. 3 (2014): 382-402. p/387

⁵⁷⁰ Haynes, Dina Francesca. "Used, abused, arrested and deported: Extending immigration benefits to protect the victims of trafficking and to secure the prosecution of traffickers." *Hum. Rts. Q.* 26 (2004): 221. p/229

⁵⁷¹ Lin Leam Lin, “Trafficking as a Human Rights Issue: Thoughts on How to Address it in the Commonwealth” In Secretariat, Commonwealth. *Gender and Human Rights in the Commonwealth: Some Critical Issues for Action in the Decade 2005-2015*. Commonwealth Secretariat, 2004. p/184

⁵⁷² Mullally, Siobhán. "Migration, Gender, and the Limits of Rights." *Human Rights and Immigration* (2014): 145-176. p/146

origin.⁵⁷³ The authorities' justification for this is often a claim that more suitable support would be provided to the supposed "victim" if they returned home, as opposed to that which would be given to the victims if they chose to remain in the destination country.⁵⁷⁴ Consequently, trafficked African players who choose to stay in the European country (sometimes illegally) due to the increased economic opportunities available in the region,⁵⁷⁵ could have their claim to being victims questioned. The players may be viewed as fraudsters who pretended to have been trafficked to gain an advantage when they are in actuality, irregular economic migrants.⁵⁷⁶ However, when authorities equate the victim status of a child to their willingness to return home when given the opportunity, Esson stated that this is arguably an anti-immigrant sentiment.⁵⁷⁷ Such a sentiment contradicts the existence of the neo-colonial links created to foster the migratory disposition of the Africans, and which were designed in the post-colonial era to ensure the continued exportation and exploitation of cheap African talent within Europe. Hence, the questioned status and subsequent treatment of the African players in the destination countries, neglects the environment formed in Europe to encourage the continued inward migration of skilled foreigners.⁵⁷⁸

Muscle Drain

African teams and countries invest in the production of sporting talent, only for the talent to be recruited at an undervalued rate⁵⁷⁹ by the economically developed teams and leagues in Europe.⁵⁸⁰ The loss of the most talented African players lowers the quality of football on the continent⁵⁸¹ as the African teams are de-skilled.⁵⁸² The current extent of the muscle drain could be escalated further by the advent of more Afro-European academies on the continent,

⁵⁷³ Blazek, Matej, James Esson, and Darren P. Smith. "Relational geographies of human trafficking: Inequality, manoeuvring and im/mobility across space and time." *Transactions of the Institute of British Geographers* 44, no. 1 (2019): 63-78. Cited in Esson, James. "Playing the victim? Human trafficking, African youth, and geographies of structural inequality." *Population, Space and Place* (2020): e2309. p/8

⁵⁷⁴ Blazek, Matej, James Esson, and Darren P. Smith. "Relational geographies of human trafficking: Inequality, manoeuvring and im/mobility across space and time." *Transactions of the Institute of British Geographers* 44, no. 1 (2019): 63-78. Esson, James. "Playing the victim? Human trafficking, African youth, and geographies of structural inequality." *Population, Space and Place* (2020): e2309. p/8

⁵⁷⁵ Esson, James, "Better Off at Home? Rethinking Responses to Trafficked West African Footballers in Europe" (2015) *Journal of Ethnic and Migration Studies*, 41:3, p/512

⁵⁷⁶ Esson, James. "Playing the victim? Human trafficking, African youth, and geographies of structural inequality." *Population, Space and Place* (2020): e2309. p/8

⁵⁷⁷ Ibid.

⁵⁷⁸ Maguire, Joseph A. "'Real politic' or 'ethically based': Sport, globalization, migration and nation-state policies." *Sport in society* 14, no. 7-8 (2011): 1040-1055. p/1046

⁵⁷⁹ Poli, Raffaele. "African migrants in Asian and European football: hopes and realities." *Sport in Society* 13, no. 6 (2010): 1001-1011. p/1002

⁵⁸⁰ Maguire, Joseph A. "'Real politic' or 'ethically based': Sport, globalization, migration and nation-state policies." *Sport in society* 14, no. 7-8 (2011): 1040-1055. p/1048

⁵⁸¹ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/59

⁵⁸² Maguire, Joseph A. "'Real politic' or 'ethically based': Sport, globalization, migration and nation-state policies." *Sport in society* 14, no. 7-8 (2011): 1040-1055. p/1048

as the rate in which talented African players are found and exported could significantly increase.⁵⁸³ The academies primarily follow sporting and economic goals which contribute to the commodification of players, whilst their efforts to contribute to local sport development may not always be to the benefit of the communities in which they are based.⁵⁸⁴ Furthermore, in these academies the players could also have their inherent African abilities coached out of them to fit a more European mould before they are exported abroad.⁵⁸⁵

As a consequence of the muscle drain, the local fans of the African football clubs are denied direct access to watching the best players nurtured and developed in their country.⁵⁸⁶ This influences match attendance and revenues for the teams, and it limits other financial options such as sponsorships for the African sides.⁵⁸⁷ Moreover, the continued exportation hinders the formation of a cohesive group of players that are ready to represent their national teams.⁵⁸⁸ And, in some instances, the African national teams could suffer with key absences, as EU football clubs sometimes refuse African players permission to play for their national sides when there is a clash with the club's domestic playing schedule.⁵⁸⁹

Football Dependence

Due to the increasing levels of football migration between Africa and Europe, Poli acknowledged that the football economy is administered in a manner which fosters the financial discrepancies between the smaller (African) countries and leagues, and the bigger (European) countries and leagues.⁵⁹⁰ Poli argued that the financial discrepancies favour the teams and countries from the bigger European leagues and allows for the continued exploitation of the smaller leagues and teams.⁵⁹¹ These financial discrepancies have been maintained by the global expansion of FIFA, which has caused tensions over the balance of power between the established European bodies and other emerging nations.⁵⁹² Therefore,

⁵⁸³ Darby, Paul, "Gains versus Drains: Football Academies and the Export of Highly Skilled Football Labor" (2011) 18 *Brown J. World Affairs*. p. 272

⁵⁸⁴ Darby, Paul, James Esson, and Christian Ungruhe. "Migration, sport for development and sports academies: The case of football in Africa." Routledge, 2018. p/13

⁵⁸⁵ Darby, Paul, G. Akindes and M. Kirwin, "Football Academies and the Migration of African football Labor to Europe" (2007) *Journal of Sport and Social Issues*, Volume 31/2, p. 155

⁵⁸⁶ Maguire, Joseph A. "'Real politic' or 'ethically based': Sport, globalization, migration and nation-state policies." *Sport in society* 14, no. 7-8 (2011): 1040-1055. p/1048

⁵⁸⁷ Darby, Paul, "African Football Labour Migration to Portugal: Colonial and Neo-Colonial Resource" (2007) *Soccer & Society*, 8:4. p. 495

⁵⁸⁸ Ibid.

⁵⁸⁹ Maguire, Joseph, and Robert Pearton. "Global sport and the migration patterns of France '98 World Cup finals players: Some preliminary observations." *Soccer & Society* 1, no. 1 (2000): 175-189. p/179

⁵⁹⁰ Poli, Raffaele, "The migrations of African football players to Europe: Human trafficking and neo-colonialism in question", (2010) presented at the Football for Development Conference, Vienna, Austria

⁵⁹¹ Ibid.

⁵⁹² Maguire, Joseph, and David Stead. "Border crossings: Soccer labour migration and the European Union." *International Review for the Sociology of Sport* 33, no. 1 (1998): 59-73. p/60

because Europe is football's core economy,⁵⁹³ the non-core leagues and countries are kept in a dependent relationship with the dominant European core.⁵⁹⁴ Thereby leaving the African sides to remain impoverished and under-developed.⁵⁹⁵

Conclusion

This chapter has shown that there are multiple factors that contribute to football labour migration. The history of football migration between Africa and Europe shows that former EU imperialist powers saw African players as part of the cheap labour that could be transported and exploited abroad. Such practices created migratory and neo-colonial links between Africa and several EU countries. The motivations for the players' migrations showed that though socio-economic benefits were key, there were often additional and underlying factors that pushed and pulled the players towards wanting to migrate, legally or otherwise. With a general absence of legal routes for migration for the aspiring players, several end up in more precarious conditions that are more related to human trafficking than irregular migration. The effects of migration then showed that though there were several positives for the few African players who successfully migrated through football, many aspiring African players suffer very contrasting circumstances if they are unsuccessful in attaining a professional playing contract. Yet, an underlying perception amongst the African minors persists that the socio-economic rewards associated with irregular migration and potentially, human trafficking, could outweigh the purported risks to their person.

⁵⁹³ Ibid. p/61

⁵⁹⁴ Maguire, Joseph, and Robert Pearton. "The impact of elite labour migration on the identification, selection and development of European soccer players." *Journal of sports sciences* 18, no. 9 (2000): 759-769. p/760

⁵⁹⁵ Darby, Paul, "African Football Labour Migration to Portugal: Colonial and Neo-Colonial Resource" (2007) *Soccer & Society*, 8:4, p. 496

Chapter 4 - REGULATION, REGULATORY SPACE, AND FIFA'S ANTI-TRAFFICKING POLICIES

Regulation plays an important role in the analysis of football trafficking, as it is apparent that the continued exploitative procurement of child players has yet to be met with the appropriate regulatory responses and allied practices needed to sufficiently curb the problem.⁵⁹⁶ So far, FIFA has been accused of instituting regulations which are not fit for purpose,⁵⁹⁷ as the policies have failed to protect the aspiring young players from being trafficked in and through the sport. Therefore, understanding the use and application of regulation and its importance in curbing the football trafficking problem is essential.

To consider the regulatory regime and landscape around football, the “regulatory space”⁵⁹⁸ account put forward in 1989 by Leigh Hancher and Michael Moran is pertinent, because it allows for a detailed look at regulatory practices beyond centred (State) regulation.⁵⁹⁹ By analysing football’s regulatory space, the interplay, inter-relationships, and the institutional connections,⁶⁰⁰ between the public (State) and private (non-State) actors involved in football will be established.⁶⁰¹ This is in order to illustrate which party has the “power”⁶⁰² to ascribe importance and prioritise certain regulatory issues in the space, and to identify who the onus falls on to regulate against such problems. After which, the relevant FIFA anti-trafficking policies will be discussed.

4.1 WHAT IS REGULATION?

Several writers have noted that the term “regulation” is notoriously difficult to define.⁶⁰³ It is an expression that is often found in both legal and non-legal contexts, and for this reason has acquired a variety of meanings over time.⁶⁰⁴ Baldwin and others claimed that the lack of

⁵⁹⁶ McGee, Darragh. "Displacing childhood: Labour exploitation and child trafficking in sport." In *Labour Migration, Human Trafficking and Multinational Corporations: The Commodification of Illicit Flows*, (Routledge, 2012) pp. 71-90. p/71

⁵⁹⁷ Esson, James, and Eleanor Drywood. "Challenging popular representations of child trafficking in football." *Journal of Criminological Research, Policy and Practice* (2018). p/65

⁵⁹⁸ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/64

⁵⁹⁹ Vibert, Frank. *The new regulatory space: Reframing democratic governance*. Edward Elgar Publishing, 2014. p/17

⁶⁰⁰ Ibid. p/18

⁶⁰¹ Morgan, Bronwen and Karen Yeung, *An introduction to law and regulation: Text and materials* (Cambridge University Press, 2007). p/59

⁶⁰² Hancher, Leigh and Moran Michael, 'Organizing Regulatory Space' in Hancher and Moran (ed), *Capitalism, Culture and Economic Regulation* (Oxford, Clarendon Press, 1989). Pg. 277

⁶⁰³ Morgan, Bronwen and Karen Yeung, *An introduction to law and regulation: Text and materials* (Cambridge University Press, 2007). p. 3

⁶⁰⁴ Ogus, Anthony, *Regulation: Legal form and economic theory* (Bloomsbury Publishing, 2004). p. 1

a singular meaning for the term is due to the growth in regulation as an institutional phenomenon within the academic industry.⁶⁰⁵ This has had the resultant effect of academics and professionals trying to colonise this field by devising their own varied definitions of the term, in order to mould the understanding of regulation in their own image.⁶⁰⁶ Black agreed with this point, as she contended that regulation is often given a particular tone or conceptualisation depending on the problem looking to be addressed by a writer.⁶⁰⁷ Other authors have argued that the lack of cohesion amongst the several definitions of the term is due to various political and ideological battles that ensue when trying to determine the appropriate scope of regulation.⁶⁰⁸ Orbach provided a short summary on the differing viewpoints surrounding the definition of regulation, as he suggested that the confusion stems out of unrelated matters, as one group is focused on the abstract concept of regulation, whilst the other group is concerned with the desirable scope of regulatory powers and policies.⁶⁰⁹

The two groups can loosely be classed into those who define regulation through a narrow lens and those who view regulation through a broad lens. Those who view regulation in a narrow form aver that regulation is an instrument of the state to influence social behaviour,⁶¹⁰ as a government promulgates rules which are accompanied by mechanisms for monitoring and enforcement,⁶¹¹ often through a specialist public agency aimed at promoting compliance.⁶¹² In contrast, those who view regulation through a broad lens argue that regulation encompasses all forms of social⁶¹³ or behavioural control whatever the origin,⁶¹⁴ and this includes non-state processes as forms of regulation.⁶¹⁵ Though there are differences between the groups, it is argued that regulation should not be reduced to a simple essence (i.e., regulation should not be deemed as only to restrict behaviour and prevent undesirable activities⁶¹⁶) or a singular concept, in order to appease any definitional issues.⁶¹⁷

⁶⁰⁵ Baldwin, Robert, Colin Scott and Christopher Hood, *A reader on regulation* (Oxford University Press, 1998) p.2

⁶⁰⁶ Ibid, p.3

⁶⁰⁷ Black, Julia, 'Critical Reflections on Regulation' (2002) CARR Discussion Papers, DP 4 London: Centre for Analysis of Risk and Regulation. p. 9

⁶⁰⁸ Morgan, Bronwen and Karen Yeung, *An introduction to law and regulation: Text and materials* (Cambridge University Press, 2007). p. 3

⁶⁰⁹ Orbach, Barak, 'What is regulation?' (2012) 30 Yale Journal on Regulation Online 1 Arizona Legal Studies Discussion Paper No 12-27. p. 3

⁶¹⁰ Morgan, Bronwen and Karen Yeung, *An introduction to law and regulation: Text and materials* (Cambridge University Press, 2007). p. 3

⁶¹¹ Black, Julia, 'Critical Reflections on Regulation' (2002) CARR Discussion Papers, DP 4 London: Centre for Analysis of Risk and Regulation. p. 8

⁶¹² Baldwin, Robert, Colin Scott and Christopher Hood, *A reader on regulation* (Oxford University Press, 1998) p.2

⁶¹³ Morgan, Bronwen and Karen Yeung, *An introduction to law and regulation: Text and materials* (Cambridge University Press, 2007). p. 4

⁶¹⁴ Ogus, Anthony, *Regulation: Legal form and economic theory* (Bloomsbury Publishing, 2004). p. 1

⁶¹⁵ Baldwin, Robert, Colin Scott and Christopher Hood, *A reader on regulation* (Oxford University Press, 1998) p.4

⁶¹⁶ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p. 3

⁶¹⁷ Baldwin, Robert, Colin Scott and Christopher Hood, *A reader on regulation* (Oxford University Press, 1998) p.2

Black proposed a general definition for regulation, as she asserted that regulation is a “sustained and focused attempt to alter the behaviour of others according to defined standards or purposes with the intention of producing a broadly identified outcome or outcomes, which may involve mechanisms of standard-setting, information-gathering and behaviour-modification.”⁶¹⁸ Black explained that behaviour modification would be able to address the collective problem often through a combination of rules as well as a means for their implementation and enforcement.⁶¹⁹ Black’s definition was affirmed by the House of Lords Select Committee on the Constitution, as they asserted that “regulation is achieved by decisions intended to control or influence specific elements of the regulated activity. [And regulations] are implemented by the setting, monitoring, and enforcement of standards designed to achieve chosen objectives.”⁶²⁰

This context within which regulations are actioned to achieve the regulatory goal is what is known as a “regulatory regime”. May explained that a regulatory regime comprises of an institutional structure assigned with the responsibilities for carrying out regulatory actions.⁶²¹ The institutional structure and regulatory regime in this analysis related to football, is FIFA.

4.1.1 The Types of Regulation

Centred regulation

Centred regulation (narrow lens perspective on regulation) involves some form of direct state intervention to alter behaviour or impact the economy.⁶²² At its conception, regulation was primarily centred and viewed as a tool by government to modify behaviours and attain certain outcomes within a community.⁶²³ In centred regulation, governments promulgate rules to be applied and effected by a body devoted to this purpose.⁶²⁴ However, regulation is increasingly being viewed as more than a centralised tool by governments to cause behaviour change.⁶²⁵

⁶¹⁸ Black, Julia, 'Critical Reflections on Regulation' (2002) CARR Discussion Papers, DP 4 London: Centre for Analysis of Risk and Regulation. p. 20

⁶¹⁹ Black, Julia. "Constructing and contesting legitimacy and accountability in polycentric regulatory regimes." *Regulation & governance* 2, no. 2 (2008): 137-164. p/139

⁶²⁰ House of Lords Select Committee on the Constitution, *The Regulatory State: Ensuring its Accountability* (Volume 1, HL Paper 68-I, the Stationary Office Limited, London 2004) Pg. 13, para. 22

⁶²¹ May, Peter J. "Regulatory regimes and accountability." *Regulation & Governance* 1, no. 1 (2007): 8-26. p/9

⁶²² Black, Julia, 'Critical Reflections on Regulation' (2002) CARR Discussion Papers, DP 4 London: Centre for Analysis of Risk and Regulation. p. 8

⁶²³ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p. 3

⁶²⁴ Ibid.

⁶²⁵ Ogus, Anthony, *Regulation: Legal form and economic theory* (Bloomsbury Publishing, 2004). p. 3

Decentred regulation

Decentred regulation (broad lens perspective on regulation) is different from centred regulation,⁶²⁶ as here there is no direct connection and instruction from the state, and there are no boundaries regarding the scope of regulation, or the impact of factors which may influence the desired outcome.⁶²⁷ Decentred regulation draws attention away from the state and denies the necessity of the state to play a central role in regulation.⁶²⁸ Decentred regulation sees regulation and the question of “who can regulate?” as an area which could consist of a combination of both state and non-state actors who can interact in a variety of complex and dynamic ways in the regime.⁶²⁹ Therefore, decentred regulation can be formed by various industries and institutions who possess regulatory functions which could be performed by one actor or dispersed between several actors in a regime.⁶³⁰

Academic writers have played a key role in the development of the different perspectives associated with decentred regulation, as they have provided an expanded list of non-state institutions which are able to engage in regulation through decentred means.⁶³¹ This could include corporations and independent organisations which practice self-regulation (such as FIFA), professional or trade bodies, and private organisations.⁶³² These bodies all have the capacity to regulate and create regulation without state interference, in order to achieve their collective goals.

4.1.2 Theories of Regulation

Despite the different types of regulation, at its core, regulation plays a major role in all contemporary societies and often flows from public or private sources of authority,⁶³³ or a combination of the two. With this flow of authority between the regulator and the regulatees, there are often three main theories of regulation. These include public interest, private interest, and institutionalist theories of regulation.

⁶²⁶ Morgan, Bronwen and Karen Yeung, *An introduction to law and regulation: Text and materials* (Cambridge University Press, 2007). p. 4

⁶²⁷ Black, Julia, 'Critical Reflections on Regulation' (2002) CARR Discussion Papers, DP 4 London: Centre for Analysis of Risk and Regulation. p. 8

⁶²⁸ Black, Julia. "Constructing and contesting legitimacy and accountability in polycentric regulatory regimes." *Regulation & governance* 2, no. 2 (2008): 137-164. p/139-40

⁶²⁹ Black, Julia. "Tensions in the regulatory state." *Public Law* 2007, no. Spring (2007) p/3

⁶³⁰ Black, Julia. "Constructing and contesting legitimacy and accountability in polycentric regulatory regimes." *Regulation & governance* 2, no. 2 (2008): 137-164. p/139

⁶³¹ Prosser, Tony, *The regulatory enterprise: Government, regulation, and legitimacy* (OUP Oxford, 2010) p/1

⁶³² Ogus, Anthony, *Regulation: Legal form and economic theory* (Bloomsbury Publishing, 2004). p. 3

⁶³³ Vibert, Frank. *The new regulatory space: Reframing democratic governance*. Edward Elgar Publishing, 2014. p/13

The public and private interest theories explain why a regulator passes certain rules and how it intends to affect the behaviour of its regulatees to achieve the desired outcomes.⁶³⁴ Whereas, the institutionalist theories concentrate on the process of how regulation works.⁶³⁵ The focus of this section is mainly on the public and private interest theories of regulation due to their increased significance in the context of analysing FIFA.

Public Interest

The public interest theory proffers that regulation is brought about as a result of an underlying pursuit of public interest related objectives by the regulators.⁶³⁶ The public interest theory is mostly seen in centred regulatory regimes, as governments use regulation to achieve the desire of the public in pursuance of a collective goal,⁶³⁷ and to promote the general welfare of a community.⁶³⁸ The public interest theory assumes that governments (in the form of politicians and other regulators) are inherently benevolent in nature, and that they aim to address objective failures within a community through regulatory intervention.⁶³⁹ However, Baldwin and others posited that the idea of a pure public interest-oriented regulation is utopian.⁶⁴⁰ As regulatory decisions are rarely based on objective standards and the public interest approach to regulation does not always deliver on the desired public interest outcomes.⁶⁴¹

Private Interest

The increased occurrences of regulatory failure and regulatory capture in public interest and centred regulatory regimes led to the growth in private interest theories. Proponents of the private interest theory questioned the true intentions behind regulation,⁶⁴² and the “public-interestedness” of regulators. This was because regulators were adopting regulations which maximised the private self-interests of a select group within the community,⁶⁴³ as opposed

⁶³⁴ Morgan, Bronwen and Karen Yeung, *An introduction to law and regulation: Text and materials* (Cambridge University Press, 2007). p. 17

⁶³⁵ Morgan, Bronwen and Karen Yeung, *An introduction to law and regulation: Text and materials* (Cambridge University Press, 2007). p. 75

⁶³⁶ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p. 40-1

⁶³⁷ Ogus, Anthony, *Regulation: Legal form and economic theory* (Bloomsbury Publishing, 2004). p. 3

⁶³⁸ Morgan, Bronwen and Karen Yeung, *An introduction to law and regulation: Text and materials* (Cambridge University Press, 2007). p. 17

⁶³⁹ Lodge, Martin and Kai Wegrich, *Managing regulation: Regulatory analysis, politics and policy* (Macmillan International Higher Education, 2012). p. 29

⁶⁴⁰ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p. 41

⁶⁴¹ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p. 43

⁶⁴² Ogus, Anthony, *Regulation: Legal form and economic theory* (Bloomsbury Publishing, 2004). p. 3

⁶⁴³ Morgan, Bronwen and Karen Yeung, *An introduction to law and regulation: Text and materials* (Cambridge University Press, 2007). p. 43

to being in the interests of the wider public, for which the regulations should have primarily benefitted.⁶⁴⁴ The private interest theory of regulation explains regulation from an interest group behavioural perspective.⁶⁴⁵ The theory entails that parties within a regime come together to form a politically effective and powerful group which is able to capture and dominate the regulatory process.⁶⁴⁶ The parties in the group are then able to pursue their self-interests,⁶⁴⁷ as they affect the decisions of the regulators to go in their favour.⁶⁴⁸ Nevertheless, because the traditional concept of an autonomous private interest group within the regulatory regime acting in pursuit of its own immediate goals, may not always contradict the public interest incentives, it is argued that the differences between both public interest and private interest theories may no longer reflect the differing dynamics and complexities seen within regulatory regimes.⁶⁴⁹

4.2 REGULATORY INSTRUMENTS AND STRATEGIES

The choice of regulatory strategy is a crucial decision for regulators, especially when trying to produce regulation which can bring about the intended behaviour modification amongst its regulatees. Regulatory instruments and strategies can be classified according to the type of regulation (centred or decentred).⁶⁵⁰ This could range from command and control, economic incentives, private regulation, competition rules, and direct action.⁶⁵¹ For this analysis, the focus will be on the command and control and private regulation instruments.

4.2.1 Command and Control (C&C) Regulation

C&C is also referred to as classical regulation, and it is the regulatory instrument most adopted in centred regulation. It consists of the promulgation of legal rules by a government through the prohibition of certain conduct and the setting of conditions for the behaviour

⁶⁴⁴ Morgan, Bronwen and Karen Yeung, *An introduction to law and regulation: Text and materials* (Cambridge University Press, 2007). p. 17

⁶⁴⁵ Den Hertog, Johan A. "Review of economic theories of regulation." *Discussion Paper Series/Tjalling C. Koopmans Research Institute* 10, no. 18 (2010). p/2

⁶⁴⁶ Adams, Michael B., and G. D. Tower. "Theories of regulation: some reflections on the statutory supervision of insurance companies in Anglo-American countries." *Geneva Papers on Risk and Insurance. Issues and Practice* (1994): 156-177. p/167

⁶⁴⁷ Kuan, Kelvin. "Why private interest theory should be used to evaluate the adequacy of the auditor independence requirements in CLERP 9." (2015). p/1
<http://www.clta.edu.au/professional/papers/conference2011/Group3_Paper1_Kuan.pdf> accessed on 28/06/2020

⁶⁴⁸ Den Hertog, Johan A. "Review of economic theories of regulation." *Discussion Paper Series/Tjalling C. Koopmans Research Institute* 10, no. 18 (2010). p/2

⁶⁴⁹ Pongsiri, Nutavoot. "Regulation and public-private partnerships." *International Journal of Public Sector Management* 15, no. 6 (2002): 487-495. p/487

⁶⁵⁰ Morgan, Bronwen and Karen Yeung, *An introduction to law and regulation: Text and materials* (Cambridge University Press, 2007). p/80

⁶⁵¹ Baldwin, Robert, Martin Cave, and Martin Lodge. *Understanding regulation: theory, strategy, and practice*. Oxford University Press on Demand, 2012. p/131

expected of its regulatees.⁶⁵² The prohibitions set in C&C regulations are considered to be an effective deterrent from undesirable behaviours, because C&C stipulations are often underpinned by coercive sanctions (either civil or criminal in nature) if the rules are violated.⁶⁵³ There are however several difficulties with C&C regulations, such as:

- C&C regulations often suffer from a lack of innovation and flexibility to accommodate for the changes in the society. The complex and inflexible rules could also lead to over-regulation, legalism, etc.⁶⁵⁴
- C&C rules could be too complex and cumbersome that the regulatees lack the requisite motivation to comply.⁶⁵⁵
- C&C may not prevent the occurrence of regulatory capture when the relationship between regulators and regulatees becomes too close.⁶⁵⁶
- The enforcement of C&C could be done in an overzealous, uninformed, or expensive manner,⁶⁵⁷ which would lead to uncertain effects within the regime.⁶⁵⁸

4.2.2 Private (Self-) Regulation

As C&C is seen in centred regulatory regimes, private self-regulation is mostly witnessed in decentred regimes. Private regulation occurs when parties voluntarily come together to form a regulatory structure as a result of their common interests.⁶⁵⁹ The private parties identify a gap in regulations pertaining to a specific activity or vocation, and decide to establish themselves as an alternate form of governance by adopting a self-regulatory strategy.⁶⁶⁰ Self-regulation takes place when the rules applicable to regulatees emanate from a private institution which has a rule-making authority,⁶⁶¹ these are referred to as Self-Regulatory Associations (SRAs).

⁶⁵² Baldwin, Robert, Martin Cave, and Martin Lodge. *Understanding regulation: theory, strategy, and practice*. Oxford University Press on Demand, 2012. p/106

⁶⁵³ Morgan, Bronwen and Karen Yeung, *An introduction to law and regulation: Text and materials* (Cambridge University Press, 2007). p/80

⁶⁵⁴ Baldwin, Robert, Martin Cave, and Martin Lodge. *Understanding regulation: theory, strategy, and practice*. Oxford University Press on Demand, 2012. p/108

⁶⁵⁵ Lodge, Martin and Kai Wegrich, *Managing regulation: Regulatory analysis, politics and policy* (Macmillan International Higher Education, 2012) p/97

⁶⁵⁶ Baldwin, Robert, Martin Cave, and Martin Lodge. *Understanding regulation: theory, strategy, and practice*. Oxford University Press on Demand, 2012. p/107

⁶⁵⁷ Baldwin, Robert, Martin Cave, and Martin Lodge. *Understanding regulation: theory, strategy, and practice*. Oxford University Press on Demand, 2012. p/110

⁶⁵⁸ Lodge, Martin and Kai Wegrich, *Managing regulation: Regulatory analysis, politics and policy* (Macmillan International Higher Education, 2012) p/97

⁶⁵⁹ Streeck, Wolfgang, and Philippe C. Schmitter. "Community, market, state-and associations? The prospective contribution of interest governance to social order." *European sociological review* 1, no. 2 (1985): 119-138. p/124

⁶⁶⁰ Ronit, Karsten. "Institutions of private authority in global governance: linking territorial forms of self-regulation." *Administration & Society* 33, no. 5 (2001): 555-578. p/561

⁶⁶¹ Vibert, Frank. *The new regulatory space: Reframing democratic governance*. Edward Elgar Publishing, 2014. p/14

SRAs share several consistencies with decentred regulation,⁶⁶² such as the lack of direct government interference, and the SRAs ability to regulate itself.⁶⁶³ This self-regulatory capacity is an essential facet of any SRA, as they are the dominant actor within the regime, have an effective monopoly, and are able to represent the specific interests of their group of actors.⁶⁶⁴ The SRA is the dominant party that has the capacity to achieve compliance among its members, and can sanction violations of its Codes of Conduct (CoC).⁶⁶⁵ To this end, SRAs are mostly professional associations or sports organisations with an ability to regulate its members according to prescribed policies and procedures for adherence.

For an SRA to be recognised as a viable regulatory body, the agreement and arrangements between the private actors should be recognised by a government.⁶⁶⁶ The state will surrender its authority in the specific field so that the SRA can be recognised as an alternate power structure that is outside the direct control of political institutions.⁶⁶⁷ The SRA would then be able to regulate itself, which is not only a cheaper form of regulation for the taxpayer,⁶⁶⁸ but also acts as recognition by the state that its involvement may not always be needed to bring about the desired behaviour change in the given sector.⁶⁶⁹ Though the state surrenders authority in the field, SRAs may at times face threats of state intervention when a problem is not being adequately regulated against within its regime.⁶⁷⁰

Types of Self-Regulation

Self-regulation encompasses a wide variety of institutional arrangements and types,⁶⁷¹ these include pure, co-opted, negotiated, and mandated self-regulation. The pure self-regulation is the most pertinent to the analysis of FIFA, but the other forms of self-regulation are also briefly explained.

Pure Self-Regulation

⁶⁶² Prosser, Tony, *The regulatory enterprise: Government, regulation, and legitimacy* (OUP Oxford, 2010) p/1

⁶⁶³ Black, Julia. "Decentring regulation: Understanding the role of regulation and self-regulation in a "post-regulatory" world." *Current legal problems* 54, no. 1 (2001): 103-146. p/113

⁶⁶⁴ Streeck, Wolfgang, and Philippe C. Schmitter. "Community, market, state-and associations? The prospective contribution of interest governance to social order." *European sociological review* 1, no. 2 (1985): 119-138. p/126

⁶⁶⁵ Ronit, Karsten. "Institutions of private authority in global governance: linking territorial forms of self-regulation." *Administration & Society* 33, no. 5 (2001): 555-578. p/566

⁶⁶⁶ Streeck, Wolfgang, and Philippe C. Schmitter. "Community, market, state-and associations? The prospective contribution of interest governance to social order." *European sociological review* 1, no. 2 (1985): 119-138. p/131

⁶⁶⁷ Ronit, Karsten. "Institutions of private authority in global governance: linking territorial forms of self-regulation." *Administration & Society* 33, no. 5 (2001): 555-578. p/566

⁶⁶⁸ Ogus, Anthony. "Rethinking self-regulation." *Oxford J. Legal Stud.* 15 (1995): 97. Cited in Morgan, Bronwen and Karen Yeung, *An introduction to law and regulation: Text and materials* (Cambridge University Press, 2007). p/93

⁶⁶⁹ Vibert, Frank. *The new regulatory space: Reframing democratic governance*. Edward Elgar Publishing, 2014. p/14

⁶⁷⁰ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/138 & 142

⁶⁷¹ Ogus, Anthony. "Rethinking self-regulation." *Oxford J. Legal Stud.* 15 (1995): 97. Cited in Morgan, Bronwen and Karen Yeung, *An introduction to law and regulation: Text and materials* (Cambridge University Press, 2007). p/95

This occurs when an industry takes the initiative to develop its laws,⁶⁷² and enforces its rules and CoC with no government involvement, or if government involvement does occur, it takes a limited form.⁶⁷³ Pure self-regulation ensues through an agreement where the involved parties decide to regulate their own behaviour through the formation of a regulatory body.⁶⁷⁴ Upon formation of the SRA, the parties will be involved in the promulgation and enforcement of its rules and CoC, along with the monitoring of the entire regulatory process.⁶⁷⁵ The SRA is left to conduct these tasks in the absence of governmental control in the given field.⁶⁷⁶

There are several professions and sports associations which practice pure self-regulation. SRAs like FIFA guide their members' behaviours through established rules, monitor their regulatory performance, and are able to sanction their members in instances of non-compliance.⁶⁷⁷ The power of the SRA is derived from the contractual agreement with its members, which ensures the SRA has specific mechanisms for dealing with disputes within the regime, and underlines that law operates as a fall-back mechanism.⁶⁷⁸

Co-Opted Self-Regulation

This occurs when the industry, on its own volition, involves non-industry people (e.g., consumer and government representatives, independent members of the public, experts) in the development, application, and enforcement of laws in the regulatory regime.⁶⁷⁹ In this self-regulation, the additional input by non-members could be through statutory prescriptions and objectives, rules that are drafted by or approved by other bodies or ministers, and ministerial guidelines for consideration by the self-regulator.⁶⁸⁰

Negotiated Self-Regulation

⁶⁷² Boddewyn, Jean J. "Advertising self-regulation: private government and agent of public policy." *Journal of public policy & marketing* 4, no. 1 (1985): 129-141. p/135

⁶⁷³ Black, Julia. "Decentring regulation: Understanding the role of regulation and self-regulation in a "post-regulatory" world." *Current legal problems* 54, no. 1 (2001): 103-146. p/113

⁶⁷⁴ Morgan, Bronwen and Karen Yeung, *An introduction to law and regulation: Text and materials* (Cambridge University Press, 2007). p/95

⁶⁷⁵ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/138

⁶⁷⁶ Ayres, Ian, and John Braithwaite. *Responsive regulation: Transcending the deregulation debate*. Oxford University Press, 1992. p/128

⁶⁷⁷ Ronit, Karsten. "Institutions of private authority in global governance: linking territorial forms of self-regulation." *Administration & Society* 33, no. 5 (2001): 555-578. p/573-4

⁶⁷⁸ Morgan, Bronwen and Karen Yeung, *An introduction to law and regulation: Text and materials* (Cambridge University Press, 2007). p/95

⁶⁷⁹ Boddewyn, Jean J. "Advertising self-regulation: private government and agent of public policy." *Journal of public policy & marketing* 4, no. 1 (1985): 129-141. p/135

⁶⁸⁰ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/142

This takes place when the industry voluntarily negotiates the development, use, and enforcement of laws with an external body (e.g., a government department or a consumer association).⁶⁸¹ This form of self-regulation involves the state contributing to the creation of conditions, whereby the SRA is able to steer itself and its members on its own and in the direction that the government prescribes, but without the government being directly involved in the regulatory set up.⁶⁸²

Mandated Self-Regulation

This occurs when an industry is ordered or designated by the government to develop, use, and enforce laws pertaining to an industry, whether alone or in collaboration with other relevant bodies.⁶⁸³

Advantages and Disadvantages of SRAs

On the one hand, there are several advantages attached to the use of self-regulation as a regulatory strategy. These include:

- SRA's regulations show an increased expertise and technical knowledge of industry practices and requirements, and also display an innovation with regulatory policies, which may not take place if the industry was regulated by the State;⁶⁸⁴
- Information costs for the formulation and interpretation of standards are lower;⁶⁸⁵
- Administrative costs of the regime are internalised and paid for by the SRA rather than by the government through taxpayer's money;⁶⁸⁶
- Monitoring and enforcement costs in private self-regulation are reduced due to ease of access to regulatees;⁶⁸⁷
- Regulatory policies are often responsive to the industry, flexible, informed, targeted, and tailored to the interests of the involved actors,⁶⁸⁸

⁶⁸¹ Boddewyn, Jean J. "Advertising self-regulation: private government and agent of public policy." *Journal of public policy & marketing* 4, no. 1 (1985): 129-141. p/135

⁶⁸² Black, Julia. "Decentring regulation: Understanding the role of regulation and self-regulation in a "post-regulatory" world." *Current legal problems* 54, no. 1 (2001): 103-146. p/112-3

⁶⁸³ Boddewyn, Jean J. "Advertising self-regulation: private government and agent of public policy." *Journal of public policy & marketing* 4, no. 1 (1985): 129-141. p/135

⁶⁸⁴ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/139

⁶⁸⁵ Ogus, Anthony. "Rethinking self-regulation." *Oxford J. Legal Stud.* 15 (1995): 97. Cited in Morgan, Bronwen and Karen Yeung, *An introduction to law and regulation: Text and materials* (Cambridge University Press, 2007). p/93

⁶⁸⁶ Ogus, Anthony. "Rethinking self-regulation." *Oxford J. Legal Stud.* 15 (1995): 97. Cited in Morgan, Bronwen and Karen Yeung, *An introduction to law and regulation: Text and materials* (Cambridge University Press, 2007). p/93

⁶⁸⁷ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/140

⁶⁸⁸ Gomsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/139

- The conditions within the SRA prompt greater compliance on the part of the regulatees.⁶⁸⁹

On the other hand, self-regulation also has its disadvantages, as SRAs have been criticised for:

- Being self-serving, self-interested, lacking sanctions;⁶⁹⁰
- Anti-competitive practices on certain requirements, and furthering the interests of its members over that of the wider public;⁶⁹¹
- Poorly imposing enforcement standards against errant members;⁶⁹²
- Producing regulations that are unjustifiable due to the lacking legitimacy and accountability;⁶⁹³
- Circumventing state interference in its affairs,⁶⁹⁴ even when problems stemming from the SRA are affecting the wider public and are not being adequately addressed through its regime;
- Carrying out all the functions of policy formulation, monitoring, adjudication, and enforcement. With the absence of power separation within the SRAs, this could lead to instances of conflicting interests, the possible abuse of power,⁶⁹⁵ and the occurrence of regulatory capture;⁶⁹⁶
- Not consulting third parties or non-members who could be affected by the SRA's regulatory policies during its decision-making processes.⁶⁹⁷

4.3 FIFA'S REGULATORY STRUCTURE AND SYSTEM

FIFA was founded in 1904 by seven nations in Europe as an umbrella organisation to standardise the rules of the game of association football across borders,⁶⁹⁸ to arrange international tournaments, and to develop a commonly shared fixture calendar for

⁶⁸⁹ Black, Julia. "Decentring regulation: Understanding the role of regulation and self-regulation in a "post-regulatory" world." *Current legal problems* 54, no. 1 (2001): 103-146. p/115

⁶⁹⁰ Black, Julia. "Decentring regulation: Understanding the role of regulation and self-regulation in a "post-regulatory" world." *Current legal problems* 54, no. 1 (2001): 103-146. p/115

⁶⁹¹ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/142

⁶⁹² Ogus, Anthony. "Rethinking self-regulation." *Oxford J. Legal Stud.* 15 (1995): 97. p/98-9

⁶⁹³ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/141

⁶⁹⁴ Streeck, Wolfgang, and Philippe C. Schmitter. "Community, market, state-and associations? The prospective contribution of interest governance to social order." *European sociological review* 1, no. 2 (1985): 119-138. p/131

⁶⁹⁵ Ogus, Anthony. "Rethinking self-regulation." *Oxford J. Legal Stud.* 15 (1995): 97. p/98-9

⁶⁹⁶ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/142

⁶⁹⁷ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/145

⁶⁹⁸ Bank, Steven A. "Reforming FIFA from the Inside out." *Vand. J. Transnat'l L.* 52 (2019): 265. p/278

participants.⁶⁹⁹ FIFA was formed as a non-profit Swiss-based association with a small network to accomplish these objectives.⁷⁰⁰ In 1974, FIFA began to enter the modern era as a major international sports power,⁷⁰¹ with an intention to build on its small foundation by adding to its regulatory capabilities.⁷⁰² This growth coincided with the rise in prominence of Brazilian FIFA president, João Havelange, who ran the association like a for-profit enterprise to generate significant revenues⁷⁰³ and increase the benefits for members of the “football family”.⁷⁰⁴ Havelange initiated the commercial exploitation of the World Cup and all related property rights for FIFA (e.g., by increasing television and sponsorship returns) and opening the game to the influences of new media and new markets.⁷⁰⁵ Havelange did so whilst centralising FIFA’s control over its increased revenues.⁷⁰⁶ FIFA is now considered to be a significant player in the global economy, with its football-centred decisions having effects on the wider world of business.⁷⁰⁷ In the 2015-2018 financial cycle, FIFA reported that it generated more than \$6.4 billion, which was a new revenue high.⁷⁰⁸ With such revenues, FIFA has developed a complex organisational structure, practically spanning every area of football, to enhance its powers within the sport and to maintain a level playing field for its participants.⁷⁰⁹

FIFA’s organisational structure is pyramidal in nature, consisting of 211 national associations. FIFA member associations (MAs) represent FIFA in their country,⁷¹⁰ and the associations are bestowed with equal voting power in the FIFA congress.⁷¹¹ The MAs are

⁶⁹⁹ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/131

⁷⁰⁰ Jorge, Guillermo. "Fixing FIFA: The Experience of the Independent Governance Committee." *Sw. J. Int'l L.* 21 (2014): 165. p/165

⁷⁰¹ García, Borja, and Henk-Erik Meier. "Keeping private governance private: is FIFA blackmailing national governments?" (2013) 13th EUSA Biennial Conference, Baltimore, Maryland, USA, 11-13, 26pp. p/7

⁷⁰² Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/131

⁷⁰³ García, Borja, and Henk-Erik Meier. "Keeping private governance private: is FIFA blackmailing national governments?" (2013) 13th EUSA Biennial Conference, Baltimore, Maryland, USA, 11-13, 26pp. p/7

⁷⁰⁴ Jorge, Guillermo. "Fixing FIFA: The Experience of the Independent Governance Committee." *Sw. J. Int'l L.* 21 (2014): 165. p/170

⁷⁰⁵ Tomlinson, Alan. "The supreme leader sails on: Leadership, ethics and governance in FIFA." *Sport in Society* 17, no. 9 (2014): 1155-1169. p/1157&1159

⁷⁰⁶ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/2

⁷⁰⁷ DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 115. p/128

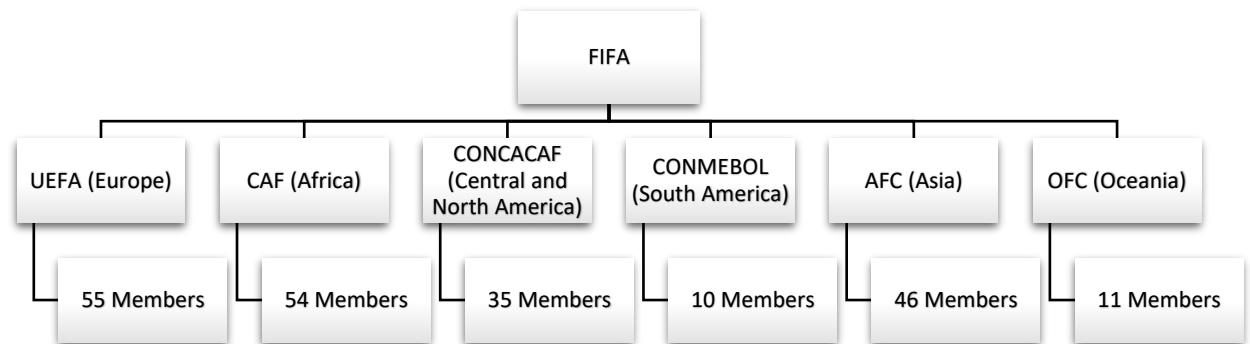
⁷⁰⁸ FIFA, "FIFA Financial Report 2018" (FIFA, 2019) <<https://resources.fifa.com/image/upload/fifa-financial-report-2018.pdf?cloudid=xzshsoe2ayttyquuxhq0>> accessed on 06/07/2020

⁷⁰⁹ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/98

⁷¹⁰ FIFA, "Associations and Confederations" <<https://www.fifa.com/associations>> accessed on 06/07/2020

⁷¹¹ Latty, Franck. "Non-state authority: FIFA". In *Global Private International Law*, (Cheltenham, UK: Edward Elgar Publishing, 2019) p/153

organised into six confederations (see Figure 1),⁷¹² they represent the hundreds of football clubs, and at the base of the pyramid, the thousands of professional players registered at these clubs.⁷¹³



*Figure 1: The FIFA Structure*⁷¹⁴

FIFA's governing body consists of three branches: the FIFA congress, the executive committee, and the general secretariat. The FIFA congress is the legislative and largest branch and is comprised of the MAs and confederations. The executive committee governs FIFA, and consists of the president, eight vice-presidents (one from each confederation, except UEFA),⁷¹⁵ and 15 members. The FIFA executive determines the venue of the FIFA World Cup competition and the number of teams permitted to take part.⁷¹⁶ The general secretariat is the third branch and takes on the administrative role for FIFA. The general secretariat is responsible for FIFA's finances, international relations, the organisation of the FIFA World Cup, and other football competitions.⁷¹⁷

With its global powers, complex organisational structure, and different branches of control, FIFA can practice a complete self-regulatory system of governance, as it occupies a vital role coordinating organised football. FIFA functions as the rule-making body which can

⁷¹² DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 115. p/118

⁷¹³ Jorge, Guillermo. "Fixing FIFA: The Experience of the Independent Governance Committee." *Sw. J. Int'l L.* 21 (2014): 165. p/166

⁷¹⁴ Nick De Marco, Q. C. *Football and the Law*. Bloomsbury Publishing Plc, 2018. p/12

⁷¹⁵ Pielke Jr, Roger. "How can FIFA be held accountable?" *Sport management review* 16, no. 3 (2013): 255-267. p/257

⁷¹⁶ FIFA Statutes, Article 20. Cited in Maguire, Joseph, and David Stead. "Border crossings: Soccer labour migration and the European Union." *International Review for the Sociology of Sport* 33, no. 1 (1998): 59-73. p/61

⁷¹⁷ Boudreaux, Christopher John, Gokhan Karahan, and Morris Coats. "Bend it like FIFA: corruption on and off the pitch." *Managerial Finance* 42, no. 9 (2016): 866-878. p/367

resolve football related disputes,⁷¹⁸ and its position in the regulatory regime allows it to induce or coerce compliance across the sport.⁷¹⁹

4.3.1 Rulemaking

FIFA formed its own footballing rules and regulations in order to continue attracting audiences, and to further its regulatory system and stranglehold over the sport.⁷²⁰ FIFA created a diverse range of codes, guides, and recommendations that set out the principles and fundamental values it considers necessary to ensure football's future.⁷²¹ FIFA relies on three tools to comply with its overall aims, these are the Code of Conduct, the Code of Ethics, and the Fair Play Code. Through these codes, FIFA sets out its guiding values of integrity, clean play, zero tolerance of discrimination, and transparency.⁷²² FIFA's organisational structure and processes are "in theory"⁷²³ dedicated to the defence and cultivation of its guiding values, as FIFA expects its MAs and related partners to comply with them.⁷²⁴ FIFA requires its MAs to abide by its statutes, regulations, directives, sanctions and decisions, as well as the awards of the Court of Arbitration for Sport (CAS),⁷²⁵ as this contributes to the private system of adjudication and enforcement which FIFA practices.⁷²⁶

FIFA uses its values to justify its position as a powerful player on the transnational stage,⁷²⁷ as the organisation is able to render private self-regulatory policies which extend over national boundaries, due to its organisational structure.⁷²⁸ FIFA's ability to provide this private law is referred to as *lex fifa*,⁷²⁹ derived from the broader *lex sportiva* which underlines the autonomy of Sports Governing Bodies (SGBs) from state control. *Lex sportiva* allows

⁷¹⁸ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/96-7

⁷¹⁹ Foster, Ken, 'The juridification of sport' in Greenfield, Steven and Osborn Guy (eds), *Readings in law and popular culture* (Routledge, 2007). p/171

⁷²⁰ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/131

⁷²¹ Castilla, José L., Aníbal Mesa, and Manuel González-Ramallal. "Football and justice devices: hybrid ethical narratives, sanctions and legitimacy of interests." *Soccer & Society* 18, no. 4 (2017): 575-590. p/582

⁷²² Castilla, José L., Aníbal Mesa, and Manuel González-Ramallal. "Football and justice devices: hybrid ethical narratives, sanctions and legitimacy of interests." *Soccer & Society* 18, no. 4 (2017): 575-590. p/582

⁷²³ Tomlinson, Alan. "The supreme leader sails on: Leadership, ethics and governance in FIFA." *Sport in Society* 17, no. 9 (2014): 1155-1169. p/1165

⁷²⁴ Zeidan, Obada S., and Simon G. Fauser. "Corporate governance and corporate social responsibility—the case of FIFA." *Problems and Perspectives in Management* 13, no. 2 (2015): 183-192. p/185

⁷²⁵ Colucci, Michele, and Felix Majani. "The FIFA Regulations on the Labour Status and Transfer of Players." *Indonesian J. Int'l L.* 5 (2007): 681. p/683

⁷²⁶ Duval, Antoine. "The FIFA regulations on the status and transfer of players: Transnational law-making in the shadow of Bosman." In *The legacy of Bosman*, pp. 81-116. TMC Asser Press, The Hague, 2016. p/82

⁷²⁷ Tomlinson, Alan. "The supreme leader sails on: Leadership, ethics and governance in FIFA." *Sport in Society* 17, no. 9 (2014): 1155-1169. p/1155

⁷²⁸ Merriam-Webster.com, "transnational" (Dictionary) <<https://www.merriam-webster.com/dictionary/transnational>> accessed 7/7/2020

⁷²⁹ Latty, Franck. "La Lex FIFA." *Droit et Coupe du Monde, Economica* (2011): 9-27. Cited in Duval, Antoine. "The FIFA regulations on the status and transfer of players: Transnational law-making in the shadow of Bosman." In *The legacy of Bosman*, pp. 81-116. TMC Asser Press, The Hague, 2016. p/92

FIFA to have its own 'internal constitutionalism' and operate a sporting 'rule of law' within football.⁷³⁰ However, the transnationality of FIFA means that it not only passes rules which pertain to matters within football (e.g., football transfers and labour contracts),⁷³¹ but its laws often have a global reach which is able to supplant the domestic laws of its MAs.⁷³²

Through its private transnational rules, FIFA's regulations apply to the 'football family' whilst simultaneously being able to influence football at all levels and affect both members and non-members affiliated with the sport.⁷³³ Regarding its members, FIFA applies rules directly to the national MAs and everyone participating in the matches and tournaments organised by FIFA. Also, FIFA is able to stretch its influence to the bottom of its pyramidal structure, so that its rules apply to clubs, coaches, players, referees, their representatives, and other involved persons.⁷³⁴ FIFA can similarly exert its transnational regulatory powers over non-member participants in football.⁷³⁵ To do this, FIFA uses three methods to make its regulations applicable. First, FIFA applies its regulations directly to all participants in matches and competitions organised by FIFA, such as the FIFA World Cup. Second, MAs are charged with applying FIFA regulations directly to all involved parties within their borders, allowing FIFA's rules to have an indirect effect on all actors affiliated with the MAs, such as investors, sponsors of tournaments, and even spectators of the game.⁷³⁶ Third, MAs are under obligation to transpose FIFA's policies into their national regulations and policy actions, where FIFA considers this to be necessary.⁷³⁷

4.3.2 Autonomous Judicial System

FIFA's rules state that all disputes within football (such as contractual disputes involving clubs, players, or other actors) are subject to the exclusive adjudication of FIFA's internal dispute resolution bodies, and the specialised Court of Arbitration for Sport (CAS).⁷³⁸ FIFA

⁷³⁰ Foster, Ken, 'How can sport be regulated?' in Greenfield, S. and G. Osborn (eds), *Law and sport in contemporary society* (Frank Cass Publishers, 2000) p/267

⁷³¹ Duval, Antoine. "The FIFA regulations on the status and transfer of players: Transnational law-making in the shadow of Bosman." In *The legacy of Bosman*, pp. 81-116. TMC Asser Press, The Hague, 2016. p/92 & 99

⁷³² Latty, Franck. "Non-state authority: FIFA". In *Global Private International Law*, (Cheltenham, UK: Edward Elgar Publishing, 2019) p/153

⁷³³ Castilla, José L., Aníbal Mesa, and Manuel González-Ramallal. "Football and justice devices: hybrid ethical narratives, sanctions and legitimacy of interests." *Soccer & Society* 18, no. 4 (2017): 575-590. p/582

⁷³⁴ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/99

⁷³⁵ Freeburn, Lloyd. "The fiction of democracy in FIFA's governance of football and the case of Football Federation Australia." *The International Sports Law Journal* (2019): 1-21. p/5

⁷³⁶ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/86

⁷³⁷ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/107

⁷³⁸ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/128

makes significant efforts to prevent external intervention into its private legal order, as it forbids its regulatees⁷³⁹ from resorting to an external court of law for judicial remedies.⁷⁴⁰ Players or MAs who revert their matters to a court of law could end up with negative consequences for the athlete's personal career, or heavy sanctions for the MA involved.⁷⁴¹

The judicial system formed by FIFA for dispute resolution consists of specialised third-party decision-making arbitration bodies. These are the FIFA Dispute Resolution Chamber (DRC) and the Player Status Committee (PSC), and they decide on matters related to international transfers and contracts within football. The PSC includes both the president and vice president of the FIFA executive committee, and the DRC is comprised of an equal number of players and club representatives.⁷⁴² The PSC and the DRC adjudicate with at least three members, who are supposed to possess and offer a better knowledge of football-related disputes and make decisions swiftly and at a rate cheaper than a court of law.⁷⁴³ The decisions of the PSC and DRC may be appealed at CAS, which FIFA recognised the mandatory jurisdiction of in 2002.⁷⁴⁴ CAS is the final appeal jurisdiction for football disputes, and CAS is able to resolve matters between FIFA and its members, football clubs, players, and officials. Furthermore, CAS' arbitral awards have the same enforceability as a judgment by a court of law.⁷⁴⁵

4.3.3 Sanctions & Enforcement

As a self-regulatory association, FIFA can use its powers to impose the resolution and decisions made by the DRC, PSC, or CAS, on its regulatees in a quick and cost-effective manner. This uniformity of application of football norms under FIFA would otherwise be difficult to achieve if football was within state control. This is because the application of the decisions of national courts in the different countries involved in football would be difficult

⁷³⁹ Jorge, Guillermo. "Fixing FIFA: The Experience of the Independent Governance Committee." *Sw. J. Int'l L.* 21 (2014): 165. p/169

⁷⁴⁰ Schwab, Brendan. "Embedding the human rights of players in world sport." *The International Sports Law Journal* 17, no. 3-4 (2018): 214-232. p/218

⁷⁴¹ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/114

⁷⁴² Duval, Antoine. "The FIFA regulations on the status and transfer of players: Transnational law-making in the shadow of Bosman." In *The legacy of Bosman*, pp. 81-116. TMC Asser Press, The Hague, 2016. p/94-5

⁷⁴³ Duval, Antoine. "The FIFA regulations on the status and transfer of players: Transnational law-making in the shadow of Bosman." In *The legacy of Bosman*, pp. 81-116. TMC Asser Press, The Hague, 2016. p/96-7

⁷⁴⁴ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/104

⁷⁴⁵ Colucci, Michele, and Felix Majani. "The FIFA Regulations on the Labour Status and Transfer of Players." *Indonesian J. Int'l L.* 5 (2007): 681. p/693

to enforce uniformly across all nations, as such a process would take a significant amount of time and resources to achieve.⁷⁴⁶

Nevertheless, FIFA does not rely on the State to coerce compliance amongst its regulatees, but rather relies on its own strong sanctions and enforcement systems.⁷⁴⁷ FIFA's enforcement system is not dissimilar to other SGBs which have private self-regulatory governance procedures and aim to induce compliance through increased sanctions.⁷⁴⁸ However, unlike most other SGBs (except the IOC), FIFA has a substantial coercive power which stems from its exclusive control of market access to global football.⁷⁴⁹ FIFA subsequently uses this exclusive control, and its enforcement and incentive systems, to complement the sanctions imposed on actors within its regulatory regime.⁷⁵⁰

FIFA's sanctions could include fines, suspensions, exclusions, or even an expulsion from the organisation, if a party has not abided by its rules.⁷⁵¹ With suspensions, for example, if FIFA believes that football's autonomy is not being respected by a country's judicial system, the corresponding MA could be suspended⁷⁵² until it is able to show that it manages its affairs independently and without the influence of third parties.⁷⁵³ This is a step by FIFA to prevent external intervention in football matters through the threat of suspension or revocation of FIFA membership status.⁷⁵⁴ The sanctions can be applied directly to MAs, clubs, players, and other involved actors, or the sanctions could be applied to a player or club indirectly through the MA. In the latter instance, the MA would be obliged to ensure its own members (the club or player) complies with the decision of the FIFA adjudicatory body.⁷⁵⁵ The

⁷⁴⁶ Colucci, Michele, and Felix Majani. "The FIFA Regulations on the Labour Status and Transfer of Players." *Indonesian J. Int'l L.* 5 (2007): 681. p/691

⁷⁴⁷ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/110

⁷⁴⁸ Wolf, Klaus Dieter. "The non-existence of private self-regulation in the transnational sphere and its implications for the responsibility to procure legitimacy: The case of the *lex sportiva*." *Global Constitutionalism* 3, no. 3 (2014): 275-309. p/292

⁷⁴⁹ Meier, Henk Erik, and Borja Garcia. "Protecting private transnational authority against public intervention: FIFA's power over national governments." *Public Administration* 93, no. 4 (2015): 890-906. p/890

⁷⁵⁰ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/110

⁷⁵¹ Colucci, Michele, and Felix Majani. "The FIFA Regulations on the Labour Status and Transfer of Players." *Indonesian J. Int'l L.* 5 (2007): 681. p/683

⁷⁵² Meier, Henk Erik, and Borja Garcia. "Protecting private transnational authority against public intervention: FIFA's power over national governments." *Public Administration* 93, no. 4 (2015): 890-906. p/894

⁷⁵³ Garcia, Borja, and Henk-Erik Meier. "The power of FIFA over national governments: a new actor in world politics?" (2014) Presented at: FLACSO-ISA Joint International Conference, Global and Regional Powers in a Changing World, 23rd-25th July 2014, University of Buenos Aires, Argentina. p/10

⁷⁵⁴ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/132

⁷⁵⁵ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/106

suspensions of MAs often represent an efficient enforcement mechanism within the sport.⁷⁵⁶ As a suspension or exclusion from FIFA competitions, like the World Cup and other international matches, may have a severe economic impact on a MA (including its clubs, referees, and administrators).⁷⁵⁷ The suspension could lead to a loss of match revenue and players, along with an exemption from the ‘club goods’ and benefits which FIFA membership ordinarily provides.⁷⁵⁸ These club goods include hosting rights for FIFA competitions and the development funds granted to MAs for individual projects.⁷⁵⁹

A suspension from taking part in international football competitions could also have a far-reaching impact for the country, as the decision will not be well received by the public.⁷⁶⁰ Football has a symbiotic relationship with modern media industries,⁷⁶¹ and a substantial share of the electorate in most countries often have emotional stakes with a football team and their national sides.⁷⁶² Thus, the effect of FIFA’s sanctioning powers on the public can best be summarised by Garcia and Meier, who noted “no politician wants to be remembered as the one that prevented the national team from participating in the FIFA World Cup”.⁷⁶³ FIFA’s sanctions and enforcement regulatory system capitalises on the increased significance of football to be an effective disciplinary tool, since the nation states are sensitive to the socio-political implications of FIFA’s sanctions.⁷⁶⁴ FIFA’s regulatory structure and system has shown how the organisation practices this “pure form of self-regulation”⁷⁶⁵ as an SRA. Yet, another essential aspect of an SRA is their recognition as an alternate power structure within the regulatory space of a specific field.⁷⁶⁶

⁷⁵⁶ Garcia, Borja, and Henk-Erik Meier. "The power of FIFA over national governments: a new actor in world politics?" (2014) Presented at: FLACSO-ISA Joint International Conference, Global and Regional Powers in a Changing World, 23rd-25th July 2014, University of Buenos Aires, Argentina. p/21

⁷⁵⁷ Garcia, Borja, and Henk-Erik Meier. "The power of FIFA over national governments: a new actor in world politics?" (2014) Presented at: FLACSO-ISA Joint International Conference, Global and Regional Powers in a Changing World, 23rd-25th July 2014, University of Buenos Aires, Argentina. p/21

⁷⁵⁸ Meier, Henk Erik, and Borja Garcia. "Protecting private transnational authority against public intervention: FIFA's power over national governments." *Public Administration* 93, no. 4 (2015): 890-906. p/894

⁷⁵⁹ Bank, Steven A. "Reforming FIFA from the Inside out." *Vand. J. Transnat'l L.* 52 (2019): 265. p/298

⁷⁶⁰ Bean, Bruce W. "FIFA Is Corruption: What Is to be Done." *Mich. St. Int'l L. Rev.* 27 (2018): 197. p/256-7

⁷⁶¹ Castilla, José L., Aníbal Mesa, and Manuel González-Ramallal. "Football and justice devices: hybrid ethical narratives, sanctions and legitimacy of interests." *Soccer & Society* 18, no. 4 (2017): 575-590. p/577

⁷⁶² Garcia, Borja, and Henk-Erik Meier. "The power of FIFA over national governments: a new actor in world politics?" (2014) Presented at: FLACSO-ISA Joint International Conference, Global and Regional Powers in a Changing World, 23rd-25th July 2014, University of Buenos Aires, Argentina. p/7

⁷⁶³ García, Borja, and Henk-Erik Meier. "Keeping private governance private: is FIFA blackmailing national governments?" (2013) 13th EUSA Biennial Conference, Baltimore, Maryland, USA, 11-13, 26pp. p/20

⁷⁶⁴ Garcia, Borja, and Henk-Erik Meier. "The power of FIFA over national governments: a new actor in world politics?" (2014) Presented at: FLACSO-ISA Joint International Conference, Global and Regional Powers in a Changing World, 23rd-25th July 2014, University of Buenos Aires, Argentina. p/22

⁷⁶⁵ Black, Julia. "Decentring regulation: Understanding the role of regulation and self-regulation in a “post-regulatory” world." *Current legal problems* 54, no. 1 (2001): 103-146. p/113

⁷⁶⁶ Streeck, Wolfgang, and Philippe C. Schmitter. "Community, market, state-and associations? The prospective contribution of interest governance to social order." *European sociological review* 1, no. 2 (1985): 119-138. p/131

4.4 FIFA'S PRIVATE LEGAL AUTHORITY

Prior to a state surrendering its powers in an industry and before recognising the authority of an SRA,⁷⁶⁷ it is common for the state and the non-state actors to struggle for legal authority within the space. In fact, the regulatory space account provides that regulatory authority within a space is generally shared between private (non-state) and public (state) actors.⁷⁶⁸ This shared authority often means that the actors compete and contest for an advantage to become the dominant party within the space.⁷⁶⁹ However, in some contexts, when authority is shared it could limit the understanding of the power structures between the actors in the space,⁷⁷⁰ which could then hinder the identification of the dominant actor.⁷⁷¹ It is said that the dominant actor within the space is one who possesses the power to prioritise regulatory issues and decisions,⁷⁷² and is the party that is able to influence the general practices within the space.⁷⁷³ Without being able to identify which party is the dominant actor, this would undermine the regulatory processes and decision-making within the regime.

There are common hindrances involved in identifying the dominant actor, which are at times caused by the shifting powers and boundaries between the private and public actors in the space.⁷⁷⁴ These powers could shift in instances whereby the state threatens and subsequently chooses to interfere in the operations of a private regulator.⁷⁷⁵ Such state interventions are often to induce the necessary behaviour change and achieve an outcome which may otherwise not occur through strict private regulation. So, to determine the dominant actor in football and to account for any shifting powers, the inter-relationships between the actors and domains of authority in football's regulatory landscape need to be examined.⁷⁷⁶

⁷⁶⁷ Ronit, Karsten. "Institutions of private authority in global governance: linking territorial forms of self-regulation." *Administration & Society* 33, no. 5 (2001): 555-578. p/566

⁷⁶⁸ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/64

⁷⁶⁹ Hancher, L., and M. Moran. "Organizing Regulatory Space." In *A Reader on Regulation*, by Baldwin, Robert, Colin Scott, and Christopher Hood, eds., Oxford University Press, 1998. Oxford Scholarship Online, 2012. p/153

⁷⁷⁰ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/65

⁷⁷¹ Hancher, Leigh and Moran Michael, 'Organizing Regulatory Space' in Baldwin, Robert, Colin Scott and Christopher Hood (eds), *A reader on regulation* (Oxford University Press, 1998). p/153

⁷⁷² Hancher, L., and M. Moran. "Organizing Regulatory Space." In *A Reader on Regulation*, by Baldwin, Robert, Colin Scott, and Christopher Hood, eds., Oxford University Press, 1998. Oxford Scholarship Online, 2012. p/163

⁷⁷³ Morgan, Bronwen and Karen Yeung, *An introduction to law and regulation: Text and materials* (Cambridge University Press, 2007). p/59

⁷⁷⁴ Hancher, Leigh and Moran Michael, 'Organizing Regulatory Space' in Hancher and Moran (ed), *Capitalism, Culture and Economic Regulation* (Oxford, Clarendon Press, 1989). Pg. 153

⁷⁷⁵ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/138 & 142

⁷⁷⁶ Vibert, Frank. *The new regulatory space: Reframing democratic governance*. Edward Elgar Publishing, 2014. p/19

4.4.1 Shared Authority?

FIFA's private legal authority differs from the general understanding of shared authority seen in the regulatory space account. Within football there is arguably no shared authority, nor are there shifting regulatory powers between the involved public and private actors. In football, the regulatory authority lies firmly with FIFA. This is because the inter-relationships in the sport are unlike other industries governed by SRAs. In other SRAs, the state maintains its legal authority to intervene and shift the regulatory powers back to itself through intervention.⁷⁷⁷ Whereas, in the case of football, the state has not only surrendered its authority to FIFA to carry out all the governance functions related to the sport,⁷⁷⁸ but there has been a notable reluctance by the state and other public bodies to intervene in regulating football.⁷⁷⁹ This reluctance becomes problematic when there are identifiable areas within the private regulatory institution that have an impact on the wider public. An example of such an area of concern involves child protection and trafficking in football, whereby rather than interfering in the sport to correct the way this issue is being regulated against, the state has left football and FIFA to address this important area of public interest, almost entirely by itself.⁷⁸⁰ In addition, the economic and social importance of sport, and the investment of public funds in the running of sports events, has also been considered as an area of public interest for which the state could and should intervene in the running of sport.⁷⁸¹ However, because of the "specificity of sport" and sporting autonomy, nation states have remained unwilling to interfere in the affairs of the private SGBs.⁷⁸²

The state's reluctance to intervene in sport (especially football) is a longstanding issue, and it is one which arguably led to the formation of FIFA as an SRA in the first instance. The reluctance resulted in a regulatory vacuum of laws applicable to international football competitions.⁷⁸³ The involved actors subsequently came together to form FIFA as a transnational private governance body⁷⁸⁴ to fill the regulatory gap and to better

⁷⁷⁷ Foster, Ken, 'The juridification of sport' in Greenfield, Steven and Osborn Guy (eds), *Readings in law and popular culture* (Routledge, 2007). p/171

⁷⁷⁸ Ogus, Anthony. "Rethinking self-regulation." *Oxford J. Legal Stud.* 15 (1995): 97. p/98-9

⁷⁷⁹ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/131

⁷⁸⁰ Lewis, Adam and Jonathan Taylor, *Sport: law and practice* (3rd edn Bloomsbury Professional, 2014). p/7

⁷⁸¹ Lewis, Adam and Jonathan Taylor, *Sport: law and practice* (3rd edn Bloomsbury Professional, 2014). p/10

⁷⁸² Foster, Ken, 'How can sport be regulated?' in Greenfield, S. and G. Osborn (eds), *Law and sport in contemporary society* (Frank Cass Publishers, 2000) p/270

⁷⁸³ Meier, Henk Erik, and Borja Garcia. "Protecting private transnational authority against public intervention: FIFA's power over national governments." *Public Administration* 93, no. 4 (2015): 890-906. p/893

⁷⁸⁴ Garcia, Borja, and Henk-Erik Meier. "The power of FIFA over national governments: a new actor in world politics?" (2014) Presented at: FLACSO-ISA Joint International Conference, Global and Regional Powers in a Changing World, 23rd-25th July 2014, University of Buenos Aires, Argentina. p/3

accommodate and represent the needs of the actors within the self-regulatory regime.⁷⁸⁵ In filling the gap, FIFA benefitted from an institutional ‘first-mover advantage’,⁷⁸⁶ as FIFA profited from its sporting autonomy, along with the special treatment given to sports by the state and other public bodies.⁷⁸⁷ The act of FIFA receiving special treatment from the state establishes the absence of any competition for authority or shifting of powers within football’s regulatory landscape. The state ceded its authority in football to allow FIFA to become the dominant party in the regulatory space.⁷⁸⁸ FIFA then used its position in the space, the special treatment it received from the state, the growing popularity,⁷⁸⁹ commercialisation, and globalisation of football,⁷⁹⁰ and its complex interaction with the ‘politicisation of sport’,⁷⁹¹ to further increase its regulatory powers and cement its status as the SRA in control of football.⁷⁹²

FIFA’s private authority grew stronger owing to some overarching factors. Its unique concentration of powers allows it to exclusively control access to international football,⁷⁹³ and the favourable socio-economic trends and the global popularity of football, such as the way it “connects the world”,⁷⁹⁴ helped confirm FIFA’s importance and socio-political relevance.⁷⁹⁵ This mainly came about in the aftermath of WWII, whereby there was an increased popularity of football and the politicisation of international sports. In the second half of the twentieth century, FIFA membership was seen as a badge of status for emerging

⁷⁸⁵ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/131 & 87

⁷⁸⁶ Tomlinson, Alan, and Christopher Young, eds. *National identity and global sports events: Culture, politics, and spectacle in the Olympics and the football World Cup*. Suny Press, 2006. Cited in Meier, Henk Erik, and Borja Garcia. "Protecting private transnational authority against public intervention: FIFA's power over national governments." *Public Administration* 93, no. 4 (2015): 890-906. p/893

⁷⁸⁷ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/131

⁷⁸⁸ Hancher, L., and M. Moran. "Organizing Regulatory Space." In *A Reader on Regulation*, by Baldwin, Robert, Colin Scott, and Christopher Hood, eds., Oxford University Press, 1998. Oxford Scholarship Online, 2012. p/153

⁷⁸⁹ Garcia, Borja, and Henk-Erik Meier. "The power of FIFA over national governments: a new actor in world politics?" (2014) Presented at: FLACSO-ISA Joint International Conference, Global and Regional Powers in a Changing World, 23rd-25th July 2014, University of Buenos Aires, Argentina. p/7

⁷⁹⁰ Castilla, José L., Aníbal Mesa, and Manuel González-Ramallal. "Football and justice devices: hybrid ethical narratives, sanctions and legitimacy of interests." *Soccer & Society* 18, no. 4 (2017): 575-590. p/577

⁷⁹¹ Tomlinson, Alan, and Christopher Young, eds. *National identity and global sports events: Culture, politics, and spectacle in the Olympics and the football World Cup*. Suny Press, 2006. Cited in Meier, Henk Erik, and Borja Garcia. "Protecting private transnational authority against public intervention: FIFA's power over national governments." *Public Administration* 93, no. 4 (2015): 890-906. p/893

⁷⁹² Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/131

⁷⁹³ Meier, Henk Erik, and Borja Garcia. "Protecting private transnational authority against public intervention: FIFA's power over national governments." *Public Administration* 93, no. 4 (2015): 890-906. p/890

⁷⁹⁴ Pielke Jr, Roger. "How can FIFA be held accountable?" *Sport management review* 16, no. 3 (2013): 255-267. p/258

⁷⁹⁵ Garcia, Borja, and Henk-Erik Meier. "The power of FIFA over national governments: a new actor in world politics?" (2014) Presented at: FLACSO-ISA Joint International Conference, Global and Regional Powers in a Changing World, 23rd-25th July 2014, University of Buenos Aires, Argentina. p/3 & 22

independent nations on the international stage.⁷⁹⁶ This led to the subsequent politicisation of sport, particularly football, on account of how the sport was able to serve as a symbol of cohesion or exclusion within and between countries.⁷⁹⁷ Politicians have often sought to benefit from the goodwill shown by the public when their nation is involved in international football competitions.⁷⁹⁸ A notable example of this took place in 2012, when Poland and Ukraine experienced a boost in national pride from hosting the European Football Championships.⁷⁹⁹ In Qatar, the 2022 World Cup is being utilised as an opportunity for the UAE to rise in the international political and business scene.⁸⁰⁰ These instances exemplify the importance nation states place on football, as the continued popularity, commercialisation, and politicisation of football subsequently resulted in the attraction of more FIFA members. This in turn allowed FIFA to extend its global reach and transnational powers,⁸⁰¹ whilst the organisation has been able to increase its revenues and provide its MAs with more money through development funds.⁸⁰²

FIFA uses its natural monopoly powers⁸⁰³ and political leverage⁸⁰⁴ to force state authorities to revoke legislations which it considers to be unwelcome.⁸⁰⁵ FIFA is able to invoke the doctrine of *Lex sportiva*,⁸⁰⁶ as a means of fending off state intervention and safeguarding its private authority from third party input or other external challenges.⁸⁰⁷ These factors combine to put FIFA in a position where its private legal authority has grown substantially

⁷⁹⁶ Tomlinson, Alan. "The supreme leader sails on: Leadership, ethics and governance in FIFA." *Sport in Society* 17, no. 9 (2014): 1155-1169. p/1157

⁷⁹⁷ García, Borja, and Henk-Erik Meier. "The power of FIFA over national governments: a new actor in world politics?" (2014) Presented at: FLACSO-ISA Joint International Conference, Global and Regional Powers in a Changing World, 23rd-25th July 2014, University of Buenos Aires, Argentina. p/7-8

⁷⁹⁸ Ibid.

⁷⁹⁹ García, Borja, and Henk-Erik Meier. "Keeping private governance private: is FIFA blackmailing national governments?" (2013) 13th EUSA Biennial Conference, Baltimore, Maryland, USA, 11-13, 26pp. p/5-6

⁸⁰⁰ Ibid.

⁸⁰¹ Meier, Henk Erik, and Borja García. "Protecting private transnational authority against public intervention: FIFA's power over national governments." *Public Administration* 93, no. 4 (2015): 890-906. p/894

⁸⁰² García, Borja, and Henk-Erik Meier. "Keeping private governance private: is FIFA blackmailing national governments?" (2013) 13th EUSA Biennial Conference, Baltimore, Maryland, USA, 11-13, 26pp. p/8

⁸⁰³ Foster, Ken, 'How can sport be regulated?' in Greenfield, S. and G. Osborn (eds), *Law and sport in contemporary society* (Frank Cass Publishers, 2000) p/271

⁸⁰⁴ Duval, Antoine. "The FIFA regulations on the status and transfer of players: Transnational law-making in the shadow of Bosman." In *The legacy of Bosman*, pp. 81-116. TMC Asser Press, The Hague, 2016. p/105

⁸⁰⁵ García, Borja, and Henk-Erik Meier. "The power of FIFA over national governments: a new actor in world politics?" (2014) Presented at: FLACSO-ISA Joint International Conference, Global and Regional Powers in a Changing World, 23rd-25th July 2014, University of Buenos Aires, Argentina. p/3

⁸⁰⁶ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/132

⁸⁰⁷ García, Borja, and Henk-Erik Meier. "The power of FIFA over national governments: a new actor in world politics?" (2014) Presented at: FLACSO-ISA Joint International Conference, Global and Regional Powers in a Changing World, 23rd-25th July 2014, University of Buenos Aires, Argentina. p/10

with little intervention from the state.⁸⁰⁸ Therefore, as a result of its transnationality⁸⁰⁹ and its ability to resist external challenges,⁸¹⁰ FIFA is in a unique position within football's regulatory space. Some have even argued that FIFA's private authority has departed from traditional laws governing other SGBs and SRAs,⁸¹¹ because of the level of dominance FIFA possesses within the space.

4.4.2 The Dominant Actor

FIFA has a complex organisational structure that spans the entirety of football.⁸¹² This characteristic of the organisation is one which is common amongst other public and private bodies that dominate their regulatory space, as they are mostly "large entities with elaborate internal divisions of administrative labour and hierarchies".⁸¹³ As previously noted, private self-regulatory SGBs who dominate the space are able to fulfil state-like functions over their members, without possessing the coercive power of a state.⁸¹⁴ The SGBs can fulfil this function through their disciplinary powers, their private legal authority, and their definitional regulatory monopoly. Their private legal authority stems from the acceptance of the SGBs' rules by its members (athletes and MAs) and non-members (the public) who are affected by the regulations.⁸¹⁵ This acceptance enables the SGBs to lay down binding rules and impose strong sanctions when there is a breach.⁸¹⁶

It is frequently argued that the private governance regimes of SGBs need a definitional regulatory monopoly structure in order to achieve meaningful sporting competitions.⁸¹⁷ This definitional monopoly provides the SGBs with the capacity to have clear and consistent rules for its participants, and to be able to determine uncontested winners for their respective

⁸⁰⁸ Meier, Henk Erik, and Borja Garcia. "Protecting private transnational authority against public intervention: FIFA's power over national governments." *Public Administration* 93, no. 4 (2015): 890-906. p/894

⁸⁰⁹ Castilla, José L., Aníbal Mesa, and Manuel González-Ramallal. "Football and justice devices: hybrid ethical narratives, sanctions and legitimacy of interests." *Soccer & Society* 18, no. 4 (2017): 575-590. p/577

⁸¹⁰ Garcia, Borja, and Henk-Erik Meier. "The power of FIFA over national governments: a new actor in world politics?" (2014) Presented at: FLACSO-ISA Joint International Conference, Global and Regional Powers in a Changing World, 23rd-25th July 2014, University of Buenos Aires, Argentina. p/10

⁸¹¹ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/131

⁸¹² Castilla, José L., Aníbal Mesa, and Manuel González-Ramallal. "Football and justice devices: hybrid ethical narratives, sanctions and legitimacy of interests." *Soccer & Society* 18, no. 4 (2017): 575-590. p/582

⁸¹³ Hancher, L., and M. Moran. "Organizing Regulatory Space." In *A Reader on Regulation*, by Baldwin, Robert, Colin Scott, and Christopher Hood, eds., Oxford University Press, 1998. Oxford Scholarship Online, 2012. p/162

⁸¹⁴ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/110

⁸¹⁵ Wolf, Klaus Dieter. "The non-existence of private self-regulation in the transnational sphere and its implications for the responsibility to procure legitimacy: The case of the lex sportiva." *Global Constitutionalism* 3, no. 3 (2014): 275-309. p/290-1

⁸¹⁶ Wolf, Klaus Dieter. "The non-existence of private self-regulation in the transnational sphere and its implications for the responsibility to procure legitimacy: The case of the lex sportiva." *Global Constitutionalism* 3, no. 3 (2014): 275-309. p/290-1

⁸¹⁷ García, Borja, and Henk-Erik Meier. "Keeping private governance private: is FIFA blackmailing national governments?" (2013) 13th EUSA Biennial Conference, Baltimore, Maryland, USA, 11-13, 26pp. p/5

competitions.⁸¹⁸ By virtue of its position, FIFA evidently possesses this definitional monopoly in football. Hence, Lewis and others contended that it is this monopoly that makes an SGB the dominant actor:

*Whether a sport's governing body holds a dominant position depends on the definition of the relevant market in the particular context, and the body's position on it. Where the governing body is acting to regulate the particular sport, and is controlling access to it for the players and clubs, it is likely to be held to be in a dominant position, as it has a de facto monopoly on the market for access to competition in the particular sport.*⁸¹⁹

With its definitional monopoly and its position as the dominant actor in the sport, FIFA is able to establish football's rules and organise football tournaments.⁸²⁰ FIFA acts as both a transnational private regulator, and a competition organiser for the sport, giving it total control over access to international football.⁸²¹ FIFA's multi-functional position allows it to exclusively control⁸²² and restrict access to the football market as it sees fit.⁸²³ With this control, FIFA imposes membership requirements on its MAs, by demanding that they submit to FIFA's private authority "autonomously",⁸²⁴ to enable them take part in football competitions. The MAs consequently have little choice but to oblige.⁸²⁵

It has been suggested that the extent of FIFA's monopolistic powers exceeds any functional need for an SGB.⁸²⁶ Though the level of monopolistic control that is "functional" is a subjective matter open to the interpretation of the reader or writer, the objective facts about FIFA's monopolistic powers is that with no shared authority or shifting powers in football's

⁸¹⁸ García, Borja, and Henk-Erik Meier. "The power of FIFA over national governments: a new actor in world politics?" (2014) Presented at: FLACSO-ISA Joint International Conference, Global and Regional Powers in a Changing World, 23rd-25th July 2014, University of Buenos Aires, Argentina. p/6

⁸¹⁹ Lewis, Adam, Jonathan Taylor, Nick De Marco, and James Segan. *Challenging Sports Governing Bodies*. (Bloomsbury Publishing, 2016). p/129

⁸²⁰ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/113-4

⁸²¹ García, Borja, and Henk-Erik Meier. "Keeping private governance private: is FIFA blackmailing national governments?" (2013) 13th EUSA Biennial Conference, Baltimore, Maryland, USA, 11-13, 26pp. p/5

⁸²² Meier, Henk Erik, and Borja García. "Protecting private transnational authority against public intervention: FIFA's power over national governments." *Public Administration* 93, no. 4 (2015): 890-906. p/890

⁸²³ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/113-4

⁸²⁴ Duval, Antoine. "The FIFA regulations on the status and transfer of players: Transnational law-making in the shadow of Bosman." In *The legacy of Bosman*, pp. 81-116. TMC Asser Press, The Hague, 2016. p/99

⁸²⁵ Meier, Henk Erik, and Borja García. "Protecting private transnational authority against public intervention: FIFA's power over national governments." *Public Administration* 93, no. 4 (2015): 890-906. p/894

⁸²⁶ García, Borja, and Henk-Erik Meier. "The power of FIFA over national governments: a new actor in world politics?" (2014) Presented at: FLACSO-ISA Joint International Conference, Global and Regional Powers in a Changing World, 23rd-25th July 2014, University of Buenos Aires, Argentina. p/6

regulatory space,⁸²⁷ FIFA exclusively controls access to the sport, and it possesses the legal authority to prioritise issues of concern within the space.⁸²⁸

4.5 FIFA'S TRANSNATIONALITY AND REGULATORY POWERS

With FIFA's position within the space and its legal authority, it is worth considering the factors which motivate FIFA's choice of regulatory instruments,⁸²⁹ and the rationale it uses to determine what matters are of increased concern or importance within its regime.⁸³⁰

FIFA has been able to adopt regulatory instruments which go beyond the confines ascribed to other SRAs. FIFA has developed a "global law without the state",⁸³¹ and has established itself as a transnational private regulator (TPR) with laws that are accepted by national football associations and governments beyond the Swiss borders where FIFA is registered.⁸³² Though private bodies can be TPRs due to their legal authority and regulatory stipulations,⁸³³ FIFA has extended and cemented its transnational powers through its monopoly control of the sport,⁸³⁴ and as a result of its dominant position in football's regulatory space.

Through FIFA's extended TPR, it has been able to arguably compete and challenge the powers of nation states.⁸³⁵ FIFA's organisational structure allows it to operate a global governance regime through its members.⁸³⁶ This enables FIFA to impose its will on sovereign nations,⁸³⁷ and gives FIFA a platform to force the introduction or abandonment of

⁸²⁷ Morgan, Bronwen and Karen Yeung, *An introduction to law and regulation: Text and materials* (Cambridge University Press, 2007). p/59

⁸²⁸ Hancher, L., and M. Moran. "Organizing Regulatory Space." In *A Reader on Regulation*, by Baldwin, Robert, Colin Scott, and Christopher Hood, eds., Oxford University Press, 1998. Oxford Scholarship Online, 2012. p/163

⁸²⁹ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/64

⁸³⁰ Hancher, L., and M. Moran. "Organizing Regulatory Space." In *A Reader on Regulation*, by Baldwin, Robert, Colin Scott, and Christopher Hood, eds., Oxford University Press, 1998. Oxford Scholarship Online, 2012. p/154

⁸³¹ Duval, Antoine. "The FIFA regulations on the status and transfer of players: Transnational law-making in the shadow of Bosman." In *The legacy of Bosman*, pp. 81-116. TMC Asser Press, The Hague, 2016. p/102

⁸³² Latty, Franck. "Non-state authority: FIFA". In *Global Private International Law*, (Cheltenham, UK: Edward Elgar Publishing, 2019) p/153

⁸³³ Meier, Henk Erik, and Borja Garcia. "Protecting private transnational authority against public intervention: FIFA's power over national governments." *Public Administration* 93, no. 4 (2015): 890-906. p/891

⁸³⁴ Garcia, Borja, and Henk-Erik Meier. "The power of FIFA over national governments: a new actor in world politics?" (2014) Presented at: FLACSO-ISA Joint International Conference, Global and Regional Powers in a Changing World, 23rd-25th July 2014, University of Buenos Aires, Argentina. p/21

⁸³⁵ Garcia, Borja, and Henk-Erik Meier. "The power of FIFA over national governments: a new actor in world politics?" (2014) Presented at: FLACSO-ISA Joint International Conference, Global and Regional Powers in a Changing World, 23rd-25th July 2014, University of Buenos Aires, Argentina. p/1 & 22

⁸³⁶ Keohane, Robert O. "Global governance and democratic accountability" In Goodin, Robert E., and Philip Pettit, eds. *Contemporary political philosophy: an anthology* (2006) Oxford Wiley-Blackwell pp.697-709. Cited in Pielke Jr, Roger. "How can FIFA be held accountable?" *Sport management review* 16, no. 3 (2013): 255-267. p/256

⁸³⁷ Gomsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/133

legislation in these countries.⁸³⁸ For instance, in the course of hosting the 2014 World Cup, Brazilian politicians were obliged to vote for a 'World Cup' exception. The exception was to make the World Cup's spectators and attendees exempt from the Brazilian law which prohibited the sale of alcohol, in or around sports stadiums.⁸³⁹ This example illustrated one of the core rationales behind FIFA's regulatory actions, as it evidenced the ability of the organisation to take a strong stance when there are potential factors which could affect its economic interests or the commerciality of football. The Brazilian example also showed the extent of FIFA's TPR powers in being able to change nation state's laws. FIFA has therefore become strong enough to resist effective state intervention,⁸⁴⁰ even in the face of key public interest concerns arising within the sport. This has led to questions about FIFA's TPR powers and whether it has gone beyond the necessary threshold.⁸⁴¹

FIFA's regulatory powers have been able to transcend both public and private spheres of regulation.⁸⁴² The extent of FIFA's TPR powers indicate that the organisation has the capacity to have social roles which could exceed the confines of football. With FIFA's capacity to influence sovereign states, it has been argued that its TPR could even "improve the world",⁸⁴³ and have a positive effect on the wider public by addressing problems which nation states have so far been unable to tackle adequately.⁸⁴⁴ Therefore, FIFA's TPR allows it to reside in a position of global importance.⁸⁴⁵ FIFA's relevance in the economic, political, and cultural processes in various countries, especially when regarding football matters, evidences its global impact.⁸⁴⁶ The importance of sport and the enormous public interest in its conduct is why SGBs like FIFA are often seen as trustees of public assets.⁸⁴⁷ Consequently, FIFA's impact as a global governance structure has led to comparisons with

⁸³⁸ Garcia, Borja, and Henk-Erik Meier. "The power of FIFA over national governments: a new actor in world politics?" (2014) Presented at: FLACSO-ISA Joint International Conference, Global and Regional Powers in a Changing World, 23rd-25th July 2014, University of Buenos Aires, Argentina. p/1 & 22

⁸³⁹ Latty, Franck. "Non-state authority: FIFA". In *Global Private International Law*, (Cheltenham, UK: Edward Elgar Publishing, 2019) p/158

⁸⁴⁰ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/133

⁸⁴¹ Garcia, Borja, and Henk-Erik Meier. "The power of FIFA over national governments: a new actor in world politics?" (2014) Presented at: FLACSO-ISA Joint International Conference, Global and Regional Powers in a Changing World, 23rd-25th July 2014, University of Buenos Aires, Argentina. p/1 & 22

⁸⁴² Latty, Franck. "Non-state authority: FIFA". In *Global Private International Law*, (Cheltenham, UK: Edward Elgar Publishing, 2019) p/152

⁸⁴³ Castilla, José L., Aníbal Mesa, and Manuel González-Ramallal. "Football and justice devices: hybrid ethical narratives, sanctions and legitimacy of interests." *Soccer & Society* 18, no. 4 (2017): 575-590. p/582

⁸⁴⁴ Duval, Antoine. "The FIFA regulations on the status and transfer of players: Transnational law-making in the shadow of Bosman." In *The legacy of Bosman*, pp. 81-116. TMC Asser Press, The Hague, 2016. p/82

⁸⁴⁵ Meier, Henk Erik, and Borja Garcia. "Protecting private transnational authority against public intervention: FIFA's power over national governments." *Public Administration* 93, no. 4 (2015): 890-906. p/894

⁸⁴⁶ Castilla, José L., Aníbal Mesa, and Manuel González-Ramallal. "Football and justice devices: hybrid ethical narratives, sanctions and legitimacy of interests." *Soccer & Society* 18, no. 4 (2017): 575-590. p/577

⁸⁴⁷ Lewis, Adam and Jonathan Taylor, *Sport: law and practice* (3rd edn Bloomsbury Professional, 2014). p/73

other supra-national institutions such as the United Nations (UN).⁸⁴⁸ However, unlike the UN, a major criticism of FIFA and its regulatory strategies and rationale is that the organisation is not the product of a global democracy, but rather that FIFA practices obscure political processes that raise key questions about its legitimacy.⁸⁴⁹

Criticisms of FIFA's lacking legitimacy are furthered by the instances of conflicting interests within FIFA's governance structure. As key personnel focus on commercialisation and the widening of FIFA's revenue streams,⁸⁵⁰ notwithstanding the human rights violations that are being caused to participants and others involved in the running of the sporting events.⁸⁵¹ When FIFA's regulatory actions are dictated by self-interests, and the organisation is primarily concerned with the pursuit of its economic targets, this tends to undermine the positive impact which FIFA could achieve across the globe. Since FIFA directly and indirectly possesses enormous power over people's livelihoods, hopes, and their expectations,⁸⁵² it is argued that the organisation's regulatory actions must be able to protect and safeguard the wellbeing of its members and non-members affected by its policy actions.

4.6 FIFA'S ANTI-TRAFFICKING POLICIES

FIFA acknowledges that whilst football migration and international transfers involving young players may prove beneficial to the child, there are times where these transfers are contrary to the best interests of the child, such as in instances of football trafficking and child exploitation.⁸⁵³ FIFA has recognised its position as the international global regulator of football, and the organisation notes that it must take into consideration the life prospects of all young players involved in the sport, including the majority of the young players that never make it to the highest professional level.⁸⁵⁴ To this end, FIFA have introduced rules aimed at safeguarding children within football and preventing them from experiencing trafficking. These rules are derived primarily from the FIFA Regulations on the Status and Transfer of Players (RSTP), though the organisation also has additional toolkits, policies, and

⁸⁴⁸ DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 115. p/118

⁸⁴⁹ Duval, Antoine. "The FIFA regulations on the status and transfer of players: Transnational law-making in the shadow of Bosman." In *The legacy of Bosman*, pp. 81-116. TMC Asser Press, The Hague, 2016. p/102

⁸⁵⁰ Meier, Henk Erik, and Borja Garcia. "Protecting private transnational authority against public intervention: FIFA's power over national governments." *Public Administration* 93, no. 4 (2015): 890-906. p/894

⁸⁵¹ Schwab, Brendan. "When We Know Better, We Do Better: Embedding the Human Rights of Players as a Prerequisite to the Legitimacy of Lex Sportiva and Sport's Justice System." *Md. J. Int'l L.* 32 (2017): 4.

⁸⁵² Lewis, Adam and Jonathan Taylor, *Sport: law and practice* (3rd edn Bloomsbury Professional, 2014). p/73

⁸⁵³ FIFA, "Protection of Minors: FAQ" (September 2016) <<https://img.fifa.com/image/upload/xbnooh14lcaxzadstknx.pdf>> accessed on 10/07/2020

⁸⁵⁴ FIFA, "World Day Against Trafficking in Persons: It's up to all of us" (*FIFA.com*, July 2020) <<https://www.fifa.com/who-we-are/news/it-s-up-to-all-of-us>> accessed on 30/07/2020

mechanisms which it uses to dictate practices within the sport that apply to all players – including minors.⁸⁵⁵ The policies contribute to FIFA’s claim that it is more concerned with “protecting the appropriate and stable development of a minor...over purely sporting interests.”⁸⁵⁶

4.7 ARTICLE 19 FIFA RSTP

After *Bosman*, FIFA realised that the international transfer of minors (ITMs) was having some negative effects on the sport, such as with the increased commodification of children and the exportation and exploitation of the cheaper African football minors to the bigger and richer EU clubs. FIFA, thereby, sought to offer minors greater protection from these dangerous situations, such as by introducing regulations which would be able to tackle the growing concern of human trafficking in the sport.⁸⁵⁷ Article 19 of the RSTP was subsequently formed to achieve this.⁸⁵⁸ The article bans the international transfer of players under the age of 18,⁸⁵⁹ unless the transfer is conducted under the following five exceptions:

4.7.1 Parent Exception

This exception allows a minor to register with a club provided the player’s parents moved to the country in which the new club is located for reasons other than football.⁸⁶⁰ This exception is considered to be the most used and abused of the FIFA exceptions,⁸⁶¹ which will be elaborated upon in the next chapter.

4.7.2 EU Exception

This exception provides a means for FIFA rules to comply with EU law,⁸⁶² as Article 19 would otherwise be in contravention of the minor’s freedom of movement rights as a worker under Article 45 of the TFEU.⁸⁶³ The EU exception permits ITMs when the transaction takes place within the EU, and the player is between the ages of 16-18.⁸⁶⁴ The exception stipulates

⁸⁵⁵ Yilmaz, Serhat, 'Protection of minors: lessons about the FIFA RSTP from the recent Spanish cases at the Court of Arbitration for Sport' (2018) *The International Sports Law Journal* 1. p/2

⁸⁵⁶ FIFA, “Protection of Minors: FAQ” (September 2016) <<https://img.fifa.com/image/upload/xbnooh14lcaxzadstknx.pdf>> accessed on 10/07/2020

⁸⁵⁷ Colucci, Michele, and Felix Majani. "The FIFA Regulations on the Labour Status and Transfer of Players." *Indonesian J. Int'l L.* 5 (2007): 681. p/689

⁸⁵⁸ Derungs, Vitus, “Protecting underage football players in the transfer system” (2015) *WSLR*, Vol. 13/9

⁸⁵⁹ Article 19(1) of the RSTP 2020

⁸⁶⁰ Article 19(2)(a) of the RSTP 2020

⁸⁶¹ Celen, Burcin, Leo Lederman, Angelo Rigopoulos, Jos6 Alfonso Rodriguez, and Piotr Sadowski. "International Transfers of Minors: Recommendations to Improve the Protections of Young Players in the Current Transfer System." (2010). *CIES* 16, p/33.

⁸⁶² Derungs, Vitus, “Protecting underage football players in the transfer system” (2015) *WSLR*, Vol. 13/9

⁸⁶³ Article 19(1) of the FIFA RSTP 2020

⁸⁶⁴ Article 45 of the Treaty on the Functioning of the European Union.

⁸⁶⁴ Article 19(2)(b) of the FIFA RSTP 2020

that the receiving club should: provide the player with adequate football education or training;⁸⁶⁵ guarantee the player academic or vocational education;⁸⁶⁶ make all necessary arrangements to ensure that the player is looked after in the best possible way (such as being given optimum living standards);⁸⁶⁷ and provide proof to the relevant FA that it is complying with the aforementioned obligations upon registration of the EU player.⁸⁶⁸

The EU exception has an emphasis on academic education to provide the players with a possible dual career opportunity to football, which is a common aspect of EU laws concerning young sports athletes.⁸⁶⁹ The education and football training requirements prevent players who have immigrated from falling into difficult socio-economic situations.⁸⁷⁰ However, the exception has been subjected to some scrutiny since its implementation, but FIFA's judicial system and CAS have so far been able to combine to prevent the abuse of this provision.

4.7.3 Border Exception

This exception allows players from neighbouring countries to move to clubs across the border, (within 50km of that border with the maximum distance between the player's domicile and the club's headquarters being 100km), as far as the player continues to live at home, and both Football Associations consent to the transfer.⁸⁷¹

4.7.4 Humanitarian Exception

This exception permits the registration of a minor where the minor has fled their country of origin without their parents for humanitarian reasons, specifically due to their life or freedom being threatened on account of race, religion, nationality, belonging to a particular social group, or political opinion.⁸⁷² The provision expects that the player must be allowed to reside, at least temporarily in the destination country, and the player's custodian must consent to their registration with the new club.⁸⁷³

⁸⁶⁵ *Ibid.* 19(2)(b)(i)

⁸⁶⁶ *Ibid.* 19(2)(b)(ii)

⁸⁶⁷ *Ibid.* 19(2)(b)(iii)

⁸⁶⁸ *Ibid.* 19(2)(b)(iv)

⁸⁶⁹ European Commission, "EU Guidelines on Dual Careers of Athletes" (November 2012) <https://ec.europa.eu/assets/eac/sport/library/documents/dual-career-guidelines-final_en.pdf> accessed on 10/07/2020

⁸⁷⁰ Najarian, Alex C. "The Lost Boys: FIFA's Insufficient Efforts to Stop Trafficking of Youth Footballers." *Sports Law J.* 22 (2015): 151. p/171

⁸⁷¹ Article 19(2)(c) of the FIFA RSTP 2020

⁸⁷² Article 19(2)(d) of the FIFA RSTP 2020

⁸⁷³ FIFA, Circular No. 1709, 13th February 2020 <<https://resources.fifa.com/image/upload/circular-no-1709-amendments-to-the-regulations-on-the-status-and-transfer-of-pla.pdf?cloudid=ywr4rcralhyoqtfrqvai>> accessed on 13/07/2020

4.7.5 Academic Exception

This exception allows for the registration of a minor where the player is a student and moves without his parents to another country temporarily for academic reasons, such as to undertake an exchange programme.⁸⁷⁴ The rule states that the duration of the player's registration for the new club is until he turns 18, or until the end of the academic or school programme, which may not exceed one year. FIFA expects that during the player's programme, he will be supervised by host parents who will provide him with accommodation, and that both the player's parents and the host parents must consent to the registration with the new club.⁸⁷⁵ The provision states that the registration of the minor must be with a purely amateur club which does not have a professional team, and which is without a legal, financial, or de facto link to a professional club.⁸⁷⁶

FIFA claims that the aforementioned exceptions are drafted carefully and reduce avenues for its regulatees to circumvent the policies.⁸⁷⁷

4.7.6 The first registration requirement

Article 19 RSTP has further provisions such as the first registration requirement. The requirement makes it a prerequisite for a player to be registered with an FA in the territory their club or academy is located, in order to be eligible for them to play organised football in that region.⁸⁷⁸ The requirement was to result in more restrictions to ITMs, unless a player had lived continuously for at least five years in the territory of a country in which he is not a national, prior to his first registration in that region.⁸⁷⁹ If the minor and the receiving club are unable to meet this requirement, the transfer would be subjected to the decision of the FIFA subcommittee.⁸⁸⁰

4.7.7 FIFA Subcommittee

FIFA introduced the Player Status Subcommittee to deal exclusively with ITMs so that it could better restrict and monitor the transfers involving youth players. This Subcommittee of the FIFA Players' Status Committee is authorised to inspect and approve every international transfer and every first registration of a minor in football.⁸⁸¹ The Subcommittee

⁸⁷⁴ Article 19(2)(e) of the FIFA RSTP 2020

⁸⁷⁵ FIFA, Circular No. 1709, 13th February 2020 <<https://resources.fifa.com/image/upload/circular-no-1709-amendments-to-the-regulations-on-the-status-and-transfer-of-pla.pdf?cloudid=ywr4rcralhyoqtfrrqvai>> accessed on 13/07/2020

⁸⁷⁶ Article 19(2)(e) of the FIFA RSTP 2020

⁸⁷⁷ FIFA, "Protection of Minors: FAQ" (September 2016) <<https://img.fifa.com/image/upload/xbnooh14lcaxzadstknx.pdf>> accessed on 10/07/2020

⁸⁷⁸ Article 19(4) of the FIFA RSTP 2020

⁸⁷⁹ Article 19(3) & (4) of the FIFA RSTP 2020

⁸⁸⁰ Article 19(4) & (5) of the FIFA RSTP 2020

⁸⁸¹ Article 19(4) of the FIFA RSTP 2020

process incorporates a mandatory use of FIFA's Transfer Matching System (TMS) during the course of a transfer,⁸⁸² and the Subcommittee's approval is a requirement before an International Transfer Certificate (ITC) is granted to allow the minor register with a new club.⁸⁸³

4.7.8 Article 19bis FIFA RSTP

Article 19 was amended to include Article 19bis, upon the realisation that academies which were not registered with their local football association provided a loophole to circumvent the ban on ITMs.⁸⁸⁴ Article 19bis was introduced to prevent ITMs by improving the monitoring of Football Associations.⁸⁸⁵ The provision requires that all clubs and academies report all the minors who attend their academies to their football association,⁸⁸⁶ and stipulates that the football associations must in turn keep a register comprising of all the names and dates of birth of the minors who have been reported to it.⁸⁸⁷ This provision aims to manage, monitor, and safeguard youth footballers through their registered football association, in order to promote the 'ethical principles of organised football'.⁸⁸⁸

4.8 THE INTERNATIONAL TRANSFER CERTIFICATE (ITC)

FIFA's regulations provide that players registered at one association may only be registered at a new association once the latter has received an International Transfer Certificate (ITC) from the former association.⁸⁸⁹ The granting of the ITC signifies that the player in question has no contractual disputes with his previous club, and that he is free to join the new club.⁸⁹⁰ The ITC is therefore a key procedural requirement for any international transfer, including those involving minors.⁸⁹¹ Without the ITC, the transfer will likely be null and void.⁸⁹²

The ITC assists in the calculation and arrangement of training compensation, payable to the selling club for the training and education the player received between the ages of 12 and

⁸⁸² Yilmaz, Serhat. "Protection of minors: lessons about the FIFA RSTP from the recent Spanish cases at the Court of Arbitration for Sport." *The International Sports Law Journal* 18, no. 1-2 (2018): 15-28. p/18

⁸⁸³ Najarian, Alex C. "The Lost Boys: FIFA's Insufficient Efforts to Stop Trafficking of Youth Footballers." (2015) *Sports Law. J.* 22: 151. p/159

⁸⁸⁴ Derungs, Vitus "Protecting underage football players in the transfer system" (2015) WSLR, Vol. 13/9.

⁸⁸⁵ Lembo, Christina. "FIFA transfer regulations and UEFA player eligibility rules: major changes in European football and the negative effect on minors." *Emory Int'l L. Rev.* 25 (2011): 539. p/577

⁸⁸⁶ Article 19bis (1) of the FIFA RSTP 2020

⁸⁸⁷ Article 19bis (3) of the FIFA RSTP 2020

⁸⁸⁸ Article 19bis (4) of the FIFA RSTP 2020

⁸⁸⁹ Article 9 (1) of the FIFA RSTP 2020

⁸⁹⁰ Colucci, Michele, and Felix Majani. "The FIFA Regulations on the Labour Status and Transfer of Players." *Indonesian J. Int'l L.* 5 (2007): 681. p/689

⁸⁹¹ Yilmaz, Serhat. "Protection of minors: lessons about the FIFA RSTP from the recent Spanish cases at the Court of Arbitration for Sport." *The International Sports Law Journal* 18, no. 1-2 (2018): 15-28. p/19

⁸⁹² Article 9(1) of the FIFA RSTP 2020

23.⁸⁹³ Due to an increased number of international transfers of players younger than 12 in football,⁸⁹⁴ FIFA reduced the age limit for the requirement of the ITC to 10 years old.⁸⁹⁵ This rule change means that the FIFA Subcommittee can only consider cases for the international transfer of players aged 10 and above,⁸⁹⁶ which itself creates a loophole for the transfers of players who are less than 10 years old.

4.9 THE TRANSFER MATCHING SYSTEM (TMS)

FIFA explains that the TMS is a web-based data information system which has the primary objective of simplifying the process of international player transfers, alongside improving transparency and the flow of information.⁸⁹⁷ The TMS modernised the transfer process by implementing an online system for registering international transfers, and this replaced the previous procedures of paper contracts and fax machines. The use of TMS is a mandatory step for all international transfers of professional and amateur players within the scope of organised football, and any registration of such a player without the use of the TMS will be deemed invalid.⁸⁹⁸

Under the TMS, each club and its FA is responsible for the information entered on the system during a transfer. TMS requires that football associations keep all information relating to a player up to date, as this will be used in any transaction or transfer the player is involved in. FIFA stipulates that all applications for a first registration or an ITM according to Article 19(3) and 19(2) RSTP, must be submitted and managed through the TMS.⁸⁹⁹ The TMS requires that transacting clubs upload a series of documents as proof of accuracy of the information entered into the system.⁹⁰⁰ This information allows FIFA to detect fraudulent transfers and irregular aspects involved in the deal. The TMS is supposed to increase the transparency of individual transactions, which will in turn improve the credibility and standing of the entire football transfer system and its procedures.⁹⁰¹

Through the TMS, FIFA highlights its commitment to use the system to safeguard and protect minors,⁹⁰² to investigate potential breaches of FIFA regulations, and to hand over

⁸⁹³ Article 9 (3) of the FIFA RSTP 2020

⁸⁹⁴ Yilmaz, Serhat. "Protection of minors: lessons about the FIFA RSTP from the recent Spanish cases at the Court of Arbitration for Sport." *The International Sports Law Journal* 18, no. 1-2 (2018): 15-28. p/19

⁸⁹⁵ Article 9 (4) of the FIFA RSTP 2020

⁸⁹⁶ Yilmaz, Serhat. "Protection of minors: lessons about the FIFA RSTP from the recent Spanish cases at the Court of Arbitration for Sport." *The International Sports Law Journal* 18, no. 1-2 (2018): 15-28. p/19

⁸⁹⁷ FIFA RSTP 2020, "Definitions: 13" Transfer matching system, p/6

⁸⁹⁸ Annexe 3 (1.5) of the FIFA RSTP 2020

⁸⁹⁹ Annexe 2 (1) of the FIFA RSTP 2020

⁹⁰⁰ Annexe 2 (5) of the FIFA RSTP 2020

⁹⁰¹ Annexe 3 (1.1) of the FIFA RSTP 2020

⁹⁰² Annexe 3 (1.3) of the FIFA RSTP 2020

relevant cases to the Disciplinary Committee for consideration and decisions leading to possible sanctions where there is a breach.⁹⁰³ The TMS also provides effective safeguards against fraud and money laundering in the sport. Football associations are required to ensure that a player being transferred to another club is a real individual and not a fictitious character being used for illicit activities.⁹⁰⁴

4.10 FIFA'S BALANCING MECHANISMS

FIFA's RSTP has established regulations designed to create a balance between the freedom of movement for players, protection of minors, and free competition, whilst redistributing income and guaranteeing that those clubs involved with training and developing players receive rightful compensation.⁹⁰⁵ The two mechanisms which are most relevant for the protection of minors are the training compensation and the solidarity contribution. These mechanisms are aimed at incentivising EU clubs to invest in the development of their own youth players, rather than to continuously conduct ITMs.

4.10.1 Training Compensation

This is an attempt by FIFA to reimburse clubs that have invested in training and educating players. It provides value for the training and education which the player received between the ages of 12 and 23.⁹⁰⁶ Training compensation is paid to a player's training club by his new club when (1) a player is registered for the first time and signs his first contract as a professional player; or when (2) a professional player is transferred between clubs before the end of the season of his 23rd birthday.⁹⁰⁷ The obligation to pay training compensation arises whether the transfer takes place during or at the end of the player's contract.⁹⁰⁸ The training compensation could act as a disincentive for the bigger clubs who would be required to pay increased sums by way of this compensation when signing players.

4.10.2 Solidarity Contribution

FIFA implemented this contribution to ensure that clubs who choose to invest in their academy systems by training youth footballers are compensated for their efforts. The rule provides that when a professional player is transferred before the expiry of his contract, any

⁹⁰³ FIFA, "Protection of Minors: FAQ" (September 2016) <<https://img.fifa.com/image/upload/xbnooh14lcaxzadstknx.pdf>> accessed on 10/07/2020

⁹⁰⁴ Annexe 3 (1.2) of the FIFA RSTP 2020

⁹⁰⁵ Najarian, Alex C. "The Lost Boys: FIFA's Insufficient Efforts to Stop Trafficking of Youth Footballers." *Sports Law. J.* 22 (2015): 151. p/178-9

⁹⁰⁶ Article 20 of the FIFA RSTP 2020

⁹⁰⁷ Article 20 of the FIFA RSTP 2020

⁹⁰⁸ Article 20 of the FIFA RSTP 2020

club that has contributed to his education and training (between his 12th and 23rd birthday) shall receive a proportion of the compensation paid to the selling club.⁹⁰⁹ Money received by a club or association as compensation for the player's transfer is to be invested in further youth training and development.⁹¹⁰ This allows the solidarity contribution to act as a monetary incentive for the EU clubs, and serves to prevent the possible exploitation of foreign minors.

4.11 REGULATIONS ON INTERMEDIARIES

In 2015, FIFA chose to revamp its regulations on intermediaries as it was alleged that the licenced agents were involved in only 25-30% of international transfers.⁹¹¹ FIFA believed that it lacked the resources to rectify such a large-scale problem and claimed that its Dispute Resolution Chamber was being overworked.⁹¹² In a bid to devise regulations that would be more transparent and simpler to administer and monitor,⁹¹³ FIFA chose to deregulate the control of intermediaries/agents, stipulating that the individual football associations would be responsible for the governance and registration of intermediaries in their regions.⁹¹⁴ This FIFA decision had some effect on ITMs, such as a recommendation for players and clubs to cap the commission rates of intermediaries at three per cent,⁹¹⁵ as well as a stipulation for intermediaries to not be paid for ITMs.⁹¹⁶ FIFA believed that these regulatory changes would act as minimum standards and would prevent intermediaries from exploiting young players.⁹¹⁷ However, FIFA's deregulation ultimately proved controversial. The laws were accused of opening the door to more unscrupulous persons and giving them valid access to vulnerable youth players. Some argued that if FIFA maintained a tight monitoring process on agents' activities and enforced its regulatory framework against unscrupulous agents in a

⁹⁰⁹ Article 21 of the FIFA RSTP 2020

⁹¹⁰ Najarian, Alex C. "The Lost Boys: FIFA's Insufficient Efforts to Stop Trafficking of Youth Footballers." *Sports Law. J.* 22 (2015): 151. p/183

⁹¹¹ Sinnott, John, "FIFA to 'axe' licensed agent rule" (*BBC*, October 2015) <<http://news.bbc.co.uk/sport1/hi/football/9049037.stm>> accessed on 13/07/2020

⁹¹² Football Intermediary, "Commentary on FIFA's Football Intermediary Regulations", <<http://footballintermediary.co.uk/regulations/commentary-on-the-regulations/>> accessed on 6 June 2016

⁹¹³ Van Maren, Oskar, "A Short Guide to the New FIFA Regulations on Working with Intermediaries" (*Asser International Sports law blog*, 3 July 2014) < <http://www.asser.nl/SportsLaw/Blog/post/a-short-guide-to-the-new-fifa-regulations-on-working-with-intermediaries>> accessed on 6 June 2016

⁹¹⁴ Marcotti, Gabriele, "The era of the 'player agent' is over, but they still have a place in football" (*ESPN FC*, 8 July 2015) <<https://www.espn.co.uk/football/blog/marcottis-musings/62/post/2516003/fifa-ends-the-player-agent-erabut-they-are-here-to-stay>> accessed on 20/12/2020

⁹¹⁵ Article 7(3)(a) of FIFA, "Regulations on Working with Intermediaries (RWI)" 2015

⁹¹⁶ Article 7(8) of FIFA RWI

⁹¹⁷ Van Maren, Oskar, "A Short Guide to the New FIFA Regulations on Working with Intermediaries" (*Asser International Sports law blog*, 3 July 2014) < <http://www.asser.nl/SportsLaw/Blog/post/a-short-guide-to-the-new-fifa-regulations-on-working-with-intermediaries>> accessed on 6 June 2016

strict and indiscriminate manner, “there would be no need for any new set of regulations, let alone for a comprehensive form of deregulation.”⁹¹⁸

In response to the criticisms it received, in 2019, the FIFA Council endorsed the reform of the regulations on football agents to improve transparency, protect player welfare, enhance contractual stability, and also to raise professional and ethical standards by reducing the abusive practices which exist within the sport.⁹¹⁹ This changed approach takes a more regulatory stance to handling the problem rather than the previous deregulation, as FIFA realised that it is its responsibility to govern the agents in the field and not that of its subsidiary football associations.⁹²⁰ FIFA’s changes are aimed at increasing transparency and the credibility of the football transfer system, whilst also trying to reintroduce key provisions that will restrict the access of unscrupulous persons to the vulnerable child players in football. For instance, the mandatory licensing system for agents is being reinstated, which could raise the professional standard of the agents acting within the sport.⁹²¹ FIFA will also require any agent wishing to represent a minor to undergo various clearances and safeguarding training. Furthermore, an online football agent directory will be made publicly available, and it will list all licensed agents with the authority to represent minors.⁹²²

4.12 FIFA GUARDIANS/CHILD SAFEGUARDING TOOLKIT

FIFA released a Child Safeguarding Toolkit in 2019 for its MAs. The toolkit was based on 5 principles:

1. Ensuring the best interest of each child.
2. Respecting and promoting children’s rights as per the Convention on the Rights of the Child.
3. Applying the principles to all children and without any discrimination.
4. Safeguarding children, as part of everybody’s responsibility.

⁹¹⁸ Ioannidis, Gregory. "Football intermediaries and self-regulation: the need for greater transparency through disciplinary law, sanctioning and qualifying criteria." *The International Sports Law Journal* 19, no. 3-4 (2019): 154-170. p/160

⁹¹⁹ FIFA, “Reform proposals concerning football agents’ regulations” (*FIFA.com*, 22 January 2020) <<https://www.fifa.com/about-fifa/who-we-are/news/reform-proposals-concerning-football-agents-regulations>> accessed on 18/02/2020

⁹²⁰ Yilmaz, Serhat, “Re-regulating football agents: would FIFA’s proposed commission cap and prohibition on dual representation work in practice?” (*LawInSport*, 6 June 2019) <<https://www.lawinsport.com/topics/item/re-regulating-football-agents-would-fifa-s-proposed-commission-cap-and-prohibition-on-dual-representation-work-in-practice>> accessed on 18/02/2020

⁹²¹ FIFA, “Reform proposals concerning football agents’ regulations” (*FIFA.com*, 22 January 2020) <<https://www.fifa.com/about-fifa/who-we-are/news/reform-proposals-concerning-football-agents-regulations>> accessed on 18/02/2020

⁹²² FIFA, “World Day Against Trafficking in Persons: It’s up to all of us” (*FIFA.com*, July 2020) <<https://www.fifa.com/who-we-are/news/it-s-up-to-all-of-us>> accessed on 30/07/2020

5. Defining specific roles and responsibilities within each sport organisation, to ensure that all concerns are reported and dealt with immediately in accordance with stated procedures.⁹²³

The toolkit acknowledges the existence of child trafficking, yet it states that football associations who suffer from this trafficking should handle the problem by developing and implementing procedures that can better safeguard children in their region. Step 3, part C of the toolkit provides that:

*Guidelines for the identification, prevention, or minimisation of risk to children involved in football. As a minimum, these guidelines should be developed and implemented by MAs and include: Procedures or programmes for addressing any specific issues of risks that children in your country or community may face, for example trafficking...*⁹²⁴

Conclusion

This chapter has explained regulation and evidenced the position of FIFA within football's regulatory space. It has shown that FIFA's structure as a TPR enables it to make rules, operate its own dispute resolution mechanism, and enforce regulatory awards in a manner that extends its powers beyond national borders. Discussions highlighted the extent of FIFA's private legal authority, differentiating FIFA from the other types of regulatory institutions alluded to within the regulatory space account. Since in football, there is no shared authority and FIFA dominates the regulatory space. FIFA's dominant position means it has the capacity to not only influence the actions of its members, but also that of non-members, via its extensive TPR powers. However, the regulatory strategies of the organisation tend to primarily be driven by economic gain and improved profits. This chapter considered a range of FIFA's policies relevant to anti-trafficking and safeguarding child players. And the next chapter begins the evaluation on the efficacy of the policies in achieving the intended outcome of protecting minors from trafficking and exploitative situations.

⁹²³ FIFA, "Child Safeguarding Toolkit for Member Associations" (*FIFA Member Associations Division and FIFA Child Safeguarding Expert Working Group*, June 2019) <<https://resources.fifa.com/image/upload/toolkit-fifa-guardians.pdf?cloudid=nz1lyz3ykaioy7gwfmgs>> accessed on 19/02/2020. p/12-16

⁹²⁴ FIFA, "Child Safeguarding Toolkit for Member Associations" (*FIFA Member Associations Division and FIFA Child Safeguarding Expert Working Group*, June 2019) <<https://resources.fifa.com/image/upload/toolkit-fifa-guardians.pdf?cloudid=nz1lyz3ykaioy7gwfmgs>> accessed on 19/02/2020. p/30

Chapter 5 - EVALUATING FIFA'S REGULATIONS - POLICY OBJECTIVES

To ascertain the quality and performance of FIFA's anti-trafficking policies, FIFA's regulations will be evaluated to highlight any discrepancies between the policy objectives and the intended regulatory outcomes. This evaluation will show the positive, negative, and/or unintended consequences of FIFA's anti-trafficking policies.⁹²⁵ Baldwin and others averred that there are four general means of evaluating policy objectives, which are, the input, process, output, and outcome-based evaluations.⁹²⁶ They explained that input-based evaluations look at inspectors, inspections, and the resources devoted to control.⁹²⁷ Process or compliance-based evaluations look at the adherence to procedural requirements in the regime.⁹²⁸ Output-based evaluations measure the extent to which the goals of the specific programme are achieved.⁹²⁹ And outcome-based evaluations assess the impact of the regulatory system,⁹³⁰ in the achievement of the specific regulatory outcomes.⁹³¹ For this analysis, the outcome-based evaluation will be adopted to assess FIFA's regulatory strategies and the performance of its anti-trafficking policies.⁹³²

The outcome-based evaluation is most suitable for assessing FIFA for three reasons: First, the evaluation will help to ascertain the true impact that FIFA's policies and regulatory system has had on the problem of football trafficking;⁹³³ second, the assessment will aid in determining if FIFA's policies have influenced the behaviours and recruitment strategies of football clubs, and ultimately, if the policies have been able to achieve the specific regulatory outcome of limiting football trafficking and the exploitation of minors in the sport;⁹³⁴ and third, because outcome-based evaluations provide a greater value of findings due to its direct link to the assessment of regulatory objectives.⁹³⁵ In Coglianese's expert paper on outcome-based evaluations, he explained that the examination should involve an assessment of the

⁹²⁵ Bryant, Katharine, and Todd Landman. "Combatting human trafficking since Palermo: what do we know about what works?" *Journal of human trafficking* 6, no. 2 (2020): 119-140. p/121

⁹²⁶ Baldwin, Robert, Martin Cave, and Martin Lodge. *Understanding regulation: theory, strategy, and practice*. Oxford University Press on Demand, 2012. p/35

⁹²⁷ Ibid.

⁹²⁸ Ibid.

⁹²⁹ Ibid.

⁹³⁰ Baldwin, Robert, Martin Cave, and Martin Lodge. *Understanding regulation: theory, strategy, and practice*. Oxford University Press on Demand, 2012. p/35-6

⁹³¹ Decker, Christopher. *Goals-based and rules-based approaches to regulation*. No. 2018/8. BEIS Research Paper, 2018. p/15

⁹³² Black, Julia. "Tensions in the regulatory state." *Public Law* 2007, no. Spring (2007). p/4

⁹³³ Baldwin, Robert, Martin Cave, and Martin Lodge. *Understanding regulation: theory, strategy, and practice*. Oxford University Press on Demand, 2012. p/35-6

⁹³⁴ Coglianese, Cary, 'Measuring Regulatory Performance evaluating the impact of regulation and regulatory policy' (2012) Expert Paper No. 1 OECD. Pg. 8

⁹³⁵ Baldwin, Robert, Martin Cave, and Martin Lodge. *Understanding regulation: theory, strategy, and practice*. Oxford University Press on Demand, 2012. p/35-6

extent to which the regulatory policies have caused any changes in the regime (impact), as well as a measurement of the reduction or improvement of the problem in the regime (specific outcome).⁹³⁶

5.1 IMPACT

The impact of FIFA's anti-trafficking policies can be determined by an analysis of its effect on FIFA members and the non-members influenced by its regime.

5.1.1 Members

Generally, it is not always clear how FIFA member clubs (and their respective MAs) manage to circumvent the prohibition on ITMs.⁹³⁷ However, of the clubs which have been detected in their attempts to evade FIFA's anti-trafficking policies, their recruitment strategies involve them identifying and utilising loopholes in FIFA's regulatory system. These loopholes give clubs the opportunity to discretely recruit international foreign minors without alerting FIFA to these transactions. For example, European clubs have used gaps in immigration law to conduct ITMs, by capitalising on EU countries with lesser restrictions.⁹³⁸ Some loopholes in FIFA's regulatory system have also appeared as a result of its contradictory policy responses to football trafficking over the years.⁹³⁹

Despite the significant restrictions on conducting ITMs provided by **Article 19** RSTP, the exceptions to the rule have created a leeway for FIFA member clubs to bypass and continue engaging in the illicit transfer of minors. For instance, the **border exception** is often considered to be a straightforward policy with limited avenues for abuse. However, the International Programme on the Elimination of Child Labour (IPEC) showed that living close to a border may itself be a risk leading to the potential trafficking of minors.⁹⁴⁰ IPEC argued that this is especially the case where the neighbouring country has a thriving labour market, such as a prevalent football league or established academy structure, as this may increase the likelihood of the child and his family being deceived, trafficked, and

⁹³⁶ Coglianese, Cary, 'Measuring Regulatory Performance evaluating the impact of regulation and regulatory policy' (2012) Expert Paper No. 1 OECD. Pg. 15

⁹³⁷ Drywood, Eleanor, "When we buy a young boy ..." Migrant Footballers, Children's Rights and the Case for EU Intervention' in Stalford, Helen and Ingi Iusmen (Eds), *The EU as a children's rights actor. Law, policy, and structural dimensions* (Barbara Budrich Publishers, Toronto 2015) 191-220. p/202

⁹³⁸ Lembo, Christina. "FIFA transfer regulations and UEFA player eligibility rules: major changes in European football and the negative effect on minors." *Emory Int'l L. Rev.* 25 (2011): 539. p/539

⁹³⁹ Esson, James, Paul Darby, Eleanor Drywood, Carolynne Mason, and Serhat Yilmaz. "Children before players: Current risks and future research agendas." (2020) <<https://hdl.handle.net/2134/11590800.v1>> accessed 2 March 2020. p/11

⁹⁴⁰ IPEC, *Combating trafficking in children for labour exploitation: A resource kit for policy-makers and practitioners* (International Labour Office; ILO International Programme on the Elimination of Child Labour, Geneva 2008). Book 4: Understanding What Child Trafficking Is, pg. 10

exploited.⁹⁴¹ The border exception tends to be exploited by unscrupulous persons and intermediaries within the EU and Western countries because of their close proximity to one another. Such as in the case of Malcolm Rodger, who was trafficked from Scotland to England as a young footballer but later became a victim of sexual exploitation.⁹⁴² African minors are not commonly put at risk through this border exception, though there are still some circumstances where they have been made susceptible to exploitation. In Ghana, the proximity between West African countries led to what was described as “exploitation within exploitation”,⁹⁴³ as African boys migrated irregularly and were made to pay money to procure Ghanaian passports to join the official football academies in the country. In other instances, the interrelatedness and connections between EEA countries is used to deceive and traffic foreign minors. The traffickers promise the minors that upon arrival in one EU country they would train and rest, and that this would make the players move to other parts of Europe easier,⁹⁴⁴ which does not often materialise for the Africans.

The **humanitarian exception** and the circumstances around its use could also create a loophole for teams looking to conduct ITMs. Certain criteria within the exception such as religion, belonging to a particular social group, or having a political opinion, could be fabricated to mislead the FIFA PSC Subcommittee to permit the transfer of the minor. With the **academic exception**, some football clubs have partnerships with schools in their regions⁹⁴⁵ and covert links with amateur clubs. Therefore, there is a possibility that a club could sign a foreign minor to an amateur club under the guise of the child travelling for educational purposes. The PSC Subcommittee may be unable to discover proof that the player is transferring for non-academic reasons, nor would they ordinarily be able to prove the absence of any legal, financial, or de facto links between a signing club and another professional club.⁹⁴⁶ Minors could be registered as amateurs until they turn 18, at which point they could then be signed by a professional club in the region. This means that the exception could be used as an extended trial period to test out young foreign players. As the

⁹⁴¹ IPEC, *Combating trafficking in children for labour exploitation: A resource kit for policy-makers and practitioners* (International Labour Office; ILO International Programme on the Elimination of Child Labour, Geneva 2008). Book 4: Understanding What Child Trafficking Is, pg. 10

⁹⁴² Thomson, Alex, “Football abuse victim claims he was trafficked from Scotland to paedophile Barry Bennell” (*Channel 4 News*, February 2020) <<https://www.channel4.com/news/football-abuse-victim-claims-he-was-trafficked-from-scotland-to-paedophile-barry-bennell>> accessed on 20/07/2020

⁹⁴³ McDougall, Dan, “The scandal of Africa’s trafficked players” (*The Guardian*, 6 January 2008) <<https://www.theguardian.com/football/2008/jan/06/newsstory.sport4>> accessed on 21/07/2020

⁹⁴⁴ Save the Children, ‘Young Invisible Enslaved: Children victims of trafficking and labour exploitation in Italy’ (2017) <https://resourcecentre.savethechildren.net/node/12527/pdf/young_invisible_enslaved_2017.pdf> accessed on 21/02/2018. p/42

⁹⁴⁵ NFFC, “Forest announce partnership with Nottingham Schools Football Association” (June 2019) <<https://www.nottinghamforest.co.uk/news/2019/june/forest-announce-partnership-with-nottingham-schools-football-association/>> accessed on 20/07/2020

⁹⁴⁶ Article 19(2)(e) of the FIFA RSTP 2020

Subcommittee may not be equipped to prevent every instance where there is potential abuse of this exception. Nevertheless, the humanitarian and academic exceptions are new additions to the FIFA RSTP, and how the provisions will be used and/or abused by the FIFA members in practice is yet to be known. The parent and EU exceptions will be discussed separately.

FIFA places an increased responsibility on its MAs in **Article 19(bis)** RSTP. With the provision, there are subsequent questions about its long-term impact due to the difficulties involved in keeping track of unaccredited academies in developing regions. For example, in Ghana, there are reportedly 500 illegal academies operating in the city of Accra alone, and thousands more are spread across the country and continent.⁹⁴⁷ Considering several MAs lack the resources, personnel, and structure to undertake this type of comprehensive record keeping, it is unlikely that the MAs would be able to meet their responsibilities in accordance with this provision.⁹⁴⁸ This thereby limits the impact of the provision and creates loopholes in which illicit ITMs could take place. FIFA's policies like the **first registration requirement** also has the capacity to prevent some instances of football trafficking. However, its use and adoption by clubs and football associations potentially creates a legal basis for institutional discrimination against migrant youths. Migrant children could be denied the right to play organised football if they are unable to support their application to play with identification documents, which could be discriminating against them, considering this is not a requirement for national citizens or citizens of other EU countries.⁹⁴⁹

The **FIFA Subcommittee**, when combined with the mandatory **ITC requirement**, arguably gives clubs a reason to bypass the Subcommittee and ITC provision to exploit young players. FIFA reduced the age limit to which an ITC is required from 12 to 10 because of an increased number of applications for ITCs for players younger than 12.⁹⁵⁰ This decision created an avenue for the potential abuse of even younger players, as ITCs are required only for international transactions involving players aged 10 and above.⁹⁵¹ FIFA entrusts its MAs with the responsibility of ensuring the safety and protection of minors who are aged less than 10.⁹⁵² With FIFA's provisions, a club transferring a nine year old player is not required to

⁹⁴⁷ McDougall, Dan, "The scandal of Africa's trafficked players" (*The Guardian*, 6 January 2008) <<https://www.theguardian.com/football/2008/jan/06/newsstory.sport4>> accessed on 21/07/2020

⁹⁴⁸ Lembo, Christina. "FIFA transfer regulations and UEFA player eligibility rules: major changes in European football and the negative effect on minors." *Emory Int'l L. Rev.* 25 (2011): 539. p/577

⁹⁴⁹ Mauro, Max. "Inclusive sport or institutional discrimination? New FIFA regulations, organized football and migrant youth in Italy." *Sport in Society* 20, no. 7 (2017): 833-847. p/844 & 834

⁹⁵⁰ FIFA, "Protection of Minors: FAQ" (September 2016) <<https://img.fifa.com/image/upload/xbnooh14lcaxzadstknx.pdf>> accessed on 10/07/2020

⁹⁵¹ Yilmaz, Serhat. "Protection of minors: lessons about the FIFA RSTP from the recent Spanish cases at the Court of Arbitration for Sport." *The International Sports Law Journal* 18, no. 1-2 (2018): 15-28. p/19

⁹⁵² Esson, James, Paul Darby, Eleanor Drywood, Carolynne Mason, and Serhat Yilmaz. "Children before players: Current risks and future research agendas." (2020) <<https://hdl.handle.net/2134/11590800.v1>> accessed 2 March 2020. p/18

attain an ITC, nor would they be expected to apply to the Subcommittee to scrutinise the nature of the transfer.⁹⁵³ Some MAs do not have the resources, structure, or general capacity to adequately ensure the safety of all the young players within their region. Therefore, by delegating such a task to some ill-prepared MAs, FIFA indirectly creates a loophole within its regulatory system for unscrupulous persons, intermediaries, and clubs, to circumvent its anti-trafficking policies and conduct illicit ITMs. This loophole is similar to that created by the **home-grown player's rule**, which led to clubs prioritising the recruitment of foreign minors in order to convert the players to home-grown talents by the time they become 18.⁹⁵⁴

For instance, Barcelona FC used the age loopholes to sign a seven-year-old British boy, enrolling him in their training academy in 2016.⁹⁵⁵ FC Barcelona has previously been accused and sanctioned for signing several international minors into their youth academy, without notifying either the Spanish Football Federation, or the FIFA Subcommittee about the transactions.⁹⁵⁶ FC Barcelona were accused of signing 31 minors between 2005 and 2012, and were charged by FIFA for repeatedly breaching its transfer regulations.⁹⁵⁷ The FIFA sanctions have arguably not had the intended impact of deterring other members, because since the Barcelona incident, there have been further discoveries of similarly illicit transactions involving minors by the other major clubs in Spain,⁹⁵⁸ i.e., Real Madrid and Atletico Madrid.⁹⁵⁹

Thus, it is argued that the impact of FIFA's anti-trafficking policies has been limited by the environment around football recruitment. Clubs continue to seek a competitive advantage by sourcing for cheap, foreign, talented labour, and recruiting such players by capitalising on gaps in FIFA's regulatory system. The clubs use the ITC requirement, the home-grown rule, and other national policies on the minimum age at which players can sign professional contracts in Europe, to create an environment which inadvertently increases the precariousness within the industry for child players (especially migrants) and for those aspiring to play football professionally.⁹⁶⁰ Organisations such as FIFPro, which is the

⁹⁵³ FIFA, Circular No. 1468, 23rd January 2015 <<https://resources.fifa.com/image/upload/1468-amendments-to-the-regulations-on-the-status-and-transfer-of-players-2510650.pdf?cloudid=zro9p178udvmsgy3nzy7>> accessed on 10/07/2020

⁹⁵⁴ Esson, James, Paul Darby, Eleanor Drywood, Carolynne Mason, and Serhat Yilmaz. "Children before players: Current risks and future research agendas." (2020) <<https://hdl.handle.net/2134/11590800.v1>> accessed 2 March 2020. p/47

⁹⁵⁵ Jones, Emily, "Barcelona sign British seven-year-old set to follow in footsteps of Lionel Messi" (*Mirror*, June 2016) <<https://www.mirror.co.uk/sport/football/news/barcelona-sign-british-seven-year-8110205>> accessed on 17/02/2020

⁹⁵⁶ McGowan, Colin, "FIFA's Child Trafficking Problem" (*Vice*, January 2015) <https://www.vice.com/en_us/article/xyj9p3/fifootball-associations-child-trafficking-problem> accessed on 14/07/2020

⁹⁵⁷ CAS 2014/A/3793 *Fútbol Club Barcelona v. Fédération Internationale de Football Association (FIFA)* para. 2.2

⁹⁵⁸ Derungs, Vitus, "Protecting underage football players in the transfer system" (2015) *WSLR*, Vol. 13/9

⁹⁵⁹ Guardian Sport, 'Real Madrid and Atlético Madrid handed transfer bans for two windows' (*Guardian*, 14 January 2016)

⁹⁶⁰ Esson, James, Paul Darby, Eleanor Drywood, Carolynne Mason, and Serhat Yilmaz. "Children before players: Current risks and future research agendas." (2020) <<https://hdl.handle.net/2134/11590800.v1>> accessed 2 March 2020. p/10

worldwide representative for professional footballers, have urged FIFA to reduce the loopholes within its regulations on player transfers. FIFPro called on FIFA to require that ITCs be granted for all transfers (including that of players less than 10 years of age⁹⁶¹) and requested that FIFA only permit ITMs in exceptional circumstances.⁹⁶² FIFA, however, has retained its stance on ITMs, and in fact, there has been a significant increase in the number of applications to register foreign minors. In 2019, FIFA's TMS and Subcommittee approved the registration of 4,133 minors approximately,⁹⁶³ which is significantly higher than the 2,323 minors it registered in 2015.

As the number of registered minors in football continues to rise, FIFA remains acutely aware of the football environment where young vulnerable players are being subjected to potential trafficking and exploitative situations. FIFA admits that though international transfers may at times be favourable to some young player's sporting careers, for the "vast majority" of minors, these international transfers may not be in their best interests as children.⁹⁶⁴ Still, FIFA looks to strike a balance between strictly regulating against ITMs to protect all minors and adopting regulatory practices which continues to promote the profitability and commercialisation of football. It can be argued that FIFA is averse to limiting ITMs because the organisation does not want to regulate against football trafficking to the extent that youths living in developing countries may be denied opportunities to play professionally and develop abroad.⁹⁶⁵ Examples such as Lionel Messi are regularly used to buttress this latter point. The Argentinian Lionel Messi, now widely regarded as one of the greatest players seen within the sport, benefited from FIFA's lax approach to limiting all ITMs. As Messi was signed by FC Barcelona in the year 2000, when he was only 13 years old.⁹⁶⁶

FIFA claims that it looks to create an environment where there is a "stable development of a minor as a whole ... over purely sporting interests".⁹⁶⁷ Yet, FIFA's practices, such as its **balancing mechanisms**, commodifies children and turns them into assets and items of

⁹⁶¹ Andersson, Lars, "FIFA lowers age requirement for transfer certificates" (*Play the Game*, January 2015) <https://www.playthegame.org/news/news-articles/2015/0005_fifa-lowers-age-requirement-for-transfer-certificates/> accessed on 31/11/2020

⁹⁶² FIFPro, "FIFPRO AND FIFA IMPROVE PROTECTION OF MINORS" (28 January 2015) <<https://www.fifpro.org/news/fifpro-and-fifa-improve-protection-of-minors/en/>> accessed on 11 May 2017.

⁹⁶³ FIFA, "Global Transfer Market Report 2019" <<https://resources.fifa.com/image/upload/global-transfer-market-report-2019-men.pdf?cloudid=x2wrqjstwjoianncnod>> accessed on 14/07/2020, p/40

⁹⁶⁴ FIFA, "Protection of Minors: FAQ" (September 2016) <<https://img.fifa.com/image/upload/xbnooh14lcaxzadstknx.pdf>> accessed on 10/07/2020

⁹⁶⁵ Mauro, Max. "Inclusive sport or institutional discrimination? New FIFA regulations, organized football and migrant youth in Italy." *Sport in Society* 20, no. 7 (2017): 833-847. p/834

⁹⁶⁶ Biography, "Lionel Messi: Biography" (April 2017) <<https://www.biography.com/athlete/lionel-messi>> accessed on 21/07/2020

⁹⁶⁷ FIFA, "Protection of Minors: FAQ" (September 2016) <<https://img.fifa.com/image/upload/xbnooh14lcaxzadstknx.pdf>> accessed on 10/07/2020

financial value. FIFA's classification systems and the financial weaknesses affecting African football perpetuate the circumstances in which football trafficking thrives, as African academies and teams are regularly underpaid when their players are sold.⁹⁶⁸ This has led to an increase in the search for talented minors (by licenced and unlicensed intermediaries in the region) as a means of either selling the players to other African sides, or more so, selling the players to foreign teams to make additional profits. The circumstances are increasingly precarious for the child players, as the intermediaries know that their value can only be realised once they are sold.⁹⁶⁹ With such practices existing within the sport, it can be said that FIFA's policies do not afford the football minors with the requisite protections from being exploited, in both the physical and economic sense.

FIFA's previous **regulations on intermediaries** deregulated the international transfer market and ended the licensing scheme for player's agents.⁹⁷⁰ The rule change was aimed at bringing the unlicensed agents conducting transfers on the boundaries of the sport to come under FIFA's regulatory structure, however, the deregulation invited more people with ulterior motives to become registered intermediaries.⁹⁷¹ FIFA's rules removed the independent vetting and exams process,⁹⁷² and increased the capacity constraints on several football associations to manage the intermediaries in their regions.⁹⁷³ Though the changes to the regulations approved in 2019 are considered to be a positive development in regards to the protection of children involved in football,⁹⁷⁴ it could be argued that the re-regulation plan by FIFA still does not put children's rights at the forefront of the change. Rather, the new changes centre on the restriction of agency fees and a general concern about the amount of money leaving the game and going into the pockets of the agents. Thus, the true impact of this change in limiting the regulatory loopholes and reducing the "abusive and excessive

⁹⁶⁸ Poli, Raffaele. "African migrants in Asian and European football: hopes and realities." *Sport in Society* 13, no. 6 (2010): 1001-1011. p/1002

⁹⁶⁹ Esson, James, "Escape to victory: Development, youth entrepreneurship and the migration of Ghanaian footballers" (2015) *Geoforum* 64, p. 52

⁹⁷⁰ Esson, James, Paul Darby, Eleanor Drywood, Carolynne Mason, and Serhat Yilmaz. "Children before players: Current risks and future research agendas." (2020) <<https://hdl.handle.net/2134/11590800.v1>> accessed 2 March 2020. p/11

⁹⁷¹ Moore, Glenn, "Glenn Moore: Next month anyone can be an agent, but it may not be the messy free-for-all some predict" (*Independent*, 13 March 2015) <<https://www.independent.co.uk/sport/football/news/glenn-moore-next-month-anyone-can-be-agent-it-may-not-be-messy-free-all-some-predict-10107619.html>> accessed on 20/12/2020

⁹⁷² Menary, Steve, "Social Media Transfer Scams and the Agents Void Created by FIFA", (*Bleacher Report*, 14 April 2016) <<https://bleacherreport.com/articles/2630486-social-media-transfer-scams-and-the-agents-void-created-by-fifa>> accessed on 20/12/2020

⁹⁷³ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/83

⁹⁷⁴ Mason, Carolynne, Paul Darby, Eleanor Drywood, James Esson, and Serhat Yilmaz. "Rights, Risks and Responsibilities in the Recruitment of Children within the Global Football Industry." *The International Journal of Children's Rights* 27, no. 4 (2019): 738-756. p/748

practices which unfortunately have existed in football”,⁹⁷⁵ will be seen when the new regulations are fully introduced.

In the **child safeguarding toolkit**, FIFA acknowledges that some MAs have well developed policies and procedures in place regarding child protection, whilst others are just starting out on their safeguarding journey.⁹⁷⁶ FIFA stipulates that the toolkit is to provide minimum requirements to keep children safe in football.⁹⁷⁷ Yet, its wording suggests that FIFA is leaving its adoption and application to the responsibility of the individual MAs, for them to dictate and enforce their own child protection norms as they see fit. Though it acknowledges that certain MAs do not yet have the structure in place to adequately safeguard children, FIFA still prescribes to these associations to safeguard the child players within their regions, as FIFA appears to be absolving itself from direct responsibility for child protection. Thus, the impact of the toolkit is limited in practical effect as it does not offer a specific overarching and uniform approach to safeguarding children and preventing the occurrence of football trafficking. Moreover, the toolkit fails to recognise the transnationality of football trafficking and the difficulty that ill-equipped MAs face in trying to protect children from this cross-border crime. The individual MAs ultimately do not have FIFA’s TPR powers. FIFA claims that:

*FIFA can only regulate activities within the scope of organised football. Issues related to “child trafficking”, like any other criminal activity, fall within the competence of the relevant national and international authorities (police, judicial, governmental). Such matters are outside of FIFA’s jurisdiction, although we certainly welcome measures that show authorities are taking them very seriously, and by means of our provisions on the protection of minors we are committed to making a contribution towards tackling this important issue within FIFA’s sphere of competence.*⁹⁷⁸

This view from FIFA is problematic, for the following reasons. First, it undermines the role FIFA itself has played in furtherance of the problem through its regulations and promoted practices which have resulted in the increased commodification of incredibly young foreign

⁹⁷⁵ FIFA, “Reform proposals concerning football agents’ regulations” (*FIFA.com*, 22 January 2020) <<https://www.fifa.com/about-fifa/who-we-are/news/reform-proposals-concerning-football-agents-regulations>> accessed on 18/02/2020

⁹⁷⁶ FIFA, “Child Safeguarding Toolkit for Member Associations” (*FIFA Member Associations Division and FIFA Child Safeguarding Expert Working Group*, June 2019) <<https://resources.fifa.com/image/upload/toolkit-fifa-guardians.pdf?cloudid=nz1lyz3ykaioy7gwfmgs>> accessed on 19/02/2020. p/17

⁹⁷⁷ *Ibid.*

⁹⁷⁸ FIFA, “Protection of Minors: FAQ” (September 2016) <<https://img.fifa.com/image/upload/xbnooh14lcaxzadstknx.pdf>> accessed on 10/07/2020. p/2

players. As Esson and Drywood note, some of FIFA's regulatory responses completely fail to meet basic welfare needs for the children involved, and in some cases, FIFA's policies have even served to exacerbate the football trafficking problem.⁹⁷⁹ Second, FIFA's claim attempts to change the narrative in relation to the problem by diverting attention to the state (and FIFA's MAs) as the appropriate bodies and authorities able to regulate against this transnational child trafficking problem within the sport. This position ignores the difficulty of nation states to regulate against a global problem, in the same way that a TPR like FIFA is capable of doing. Similarly, FIFA's assertions ignore its sporting autonomy and the restrictions it has put in place to prevent state interference in footballing matters. Third, FIFA argued that the trafficking problem is not within its competence. But FIFA, as a TPR and the dominant actor in football's regulatory space, is able to dictate matters of importance and regulate against all the problems affecting the football community. Thus, this specific problem of football trafficking (notwithstanding the intersection with the broader global issue of child trafficking) arguably falls into FIFA's jurisdictional capacity and authority, particularly owing to the actors regularly involved in its occurrence, and the FIFA member parties who continue to benefit from the illicit transfers involving football minors.

Though most of FIFA's anti-trafficking policies have been subjected to possible misuse to the detriment of foreign minors, the **Parent** and **EU** exceptions of Article 19 RSTP are generally the most prone to abuse by the unscrupulous persons within FIFA's regime.

Article 19: Parent exception

FIFA argues that its Article 19 exceptions are drafted carefully, and that it limits the opportunities for its regulatees to circumvent the policy.⁹⁸⁰ Yet, the parent exception is the most commonly used route around FIFA's prohibition on ITMs.⁹⁸¹ The provision permits ITMs when a child's parents moves to a country for "reasons not linked to football."⁹⁸² The exception provides a loophole in FIFA's regulations because the reasons not linked to football can be created after the club has expressed an interest in the minor as a player, and provided the PSC believes this to be true, the ITM will proceed as an exception.⁹⁸³

⁹⁷⁹ Esson, James, and Eleanor Drywood. "Challenging popular representations of child trafficking in football." *Journal of Criminological Research, Policy and Practice* (2018). p/68

⁹⁸⁰ FIFA, "Protection of Minors: FAQ" (September 2016) <<https://img.fifa.com/image/upload/xbnooh14lcaxzadstknx.pdf>> accessed on 10/07/2020

⁹⁸¹ Drywood, Eleanor, "'When we buy a young boy ...' Migrant Footballers, Children's Rights and the Case for EU Intervention' in Stalford, Helen and Ingi Iusmen (Eds), *The EU as a children's rights actor. Law, policy, and structural dimensions* (Barbara Budrich Publishers, Toronto 2015) 191-220. p/203

⁹⁸² Article 19(2)(a) of the RSTP 2020

⁹⁸³ Drywood, Eleanor, "'When we buy a young boy ...' Migrant Footballers, Children's Rights and the Case for EU Intervention' in Stalford, Helen and Ingi Iusmen (Eds), *The EU as a children's rights actor. Law, policy, and structural dimensions* (Barbara Budrich Publishers, Toronto 2015) 191-220. p/203

Football clubs have consequently resorted to creating local jobs for parents, and even bribing the parents so that their child can qualify for the parent exception and register with their club. For example, Chelsea FC were accused of making illegal payments by way of a bribe to the father of former Nigerian international, John Obi Mikel, to persuade his son to sign for the English club from a Norwegian side.⁹⁸⁴ There have been other situations where a father was given a position as a gardener in the stadium, and another as the team bus driver, in order to convince the parents to move and for their child to sign playing contracts at EU clubs.⁹⁸⁵ These situations occur because the relationships between the family members, the employer, and the club or middleman cannot always be proved, this makes it difficult for the FIFA PSC to declare the transfer as being illicit and contrary to Article 19.⁹⁸⁶

The case of Paraguayan footballer Carlos Caballero showed an attempt to abuse this exception which the PSC were able to identify and prevent. Caballero was sixteen years old at the time of the dispute, having taken part in an Under-20 FIFA tournament, he was noticed by a FIFA agent who offered to represent him and give him an opportunity to play in Europe.⁹⁸⁷ A month after the tournament, Caballero's mother and younger brother left for Cadiz, Spain, where she signed an employment contract with a restaurant the week after she had contracted for her son to play for Spanish first-tier club Cadiz C.F., for a period of six and a half years.⁹⁸⁸ FIFA refused the ITC from being granted for the player's transfer and Cadiz appealed to CAS, who subsequently upheld FIFA's decision.⁹⁸⁹ CAS concluded that the player's decision to move to Spain was made first, and that the decision of his mother to move to Spain was thus directly linked to the contract signed between the player and the club.⁹⁹⁰ This case showed how the FIFA PSC and CAS, could have an impact in limiting attempts to exploit minors through the regulatory loopholes. However, the issue remains that of the many other cases which FIFA have been unable to identify as breaches, due to the obscure links between the involved parties.

⁹⁸⁴ McGee, Darragh. "Displacing childhood: Labour exploitation and child trafficking in sport." In *Labour Migration, Human Trafficking and Multinational Corporations: The Commodification of Illicit Flows*, (Routledge, 2012) pp. 71-90. p/81

⁹⁸⁵ Lembo, Christina. "FIFA transfer regulations and UEFA player eligibility rules: major changes in European football and the negative effect on minors." *Emory Int'l L. Rev.* 25 (2011): 539. p/562

⁹⁸⁶ Najarian, Alex C. "The Lost Boys: FIFA's Insufficient Efforts to Stop Trafficking of Youth Footballers." *Sports Law. J.* 22 (2015): 151. p/168-9

⁹⁸⁷ CAS 2005/A/955 *Cadiz C.F., SAD v. FIFA & Asociacion Paraguaya de Futbol*, and CAS 2005/A/956 *Carlos Javier Acuna Caballero v. FIFA and Asociacion Paraguaya de Futbol*. Paragraph. 2.4

⁹⁸⁸ *Ibid.* para. 2.6 to 2.8

⁹⁸⁹ *Ibid.* para. 7.2

⁹⁹⁰ *Ibid.* para. 7.3.1

Article 19: EU exception

This exception has similarly provided an avenue within FIFA's regulations for football clubs to export and exploit foreign minors. In the case of *FC Midtjylland AS v FIFA*,⁹⁹¹ a Danish Premier League club entered into an agreement with a Nigerian club (FC Ebedei) that provided the Danish club with exclusive access to the most talented players from the Nigerian side's first team and youth academy.⁹⁹² The Nigerian club, situated in the most populous city in the country, provided Midtjylland with a vast talent pool in which to identify and cherry-pick the best players in the region.⁹⁹³

Between the years of 2006 and 2007, Midtjylland attempted to register six Nigerian minors with the Danish Football Association (DFA), with the players being listed as "amateurs". The DFA issued the necessary licenses to three of the players, refusing to grant amateur permits to the others because of potential violations of Article 19. In accordance with DFA regulations, Midtjylland were required to pay the Nigerian minors about 3,000 Euros, which would cover their necessities of food and accommodation. For residence and work permit purposes, the Danish Immigration Service (DIS) classified the players as students and the players were given access, on a part time basis, to some secondary schooling.⁹⁹⁴ Midtjylland went on to treat the boys as workers, and FIFPro subsequently brought this potential violation of Article 19 to FIFA's attention.⁹⁹⁵ FIFA's PSC thereafter held that Midtjylland were in contravention of the rules and sanctioned both the club and the DFA with a "strong warning" to refrain from further infringements of FIFA's Article 19 provisions.⁹⁹⁶

Midtjylland challenged the decision of the FIFA PSC and the matter was taken to CAS, as the club alleged that the minors who had been transferred from Nigeria were being discriminated against by the decision of the FIFA committee.⁹⁹⁷ The Danish club argued that according to EU law, the players were "workers" within an EU member state, and because both Nigeria and Denmark are parties to the Cotonou Agreement, any discrimination which the players face based on their nationality would be contrary to the provision.⁹⁹⁸ The CAS panel held that the application of FIFA's Article 19 in this case was not in contravention with any mandatory provision of EU law, and more so, was not in violation of the Cotonou

⁹⁹¹ CAS 2008/A/1485 *FC Midtjylland AS v FIFA*

⁹⁹² *Ibid.*, para. 2.2

⁹⁹³ *Ibid.*

⁹⁹⁴ Anderson, Jack, *Modern Sports Law: A Textbook* (Oxford: Hart, 2010) p. 294

⁹⁹⁵ CAS 2008/A/1485 *FC Midtjylland AS v FIFA*, p/3

⁹⁹⁶ *Ibid.*, para. 7.2.

⁹⁹⁷ *Ibid.*, para. 7.4.2 – 7.4.4

⁹⁹⁸ CAS 2008/A/1485 *FC Midtjylland AS v FIFA*, para. 7.4.9 – 7.4.10

Agreement.⁹⁹⁹ CAS decided that the players in question were not legally employed in Denmark and were therefore not “workers” but rather “students”, and thus fell outside the scope of Article 13(3) of the Cotonou Agreement.¹⁰⁰⁰

Despite the FIFA PSC and CAS again combining to prevent the exploitation of minors through this exception, football clubs continue to look for other means of circumventing FIFA’s regulations. Clubs have obtained EU passports for sixteen-year-old non-EU players (via links to the player’s extended family) because the EU exception allows for intra-European migration.¹⁰⁰¹ This intra-European migration is not restricted to just EU citizens, as young players of any nationality moving between two clubs within the EU/EEA area will be permitted. The exception therefore provides an incentive for unscrupulous persons to use countries within the EU who have more relaxed nationality laws to gain access to the territory, and subsequently conduct ITMs within Europe.¹⁰⁰²

In general human trafficking literature, such intermediate countries are referred to as transit countries, because they are passed through by the victims of trafficking during their transport from their origin country or region (Africa) to destination countries (in this case, football’s core economy, Europe).¹⁰⁰³ The unscrupulous agents and football teams know that once an international minor is legally resident in a transit EU country, or once they have signed with a club within the area, the agent would have access to the EU football market, and would be better placed to move the player around the region even before the player turns 18.¹⁰⁰⁴ At a time, Belgium and France were reported as having the highest concentration of African footballers per club,¹⁰⁰⁵ and this was because both countries were regarded as the primary transit EU countries. Belgium, in particular, was considered to be a prime market to leave “cheap foreign [and] often African talent”.¹⁰⁰⁶ This was because of: the country’s lax immigration requirements; its exemptions on work permits for non-European sports persons

⁹⁹⁹ Anderson, Jack, *Modern Sports Law: A Textbook* (Oxford: Hart, 2010) p. 295

¹⁰⁰⁰ CAS 2008/A/1485 *FC Midtjylland AS v FIFA*., para. 36

¹⁰⁰¹ Smith, Andy, “How did Borussia Dortmund star Christian Pulisic make it into the European big leagues?” (2018) <<https://www.bundesliga.com/en/news/Bundesliga/how-did-christian-pulisic-make-it-into-the-european-big-leagues-dortmund-512258.jsp>> accessed 14/07/2020

¹⁰⁰² Drywood, Eleanor, “‘When we buy a young boy ...’ Migrant Footballers, Children’s Rights and the Case for EU Intervention’ in Stalford, Helen and Ingi Iusmen (Eds), *The EU as a children’s rights actor. Law, policy, and structural dimensions* (Barbara Budrich Publishers, Toronto 2015) 191-220. p/203

¹⁰⁰³ Schönhöfer, Johanna. “Political determinants of efforts to protect victims of human trafficking.” *Crime, Law and Social Change* 67, no. 2 (2017): 153-185. p/154

¹⁰⁰⁴ Drywood, Eleanor, “‘When we buy a young boy ...’ Migrant Footballers, Children’s Rights and the Case for EU Intervention’ in Stalford, Helen and Ingi Iusmen (Eds), *The EU as a children’s rights actor. Law, policy, and structural dimensions* (Barbara Budrich Publishers, Toronto 2015) 191-220. p/203

¹⁰⁰⁵ Poli, Raffaele. “African migrants in Asian and European football: hopes and realities.” *Sport in Society* 13, no. 6 (2010): 1001-1011. p/1005

¹⁰⁰⁶ Associated Press, “Authorities charge five in Belgian football corruption claims” (*The Guardian*, October 2018) <<https://www.theguardian.com/football/2018/oct/10/belgian-football-clubs-raided-fraud-match-fixing-inquiry>> accessed on 16/07/2020

who did not already reside in Belgium;¹⁰⁰⁷ the fact that there were no limits on the number of non-EU players who could play in their leagues; and the relatively low minimum wage requirement for foreign players.¹⁰⁰⁸ Thus, several African players and agents considered Belgium to be a steppingstone EU country that would enable them to access the other more profitable EU leagues and clubs,¹⁰⁰⁹ even though only a few players ever made it to the other major leagues.¹⁰¹⁰

Unscrupulous agents falsified the ages of players to make them younger so Belgian clubs would not breach transfer rules.¹⁰¹¹ The agents bound players to exploitative contracts and made arrangements so as to benefit financially from any subsequent sale involving the players.¹⁰¹² Dedecker, a former Member of the European Parliament for Belgium, discovered several Nigerian players who were transferred to the country but were not being paid or were being paid less than minimum wage at Roeselare FC. Upon Dedecker's discovery, four people which included the intermediaries and the president of the Belgian club, were consequently summoned to court to face the charge of human trafficking. Though this was one of the few reported instances whereby a club or group of people had been charged for the trafficking of young footballers, the court found in favour of the club, stating that the boys could not be victims of trafficking because they were not forced to leave their home countries to embark on the journey to Europe.¹⁰¹³ The court's decision, it can be argued, directly contradicts with the provisions of the Trafficking Protocol. Seeing as the players were children at the time of the act, they did not need to be forced into making the trip to Europe for them to be considered as victims of the crime. In accordance with the protocol, the fact that the young players were trafficked or transported for the exploitative purpose of playing football for less than minimum wage, should have been enough to justify that the boys had been trafficked.

¹⁰⁰⁷ Dedecker, J-M, "Belgium: Player trafficking in Belgium: analysis", (2006) *WSLR* Volume 4 Issue 11

¹⁰⁰⁸ Castle, Stephen, Alex Duval Smith, and Lloyd Rundle, "Inquiry into 'slave trade' in African footballers", *The Independent* (7 November 2000) <<https://www.independent.co.uk/news/world/europe/inquiry-into-slave-trade-in-african-footballers-622877.html>> accessed on 20/12/2020

¹⁰⁰⁹ Lembo, Christina. "FIFA transfer regulations and UEFA player eligibility rules: major changes in European football and the negative effect on minors." *Emory Int'l L. Rev.* 25 (2011): 539. p/563

¹⁰¹⁰ Associated Press, "Authorities charge five in Belgian football corruption claims" (*The Guardian*, October 2018) <<https://www.theguardian.com/football/2018/oct/10/belgian-football-clubs-raided-fraud-match-fixing-inquiry>> accessed on 16/07/2020

¹⁰¹¹ Hawkins, Ed, "Victims or fraudsters? The world of football trafficking laid bare" (*The Independent*, December 2015) <<https://www.independent.co.uk/sport/football/news-and-comment/victims-or-fraudsters-the-world-of-football-trafficking-a6783421.html>> accessed on 16/07/2020

¹⁰¹² Dedecker, J-M, "Belgium: Player trafficking in Belgium: analysis", (2006) *WSLR* Volume 4 Issue 11

¹⁰¹³ Mauro, Max. "Inclusive sport or institutional discrimination? New FIFA regulations, organized football and migrant youth in Italy." *Sport in Society* 20, no. 7 (2017): 833-847. p/839

Nonetheless, the existence of loopholes in FIFA's regulatory system and the way the problem is being managed has resulted in clubs and unscrupulous intermediaries believing that they have no choice but to engage in the identification, exportation, and exploitation of the young foreign players, arguing that "if we don't do it, our competitors will".¹⁰¹⁴ The perpetrators are motivated by the footballing environment that promotes the commodification of children, yet does not offer significant sanctions for the defaulting parties that contravene the anti-trafficking rules. The FIFA members, like other perpetrators of trafficking, are generally safe in the knowledge that there is a limited likelihood of apprehension and prosecution for their actions, thus making trafficking the "perfect crime".¹⁰¹⁵ With the increased economic gains involved with a club discovering the next "football superstar" for little financial outlay, the buoyant trade in young international footballers (occurring in both legal and illegal forms) is likely to continue.¹⁰¹⁶

Based on the responses of FIFA's members to its policies for preventing football trafficking and child exploitation, one could argue that the impact of the policies has been limited in restricting the occurrence of the problem. FIFA members are constantly seeking to exploit loopholes in FIFA's regulatory system to bypass the anti-trafficking policies and conduct ITMs to gain a competitive advantage and make increased profits. These occurrences undermine the impact of FIFA's policies, most significantly when considering that the organisation has the resources and capacity to ensure that ITMs take place only in exceptional circumstances, per the recommendations of FIFPro. Seeing that FIFA may not always be aware of the covert methods being adopted by its members when they conduct ITMs, it may be argued that the organisation is culpable for the occurrence of football trafficking within football's regulatory space. With the role FIFA has played in the initiation of the trafficking problem, the commercialisation of the sport, and the commodification of children,¹⁰¹⁷ its anti-trafficking regulations have arguably had a limited positive impact on the minors involved with football, as the policies have been ineffective in changing the behaviours of its regulatees.

¹⁰¹⁴ Dedeker, J-M, "Belgium: Player trafficking in Belgium: analysis", (2006) *WSLR* Volume 4 Issue 11

¹⁰¹⁵ Gallagher, Anne. "Recent legal developments in the field of human trafficking: A critical review of the 2005 European Convention and related instruments." *European Journal of Migration and Law* 8, no. 2 (2006): 163-189. p/163

¹⁰¹⁶ Drywood, Eleanor, "'When we buy a young boy ...' Migrant Footballers, Children's Rights and the Case for EU Intervention' in Stalford, Helen and Ingi Iusmen (Eds), *The EU as a children's rights actor. Law, policy, and structural dimensions* (Barbara Budrich Publishers, Toronto 2015) 191-220. p/192-3 & 202

¹⁰¹⁷ Esson, James, Paul Darby, Eleanor Drywood, Carolynne Mason, and Serhat Yilmaz. "Children before players: Current risks and future research agendas." (2020) <<https://hdl.handle.net/2134/11590800.v1>> accessed 2 March 2020. p/38

5.1.2 Non-members

FIFA is primarily responsible for the actions of its members, however, due to its position as gatekeeper, monopoly power, and global regulator for football, the involvement and engagement of non-members (those on the periphery of the sport) should not be roundly discounted as being outside FIFA's jurisdiction.¹⁰¹⁸ FIFA has previously shown its capacity to effect behaviour change in a manner which goes beyond the organisation's pyramidal structure to affect non-members, especially when its sporting autonomy is being threatened, or where the potential profitability of the sport is being limited, such as during the 2014 World Cup in Brazil.¹⁰¹⁹ The Brazilian example illustrated the strength of FIFA's TPR, and how the organisation is not only strong enough to resist effective state intervention,¹⁰²⁰ but that FIFA has the power to impose its will on nation states, and to effect change amongst its non-members who are affiliated with the sport.

Despite the global capacity of the organisation, the issue of football trafficking has not yet been treated with the requisite level of urgency. An urgency that would result in FIFA using its transnational power and authority to effect widespread behaviour change amongst all involved. FIFA's anti-trafficking policies have had a limited impact on those on the periphery of the sport, as illegal intermediaries and unscrupulous persons continue to circumvent the organisation's regulations.¹⁰²¹ This limited impact is arguably as a result of the barriers which typically prevent anti-trafficking policies from having their desired effect, such as the complexities related to trafficking which encompasses many perpetrators, routes, sectors, victims, and forms of exploitation.¹⁰²² With these barriers, the fact that FIFA's rules apply primarily to its members rather than the non-members who are often the perpetrators of football trafficking,¹⁰²³ is a further constraint on the effectiveness of the policies. The limited applicability undermines the dominant position which FIFA possesses within football's regulatory space, and it allows both FIFA members and non-members to conduct illicit ITMs. FIFA's policies, such as the **TMS**, represent the organisation's limitation in effecting behaviour change amongst non-members. The TMS is considered to be a useful

¹⁰¹⁸ Brackenridge, C. H. "Children's rights in football: Welfare and work." (2010) <<https://idrottsforum.org/articles/brackenridge/brackenridge110608.html>> accessed on 02/03/2020

¹⁰¹⁹ Latty, Franck. "Non-state authority: FIFA". In *Global Private International Law*, (Cheltenham, UK: Edward Elgar Publishing, 2019) p/158

¹⁰²⁰ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/133

¹⁰²¹ Brackenridge, C. H. "Children's rights in football: Welfare and work." (2010) <<https://idrottsforum.org/articles/brackenridge/brackenridge110608.html>> accessed on 02/03/2020

¹⁰²² Bryant, Katharine, and Todd Landman. "Combating human trafficking since Palermo: what do we know about what works?" *Journal of human trafficking* 6, no. 2 (2020): 119-140. p/131

¹⁰²³ Najarian, Alex C. "The Lost Boys: FIFA's Insufficient Efforts to Stop Trafficking of Youth Footballers." *Sports Law. J.* 22 (2015): 151. p/167

provision when the transfer of a player is legal, and it is also useful to prevent money laundering through football.¹⁰²⁴ However, the policy loses its effectiveness in the case of illicit transfers involving unscrupulous intermediaries on the periphery of the sport. This prevents FIFA from being able to identify when there is a potential breach to its rules, and it also makes FIFA unable to detect when football trafficking is taking place.

FIFA's current anti-trafficking approach creates no legal obligation for the non-members operating on the boundaries of the sport to the benefit of the FIFA member clubs.¹⁰²⁵ There have been instances whereby players are trafficked to clubs abroad for trials by unscrupulous persons, but the clubs do not verify the origin of the player when signing them.¹⁰²⁶ In other cases, there have been teams which did not adequately probe the relationship between a player and their supposed 'agent', to verify that the player is not being held as a victim of trafficking and being forced to work or play football due to debt bondage.¹⁰²⁷ Still, despite the connection between the non-members collaborating with FIFA members to perpetuate football trafficking, FIFA questionably maintains that this trafficking problem is outside its jurisdiction.¹⁰²⁸ With FIFA's rules not resulting in the required behaviour change for both members and non-members, it is argued that the loopholes in FIFA's regulatory system underlines the inefficacy of its policy to have the desired impact in preventing football trafficking and child exploitation.

5.2 SPECIFIC REGULATORY OUTCOME/SUFFICIENT REDUCTION

For there to be a claim that FIFA's policies have contributed towards a sufficient reduction in the football trafficking problem,¹⁰²⁹ its regulations would need to prevent and protect minors from the situations of trafficking and exploitation related to the sport. However, the recurrent media reports suggest that FIFA's policies have been unable to achieve this outcome, as minors are still being put in precarious positions owing to their involvement with football.¹⁰³⁰ There are several examples which illustrate this.

¹⁰²⁴ Annexe 3 (1.2) of the FIFA RSTP 2020

¹⁰²⁵ Ruggie John, "For the game. For the world. FIFA and human rights" (2016) Harvard Kennedy School <https://www.hks.harvard.edu/sites/default/files/Ruggie_humanrightsFIFA_reportApril2016.pdf> accessed on 31/08/19. p/25

¹⁰²⁶ Colin Brown, 'Football chiefs to tackle hidden trade in Africa's children' *Independent* (5 July 2008)

¹⁰²⁷ Zimmerman, C. and M. B. Schenker, 'Human trafficking for forced labour and occupational health' (2014) *Occup Environ Med* 71(12) 807. p. 807

¹⁰²⁸ FIFA, "Protection of Minors: FAQ" (September 2016) <<https://img.fifa.com/image/upload/xbnooh14lcaxzadstknx.pdf>> accessed on 10/07/2020

¹⁰²⁹ Coglianese, Cary, 'Measuring Regulatory Performance evaluating the impact of regulation and regulatory policy' (2012) Expert Paper No. 1 OECD. Pg. 16

¹⁰³⁰ Lord, Fred, "Human trafficking: International fake player agents and scouts, and their selling of dreams" (*Inside World Football*, November 2020) <<http://www.insideworldfootball.com/2020/11/02/human-trafficking-international-fake-player-agents-scouts-selling-dreams/>> accessed on 02/12/2020

First, Culture Foot Solidaire (CFS) a charity organisation who are one of the only charities which targets the victims of football trafficking, and one which has been recognised by FIFA for its work,¹⁰³¹ estimated that up to 15,000 youth footballers are taken out of Sub-Saharan Africa each year.¹⁰³² According to CFS, 98 per cent of the would-be footballers who make it to Paris are illegal immigrants (players trafficked or smuggled from Africa), of which 70 per cent of the total sum are players under the age of 18.¹⁰³³ Others involved in football trafficking research have since held that due to the lack of monitoring in the area, the exact figure of the victims of football trafficking taken abroad could be even higher than CFS' estimation.¹⁰³⁴

Second, in 2015, 23 West African minors were trafficked to the Laos football team, Champasak United, by former Liberian international Alex Karmo. Karmo admitted that Champasak brought in the players to sell them on for profit afterwards.¹⁰³⁵ The Global players' union FIFPro discovered the illicit situation, as it revealed that the club had no proper coach, medical facilities, had no provision for education, forced the players to train twice a day, fed them only twice a day, and made them sleep on the floor of the club's stadium. The club held the boys' passports and controlled their mobility so that the boys rarely left the stadium. The trafficked players had signed binding contracts with exploitative terms that meant they were earning between zero and 140 dollars at Champasak United. In addition, the living conditions of the players were described as "deplorable and disturbing".¹⁰³⁶

Third, in 2017, more than 100 people from West Africa reportedly entered Nepal. Though Nepal, South Asia, is an unlikely destination for aspiring footballers, the African minors were deceived into making the trip as part of their search for professional football contracts. The players believed that being outside Africa would increase their visibility and the possibility of them being scouted by an EU team. The report noted that "the players [were] victims of an informal network of recruiters and brokers, which stretched from "managers"

¹⁰³¹ FIFA, "Culture Foot Solidaire protecting youth" (*FIFA.com*, Oct 2008) <<https://www.fifa.com/mensyoutholympic/news/culture-foot-solidaire-protecting-youth-920094#former-french-coach-and-honorary-president-culture-foot-solidaire-aime-919903>> accessed on 25/07/2020

¹⁰³² Rowe, Mark, "Dossier: The human game – tackling football's 'slave trade'" (*Geographical*, July 2018) <<https://geographical.co.uk/people/development/item/2817-football-trafficking>> accessed on 16/07/2020

¹⁰³³ Rowe, Mark, "Dossier: The human game – tackling football's 'slave trade'" (*Geographical*, July 2018) <<https://geographical.co.uk/people/development/item/2817-football-trafficking>> accessed on 16/07/2020

¹⁰³⁴ Guilbert, Kieran, "Chasing dreams: Young African footballers duped, dumped by traffickers", (*Reuters*, 7 December 2015) <<https://cn.reuters.com/article/instant-article/idINL8N13R3V920151207>> accessed on 20/12/2020

¹⁰³⁵ Edwards, Piers, "Can FIFA end child trafficking from Africa to Asia?" (*BBC Africa Sport*, 21 July 2015) <<https://www.bbc.co.uk/news/world-africa-33602171>> accessed on 01/11/2017

¹⁰³⁶ Edwards, Piers, 'Underage African footballers 'trafficked' to Laos' (*BBC Africa sport*, 21 July 2015) <<http://www.bbc.co.uk/news/world-africa-33595804>> accessed on 01/11/2017

in West Africa, to Africans who have lived in Nepal or India for years.”¹⁰³⁷ These circumstances which foreign minors face, led FIFA’s former head of security to admit that FIFA is failing in its moral duty to protect the thousands of boys, who are attracted by the Premier League and footballing stardom, but end up as victims of trafficking.¹⁰³⁸

Fourth, in 2017, the Independent reported that boys were being told they would become the next football stars in England but ended up being “made to work on building sites until their bones break”.¹⁰³⁹ Reuters also noted and reported a concern for the estimated 2,120 minors trafficked to the UK to play football.¹⁰⁴⁰ In 2019, the BBC reported that a Nigerian boy was trafficked to the UK to play football but ended up locked away and subjected to sexual exploitation upon his arrival.¹⁰⁴¹ After the World Cup in 2018, several Nigerian boys were scammed and trafficked to Russia in the hope of joining a professional team but were abandoned and left to face the “ugly side of football” in the EU country.¹⁰⁴² Reports on trafficking show that human trafficking at major sporting events like the World Cup are not uncommon, because such tournaments are usually prime targets for human traffickers as people converge onto the hosting country during that period.¹⁰⁴³ Although FIFA has established several rules to combat football trafficking,¹⁰⁴⁴ there remains clear weaknesses in the regulatory strategies and commitments of the entire football community to truly curbing this crime.¹⁰⁴⁵

The examples discussed illustrate this lacking commitment by FIFA. The football trafficking problem persists whilst FIFA has increased the commodification of young football talent,¹⁰⁴⁶

¹⁰³⁷ Pete Pattison, ‘Football’s broken dreams: the African teenagers sold a Premier League lie’ *The Guardian* (16 May 2018) <<https://www.theguardian.com/global-development/2018/may/16/football-broken-dreams-african-teenagers-sold-premier-league-lie-nepal>> accessed on 15/11/2019

¹⁰³⁸ Dan Warburton, ‘Fake agents tricking thousands of football-loving kids into child trafficking hell’ *Mirror* (29 July 2019) <<https://www.mirror.co.uk/sport/football/news/kids-young-13-dreams-football-12995874>> accessed on 15/11/2019

¹⁰³⁹ Cumming, Ed. ‘Slaves on our Streets: Tracking the route of human trafficking from Nigeria to Europe – and back again’ (*Independent*, 29 September 2017) <<http://www.independent.co.uk/news/uk/crime/modern-day-slavery-nigeria-uk-human-trafficking-europe-investigation-lagos-slaves-on-our-streets-a7973366.html>> accessed on 14/11/2017.

¹⁰⁴⁰ Guilbert, Kieran, “Premier League concerned by children trafficked to UK by football ‘fraudsters’” (*Reuters*, April 2018) <<https://www.reuters.com/article/us-britain-slavery-soccer/premier-league-concerned-by-children-trafficked-to-uk-by-football-fraudsters-idUSKBN1HU1UJ>> accessed on 25/03/2019

¹⁰⁴¹ Kenyon, Paul, and Harte Alys, “Human trafficking: Victims ‘stuck in limbo for years’” (*BBC File on 4*, 22 January 2019) <<https://www.bbc.co.uk/news/uk-46945352>> accessed on 17/02/2019

¹⁰⁴² Julian Colling, ‘A Russian dead end for scammed Nigerian footballers’ (*Aljazeera*, 27 May 2019) <<https://www.aljazeera.com/indepth/features/russian-dead-scammed-nigerian-footballers-190526202328312.html>> accessed on 15/11/2019

¹⁰⁴³ Richard Lapchick, ‘The state of human trafficking and sport in 2019’ (*ESPN*, 30 July 2019) <https://www.espn.com/espn/story/_/id/27263771/the-state-human-trafficking-sport-2019> accessed on 15/11/2019

¹⁰⁴⁴ Ruggie John, “For the game. For the world. FIFA and human rights” (2016) Harvard Kennedy School <https://www.hks.harvard.edu/sites/default/files/Ruggie_humanrightsFIFA_reportApril2016.pdf> accessed on 31/08/19. p/25

¹⁰⁴⁵ Andrews, Matthew, and Peter Harrington. “Off pitch: football’s financial integrity weaknesses, and how to strengthen them.” (2016) CID Working Paper No. 311. p/9

¹⁰⁴⁶ Darby, Paul, James Esson, and Christian Ungruhe. “Migration, sport for development and sports academies: The case of football in Africa.” Routledge, 2018. p/11

allowing children to be treated as assets for economic and financial gain.¹⁰⁴⁷ Though, as FIFA have claimed, most instances of football trafficking are “trafficking *through* football” cases, and therefore may be interpreted as being outside of its direct jurisdiction. Still, FIFA’s anti-trafficking policies have done little to restrict the avenues used by the unscrupulous persons and teams (both members and non-members) to transact, transport, and exploit young African players within football’s regulatory environment and FIFA’s regime.¹⁰⁴⁸ Without instituting effective anti-trafficking policies and consequently putting the lives of child players at risk of trafficking and exploitation, FIFA’s policies have arguably not resulted in a sufficient reduction of the problem, and neither have the policies achieved its intended regulatory outcome of safeguarding minors.

5.3 COMPARING PERFORMANCE

The key question to then ask is, considering the impact of FIFA’s anti-trafficking policies and the absence of a sufficient reduction to the problem, are the international law instruments considered earlier in this thesis better suited to curbing football trafficking?¹⁰⁴⁹

5.3.1 The impact of the Palermo Protocols

The Palermo Protocols made significant steps forward in the fight against the trafficking and smuggling of persons, but the instrument is plagued with some problems which have burdened other similarly motivated international anti-trafficking efforts.¹⁰⁵⁰ For example, due to the wide-ranging nature of the definition of human trafficking which it provides, nation states have created different variations of what would constitute as being trafficking.¹⁰⁵¹ Over the years, this has led to conformity problems across and within State parties,¹⁰⁵² resulting in instances where traffickers are rarely being prosecuted for this offence whilst trafficking victims are increasingly criminalised.¹⁰⁵³ Within football, FIFA have yet to explicitly state what “football trafficking” would entail, rather than grouping its

¹⁰⁴⁷ Mason, Carolynne, Paul Darby, Eleanor Drywood, James Esson, and Serhat Yilmaz. "Rights, Risks and Responsibilities in the Recruitment of Children within the Global Football Industry." *The International Journal of Children's Rights* 27, no. 4 (2019): 738-756. p/745

¹⁰⁴⁸ Ruggie John, “For the game. For the world. FIFA and human rights” (2016) Harvard Kennedy School <https://www.hks.harvard.edu/sites/default/files/Ruggie_humanrightsFIFA_reportApril2016.pdf> accessed on 31/08/19. p/25

¹⁰⁴⁹ 2.2: International Legal Instruments on Anti-Trafficking

¹⁰⁵⁰ Fredette, Kalen. "Revisiting the UN protocol on human trafficking: Striking balances for more effective legislation." *Cardozo J. Int'l & Comp. L.* 17 (2009): 101. p/104

¹⁰⁵¹ Allain, Jean. "No Effective Trafficking Definition Exists: Domestic Implementation of the Palermo Protocol' (2014)." *Albany Government Law Review* 7: 111. p/142

¹⁰⁵² Bowersox, Zack. "International Sporting Events and Human Trafficking: Effects of Mega-Events on a State’s Capacity to Address Human Trafficking." *Journal of Human Trafficking* 2, no. 3 (2016): 201-220. p/202

¹⁰⁵³ Haynes, Dina Francesca. "Used, abused, arrested and deported: Extending immigration benefits to protect the victims of trafficking and to secure the prosecution of traffickers." *Hum. Rts. Q.* 26 (2004): 221. p/227

occurrence under the same parameters as the illicitly conducted ITMs. Such a definitional gap also pre-empts and undermines the direct application of the Protocol in a footballing context.

As trafficking and smuggling are part of the same continuum of the growing ‘criminal industry’¹⁰⁵⁴ in which people exploitation is rising,¹⁰⁵⁵ there is often a need to distinguish between the two phenomena, to determine if the identified person is an illegal/irregular migrant or a victim of trafficking.¹⁰⁵⁶ Admittedly, making this identification is difficult because the patterns of movement are often similar¹⁰⁵⁷ and there are shared characteristics which vulnerable children face in the hands of smugglers and traffickers.¹⁰⁵⁸ Individuals (like football players) often begin their journeys as smuggled migrants, but by their journey’s end find themselves in exploitative situations,¹⁰⁵⁹ such as debt bondage and other slave like conditions.¹⁰⁶⁰ Thus, it is on the way to the destination country that voluntary smuggling transitions into the involuntary trafficking of persons for exploitative purposes.¹⁰⁶¹ Yet, as Gallagher posits, the Protocols do not acknowledge the operational link between the occurrence of smuggling and trafficking.¹⁰⁶²

The failure of the Protocols to provide guidance on how trafficked persons and smuggled migrants are to be identified is said to be a significant weakness which compromises the object and purpose of the trafficking treaty agreement.¹⁰⁶³ By not providing this guidance,¹⁰⁶⁴ many victims of trafficking run the risk of being misidentified as illegal migrants. This is because the tag ascribed to the person often influences the treatment they

¹⁰⁵⁴ Ellis, Tom and James Akpala, 'Making sense of the relationship between trafficking in persons, human smuggling, and organised crime: the case of Nigeria' (2011) 84(1) *The Police Journal* 13. p/5

¹⁰⁵⁵ NAL, P., 'Human Trafficking for Labour Exploitation/Forced and Bonded Labour: Identification–Prevention–Prosecution. Human Trafficking for Labour Exploitation/Forced and Bonded Labour' (2008). p/27

¹⁰⁵⁶ Plambech, Sine. "Between “Victims” and “Criminals”: Rescue, deportation, and everyday violence among Nigerian migrants." *Social Politics* 21, no. 3 (2014): 382-402. p/390

¹⁰⁵⁷ Bowersox, Zack. "International Sporting Events and Human Trafficking: Effects of Mega-Events on a State’s Capacity to Address Human Trafficking." *Journal of Human Trafficking* 2, no. 3 (2016): 201-220. p/203

¹⁰⁵⁸ Save the Children, 'Young Invisible Enslaved: Children victims of trafficking and labour exploitation in Italy' (2017) <https://resourcecentre.savethechildren.net/node/12527/pdf/young_invisible_enslaved_2017.pdf> accessed on 21/02/2018. p/15

¹⁰⁵⁹ Gallagher, Anne. "Trafficking, smuggling and human rights: tricks and treaties." *Forced migration review* 12, no. 25 (2002). p/27

¹⁰⁶⁰ Haynes, Dina Francesca. "Used, abused, arrested and deported: Extending immigration benefits to protect the victims of trafficking and to secure the prosecution of traffickers." *Hum. Rts. Q.* 26 (2004): 221. p/254

¹⁰⁶¹ Bowersox, Zack. "International Sporting Events and Human Trafficking: Effects of Mega-Events on a State’s Capacity to Address Human Trafficking." *Journal of Human Trafficking* 2, no. 3 (2016): 201-220. p/203

¹⁰⁶² Gallagher, Anne. "Human rights and the new UN protocols on trafficking and migrant smuggling: A preliminary analysis." *Hum. Rts. Q.* 23 (2001): 975. p/1001

¹⁰⁶³ Gallagher, Anne. "Recent legal developments in the field of human trafficking: A critical review of the 2005 European Convention and related instruments." *European Journal of Migration and Law* 8, no. 2 (2006): 163-189. p/166

¹⁰⁶⁴ Gallagher, Anne. "Trafficking, smuggling and human rights: tricks and treaties." *Forced migration review* 12, no. 25 (2002). p/27

are given.¹⁰⁶⁵ In the Travaux Préparatoires, trafficking victims who agree to testify are to be accorded special protection, and all efforts should be made to avoid their re-victimisation, including placing them in a safe and suitable accommodation with skilled people taking care of them.¹⁰⁶⁶ State parties are also expected to ensure that victims are not removed from the destination country against their will.¹⁰⁶⁷ This type of protection that the Protocol stipulates should be offered to trafficking victims, creates significant financial and administrative burdens on the state authorities, more than they would face in the case of a smuggled migrant.¹⁰⁶⁸ The increased burdens subsequently acts as an incentive for border authorities and immigration officials to identify victims of trafficking as illegal migrants.¹⁰⁶⁹

Often, the onus is placed on the victims to prove their innocence, such as their lack of knowledge of the trafficking or smuggling circumstances, as this will then enable them to receive the aid and protections normally afforded to victims.¹⁰⁷⁰ In a football context, for example, the agreement of a player to leave their home country may be read as a legitimate form of capitalist exchange, because both parties are considered to have consented to the transaction.¹⁰⁷¹ With the way this exchange was previously interpreted by a court in favour of a Belgian club who trafficked African minors,¹⁰⁷² it is arguable that the trafficked minors are placed at a disadvantage when they have to prove their innocence in a destination country. Esson concurs, as he explained that many of the trafficked minors he met in Paris were misidentified as illegal ‘adult’ migrants.¹⁰⁷³ This was because the minors did not have any official identification (as it was taken by the traffickers), and the predominantly white support service staff claimed they could not assess the age of dark-skinned people, and by default, the minors were aged, racialised, and gendered as Black African men.¹⁰⁷⁴

¹⁰⁶⁵ Gallagher, Anne. "Human rights and the new UN protocols on trafficking and migrant smuggling: A preliminary analysis." *Hum. Rts. Q.* 23 (2001): 975. p/1000

¹⁰⁶⁶ United Nations, General Assembly, Report of the Ad Hoc Committee on the Elaboration of a Convention Against Transnational Organized Crime on the work of its first to eleventh sessions, Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, UN GAOR 55th Sess., § 3, UN Doc. A/55/383/Add.1 (2000) p/290, § 65(b)(c) and (d).

¹⁰⁶⁷ Gallagher, Anne. "Trafficking, smuggling and human rights: tricks and treaties." *Forced migration review* 12, no. 25 (2002). p/27

¹⁰⁶⁸ Ibid.

¹⁰⁶⁹ Gallagher, Anne. "Human rights and the new UN protocols on trafficking and migrant smuggling: A preliminary analysis." *Hum. Rts. Q.* 23 (2001): 975. p/1000

¹⁰⁷⁰ Fredette, Kalen. "Revisiting the UN protocol on human trafficking: Striking balances for more effective legislation." *Cardozo J. Int'l & Comp. L.* 17 (2009): 101. p/112

¹⁰⁷¹ Esson, James. "Playing the victim? Human trafficking, African youth, and geographies of structural inequality." *Population, Space and Place* (2020): e2309. p/7

¹⁰⁷² Mauro, Max. "Inclusive sport or institutional discrimination? New FIFA regulations, organized football and migrant youth in Italy." *Sport in Society* 20, no. 7 (2017): 833-847. p/839

¹⁰⁷³ Esson, James. "Playing the victim? Human trafficking, African youth, and geographies of structural inequality." *Population, Space and Place* (2020): e2309. p/7

¹⁰⁷⁴ Ibid.

Generally, an individual who fails to satisfy the burden of proof placed on them by the national authorities is tagged as an illegal migrant.¹⁰⁷⁵ This results in them being denied access to rights and services available to trafficked victims, as they subsequently could be removed from the country, or even prosecuted for engaging in criminal activities whilst they were being exploited.¹⁰⁷⁶ The imposed burden of proof allows State parties to potentially mishandle a wide range of real victims, rather than affording them the requisite care, respect, and rights they deserve.¹⁰⁷⁷ This treatment stems from an embedded belief amongst some nation states that the “proper place” of the trafficked individuals is back at home.¹⁰⁷⁸ Consequently, the nation states look for means to expedite the removal of persons, despite the fact that sending victims back could place them in danger and could expose them to retaliatory measures by traffickers.¹⁰⁷⁹ These actions by State parties continue to occur, contrary to the Travaux Préparatoires of the Protocol.¹⁰⁸⁰

The circumstances of people being misidentified and removed undermines the law enforcement objectives of the instrument.¹⁰⁸¹ Victims do not want to come forward as they could be at risk of being ‘voluntarily returned’, thereby limiting avenues for prosecuting the perpetrators and allowing the traffickers and smugglers to continue operating with impunity. However, despite the importance of prosecution, it is argued that without instituting stronger obligations on state parties to address the root causes and factors leading to trafficking, as alluded to in Article 9(4) of the Trafficking Protocol, the current victim protection program is likely to be ineffective and unable to provide the requisite protections for the minors in the long-term.¹⁰⁸² This is evidenced by Haynes’ claim that “trafficking is neither slowing [down], nor is the prosecution of traffickers or the protection of their victims becoming any more certain”.¹⁰⁸³ This argument is valid, considering the ILO reported that on any given

¹⁰⁷⁵ Gallagher, Anne. "Human rights and the new UN protocols on trafficking and migrant smuggling: A preliminary analysis." *Hum. Rts. Q.* 23 (2001): 975. p/1001

¹⁰⁷⁶ O'Connell Davidson, Julia. "Moving children? Child trafficking, child migration, and child rights." *Critical social policy* 31, no. 3 (2011): 454-477. p/466

¹⁰⁷⁷ Fredette, Kalen. "Revisiting the UN protocol on human trafficking: Striking balances for more effective legislation." *Cardozo J. Int'l & Comp. L.* 17 (2009): 101. p/112 and 114

¹⁰⁷⁸ Stoyanova, Vladislava. "Complementary protection for victims of human trafficking under the European Convention on Human Rights." *Goettingen J. Int'l L.* 3 (2011): 777. p/788

¹⁰⁷⁹ Fredette, Kalen. "Revisiting the UN protocol on human trafficking: Striking balances for more effective legislation." *Cardozo J. Int'l & Comp. L.* 17 (2009): 101. p/132-3

¹⁰⁸⁰ United Nations, General Assembly, "Report of the Ad Hoc Committee on the Elaboration of a Convention Against Transnational Organized Crime on the work of its first to eleventh sessions, Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, UN GAOR 55th Sess., § 3, UN Doc. A/55/383/Add.1 (2000) p/290, § 66

¹⁰⁸¹ Gallagher, Anne. "Trafficking, smuggling and human rights: tricks and treaties." *Forced migration review* 12, no. 25 (2002). p/27

¹⁰⁸² Fredette, Kalen. "Revisiting the UN protocol on human trafficking: Striking balances for more effective legislation." *Cardozo J. Int'l & Comp. L.* 17 (2009): 101. p/133-4

¹⁰⁸³ Haynes, Dina Francesca. "Used, abused, arrested and deported: Extending immigration benefits to protect the victims of trafficking and to secure the prosecution of traffickers." *Hum. Rts. Q.* 26 (2004): 221. p/227

day in 2016, there were an estimated 40 million people in forced labour and forced marriage circumstances in the world.¹⁰⁸⁴ Though it is difficult to estimate how many of these individuals are specific victims of human trafficking, the figures are an indictment of the extent of these related forms of exploitation.¹⁰⁸⁵ These situations also indicate the circumstances of the African football minors, who are neither being given the requisite protections that are reflective of their conditions and increased vulnerability towards trafficking, nor are they even given the appropriate status and services that are generally afforded to the other child victims of trafficking.

5.3.2 The Effectiveness of the UNCRC in Sport

Although it is commonly held that it is the State parties to the UNCRC that have the primary responsibility for ensuring compliance with its provisions, the Committee on the Rights of the Child noted that the responsibilities to respect the UNCRC extends beyond the State to individuals, parents, legal guardians, and other non-state actors.¹⁰⁸⁶ As sport is not immune from respecting the rights of children, the non-State Sports Governing Bodies (SGBs) including FIFA, also have an obligation to contribute to the effective protection of children and child athletes. In fact, as David argues, if States are said to have a direct responsibility to promote and protect children's rights, even in sports, then third parties such as FIFA have an indirect responsibility to do the same under the UNCRC.¹⁰⁸⁷ Still, because of sport's prevailing competitive culture and the commodification of children in such circles, sport is seldom a fertile ground for meaningful discussions on the interaction between children's rights and the impact of sport on the lived experiences of participants.¹⁰⁸⁸

David contended that sport is one of the domains in which the rights of the child are often ignored or overlooked.¹⁰⁸⁹ Donnelly concurred with this point via an earlier statement, as he argued that "national and international sport organisations, and governments, have singularly failed to deal with issues regarding the human rights of children, and some 14 Articles of the

¹⁰⁸⁴ International Labour Organization, "Global estimates of Modern Slavery: Forced Labour and Forced Marriage" Geneva 2017. p/5 <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf> accessed on 28/07/2020

¹⁰⁸⁵ Bryant, Katharine, and Todd Landman. "Combatting human trafficking since Palermo: what do we know about what works?" *Journal of human trafficking* 6, no. 2 (2020): 119-140. p/119

¹⁰⁸⁶ Farstad, Siri. "Protecting children's rights in sport: The use of minimum age." *Human Rights Law Commentary* 3 (2007): 1-20. p/18-19

¹⁰⁸⁷ David, Paulo. "Respecting the rights of the child in sports: Not an option." In *International Handbook on Child Rights and School Psychology*, pp. 377-388. Springer, Cham, 2020. p/379

¹⁰⁸⁸ Yilmaz, Serhat, James Esson, Paul Darby, Eleanor Drywood, and Carolynne Mason. "Children's rights and the regulations on the transfer of young players in football." *International Review for the Sociology of Sport* 55, no. 1 (2020): 115-124. p/116

¹⁰⁸⁹ David, Paulo. "Respecting the rights of the child in sports: Not an option." In *International Handbook on Child Rights and School Psychology*, pp. 377-388. Springer, Cham, 2020. p/377

UNCRC are occasionally or routinely violated in sports.”¹⁰⁹⁰ Though the UNCRC does not expressly mention sport or the involvement of children in sports, certain provisions of the instrument could serve to protect young athletes due to their broad formulation.¹⁰⁹¹ For example, with football trafficking, the UNCRC contains measures which combat trafficking in children (Article 35), protects young people from economic exploitation (Article 32), and protects children from violence, abuse, neglect, and maltreatment (Article 19) in all aspects of life, including sport.¹⁰⁹²

Despite the existence of these provisions and their applicability in sport, there remains a significant under-recognition of football trafficking. On a broader level, this under-recognition can be attributed to the perception of the “victim” in the football trafficking context. Greenbaum and others argued that the number of boys who are trafficked and placed in modern slavery-like conditions may not be appropriately reflected.¹⁰⁹³ This is because of an apparent tendency by some state authorities to treat male victims of trafficking as offenders, rather than as children in need of help and protection.¹⁰⁹⁴ As Esson also noted, this is likely exacerbated by the fact that the trafficked African boys do not fit the stereotypical view of a “victim of trafficking”, and this is subsequently used against them.¹⁰⁹⁵ On a sports specific level, the under-recognition of the problem could be due to some suppressed factors within the football recruitment environment. For instance, despite Article 32 UNCRC preventing the economic exploitation of children, football’s global production network and the transfer market system has been noted for being inconsistent with this provision.¹⁰⁹⁶ Child players are increasingly viewed as club assets, which underlines the fact that football’s transfer system prioritises economic gain over the welfare (and best interests) of the child.¹⁰⁹⁷

When child victims of trafficking are detected, Article 3 UNCRC (the best interests principle) is increasingly cited as state parties contemplate the subsequent admission or

¹⁰⁹⁰ Donnelly, Peter. "Sport and human rights." *Sport in society* 11, no. 4 (2008): 381-394. p/391

¹⁰⁹¹ Weber, Romana. "Protection of children in competitive sport: Some critical questions for London 2012." *International Review for the Sociology of Sport* 44, no. 1 (2009): 55-69. p/57

¹⁰⁹² Esson, James, and Eleanor Drywood. "Challenging popular representations of child trafficking in football." *Journal of Criminological Research, Policy and Practice* (2018). p/68

¹⁰⁹³ Greenbaum, Jordan, Nia Bodrick, and Committee on Child Abuse and Neglect. "Global human trafficking and child victimization." *Pediatrics* 140, no. 6 (2017). p/6

¹⁰⁹⁴ Ibid.

¹⁰⁹⁵ Esson, James. "Playing the victim? Human trafficking, African youth, and geographies of structural inequality." *Population, Space and Place* (2020): e2309. p/7

¹⁰⁹⁶ Mason, Carolynne, Paul Darby, Eleanor Drywood, James Esson, and Serhat Yilmaz. "Rights, Risks and Responsibilities in the Recruitment of Children within the Global Football Industry." *The International Journal of Children's Rights* 27, no. 4 (2019): 738-756. p/745

¹⁰⁹⁷ Esson, James, and Eleanor Drywood. "Challenging popular representations of child trafficking in football." *Journal of Criminological Research, Policy and Practice* (2018). p/68

removal of the child from the destination country.¹⁰⁹⁸ Article 3 is relevant to the procedures and treatment applicable to children seeking international protection, as the UNCRC's General Comment number 6, provides that "return to the country of origin shall in principle only be arranged if such return is in the best interests of the child".¹⁰⁹⁹ Yet, this aspect of the UNCRC's obligation is often overlooked by State parties.¹¹⁰⁰ This is arguably because several nation states, and the private actors including FIFA who are equally obliged to uphold this principle,¹¹⁰¹ ignore the "consideration" word used in the provision. Consideration emphasises that the child's best interests must be considered in "all actions concerning children",¹¹⁰² and as Alston expanded, such consideration must be "genuine rather than token or merely formal and must ensure that all aspects of the child's best interests are factored into the equation."¹¹⁰³ In practice, this principle is not consistently upheld, as parties fail to note that the best interests of a child in a specific situation of vulnerability, will not be the same as a child who is not in the same vulnerable situation.¹¹⁰⁴ Thus, decisions regarding trafficked African minors should be made on a case by case basis, without prejudice to their appearance, and in acknowledgement that actions pertaining to their status and subsequent treatment are to be made in their best interests, and with consideration given to their peculiar circumstances.

Furthermore, the Committee on the Rights of the Child which was formed to ensure the implementation of the UNCRC, lacks effective enforcement and controlling measures to put pressure on parties to implement the Convention.¹¹⁰⁵ The Committee is mainly concerned with controlling state reports and making non-binding recommendations,¹¹⁰⁶ it receives funding from UN donor states, and does not have the power to sentence parties for non-compliance. This means that there is no international court to adjudicate on children's rights issues,¹¹⁰⁷ and no institution that children can petition to seek to have their UNCRC rights

¹⁰⁹⁸ Pobjoy, Jason M. "The best interests of the child principle as an independent source of international protection." *Int'l & Comp. LQ* 64 (2015): 327. p/328

¹⁰⁹⁹ UNCRC, "General Comment No 6: Treatment of Unaccompanied and Separated Children outside Their Country of Origin", 39th sess, UN Doc CRC/GC/2005/6 (2005) 84

¹¹⁰⁰ UNCRC, '2012 Day of Discussion: The Rights of All Children in the Context of International Migration: Background Paper', (2012) 20. Cited in Pobjoy, Jason M. "The best interests of the child principle as an independent source of international protection." *Int'l & Comp. LQ* 64 (2015): 327. p/331

¹¹⁰¹ Zermatten, Jean. "The best interests of the child principle: literal analysis and function." *The International Journal of Children's Rights* 18, no. 4 (2010): 483-499. p/488

¹¹⁰² UNCRC, Article 3(1) 1989

¹¹⁰³ Alston, Philip. "The best interests principle: towards a reconciliation of culture and human rights." *International Journal of Law, Policy and the Family* 8, no. 1 (1994): 1-25. p/13

¹¹⁰⁴ UNCRC, "General Comment No 14 on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (art 3, para 1)", 62nd sess, UN Doc CRC/C/GC/14 (2013) 76

¹¹⁰⁵ Weber, Romana. "Protection of children in competitive sport: Some critical questions for London 2012." *International Review for the Sociology of Sport* 44, no. 1 (2009): 55-69. p/58

¹¹⁰⁶ *Ibid.*

¹¹⁰⁷ Tobin, John, and Judy Cashmore. "Thirty years of the CRC: child protection progress, challenges and opportunities." *Child abuse & neglect* (2020): 104436. p/5

vindicated.¹¹⁰⁸ Consequently, academics have posed significant questions about the role of the Committee and its capacity to monitor sports-related issues¹¹⁰⁹ such as football trafficking. These questions stem from the inability of the Committee to issue binding recommendations on defaulting parties, as it diminishes its ability to proffer effective protections for child athletes.¹¹¹⁰

Though the UNCRC contains pertinent provisions which should prevent the occurrence of child trafficking in sport, its regulations have not been utilised in a manner that achieves this intended outcome. This can be attributed to problems such as victim identification, the recruitment practices of football teams, or as described by detractors of the UNCRC, the fact that the provisions are too unwieldy and therefore more “aspirational” than enforceable.¹¹¹¹ Nevertheless, what remains clear is that the UNCRC has been undermined by the footballing environment and the embedded incentives which allow the unscrupulous persons and teams to circumvent the regulations to exploit children and make profit. Thereby leading to questions about the effectiveness and suitability of this *lex generalis* instrument in curbing the specific problem of football trafficking.

5.3.3 The UN SDGs and Football Trafficking

The focus of the SDGs on safe migration and the goal of ending child trafficking provides the requisite intersection and applicability between the SDGs and football trafficking. Like the UNCRC, the recruitment strategies in football weaken the implementation and effectiveness of the SDGs in limiting child trafficking in sport. The circumstances in football exist despite FIFA and other government agencies acknowledging and accepting the SDGs global goals of ending abuse, exploitation, and trafficking in persons.¹¹¹² And, similar to the Trafficking Protocol, the long-term effects of the SDGs in curbing this problem could be undermined by the fact the instrument does not provide a concrete means of tackling some of the core issues in source countries that lead to situations of trafficking and exploitation. For example, though the SDGs contain a commitment to eradicating inequality within and amongst countries in Goal 10,¹¹¹³ the implementation of this goal in developing countries

¹¹⁰⁸ Kinkelly, Ursula. "Protecting children's rights under the ECHR: the role of positive obligations." *N. Ir. Legal Q.* 61 (2010): 245. p/247

¹¹⁰⁹ Williams, Yvonne. "Protecting children from violence in sport: a Unicef Report." *ESLJ* 9 (2011): 72. Para. 14

¹¹¹⁰ Weber, Romana. "Protection of children in competitive sport: Some critical questions for London 2012." *International Review for the Sociology of Sport* 44, no. 1 (2009): 55-69. p/58

¹¹¹¹ McCall-Smith, Kasey. "To incorporate the CRC or not—is this really the question?" *The International Journal of Human Rights* 23, no. 3 (2019): 425-441. p/426

¹¹¹² FIFA, "World Day Against Trafficking in Persons: It's up to all of us" (*FIFA.com*, July 2020) <<https://www.fifa.com/who-we-are/news/it-s-up-to-all-of-us>> accessed on 30/07/2020

¹¹¹³ UN General Assembly, "Sustainable Development Goals." *SDGs, Transforming our world: the 2030 Agenda* (2015). Goal 10

and how it would be tailored to limiting the vulnerabilities of potential victims of trafficking remains to be seen.

The SDGs propose that to eradicate inequality, nation states must facilitate orderly, safe, regular, and responsible migration and mobility of people (Goal 10.7). However, when this is considered within the context of football, the call for increased labour migration may itself constitute both the possibilities and the limitations of the SDGs' applicability within sport.¹¹¹⁴ As a possibility/positive, labour migration could lead to a reduction in the inequalities between nations, as it could have several developmental benefits to both the source and destination countries when a talented player migrates. Yet, increased labour migration could also be a limitation/negative when several skilled individuals migrate, as their country could face underdevelopment resulting in their continued dependence on richer countries and economies for support.¹¹¹⁵ This underdevelopment potentially puts many young people at a heightened risk of trafficking and exploitation.

Though there are instances where players have migrated legally, received professional playing contracts and remitted money to improve the lives of their families back home (thereby potentially reducing some inequalities), most of the aspiring foreign players are subjected to a different state of affairs. Unfortunately, the practical implications of the SDGs' call for more labour migration aligns more with the negative argument associated with the provision. This is evidenced by the occurrence of football trafficking, as the problem is a consequence of the continued African football labour migration, which has resulted in the stagnation, underdevelopment, and dependence of African football on European countries and football leagues.

Conclusion

FIFA's regime has not achieved its intended policy objective of curbing football trafficking owing to the numerous loopholes in its regulatory system. The loopholes have created an avenue for FIFA's members to circumvent the organisation's regulations. Whilst simultaneously creating an incentive for unscrupulous persons (both FIFA members and non-members) to enter strategic deals with football teams to traffic and exploit young players, as a means of benefitting from football's global transfer market. It becomes apparent

¹¹¹⁴ Lindsey, Iain, and Paul Darby. "Sport and the Sustainable Development Goals: Where is the policy coherence?" *International Review for the Sociology of Sport* 54, no. 7 (2019): 793-812. p/803

¹¹¹⁵ Poli, Raffaele. "Africans' status in the European football players' labour market." *Soccer & society* 7, no. 2-3 (2006): 278-291. p/12

that the football environment (similar to other sporting circles) has turned a blind eye to these trafficking circumstances, as “the law of silence”¹¹¹⁶ is regularly practiced.

The comparison of FIFA’s anti-trafficking policy performance to wider international law instruments showed that the instruments face similar problems of detection, implementation, and enforcement, when it comes to the cases of human trafficking. Whilst policies such as the UNCRC and the SDGs prioritise the best interests of the child and promote the creation of safe routes of migration respectively, the treatment of the trafficked minors upon identification in the destination countries suggest that the players are being criminalised as illegal migrants, even though they are victims of human trafficking. This renders key questions about the applicability of the policies in being able to curb the specific problem of child trafficking in sport. Ultimately, the discussions have shown that the FIFA and international law instruments both fail to adequately tackle the root causes of the problem.

¹¹¹⁶ David, Paulo, *Human rights in youth sport: a critical review of children's rights in competitive sport*. (London: Routledge, London 2005) p/162

Chapter 6 - EVALUATING FIFA'S REGULATIONS – SPECIFIC ASPECTS & LOOKING AT FIFA AS THE ASSESSED PARTY

It is essential to analyse the aspects of FIFA's anti-trafficking regulations that may be hindering the policies from achieving their specific regulatory objectives. This is according to the benchmarks for evaluating policy performance,¹¹¹⁷ and this practice is also necessary when adopting regulatory theory as a diagnostic tool. Additionally, and in line with aforementioned benchmarks, it is equally important to assess FIFA as the key party in the particular regulatory regime being considered.

To critically discuss the specific aspects of FIFA's anti-trafficking regulations, the analysis is divided into both social and systemic factors. The social factors will build on the push and pull dynamics of human migration first considered in Chapter 3. The analysis will illustrate how the push and pull factors potentially motivate an averseness to FIFA's anti-trafficking policies amongst the African youths, thereby leading them into the hands of unscrupulous persons. Whereas, the systemic factors will examine how the data deficits in human trafficking research and policy formation, as well as other aspects of FIFA's anti-trafficking policy approach (e.g., the issues with regulatory enforcement, and the imbalanced treatment of African football minors), combine to inhibit the optimal performance of FIFA's anti-trafficking policies.

Furthermore, to evaluate FIFA as the assessed party, various structural factors affecting the organisation (e.g., its corrupted structure, its non-profit status, its one member one vote practice, and the conflicts of interest seen amidst top FIFA personnel) are expanded upon to highlight how these inherent characteristics of the organisation could be impeding the organisation's own policy performance.

6.1 THE ASPECT OF REGULATION

Baldwin and others posed that a key question to ask during an evaluation is “what aspects of the regulatory regime are affecting the policies from achieving the objectives?”.¹¹¹⁸ To answer this question, the social and systemic factors will be discussed.

¹¹¹⁷ Baldwin, Robert, Martin Cave, and Martin Lodge. *Understanding regulation: theory, strategy, and practice*. Oxford University Press on Demand, 2012. p/35

¹¹¹⁸ Baldwin, Robert, Martin Cave, and Martin Lodge. *Understanding regulation: theory, strategy, and practice*. Oxford University Press on Demand, 2012. p/35-7

6.1.1 Social Factors

There are often social factors that have the propensity to undercut regulatory efficacy and result in the continuation of a problem within a regime. Consideration of such broader social issues coincides with the recommendation of academics Lodge and Wegrich, who contended that during an evaluation, tough questions which reflect the real-life complexities of regulation must be asked about the regulations and regulatory performance.¹¹¹⁹ Thus, in determining the real-life complexities affecting FIFA's anti-trafficking policies, the push-pull dynamics in human migration are pertinent. The dynamics/factors were introduced earlier as the push factors which drives people to leave their home country,¹¹²⁰ and the pull factors which attracts them to a destination country.¹¹²¹

Push Factors

These can be divided into general,¹¹²² and football specific push factors.¹¹²³

General

There are several general factors that push young people into the arms of unscrupulous persons. For example, youth unemployment is an issue that is not only prevalent in Africa but is a global problem with wide ranging ramifications. This unemployment pushes young people to migrate (legally or illegally) to find work when there is a shortage of opportunities available in their home country, or if they lack the requisite skills needed to do the work that is available.¹¹²⁴ With the absence of jobs, there is a subsequent lack of income that could lead to poverty, which is one of the "risk factors" that make youths vulnerable to the ploys of human traffickers looking to exploit them.¹¹²⁵ This is because poverty generates a vulnerability to exploitative practices like forced labour.

Other push factors include the circumstances of age and gender discrimination that take place across Africa, thereby making it difficult for African youths to gain employment and sustain

¹¹¹⁹ Lodge, Martin and Kai Wegrich, *Managing regulation: Regulatory analysis, politics and policy* (Macmillan International Higher Education, 2012) p/244

¹¹²⁰ 3.2.3: Push-pull dynamics

¹¹²¹ International Organization for Migration. 'Key Migration Terms ' <<https://www.iom.int/key-migration-terms>> accessed on 25/07/2018.

¹¹²² IPEC, *Combating trafficking in children for labour exploitation: A resource kit for policy-makers and practitioners* (International Labour Office; ILO International Programme on the Elimination of Child Labour, Geneva 2008). Book 1: Understanding What Child Trafficking Is, pg. 8

¹¹²³ Darby, Paul, "African Football Labour Migration to Portugal: Colonial and Neo-Colonial Resource", (2007) *Soccer & Society*, 8:4, 495-509, pg. 500

¹¹²⁴ IPEC, *Combating trafficking in children for labour exploitation: A resource kit for policy-makers and practitioners* (International Labour Office; ILO International Programme on the Elimination of Child Labour, Geneva 2008). Book 1: Understanding What Child Trafficking Is, pg. 8

¹¹²⁵ IPEC, *Combating trafficking in children for labour exploitation: A resource kit for policy-makers and practitioners* (International Labour Office; ILO International Programme on the Elimination of Child Labour, Geneva 2008). Book 1: Understanding What Child Trafficking Is, pg. 20

themselves.¹¹²⁶ Unequal opportunities to gain education in Africa is a push factor which limits the access to skilled occupations for the African youths, and this is often coupled with a general lack of awareness of the risks involved in irregular migration.¹¹²⁷ The proximity of an individual to a border of a neighbouring country with a thriving labour market may also be a push factor.¹¹²⁸ This is best illustrated in the case of the West African minors who migrated irregularly to enrol in the football academies in Ghana, where they were subsequently subjected to “exploitation within exploitation”.¹¹²⁹ The example shows that economic instability on the part of the Africans,¹¹³⁰ and the added restrictions on the process of regular migration, combine to provide the basis in which smuggling, irregular migration, and trafficking, is allowed to thrive in the region.¹¹³¹ Thus, as Saner and others contend, human trafficking is a symptom of wider underdevelopment in the source countries.¹¹³²

In the specific instance of child trafficking, there are often supplementary push factors which expose children to heightened risks of violence, abuse, and exploitation. These include natural disasters, armed conflicts,¹¹³³ separation from families, minimal education, and a lack of vocational skills. These supplemental factors are identical to the factors that have generally been identified as triggering children’s independent migration,¹¹³⁴ but in this instance, the risk factors potentially kick-start the trafficking process and push the vulnerable children into exploitative situations.¹¹³⁵ These factors result in trafficking and irregular migration for a few reasons. First, the absence of opportunities for persons under the age of 18 to migrate both legally and independently, thus leaving the children to rely on intermediaries to realise their migratory aspirations.¹¹³⁶ Second, stricter European border

¹¹²⁶ Ellis, Tom and James Akpala, 'Making sense of the relationship between trafficking in persons, human smuggling, and organised crime: the case of Nigeria' (2011) 84(1) *The Police Journal* 13. pg. 5

¹¹²⁷ Ibid.

¹¹²⁸ IPEC, *Combating trafficking in children for labour exploitation: A resource kit for policy-makers and practitioners* (International Labour Office; ILO International Programme on the Elimination of Child Labour, Geneva 2008). Book 4: Taking Action Against Child Trafficking, pg. 10

¹¹²⁹ McDougall, Dan, “The scandal of Africa’s trafficked players” (*The Guardian*, 6 January 2008) <<https://www.theguardian.com/football/2008/jan/06/newsstory.sport4>> accessed on 21/07/2020

¹¹³⁰ Haynes, Dina Francesca. "Used, abused, arrested and deported: Extending immigration benefits to protect the victims of trafficking and to secure the prosecution of traffickers." *Hum. Rts. Q.* 26 (2004): 221. p/223

¹¹³¹ Ellis, Tom and James Akpala, 'Making sense of the relationship between trafficking in persons, human smuggling, and organised crime: the case of Nigeria' (2011) 84(1) *The Police Journal* 13. p/3

¹¹³² Saner, Raymond, Lichia Yiu, and Laurel Rush. "The measuring and monitoring of human trafficking." *Public Administration and Policy* (2018). p/96

¹¹³³ UNICEF, “Child protection from violence, exploitation and abuse” (November 2017) <https://www.unicef.org/protection/57929_57990.html> accessed on 03/08/2020

¹¹³⁴ O’Connell Davidson, Julia. "Moving children? Child trafficking, child migration, and child rights." *Critical social policy* 31, no. 3 (2011): 454-477. p/467

¹¹³⁵ IPEC, *Combating trafficking in children for labour exploitation: A resource kit for policy-makers and practitioners* (International Labour Office; ILO International Programme on the Elimination of Child Labour, Geneva 2008). Book 1: Understanding What Child Trafficking Is, pg. 20 and 27

¹¹³⁶ O’Connell Davidson, Julia. "Moving children? Child trafficking, child migration, and child rights." *Critical social policy* 31, no. 3 (2011): 454-477. p/467

control has made it increasingly expensive for undocumented immigrants to enter.¹¹³⁷ This has led aspiring migrants to explore more dangerous avenues to migrate illegally, and has contributed to the growing market for clandestine migration services, including smuggling across borders and faking travel documents.¹¹³⁸ Third, owing to the reduced costs for the smugglers and traffickers when moving children, the higher potential returns, and the ease of controlling, manipulating, and/or replacing vulnerable children,¹¹³⁹ there appears to be a constant incentive for unscrupulous persons to circumvent national, international, and also FIFA's anti-trafficking regulations.

Football Specific

Playing football professionally outside Africa is considered to be a vehicle to elevate and change the life of an individual and their family.¹¹⁴⁰ This perception often coincides with certain football specific factors which make it difficult for the youths in Africa to envision playing and being successful if they remained on the continent. Some of the relevant factors include: the fragile political economy and instability affecting football in several African countries; the high levels of poverty leading to an uncertain football landscape;¹¹⁴¹ the substandard administration of African leagues; the corrupt practices of those in the football associations; the limited state investment in the leagues; and the occurrence of unnecessary government interference in football matters.¹¹⁴² Darby posited that these factors combine to make playing football in Africa a less appealing option for the youths, and that there is often little in the way of financial reward and stability for the players if they were to choose to remain on the continent.¹¹⁴³ These factors subsequently give aspiring African footballers a reason to seek better playing and paying opportunities, stability, and financial rewards, at a club outside the continent.¹¹⁴⁴

The main difficulty for these aspiring youths lies in their inability to secure safe and legal passage to the foreign country. The limited opportunities for safe passage is a consequence

¹¹³⁷ Plambech, Sine. "Between "Victims" and "Criminals": Rescue, deportation, and everyday violence among Nigerian migrants." *Social Politics* 21, no. 3 (2014): 382-402. p/389

¹¹³⁸ O'Connell Davidson, Julia. "Moving children? Child trafficking, child migration, and child rights." *Critical social policy* 31, no. 3 (2011): 454-477. p/460

¹¹³⁹ Ellis, Tom and James Akpala, 'Making sense of the relationship between trafficking in persons, human smuggling, and organised crime: the case of Nigeria' (2011) 84(1) *The Police Journal* 13. pg. 5-6

¹¹⁴⁰ Esson, James, "Better Off at Home? Rethinking Responses to Trafficked West African Footballers in Europe", (2015) *Journal of Ethnic and Migration Studies*, 41:3, 512-530, pg. 521

¹¹⁴¹ Esson, James, 'You have to try your luck: male Ghanaian youth and the uncertainty of football migration' (2015) 47(6) *Environ Plann A* 1383, p. 1387

¹¹⁴² Darby, Paul, 'African football labour migration to Portugal: colonial and neo-colonial resource' (2007) 8(4) *Soccer & Society* 495. p. 499

¹¹⁴³ *Ibid*, pg. 500

¹¹⁴⁴ Darby, Paul, "'Go Outside': The History, Economics and Geography of Ghanaian Football Labour Migration" (2010) *African Historical Review*, 42:1, 19-41, pg. 36

of the tightening of state borders and the introduction of stricter visa requirements and immigration policies for people coming from developing countries.¹¹⁴⁵ The stricter border control leads to the perception amongst the African youths that they would be unable to make the trip to a foreign club via legal channels,¹¹⁴⁶ seeing as they may not ordinarily qualify for the requisite visas which allow them legitimate entry to stay and work.¹¹⁴⁷ The youths then turn to intermediaries, middlemen, and facilitators who are able to provide services to make the now clandestine trip feasible.¹¹⁴⁸ Consequently, the African youths become open to exploitation and other precarious circumstances in the destination country due to their search for better footballing and economic opportunities,¹¹⁴⁹ and as a result of their reliance on unscrupulous intermediaries and traffickers to gain access to the region.¹¹⁵⁰

However, some African footballers may consider that the precarious conditions in the foreign country are better than the alternative of remaining in Africa with the deficient football infrastructure, and an unstable football governance system on the continent.¹¹⁵¹ This unstable climate owes largely to the impact of corruption in African football, and is one which Poli asserts is similar to “internal neo-colonialism”.¹¹⁵² The corruption acts as a push factor because the funds stipulated for the development of the local game are regularly misappropriated by the football associations.¹¹⁵³ Anecdotally, some prior statistics showed that 90 out of every 100 dollars meant for the development of grassroots football in Africa “disappears” into the pockets of private individuals.¹¹⁵⁴ The problem here, however, is not that there is corruption in African football (as this problem affects all parts of FIFA¹¹⁵⁵), but

¹¹⁴⁵ Esson, James, “Escape to victory: Development, youth entrepreneurship and the migration of Ghanaian footballers”, (2015) *Geoforum* 64, pp. 47-55, pg. 53

¹¹⁴⁶ *Ibid.*, pg. 50

¹¹⁴⁷ Ellis, Tom and James Akpala, 'Making sense of the relationship between trafficking in persons, human smuggling, and organised crime: the case of Nigeria' (2011) 84(1) *The Police Journal* 13, p/4

¹¹⁴⁸ *Ibid.* p/6

¹¹⁴⁹ Esson, James, “Escape to victory: Development, youth entrepreneurship and the migration of Ghanaian footballers”, (2015) *Geoforum* 64, pp. 47-55, pg. 54

¹¹⁵⁰ Ellis, Tom and James Akpala, 'Making sense of the relationship between trafficking in persons, human smuggling, and organised crime: the case of Nigeria' (2011) 84(1) *The Police Journal* 13, pg. 5

¹¹⁵¹ Darby, Paul, “Moving players, traversing perspectives: Global value chains, production networks and Ghanaian football labour migration”, (2013) *Geoforum* 50, 43-53, pg. 48

¹¹⁵² Poli, Raffaele. “The migrations of African football players to Europe: Human trafficking and neo-colonialism in question”, (2010) presented at the Football for Development Conference, Vienna, Austria

¹¹⁵³ Chiweshe, Manase Kudzai. “The Problem with African Football: Corruption and the (Under) Development of the Game on the Continent” (2014) *African Sports Law and Business Bulletin* 2, p. 2

¹¹⁵⁴ Oliver, Brian, “Making a killing out of football: African reporters investigate” (*The Guardian*, 24 October 2010). Cited in Chiweshe, Manase Kudzai. “The Problem with African Football: Corruption and the (Under) Development of the Game on the Continent” (2014) *African Sports Law and Business Bulletin* 2, p. 3

¹¹⁵⁵ Khumalo, Thabani, “Football’s rotten core must be excised” (*News 24*, 7 April 2013).

<<https://www.news24.com/news24/Archives/City-Press/Footballs-rotten-core-must-be-excised-20150429>> accessed on 21/12/2020.

it is the scale in which corruption occurs in African football that is considered to be the most worrying and contributory push factor for the majority of the youths.¹¹⁵⁶

The issue of corruption in African football is one that is not easily solved, seeing as FIFA's rules on non-interference hinders governments from combating corruption and interfering with their respective Football associations.¹¹⁵⁷ The FIFA rules protect those at the centre of the corrupt practices within the African Football Associations,¹¹⁵⁸ by shielding them from being the target of any democratic process. Thus, any attempts by African governments to overhaul their respective Football association to rid corrupt practices and make the association more accountable, is likely to be considered as an intrusion by FIFA and could lead to a possible warning, sanction, or a suspension from football tournaments for the country.¹¹⁵⁹

When these general and football specific push factors are considered collectively by the African youths, it often leads to the triggering of the trafficking or irregular migration process, as the youths seek the help of smugglers and unscrupulous intermediaries to facilitate their trips abroad. It could be argued that the African youths view irregular migration (and their potential trafficking) as a worthwhile risk, even if migrating in such a manner has little chance of resulting in a sustained career in professional football.¹¹⁶⁰ This view by the African players is often as a result of two predominant factors. First, West African boys believe that international migration to Europe or US would aid the attainment of future success and social mobility.¹¹⁶¹ Esson, having interviewed several of the migrant/trafficked African boys in Paris, as well as the aspiring footballers in Ghana, explained that there is a common belief amongst them that a career in professional football and migration to a league outside of Africa is a viable livelihood strategy to lift them, and vicariously, their families, out of poverty.¹¹⁶² Second, the perception of the youths and their eagerness to migrate to play professionally exists in the backdrop of a plethora of regulatory

¹¹⁵⁶ Chiweshe, Manase Kudzai. "The Problem with African Football: Corruption and the (Under) Development of the Game on the Continent" (2014) *African Sports Law and Business Bulletin* 2, p. 3

¹¹⁵⁷ FIFA, "Regulations Governing the Application of the Statutes Standing Orders of the Congress" (April 2015 edition) Section 68(2)

¹¹⁵⁸ Chiweshe, Manase Kudzai. "The Problem with African Football: Corruption and the (Under) Development of the Game on the Continent" (2014) *African Sports Law and Business Bulletin* 2, p. 1

¹¹⁵⁹ Chiweshe, Manase Kudzai. "The Problem with African Football: Corruption and the (Under) Development of the Game on the Continent" (2014) *African Sports Law and Business Bulletin* 2, p. 4

¹¹⁶⁰ Lindsey, Iain, and Paul Darby. "Sport and the Sustainable Development Goals: Where is the policy coherence?" *International Review for the Sociology of Sport* 54, no. 7 (2019): 793-812. p/805

¹¹⁶¹ Ungruhe, Christian, and James Esson. "A Social Negotiation of Hope: Male West African Youth." *Boyhood Studies* 10, no. 1 (2017): 22-43. p/27

¹¹⁶² Esson, James. "Better off at home? Rethinking responses to trafficked West African footballers in Europe." *Journal of Ethnic and Migration Studies* 41, no. 3 (2015): 512-530. p/521

policies which are ordinarily formed to prevent irregular migration and football trafficking from taking place. With the general absence of routes for the African youth players to legally migrate, and with the tighter controls on football migration applied without addressing the wider global inequalities that push the players to want to migrate, the possibility of exploitation or trafficking taking place becomes increasingly pronounced for the aspiring players.¹¹⁶³

Hence, the football environment in Africa recurrently puts one party, the desperate African player willing to leave the continent to play professionally abroad by any means necessary, with the other party, the unscrupulous persons and intermediaries who are tasked with finding innovative means of circumventing existing anti-trafficking regulations to export and exploit players for monetary gains. This combination challenges the efficacy of FIFA's policies, and is consequently a key aspect affecting the organisation's policy performance.

Pull Factors

Several African clubs find themselves unable to pay their players' salaries, and this limits their ability to stop their best players from migrating.¹¹⁶⁴ In Africa, there are only a few teams which have the capacity and financial resources to pay players the kind of salaries that could encourage them to remain and play professionally on the continent. In an earlier analysis by Darby, he identified that Al Ahly and Arab Contractors in Egypt, and Esperance in Tunisia, were the "primary player exporting zones" with some pulling power within Africa.¹¹⁶⁵ This limited list is rooted in the inequalities and economic disparities between the EU and African teams, and is reflective of the wider economies and economic markets between the regions.¹¹⁶⁶ The few options available in Africa are in stark contrast to the numerous options that exist in Europe for the aspiring players, with teams willing to give them the opportunities and economic incentives which do not exist anywhere else in football, let alone in African football.¹¹⁶⁷

With their elevated financial strength and the globalisation of football's transfer market since *Bosman*, the recruitment strategies of European clubs have revolved around locating talented

¹¹⁶³ Lindsey, Iain, and Paul Darby. "Sport and the Sustainable Development Goals: Where is the policy coherence?" *International Review for the Sociology of Sport* 54, no. 7 (2019): 793-812. p/805

¹¹⁶⁴ Poli, Raffaele. "Africans' status in the European football players' labour market." *Soccer & society* 7, no. 2-3 (2006): 278-291. p/283

¹¹⁶⁵ Darby, Paul, "African Football Labour Migration to Portugal: Colonial and Neo-Colonial Resource", (2007) *Soccer & Society*, 8:4, 495-509, pg. 499-500

¹¹⁶⁶ Giulianotti, Richard, and Roland Robertson. "Sport and globalization" in Carrington, Ben, and David L. Andrews. *A Companion to Sport*. (Wiley-Blackwell, 2013). p/53

¹¹⁶⁷ Darby, Paul, "African Football Labour Migration to Portugal: Colonial and Neo-Colonial Resource", (2007) *Soccer & Society*, 8:4, 495-509, pg. 499-500

youth players abroad and “pulling” said players to Europe through economic incentives.¹¹⁶⁸ The law of supply and demand operates in football just as in any other sphere of the marketplace.¹¹⁶⁹ The demand exists in Europe, whilst the supply is the plethora of talented Africans looking to travel abroad, which results in the cross-nationality migration (both legal and illegal) prevalent in football today.¹¹⁷⁰ European clubs are constantly scouting for cheap and talented players to import,¹¹⁷¹ as their increased financial capability allows them to offer players uniquely high salaries,¹¹⁷² and gives the European clubs the “pick of the bunch” when it comes to selecting from Africa’s football talent pool.¹¹⁷³ However, this recruitment method of pulling players to Europe through economic incentives has been described as one of the root causes of labour exploitation and human trafficking.¹¹⁷⁴ The method has also been criticised due to its similarities with economic imperialism and the continued neo-colonial exploitation of cheap labour between developed and developing countries.¹¹⁷⁵

Though the financial benefits on offer are important, pull factors could also be related to a shared language, culture, and heritage, which are factors formed through the historical and colonial links between African and European countries.¹¹⁷⁶ These factors motivate the migratory patterns and disposition of the young African players, and the factors have at times been considered to be just as important as the economic incentives.¹¹⁷⁷ As previously discussed,¹¹⁷⁸ during colonial times, players from all over Africa were transferred to the respective European colonial powers, such as France,¹¹⁷⁹ Portugal, and Belgium.¹¹⁸⁰

¹¹⁶⁸ Bowman, Benjamin. 'Is international football migration simply another type of labour migration?: The politics of migration through the lens of international football migration from Africa to Europe' <http://people.bath.ac.uk/bd203/docs/Bowman2011_internationalfootballmigration.pdf> accessed on 09/11/2017. p. 4

¹¹⁶⁹ Magee, Jonathan, and John Sugden. ““The World at their Feet” Professional Football and International Labor Migration.” *Journal of sport and social issues* 26, no. 4 (2002): 421-437. p/429

¹¹⁷⁰ Bullough, Steve, Richard Moore, Simon Goldsmith, and Lee Edmondson. "Player migration and opportunity: Examining the efficacy of the UEFA home-grown rule in six European football leagues." *International Journal of Sports Science & Coaching* 11, no. 5 (2016): 662-672. p/664

¹¹⁷¹ Maguire, Joseph A. "'Real politic' or 'ethically based': Sport, globalization, migration and nation-state policies." *Sport in society* 14, no. 7-8 (2011): 1040-1055. p/1046

¹¹⁷² Darby, Paul, “African Football Labour Migration to Portugal: Colonial and Neo-Colonial Resource”, (2007) Soccer & Society, 8:4, 495-509, pg. 499-500

¹¹⁷³ McDougall, Dan, “The scandal of Africa’s trafficked players” (*The Guardian*, 6 January 2008) <<https://www.theguardian.com/football/2008/jan/06/newsstory.sport4>> accessed on 21/07/2020

¹¹⁷⁴ Anner, Mark, Jennifer Bair, and Jeremy Blasi. "Toward joint liability in global supply chains: Addressing the root causes of labor violations in international subcontracting networks." *Comp. Lab. L. & Pol'y J.* 35 (2013): 1. Cited in McGrath, Siobhán, and Fabiola Mieres. *Addressing the demand side in and through supply chains: Mapping the field of initiatives around human trafficking, forced labour and slavery*. No. 8. DemandAt Working Paper, 2017. p/12

¹¹⁷⁵ Darby, Paul “African Football Labour Migration to Portugal: Colonial and Neo-Colonial Resource”, (2007) Soccer & Society, 8:4, 495-509, pg. 501

¹¹⁷⁶ Maguire, Joseph, and Robert Pearton. "The impact of elite labour migration on the identification, selection and development of European soccer players." *Journal of sports sciences* 18, no. 9 (2000): 759-769. p/764

¹¹⁷⁷ Taylor, Matthew. "Global players? Football, migration and globalization, c. 1930-2000." *Historical Social Research/Historische Sozialforschung* (2006): 7-30. p/17

¹¹⁷⁸ 3.1: History of football labour migration

¹¹⁷⁹ Ungruhe, Christian. "Mobilities at play: the local embedding of transnational connections in West African football migration." *The International Journal of the History of Sport* 33, no. 15 (2016): 1767-1785. p/1770

¹¹⁸⁰ Darby, Paul. "'Go Outside': The history, economics and geography of Ghanaian football labour migration." *African historical review* 42, no. 1 (2010): 19-41. p/29

Following the independence of African states, prior colonial links were still used to recruit the best players from the continent.¹¹⁸¹ The shared colonial history between imperialist powers and their former colonies acts as a significant pull factor for the African players, as the similarities in language and culture improves the ease of migration and acclimatisation in the EU country.¹¹⁸² This results in Africans increasingly viewing playing in Europe as a true ‘rite de passage’ to enhance their footballing development.¹¹⁸³ And this is consistent with the African players Darby encountered in Ghana, who wanted to migrate to England because of the shared colonial history.¹¹⁸⁴

Another relevant pull factor is the media which reinforces the appeal of going abroad to obtain wealth and possible socio-economic betterment through football.¹¹⁸⁵ The widespread broadcasts of European football have not only increased the sport’s popularity around the world,¹¹⁸⁶ but has exposed the aspiring players to quality leagues and matches in the major championships of other nations.¹¹⁸⁷ The aspiring players become attracted to the leagues, see other football migrants that have succeeded, and the successful players become their role models.¹¹⁸⁸ They then idolise the football stars abroad and harbour intentions of playing in the same countries and leagues as their football heroes.¹¹⁸⁹ The media similarly increases opportunities for European clubs to conduct their recruitment,¹¹⁹⁰ as the global expansion of

¹¹⁸¹ Taylor, Matthew. "Global players? Football, migration and globalization, c. 1930-2000." *Historical Social Research/Historische Sozialforschung* (2006): 7-30. Cited in Ungruhe, Christian. "Mobilities at play: the local embedding of transnational connections in West African football migration." *The International Journal of the History of Sport* 33, no. 15 (2016): 1767-1785. p/1770

¹¹⁸² Darby, Paul, "African Football Labour Migration to Portugal: Colonial and Neo-Colonial Resource" (2007) *Soccer & Society*, 8:4, p. 499

¹¹⁸³ Stead, David, and Joseph Maguire. "'Rite De Passage' or passage to riches? The motivation and objectives of Nordic/Scandinavian players in English league soccer." *Journal of Sport and Social Issues* 24, no. 1 (2000): 36-60. Cited in Maguire, Joseph A. "'Real politic' or 'ethically based': Sport, globalization, migration and nation-state policies." *Sport in society* 14, no. 7-8 (2011): 1040-1055. p/1045-6

¹¹⁸⁴ Darby, Paul. "'Go Outside': The history, economics and geography of Ghanaian football labour migration." *African historical review* 42, no. 1 (2010): 19-41. p/33

¹¹⁸⁵ Esson, James, "Escape to victory: Development, youth entrepreneurship and the migration of Ghanaian footballers", (2015) *Geoforum* 64, pp. 47-55, pg. 50

¹¹⁸⁶ Ungruhe, Christian. "Mobilities at play: the local embedding of transnational connections in West African football migration." *The International Journal of the History of Sport* 33, no. 15 (2016): 1767-1785. p/1771

¹¹⁸⁷ Taylor, Matthew. "Global players? Football, migration and globalization, c. 1930-2000." *Historical Social Research/Historische Sozialforschung* (2006): 7-30. p/20

¹¹⁸⁸ Maguire, Joseph, and David Stead. "Border crossings: Soccer labour migration and the European Union." *International Review for the Sociology of Sport* 33, no. 1 (1998): 59-73. p/71

¹¹⁸⁹ Bourke, Ann. "The road to fame and fortune: Insights on the career paths of young Irish professional footballers in England." *Journal of Youth Studies* 5, no. 4 (2002): 375-389. Cited in van Bakel, Marian, and Susan Salzbrenner. "Going abroad to play: Motivations, challenges, and support of sports expatriates." *Thunderbird International Business Review* 61, no. 3 (2019): 505-517. p/507

¹¹⁹⁰ Engh, Mari Haugaa, and Sine Agergaard. "Producing mobility through locality and visibility: Developing a transnational perspective on sports labour migration." *International Review for the Sociology of Sport* 50, no. 8 (2015). p/11

TV coverage on football has put far more African players in the “shop window” for purchasers.¹¹⁹¹

The aspirations of the African minors to travel and play abroad is a common trait amongst football migrants.¹¹⁹² The players often view migration as a means of improving their careers by testing themselves at a higher level on a regular basis.¹¹⁹³ Many sports athletes spend a part of their career abroad,¹¹⁹⁴ and Poli reported that nearly half of all the active professional footballers in the top 5 European leagues are sports expatriates/migrants.¹¹⁹⁵ The problem that arises for the aspiring African players is that the figures in support of sporting migration do not render a complete appraisal of the underlying trafficking problem. The figures do not show the many aspiring players who migrated irregularly or were trafficked and kept in precarious situations abroad, unable to secure professional playing contracts.¹¹⁹⁶

These pull factors promote the notion amongst the Africans that migrating to Europe is an essential part of their development process. Along with the notion that the absence of opportunities to attain spatial mobility is directly linked to their inability to achieve social mobility and provide for them and their families. As a result, the African boys seek ways to migrate to other parts of the world, as they do not anticipate that the development and transformation of their lives would occur if they remained on the continent.¹¹⁹⁷ This creates a significant incentive to bypass FIFA’s anti-trafficking regulations. It also extends the avenues for unscrupulous persons to capitalise on the boys’ migratory disposition, the shared colonial history with European countries, the loopholes in FIFA’s regulations, the economic incentives available in Europe, and the demand for cheap labour, to deceive parents and smuggle, traffic, export, and exploit the young and vulnerable African players. Furthermore, with the continued demand for cheap foreign labour, if FIFA’s anti-trafficking policies do not accommodate for these social factors, the policies are likely to remain ineffective.

¹¹⁹¹ Maguire, Joseph, and David Stead. "Border crossings: Soccer labour migration and the European Union." *International Review for the Sociology of Sport* 33, no. 1 (1998): 59-73. p/71

¹¹⁹² Magee, Jonathan, and John Sugden. "'The World at their Feet' Professional Football and International Labor Migration." *Journal of sport and social issues* 26, no. 4 (2002): 421-437. p/432

¹¹⁹³ Maguire, Joseph, and David Stead. "Border crossings: Soccer labour migration and the European Union." *International Review for the Sociology of Sport* 33, no. 1 (1998): 59-73. p/69

¹¹⁹⁴ Van Bakel, Marian, and Susan Salzbrenner. "Going abroad to play: Motivations, challenges, and support of sports expatriates." *Thunderbird International Business Review* 61, no. 3 (2019): 505-517. p/505

¹¹⁹⁵ Poli, Raffaele, Loïc Ravenel, and Roger Besson. "Foreign players in football teams." *CIES Football Observatory monthly report* 12 (2016). p/1

¹¹⁹⁶ Poli, Raffaele. "African migrants in Asian and European football: hopes and realities." *Sport in Society* 13, no. 6 (2010): 1001-1011. p/1001-2

¹¹⁹⁷ Esson, James. "Playing the victim? Human trafficking, African youth, and geographies of structural inequality." *Population, Space and Place* (2020): e2309. p/5

6.1.2 Systemic Factors

There are several systemic factors which have affected FIFA's policy performance, such as the data deficits in human trafficking.

Data Deficits

The entrenched issue with data in human trafficking related research is broad, and one which football is not exempt from. It can be argued that when it comes to data on trafficking in football, the sport is significantly behind nation states and governmental bodies in its approach to bridging the knowledge gap in relation to the occurrence of the crime. Antonio Costa, the former Executive Director of the United Nations Office on Drugs and Crime (UNODC), once warned that "if we do not overcome this knowledge crisis, we will be fighting the problem [of human trafficking] blindfolded".¹¹⁹⁸ The knowledge gap/crisis here are the data deficits which prevent a thorough understanding of trafficking and the migratory trails commonly used to perpetuate the crime. Costa stated that "we fear the problem is getting worse, but we cannot prove it for lack of data".¹¹⁹⁹ Gallagher concurred with Costa's assertion and explained that there are in fact compelling indications that show human trafficking is increasing, becoming more organised and more profitable, and steadily being integrated into the fabric of the new global economy, despite the absence of precise numbers regarding its continued occurrence.¹²⁰⁰

This lack of data is said to exist as a consequence of the complex and transnational nature of the crime.¹²⁰¹ Therefore, available data is mostly based on the few reports that come to light about trafficking taking place, such as when trafficked victims are identified and appear in official police, immigration, or social welfare statistics.¹²⁰² There are several undetected victims of human trafficking who do not appear in official statistics,¹²⁰³ and there are those who are victims of trafficking but have been misidentified and treated as irregular migrants. The statistical gap is one which the UN has tried to fill through mechanisms chaired by the

¹¹⁹⁸ United Nations Office on Drugs and Crime, 'UNODC report on human trafficking exposes modern form of slavery' (February 2009) <<https://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html>> accessed on 16/11/2019

¹¹⁹⁹ United Nations Office on Drugs and Crime, 'UNODC report on human trafficking exposes modern form of slavery' (February 2009) <<https://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html>> accessed on 16/11/2019

¹²⁰⁰ Gallagher, Anne, and Paul Holmes. "Developing an effective criminal justice response to human trafficking: Lessons from the front line." *International criminal justice review* 18, no. 3 (2008): 318-343. p/319

¹²⁰¹ Saner, Raymond, Lichia Yiu, and Laurel Rush. "The measuring and monitoring of human trafficking." *Public Administration and Policy* (2018). p/97

¹²⁰² IPEC, *Combating trafficking in children for labour exploitation: A resource kit for policy-makers and practitioners* (International Labour Office; ILO International Programme on the Elimination of Child Labour, Geneva 2008). Book 2: Understanding What Child Trafficking Is, pg. 6-7

¹²⁰³ Saner, Raymond, Lichia Yiu, and Laurel Rush. "The measuring and monitoring of human trafficking." *Public Administration and Policy* (2018). p/97

UNODC, as well as calls in the UNSDGs, to promote better monitoring and reporting of the progresses made in tackling human trafficking.¹²⁰⁴ The UNSDGs request that improved monitoring takes place,¹²⁰⁵ as Member States are to collect proper trafficking data and defined methodologies to estimate the total number of trafficking victims, and to report these numbers by sex, age, and form of exploitation.¹²⁰⁶ Such information is required to shed more light on the problem and is needed to limit the data deficits in the field. It will also allow evaluators and regulators alike to gain a better understanding of the circumstances around trafficking, and to track the performance of the various anti-trafficking policies.

Despite the UN initiatives, it has been reported that some countries have declined to report data altogether,¹²⁰⁷ whilst other countries lack the capacity to sufficiently record and share data on trafficking in persons.¹²⁰⁸ Data collected on victims or offenders may be missing or incomplete, and at times it may not be systematically collected, or could be available for only some years, or for some parts of the country.¹²⁰⁹ These disparities in data collection practices often take place in developing countries and regions such as Africa and Asia, and result in there being less knowledge about trafficking patterns and flows, weaker detection of victims, and a reduced conviction of traffickers.¹²¹⁰ The disparities typically lead to an underestimation of the trafficking problem,¹²¹¹ as evaluators of policy performance end up having to extrapolate data from trends and the victims who have been detected. However, it is argued that evaluating policies without core data on the problem would lead to inherent biases about the crime. For example, there would be notions that because many identified victims have faced a specific form of trafficking and exploitation (i.e., involving sexual activities) there would be more victims of this type than other forms of trafficking (i.e., football trafficking).¹²¹² Such inherent biases fail to recognise that the identified victims may simply be easier to detect by law enforcement due to the form of trafficking and exploitation

¹²⁰⁴ United Nations News, 'Rising human trafficking takes on 'horrific dimensions': almost a third of victims are children' (7 January 2019) <<https://news.un.org/en/story/2019/01/1029912>> accessed on 16/11/2019

¹²⁰⁵ UNODC, *Global Report on Trafficking in Persons 2018* (United Nations publication, Sales No. E.19.IV.2) p/16

¹²⁰⁶ UN General Assembly, "Sustainable Development Goals." *SDGs, Transforming our world: the 2030 Agenda* (2015). Goal 16, Indicator 16.2.2

¹²⁰⁷ Saner, Raymond, Lichia Yiu, and Laurel Rush. "The measuring and monitoring of human trafficking." *Public Administration and Policy* (2018). p/95

¹²⁰⁸ United Nations News, 'Rising human trafficking takes on 'horrific dimensions': almost a third of victims are children' (7 January 2019) <<https://news.un.org/en/story/2019/01/1029912>> accessed on 16/11/2019

¹²⁰⁹ UNODC, *Global Report on Trafficking in Persons 2018* (United Nations publication, Sales No. E.19.IV.2) p/15

¹²¹⁰ Ibid.

¹²¹¹ IPEC, *Combating trafficking in children for labour exploitation: A resource kit for policy-makers and practitioners* (International Labour Office; ILO International Programme on the Elimination of Child Labour, Geneva 2008). Book 2: Understanding What Child Trafficking Is, pg. 6-7

¹²¹² Saner, Raymond, Lichia Yiu, and Laurel Rush. "The measuring and monitoring of human trafficking." *Public Administration and Policy* (2018). p/98

being practiced. Whereas the victims of other forms of trafficking and exploitation such as football and labour trafficking, may not be as easily recognisable.

The human trafficking data deficits are even more pronounced in the case of football and FIFA's regime, as the sourcing of data regarding its occurrence has proven to be cursory, at best, especially when compared to the approach taken at international levels. In football, plainly, the problem is "underreported, under-detected, and therefore, under-prosecuted".¹²¹³ Beyond FIFA admitting that the problem exists,¹²¹⁴ there is a lack of precise statistical indicators of the extent of trafficking in the sport.¹²¹⁵ This lack of official data on the problem hinders a clear understanding of: player movements; the exact role of intermediaries and unscrupulous persons in the football trafficking process; if third party ownership takes place; the intra and inter club mechanisms used to source and access foreign talent; and, the regular and irregular migratory routes and transfer flows as related to football trafficking.¹²¹⁶ With FIFA requiring its individual football associations to manage ITMs in their respective regions,¹²¹⁷ the possible lack of coherence in data between the associations prevents regulators and evaluators from attaining comprehensive data on football transfers.¹²¹⁸ If comprehensive data on the problem existed, this would have increased the likelihood of more effective and tailored regulatory responses to the crime being formed.¹²¹⁹ Nevertheless, it is argued that the absence of requisite data on the true extent of football trafficking should not preclude FIFA from creating better avenues for monitoring the problem, in addition to fostering practices which promote better data collection and exchange within its regime.

Aspects of FIFA's regulations

Certain aspects of FIFA's anti-trafficking policies have hindered the performance of its regulations. FIFA's rules have been described as "demonstrably ineffective" in limiting football trafficking,¹²²⁰ but the organisation has not amended its policies to better prevent

¹²¹³ McGee, Darragh. "Displacing childhood: Labour exploitation and child trafficking in sport." In *Labour Migration, Human Trafficking and Multinational Corporations: The Commodification of Illicit Flows*, (Routledge, 2012) pp. 71-90. p/73

¹²¹⁴ FIFA, "Protection of Minors: FAQ" (September 2016) <<https://img.fifa.com/image/upload/xbnooh14lcaxzadstknx.pdf>> accessed on 10/07/2020

¹²¹⁵ McGee, Darragh. "Displacing childhood: Labour exploitation and child trafficking in sport." In *Labour Migration, Human Trafficking and Multinational Corporations: The Commodification of Illicit Flows*, (Routledge, 2012) pp. 71-90. p/73

¹²¹⁶ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/82

¹²¹⁷ FIFA, Circular No. 1468, 23rd January 2015 <<https://resources.fifa.com/image/upload/1468-amendments-to-the-regulations-on-the-status-and-transfer-of-playe-2510650.pdf?cloudid=zro9p178udvmsgy3nzy7>> accessed on 10/07/2020

¹²¹⁸ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/83&5

¹²¹⁹ UNODC, *Global Report on Trafficking in Persons 2018* (United Nations publication, Sales No. E.19.IV.2) p/15

¹²²⁰ FIFPro, "FIFPRO and FIFA Improve Protection of Minors" (28 January 2015) <<https://www.fifpro.org/news/fifpro-and-fifa-improve-protection-of-minors/en/>> accessed on 11 May 2017

the crime. Instead, FIFA maintains that its policies are able to curb the trafficking problem if applied strictly.¹²²¹ Yet, FIFA's rules and sanctions have not always been applied strictly, and the sanctions have not had a deterrent effect on other football clubs looking to traffic and exploit child players. For instance, though FC Barcelona were charged by FIFA for repeatedly breaching its transfer regulations regarding the recruitment of foreign minors,¹²²² soon after the sanction, the other big clubs in Spain (Real Madrid and Atletico Madrid) were similarly accused of breaching the same FIFA rules.¹²²³ Thus, it is argued that the deterrent effect of the FIFA policies have been undermined by the disparities in its implementation. Such as, after being accused of breaching FIFA's rules, Real Madrid were able to successfully challenge their sanction at CAS, and they had their punishment (the fine and duration of their transfer ban) halved.¹²²⁴ Whereas, Atletico Madrid's appeal was unsuccessful, and their transfer ban was upheld (though their fine was reduced by 38%). Atletico argued that this decision was "unfair" and accused FIFA and CAS of "comparative disadvantage and discriminatory treatment" considering the successful appeal of the bigger team, Real Madrid.¹²²⁵ Since these sanctions for the Spanish teams, English club Manchester City have undergone several investigations about their conducting of ITMs,¹²²⁶ and Chelsea have also been sanctioned by FIFA for the questionable recruitment of 29 foreign minors.¹²²⁷ Hence, clubs continue to engage in illicit ITMs despite the existence of the FIFA policies, as the clubs are somewhat safe in the knowledge that if they are caught, their punishment would not be severe and their sanctions could be overturned (or reduced) upon appeal to CAS.

Another key aspect undermining FIFA's anti-trafficking policy performance is the fact that the regulations arguably do not cater to the specific needs of the African minors. Oberg explained that a change of environment and cultural setting could place physical, sociological, and psychological demands on athletes, even resulting in a "culture shock".¹²²⁸

¹²²¹ FIFA, "Protection of Minors: FAQ" (September 2016) <<https://img.fifa.com/image/upload/xbnooh14lcaxzadstknx.pdf>> accessed on 10/07/2020

¹²²² CAS 2014/A/3793 *Fútbol Club Barcelona v. Fédération Internationale de Football Association (FIFA)*

¹²²³ Guardian Sport, 'Real Madrid and Atlético Madrid handed transfer bans for two windows' (*Guardian*, 14 January 2016);

¹²²⁴ CAS 2016/A/4785 *Real Madrid Club de Fútbol v. FIFA*. p/36

¹²²⁵ BBC, "Atletico Madrid transfer ban upheld by Court of Arbitration for Sport" (*BBC*, 1 June 2017) <<https://www.bbc.co.uk/sport/football/40117879>> accessed on 27/11/2018

¹²²⁶ Ben Rumsby, Exclusive: FIFA expands investigation into Manchester City over possible breach of rules over foreign trainees" (*The Telegraph*, 14 March 2018) <<https://www.telegraph.co.uk/football/2018/03/14/fifa-expand-investigation-manchester-city-possible-breach-rules/>> accessed on 27/11/2018

¹²²⁷ FIFA, "Chelsea FC, The Football Association sanctioned for international transfers of minors" (*FIFA Media Release*, 22 February 2019) <<https://www.fifa.com/about-fifa/who-we-are/news/chelsea-fc-the-football-association-sanctioned-for-international-transfers-of-mi>> accessed on 22/02/2019

¹²²⁸ Oberg, Kalervo. "Cultural shock: Adjustment to new cultural environments." *Practical anthropology* 4 (1960): 177-182. Cited in Egilsson, Birnir, and Harald Dolles. "'From Heroes to Zeroes"—self-initiated expatriation of talented young footballers." *Journal of Global Mobility: The Home of Expatriate Management Research* (2017). p/185

These conditions are arguably more predominant when dealing with foreign minors who often suffer from homesickness and loneliness when they come to Europe,¹²²⁹ but are required to adapt to their new environment and perform to the highest standards of play, despite the socio-cultural changes.¹²³⁰ The predominant football environment dictates to the foreign minors that if they do not adjust and adapt quickly they could lose their chance at achieving a professional playing contract, and because they are “foreign”, they are not provided with a “plan B” career opportunity. With FIFA’s regulations, EU minors are provided with this “plan B”, as they are protected by FIFA’s Article 19(2)(b) RSTP which establishes obligations in respect of football education, academic provision, and living standards for EU players.¹²³¹ Celen and others contended that these obligations for the EU teams when signing EU minors were put in place to ensure the players were given a good education and training, and importantly, to guarantee that the player could have an alternative career or occupation if they fail to make it as professional footballers.¹²³² However, for the African minors, current FIFA regulations do not reflect any such fail-safe measures if they are unsuccessful in their footballing trials.¹²³³ This gap exists within the policies despite the socio-cultural changes the foreign minors are known to face during their acclimatisation to a new country and environment. Yet, if a non-EU minor is unable to secure a playing contract abroad after undergoing trials, he runs the risk of being released from the club. After the release, there is then a heightened risk that the minor could be exploited or trafficked to another team, or he could be put in a precarious situation by unscrupulous persons in the foreign country.¹²³⁴

The imbalanced treatment between the aspiring African and EU minors creates the avenue for EU teams and unscrupulous intermediaries to transfer and treat the African minors with no long-term regard for their welfare and safety. For this reason, there are bound to be key questions about the rights and welfare of young foreign players within the sport.¹²³⁵ Jean-Claude Mbvoumin, the founder of the football trafficking charity Culture Foot Solidaire

¹²²⁹ Egilsson, Birnir, and Harald Dolles. ““From Heroes to Zeroes”—self-initiated expatriation of talented young footballers.” *Journal of Global Mobility: The Home of Expatriate Management Research* (2017). p/185

¹²³⁰ Najarian, Alex C, 'The Lost Boys: FIFA's Insufficient Efforts to Stop Trafficking of Youth Footballers' (2015) 22 Sports Law.J. 151.p/155.

¹²³¹ FIFA Regulations on the Status and Transfer of Players (2020).

¹²³² Celen, Burcin, Leo Lederman, Angelo Rigopoulos, José Alfonso Rodriguez, and Piotr Sadowski. "International Transfers of Minors: Recommendations to Improve the Protections of Young Players in the Current Transfer System." (2010) CIES. p. 33-4

¹²³³ Najarian, Alex C, 'The Lost Boys: FIFA's Insufficient Efforts to Stop Trafficking of Youth Footballers' (2015) 22 Sports Law.J. 151., p. 171

¹²³⁴ European Commission, “White Paper - White Paper on Sport” Brussels, COM (2007) 391 final. Article 4.5

¹²³⁵ Drywood, Eleanor, ““When we buy a young boy ...” Migrant Footballers, Children’s Rights and the Case for EU Intervention” in Stalford, Helen and Ingi Iusmen (Eds), *The EU as a children’s rights actor. Law, policy, and structural dimensions* (Barbara Budrich Publishers, Toronto 2016) 191-220. p. 192

(CFS), stated that the circumstances in football are dangerous for young players as they are increasingly “treated like objects”.¹²³⁶ Mbvoumin argued that for the African players to be protected through FIFA’s regulations, FIFA would need to change its current stance and be more paternalistic and social with its approach.¹²³⁷ It is therefore argued that FIFA’s anti-trafficking policies will continue to perform ineffectively in curbing football trafficking, unless, FIFA modifies the aforementioned aspects of its regulations to have a more paternalistic anti-trafficking stance. In so doing, FIFA should prioritise the welfare and wellbeing of the young participants in its regime, over other sporting or commercial interests.

6.2 THE ASSESSED PARTY

Baldwin and others explained that during an evaluation there should be an analysis of the regulatory body/assessed party. They argued that this analysis is to identify the involved actors in the space, and to note the dominant party who is ascribed authority within it.¹²³⁸ In an earlier chapter, this thesis identified the involved parties in football’s regulatory space and explained FIFA’s position as the dominant actor.¹²³⁹ Through the analysis, it became evident that there were likely to be some structural factors caused by FIFA’s organisational setup which could be affecting its policy performance.

6.2.1 Structural Factors

With FIFA’s structure and its TPR regime, FIFA’s leadership undoubtedly sees FIFA as a big player on the global stage.¹²⁴⁰ FIFA’s formal composition has led to analogies being drawn between FIFA and other public international organisations (such as the UN¹²⁴¹) where the rule of law, transparency, accountability, and impartiality, guide the decision-making processes.¹²⁴² The key difference between the UN and FIFA, however, is that FIFA does not have the same requirements or imposed objectives as the public international organisations. FIFA’s main mission remains “to promote the game of football, protect its integrity and bring

¹²³⁶ FIFA, “Culture Foot Solidaire protecting youth” (FIFA.com, 21 Oct 2008) <<http://www.fifa.com/sustainability/news/y=2008/m=10/news=culture-foot-solidaire-protecting-youth-920094.html>> accessed on 25/10/2018

¹²³⁷ FIFA, “Culture Foot Solidaire protecting youth” (FIFA.com, 21 Oct 2008) <<http://www.fifa.com/sustainability/news/y=2008/m=10/news=culture-foot-solidaire-protecting-youth-920094.html>> accessed on 25/10/2018

¹²³⁸ Baldwin, Robert, Martin Cave, and Martin Lodge. *Understanding regulation: theory, strategy, and practice*. Oxford University Press on Demand, 2012. p/35-7

¹²³⁹ 4.4.2: The Dominant Actor

¹²⁴⁰ Tomlinson, Alan. “The supreme leader sails on: Leadership, ethics and governance in FIFA.” *Sport in Society* 17, no. 9 (2014): 1155-1169. p/1161

¹²⁴¹ DiCenso, Matthew B. “A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football’s Governing Body.” *BC Int’l & Comp. L. Rev.* 40 (2017): 115. p/118

¹²⁴² Jorge, Guillermo. “Fixing FIFA: The Experience of the Independent Governance Committee.” *Sw. J. Int’l L.* 21 (2014): 165. p/169

the game to all”,¹²⁴³ and it will do so by acting in the best interest of its members¹²⁴⁴ and stakeholders.¹²⁴⁵ FIFA is not generally tasked with ensuring the prevention of negative externalities which affect the wider public,¹²⁴⁶ such as football trafficking.

There has been a growing critique of FIFA’s governance procedures over recent years, and this has created a crisis in the confidence ascribed to the organisation,¹²⁴⁷ and has undermined FIFA’s public image.¹²⁴⁸ The core problem with FIFA’s governance is that as FIFA’s revenues and TPR regime has grown and it has gained global prominence, the organisation’s procedural requirements have not grown with it.¹²⁴⁹ FIFA retains the same practices for selecting leaders, controlling funds, and conducting business as it did when it was newly formed.¹²⁵⁰ These predated practices have made the organisation prone to corruption and various scandals. For instance, though set up as a democratic organisation with an executive, legislative, and judicial arm, in practice, there is no real devolution of powers or autonomy within the FIFA body.¹²⁵¹ FIFA’s personnel and committee members often bow to the wishes of the FIFA leader,¹²⁵² which means that due to the concentration of powers on the FIFA president, the organisation often operates as a centralised private organisation.¹²⁵³ This, rather singular, concentration of powers has in turn established the culture of self-aggrandisement, unaccountability, and corruption seen at FIFA.¹²⁵⁴

Corrupted structure

Corruption is defined as “illegal, bad, or dishonest behaviour, especially by people in positions of power.”¹²⁵⁵ Corruption is a global problem and it is a risk wherever power and

¹²⁴³ FIFA, ‘Our Strategy’ (*Explore FIFA*, 13 October 2016) <<https://www.fifa.com/about-fifa/who-we-are/explore-fifa.html>> accessed on 03/10/2019

¹²⁴⁴ Jorge, Guillermo. "Fixing FIFA: The Experience of the Independent Governance Committee." *Sw. J. Int'l L.* 21 (2014): 165. p/170

¹²⁴⁵ Colucci, Michele, and Felix Majani. "The FIFA Regulations on the Labour Status and Transfer of Players." *Indonesian J. Int'l L.* 5 (2007): 681. p/682

¹²⁴⁶ Duval, Antoine. "The FIFA regulations on the status and transfer of players: Transnational law-making in the shadow of Bosman." In *The legacy of Bosman*, pp. 81-116. TMC Asser Press, The Hague, 2016. p/82

¹²⁴⁷ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/2

¹²⁴⁸ Tomlinson, Alan. "The supreme leader sails on: Leadership, ethics and governance in FIFA." *Sport in Society* 17, no. 9 (2014): 1155-1169. p/1155

¹²⁴⁹ Bank, Steven A. "Reforming FIFA from the Inside out." *Vand. J. Transnat'l L.* 52 (2019): 265. p/279

¹²⁵⁰ Bean, Bruce W. "The Perfect Crime: FIFA and the Absence of Accountability in Switzerland." *Md. J. Int'l L.* 32 (2017): 68. p/84

¹²⁵¹ Jorge, Guillermo. "Fixing FIFA: The Experience of the Independent Governance Committee." *Sw. J. Int'l L.* 21 (2014): 165. p/167

¹²⁵² Tomlinson, Alan. "The supreme leader sails on: Leadership, ethics and governance in FIFA." *Sport in Society* 17, no. 9 (2014): 1155-1169. p/1160

¹²⁵³ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/89

¹²⁵⁴ Tomlinson, Alan. "The supreme leader sails on: Leadership, ethics and governance in FIFA." *Sport in Society* 17, no. 9 (2014): 1155-1169. p/1160

¹²⁵⁵ Cambridge Dictionary, “Corruption” <<https://dictionary.cambridge.org/dictionary/english/corruption>> accessed on 04/10/2019

politics are practised.¹²⁵⁶ In sport, corruption could range from a simple bribe, to multinational crime syndicates seeking to manipulate sporting events across the globe.¹²⁵⁷ Considering FIFA's significant TPR regime and its likeness to public organisations, the constant reports of corruption at FIFA could have a widespread effect beyond the sport.¹²⁵⁸ Scholars have linked corruption by nation states to weak governance systems which have had a detrimental impact on society, as it could lead to problems like human trafficking.¹²⁵⁹ Thus, it could be argued that there is equally a connection between corruption and the corrupt practices at FIFA, and the occurrence of football trafficking at the bottom of FIFA's football pyramid.

FIFA have faced corruption scandals and allegations of governance problems regarding their announcement of Russia and Qatar as the hosts for the 2018 and 2022 World Cups, respectively.¹²⁶⁰ Such allegations have been a constant at FIFA because FIFA has the capacity to "ignite a geopolitical fire"¹²⁶¹ with its sporting decisions, as these tend to have a longstanding socio-political and economic effect on nation states. Yet, when matters related to corruption occur, nation states are reluctant to intervene in FIFA affairs. FIFA's power ensures that the corruption scandals it is involved in often lead to no more than internal sanctions and minor sectoral crises within the organisation.¹²⁶² Consequently, there is no long-term or significant improvements to FIFA's practices in the aftermath, thus leading to claims that "football and FIFA are corrupt. Very, very corrupt".¹²⁶³

FIFA has arguably faced issues in adequately handling corruption because of its organisational and structural composition.¹²⁶⁴ FIFA's pyramidal structure means that its resources and benefits are not distributed evenly across the different levels of football.¹²⁶⁵

¹²⁵⁶ Pielke Jr, Roger. "Obstacles to accountability in international sports governance." *Transparency International, global corruptions report: Soccer* (2016). p/3

¹²⁵⁷ Kihl, Lisa A., James Skinner, and Terry Engelberg. "Corruption in sport: understanding the complexity of corruption." (2017) *European Sport Management Quarterly*, 17:1, 1-5. p/2

¹²⁵⁸ Boudreaux, Christopher John, Gokhan Karahan, and Morris Coats. "Bend it like FIFA: corruption on and off the pitch." *Managerial Finance* 42, no. 9 (2016): 866-878. p/366

¹²⁵⁹ Saner, Raymond, Lichia Yiu, and Laurel Rush. "The measuring and monitoring of human trafficking." *Public Administration and Policy* (2018). p/100

¹²⁶⁰ Král, Pavel, and Graham Cuskelly. "A model of transparency: determinants and implications of transparency for national sport organizations." *European Sport Management Quarterly* 18, no. 2 (2018): 237-262. p/238

¹²⁶¹ DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 115. p/116

¹²⁶² Bayle, Emmanuel, and Hervé Rayner. "Sociology of a scandal: the emergence of 'FIFAgate'." *Soccer & Society* 19, no. 4 (2018): 593-611. p/604

¹²⁶³ Bean, Bruce W. "FIFA Is Corruption: What Is to be Done." *Mich. St. Int'l L. Rev.* 27 (2018): 197 p/260

¹²⁶⁴ DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 115. p/131

¹²⁶⁵ Jorge, Guillermo. "Fixing FIFA: The Experience of the Independent Governance Committee." *Sw. J. Int'l L.* 21 (2014): 165. p/167

This opens the door for the smaller and more corruptible MAs¹²⁶⁶ to be flattered, cajoled, rewarded or bribed, for their support and votes when elections for the next president or World Cup location arises.¹²⁶⁷ FIFA executives and board members are in a unique position to demand payoffs, and they are able to punish adversaries with their venue selection for football tournaments.¹²⁶⁸ The following examples illustrate the depth of the corruption problem in football and how this could limit optimum policy performance.¹²⁶⁹

In May 2015, Swiss authorities arrested top FIFA executives at the behest of U.S. officials because of “rampant, systemic and deep-rooted” corruption spanning “at least two generations of soccer officials.”¹²⁷⁰ It was reported that forty-one people or entities were charged with fraud, bribery, and money laundering and other schemes to solicit and receive more than \$200 million in bribes and kickbacks.¹²⁷¹ Though the true extent of FIFA’s corruption scandals could potentially go beyond this reported sum,¹²⁷² it was believed that the money that was diverted for private gain was supposed to trickle down to the benefit of the people at the bottom of FIFA’s pyramid.¹²⁷³ The fact that the diverted funds were meant for social causes could have enhanced the vulnerabilities of the at-risk minors, thus increasing the likelihood of their being trafficked and exploited.¹²⁷⁴

During the raid of FIFA, former president, Joseph Blatter, and former UEFA President, Michel Platini, along with the presidents of other football confederations, were also indicted and/or suspended for several ethical violations related to corruption.¹²⁷⁵ After the arrests and scandals, FIFA’s new president, Gianni Infantino, stepped in to try and improve the governance issues and reshape the organisation’s image, but the corruption problems seem to have persisted.¹²⁷⁶ During his campaign to be elected president, Infantino promised that FIFA would pay each of its MAs \$5 million. This was a promise that FIFA’s public accounting auditors, KPMG, alerted that FIFA did not have the necessary internal

¹²⁶⁶ DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 115. p/131

¹²⁶⁷ Tomlinson, Alan. "The supreme leader sails on: Leadership, ethics and governance in FIFA." *Sport in Society* 17, no. 9 (2014): 1155-1169. p/1161

¹²⁶⁸ Boudreaux, Christopher John, Gokhan Karahan, and Morris Coats. "Bend it like FIFA: corruption on and off the pitch." *Managerial Finance* 42, no. 9 (2016): 866-878. p/866

¹²⁶⁹ Bank, Steven A. "Reforming FIFA from the Inside out." *Vand. J. Transnat'l L.* 52 (2019): 265. p/280-1

¹²⁷⁰ DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 115. p/116

¹²⁷¹ Bank, Steven A. "Reforming FIFA from the Inside out." *Vand. J. Transnat'l L.* 52 (2019): 265. p/283

¹²⁷² Boudreaux, Christopher John, Gokhan Karahan, and Morris Coats. "Bend it like FIFA: corruption on and off the pitch." *Managerial Finance* 42, no. 9 (2016): 866-878. p/369

¹²⁷³ Bank, Steven A. "Reforming FIFA from the Inside out." *Vand. J. Transnat'l L.* 52 (2019): 265. p/283-4

¹²⁷⁴ Ruggie John, "For the game. For the world. FIFA and human rights" (2016) Harvard Kennedy School <https://www.hks.harvard.edu/sites/default/files/Ruggie_humanrightsFIFA_reportApril2016.pdf> accessed on 31/08/19. p/25

¹²⁷⁵ Bank, Steven A. "Reforming FIFA from the Inside out." *Vand. J. Transnat'l L.* 52 (2019): 265. p/267-8

¹²⁷⁶ Bank, Steven A. "Reforming FIFA from the Inside out." *Vand. J. Transnat'l L.* 52 (2019): 265. p/284

procedures to ensure that these funds would be properly utilised.¹²⁷⁷ Nevertheless, Infantino insisted that the sums be paid, and KPMG subsequently resigned, citing a lack of “trust that the new management would do what they said they were going to do to improve governance.”¹²⁷⁸

Moreover, with FIFA’s personnel and committee members bowing to the wishes of the FIFA leader,¹²⁷⁹ Infantino has been able to reshape the billion-dollar FIFA empire into an organisation that is subservient to him.¹²⁸⁰ FIFA, as with most sports organisations, have been unable to operate a good governance structure with an appropriate separation of powers,¹²⁸¹ thereby allowing Infantino to push through key resolutions which enable the FIFA Council to remove members of FIFA’s “independent” committees. Infantino was faced with allegations of ethical violations, after reports emerged that he had ordered the destruction of tapes of a FIFA Council meeting, made lavish expenditures without authorisation, and improperly attempted to influence the election of the next UEFA and CAF president.¹²⁸² During Infantino’s investigation, the FIFA president arranged for the sudden removal of the FIFA ethics committee chairmen and members.¹²⁸³ This led to the suggestion that Infantino was subsequently cleared of any ethical violations because the members of the independent committee were worried that they would be replaced if they voted against him.¹²⁸⁴ In 2020, Infantino was again faced with allegations of corruption,¹²⁸⁵ and he was cleared by the ethics committee several weeks later.¹²⁸⁶

Non-Profit Private Legal Order

Though FIFA acts as a supranational entity, it is domiciled in Switzerland and registered as a non-profit organisation (NPO) under Swiss law.¹²⁸⁷ FIFA’s NPO status has provided

¹²⁷⁷ Bean, Bruce W. "FIFA Is Corruption: What Is to be Done." *Mich. St. Int'l L. Rev.* 27 (2018): 197 p/245

¹²⁷⁸ Bank, Steven A. "Reforming FIFA from the Inside out." *Vand. J. Transnat'l L.* 52 (2019): 265. p/272

¹²⁷⁹ Tomlinson, Alan. "The supreme leader sails on: Leadership, ethics and governance in FIFA." *Sport in Society* 17, no. 9 (2014): 1155-1169. p/1160

¹²⁸⁰ Bean, Bruce W. "FIFA Is Corruption: What Is to be Done." *Mich. St. Int'l L. Rev.* 27 (2018): 197 p/250

¹²⁸¹ Foster, Ken, 'How can sport be regulated?' in Greenfield, S. and G. Osborn (eds), *Law and sport in contemporary society* (Frank Cass Publishers, 2000) p/279

¹²⁸² Bank, Steven A. "Reforming FIFA from the Inside out." *Vand. J. Transnat'l L.* 52 (2019): 265. p/270-1

¹²⁸³ Conn, David, "Gianni Infantino faced investigation by Fifa ethics committee for alleged malpractice" (*The Guardian*, June 2017) <<https://www.theguardian.com/football/2017/jun/18/gianni-infantino-fifa-president-ethics-committee-under-investigation-alleged-malpractice>> accessed 26/12/2020

¹²⁸⁴ Bank, Steven A. "Reforming FIFA from the Inside out." *Vand. J. Transnat'l L.* 52 (2019): 265. p/271

¹²⁸⁵ BBC, "Gianni Infantino: Legal proceedings launched against Fifa president" (*BBC Sport*, July 2020) <<https://www.bbc.co.uk/sport/football/53598206>> accessed on 30/07/2020

¹²⁸⁶ Evans, Simon, "Fifa's ethics committee clears president Gianni Infantino after investigation" (*Independent*, 20 August 2020) <<https://www.independent.co.uk/sport/football/fifa-ethics-committee-president-gianni-infantino-investigation-cleared-a9679656.html>> accessed on 27/08/2020

¹²⁸⁷ Bean, Bruce W. "The Perfect Crime: FIFA and the Absence of Accountability in Switzerland." *Md. J. Int'l L.* 32 (2017): 68. p/80

several benefits to the organisation, but these benefits equally reflect some of the structural factors hindering FIFA's policy performance.

First, no domestic government has the power to subject FIFA to formal state authority, with the exception of Switzerland.¹²⁸⁸ This is because NPOs are often only subject to regulation from the country where they are incorporated and the country where they operate, which in the case of FIFA is Switzerland.¹²⁸⁹ Switzerland, however, have repeatedly taken a laissez-faire approach regarding football's decades of match-fixing, money laundering, looting, self-dealing, and bribery.¹²⁹⁰ The limited interest shown by Swiss authorities paved the way for FIFA's years of unaccountability and led to claims that Switzerland are "implicitly complicit" in FIFA's corruption.¹²⁹¹ The complicity is exacerbated by studies which show that Switzerland's neutrality has been to enable the Swiss "perpetuate their power and in many cases enrich themselves individually at the organization's expense."¹²⁹² Therefore, both FIFA and Swiss officials have been accused of being corrupt.

Second, because it is an NPO, FIFA receives far less oversight¹²⁹³ and can avoid practices that regular businesses must abide by. For example, FIFA is not required to disclose what it does with its money by publishing its financial accounts.¹²⁹⁴ Therefore, many of FIFA's fiscal decisions remain undisclosed.¹²⁹⁵ FIFA enjoys exemptions from domestic anti-corruption laws, and FIFA is given substantial freedom to administer its own affairs.¹²⁹⁶ Alternatively, for-profit organisations (FPOs) are regulated largely through the market process, with stockholders having strong incentives to maintain close oversight and demanding transparency of transactions.¹²⁹⁷ FPOs are subject to "proportional sharing" requirements, whereby the board is expected to not discriminate when making

¹²⁸⁸ DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 115. p/130-1

¹²⁸⁹ Boudreaux, Christopher John, Gokhan Karahan, and Morris Coats. "Bend it like FIFA: corruption on and off the pitch." *Managerial Finance* 42, no. 9 (2016): 866-878. p/866

¹²⁹⁰ DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 115. p/131

¹²⁹¹ Bean, Bruce W. "The Perfect Crime: FIFA and the Absence of Accountability in Switzerland." *Md. J. Int'l L.* 32 (2017): 68. p/71&80

¹²⁹² Jorge, Guillermo. "Fixing FIFA: The experience of the independent governance committee." *Sw. J. Int'l L.* 21 (2014): 165. p/171

¹²⁹³ Boudreaux, Christopher John, Gokhan Karahan, and Morris Coats. "Bend it like FIFA: corruption on and off the pitch." *Managerial Finance* 42, no. 9 (2016): 866-878. p/866

¹²⁹⁴ Jennings, Andrew. "Investigating corruption in corporate sport: The IOC and FIFA." *International Review for the Sociology of Sport* 46, no. 4 (2011): 387-398. p/395

¹²⁹⁵ Boudreaux, Christopher John, Gokhan Karahan, and Morris Coats. "Bend it like FIFA: corruption on and off the pitch." *Managerial Finance* 42, no. 9 (2016): 866-878. p/368

¹²⁹⁶ DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 115. p/130

¹²⁹⁷ Boudreaux, Christopher John, Gokhan Karahan, and Morris Coats. "Bend it like FIFA: corruption on and off the pitch." *Managerial Finance* 42, no. 9 (2016): 866-878. p/866

distributions.¹²⁹⁸ With the sharing requirements in FPOs, shareholders are likely to vote for what is in the best interest of the organisation because that will also produce the greatest benefit for themselves.¹²⁹⁹ Whereas, with NPOs and private institutions like FIFA, the best interest of the organisation may not always be the aim of the officials in charge, but rather, the aim tends to be promotion of wealth redistribution within the group.¹³⁰⁰

FIFA treats its MAs differently from one another because of its pyramidal structure,¹³⁰¹ and this furthers an uneven distribution of resources between the MAs.¹³⁰² The uneven treatment contributes to the self-aggrandisement and corruption culture seen at FIFA,¹³⁰³ and it also influences voting decisions.¹³⁰⁴ This is because the smaller and more corruptible MAs¹³⁰⁵ have personnel who are more likely to be cajoled for their support and votes,¹³⁰⁶ owing to individual promises and the monetary benefits on offer, rather than by an assessment of what is best for the organisation as a whole.¹³⁰⁷

Third, with FIFA's NPO status, the organisation enjoys favourable tax relief from Switzerland and its World Cup host countries. Meaning, the substantial revenues FIFA generates from the World Cup (such as the \$5.3 billion from the 2018 competition in Russia¹³⁰⁸) is mostly tax free.¹³⁰⁹ Through FIFA's billions in untaxed profits, unparalleled bargaining power, and with its limited oversight, DiCenso argued that it is unsurprising that FIFA officials have been able to continuously push the boundaries of legality.¹³¹⁰ Seeing as FIFA is not ordinarily accountable to any higher authority (except the neutral Switzerland), FIFA officials have been able to take advantage of the temptations presented by football's billions of dollars.¹³¹¹ The underlying issue remains that these corruptible FIFA officials are often leading personnel at football associations, and therefore have a seat and a valuable vote

¹²⁹⁸ Bank, Steven A. "Reforming FIFA from the Inside out." *Vand. J. Transnat'l L.* 52 (2019): 265. p/297

¹²⁹⁹ Bank, Steven A. "Reforming FIFA from the Inside out." *Vand. J. Transnat'l L.* 52 (2019): 265. p/298

¹³⁰⁰ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/136

¹³⁰¹ Bank, Steven A. "Reforming FIFA from the Inside out." *Vand. J. Transnat'l L.* 52 (2019): 265. p/298

¹³⁰² Jorge, Guillermo. "Fixing FIFA: The Experience of the Independent Governance Committee." *Sw. J. Int'l L.* 21 (2014): 165. p/167

¹³⁰³ Tomlinson, Alan. "The supreme leader sails on: Leadership, ethics and governance in FIFA." *Sport in Society* 17, no. 9 (2014): 1155-1169. p/1160

¹³⁰⁴ Bank, Steven A. "Reforming FIFA from the Inside out." *Vand. J. Transnat'l L.* 52 (2019): 265. p/298

¹³⁰⁵ DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 115. p/131

¹³⁰⁶ Tomlinson, Alan. "The supreme leader sails on: Leadership, ethics and governance in FIFA." *Sport in Society* 17, no. 9 (2014): 1155-1169. p/1161

¹³⁰⁷ Bank, Steven A. "Reforming FIFA from the Inside out." *Vand. J. Transnat'l L.* 52 (2019): 265. p/298

¹³⁰⁸ FIFA, "FIFA Financial Report 2018" (FIFA, 2019) <<https://resources.fifa.com/image/upload/fifa-financial-report-2018.pdf?cloudid=xzshsoe2ayttyquuxhq0>> accessed on 06/07/2020. p/2

¹³⁰⁹ DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 115. p/130-1

¹³¹⁰ DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 115. p/131

¹³¹¹ Bean, Bruce W. "FIFA Is Corruption: What Is to be Done." *Mich. St. Int'l L. Rev.* 27 (2018): 197 p/230-1

at the FIFA Congress. Rather than using FIFA resources to make social change in regions and countries renowned for being source areas for victims of football trafficking, for instance, the FIFA officials appear to be more interested in achieving private monetary gains at the expense of the organisation's public image.

One member, One vote

FIFA implements a "one member, one vote" system in its Congress.¹³¹² And though this is in theory a pure democracy, where each MA has an equal vote,¹³¹³ it is also inherently imbalanced in nature. The structure favours the smaller and more corruptible MAs by placing them in a disproportionately powerful position where they can be bribed¹³¹⁴ in exchange for their support and votes.¹³¹⁵ This structural weakness stems from football's financial arrangements whereby several MAs beneath FIFA's elite level have insufficient resources needed to sustain themselves.¹³¹⁶ This limitation has meant that even legitimate funding from FIFA to a small MA could potentially influence the association's votes.¹³¹⁷ For instance, when Havelange incorporated new MAs into FIFA's pyramid and awarded them with financial assistance to support football in their respective countries, the associations showed gratitude to Havelange by supporting him with their votes in five of his re-election campaigns.¹³¹⁸

The issue with the financial assistance is that though a relatively small amount of funding goes a long way in smaller nations, the money that is earmarked for development projects can also be easily misallocated into the private pockets of football officials. Yet, this problem of misappropriated funds appears to be one of limited concern to FIFA. When Blatter took the reins, between 1998 and 2014, \$1.1 billion was disbursed by FIFA to the various MAs and confederations.¹³¹⁹ It has been suggested that the grants were designed to corrupt the MAs since they were used to satisfy campaign promises, and the payments were made irrespective of whether or not they would be diverted for personal use.¹³²⁰ Although FIFA

¹³¹² DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 115. p/131

¹³¹³ Bean, Bruce W. "FIFA Is Corruption: What Is to be Done." *Mich. St. Int'l L. Rev.* 27 (2018): 197 p/211

¹³¹⁴ DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 131-3

¹³¹⁵ Tomlinson, Alan. "The supreme leader sails on: Leadership, ethics and governance in FIFA." *Sport in Society* 17, no. 9 (2014): 1155-1169. p/1161

¹³¹⁶ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/2

¹³¹⁷ DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 132-3

¹³¹⁸ Bean, Bruce W. "FIFA Is Corruption: What Is to be Done." *Mich. St. Int'l L. Rev.* 27 (2018): 197 p/211

¹³¹⁹ Conn, David. *The Fall of the House of FIFA*. Random House, 2017. p/63. Cited in Bean, Bruce W. "FIFA Is Corruption: What Is to be Done." *Mich. St. Int'l L. Rev.* 27 (2018): 197 p/212

¹³²⁰ Bean, Bruce W. "FIFA Is Corruption: What Is to be Done." *Mich. St. Int'l L. Rev.* 27 (2018): 197 p/212

may not consider the diverted funds as a serious breach to its practices and operations, the funds perpetuate illicit practices within football, thereby leading to more significant problems of match-fixing, money laundering, and ultimately, human rights related problems like trafficking.¹³²¹ Ruggie stated that the lack of financial integrity at FIFA is itself a foundational source of human rights risks for those involved in the sport, as issues such as bribery and corruption enable the involved parties to evade their legal and contractual requirements to their participants, including the requirements related to the protection of their human rights.¹³²²

Conflicts of Interest

FIFA's billions of dollars in untaxed revenues attracts a wide range of interests¹³²³ and its fair share of associated conflicts, as several FIFA officials prioritise their personal interests over the good of the organisation.¹³²⁴ There are common trends of conflicting interests at FIFA that are reflected through key personnel chasing self-interests, high salaries, bonuses, and prolonged tenures as board members.¹³²⁵ Even though these trends underline the self-serving environment at FIFA, they are also trends seen at other SGBs which have regulatory authority and simultaneously control their own commercial activities with relatively limited supervision.¹³²⁶ FIFA officials have been involved in illicit actions in the projects associated with football,¹³²⁷ and also in the decision-making processes leading to the selection of host venues and the selling of media rights for football competitions.¹³²⁸ FIFA officials have been accused of rigging bids for the World Cup and accepting bribes in exchange for marketing and broadcast contracts.¹³²⁹

A key illustration of these conflicting interests is the case of Jack Warner. Warner was vice president of FIFA and president of CONCACAF and the Caribbean Football Union

¹³²¹ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/2

¹³²² Ruggie John, "For the game. For the world. FIFA and human rights" (2016) Harvard Kennedy School <https://www.hks.harvard.edu/sites/default/files/Ruggie_humanrightsFIFA_reportApril2016.pdf> accessed on 31/08/19. p/21

¹³²³ Pielke Jr, Roger. "Obstacles to accountability in international sports governance." *Transparency International, global corruptions report: Soccer* (2016). p/4

¹³²⁴ Zeidan, Obada S., and Simon G. Fauser. "Corporate governance and corporate social responsibility—the case of FIFA." *Problems and Perspectives in Management* 13, no. 2 (2015): 183-192. p/189

¹³²⁵ Jarvie G, Thornton, James and Mackie, Hector, *Sport, Culture and Society: An Introduction* (Third edition., Routledge 2018) p/151

¹³²⁶ Vermeersch, An. "Case C-49/07, *Motosykletistiki Omospondia Ellados NPID (MOTOE) v. Elliniko Dimosio*, judgment of the Court of Justice (Grand Chamber) of 1 July 2008." *Common Market Law Review* 46, no. 4 (2009). p/8

¹³²⁷ Pielke Jr, Roger. "Obstacles to accountability in international sports governance." *Transparency International, global corruptions report: Soccer* (2016). p/4

¹³²⁸ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/137

¹³²⁹ DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 115. p/116

(CFU).¹³³⁰ Warner was accused of receiving bribes and siphoning money on several occasions during his tenure to support national bids to host World Cups and to deliver votes for FIFA presidential candidates.¹³³¹ Prior to the 2010 World Cup, and to secure his votes (and that of his bloc of MAs under the CFU), Warner received and pocketed sums totalling \$10 million from South African representatives. This money was reportedly meant for a “diaspora legacy programme to develop football in the Caribbean region.”¹³³² Warner also received a bribe from the former president of the Asian Football Confederation, Mohamed Bin Hammam, for his support in Hammam’s bid to become the next FIFA president.¹³³³ The Warner example is symptomatic of FIFA as an organisation and its corruptible personnel in top positions of power and influence.¹³³⁴ The pervasiveness of Warner’s actions run deep through FIFA,¹³³⁵ and it showcases the general acceptance of the way FIFA operates as being “normal”.¹³³⁶

FIFA MAs and related personnel are also culpable in the organisation’s corrupt practices. The MAs at times adopt adverse rent seeking behaviours to capitalise on the economic impact of hosting major sporting events. With the significant development consequences and investments associated with hosting a competition like the World Cup,¹³³⁷ MAs have been accused of promoting their own self-interest at the expense of football.¹³³⁸ The scramble for profit making opportunities related to the World Cup (e.g., television rights and other economic investments) increases the incentive for corrupt persons and MAs to seek rents through hosting the competition, subsequently feeding other corrupt practices and procedures within FIFA.¹³³⁹ For instance, in Brazil, a significant sum of the country’s infrastructural spending for the 2014 World Cup was diverted/captured by “illicit” activities like overpricing and accounting irregularities.¹³⁴⁰ In addition, the Qatari government promised to invest \$10 billion locally ahead of the 2022 World Cup,¹³⁴¹ which are funds that

¹³³⁰ Zeidan, Obada S., and Simon G. Fauser. "Corporate governance and corporate social responsibility—the case of FIFA." *Problems and Perspectives in Management* 13, no. 2 (2015): 183-192. p/189

¹³³¹ Bank, Steven A. "Reforming FIFA from the Inside out." *Vand. J. Transnat'l L.* 52 (2019): 265. p/280-1

¹³³² Bank, Steven A. "Reforming FIFA from the Inside out." *Vand. J. Transnat'l L.* 52 (2019): 265. p/281-2

¹³³³ Zeidan, Obada S., and Simon G. Fauser. "Corporate governance and corporate social responsibility—the case of FIFA." *Problems and Perspectives in Management* 13, no. 2 (2015): 183-192. p/189

¹³³⁴ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/137

¹³³⁵ Bank, Steven A. "Reforming FIFA from the Inside out." *Vand. J. Transnat'l L.* 52 (2019): 265. p/283

¹³³⁶ Bean, Bruce W. "The Perfect Crime: FIFA and the Absence of Accountability in Switzerland." *Md. J. Int'l L.* 32 (2017): 68. p/84

¹³³⁷ Pielke Jr, Roger. "How can FIFA be held accountable?" *Sport management review* 16, no. 3 (2013): 255-267. p/258

¹³³⁸ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/137

¹³³⁹ Boudreaux, Christopher John, Gokhan Karahan, and Morris Coats. "Bend it like FIFA: corruption on and off the pitch." *Managerial Finance* 42, no. 9 (2016): 866-878. p/368

¹³⁴⁰ *Ibid.* p/369

¹³⁴¹ Pielke Jr, Roger. "How can FIFA be held accountable?" *Sport management review* 16, no. 3 (2013): 255-267. p/258

could have been used for more long-term improvements to the host country, but the rent-seekers within the MAs have instead chosen to use football as an avenue to make profit.¹³⁴²

FIFA as an organisation, can also be accused of conflicting interests which contradict its purported social responsibility and ethical principles.¹³⁴³ For example, on two occasions during the preparations for the 2014 World Cup in Brazil, FIFA ignored the people's interests for its own benefit. First, when many families were evacuated from their homes in favour of the World Cup constructions, the families were moved without compensation. Second, FIFA forced the Brazilian government to overturn its laws around the sale of alcohol within football stadiums, so that its alcohol partner Budweiser could sell beers during the tournament.¹³⁴⁴

Conclusion

The evaluation of the aspects of regulation revealed that the social and systemic factors are significant enough to undermine the efficacy of FIFA's anti-trafficking policies. The social factors showed that the push and pull dynamics result in the young African players having an innate desire to migrate to Europe to achieve socio-economic betterment through football. The absence of legal routes to migrate subsequently leads the aspiring footballers into the hands of unscrupulous persons looking to traffic and exploit them. The systemic factors affecting the performance of FIFA's policies then revealed that data deficits are a general problem in forming pertinent anti-trafficking regulations. However, the efforts of the UN and its member states, and the practices introduced at international level to bridge the knowledge gap in relation to the occurrence of the problem, are in stark contrast to the practices being adopted by FIFA. In FIFA's regulatory regime, there is no adequate data on the trafficking problem, even though the organisation has admitted the problem does exist. Therefore, FIFA's ability to adequately regulate against football trafficking, considering the absence of data, is questionable.

In evaluating FIFA as the assessed party, the structural factors showed that corruption at FIFA is a longstanding problem and is one that has resulted in several negative externalities for the general public. FIFA's corrupted structure, its practices and benefits as an NPO, and its one member one vote policies, have combined to provide an environment in which problems like money laundering, match fixing, and human trafficking, are all allowed to

¹³⁴² Boudreaux, Christopher John, Gokhan Karahan, and Morris Coats. "Bend it like FIFA: corruption on and off the pitch." *Managerial Finance* 42, no. 9 (2016): 866-878. p/369

¹³⁴³ Zeidan, Obada S., and Simon G. Fauser. "Corporate governance and corporate social responsibility—the case of FIFA." *Problems and Perspectives in Management* 13, no. 2 (2015): 183-192. p/189

¹³⁴⁴ Zeidan, Obada S., and Simon G. Fauser. "Corporate governance and corporate social responsibility—the case of FIFA." *Problems and Perspectives in Management* 13, no. 2 (2015): 183-192. p/189

thrive. The conflicts of interest amongst senior personnel at the organisation results in the diversion of essential funds that would help local communities and reduce the risk factors and vulnerabilities of child players. Yet, FIFA remains largely unmoved by these reports.

Chapter 7 - EVALUATING FIFA'S REGULATIONS - DECENTRED REGIMES (LEGITIMACY & ACCOUNTABILITY)

Baldwin and others posited that there is often a difficulty for evaluators when assessing the policy performance of decentred regimes¹³⁴⁵ (where the regulators are autonomous from the state¹³⁴⁶), because of the regulatory structure of these bodies. Black and Prosser¹³⁴⁷ proffered that to counter such difficulties during an evaluation, the dominant actor in the decentred regime should be assessed by yardsticks which determine if the organisation's practices are legitimate and accountable.¹³⁴⁸ Black argued that all regulators, but particularly non-state regulators, need legitimacy to motivate behavioural responses amongst their regulatees.¹³⁴⁹ Unlike state-based regulators whose actions are supported by law, private regulators cannot rely on the authority of law to motivate their regulatees to change their behaviours, or to behave in a certain way.¹³⁵⁰ Thus, the decentred bodies need to be seen as legitimate and accountable by its regulatees to ensure policy compliance. To translate these regulatory prerequisites to the analysis of FIFA, the organisation is required to be legitimate and accountable for its regulations and anti-trafficking policies to have the desired impact in the regime. Black reasoned that there are four challenges which should be addressed when assessing the legitimacy and accountability of a decentred body.¹³⁵¹ These are:

- 1) **Functional challenges:** Relate to the problem of coordination, as organisations within a regulatory regime may have complex interdependencies and lack a central locus of authority. This means that in decentred regimes, there may not be a body whose role it is to coordinate the activities of the multiple participants.¹³⁵²
- 2) **Systemic challenges:** With a plethora of normative orders (i.e., both state and non-state regulations being applicable) the challenge would be in identifying what regulatory norms should be considered as "law" and which should not.¹³⁵³

¹³⁴⁵ Baldwin, Robert, Martin Cave, and Martin Lodge. *Understanding regulation: theory, strategy, and practice*. Oxford University Press on Demand, 2012. p/37

¹³⁴⁶ Black, Julia. "Constructing and contesting legitimacy and accountability in polycentric regulatory regimes." *Regulation & governance* 2, no. 2 (2008): 137-164. p/137-8

¹³⁴⁷ Prosser, Tony, *The regulatory enterprise: Government, regulation, and legitimacy* (OUP Oxford 2010) p/7

¹³⁴⁸ Black, Julia. "Constructing and contesting legitimacy and accountability in polycentric regulatory regimes." *Regulation & governance* 2, no. 2 (2008): 137-164. p/137-8

¹³⁴⁹ Black, Julia. "Constructing and contesting legitimacy and accountability in polycentric regulatory regimes." *Regulation & governance* 2, no. 2 (2008): 137-164. p/148

¹³⁵⁰ *Ibid.*

¹³⁵¹ Black, Julia. "Constructing and contesting legitimacy and accountability in polycentric regulatory regimes." *Regulation & governance* 2, no. 2 (2008): 137-164. p/141

¹³⁵² *Ibid.*

¹³⁵³ *Ibid.*

- 3) **Democratic challenges:** These arise from issues of representation, such as when identifying who should be involved in the decision-making process, and to whom the regulatory body is accountable to, and how.¹³⁵⁴
- 4) **Normative challenges:** These stem from concerns as to the goals and operations of the regulatory regime. For example, in identifying the overriding “good” that is being pursued through the adopted regulatory policy.¹³⁵⁵

In FIFA’s regulatory regime, there is no uncertainty relating to complex interdependencies or a lacking central locus, as FIFA does not share authority with state actors and maintains a monopolistic control of all regulatory matters related to football. Equally, considering FIFA’s position as the dominant actor, norms from the organisation are deemed as “law” within football’s regulatory environment. Therefore, both the functional and systemic challenges mentioned by Black are of limited importance within the context of determining if FIFA is legitimate and accountable. Although significant questions could be posed about FIFA through the democratic challenge (who is represented in the decision-making, and who is the organisation accountable to?) and the normative challenge (is there an overarching good being pursued by FIFA’s policies?).

Discussions relating to the democratic and normative challenges will help to ascertain if FIFA is a legitimate and accountable organisation able to bring about the necessary behaviour change amongst its regulatees. However, prior to discussing these challenges, Black asserts that the evaluator ought to have an appreciation of the organisation being assessed, and a core understanding of what it means to be legitimate and accountable within a decentred regime.¹³⁵⁶ To appreciate the nature of the organisation, Prosser explained that an inter-institutional mapping out of the ‘regulatory space’ would help achieve such an understanding of the body being assessed, as it will highlight the inter-relationships between the regulators and the regulated in the regime.¹³⁵⁷ The previous discussion about football’s regulatory space and the role of FIFA subscribes to Prosser’s assertion of mapping out the inter-relationships within the space. The discussions revealed FIFA as a transnational private regulator with monopoly powers over the sport, and as the dominant actor in the space.¹³⁵⁸

¹³⁵⁴ Black, Julia. "Constructing and contesting legitimacy and accountability in polycentric regulatory regimes." *Regulation & governance* 2, no. 2 (2008): 137-164. p/141

¹³⁵⁵ Black, Julia. "Constructing and contesting legitimacy and accountability in polycentric regulatory regimes." *Regulation & governance* 2, no. 2 (2008): 137-164. p/140-1

¹³⁵⁶ Black, Julia. "Constructing and contesting legitimacy and accountability in polycentric regulatory regimes." *Regulation & governance* 2, no. 2 (2008): 137-164. p/143-4

¹³⁵⁷ Prosser, Tony, *The regulatory enterprise: Government, regulation, and legitimacy* (OUP Oxford 2010) p/7

¹³⁵⁸ 4.4: FIFA’s Private Legal Authority

Thus, in line with Black's assertion, the key question becomes, what does it mean to be legitimate and accountable in a decentred regime?

7.1 WHAT IS LEGITIMACY?

Wolf once asked, "what makes public authority exercised by private actors in the sphere beyond the state *legitimate* authority?"¹³⁵⁹ Legitimate regulatory authority in a decentred regime can be said to exist when there is "a generalised perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norm."¹³⁶⁰ Hence, for the actions of the controlling body in the decentred regime to be deemed as desirable and thereby legitimate, the actions of the body should be rooted in acceptance and "active support" from its regulatees, thereby enabling it to institute the necessary behaviour change.¹³⁶¹ It can be surmised that, particularly for non-state actors such as FIFA, for the organisation's anti-trafficking policies to cause the requisite change amongst its regulatees, the regulatees (and others affected by FIFA's regulatory actions) should accept the policies and show active support for its introduction. This would not only further FIFA's claim to being legitimate, but it will also aid policy compliance between the FIFA members and non-members associated with the sport.

Notwithstanding the presence or absence of the acceptance and active support elements of a claim to legitimacy, FIFA alleges it is a legitimate organisation on account of two main factors. Firstly, the implicit delegation¹³⁶² of powers caused by the state's refusal to regulate sport.¹³⁶³ FIFA, in filling the regulatory gap left by nation states and international law,¹³⁶⁴ assumed responsibility and gained recognition for the application of its special expertise as a 'legitimate' TPR within football's regulatory space.¹³⁶⁵ However, it has been argued that this alone is not enough to ascribe unfettered legitimacy to FIFA, because in general, TPRs

¹³⁵⁹ Wolf, Klaus Dieter. "The non-existence of private self-regulation in the transnational sphere and its implications for the responsibility to procure legitimacy: The case of the *lex sportiva*." *Global Constitutionalism* 3, no. 3 (2014): 275-309. p/278

¹³⁶⁰ Suchman, Mark C. "Managing legitimacy: Strategic and institutional approaches." *Academy of management review* 20, no. 3 (1995): 571-610. p/574. Cited in Black, Julia. "Constructing and contesting legitimacy and accountability in polycentric regulatory regimes." *Regulation & governance* 2, no. 2 (2008): 137-164. p/144

¹³⁶¹ Black, Julia. "Constructing and contesting legitimacy and accountability in polycentric regulatory regimes." *Regulation & governance* 2, no. 2 (2008): 137-164. p/154

¹³⁶² García, Borja, and Henk-Erik Meier. "Keeping private governance private: is FIFA blackmailing national governments?" (2013) 13th EUSA Biennial Conference, Baltimore, Maryland, USA, 11-13, 26pp. p/3

¹³⁶³ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/131

¹³⁶⁴ Wolf, Klaus Dieter. "The non-existence of private self-regulation in the transnational sphere and its implications for the responsibility to procure legitimacy: The case of the *lex sportiva*." *Global Constitutionalism* 3, no. 3 (2014): 275-309. p/301

¹³⁶⁵ García, Borja, and Henk-Erik Meier. "Keeping private governance private: is FIFA blackmailing national governments?" (2013) 13th EUSA Biennial Conference, Baltimore, Maryland, USA, 11-13, 26pp. p/3

who control the space owing to the state's failure to regulate are known to lack legitimacy.¹³⁶⁶ Secondly, FIFA claims to be legitimate through its democratic representation where it purports to serve the shared interests of its members¹³⁶⁷ by exercising its consent-based power as a 'voluntary association'.¹³⁶⁸ Yet, there remain key questions about the voluntary/autonomous nature of the submission to FIFA's authority.

Furthermore, Schwab argued that SGBs typically do not have regulatory legitimacy, due to:

- (1) *the acknowledged failures and conflicts of interest within the governance of SGBs*
- (2) *the lack of involvement of the people bound by the law in the making of it – the players*
- (3) *the ongoing violation of the rights of players – especially vulnerable players who are, naturally, the ones most in need of the protection of the law; and*
- (4) *the law's lack of recognition and compliance with internationally recognised human rights.*¹³⁶⁹

These four assertions by Schwab can be adapted to elements of both the democratic (points 1 and 2) and normative (points 3 and 4) challenges which would justify why FIFA may lack legitimacy. (1) Though the conflicting interests displayed within FIFA's governance may not be enough to deny FIFA's legitimacy on its own,¹³⁷⁰ the combination of the conflicting interests with other structural factors affecting FIFA's policy performance could serve to undermine the democratic processes and claims to legitimacy sought by the organisation. (2) If FIFA's democratic processes do not involve or accommodate for the perspective of the players who are bound by the laws, the organisation's policies may not be accepted or supported by the regulatees, which could lead to non-compliance. Additionally, Schwab's points about (3) the violation of the rights of players, and (4) the deficient recognition of international human rights standards, are both crucial elements which would weaken the argument of an "overriding good" within FIFA's policy provisions and would grossly undermine the existence of legitimacy within the regime.

¹³⁶⁶ García, Borja, and Henk-Erik Meier. "Keeping private governance private: is FIFA blackmailing national governments?" (2013) 13th EUSA Biennial Conference, Baltimore, Maryland, USA, 11-13, 26pp. p/1

¹³⁶⁷ Pielke Jr, Roger. "How can FIFA be held accountable?" *Sport management review* 16, no. 3 (2013): 255-267. p/256

¹³⁶⁸ Freeburn, Lloyd. "The fiction of democracy in FIFA's governance of football and the case of Football Federation Australia." *The International Sports Law Journal* (2019): 1-21. p/1

¹³⁶⁹ Schwab, Brendan. "When We Know Better, We Do Better: Embedding the Human Rights of Players as a Prerequisite to the Legitimacy of Lex Sportiva and Sport's Justice System." *Md. J. Int'l L.* 32 (2017). p/57-8

¹³⁷⁰ Bayle, Emmanuel, and Hervé Rayner. "Sociology of a scandal: the emergence of 'FIFAgate'." *Soccer & Society* 19, no. 4 (2018): 593-611. p/595

7.2 WHAT IS ACCOUNTABILITY?

Accountability is defined as an obligation or willingness to accept responsibility or to account for one's actions.¹³⁷¹ It is a central feature of most global governance structures, including that of centred and decentred regulatory regimes.¹³⁷² Accountability is often mentioned as a joint concern with legitimacy, because accountability is considered to be a critical element in the construction and contestation of legitimacy.¹³⁷³ The UK Better Regulation Task Force (BRTF) suggested that to be accountable “regulators must be able to justify decisions and be subject to public scrutiny”.¹³⁷⁴ Black asserted that being accountable is agreeing to subject one’s self to relationships of external scrutiny which can have consequences.¹³⁷⁵ Though the BRTF and Black agree that to be accountable there must be some form of external scrutiny, the ‘consequences’ element added by Black for unachieved regulatory outcomes is of specific importance here. Stiglitz concurred and explained that accountability requires that:

*(1) people are given certain objectives; (2) there is a reliable way of assessing whether they have met those objectives; and (3) consequences exist for both the case in which they have done what they were supposed to do and the case in which they have not done so.*¹³⁷⁶

Though sports law scholars like Foster have since argued that SGBs have limited accountability because of their set-up as private entities,¹³⁷⁷ FIFA’s regulatory regime is going to be examined in line with Stiglitz’s assertion. Translating Stiglitz’s criteria within the context of FIFA: (1) FIFA’s objective is to regulate all matters relating to football, including the provision of efficient anti-trafficking policies to safeguard children within the sport; (2) various methods have been adopted in this thesis to assess whether FIFA’s policies have met their intended objective of curbing football trafficking; and (3) having established

¹³⁷¹ Merriam-Webster.com Dictionary, “accountability” <<https://www.merriam-webster.com/dictionary/accountability>> accessed 6/8/2020,

¹³⁷² Pielke Jr, Roger. "How can FIFA be held accountable?" *Sport management review* 16, no. 3 (2013): 255-267. p/256

¹³⁷³ Black, Julia. "Constructing and contesting legitimacy and accountability in polycentric regulatory regimes." *Regulation & governance* 2, no. 2 (2008): 137-164. p/149

¹³⁷⁴ Better Regulation Task Force. "Principles of good regulation." *London, Cabinet Office, Regulatory Impact Unit* (2003). p/4

¹³⁷⁵ Black, Julia. "Constructing and contesting legitimacy and accountability in polycentric regulatory regimes." *Regulation & governance* 2, no. 2 (2008): 137-164. p/152

¹³⁷⁶ Stiglitz, Joseph E. "Democratizing the International Monetary Fund and the World Bank: governance and accountability." *Governance* 16, no. 1 (2003): 111-139. Cited in Pielke Jr, Roger. "How can FIFA be held accountable?" *Sport management review* 16, no. 3 (2013): 255-267. p/256

¹³⁷⁷ Foster, Ken, 'How can sport be regulated?' in Greenfield, S. and G. Osborn (eds), *Law and sport in contemporary society* (Frank Cass Publishers, 2000) p/279

that FIFA's policies have not achieved its policy objective of providing the requisite protections, the key question is then are there any consequences for FIFA?

It is noted that the consequences for unmet regulatory objectives are often imposed through accountability mechanisms which keep the controlling regulatory body in check. Pielke provided a list of such accountability mechanisms which could apply to an organisation such as FIFA.¹³⁷⁸ These included the hierarchical, supervisory, fiscal, legal, market, peer, reputational,¹³⁷⁹ and the democratic means of accountability.¹³⁸⁰ Due to accountability being part of the democratic challenges facing FIFA as a decentred body,¹³⁸¹ the accountability mechanisms will be discussed in relation to their significance for FIFA's claim to legitimacy.

7.3 DEMOCRATIC CHALLENGE

The democratic challenge affects the legitimacy and accountability of decentred regimes because it purports that the regulatees may not be adequately represented during the decision-making process, thus making the regulatory body unaccountable.¹³⁸² If strong democratic structures existed, the regulatees would be more willing to accept the regulatory actions of the controlling body, which would improve policy performance. However, Foster argued that many SGBs remain undemocratic because they exclude fans, players, and representatives of communities, from formal representation within their decision-making processes.¹³⁸³ This was echoed by Schwab, who stated that players and the people bound by the laws of SGBs may not always be represented in the democratic structures of the associations,¹³⁸⁴ thereby limiting the SGBs' claim to legitimacy.

7.3.1 Representation at FIFA

The actions of a TPR could be legitimised through its representative democracy and organisational structure.¹³⁸⁵ Though the principles of representative democracy are usually applied to nation states, in the case of FIFA, the organisation's claim to legitimacy through

¹³⁷⁸ Boudreaux, Christopher John, Gokhan Karahan, and Morris Coats. "Bend it like FIFA: corruption on and off the pitch." *Managerial Finance* 42, no. 9 (2016): 866-878. p/867-8

¹³⁷⁹ Pielke Jr, Roger. "How can FIFA be held accountable?" *Sport management review* 16, no. 3 (2013): 255-267. p/259

¹³⁸⁰ Freeburn, Lloyd. "The fiction of democracy in FIFA's governance of football and the case of Football Federation Australia." *The International Sports Law Journal* (2019): 1-21. p/4

¹³⁸¹ Black, Julia. "Constructing and contesting legitimacy and accountability in polycentric regulatory regimes." *Regulation & governance* 2, no. 2 (2008): 137-164. p/141

¹³⁸² Black, Julia. "Constructing and contesting legitimacy and accountability in polycentric regulatory regimes." *Regulation & governance* 2, no. 2 (2008): 137-164. p/141

¹³⁸³ Foster, Ken, 'How can sport be regulated?' in Greenfield, S. and G. Osborn (eds), *Law and sport in contemporary society* (Frank Cass Publishers, 2000) p/274

¹³⁸⁴ Schwab, Brendan. "When We Know Better, We Do Better: Embedding the Human Rights of Players as a Prerequisite to the Legitimacy of Lex Sportiva and Sport's Justice System." *Md. J. Int'l L.* 32 (2017). p/57-8

¹³⁸⁵ Freeburn, Lloyd. "The fiction of democracy in FIFA's governance of football and the case of Football Federation Australia." *The International Sports Law Journal* (2019): 1-21. p/3

this means is furthered by its backing from Swiss legislation which recognises FIFA as a voluntary association that is structured democratically.¹³⁸⁶ It can be argued that a real representative democracy at FIFA would not only improve the quality of governance and reduce corruption and instances of conflicting interests¹³⁸⁷ within the organisation,¹³⁸⁸ but it could also limit the occurrence of the negative externalities which affect the wider public.

For FIFA, the voluntary will of its members and participants to be a part of the organisation is the primary basis for its claim to representative democracy, and legitimacy by extension. However, the autonomous nature of the relationship between FIFA and its members has been called a “quaint legal fiction”.¹³⁸⁹ In practice, the MAs are given little choice in exercising their autonomy. Without complying with FIFA’s stipulations, parties would be unable to engage with professional football in any capacity, considering FIFA’s exclusive control of market access to the sport.¹³⁹⁰ Therefore, there is a general acceptance of FIFA’s regulatory actions by both its members and non-members affected by its policies.¹³⁹¹ Still, the players at the bottom of FIFA’s pyramidal structure, who are bound by the organisation in order to keep participating in the sport,¹³⁹² are unable to make direct contributions to FIFA’s decision-making processes.¹³⁹³ Though football has been dubbed as a “representational sport”,¹³⁹⁴ it is evident that FIFA’s ability to democratically represent its regulatees is itself hindered by FIFA’s organisational structure. Freeburn underlined this issue, as he contended that:

A system in which a participant votes for someone, who votes for someone else, and perhaps so on, through various other layers until someone is ultimately elected to a

¹³⁸⁶ Freeburn, Lloyd. "The fiction of democracy in FIFA’s governance of football and the case of Football Federation Australia." *The International Sports Law Journal* (2019): 1-21. p/3-4

¹³⁸⁷ Zeidan, Obada S., and Simon G. Fauser. "Corporate governance and corporate social responsibility—the case of FIFA." *Problems and Perspectives in Management* 13, no. 2 (2015): 183-192. p/189

¹³⁸⁸ Freeburn, Lloyd. "The fiction of democracy in FIFA’s governance of football and the case of Football Federation Australia." *The International Sports Law Journal* (2019): 1-21. p/18

¹³⁸⁹ Freeburn, Lloyd. "The fiction of democracy in FIFA’s governance of football and the case of Football Federation Australia." *The International Sports Law Journal* (2019): 1-21. p/3-4

¹³⁹⁰ Meier, Henk Erik, and Borja Garcia. "Protecting private transnational authority against public intervention: FIFA’s power over national governments." *Public Administration* 93, no. 4 (2015): 890-906. p/890

¹³⁹¹ Wolf, Klaus Dieter. "The non-existence of private self-regulation in the transnational sphere and its implications for the responsibility to procure legitimacy: The case of the lex sportiva." *Global Constitutionalism* 3, no. 3 (2014): 275-309. p/290-1

¹³⁹² Panagiotopoulos, Dimitrios P. "Lex sportiva and international legitimacy governing: protection of professional players." *US-China Law Review* 8 (2011): 121. p/131

¹³⁹³ Schwab, Brendan. "Embedding the human rights of players in world sport." *The International Sports Law Journal* 17, no. 3-4 (2018): 214-232. p/223

¹³⁹⁴ Bale, John. "The changing face of football: Stadiums and communities." *Soccer & Society* 1, no. 1 (2000): 91-101. Cited in Greenfield, Steve, and Guy Osborn. "Regulating sport: finding a role for the law?" *Sport in Society* 13, no. 2 (2010): 367-379. p/371

*body that makes the rules, cannot masquerade as an expression of the democratic will of the participant.*¹³⁹⁵

Despite FIFA lacking legitimacy, the organisation is left to continually operate in this manner because it is the only “sheriff in town”,¹³⁹⁶ for which all actors looking to engage in organised football must submit, regardless of whether or not they are adequately represented within FIFA’s processes. When FIFA’s regulatory powers are actioned without the requisite legitimacy, this increases the likelihood of wider negative externalities in the regime, leading to circumstances which endangers players and leaves them susceptible to issues which could include trafficking and exploitation.

7.3.2 Accountability and FIFA

Accountability is a vital element in the contestation of legitimacy¹³⁹⁷ and is also a key part of the democratic challenge. As a TPR and major economic player with ties to nearly every part of the world, achieving accountability within FIFA, its leaders, and members, should be a critical aspect of the organisation’s aims.¹³⁹⁸ When SGBs lack accountability it increases the possibility of abuse, and it could also damage the reputation of the organisation as public mistrust may be engendered.¹³⁹⁹ It has been argued that accountability remains a perennial problem for FIFA,¹⁴⁰⁰ as the organisation has reportedly shown a “disdain for any attempt to bring accountability”¹⁴⁰¹ to its ranks. Some have claimed that FIFA does not have a willingness to make its key personnel accountable,¹⁴⁰² as it has “manoeuvred itself into a position where none of its members can really be prosecuted for much of anything.”¹⁴⁰³

With these issues, Boudreaux and others summarised the work of Pielke,¹⁴⁰⁴ who had concluded that there were no clear institutional processes whereby FIFA’s president and its

¹³⁹⁵ Freeburn, Lloyd. "The fiction of democracy in FIFA's governance of football and the case of Football Federation Australia." *The International Sports Law Journal* (2019): 1-21. p/10

¹³⁹⁶ Duval, Antoine. "The FIFA regulations on the status and transfer of players: Transnational law-making in the shadow of Bosman." In *The legacy of Bosman*, pp. 81-116. TMC Asser Press, The Hague, 2016. p/82

¹³⁹⁷ Black, Julia. "Constructing and contesting legitimacy and accountability in polycentric regulatory regimes." *Regulation & governance* 2, no. 2 (2008): 137-164. p/149

¹³⁹⁸ DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 115. p/128

¹³⁹⁹ Foster, Ken, 'How can sport be regulated?' in Greenfield, S. and G. Osborn (eds), *Law and sport in contemporary society* (Frank Cass Publishers, 2000) p/279

¹⁴⁰⁰ Boudreaux, Christopher John, Gokhan Karahan, and Morris Coats. "Bend it like FIFA: corruption on and off the pitch." *Managerial Finance* 42, no. 9 (2016): 866-878. p/867-8

¹⁴⁰¹ Bean, Bruce W. "FIFA Is Corruption: What Is to be Done." *Mich. St. Int'l L. Rev.* 27 (2018): 197. p/258

¹⁴⁰² Jorge, Guillermo. "Fixing FIFA: The Experience of the Independent Governance Committee." *Sw. J. Int'l L.* 21 (2014): 165. p/169

¹⁴⁰³ Schaerlaeckens, Leander, "Sepp Blatter and His World of Corruption Detailed" (Bloomberg Expos, Yahoo! Sports, 2015) Cited in Bean, Bruce W. "The Perfect Crime: FIFA and the Absence of Accountability in Switzerland." *Md. J. Int'l L.* 32 (2017): 68. p/80

¹⁴⁰⁴ Pielke Jr, Roger. "How can FIFA be held accountable?" *Sport management review* 16, no. 3 (2013): 255-267.

MAAs could be held accountable for their actions.¹⁴⁰⁵ It was then contended that this lack of an obvious means to hold FIFA accountable stemmed from its organisational structure.¹⁴⁰⁶ FIFA's structure makes it immune to various accountability mechanisms,¹⁴⁰⁷ thereby allowing FIFA to do as it wishes with little consequences.¹⁴⁰⁸ According to Stiglitz's earlier assertion, this lack of consequences itself alludes to a system with no accountability.¹⁴⁰⁹ Nevertheless, in his analysis, Pielke mentioned and applied several accountability mechanisms to examine the applicability of these within the context of FIFA, and to determine how and why FIFA could be termed as being unaccountable.

The first mechanism is the **hierarchical accountability**, this is the power that superiors have over subordinates within an organisation, allowing them to impose accountability in such circumstances.¹⁴¹⁰ With FIFA's pyramidal structure, it has historically lacked this type of accountability,¹⁴¹¹ as the president and leaders who sit at the top have been accused of corruption¹⁴¹² and accountability failings in the midst of various scandals.¹⁴¹³ The constant allegations of corruption suggests that FIFA may not have held itself to its own self-professed standards¹⁴¹⁴ and its supposed commitment to transparency.¹⁴¹⁵ The transparency problems at FIFA have arguably been worsened by systems such as its one member one vote policy,¹⁴¹⁶ and also the general corruptibility of the MAs and top personnel.¹⁴¹⁷ Though issues of corruption often plague SGBs with an influx of money such as FIFA, consequently making them unaccountable,¹⁴¹⁸ FIFA's governance scandals in particular have highlighted

¹⁴⁰⁵ Boudreaux, Christopher John, Gokhan Karahan, and Morris Coats. "Bend it like FIFA: corruption on and off the pitch." *Managerial Finance* 42, no. 9 (2016): 866-878. p/867-8

¹⁴⁰⁶ Bean, Bruce W. "The Perfect Crime: FIFA and the Absence of Accountability in Switzerland." *Md. J. Int'l L.* 32 (2017): 68. p/84

¹⁴⁰⁷ DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 115. p/133

¹⁴⁰⁸ Pielke Jr, Roger. "Obstacles to accountability in international sports governance." *Transparency International, global corruptions report: Soccer* (2016). p/8

¹⁴⁰⁹ Stiglitz, Joseph E. "Democratizing the International Monetary Fund and the World Bank: governance and accountability." *Governance* 16, no. 1 (2003): 111-139. Cited in Pielke Jr, Roger. "How can FIFA be held accountable?" *Sport management review* 16, no. 3 (2013): 255-267. p/256

¹⁴¹⁰ Pielke Jr, Roger. "How can FIFA be held accountable?" *Sport management review* 16, no. 3 (2013): 255-267. p/259

¹⁴¹¹ DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 115. p/133

¹⁴¹² Bank, Steven A. "Reforming FIFA from the Inside out." *Vand. J. Transnat'l L.* 52 (2019): 265. p/271

¹⁴¹³ Král, Pavel, and Graham Cuskelly. "A model of transparency: determinants and implications of transparency for national sport organizations." *European Sport Management Quarterly* 18, no. 2 (2018): 237-262. p/238

¹⁴¹⁴ Pielke Jr, Roger. "How can FIFA be held accountable?" *Sport management review* 16, no. 3 (2013): 255-267. p/258

¹⁴¹⁵ Jennings, Andrew. "Investigating corruption in corporate sport: The IOC and FIFA." *International Review for the Sociology of Sport* 46, no. 4 (2011): 387-398. p/395

¹⁴¹⁶ Tomlinson, Alan. "The supreme leader sails on: Leadership, ethics and governance in FIFA." *Sport in Society* 17, no. 9 (2014): 1155-1169. p/1165

¹⁴¹⁷ DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 132-3

¹⁴¹⁸ García, Borja, and Henk-Erik Meier. "Keeping private governance private: is FIFA blackmailing national governments?" (2013) 13th EUSA Biennial Conference, Baltimore, Maryland, USA, 11-13, 26pp. p/21

a significant lack of transparency and accountability.¹⁴¹⁹ These circumstances contribute to the football environment where illicit dealings and opaque arrangements are common,¹⁴²⁰ which consequently puts several players involved in the sport at risk of exploitation due to bad governance.

The absence of a sound democratic structure at FIFA has contributed to a deficient **democratic accountability**.¹⁴²¹ FIFA exercises its TPR regulatory powers without being democratically accountable to the wider public who are affected by its decisions, unlike public bodies at the domestic levels of governance.¹⁴²² Olsen noted that to be democratically accountable, the democratic structure of the organisation should be based on appointed officials being accountable to those who elected them.¹⁴²³ And as Freeburn argued, with FIFA's layered democratic system,¹⁴²⁴ there is likely to be an absence of accountability between the elected and the electorate.

With FIFA's wide spectrum of involved actors¹⁴²⁵ and its laws which affect both its members and non-members, the **legal accountability** mechanism would have ensured that FIFA is held accountable by virtue of its registration as a non-profit organisation (NPO) based in Switzerland.¹⁴²⁶ Wrage had stated that "the only entity capable of insisting on transparency [and accountability] at FIFA is the Swiss government",¹⁴²⁷ and Bruce echoed this point as he asserted that "the most direct and effective means of imposing accountability upon FIFA would be through the Swiss government."¹⁴²⁸ However, the Swiss, despite their direct formal authority, have often chosen to be "notoriously laissez-faire"¹⁴²⁹ in their approach to overseeing FIFA.¹⁴³⁰ The relaxed approach is consequential of the significant financial

¹⁴¹⁹ DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 115. p/115

¹⁴²⁰ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/82-3

¹⁴²¹ Meier, Henk Erik, and Borja Garcia. "Protecting private transnational authority against public intervention: FIFA's power over national governments." *Public Administration* 93, no. 4 (2015): 890-906. p/890

¹⁴²² Wolf, Klaus Dieter. "The non-existence of private self-regulation in the transnational sphere and its implications for the responsibility to procure legitimacy: The case of the lex sportiva." *Global Constitutionalism* 3, no. 3 (2014): 275-309. p/276 & 286-7

¹⁴²³ Olsen, Johan P. *Democratic accountability, political order, and change: Exploring accountability processes in an era of European transformation*. Oxford University Press, 2017.

¹⁴²⁴ Freeburn, Lloyd. "The fiction of democracy in FIFA's governance of football and the case of Football Federation Australia." *The International Sports Law Journal* (2019): 1-21. p/10

¹⁴²⁵ Pieth, Mark. "Governing FIFA: Concept paper and report." Geneva, Switzerland: Federation Internationale de Football Association (2011) Cited in Pielke Jr, Roger. "How can FIFA be held accountable?" *Sport management review* 16, no. 3 (2013): 255-267. p/258

¹⁴²⁶ Jorge, Guillermo. "Fixing FIFA: The Experience of the Independent Governance Committee." *Sw. J. Int'l L.* 21 (2014): 165. p/165

¹⁴²⁷ Bean, Bruce W. "FIFA Is Corruption: What Is to be Done." *Mich. St. Int'l L. Rev.* 27 (2018): 197. p/251

¹⁴²⁸ Bean, Bruce W. "The Perfect Crime: FIFA and the Absence of Accountability in Switzerland." *Md. J. Int'l L.* 32 (2017): 68. p/117

¹⁴²⁹ DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 115. p/131

¹⁴³⁰ Pielke Jr, Roger. "How can FIFA be held accountable?" *Sport management review* 16, no. 3 (2013): 255-267. p/262

contributions FIFA (and other SGBs registered in the country) make to the Swiss economy.¹⁴³¹ Additionally, FIFA's registration as an NPO under Swiss law also forms the basis for the unaccountable practices and procedures of the organisation.¹⁴³² Unlike for-profit organisations (FPOs) which claim accountability through their stakeholders,¹⁴³³ democratic practices, and government regulations, NPOs with their diffuse and complex stakeholder relationships¹⁴³⁴ are not subject to the same norms and practices that govern and ensure FPOs are accountable.¹⁴³⁵ Due to there being less restrictions on NPOs, FIFA is not required under Swiss law to publish its financial accounts.¹⁴³⁶ This instrument of accountability is known as **fiscal accountability**. However, because many of FIFA's fiscal decisions remain undisclosed,¹⁴³⁷ the organisation continues to operate independent of state oversight. FIFA's financial independence prevents the state from adopting a monetary incentive system, which is commonly used to hold other non-governmental bodies accountable.¹⁴³⁸ Thus, FIFA's fiscal independence makes this accountability mechanism unworkable.¹⁴³⁹

FIFA's financial backers and commercial partners contribute billions to the organisation, thereby enabling FIFA to be financially independent. These contributions should ordinarily put the sponsors in a position where they are able to demand accountability from FIFA.¹⁴⁴⁰ This accountability mechanism is referred to as pressure from sponsors or **market accountability**.¹⁴⁴¹ However, the practical impact of this accountability has also been ineffective. For example, in the aftermath of the selection of Russia and Qatar as World Cup host countries for 2018 and 2022 respectively, some major sponsors voiced their disdain for this decision,¹⁴⁴² as Castrol, Continental, Johnson-Johnson, Sony, and Emirates announced

¹⁴³¹ Bean, Bruce W. "FIFA Is Corruption: What Is to be Done." *Mich. St. Int'l L. Rev.* 27 (2018): 197. p/252

¹⁴³² Tomlinson, Alan. "The supreme leader sails on: Leadership, ethics and governance in FIFA." *Sport in Society* 17, no. 9 (2014): 1155-1169. p/1165

¹⁴³³ Pielke Jr, Roger. "Obstacles to accountability in international sports governance." *Transparency International, global corruptions report: Soccer* (2016). p/5

¹⁴³⁴ Tomlinson, Alan. "The supreme leader sails on: Leadership, ethics and governance in FIFA." *Sport in Society* 17, no. 9 (2014): 1155-1169. p/1165

¹⁴³⁵ Pielke Jr, Roger. "Obstacles to accountability in international sports governance." *Transparency International, global corruptions report: Soccer* (2016). p/5&8

¹⁴³⁶ DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 115. p/134

¹⁴³⁷ Boudreaux, Christopher John, Gokhan Karahan, and Morris Coats. "Bend it like FIFA: corruption on and off the pitch." *Managerial Finance* 42, no. 9 (2016): 866-878. p/368

¹⁴³⁸ Jorge, Guillermo. "Fixing FIFA: The Experience of the Independent Governance Committee." *Sw. J. Int'l L.* 21 (2014): 165. p/170

¹⁴³⁹ DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 115. p/134

¹⁴⁴⁰ Bean, Bruce W. "FIFA Is Corruption: What Is to be Done." *Mich. St. Int'l L. Rev.* 27 (2018): 197. p/254-5

¹⁴⁴¹ Tomlinson, Alan. "The supreme leader sails on: Leadership, ethics and governance in FIFA." *Sport in Society* 17, no. 9 (2014): 1155-1169. p/1165

¹⁴⁴² Bean, Bruce W. "FIFA Is Corruption: What Is to be Done." *Mich. St. Int'l L. Rev.* 27 (2018): 197. p/255

the end of their sponsorships with FIFA.¹⁴⁴³ Yet, the sponsorship gap meant that new companies which were not immediately recognisable in the west now had a big opportunity to come in and increase their branding via sponsoring FIFA. The sponsorship gap was soon filled by large state-controlled Russian company, Gazprom, and several other Chinese companies,¹⁴⁴⁴ and in so doing limiting the potential effects of the market accountability mechanism. FIFA remained largely unaffected, whilst it continues to be affiliated with several other corporate giants such as Coca-Cola, McDonald's, Visa, and Adidas. These organisations all called for FIFA to address its internal issues in the wake of the previous corruption scandals,¹⁴⁴⁵ but none of the sponsors were inclined to do more than issue public-friendly statements of concern about FIFA's practices.¹⁴⁴⁶

With football's popularity across the globe, **reputational accountability** could also be used by the public to apply pressure on FIFA. The problem with this form of accountability is on the one hand, FIFA has often shown a lack of appreciation of its fiduciary duties to the wider consumers of football.¹⁴⁴⁷ And on the other hand, the fans themselves are more concerned with "what happens on the pitch, and not in the smoky back rooms of football governance".¹⁴⁴⁸ **Peer accountability** implies that another SGB on FIFA's level, such as the International Olympic Committee (IOC), could be able to impose better accountability on FIFA. Then again, the IOC has itself been embroiled in corruption issues,¹⁴⁴⁹ and suffers similar governance failings to FIFA. There is also no evidence to suggest that the IOC could apply this type of accountability to FIFA, or that FIFA has any degree of accountability to the IOC, in the first instance.¹⁴⁵⁰

Fundamentally, the core accountability that could be applied to FIFA is the **supervisory accountability**.

Supervisory accountability

This accountability can be interpreted on two levels.

¹⁴⁴³ Parella, Kishanthi. "Reputational Regulation." *Duke LJ* 67 (2017): 907. p/934

¹⁴⁴⁴ Bean, Bruce W. "FIFA Is Corruption: What Is to be Done." *Mich. St. Int'l L. Rev.* 27 (2018): 197. p/256

¹⁴⁴⁵ Parella, Kishanthi. "Reputational Regulation." *Duke LJ* 67 (2017): 907. p/934

¹⁴⁴⁶ DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 115. p/134

¹⁴⁴⁷ Bean, Bruce W. "FIFA Is Corruption: What Is to be Done." *Mich. St. Int'l L. Rev.* 27 (2018): 197. p/258

¹⁴⁴⁸ DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 115. p/134

¹⁴⁴⁹ Jennings, Andrew. "Investigating corruption in corporate sport: The IOC and FIFA." *International Review for the Sociology of Sport* 46, no. 4 (2011): 387-398.

¹⁴⁵⁰ Pielke Jr, Roger. "How can FIFA be held accountable?" *Sport management review* 16, no. 3 (2013): 255-267. p/263

The first level is when a nation state proposes to act in a direct supervisory role over its home FIFA Member Association,¹⁴⁵¹ i.e., the Spanish government seeking to control the affairs of the Spanish football federation. This accountability is frowned upon by FIFA, as its statutes discourage oversight and interference from nation states and allows FIFA to suspend governments who intervene in football matters.¹⁴⁵² There are several reasons why the states would rather comply with FIFA than go against the organisation's statutes. For example, FIFA's monopoly stranglehold over the sport; the socio-political, socio-cultural, and economic importance of football to various governments; the role football can (and continues to play) in identity politics; the global popularity of football and political leverage that comes with it;¹⁴⁵³ the significance of a nation's participation in international sporting competitions;¹⁴⁵⁴ and, the important club goods FIFA provides to its MAs, of which the wider public/football consumers within the country could potentially benefit.

Though these reasons provide a significant incentive for the state to comply with FIFA, there have been instances whereby nation states have stood up against the organisation. Such as, to address governance failures or to fight misconduct in their home MA¹⁴⁵⁵ and impose more accountable and transparent practices. Over the years, FIFA's response to some of these challenges have included: First, in Greece, after FIFA's intervention and meeting with representatives of the Greek government, the government watered down its initial proposals and left the Greek FA's structure mostly unchanged. Satisfied with this opt-out, FIFA lifted the suspension of the Greek Football Association and national team.¹⁴⁵⁶ Second, in Spain, after the Spanish government attempted to intervene in the matters of the Spanish FA (RFEF) through a court ruling, the RFEF threatened its own government with impending sanctions from FIFA. The RFEF underlined the supremacy of *lex sportiva* (sporting autonomy) over nation states, to show that Football associations themselves could escalate matters up to FIFA with confidence that FIFA would successfully exercise its powerful position and prevent state interference.¹⁴⁵⁷ The Spanish government backed down to avoid conflict with FIFA, and this again highlighted FIFA's ability to consistently defend its autonomy against

¹⁴⁵¹ Pielke Jr, Roger. "How can FIFA be held accountable?" *Sport management review* 16, no. 3 (2013): 255-267. p/260

¹⁴⁵² DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 115. p/133

¹⁴⁵³ Ibid. p/131

¹⁴⁵⁴ Garcia, Borja, and Henk-Erik Meier. "The power of FIFA over national governments: a new actor in world politics?" (2014) Presented at: FLACSO-ISA Joint International Conference, Global and Regional Powers in a Changing World, 23rd-25th July 2014, University of Buenos Aires, Argentina. p/21

¹⁴⁵⁵ Ibid. p/10

¹⁴⁵⁶ Meier, Henk Erik, and Borja Garcia. "Protecting private transnational authority against public intervention: FIFA's power over national governments." *Public Administration* 93, no. 4 (2015): 890-906. p/900

¹⁴⁵⁷ García, Borja, and Henk-Erik Meier. "Keeping private governance private: is FIFA blackmailing national governments?" (2013) 13th EUSA Biennial Conference, Baltimore, Maryland, USA, 11-13, 26pp. p/16-7&20

nation states¹⁴⁵⁸ by forcing governments to deviate from national paths of sports policy. These examples show that FIFA's ability to threaten and/or suspend nation states continues to be an effective hindrance on the capacity of the supervisory accountability.

The second level of the supervisory accountability is between FIFA and the absent supervision from nation states. Under general circumstances with private governing bodies which lack accountability, it often becomes the state's responsibility to procure such legitimacy and accountability for the private body.¹⁴⁵⁹ The state generally tries to resolve this by interfering and correcting the defaulting association through the imposition of constitutional norms on the private body.¹⁴⁶⁰ This state interference is known as the public "shadow of hierarchy" (SoH).¹⁴⁶¹ However, contrary to other forms of private governance, the strength of the SoH is significantly diminished in the case of TPRs such as FIFA.¹⁴⁶² This is as a result of FIFA's financial independence, and the fact that the organisation provides a service for which there is no adequate substitute which the state authorities can provide.¹⁴⁶³

FIFA's significant strength over nation states and its ability to limit effective state intervention¹⁴⁶⁴ has meant that governments have very few, if any, tools at their disposal to hold FIFA accountable.¹⁴⁶⁵ This lack of accountability but continued 'victories' against nation states (who often have legitimate grounds for intervention) could itself prove to be the undoing of FIFA and its private governance structure.¹⁴⁶⁶ Though supranational institutions such as the EU have previously been able to challenge the legitimacy and governance of football,¹⁴⁶⁷ it is clear that nation states and wider jurisdictions at the

¹⁴⁵⁸ Meier, Henk Erik, and Borja Garcia. "Protecting private transnational authority against public intervention: FIFA's power over national governments." *Public Administration* 93, no. 4 (2015): 890-906. p/901

¹⁴⁵⁹ Wolf, Klaus Dieter. "The non-existence of private self-regulation in the transnational sphere and its implications for the responsibility to procure legitimacy: The case of the lex sportiva." *Global Constitutionalism* 3, no. 3 (2014): 275-309. p/276 & 286-7

¹⁴⁶⁰ Wolf, Klaus Dieter. "The non-existence of private self-regulation in the transnational sphere and its implications for the responsibility to procure legitimacy: The case of the lex sportiva." *Global Constitutionalism* 3, no. 3 (2014): 275-309. p/276 & 286-7

¹⁴⁶¹ Mayntz, Renate, and Fritz W. Scharpf. "Steuerung und Selbstorganisation in staatsnahen Sektoren." In *Gesellschaftliche Selbstregulierung und politische Steuerung*, pp. 9-38. Campus Verlag, 1995 p/28. Cited in García, Borja, and Henk-Erik Meier. "Keeping private governance private: is FIFA blackmailing national governments?" (2013) 13th EUSA Biennial Conference, Baltimore, Maryland, USA, 11-13, 26pp. p/1

¹⁴⁶² García, Borja, and Henk-Erik Meier. "Keeping private governance private: is FIFA blackmailing national governments?" (2013) 13th EUSA Biennial Conference, Baltimore, Maryland, USA, 11-13, 26pp. p/1

¹⁴⁶³ Ibid. p/4

¹⁴⁶⁴ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/133

¹⁴⁶⁵ DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 115. p/130-1

¹⁴⁶⁶ García, Borja, and Henk-Erik Meier. "Keeping private governance private: is FIFA blackmailing national governments?" (2013) 13th EUSA Biennial Conference, Baltimore, Maryland, USA, 11-13, 26pp. p/21

¹⁴⁶⁷ Garcia, Borja. "The Influence of the EU on the Governance of Football." In *The Organisation and Governance of Top Football Across Europe*, pp. 32-45. Routledge, 2011. p/32

international level will need to orchestrate their efforts if they want to put up a significant challenge to FIFA's unaccountable practices.¹⁴⁶⁸ This is significant because FIFA's governance failings have shown that it is incapable of mitigating global and large-scale problems affecting football,¹⁴⁶⁹ such as football trafficking. Therefore, better collaboration and externally imposed accountability of FIFA could bring about greater legitimacy within football's regulatory space,¹⁴⁷⁰ which may lead to better performing FIFA policies in the long term.

7.4 NORMATIVE CHALLENGE

A normative element to regulatory actions is similarly important to the claim of legitimacy.¹⁴⁷¹ According to Black, normative legitimacy exists when the assessment of an organisation's regulatory policies affirm that the policy actions are "the right thing to do" or that there is an overriding good to the regulations.¹⁴⁷² The normativity challenge stems from concerns as to the means of determining this overriding "good".¹⁴⁷³ Incorporating the challenge within the context of analysing FIFA, the question then becomes "what is the overriding good that is sought by FIFA's policy responses to football trafficking?". To answer this, Schwab's earlier assertion is important. He argued that SGBs lacked legitimacy (and by extension, normativity) because of the violations of the rights of players, especially vulnerable players, and the lack of recognition of wider human rights standards within sport.¹⁴⁷⁴ This means that an organisation cannot claim to be pursuing an overriding good when its policy actions provide avenues for involved actors to suffer human rights abuses.

7.4.1 Violation of rights of players

For FIFA to be legitimate it must respect and fulfil the fundamental human rights of the people who are often the subject of its laws and reside at the bottom of its organisational structure, such as the child players and vulnerable participants who are most in need of these protections. However, as McGee argued, sport (including football) remains one of the few

¹⁴⁶⁸ García, Borja, and Henk-Erik Meier. "Keeping private governance private: is FIFA blackmailing national governments?" (2013) 13th EUSA Biennial Conference, Baltimore, Maryland, USA, 11-13, 26pp. p/21

¹⁴⁶⁹ Garcia, Borja, and Henk-Erik Meier. "The power of FIFA over national governments: a new actor in world politics?" (2014) Presented at: FLACSO-ISA Joint International Conference, Global and Regional Powers in a Changing World, 23rd-25th July 2014, University of Buenos Aires, Argentina. p/23

¹⁴⁷⁰ Meier, Henk Erik, and Borja Garcia. "Protecting private transnational authority against public intervention: FIFA's power over national governments." *Public Administration* 93, no. 4 (2015): 890-906. p/890

¹⁴⁷¹ Black, Julia. "Constructing and contesting legitimacy and accountability in polycentric regulatory regimes." *Regulation & governance* 2, no. 2 (2008): 137-164. p/145

¹⁴⁷² Ibid. p/147

¹⁴⁷³ Ibid. p/140-1

¹⁴⁷⁴ Schwab, Brendan. "When We Know Better, We Do Better: Embedding the Human Rights of Players as a Prerequisite to the Legitimacy of Lex Sportiva and Sport's Justice System." *Md. J. Int'l L.* 32 (2017). p/57-8

domains that has been impermeable to the legal and moral obligations needed to regulate and safeguard the welfare of minors.¹⁴⁷⁵ This inability to protect the child players underlines the argument that FIFA (and other SGBs) lack legitimacy, as they have systemically failed to embed and sufficiently reflect the rights of players within their governance framework.¹⁴⁷⁶ Consequently leading to the increased instances of human rights violations within sport.

Though FIFA has established its anti-trafficking rules,¹⁴⁷⁷ there remains significant weaknesses within its regulatory system that has undermined its ability to protect child players from these human rights violations. FIFA's regulations do not cover the unscrupulous intermediaries, unsanctioned football academies, and the known trafficking routes by which the traffickers and smugglers constantly use to transport the vulnerable players.¹⁴⁷⁸ Such significant regulatory gaps have allowed unscrupulous intermediaries to continue facilitating the trafficking and transfer of players from the poor countries in West Africa to lower-tier European and Asian clubs.¹⁴⁷⁹ The players' rights are violated as they find themselves in conditions akin to slavery and servitude, being cajoled into signing exploitative professional contracts, which as Giulianotti notes, are "little more than indentured labour".¹⁴⁸⁰

Despite these violations, there are limited options for players to seek respite through legal frameworks and systems of justice.¹⁴⁸¹ FIFA, like other SGBs, maintains the barriers which prevents athletes and participants from seeking external non-sport specific judicial remedies, even when the internal arbitral systems have failed to adequately protect them.¹⁴⁸² It has been argued that such a restriction on the rights of athletes to choose between a Judge from a court of law, and a sports arbitral tribunal, could itself constitute as being a violation of the players' rights.¹⁴⁸³ Such a violation could prove detrimental to players, as though the sports arbitral

¹⁴⁷⁵ McGee, Darragh. "Displacing childhood: Labour exploitation and child trafficking in sport." In *Labour Migration, Human Trafficking and Multinational Corporations: The Commodification of Illicit Flows*, (Routledge, 2012) pp. 71-90. p/71

¹⁴⁷⁶ Schwab, Brendan. "Embedding the human rights of players in world sport." *The International Sports Law Journal* 17, no. 3-4 (2018): 214-232. p/223

¹⁴⁷⁷ Ruggie John, "For the game. For the world. FIFA and human rights" (2016) Harvard Kennedy School <https://www.hks.harvard.edu/sites/default/files/Ruggie_humanrightsFIFA_reportApril2016.pdf> accessed on 31/08/19. p/25

¹⁴⁷⁸ Ibid.

¹⁴⁷⁹ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/58

¹⁴⁸⁰ Giulianotti, Richard. "Human rights, globalization and sentimental education: The case of sport." *Sport in society* 7, no. 3 (2004): 355-369. p/360

¹⁴⁸¹ Schwab, Brendan. "When We Know Better, We Do Better: Embedding the Human Rights of Players as a Prerequisite to the Legitimacy of Lex Sportiva and Sport's Justice System." *Md. J. Int'l L.* 32 (2017). p/57

¹⁴⁸² Schwab, Brendan. "Embedding the human rights of players in world sport." *The International Sports Law Journal* 17, no. 3-4 (2018): 214-232. p/219

¹⁴⁸³ Panagiotopoulos, Dimitrios P. "Lex sportiva and international legitimacy governing: protection of professional players." *US-China Law Review* 8 (2011): 121. p/131

bodies may be well equipped to resolve a great variety of sports-related disputes, the arbitral avenues lack the requisite expertise needed to handle the wider human rights problems that are faced by athletes, which also intertwine with sport.¹⁴⁸⁴

Fundamentally, the violations on the rights of players transpires in football because the environment fostered by FIFA is primarily concerned with the goals of profit maximisation, commercialisation of football, and the continued commodification of child athletes, rather than prioritising the safety of all child participants involved with the sport. Arguably, FIFA's profit-oriented goals underline the absence of an overriding good that is being sought by the organisation's policy responses to football trafficking thus far.

7.4.2 Lack of recognition of wider human rights

In 2017, FIFA released its first Human Rights Policy, which showed its commitment to “respecting human rights in accordance with the UN Guiding Principles on Business and Human Rights (UNGPs).”¹⁴⁸⁵ A relevant excerpt from the policy is:

*In the often short-lived career of a professional football player, the human rights of players may be at risk, particularly in connection with their employment and transfer[...] Moreover, the strong desire to become a professional footballer and the lure of financial benefits can create fertile ground for adverse human rights impacts, in particular with regard to trafficking and other issues relating to minors. FIFA is committed to helping protect the rights of football players and will continually evaluate existing regulations and processes and, if necessary, consider additional measures to address the respective risks.*¹⁴⁸⁶

Considering FIFA's anti-trafficking regulations have been described as “demonstrably ineffective”,¹⁴⁸⁷ it can be said that the organisation has reneged on its claim to adopt additional measures that would address the football trafficking related risks faced by the vulnerable minors. The UNGPs on Business and Human Rights provided that, FIFA (like all

¹⁴⁸⁴ Ruggie, John G. "For the Game. For the World. "FIFA and Human Rights." *Corporate Responsibility Initiative Report No 68* (2016) p/26 Cited in Schwab, Brendan. "Embedding the human rights of players in world sport." *The International Sports Law Journal* 17, no. 3-4 (2018): 214-232. p/219

¹⁴⁸⁵ FIFA, "FIFA's Human Rights Policy" (May 2017 edition) article 1. p/5

¹⁴⁸⁶ FIFA, "FIFA's Human Rights Policy" (May 2017 edition) article 5.5. p/7

¹⁴⁸⁷ FIFPro, "FIFPRO and FIFA Improve Protection of Minors" (28 January 2015) <<https://www.fifpro.org/news/fifpro-and-fifa-improve-protection-of-minors/en/>> accessed on 11 May 2017

business enterprises) should respect human rights, avoid infringing on the human rights of others, and should address adverse human rights impacts with which they are involved.¹⁴⁸⁸

The UNGPs state that the responsibility of an entity such as FIFA would include (a) avoiding causing or contributing to adverse human rights impacts through their own activities, and to address such impacts when they occur; and (b) seeking to prevent or mitigate adverse human rights impacts that are directly linked to their operations.¹⁴⁸⁹ Likewise, the UNESCO Charter imposes clear obligations on employers of players in sport, stating that “International labour conventions and basic human rights must be respected, in particular to avoid child labour and human trafficking.”¹⁴⁹⁰ Seeing as this thesis has at different points established the contributory role FIFA has played towards the current football trafficking circumstances, it could therefore be argued that FIFA has not complied with the internationally recognised human rights standards.¹⁴⁹¹ In FIFA’s human rights policy, the organisation admits to the occurrence of football trafficking. Yet, contrary to the UNGPs on Human rights and the UNESCO Charter, FIFA has neither limited the causative circumstances in the sport which fosters the adverse human rights, child labour, and human trafficking of the foreign minors, and neither has FIFA introduced tailored policies which adequately prevent these adverse human rights problems from occurring within the sport.

The adverse human rights risks faced by the child participants in sport are also felt by people involved in the delivery of major sporting events (MSEs) such as the World Cup.¹⁴⁹² FIFA claims it takes human rights into account in the selection of host countries for its MSEs,¹⁴⁹³ and that it expects compliance with international standards from all host countries for its events.¹⁴⁹⁴ However, the organisation has so far omitted to take measures to ensure that Qatar was upholding its commitments on the health and safety involved in its preparations for the 2022 World Cup.¹⁴⁹⁵ During the Qatar preparations, there have been documented instances

¹⁴⁸⁸ United Nations. *Guiding principles on business and human rights: implementing the United Nations "Protect, Respect and Remedy" framework*. (2011) Office of the United Nations High Commissioner for Human Rights. Part II, point 11, p/13

¹⁴⁸⁹ United Nations. *Guiding principles on business and human rights: implementing the United Nations "Protect, Respect and Remedy" framework*. (2011) Office of the United Nations High Commissioner for Human Rights. Part II, point 13, p/14

¹⁴⁹⁰ United Nations Educational, Scientific and Cultural Organization (UNESCO), “International Charter of Physical Education, Physical Activity and Sport” (2015) Article 10.5

¹⁴⁹¹ Schwab, Brendan. "When We Know Better, We Do Better: Embedding the Human Rights of Players as a Prerequisite to the Legitimacy of Lex Sportiva and Sport's Justice System." *Md. J. Int'l L.* 32 (2017). p/57-8

¹⁴⁹² Schwab, Brendan. "Embedding the human rights of players in world sport." *The International Sports Law Journal* 17, no. 3-4 (2018): 214-232. p/222

¹⁴⁹³ FIFA, “FIFA’s Human Rights Policy” (May 2017 edition) Pillar II article 10. p/8

¹⁴⁹⁴ FIFA, “FIFA’s Human Rights Policy” (May 2017 edition) Pillar III article 11. p/9

¹⁴⁹⁵ Latty, Franck. "Non-state authority: FIFA". In *Global Private International Law*, (Cheltenham, UK: Edward Elgar Publishing, 2019) p/151

of several workers dying,¹⁴⁹⁶ workers being forced to work without contracts, workers being paid poorly, and workers being subjected to debt bondage.¹⁴⁹⁷ When then FIFA president, Sepp Blatter, was confronted about these Qatar incidents, he replied that the Qatar government and companies are responsible for their workers' rights, and "we can't interfere in the workers unions".¹⁴⁹⁸ Though, FIFA were not averse to interfering in the operations of the Brazilian government when there was a commercial risk to the organisation.¹⁴⁹⁹

These instances reflect a contradiction to FIFA's social responsibility and undermines the perceived values of integrity and transparency¹⁵⁰⁰ the organisation claims to stand by.¹⁵⁰¹ In addition, the normativity/overriding good of FIFA's regulatory actions remain questionable. This is considering the loopholes in the policies that were supposed to prevent aspiring child players from facing adverse human rights conditions and precarious circumstances, as well as the inadequate response to the detrimental situations faced by the workers taking part in the organisation of the FIFA World Cup.

Conclusion

This chapter has discussed the importance of legitimacy and accountability for decentred regimes, to ensure that the operations of non-state bodies are conducted in a manner which the regulatees in the regime accept and support, as this will aid policy compliance. It was argued that to achieve such acceptance and support, the regulatory body would need to have strong democratic and normative elements in its operations. This will ensure that policy provisions are representative of the intentions of the involved actors, and that the regulators seek to achieve an overriding good.

FIFA's claim to democratic legitimacy and accountability are hampered by its organisational structure which hinders it from adequately representing the intentions of all who are affected by its policy actions within its decision-making process. Also, due to its structure, its strength as a TPR, and with its monopoly over the sport, several accountability mechanisms are unworkable when applied specifically to FIFA. In addition, with the violations to players'

¹⁴⁹⁶ Zeidan, Obada S., and Simon G. Fauser. "Corporate governance and corporate social responsibility—the case of FIFA." *Problems and Perspectives in Management* 13, no. 2 (2015): 183-192. p/189

¹⁴⁹⁷ Ruggie John, "For the game. For the world. FIFA and human rights" (2016) Harvard Kennedy School <https://www.hks.harvard.edu/sites/default/files/Ruggie_humanrightsFIFA_reportApril2016.pdf> accessed on 31/08/19. p/22

¹⁴⁹⁸ Zeidan, Obada S., and Simon G. Fauser. "Corporate governance and corporate social responsibility—the case of FIFA." *Problems and Perspectives in Management* 13, no. 2 (2015): 183-192. p/189

¹⁴⁹⁹ Latty, Franck. "Non-state authority: FIFA". In *Global Private International Law*, (Cheltenham, UK: Edward Elgar Publishing, 2019) p/158

¹⁵⁰⁰ Castilla, José L., Aníbal Mesa, and Manuel González-Ramallal. "Football and justice devices: hybrid ethical narratives, sanctions and legitimacy of interests." *Soccer & Society* 18, no. 4 (2017): 575-590. p/582

¹⁵⁰¹ Zeidan, Obada S., and Simon G. Fauser. "Corporate governance and corporate social responsibility—the case of FIFA." *Problems and Perspectives in Management* 13, no. 2 (2015): 183-192. p/189

rights and FIFA's policy provisions failing to action its claim to adopt additional measures needed to safeguard vulnerable minors from football trafficking, these circumstances combine to undermine FIFA's claim to normativity, and ultimately, legitimacy. Thus, with legitimacy and accountability both absent, FIFA's anti-trafficking policies are consequently hindered by the non-compliant practices of its regulatees and their unchanged behaviours, which continuously puts the young African players at risk of trafficking and exploitation.

Chapter 8 - FIFA'S REGULATORY FAILURE?

Identifying the success of regulation is said to be harder than failure,¹⁵⁰² but this does not mean that ascertaining regulatory failure is a straightforward task, as evaluators often disagree on what would constitute “failure” and what its causes could be.¹⁵⁰³ On the one hand, failure could be based on the different understandings of the regulatory objectives and the view of the problem being regulated against. This would often involve a comparison between the desired outcomes of the policy and the real-life impact of the provisions.¹⁵⁰⁴ On the other hand, failure could be determined by the effect a range of factors could have had on policy performance.¹⁵⁰⁵ With one view arguing that failure would depend on the outcome of the policy and the second basing failure on the extent to which the policy is resistant to wider factors of influence, Baldwin and others asserted that when discussing regulatory failure the evaluator ought to know what they are comparing failure to.¹⁵⁰⁶ They contended that to ascertain failure and possible comparisons, two broad approaches to explaining regulatory failure could be adopted, the rhetorical and the analytical approaches.¹⁵⁰⁷

8.1 RHETORICAL APPROACH

The rhetorical approach draws on the work by the economist Albert Hirschman, and it looks at the common arguments used to dispute the effectiveness of regulation. Baldwin and others explained that this approach is divided into three: futility, jeopardy, and perversity. Of the three, the perversity argument (when the regulatory policy achieves the exact opposite of the intended outcomes¹⁵⁰⁸) is of least importance within the context of this analysis and therefore will not be expanded upon.

¹⁵⁰² Hawkins, K. "Law as Last Resort." In *A Reader on Regulation*, by Baldwin, Robert, Colin Scott, and Christopher Hood, eds., (Oxford: Oxford University Press, 1998. Oxford Scholarship Online, 2012). p/292

¹⁵⁰³ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/68

¹⁵⁰⁴ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (Oxford University Press on Demand, 2012). Pg. 69

¹⁵⁰⁵ Breyer, Stephen, 'Analyzing regulatory failure: Mismatches, less restrictive alternatives, and reform' (1979) Harv Law Rev 547. Pg. 551

¹⁵⁰⁶ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (Oxford University Press on Demand, 2012). Pg. 69

¹⁵⁰⁷ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/73

¹⁵⁰⁸ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/73

8.1.1 Futility

The futility argument provides that regulation fails when there is no change to the existing problem, nor is there a change in behaviours, despite the regulatory intervention.¹⁵⁰⁹ The data deficits in human trafficking research would ordinarily prevent an assured answer to the question “has there been any change to the existing problem?”, however the range of evaluations conducted within this study suggests that the football trafficking problem may be largely unchanged. With the results from the assessment into FIFA’s anti-trafficking policy objectives (its impact and outcomes), discussing aspects of FIFA’s anti-trafficking regulations, analysing FIFA as the assessed party, and examining the legitimacy and accountability practices used within the organisation, it is evident that FIFA’s members and non-members are still involved in football trafficking despite the organisation’s provisions restricting this. The analysis into FIFA revealed that its anti-trafficking policies contain loopholes which several teams and unscrupulous persons have been able to utilise to contravene FIFA’s regulations on ITMs. With the unchanged behaviours and the effect of the internal and external factors impacting on FIFA’s policy performance, it can be argued that FIFA’s anti-trafficking policies have not resulted in any significant change to the current football trafficking problem.

8.1.2 Jeopardy

The jeopardy argument provides that regulatory failure occurs when the deployment of the regulatory tool leads to undesirable side-effects.¹⁵¹⁰ These side-effects could be detrimental to the regulatory system, the members within the regime,¹⁵¹¹ and also non-members, due to the wide implications of regulatory actions which are able to affect a variety of persons both directly and indirectly.¹⁵¹² In FIFA’s regime, the undesirable side-effects are caused by the organisation’s regulatory loopholes, structural problems, and the lack of legitimacy and accountability. These circumstances have inadvertently established the culture of self-aggrandisement, unaccountability, and corruption seen at FIFA.¹⁵¹³ Whereas, FIFA’s anti-trafficking policy provisions have been unable to limit the risk factors faced by the vulnerable minors, and in some cases, the policies have exacerbated the problem,¹⁵¹⁴ leading

¹⁵⁰⁹ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/73

¹⁵¹⁰ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/73

¹⁵¹¹ Morgan, Bronwen and Karen Yeung, *An introduction to law and regulation: Text and materials* (Cambridge University Press, 2007). p/72

¹⁵¹² Grabosky, Peter N. "Counterproductive regulation." *International journal of the Sociology of Law* 23, no. 4 (1995): 347-369. p/357

¹⁵¹³ Tomlinson, Alan. "The supreme leader sails on: Leadership, ethics and governance in FIFA." *Sport in Society* 17, no. 9 (2014): 1155-1169. p/1160

¹⁵¹⁴ Esson, James, and Eleanor Drywood. "Challenging popular representations of child trafficking in football." *Journal of Criminological Research, Policy and Practice* (2018). p/68

the minors to face even more precarious circumstances as part of the football environment. It is argued that with the continued endangerment of child players as a side-effect of FIFA's regulatory actions, the organisation's anti-trafficking policies can also be said to have failed in accordance with the jeopardy argument of this rhetorical approach to regulatory failure.

8.2 ANALYTICAL APPROACH

The analytical approach explains regulatory failure through four accounts which show how regulation might fail or has failed in different contexts.¹⁵¹⁵ These include the public interest, interest group, ideas based, and institutional theories accounts of regulatory failure.

8.2.1 Public Interest accounts

The public interest account argues that regulatory failure occurs through two main elements. The first centres on the determination of the true public interest of the regulatory actions, and the second concerns the competing conceptions of public interest and how this could lead to regulatory failure.¹⁵¹⁶

With the first element, based on the analysis of FIFA and its dominant position in the space, it is clear that as a TPR the organisation has a responsibility to produce policies which do not negatively affect the wider public, even though said policies may not have been created for the express benefit of the public. Foster noted that SGBs should be able to recognise a wider public interest in the way in which sport is run.¹⁵¹⁷ However, the absent democratic representation for the wider public who are affected by FIFA's policies limits the organisation's claim to recognising matters of wider public interest. Also, with prior discussions about the lack of recognition (and compliance) with internationally recognised human rights standards,¹⁵¹⁸ it could be reasoned that FIFA's deficient legitimacy and accountability practices also hinders the public interestedness of its regulatory actions. This then leads to deficiencies within FIFA's anti-trafficking policies and ultimately, the occurrence of regulatory failure.

Regarding the second element, because of football's regulatory space and FIFA's control, it is argued that there are no competing conceptions of what public interest policies would entail in the regime. FIFA solely determines the policy direction, and it is therefore

¹⁵¹⁵ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/74

¹⁵¹⁶ Ibid.

¹⁵¹⁷ Foster, Ken, 'How can sport be regulated?' in Greenfield, S. and G. Osborn (eds), *Law and sport in contemporary society* (Frank Cass Publishers, 2000) p/279

¹⁵¹⁸ 7.4.2: Lack of recognition of wider human rights

responsible for regulatory failures caused by its omission to account for wider public interest issues within its anti-trafficking and human rights related policies.

8.2.2 Interest group theories

Most of the literature on regulatory failure focuses on the extent to which regulatory actions are made based on the concerns of an interest group, rather than actions being taken in pursuit of an overarching good.¹⁵¹⁹ This occurrence is known as regulatory capture and was proposed by Stigler.¹⁵²⁰ Capture theory presumes an understanding of the public interestedness of regulatory provisions,¹⁵²¹ and considers that capture occurs when regulatory policies are directed away from the public's interest in favour of specific vested interests¹⁵²² of regulatees in a regime.¹⁵²³ Lodge and Wegrich argued that regulatory capture is in fact the most prominent explanation for regulatory failure.¹⁵²⁴

There are two main views of regulatory capture. The classic view purports that regulations are "captured" (or there is a "power grab"¹⁵²⁵) either by those the regulators are supposed to regulate (such as industries, professions, businesses, or other interest groups) or by the bureaucrats or legislators who write and control the regulation (such as politicians¹⁵²⁶ and other powerful parties¹⁵²⁷).¹⁵²⁸ The capturing party is subsequently able to influence the impartiality of regulations,¹⁵²⁹ and can shape the regulatory processes to meet its specific needs.¹⁵³⁰ The second view of regulatory capture is the non-materialist view or "cognitive" capture theory.¹⁵³¹ In this view, emphasis is placed on the interest-group's capture of the administrative process through the "creeping colonisation of ideas", as the regulators are influenced to think like the regulated industry.¹⁵³² This influence over regulators can result

¹⁵¹⁹ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/75

¹⁵²⁰ Stigler, George J., 'The theory of economic regulation' (1971) *The Bell journal of economics and management science* 3, p/1

¹⁵²¹ Engstrom, David Freeman. "Corralling capture." *Harv. JL & Pub. Pol'y* 36 (2013): 31. p/31

¹⁵²² Baker, Andrew. "Restraining regulatory capture? Anglo-America, crisis politics and trajectories of change in global financial governance." *International Affairs* 86, no. 3 (2010): 647-663.

¹⁵²³ Engstrom, David Freeman. "Corralling capture." *Harv. JL & Pub. Pol'y* 36 (2013): 31. p/31

¹⁵²⁴ Lodge, Martin and Kai Wegrich, *Managing regulation: Regulatory analysis, politics and policy* (Macmillan International Higher Education, 2012). p. 29

¹⁵²⁵ Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/136

¹⁵²⁶ Morgan, Bronwen and Karen Yeung, *An introduction to law and regulation: Text and materials* (Cambridge University Press, 2007). p/72

¹⁵²⁷ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p. 42

¹⁵²⁸ Etzioni, Amitai. "The capture theory of regulations—revisited." *Society* 46, no. 4 (2009): 319-323. p/319

¹⁵²⁹ Ogus, Anthony, *Regulation: Legal form and economic theory* (Bloomsbury Publishing, 2004). p/57

¹⁵³⁰ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/75

¹⁵³¹ Engstrom, David Freeman. "Corralling capture." *Harv. JL & Pub. Pol'y* 36 (2013): 31. p/32

¹⁵³² Ibid.

in weaker enforcement¹⁵³³ of regulatory standards,¹⁵³⁴ and a biased supply of benefits to an interest group.¹⁵³⁵

The cognitive capture theory, in particular, can be linked to FIFA. An illustrative example is the unique relationship between the state regulator (Switzerland) and the regulated body (FIFA).¹⁵³⁶ FIFA exerts its significant TPR authority over nation states, so much so that Switzerland chooses to adopt a laissez-faire approach to overseeing the organisation.¹⁵³⁷ This circumstance of limited oversight is in essence regulatory capture, as it evidences the conditions whereby the regulator (Switzerland) considers that it is not in its best interests to intervene and regulate a particular industry or body (FIFA)¹⁵³⁸ because it fears it has more to lose than to gain if it actively supervises the body.¹⁵³⁹ Regarding potential losses, FIFA has the capacity to penalise the Swiss national football team if Switzerland interferes in football matters. FIFA could also propose a “regulator switch”,¹⁵⁴⁰ as it could threaten to relocate to the United Arab Emirates as a means of influencing the Switzerland government to act in its favour.¹⁵⁴¹ If FIFA relocated, the organisation would no longer be subjected to the regulatory stipulations of Switzerland, and most importantly for the Swiss, the country would lose out on millions of investments in its economy. However, whilst FIFA remains under Swiss authority, the lacking accountability, limited regulatory legitimacy, and the absent consequences for FIFA’s policy failures, are all indicative of regulatory capture. With capture alone inferring a high probability of regulatory failure, FIFA’s anti-trafficking regime has arguably failed.

8.2.3 Ideas based account

This account explains that regulatory failure can occur when the ideas, beliefs, and worldviews that shape the regulatory approach and delivery are flawed.¹⁵⁴² For example:

¹⁵³³ Etzioni, Amitai. "The capture theory of regulations—revisited." *Society* 46, no. 4 (2009): 319-323. p/320

¹⁵³⁴ Scott, Colin, 'Analysing regulatory space: fragmented resources and institutional design' (2001) Public Law 283. p/15

¹⁵³⁵ Boudreaux, Christopher John, Gokhan Karahan, and Morris Coats. "Bend it like FIFA: corruption on and off the pitch." *Managerial Finance* 42, no. 9 (2016): 866-878. p/368

¹⁵³⁶ Ibid.

¹⁵³⁷ DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 115. p/131

¹⁵³⁸ Boudreaux, Christopher John, Gokhan Karahan, and Morris Coats. "Bend it like FIFA: corruption on and off the pitch." *Managerial Finance* 42, no. 9 (2016): 866-878. p/368

¹⁵³⁹ Ibid.

¹⁵⁴⁰ Etzioni, Amitai. "The capture theory of regulations—revisited." *Society* 46, no. 4 (2009): 319-323. p/320-1

¹⁵⁴¹ Bean, Bruce W. "FIFA Is Corruption: What Is to be Done." *Mich. St. Int'l L. Rev.* 27 (2018): 197. p/253

¹⁵⁴² Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/75

Cause–effect assumptions

Regulations can fail when the underlying cause–effect assumptions regarding the problem are defective.¹⁵⁴³ This defective view could be as a result of inadequate data and lacking information regarding a problem, which some refer to as the “bounded rationality” that affects the decision-making of regulators.¹⁵⁴⁴ The data deficits considered earlier underlines the fact that FIFA’s regulatory regime and its anti-trafficking policies are affected by this bounded rationality.¹⁵⁴⁵ Though the issue with data deficits is a common theme with human trafficking regulatory responses, FIFA’s regime has been particularly ineffective in bridging the knowledge gap and providing appropriate insights into the cause-and-effect links associated with football trafficking. Consequently, FIFA’s anti-trafficking policies have performed poorly in limiting the problem, thereby increasing the propensity of regulatory failure.

It is also held that defective cause-and-effect assumptions could be as a result of an incomplete understanding of the regulatory environment,¹⁵⁴⁶ as when regulators display an uncertainty and ambiguity of knowledge with their decisions, this inhibits them from choosing the most appropriate regulatory action that is tailored to tackling the problem.¹⁵⁴⁷ Within FIFA’s regime, it is argued that there is in fact a complete understanding of the regulatory environment, owing to FIFA’s dominant position within the space. Yet, FIFA has still shown an ambiguity with its anti-trafficking approach, e.g., through its initial deregulation on the rules for intermediaries which put several child players at an increased risk of exploitation.¹⁵⁴⁸ Accordingly, it is contended that FIFA has been unable to adopt an appropriate regulatory approach to limiting football trafficking, considering the various loopholes in the regime and the inability of FIFA’s anti-trafficking policies to achieve their intended outcome.

¹⁵⁴³ Grabosky, Peter N. "Counterproductive regulation." *International journal of the Sociology of Law* 23, no. 4 (1995): 347-369. p/357

¹⁵⁴⁴ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/79

¹⁵⁴⁵ 6.1.2: Data Deficits

¹⁵⁴⁶ Grabosky, Peter N. "Counterproductive regulation." *International journal of the Sociology of Law* 23, no. 4 (1995): 347-369. p/357-8

¹⁵⁴⁷ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/74

¹⁵⁴⁸ Esson, James, and Eleanor Drywood. "Challenging popular representations of child trafficking in football." *Journal of Criminological Research, Policy and Practice* (2018). p/65

Regulatory instrument

Regulatory failure could occur because of the chosen regulatory instrument. This is said to be the case when a regulatory choice is made based on limited knowledge of the problem,¹⁵⁴⁹ or an underestimation of the scope of the problem.¹⁵⁵⁰ FIFA's current anti-trafficking responses suggest that though the organisation acknowledges the existence of football trafficking, its subsequent regulations allude to a lack of in-depth knowledge and understanding of the problem, such as through its defective cause and effect assumptions. Still, FIFA has displayed an over-confidence in its anti-trafficking regulatory strategy,¹⁵⁵¹ believing that its provisions can curb football trafficking if applied strictly.¹⁵⁵² However, as the evaluation of FIFA's anti-trafficking policies revealed, the regulations have been ineffective in safeguarding child players from trafficking and exploitation. This is arguably due to FIFA's choice of regulatory strategy recurrently underestimating the true scope of the problem. Therefore, without first attaining an in-depth understanding of football trafficking, FIFA's over-confidence in its regulatory instruments has hindered the organisation from being able to effectively predict (and prevent) the adverse side-effects of its policies,¹⁵⁵³ such as the subsequent prevalence of football trafficking.

Compliance assumptions

Regulatory failure could occur as a result of misguided assumptions about regulatory compliance.¹⁵⁵⁴ Meaning, a gap between what regulators assume is taking place, and what the regulatees are doing in practice, could itself be described as regulatory failure. In the context of FIFA and football trafficking, FIFA believes that when trafficking and illicit transfers involving minors occur with its member parties, it has the mechanisms in place to intervene, prevent, and/or sanction defaulting teams, as seen with the *Midtjylland* and *Cadiz* cases. However, the analysis of FIFA's members showed that, like other industries, its members are at times prone to creative compliance (side-stepping regulatory provisions without breaking them) and even non-compliance.¹⁵⁵⁵ Nevertheless, FIFA assumes that its

¹⁵⁴⁹ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/74

¹⁵⁵⁰ Grabosky, Peter N. "Counterproductive regulation." *International journal of the Sociology of Law* 23, no. 4 (1995): 347-369. p/358

¹⁵⁵¹ Lodge, Martin and Kai Wegrich, *Managing regulation: Regulatory analysis, politics and policy* (Macmillan International Higher Education, 2012). p. 35

¹⁵⁵² FIFA, "Protection of Minors: FAQ" (September 2016) <<https://img.fifa.com/image/upload/xbnooh14lcaxzadstknx.pdf>> accessed on 10/07/2020

¹⁵⁵³ Lodge, Martin and Kai Wegrich, *Managing regulation: Regulatory analysis, politics and policy* (Macmillan International Higher Education, 2012). p. 35

¹⁵⁵⁴ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/75

¹⁵⁵⁵ Ibid. p/70&75

policies are adept at dealing with football trafficking by its members, and that the key issue with non-compliance comes from the unscrupulous intermediaries and rogue agents on the periphery of the sport (non-members) who conduct the crime outside FIFA's jurisdiction.¹⁵⁵⁶ Whilst, generally speaking, the non-members are often the parties most connected to football trafficking, FIFA's compliance assumption here misses an essential link between its members and non-members who collectively benefit when a trafficked player becomes a football star. The prior evaluation of FIFA revealed that there is an apparent gap between the theoretical view and practical aspects of FIFA's anti-trafficking regulations. As FIFA's overriding perspective on compliance is not representative of the profit maximisation practices of its own regulatees, who continually look for means to benefit from the enhanced commodification of child players within the sport.

Confusion of approaches

Regulatory failure may occur when there is a confusion of approaches to tackling a problem, as this could lead to frictions in communicative practices and uncertainties in the implementation of provisions.¹⁵⁵⁷ Having discussed FIFA's over-confidence with its anti-trafficking regulations, FIFA cannot be simultaneously accused of adopting a confused approach. However, the communicative practices and uncertainties around the implementation of certain FIFA policies arguably aligns the regime with this account of regulatory failure.

With the communicative practices, Black explained that controlling bodies at times use false communication to manipulate perceptions of their activities and the performance of their regulations, in order to serve their interests and enhance their claim to legitimacy in the eyes of the public.¹⁵⁵⁸ In the past, FIFA has attempted to manipulate perceptions about its regime, such as in the aftermath of the corruption scandals.¹⁵⁵⁹ At the time, FIFA used positive-sounding press releases and well publicised moves about reform as a calculated step to assuage public outrage¹⁵⁶⁰ and allay further fears of corruption,¹⁵⁶¹ whilst the organisation

¹⁵⁵⁶ FIFA, "Protection of Minors: FAQ" (September 2016) <<https://img.fifa.com/image/upload/xbnooh14lcaxzadstknx.pdf>> accessed on 10/07/2020

¹⁵⁵⁷ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/76

¹⁵⁵⁸ Black, Julia. "Constructing and contesting legitimacy and accountability in polycentric regulatory regimes." *Regulation & governance* 2, no. 2 (2008): 137-164. p/151

¹⁵⁵⁹ Pielke Jr, Roger. "How can FIFA be held accountable?" *Sport management review* 16, no. 3 (2013): 255-267. p/258

¹⁵⁶⁰ Bean, Bruce W. "FIFA—Where crime pays." In *The Palgrave Handbook on the Economics of Manipulation in Sport*, pp. 279-314. Palgrave Macmillan, Cham, 2018. p/286

¹⁵⁶¹ Bean, Bruce W. "The Perfect Crime: FIFA and the Absence of Accountability in Switzerland." *Md. J. Int'l L.* 32 (2017): 68. p/80

remained “more or less unchanged.”¹⁵⁶² Similar to this, FIFA has also publicly claimed to be playing an active role in the protection of vulnerable child players from adverse human rights issues and child trafficking.¹⁵⁶³ Yet, as the analysis in this thesis has shown, there are continued reports of human rights abuses and the violation of players’ rights, whilst FIFA’s regulations which were once described as “demonstrably ineffective”,¹⁵⁶⁴ have not been updated to account for the increased vulnerabilities of the at-risk children involved with the sport. Moreover, this absence of amendments to its policy approach occurs despite FIFA’s initial commitment to adopting additional measures to prevent football trafficking in its human rights policy.¹⁵⁶⁵

Concerning uncertainties with implementation, this takes place mainly when there is resource inadequacy (insufficient resources provided for the effective enforcement of regulation¹⁵⁶⁶), or a failure of oversight and monitoring over policy enforcement.¹⁵⁶⁷ With the billions of dollars football is able to generate,¹⁵⁶⁸ resource inadequacy is generally not an issue with the top echelons of the industry. However, it is the corruption and mismanagement of available resources, and the prevalence of conflicting interests, that arguably leads to the ineffective enforcement of FIFA’s anti-trafficking policies, and the consequent assertion of regulatory failure. Additionally, the failure to monitor the practical enforcement of FIFA’s anti-trafficking policies is evidenced by the significant data deficits in the field. This means that FIFA is neither aware of the true extent of the problem, nor is the organisation cognisant of the specific impact of its anti-trafficking policies in limiting and/or furthering the occurrence of football trafficking.

Changing challenges

Regulatory failure can take place when policies are inflexible and unable to be adapted to new circumstances in the regime,¹⁵⁶⁹ even when under-performing.¹⁵⁷⁰ This is similarly referred to as an assessment and modification failing. Analysis in this thesis has shown that

¹⁵⁶² Bank, Steven A. "Reforming FIFA from the Inside out." *Vand. J. Transnat'l L.* 52 (2019): 265. p/272

¹⁵⁶³ Parry, Richard, "Child trafficking in sport: FIFA backs new initiative to safeguard children" (*Evening Standard*, July 2020) <<https://www.standard.co.uk/sport/football/fifa-backs-anti-child-trafficking-initiative-sports-a4512266.html>> accessed on 09/12/2020

¹⁵⁶⁴ FIFPro, "FIFPRO and FIFA Improve Protection of Minors" (28 January 2015) <<https://www.fifpro.org/news/fifpro-and-fifa-improve-protection-of-minors/en/>> accessed on 11 May 2017

¹⁵⁶⁵ FIFA, "FIFA’s Human Rights Policy" (May 2017 edition) article 5.5. p/7

¹⁵⁶⁶ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (Oxford University Press on Demand, 2012). Pg. 72

¹⁵⁶⁷ Grabosky, Peter N. "Counterproductive regulation." *International journal of the Sociology of Law* 23, no. 4 (1995): 347-369. p/359-360

¹⁵⁶⁸ FIFA, "FIFA Financial Report 2018" (FIFA, 2019) <<https://resources.fifa.com/image/upload/fifa-financial-report-2018.pdf?cloudid=xzshsoe2ayttyquuxhq0>> accessed on 06/07/2020. p/2

¹⁵⁶⁹ Grabosky, Peter N. "Counterproductive regulation." *International journal of the Sociology of Law* 23, no. 4 (1995): 347-369. p/358

¹⁵⁷⁰ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/76

FIFA's anti-trafficking policies have underperformed in affording the at-risk minors with requisite protections from exploitation within the sport. However, the organisation is yet to modify its regulatory responses to reflect the ever-changing football environment in which trafficking occurs. It is argued that FIFA's regulatory approach has been inflexible because the organisation has been unable to adequately self-assess the performance of its policies, in order to mitigate the regulatory loopholes which its members and non-members frequently adopt to conduct illicit ITMs. This inability to adjust and adapt to such changing challenges suggests that FIFA's anti-trafficking regulations have failed.

8.2.4 Institutional theories

This theory illustrates that institutional structures and arrangements which shape regulation could be the reason for regulatory failure.¹⁵⁷¹ To elucidate, the structure of a regulatory body, the type of organisation being assessed, and the complexity of the regulatory space where the organisation operates, and the inter- and intra-institutional pressures that exist in the space, are all aspects of an organisation's institutional structure and arrangement which could lead and contribute to uncertain effects within the regulatory regime, and ultimately result in regulatory failure.¹⁵⁷²

Baldwin and others explained that a special feature of the institutional theories view of regulatory failure is the occurrence of "drift", and they explained this as the tendency of a regulatory system to lose focus and direction.¹⁵⁷³ This loss of focus can be linked to Baldwin and others' supplemental point about regulatory failure potentially occurring due to the overlapping of different organisational understandings, and the frictions that this may cause.¹⁵⁷⁴ It is subsequently argued that the institutional and organisational understanding overlaps, and the consequent loss of focus, are mostly seen in decentred regulatory regimes where there could be multiple actors involved within the regulatory space. Therefore, the complexity of the regulatory space in decentred regimes may lead to uncertain outcomes, diverse assumptions about a problem, the misallocation of resources owing to the number of different actors involved in the space,¹⁵⁷⁵ and potentially, regulatory failure.

Prior discussions in this thesis have evidenced that within football's regulatory space, and unlike in other decentred regimes, there is no "complexity" in football's space as FIFA

¹⁵⁷¹ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/76

¹⁵⁷² Ibid.

¹⁵⁷³ Ibid.

¹⁵⁷⁴ Ibid.

¹⁵⁷⁵ Ibid.

maintains a stranglehold over the sport as the monopoly power and dominant actor in football's regulatory environment.¹⁵⁷⁶ Ordinarily, the absence of a complexity within football's space may have negated the argument that FIFA's regulatory regime has failed under this institutional theories account of failure. However, it is contended that it is this absence of complexity in the space that has contributed significantly to the lack of legitimacy and accountability seen across FIFA's institutional structures and arrangements, and which has also affected the efficacy and performance of the organisation's anti-trafficking policies. With the current institutional set-up in and around football, FIFA faces no substantive external scrutiny for the failure and ineffectiveness of its anti-trafficking policies. Thus, the institutional structures and arrangements of FIFA, the wider football environment, and the external SGBs, NGOs, and IGOs who are interested parties in the governance of the sport, have all contributed to the present situation whereby FIFA continues to produce regulations which are unable to adequately protect a select number of its child participants, without the organisation suffering any consequences for its ineffectual policy actions. As a result, it should be noted that these deficient policies could potentially have a longstanding detrimental effect on FIFA's regulatory regime, as if unchanged, the organisation's practices will continue to place African and other foreign football minors at an increased risk of trafficking and exploitation in and through the sport.

Conclusion

The discussions on the rhetorical and analytical approaches to determining regulatory failure suggest that core elements within FIFA's regime and its anti-trafficking regulations could be said to have failed. The rhetorical approach considered that, firstly, FIFA's anti-trafficking policies have arguably been futile in limiting the problem. And secondly, that the FIFA policies align with the jeopardy argument because of the negative externalities and precarious circumstances which young players continue to face as a consequence of FIFA's rules.

With the analytical approach, the analysis showed that the public interestedness of FIFA's regulations is questionable, and that the occurrence of regulatory capture suggests that regulatory failure has taken place. Under the ideas-based account, it was established that FIFA's cause-effect assumptions on football trafficking are defective; the choice of regulatory instruments have been ill-informed; its compliance assumptions are detrimental to optimal regulatory performance considering the real-time practices of FIFA's regulatees;

¹⁵⁷⁶ 4.4: FIFA's Private Legal Authority

the false communicative practices and uncertainties with policy implementation and enforcement suggests that there is a confused approach to tackling the problem; and the inadaptability of FIFA's policies to the changing challenges in football's regulatory environment implies that FIFA's regulations have failed. The institutional approach then highlighted how FIFA's private legal order as the dominant actor within football's regulatory space has affected the performance of its anti-trafficking policies, and has contributed to the occurrence of regulatory failure in the regime. Ultimately, the circumstances discussed through the rhetorical and analytical approaches illustrate why FIFA's policies have failed to protect vulnerable foreign minors involved in the sport from trafficking and subsequent exploitation. Thereby leading to the question, what are the possible remedies for FIFA's anti-trafficking regulatory failures?

Chapter 9 - REMEDYING FIFA'S REGULATORY FAILURE (ORGANISATIONAL AND GOVERNANCE REFORM)

The regulatory literature is important for understanding and applying the remedies for regulatory failure to the specific context of FIFA and football's regulatory environment. Regulatory theory provides that there are three means for countering regulatory failure: Coordination, hybrid solutions, and organisational reform. Of the three remedies, organisational reform is considered to be the most applicable remedy within the context of this study and for recommending solutions to FIFA.

The organisational reform remedy aims to counter the bounded rationality (or data deficits) that leads regulators to produce policies based on limited information about a problem.¹⁵⁷⁷ Organisational reform proposes that regulatory bodies introduce a 'challenge function' into their operations to counteract the informational issues.¹⁵⁷⁸ The role of the challenger is to improve the organisation's legitimacy and accountability practices by holding it responsible for its regulatory actions from within. It is held that the challenger is the one that can "speak truth to power", by posing tough questions and analysing proposed regulatory interventions to identify potential derailments that could hinder the achievement of the regulatory objectives.¹⁵⁷⁹ The organisational reform remedy has the capacity to improve the quality and performance of FIFA's anti-trafficking regulations, as the reforms could persuade FIFA's regulatees to be more compliant with the organisation's policy interventions.

9.1 ORGANISATIONAL REFORM AT FIFA

To offset the bounded rationality in FIFA's anti-trafficking decision-making, its regulatory processes should be more open, rigorous, transparent, and able to encourage active participation (by members and non-members) so it can better assess a range of views and viable solutions for the problem.¹⁵⁸⁰ It is contended that this can be achieved if FIFA undergoes significant structural reform.

FIFA was established prior to the rapid growth, politicisation, and commercialisation of football, but the structure of the organisation is not yet tailored to handle the growing

¹⁵⁷⁷ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/79

¹⁵⁷⁸ Ibid. p/80

¹⁵⁷⁹ Grabosky, Peter N. "Counterproductive regulation." *International journal of the Sociology of Law* 23, no. 4 (1995): 347-369. p/362

¹⁵⁸⁰ Prosser, Tony. *The regulatory enterprise: Government, regulation, and legitimacy*. OUP Oxford, 2010. p/204

political and administrative challenges that exists in the sport today.¹⁵⁸¹ Some have argued that FIFA's structure still resembles an amateur association, as opposed to a socially responsible global sports body.¹⁵⁸² Over the years, FIFA has undergone several reforms due to pressures from the media, civil society organisations, and the public, especially in the aftermath of the corruption scandals.¹⁵⁸³ However, many argue that FIFA's reforms have exemplified the difference between "good governance" and "good-looking governance".¹⁵⁸⁴ FIFA views reforms as an opportunity to restore confidence and win back corporate sponsors,¹⁵⁸⁵ thus, it is often more interested in the good publicity that a reform effort might provide, rather than in attaining actual change through reform.¹⁵⁸⁶

FIFA's reforms have been relatively ineffective because the recommendations provided through the reforms have either been rejected, partially ignored, or have fallen apart.¹⁵⁸⁷ This has led to questions about FIFA's capacity to adequately reform itself.¹⁵⁸⁸ Significant reform (imposed through internal or external channels) is therefore needed to enable FIFA to improve the quality of its governance and its regulatory practices.¹⁵⁸⁹ This will reduce the instances of corruption and conflicting interests within the SGB,¹⁵⁹⁰ thereby allowing FIFA to become a more legitimate and accountable organisation.

9.1.1 The Challenge Function and Transparency

The challenger in organisational reform can either be a person or committee.¹⁵⁹¹ They are tasked with analysing proposed regulatory interventions to identify potential derailments,¹⁵⁹² and to prevent the reoccurrence of regulatory failure.

At FIFA, it is recommended that the challenger be a combination of independent personnel and committee members able to question its regulations. With FIFA's dominance of

¹⁵⁸¹ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/205

¹⁵⁸² Jarvie G, Thornton, James and Mackie, Hector, *Sport, Culture and Society: An Introduction* (Third edition., Routledge 2018) p/153

¹⁵⁸³ Jorge, Guillermo. "Fixing FIFA: The Experience of the Independent Governance Committee." *Sw. J. Int'l L.* 21 (2014): 165. p/171

¹⁵⁸⁴ Bean, Bruce W. "FIFA Is Corruption: What Is to be Done." *Mich. St. Int'l L. Rev.* 27 (2018): 197. p/226

¹⁵⁸⁵ Parella, Kishanthi. "Reputational Regulation." *Duke LJ* 67 (2017): 907. p/932

¹⁵⁸⁶ DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 115. p/137

¹⁵⁸⁷ Bank, Steven A. "Reforming FIFA from the Inside out." *Vand. J. Transnat'l L.* 52 (2019): 265. p/274 and 287

¹⁵⁸⁸ Bean, Bruce W. "FIFA Is Corruption: What Is to be Done." *Mich. St. Int'l L. Rev.* 27 (2018): 197. p/243

¹⁵⁸⁹ Pielke Jr, Roger. "Obstacles to accountability in international sports governance." *Transparency International, global corruptions report: Soccer* (2016). p/3

¹⁵⁹⁰ Freeburn, Lloyd. "The fiction of democracy in FIFA's governance of football and the case of Football Federation Australia." *The International Sports Law Journal* (2019): 1-21. p/17-8

¹⁵⁹¹ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/80

¹⁵⁹² Grabosky, Peter N. "Counterproductive regulation." *International journal of the Sociology of Law* 23, no. 4 (1995): 347-369. p/362

football's regulatory space, the organisation has been notoriously insular in the way it operates.¹⁵⁹³ Thus, commentators in and around football's regulatory environment have called for FIFA to adopt the same measures used by corporate governance and international public bodies, such as introducing more oversight by independent directors.¹⁵⁹⁴ Foster noted that the use of independent personnel is a common response to failures of governance by international sporting federations, as it is often an attempt to preserve their regime's integrity.¹⁵⁹⁵ In the past, FIFA have introduced independent chairs for its Ethics Committee and its Audit and Compliance Committee, and FIFA have also hired individuals to serve in executive positions who had not previously been involved in the sport.¹⁵⁹⁶ These independent persons were purportedly brought to remedy and reform FIFA's governance failings. However, FIFA's organisational structure limited the effect that the independent personnel/challengers could have.

First, the independent personnel were selected by FIFA officials/insiders, are accountable to the insiders, and ultimately remain beholden to them.¹⁵⁹⁷ In addition, FIFA's president Gianni Infantino, arranged for the FIFA Executive Council to have the power to not only appoint but also to fire the "independent" members on the Ethics and Audit Committees.¹⁵⁹⁸ This meant that the independent members were "factually deprived of their independence" and could have, at any time, become auxiliary agents of those they were brought in to supervise.¹⁵⁹⁹ Secondly, the possibility that the independent personnel could be co-opted into corruptible FIFA practices undermines the general workability of this challenge function. As Bank argued, even the above-the-table payments and exorbitant salaries of committee members are sometimes enough to entice independent reformers to abandon their reform aims and collude with FIFA.¹⁶⁰⁰

Accordingly, to reform FIFA and institute a workable challenge function, there should be truly independent personnel not beholden to FIFA, as well as an oversight group composed of independent stakeholders.¹⁶⁰¹ The aim of the oversight group would be to encourage better stakeholder participation, and improve representation from all involved in football, such as

¹⁵⁹³ Bank, Steven A. "Reforming FIFA from the Inside out." *Vand. J. Transnat'l L.* 52 (2019): 265. p/268

¹⁵⁹⁴ Pielke Jr, Roger. "Obstacles to accountability in international sports governance." *Transparency International, global corruptions report: Soccer* (2016). p/10

¹⁵⁹⁵ Foster, Ken. "Global Sports Law Revisited." *The Entertainment and Sports Law Journal* 17, no. 1 (2019). p/11

¹⁵⁹⁶ Bank, Steven A. "Reforming FIFA from the Inside out." *Vand. J. Transnat'l L.* 52 (2019): 265. p/265

¹⁵⁹⁷ *Ibid.* p/273-4

¹⁵⁹⁸ *Ibid.* p/276

¹⁵⁹⁹ Bean, Bruce W. "The Perfect Crime: FIFA and the Absence of Accountability in Switzerland." *Md. J. Int'l L.* 32 (2017): 68. p/111

¹⁶⁰⁰ Bank, Steven A. "Reforming FIFA from the Inside out." *Vand. J. Transnat'l L.* 52 (2019): 265. p/274

¹⁶⁰¹ Bean, Bruce W. "The Perfect Crime: FIFA and the Absence of Accountability in Switzerland." *Md. J. Int'l L.* 32 (2017): 68. p/88

the players, football federations, sponsors, referees, and the global football-watching public who also deserve a voice in the decision-making processes.¹⁶⁰² Such representation will increase FIFA's claim to being a legitimate organisation and will enhance the number of personnel and committees able to hold FIFA accountable internally. From an external perspective, the introduction of the oversight committee should coincide with more transparency and cooperation between governments, the EU, and FIFA, in this attempt to solve what is a global trafficking problem.¹⁶⁰³

Improving transparency across FIFA will not only limit the instances of corruption,¹⁶⁰⁴ but could potentially have a domino effect on the rest of the footballing community. Football teams could be encouraged to be more transparent with their recruitment strategies,¹⁶⁰⁵ and this will be beneficial in combatting the instances of forced labour and child trafficking seen amidst football's supply chains. With more independent personnel, an oversight group, and better transparency practices within FIFA, the effects of the bounded rationality which exists in this area will be limited. This is because the information relevant to football trafficking will be more accurate, understandable, and accessible to the regulators. Thereby allowing the challenge function to accomplish its intended purpose of identifying problems with FIFA's proposed regulatory actions and preventing further instances of failure.

9.1.2 Rebalancing and Redistribution

The rebalancing of power and redistribution of football's wealth should also be a key part of FIFA's reform. Currently, smaller countries and MAs have not benefitted from their representation and voting rights at FIFA, with data showing that though these smaller and poorer MAs have gained more votes, they have lost out more on football revenue and participation.¹⁶⁰⁶ Hence, there is a need for the power model within FIFA to be rebalanced in a manner that is more representative of the football landscape. For example, there could be an imposition of a population-based voting system which would ensure that smaller countries are no longer disproportionately favoured during FIFA's elections.¹⁶⁰⁷ This would

¹⁶⁰² Gill, Sahiba, Edouard Adelus, and Francisco de Abreu Duarte. "Whose Game? FIFA, Corruption and the Challenge of Global Governance." *The European Journal of International Law* Vol. 30 no. 3 (2019): 1041-1066. p/1045

¹⁶⁰³ Jarvie G, Thornton, James and Mackie, Hector, *Sport, Culture and Society: An Introduction* (Third edition., Routledge 2018) p/153

¹⁶⁰⁴ Král, Pavel, and Graham Cuskelly. "A model of transparency: determinants and implications of transparency for national sport organizations." *European Sport Management Quarterly* 18, no. 2 (2018): 237-262. p/240

¹⁶⁰⁵ Marx, Axel, and Jan Wouters. "Combating Slavery, Forced Labour and Human Trafficking. Are Current International, European and National Instruments Working?" *Global Policy* 8, no. 4 (2017): 495-497. p/496

¹⁶⁰⁶ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/215

¹⁶⁰⁷ DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 115. p/138

reduce the corruptibility of the smaller MAs and will enable more FIFA officials to vote based on merit rather than on self-interests.

Another means of achieving this rebalance is for FIFA to bridge, rather than perpetuate, the gap between the rich and poor football nations.¹⁶⁰⁸ To bridge the economic gap, there would need to be better redistribution of football's resources. Such as, by offering better financial compensation to the poorer African nations who lose their most talented players to European teams for undervalued transfer sums.¹⁶⁰⁹ Advocate-General Lenz equally argued for the better redistribution of football's wealth in *Bosman*, emphasising that this is important to prevent the richest clubs from monopolising the best players.¹⁶¹⁰ With better wealth redistribution, the African MAs and clubs would be able to invest in their local youth training academies, build larger facilities, and develop other talented players.¹⁶¹¹ The better structure and facilities would improve the quality of African football and help "give back" to the communities where the talented players are regularly sourced. These improvements could also lead to reduced instances of football trafficking, as the migratory disposition of the African players could be diminished.

9.2 LEGITIMACY AND ACCOUNTABILITY

There is an increased need for FIFA to input and maintain better legitimacy and accountability practices. This will improve FIFA's policy performance and will enable the organisation to achieve more compliant behaviour from its regulatees and others affected by its regime. As Ruggie argued, "organisations with a footprint as large as FIFA's ... must become more transparent and more accountable".¹⁶¹² Still, there are significant questions about how FIFA can be reformed into a more legitimate organisation,¹⁶¹³ considering FIFA's "decades of unaccountability",¹⁶¹⁴ and its dominant position in football's regulatory space.

¹⁶⁰⁸ Jarvie G, Thornton, James and Mackie, Hector, *Sport, Culture and Society: An Introduction* (Third edition., Routledge 2018) p/517

¹⁶⁰⁹ Poli, Raffaele. "African migrants in Asian and European football: hopes and realities." *Sport in Society* 13, no. 6 (2010): 1001-1011. p/1002

¹⁶¹⁰ Case C-415/93, *Union Royale Belge des Sociétés de Football Ass'n ASBL v. Bosman*, 1995 E.C.R. I-5040. Opinion of Advocate General Lenz at I-4921.

¹⁶¹¹ Lembo, Christina. "FIFA transfers regulations and UEFA player eligibility rules: major changes in European football and the negative effect on minors." *Emory Int'l L. Rev.* 25 (2011): 539. p/580

¹⁶¹² Ruggie John, "For the game. For the world. FIFA and human rights" (2016) Harvard Kennedy School <https://www.hks.harvard.edu/sites/default/files/Ruggie_humanrightsFIFA_reportApril2016.pdf> accessed on 31/08/19. p/36-7

¹⁶¹³ Tomlinson, Alan. "The supreme leader sails on: Leadership, ethics and governance in FIFA." *Sport in Society* 17, no. 9 (2014): 1155-1169. p/1155

¹⁶¹⁴ Bean, Bruce W. "FIFA—Where crime pays." In *The Palgrave Handbook on the Economics of Manipulation in Sport*, pp. 279-314. Palgrave Macmillan, Cham, 2018. p/299

Thus, it is reasoned that a comprehensive strategy must include both internal and external mechanisms able to enhance legitimacy and institute better accountability at FIFA.

9.2.1 Enhancing Legitimacy

Often, when a private body assumes some public function through its regime, the State is still responsible to mitigate any problems of legitimation associated with the private organisation. Wolf called this occurrence an “external legitimation” by the State,¹⁶¹⁵ which is similar to the supervisory accountability/Shadow of Hierarchy argument considered earlier.¹⁶¹⁶ However, FIFA’s structure and its insularity has meant that the organisation is generally able to withstand external oversight and scrutiny of its regulations.¹⁶¹⁷ But with problems like football trafficking affecting the regime, there are underlying arguments that football has grown to the extent that it is impossible to manage the sport only through FIFA’s ‘Laws of the Game’,¹⁶¹⁸ and that the State needs to intervene to stop the self-regulation of FIFA.¹⁶¹⁹

Though Foster argues that legitimation must be internally produced by those directly involved in private self-regulation,¹⁶²⁰ and even though State interference may ordinarily be averse to the autonomy of sport, it is argued that FIFA needs significant external legitimation to curtail this specific transnational problem of football trafficking. The intervention and supervision of FIFA should be a concerted approach which merges actions, oversight, and pressures from nation states, governmental institutions, and intergovernmental bodies, to impose an enhanced external legitimacy on FIFA. This will ensure that FIFA creates more effective policies, ones which recognise and comply with international human rights standards, and are able to target the elimination of forced labour within football.¹⁶²¹

9.2.2 Instituting better Accountability

FIFA sits free from several mechanisms of accountability that are employed to hold international organisations to account.¹⁶²² Thus, FIFA has operated without consequences

¹⁶¹⁵ Wolf, Klaus Dieter. "The non-existence of private self-regulation in the transnational sphere and its implications for the responsibility to procure legitimacy: The case of the lex sportiva." *Global Constitutionalism* 3, no. 3 (2014): 275-309. p/302

¹⁶¹⁶ 7.3.2: Supervisory accountability

¹⁶¹⁷ Drywood, Eleanor, "When we buy a young boy ..." Migrant Footballers, Children’s Rights and the Case for EU Intervention' in Stalford, Helen and Ingi Iusmen (Eds), *The EU as a children’s rights actor. Law, policy, and structural dimensions* (Barbara Budrich Publishers, Toronto 2015) 191-220. p/217

¹⁶¹⁸ Castilla, José L., Aníbal Mesa, and Manuel González-Ramallal. "Football and justice devices: hybrid ethical narratives, sanctions and legitimacy of interests." *Soccer & Society* 18, no. 4 (2017): 575-590. p/584

¹⁶¹⁹ Pieth, Mark, "Infantino’s FIFA is a ‘return to the Blatter Middle Ages’", Swissinfo.Ch (June 18, 2016) Cited in Bean, Bruce W. "FIFA Is Corruption: What Is to be Done." *Mich. St. Int’l L. Rev.* 27 (2018): 197 p/251

¹⁶²⁰ Foster, Ken. "Global Sports Law Revisited." *The Entertainment and Sports Law Journal* 17, no. 1 (2019). p/3

¹⁶²¹ Schwab, Brendan. "Embedding the human rights of players in world sport." *The International Sports Law Journal* 17, no. 3-4 (2018): 214-232. p/225

¹⁶²² Pielke Jr, Roger. "How can FIFA be held accountable?" *Sport management review* 16, no. 3 (2013): 255-267. p/264

for the non-achievement of regulatory objectives, even where such objectives are the safeguarding of child players within the sport. Therefore, to remedy the failure of FIFA's anti-trafficking regulations, it is contended that there ought to be a considerable challenge to FIFA's lack of accountability.¹⁶²³ Switzerland remains in the best position to pioneer the improvement of accountability at FIFA,¹⁶²⁴ due to FIFA's articles of incorporation and its registration as an NPO in the country.¹⁶²⁵ Although, for this increased accountability to take place, the Swiss authorities must do away with their laissez-faire and ineffective approach to monitoring FIFA.¹⁶²⁶ As it is often argued that Swiss action is necessary before other forms of accountability can be effectively imposed on FIFA.¹⁶²⁷

Swiss authorities have previously collaborated with the US' department of justice (DOJ) to force FIFA into significant internal reform.¹⁶²⁸ On its own, the DOJ would have been unable to directly impose accountability upon FIFA¹⁶²⁹ because FIFA exists outside the scope of its courts.¹⁶³⁰ The DOJ thereby needed to collaborate with the Swiss authorities to have the requisite impact on FIFA.¹⁶³¹ This instance showed that nation states are increasingly more willing to intervene in FIFA matters, especially when there is a need to correct the internal governance failings within the organisation.¹⁶³² Additionally, nation States may choose to combine to have an "intergovernmental effect" able to impose accountability on FIFA, as occurred with the IOC.¹⁶³³ Through the coalition, the authorities would be empowered to impose requisite consequences on FIFA, which will lay the foundation for a more concerted, collaborative, and considered approach to tackling football trafficking.

Conclusion

This chapter discussed how organisational reform and increased legitimacy and accountability at FIFA are potentially key remedies for the failure of FIFA's anti-trafficking regulations. Organisational reform considered that regulatory bodies should introduce a

¹⁶²³ Tomlinson, Alan. "The supreme leader sails on: Leadership, ethics and governance in FIFA." *Sport in Society* 17, no. 9 (2014): 1155-1169. p/1156

¹⁶²⁴ Bean, Bruce W. "FIFA—Where crime pays." In *The Palgrave Handbook on the Economics of Manipulation in Sport*, pp. 279-314. Palgrave Macmillan, Cham, 2018. p/307

¹⁶²⁵ Pielke Jr, Roger. "How can FIFA be held accountable?" *Sport management review* 16, no. 3 (2013): 255-267. p/264

¹⁶²⁶ Bank, Steven A. "Reforming FIFA from the Inside out." *Vand. J. Transnat'l L.* 52 (2019): 265. p/273

¹⁶²⁷ Bean, Bruce W. "FIFA Is Corruption: What Is to be Done." *Mich. St. Int'l L. Rev.* 27 (2018): 197. p/266-7

¹⁶²⁸ DiCenso, Matthew B. "A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football's Governing Body." *BC Int'l & Comp. L. Rev.* 40 (2017): 115. p/125

¹⁶²⁹ Bean, Bruce W. "The Perfect Crime: FIFA and the Absence of Accountability in Switzerland." *Md. J. Int'l L.* 32 (2017): 68. p/116

¹⁶³⁰ Foster, Ken. "Global Sports Law Revisited." *The Entertainment and Sports Law Journal* 17, no. 1 (2019). p/10

¹⁶³¹ Parella, Kishanthi. "Reputational Regulation." *Duke LJ* 67 (2017): 907. p/933

¹⁶³² Gomtsian, Suren, Annemarie Balvert, Branislav Hock, and Oguz Kirman. "Between the green pitch and the red tape: The private legal order of FIFA." *Yale J. Int'l L.* 43 (2018): 85. p/140

¹⁶³³ Garcia, Borja, and Henk-Erik Meier. "The power of FIFA over national governments: a new actor in world politics?" (2014) Presented at: FLACSO-ISA Joint International Conference, Global and Regional Powers in a Changing World, 23rd-25th July 2014, University of Buenos Aires, Argentina. p/23

challenge function to counter the information problems/bounded rationality which affects their decision-making processes. Thereafter, it was recommended that the challenge function at FIFA be actioned by both independent personnel and a committee of stakeholders involved with the sport. A secondary aspect of organisational reform proffered that there be a rebalancing of powers within football, as well as a better redistribution of football's wealth. The rebalancing and redistribution will help the struggling African teams and leagues in being more sustainable, which could potentially limit instances of football trafficking. Furthermore, it was argued that improving, instituting, and maintaining better legitimacy and accountability practices around FIFA, are essential tenets that will allow for the better performance of FIFA's future anti-trafficking policies.

Chapter 10 - CREATING EFFECTIVE ANTI-TRAFFICKING REGULATION

Gaining an understanding of the core principles of “effective regulation” is essential, especially when trying to implement the principles as part of the formation of successful anti-trafficking policies. Scholars in regulatory theory note that effective regulation is often the outcome of significant dialogue with the actors within a regime.¹⁶³⁴ The aim of the dialogue is to facilitate the unbiased participation of all stakeholders, allowing them to better analyse the advantages and limitations of proposed regulatory strategies.¹⁶³⁵ The regulations produced through such dialogue will be more legitimate, as it would be representative of the intentions of the actors. This thereby increases the likelihood of policy compliance and effectiveness in the long-term. Though, with FIFA and football’s regulatory environment, it should be noted that in order to create effective anti-trafficking policies, merely having more dialogue with regulatees will not be enough to produce the requisite policies able to curtail the trafficking problem. The International Labour Office highlighted that there are several obstacles which regulators should be aware of when creating anti-trafficking policies:

1. *Insufficient preparation because initiatives have been launched before reliable information has been thoroughly reviewed;*
2. *Missing links between cause and effect (often because of poor understanding of why or how things happen) that lead to a mismatch between the desired outcome and the actions taken to reach it; and*
3. *False “common wisdoms” that recur throughout the various elements of project design or policy planning and that invariably lead to ineffective (or even harmful) outcomes.*¹⁶³⁶

Elements of these three obstacles have been discussed at prior points within this thesis.

First, with insufficient preparation and information deficits, the previous chapter showed that the organisational reform of FIFA and the inclusion of a challenge function could be used to counter this issue.¹⁶³⁷ The stakeholders involved in deliberations should be aware that through their increased unbiased critique of FIFA’s proposed anti-trafficking policies, and by recommending and instituting key measures to bridge the knowledge gap pertaining

¹⁶³⁴ Tombs, Steve. "Book Review: Understanding Regulation?" *Social & Legal Studies* 11, no. 1 (2002): 113-133. p/120

¹⁶³⁵ Lodge, Martin and Kai Wegrich, *Managing regulation: Regulatory analysis, politics and policy* (Macmillan International Higher Education, 2012). p/253

¹⁶³⁶ IPEC, *Combating trafficking in children for labour exploitation: A resource kit for policy-makers and practitioners* (International Labour Office; ILO International Programme on the Elimination of Child Labour, Geneva 2008). Book 2 page 6

¹⁶³⁷ 9.1: Organisational Reform at FIFA

to the trafficking problem, this information obstacle will be bypassed. Moreover, further means of providing additional information for the policy deliberations will be discussed. This will centre on the recommendation that FIFA should adopt a (human rights) regulatory impact assessment, and that its anti-trafficking policies should be modelled on the “DREAM” regulatory framework. Both measures will improve the efficiency and quality of FIFA’s anti-trafficking regulations.

Second, the missing links with cause and effect and how these relate to the occurrence of football trafficking (and the failure of FIFA’s regulations) were discussed in chapter 8.¹⁶³⁸ As part of the open dialogue, FIFA and its stakeholders should be cognisant of the fact that various structural, systemic, and social factors have undermined FIFA’s prior anti-trafficking policies. These factors overtly and covertly combine to cause a disparity between FIFA’s desired outcomes, and the actual outcomes, where football trafficking is still prevalent due to the increased commodification of foreign child players. Therefore, it is suggested that policy deliberations on effective anti-trafficking regulations must reflect a significant understanding of *why*, and *how*, football trafficking occurs. As Gallagher and Holmes argued, trafficking is “not simply a special organised criminal behaviour, but rather the predictable outcome of certain global political and economic realities.”¹⁶³⁹ Thus, effective anti-trafficking policies must be reflective of these realities, considering its influence on the understanding of the cause-and-effect links related to football trafficking. For example, the lack of safeguards and policies compliant with international human rights standards, the absence of safe routes to play professionally abroad for the African footballers, and the gross inequalities within and between footballing countries and leagues,¹⁶⁴⁰ are all realities and factors that increase the vulnerabilities and tendency towards trafficking for the young players.

Furthermore, Gallagher and Holmes again noted that with the transnationality of human trafficking, national criminal justice agencies (and in the context of this study, FIFA) should “understand the limits of their own influence and not be tricked into believing that they alone have the power to curb or even substantially disrupt this trade.”¹⁶⁴¹ Therefore, FIFA, by itself and in collaboration with other SGBs, NGOs, and IGOs, must find ways to reduce the inequalities and realities that lead to the trafficking of the young African players. Such as,

¹⁶³⁸ 8.2.3: Cause–effect assumptions

¹⁶³⁹ Gallagher, Anne, and Paul Holmes. "Developing an effective criminal justice response to human trafficking: Lessons from the front line." *International criminal justice review* 18, no. 3 (2008): 318-343. p/321

¹⁶⁴⁰ Gallagher, Anne. "Trafficking, smuggling and human rights: tricks and treaties." *Forced migration review* 12, no. 25 (2002). p/28

¹⁶⁴¹ Gallagher, Anne, and Paul Holmes. "Developing an effective criminal justice response to human trafficking: Lessons from the front line." *International criminal justice review* 18, no. 3 (2008): 318-343. p/321

by instituting a child-centred approach to anti-trafficking regulations and introducing a legal route towards professional football for the African minors.

Third, the dialogue on anti-trafficking policies should consider how to limit the effect of the false “common wisdoms” that exist in the field. Prior discussions uncovered how the bounded rationality and data deficits affected FIFA’s understanding of the problem,¹⁶⁴² which subsequently limited the efficacy of its anti-trafficking policies. As, despite the emphasis FIFA places on protecting minors through an uncompromising stance within football, there remains a significant mismatch with the effectiveness of the policies in practice.¹⁶⁴³ This is exemplified most by FIFA’s limitations on ITMs. Therefore, to counter the further impact of the false common wisdoms, it is argued that the proposed organisational reform of FIFA should be conducted in conjuncture with the adoption of the DREAM regulatory framework, and a child-centred approach that would enable the creation of more effective anti-trafficking policies.

10.1 REGULATORY IMPACT ASSESSMENTS

A key practice which should be adopted during the preliminary stages of FIFA’s anti-trafficking decision-making policy process is the use of an economic appraisal, in the form of a regulatory impact assessment (RIA).¹⁶⁴⁴ RIAs are used to appraise the potential advantages and disadvantages of proposed policy strategies.¹⁶⁴⁵ RIAs consider the full range of costs and benefits of regulatory policies,¹⁶⁴⁶ in order to achieve a situation whereby the total benefits of a policy exceed its total costs, and the marginal benefits are equal to the marginal costs of the chosen strategy.¹⁶⁴⁷ The RIA contains a summary of the problem, the rationale and justification behind choosing a particular intervention,¹⁶⁴⁸ what the policy objectives being sought are, and what the intended impact in the regime is likely to be.¹⁶⁴⁹ Therefore, RIAs are crucial in improving the quality of regulations because they make

¹⁶⁴² 6.1.2: Data Deficits

¹⁶⁴³ Drywood, Eleanor, “‘When we buy a young boy ...’ Migrant Footballers, Children’s Rights and the Case for EU Intervention’ in Stalford, Helen and Ingi Iusmen (Eds), *The EU as a children’s rights actor. Law, policy, and structural dimensions* (Barbara Budrich Publishers, Toronto 2015) 191-220. p/203

¹⁶⁴⁴ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/334

¹⁶⁴⁵ Lodge, Martin and Kai Wegrich, *Managing regulation: Regulatory analysis, politics and policy* (Macmillan International Higher Education, 2012) p/202

¹⁶⁴⁶ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/317

¹⁶⁴⁷ Ogus, Anthony I. *Regulation: Legal form and economic theory*. Bloomsbury Publishing, 2004. p/153

¹⁶⁴⁸ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/317

¹⁶⁴⁹ Lodge, Martin and Kai Wegrich, *Managing regulation: Regulatory analysis, politics and policy* (Macmillan International Higher Education, 2012) p/201

deliberations more transparent, they facilitate essential discussions regarding the ideal choice of regulatory strategy,¹⁶⁵⁰ and RIAs have a comprehensive structure and economic relevance.¹⁶⁵¹

It is recommended that FIFA adopts the use of RIAs in its policy design because of the intersection between the economic incentives in football trafficking (for the unscrupulous persons and victims), and the costs involved in creating effective anti-trafficking policies. Analysis on football trafficking has shown that the finances and underlying benefits feeding the problem are not being matched by the financial support which should be dedicated to stopping it from within the football community.¹⁶⁵² Consequently, in balancing the costs, benefits, and intended impact of effective anti-trafficking policies, an RIA would be essential. For the RIA to have the necessary impact, it is important that FIFA does not view its use as merely a “box-ticking exercise”.¹⁶⁵³ When used correctly, RIAs have the potential of being an instrument to bring about meaningful change in the regime, which is essential considering the need to quell the financial speculation and increased commodification of young African players within football.¹⁶⁵⁴ By using RIAs as an element within the formation of effective anti-trafficking policies, the football minors will be provided with requisite protections from adverse human rights risks. This can arguably be achieved through the specific adoption of a human rights impact assessment (HRIA).

HRIs are complex surveys requiring an important level of human rights expertise, whereby stakeholder involvement and consultation of human rights experts is considered to be imperative to draw a holistic picture of the human rights situation in a regime.¹⁶⁵⁵ HRIs are recommended here as part of the overall calls from intergovernmental organisations (IGOs), NGOs, and some UN bodies, which have asked regulators to adopt a “human rights” approach to trafficking that prioritises and emphasises the protection of the victim.¹⁶⁵⁶

¹⁶⁵⁰ Prosser, Tony. *The regulatory enterprise: Government, regulation, and legitimacy*. OUP Oxford, 2010. p/218

¹⁶⁵¹ Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding regulation: theory, strategy, and practice* (2nd edn Oxford University Press on Demand, 2012). p/319

¹⁶⁵² Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/181

¹⁶⁵³ Lodge, Martin and Kai Wegrich, *Managing regulation: Regulatory analysis, politics and policy* (Macmillan International Higher Education, 2012) p/204

¹⁶⁵⁴ Esson, James. "Playing the victim? Human trafficking, African youth, and geographies of structural inequality." *Population, Space and Place* (2020): e2309. p/6

¹⁶⁵⁵ Kirschner, Florian. "Breakthrough or much ado about nothing? FIFA's new bidding process in the light of best practice examples of human rights assessments under UNGP Framework." *The International Sports Law Journal* 19, no. 3-4 (2019): 133-153. p/139

¹⁶⁵⁶ Haynes, Dina Francesca. "Used, abused, arrested and deported: Extending immigration benefits to protect the victims of trafficking and to secure the prosecution of traffickers." *Hum. Rts. Q.* 26 (2004): 221. p/247-8

HRIAs can be used to ensure that FIFA and its stakeholders take all feasible measures to address and prevent adverse human rights risks from occurring within its regime.¹⁶⁵⁷

Some have argued that FIFA now understands it can no longer be a passive player in respect of human rights in football.¹⁶⁵⁸ As FIFA possesses the legal mechanisms to contribute to the improvement of human rights at a global level, whilst it has also been noted that SGBs generally have the capacity to exercise their regulatory powers in a way which proactively addresses the fundamental rights of participants transnationally.¹⁶⁵⁹ Therefore, as Latty argued, FIFA may prove to be more efficient in instituting vital human rights practices than other public international organisations.¹⁶⁶⁰ Having previously discussed the transnationality and strength of FIFA's legal authority,¹⁶⁶¹ the organisation possesses the capacity to have a longstanding impact in the fight against child trafficking, in sport, and also on a broader global scale. It is contended that FIFA can achieve this by using HRIAs to implement a human rights and child-centred approach to its anti-trafficking policy responses. HRIAs will enable FIFA's policy deliberations to consider the possible unintended consequences of the policy intervention, and the HRIAs will be beneficial in enabling the regulators to identify (and curtail) any adverse human rights risks that could be caused through the purported policy action.¹⁶⁶²

In consideration of the HRIAs, it is recommended that FIFA should:

- Expand its understanding of human trafficking. FIFA (and its partners) should ensure that trafficking and smuggling are not seen as only problems of migration or organised crime,¹⁶⁶³ but that trafficking is perceived as a by-product of global inequalities.
- Be willing to assess the myriad of contextual factors and underlying systems that combine to cause human trafficking.¹⁶⁶⁴

¹⁶⁵⁷ Kirschner, Florian. "Breakthrough or much ado about nothing? FIFA's new bidding process in the light of best practice examples of human rights assessments under UNGP Framework." *The International Sports Law Journal* 19, no. 3-4 (2019): 133-153. p/139

¹⁶⁵⁸ Latty, Franck. "Non-state authority: FIFA". In *Global Private International Law*, (Cheltenham, UK: Edward Elgar Publishing, 2019) p/153

¹⁶⁵⁹ Schwab, Brendan. "Embedding the human rights of players in world sport." *The International Sports Law Journal* 17, no. 3-4 (2018): 214-232. p/227

¹⁶⁶⁰ Latty, Franck. "Non-state authority: FIFA". In *Global Private International Law*, (Cheltenham, UK: Edward Elgar Publishing, 2019) p/159-160

¹⁶⁶¹ 4.5: FIFA's Transnationality and Regulatory Powers

¹⁶⁶² Bryant, Katharine, and Todd Landman. "Combatting human trafficking since Palermo: what do we know about what works?" *Journal of human trafficking* 6, no. 2 (2020): 119-140. p/132

¹⁶⁶³ Gallagher, Anne. "Trafficking, smuggling and human rights: tricks and treaties." *Forced migration review* 12, no. 25 (2002). p/28

¹⁶⁶⁴ Bryant, Katharine, and Todd Landman. "Combatting human trafficking since Palermo: what do we know about what works?" *Journal of human trafficking* 6, no. 2 (2020): 119-140. p/135

- Centre a durable anti-trafficking approach on the rights and needs of the victims of trafficking.¹⁶⁶⁵
- Institute avenues for robust engagement with external stakeholders who have human rights expertise.¹⁶⁶⁶
- Collaborate frequently and transparently with external IGOs and NGOs to ensure a concerted regulatory approach is being adopted.
- Utilise internal but independent human rights monitors who can report to FIFA regularly to provide more insight and data on the trafficking problem, as well as updates on the performance of the anti-trafficking policies.
- Have a dispute resolution body with specific human rights expertise to address human rights claims and provide more effective remedies to victims,¹⁶⁶⁷ which should also coincide with increased sanctions to the identified perpetrators.

10.2 THE “DREAM” FRAMEWORK

Baldwin and others devised the DREAM framework (Detection, Responding, Enforcing, Assessing, and Modifying) as a viable means of attaining effective regulatory enforcement¹⁶⁶⁸ and ensuring that policy interventions are more than “symbolic gestures”.¹⁶⁶⁹ These enhanced regulatory practices will enable FIFA’s anti-trafficking policies to have a greater impact in the regime.

10.2.1 Detection

Detection allows for the adequate inspection of activities within the space and involves the regulators gaining information on the undesirable or non-compliant behaviours occurring in the regime.¹⁶⁷⁰ Detection is key to achieving effective regulation and optimal policy performance, as an inability to detect non-compliant behaviour could itself undermine regulatory efficiency. For example, imposing sanctions such as fines or bans on non-

¹⁶⁶⁵ Gallagher, Anne T. "Two cheers for the trafficking protocol." *Anti-Trafficking Review* 4 (2015). p/8

¹⁶⁶⁶ Ruggie John, “For the game. For the world. FIFA and human rights” (2016) Harvard Kennedy School<https://www.hks.harvard.edu/sites/default/files/Ruggie_humanrightsFIFA_reportApril2016.pdf> accessed on 31/08/19. p/5

¹⁶⁶⁷ Schwab, Brendan. "Embedding the human rights of players in world sport." *The International Sports Law Journal* 17, no. 3-4 (2018): 214-232. p/229

¹⁶⁶⁸ Baldwin, Robert, Martin Cave, and Martin Lodge. *Understanding regulation: theory, strategy, and practice*. Oxford University Press on Demand, 2012. p/257

¹⁶⁶⁹ Baldwin, Robert, Colin Scott and Christopher Hood, *A reader on regulation* (Oxford University Press, 1998). p/14

¹⁶⁷⁰ Baldwin, Robert, Martin Cave, and Martin Lodge. *Understanding regulation: theory, strategy, and practice*. Oxford University Press on Demand, 2012. p/227

compliant regulatees will have a limited effect if the probability of detecting such non-compliant behaviour is negligible in the first instance.¹⁶⁷¹

FIFA, in introducing more effective anti-trafficking policies, must consider the importance of being able to detect and address errant behaviours in its regime. However, detection of trafficking related activities has often proven to be an arduous task, caused by the complexities and clandestine nature of its occurrence. Since recruiters use disguises to conduct dealings in legal, semi-legal, or even an illegal manner,¹⁶⁷² traffickers and other persons involved in perpetrating the crime are difficult to identify,¹⁶⁷³ whilst the victims of trafficking are often confused for irregular migrants. Whereas in football, the teams who benefit from the trafficking of young African players are not easily detected. The issue with detecting instances of trafficking within football is significant, and this is due to the blurred understanding of what would constitute as being “the trafficking of foreign football minors”, and merely, the “non-compliance of football clubs with FIFA’s rules on ITMs.” This blurred understanding significantly hinders the detection of the perpetrators and the victims involved.

FIFA’s decision makers and policy deliberators must clarify their stance via the attainment of a thorough understanding of the problem. The regulators must ask themselves key questions about their regulatory approach, in order to improve the efficacy of policy actions and institute better mechanisms able to detect and differentiate when football trafficking can be said to have taken place within the regime. The questions may include:

- What is the difference between breaching FIFA’s rules on ITMs and conducting football trafficking?
- Who are the perpetrators of football trafficking and can they be adequately sanctioned for this offence?
- Should there be more checks and verifications to ensure players are not victims of trafficking before they are allowed to take part in football trials abroad?
- Can football teams be held liable for receiving, signing, and benefiting from the use of trafficked football labour?

¹⁶⁷¹ Lodge, Martin, and Kai Wegrich. *Managing regulation: Regulatory analysis, politics and policy*. Macmillan International Higher Education, 2012. p/76

¹⁶⁷² Guild, E., B. Andrees and M. Linden, *Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement* (Geneva: International Labour Office, 2005). p/31

¹⁶⁷³ Mason, Carolynne, Paul Darby, Eleanor Drywood, James Esson, and Serhat Yilmaz. "Rights, Risks and Responsibilities in the Recruitment of Children within the Global Football Industry." *The International Journal of Children's Rights* 27, no. 4 (2019): 738-756. p/747

- Can football teams be identified as part of the wider criminal network that aims to locate, transport, and exploit young African players for profit in Europe?

FIFA must have a clear conception of what compliance with its anti-trafficking policies would entail and how it aims to detect the instances of non-compliant behaviour. With the latter, it is recommended that through better collaboration, more insight into the ways in which victims of trafficking are identified and treated, and with improved data on the problem and the routes taken to exploit the young players, FIFA would be able to better detect the occurrence of football trafficking.

Better Collaboration

The failure of FIFA's regime to adequately detect and respond to instances of football trafficking suggests that there is a need for more international collaboration to effectively tackle the problem.¹⁶⁷⁴ Moreover, it can be argued that football trafficking (as with other generic forms of trafficking) is not a problem that can be detected and addressed effectively in any one national jurisdiction, nor can it be solved by any one entity.¹⁶⁷⁵ The nature and transnationality of its occurrence restricts the way victims can be identified and the way punishments can be imposed upon traffickers. In football trafficking, specifically, many aspects related to the occurrence of the crime falls outside the scope of FIFA's direct authority.¹⁶⁷⁶ Thus, because of FIFA's status as a private regulator and the associated limitations, a collaborative multi-agency approach will be essential to better detect, combat, and prevent the continued trafficking of persons within the sport.¹⁶⁷⁷

To have the requisite effect, the multi-agency approach should consist of greater networking, collaboration, coordination,¹⁶⁷⁸ and co-operation between FIFA and other external bodies involved in human trafficking, who are able to operate in both a domestic and cross-border capacity.¹⁶⁷⁹ This collaborative element improves the ways in which non-compliant behaviour (within FIFA's regime and on the periphery of the sport) can be detected and

¹⁶⁷⁴ Mason, Carolynne, Paul Darby, Eleanor Drywood, James Esson, and Serhat Yilmaz. "Rights, Risks and Responsibilities in the Recruitment of Children within the Global Football Industry." *The International Journal of Children's Rights* 27, no. 4 (2019): 738-756. p/747

¹⁶⁷⁵ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/203

¹⁶⁷⁶ Lembo, Christina. "FIFA transfers regulations and UEFA player eligibility rules: major changes in European football and the negative effect on minors." *Emory Int'l L. Rev.* 25 (2011): 539. p/578

¹⁶⁷⁷ Guild, E., B. Andrees and M. Linden, *Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement* (Geneva: International Labour Office, 2005). p/60

¹⁶⁷⁸ IPEC, *Combating trafficking in children for labour exploitation: A resource kit for policy-makers and practitioners* (International Labour Office; ILO International Programme on the Elimination of Child Labour, Geneva 2008). Book 3 page 28

¹⁶⁷⁹ Gallinetti, Jacqui, and Daksha Kassin. "Trafficking of Children in Africa: An Overview of Research, International Obligations and Existing Legal Provisions." *Children's Rights in Africa: A Legal Perspective* (2013). p/252

subsequently combatted. Thus, FIFA is encouraged to form more effective coalitions and networks consisting of other sports governing bodies, wider institutions in the form of law enforcement agencies (police and prosecutors), civil society groups (social workers and service providers), IGOs and NGOs, who are all able to collaborate and improve the detection and consequent eradication of trafficking.¹⁶⁸⁰

FIFA should note that an effective collaborative approach should extend beyond the destination countries¹⁶⁸¹ to involve personnel and organisations in known source regions for the trafficking victims. As Gallinetti and Kassan argued, “to address the phenomenon of child trafficking in Africa adequately, a single, comprehensive approach across countries on the continent and between regions is required to provide the African child with the maximum protection against this global scourge.”¹⁶⁸² It is therefore essential that for FIFA’s anti-trafficking policies to adequately detect and tackle the problem, the collaborative element should extend to Africa through the introduction of tailored policy actions which are relevant to the region. Actions could include an aggressive monitoring of football academies in the known source countries, and better monitoring of player movements through identified ‘trade’ routes.¹⁶⁸³ Such actions will increase the likelihood of detecting non-compliant behaviour, which could then serve to deter unscrupulous intermediaries/agents (and teams) from further engaging in football trafficking.

Identification of victims

Efficient anti-trafficking regulations should be able to differentiate between a victim of trafficking and an irregular migrant. Victim identification is classed as an important aspect of an effective response to the occurrence of the crime, as the identification will enable the victims to benefit from requisite assistance, support, and protection obligations in the destination country.¹⁶⁸⁴ With FIFA’s collaborations with the interested external bodies, FIFA should similarly input policies and practices that reflect an importance in identifying the victims of football trafficking as victims, rather than illegal migrants. Through this, identified persons will be afforded the requisite protections for their circumstances rather

¹⁶⁸⁰ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/203

¹⁶⁸¹ McGrath, Siobhán and Fabiola Mieres, 'Addressing the demand side in and through supply chains: Mapping the field of initiatives around human trafficking, forced labour and slavery.' (2017) DemandAT Working Paper No 8. p/2-3

¹⁶⁸² Gallinetti, Jacqui, and Daksha Kassan. "Trafficking of Children in Africa: An Overview of Research, International Obligations and Existing Legal Provisions." *Children's Rights in Africa: A Legal Perspective* (2013). p/253

¹⁶⁸³ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/182

¹⁶⁸⁴ Gallagher, Anne, and Paul Holmes. "Developing an effective criminal justice response to human trafficking: Lessons from the front line." *International criminal justice review* 18, no. 3 (2008): 318-343. p/329-30

than for them to be treated as criminals and smuggled persons who are likely to be returned upon discovery.¹⁶⁸⁵ Better identification of the victims will contribute to an increased transparency around the crime, which will allow FIFA and its partners to better investigate, track, and prosecute the involved perpetrators.

Outside football trafficking, the science of locating and identifying trafficked persons is one that has been described as a “frustratingly complex and inexact” process, and this has led to universally low rates of victim identification.¹⁶⁸⁶ These low levels of detection and identification lend weight to a growing perception that if there is reason to believe someone has been trafficked, then that person should be identified and treated as a victim, unless and until another determination is made regarding the individual’s status.¹⁶⁸⁷ It is argued that by using this perception to institute more lenient identification policies through FIFA and its collaborating parties, there will be no negative effects to the organisation’s intended outcome of curbing trafficking. In fact, such a lenient policy identification process will enable FIFA to curtail trafficking and the possibility of re-trafficking by offering key assistance to several of the purported victims.¹⁶⁸⁸

Improving Data Collection

Improving detection is often hindered by circumstances in the regime where breaching the rules are cheap and easily carried out in a clandestine manner,¹⁶⁸⁹ or where there are significant loopholes in the regulatory system that allow for non-compliance or creative compliance amidst the regulatees. It can be argued that these hindrances are more pronounced in the case of trafficking, considering it is an “invisible crime”¹⁶⁹⁰ with its own detection and data difficulties. With problems in acquiring data on both the trafficking victims and the numerous undetected victims,¹⁶⁹¹ it is evident that there are specific vulnerabilities in relation to data collection on the crime. This problem is arguably more pronounced in football, as the lack of data contributed to the failure of FIFA’s current anti-trafficking policy responses. Consequently, FIFA must consider more innovative ways to

¹⁶⁸⁵ Stoyanova, Vladislava. "Complementary protection for victims of human trafficking under the European Convention on Human Rights." *Goettingen J. Int'l L.* 3 (2011): 777. p/783

¹⁶⁸⁶ Gallagher, Anne, and Paul Holmes. "Developing an effective criminal justice response to human trafficking: Lessons from the front line." *International criminal justice review* 18, no. 3 (2008): 318-343. p/329

¹⁶⁸⁷ *Ibid* p/329-30

¹⁶⁸⁸ Haynes, Dina Francesca. "Used, abused, arrested and deported: Extending immigration benefits to protect the victims of trafficking and to secure the prosecution of traffickers." *Hum. Rts. Q.* 26 (2004): 221. p/254

¹⁶⁸⁹ Baldwin, Robert, Martin Cave, and Martin Lodge. *Understanding regulation: theory, strategy, and practice*. Oxford University Press on Demand, 2012. p/228

¹⁶⁹⁰ Saner, Raymond, Lichia Yiu, and Laurel Rush. "The measuring and monitoring of human trafficking." *Public Administration and Policy* (2018). p/101

¹⁶⁹¹ *Ibid* p/97

detect and gain data on football trafficking. Collecting accurate and comprehensive data on the victims of trafficking, and even concrete estimations on the number of undetected victims, are important facets needed to propose adequate anti-trafficking policy responses. This data can also act as a means of measuring the performance of subsequent anti-trafficking policies, to determine how or if the policies have contributed towards the eradication of trafficking in the long run.¹⁶⁹²

Enhanced data and detection practices can only come about where there is significant investment from FIFA in information gathering systems and campaigns, as this will provide the systematic information needed¹⁶⁹³ to plot the nature of the crime.¹⁶⁹⁴ It is recommended that FIFA should introduce mechanisms to ensure that all its MAs and their associated teams operate in a transparent manner, allowing FIFA to better monitor the actions of its regulatees, and to collect essential and comprehensive data on football academies and player movements and registrations, as they occur within the sport. The improved information will aid the process of learning relevant on-the-ground information about football trafficking,¹⁶⁹⁵ which will then contribute to the formation of more effective anti-trafficking policies capable of preventing the crime and protecting the vulnerable players from the precarious circumstances related to it.

10.2.2 Responding

Regulators should be able to react efficiently to the non-compliant and errant behaviours detected in the regime.¹⁶⁹⁶ These responses can be broadly divided into four categories:

- 1) Amending the rules: The regulators could determine that the rule serves no obvious function and should be replaced by a regulatory mixture of general and specific rules to better address the issue of non-compliance.¹⁶⁹⁷
- 2) Persuasion: Regulators may choose to persuade and advice regulatees that compliance with its policies is in their best interests.¹⁶⁹⁸

¹⁶⁹² Saner, Raymond, Lichia Yiu, and Laurel Rush. "The measuring and monitoring of human trafficking." *Public Administration and Policy* (2018). p/104

¹⁶⁹³ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/202

¹⁶⁹⁴ Guild, E., B. Andrees and M. Linden, *Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement* (Geneva: International Labour Office, 2005). p/45

¹⁶⁹⁵ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/203

¹⁶⁹⁶ Baldwin, Robert, Martin Cave, and Martin Lodge. *Understanding regulation: theory, strategy, and practice*. Oxford University Press on Demand, 2012. p/227

¹⁶⁹⁷ *Ibid.* p/231

¹⁶⁹⁸ Lodge, Martin, and Kai Wegrich. *Managing regulation: Regulatory analysis, politics and policy*. Macmillan International Higher Education, 2012. p/73

- 3) Deterrence: Regulators may punish defaulting regulatees to act as a deterring factor and make them averse to breaking the rules.¹⁶⁹⁹
- 4) Reform: Regulators can attempt to make it impossible for the regulatees to break the rules through technical and structural means.¹⁷⁰⁰

The persuasion and deterrence responses will be discussed in line with the enforcement benchmark within the DREAM framework. Whereas the reform response has already been considered in the previous analysis on organisational reform.¹⁷⁰¹ This section considers “amending the rules” as a valid response to correcting regulatory failure.

Since human trafficking is fuelled by profit and demand,¹⁷⁰² it is argued that an effective response to this occurrence would be to amend the rules and undermine the basis in which the traffickers use to make continued profits from this illicit activity.¹⁷⁰³ For example, there should be added scrutiny on the backgrounds of young players being introduced into the footballing environment, and there should also be more transparency around the signing of young foreign players, with an obligation to disclose the transfer terms and conditions to ensure that there are no irregularities with the transfer. These stricter provisions will limit the profitability of the underground market for the aspiring players. Therefore, it is essential that FIFA should prioritise constant cooperation and collaboration where possible to ensure that all appropriate measures to fight trafficking in the sport are being taken.¹⁷⁰⁴

FIFA should note that an efficient response to trafficking is one where the child victim is not criminalised for offences relating to their being trafficked,¹⁷⁰⁵ and that the protection of trafficked persons is a goal which should be prioritised in itself.¹⁷⁰⁶ Article 2(b) of the UN Trafficking Protocol proposed that victims of trafficking should be protected “with full respect for their human rights”, and Article 6(5) of the same Protocol urged States to “endeavour to provide for the physical safety of victims of trafficking in persons while they

¹⁶⁹⁹ *Ibid.* p/73-4

¹⁷⁰⁰ *Ibid.* p/73-4

¹⁷⁰¹ 9.1: Organisational Reform at FIFA

¹⁷⁰² European Commission, “Answer to question on People trafficking in football” (April 2019) E-000535/2019 <https://www.europarl.europa.eu/doceo/document/E-8-2019-000535-ASW_EN.pdf> accessed on 20/07/2020

¹⁷⁰³ Guild, E., B. Andrees and M. Linden, *Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement* (Geneva: International Labour Office, 2005). p/34

¹⁷⁰⁴ European Commission, “Answer to question on People trafficking in football” (April 2019) E-000535/2019 <https://www.europarl.europa.eu/doceo/document/E-8-2019-000535-ASW_EN.pdf> accessed on 20/07/2020

¹⁷⁰⁵ Gallagher, Anne, and Paul Holmes. “Developing an effective criminal justice response to human trafficking: Lessons from the front line.” *International criminal justice review* 18, no. 3 (2008): 318-343. p/332

¹⁷⁰⁶ Haynes, Dina Francesca. “Used, abused, arrested and deported: Extending immigration benefits to protect the victims of trafficking and to secure the prosecution of traffickers.” *Hum. Rts. Q.* 26 (2004): 221. p/233

are within its territory”,¹⁷⁰⁷ including the right to stay in the destination country and other protections.¹⁷⁰⁸

This victim support response promotes the safety of the victim¹⁷⁰⁹ and restricts them from being deported. Victim support is particularly important because repatriation of child victims of trafficking may open them up to several risks upon returning to their home countries.¹⁷¹⁰ This may include dangers of re-trafficking; fear of retaliation by the members of the trafficking organisation (or the unscrupulous persons) who sent them abroad in the first instance; fear of being found by the trafficking organisation for the non-payment of monies owed through debt bondage; lack of social and/or medical assistance in the country of origin; rejection and stigmatisation by the local community and/or by the victim’s family.¹⁷¹¹ Thus, with these prevalent factors in the lives of a significant number of returned victims of trafficking, it is necessary that there be a regulatory response which protects the victims rather than deports them.¹⁷¹²

Considering FIFA possesses regulatory powers and monetary reserves that are comparable to many nation states, it can be argued that FIFA (in collaboration with other external institutions) has the wherewithal to offer a victim support response to the occurrence of football trafficking. FIFA can cater to the specific needs and protections of the identified victims, and through its global position and the strength of its TPR, FIFA has the capacity to create alternative opportunities for the victims in football, or FIFA could form other avenues related to the sport that would allow the child to continue their development. These opportunities will serve to insulate the trafficked victims from other adverse human rights risks, situations of re-trafficking, and the possible dangers they may face upon return.

10.2.3 Enforcement

For FIFA’s anti-trafficking regulations to be effective, the organisation must be able to adequately apply the rules on the ground.¹⁷¹³ Haynes argued that anti-trafficking regulations are only useful to trafficked persons and threatening to violators if it is

¹⁷⁰⁷ United Nations Trafficking in Persons Protocol (UN TIP Protocol) of 25 December 2003

¹⁷⁰⁸ Gallagher, Anne T. "Two cheers for the trafficking protocol." *Anti-Trafficking Review* 4 (2015). p/4

¹⁷⁰⁹ Haynes, Dina Francesca. "Used, abused, arrested and deported: Extending immigration benefits to protect the victims of trafficking and to secure the prosecution of traffickers." *Hum. Rts. Q.* 26 (2004): 221. p/248

¹⁷¹⁰ Gallagher, Anne, and Paul Holmes. "Developing an effective criminal justice response to human trafficking: Lessons from the front line." *International criminal justice review* 18, no. 3 (2008): 318-343. p/332

¹⁷¹¹ Stoyanova, Vladislava. "Complementary protection for victims of human trafficking under the European Convention on Human Rights." *Goettingen J. Int'l L.* 3 (2011): 777. p/779

¹⁷¹² Stoyanova, Vladislava. "Complementary protection for victims of human trafficking under the European Convention on Human Rights." *Goettingen J. Int'l L.* 3 (2011): 777. p/784

¹⁷¹³ Baldwin, Robert, Martin Cave, and Martin Lodge. *Understanding regulation: theory, strategy, and practice*. Oxford University Press on Demand, 2012. p/227

implemented/enforced properly, and that the traffickers know that the rules are fully in force.¹⁷¹⁴ Thus, proper enforcement of policies could be the difference between regulatory failure or success.¹⁷¹⁵ Enforcement entails compelling regulatees to comply with regulatory policies through persuasion and deterrence approaches,¹⁷¹⁶ as regulators can directly respond to the non-compliant regulatees by invoking more interventionist or punitive modes of enforcement until regulatory compliance is achieved.¹⁷¹⁷

Persuasion based approach

Persuasion is generally considered as the preferable first step¹⁷¹⁸ to achieve more compliant behaviour.¹⁷¹⁹ Through this approach, it is recommended that FIFA (the regulator) should initially have open conversations with its MAs and their associated teams (the regulatees) to understand the complexities of compliance in the context of its anti-trafficking policies. With the open conversations, FIFA will be informed of the hindrances in its regime which may be preventing its regulatees from voluntarily complying with its anti-trafficking rules and standards.¹⁷²⁰ For instance, FIFA could be briefed about the extent of the financial benefits on offer to the teams who engage in these illicit transactions. The conversations could inform FIFA of the extent of these ambiguous transactions involving foreign minors, alluding to how several teams maintain an element of deniability and culpability for the on-the-ground effects of their aggressive recruitment strategies. With this information, FIFA would be better placed to advice and dissuade its regulatees from continuously engaging in these harmful practices, whilst proffering alternative means for the regulatees to achieve their profitability goals, in a manner that does not put foreign football minors at an increased risk of exploitation.

FIFA should consider the introduction of mechanisms which reduce the commodification of children within the sport, as this is an underlying factor that drives the football trafficking problem. The reduced profitability ascribed to child players could act as a disincentive for the teams who continually search for means to bypass FIFA's policies, and it could limit the

¹⁷¹⁴ Haynes, Dina Francesca. "Used, abused, arrested and deported: Extending immigration benefits to protect the victims of trafficking and to secure the prosecution of traffickers." *Hum. Rts. Q.* 26 (2004): 221. p/234

¹⁷¹⁵ Baldwin, Robert, Martin Cave, and Martin Lodge. *Understanding regulation: theory, strategy, and practice*. Oxford University Press on Demand, 2012. p/257

¹⁷¹⁶ Lodge, Martin, and Kai Wegrich. *Managing regulation: Regulatory analysis, politics and policy*. Macmillan International Higher Education, 2012. p/71

¹⁷¹⁷ Tombs, Steve. "Book Review: Understanding Regulation?" *Social & Legal Studies* 11, no. 1 (2002): 113-133. p/119

¹⁷¹⁸ Ayres, Ian, and John Braithwaite. *Responsive regulation: Transcending the deregulation debate*. Oxford University Press, 1992. p/26

¹⁷¹⁹ Ayres, Ian, and John Braithwaite. *Responsive regulation: Transcending the deregulation debate*. Oxford University Press, 1992. p/26

¹⁷²⁰ Lodge, Martin, and Kai Wegrich. *Managing regulation: Regulatory analysis, politics and policy*. Macmillan International Higher Education, 2012. p/76

benefits for the unscrupulous persons who are regularly engaged in the trafficking of young players. With the open discussions brought about through this persuasive approach, FIFA could also ascertain the compliance reaction of its regulatees towards its proposed anti-trafficking provisions. However, the issue with adopting only a persuasive approach to achieving optimal anti-trafficking regulatory compliance is that constant persuasion between the regulators and regulatees is known to create a “cosy regulatory arrangement”, which may itself discourage compliance in the long-term.¹⁷²¹ To achieve compliance through effective enforcement, the regulators must have punishments which not only adequately reflect the gravity of the breach, but are also able to deter regulatees from future non-compliant and errant behaviours.

Deterrence based approach

Deterrence approaches are adopted when persuasion fails,¹⁷²² and its aim is to produce compliant behaviour by introducing increasingly severe punishments for non-compliance. Deterrence approaches should be used after the attempts to persuade, as when they are used before,¹⁷²³ the deterrence measures could be counter-productive¹⁷²⁴ or could lead to undesirable side-effects in the regime.¹⁷²⁵ With FIFA and the effectiveness of its future anti-trafficking regulations, a deterrence approach is essential to cope with the instances of deliberate rule avoidance,¹⁷²⁶ and the creative compliance which takes place amidst FIFA’s regulatees. It is recommended that FIFA’s anti-trafficking deterrence approach should specifically target the finances involved in football trafficking, and that there should also be an increase in the severity of the punishments/sanctions imposed upon defaulting parties.

Regarding the finances, FIFA’s policies should be able to dismantle the current circumstances in football which render significant benefits for rule breaking, as opposed to the light-handed punishments for non-compliant behaviour with the organisation’s anti-trafficking policies. In FIFA’s regime, the cost of non-compliance with its anti-trafficking regulations should be higher than the prospective benefits for the teams who break the rules

¹⁷²¹ Lodge, Martin, and Kai Wegrich. *Managing regulation: Regulatory analysis, politics and policy*. Macmillan International Higher Education, 2012. p/78-9

¹⁷²² Braithwaite, John. "Beyond positivism: Learning from contextual integrated strategies." *Journal of Research in Crime and Delinquency* 30, no. 4 (1993): 383-399. p/390. Cited in Tombs, Steve. "Book Review: Understanding Regulation?" *Social & Legal Studies* 11, no. 1 (2002): 113-133. p/119

¹⁷²³ Lodge, Martin, and Kai Wegrich. *Managing regulation: Regulatory analysis, politics and policy*. Macmillan International Higher Education, 2012. p/79

¹⁷²⁴ Braithwaite, John. "Beyond positivism: Learning from contextual integrated strategies." *Journal of Research in Crime and Delinquency* 30, no. 4 (1993): 383-399. p/390. Cited in Tombs, Steve. "Book Review: Understanding Regulation?" *Social & Legal Studies* 11, no. 1 (2002): 113-133. p/119

¹⁷²⁵ Baldwin, Robert, Martin Cave, and Martin Lodge. *Understanding regulation: theory, strategy, and practice*. Oxford University Press on Demand, 2012. p/242

¹⁷²⁶ Baldwin, Robert, Martin Cave, and Martin Lodge. *Understanding regulation: theory, strategy, and practice*. Oxford University Press on Demand, 2012. p/231

to conduct ITMs beneath FIFA's radar. The severity of these practices by FIFA's regulatees - which inadvertently contributes to the underground trade in foreign minors, should be reflected with significant financial and cost related punishments for the defaulting teams and football personnel. The financial penalties could include points deduction; bans from football for persons involved or bans from international competitions for teams, denying them the possibility of attaining the considerable cash rewards on offer for good performance; more significant and long-term limitations and bans to the teams' ability to recruit and trade within the football transfer market; and other substantial economic fines, asset forfeiture,¹⁷²⁷ and confiscations.¹⁷²⁸ These financial penalties will reflect the significance of FIFA's stance on restricting the occurrence of football trafficking, and it could serve to effectively deter the perpetrators from such errant behaviours which puts child players at risk of exploitation.

Concerning increased punishments, FIFA should adopt a severe punitive and prosecution-oriented approach to achieving compliant behaviour, to effectively deter the perpetrators of trafficking (both within football and on the periphery of the sport). FIFA's anti-trafficking policies should have avenues for increased enforcement and punishments in collaboration with wider NGOs, IGOs, and nation States. FIFA's current 'soft' approach to punishing defaulting teams engaged in the crime has not contributed to ending the wider culture of impunity for perpetrators of trafficking and those that use trafficked labour.¹⁷²⁹ It is generally held that trafficking (and football trafficking as a subset of the larger problem) is a billion-dollar business with a seemingly endless supply of trafficable persons and users.¹⁷³⁰ Yet, due to this wider culture of impunity that has also seeped into football, anti-trafficking regulations have seldom led to arrests, investigations, prosecutions, or convictions of the traffickers or those that use and exploit trafficked labour.¹⁷³¹

Accordingly, for FIFA's regulations to effectively deter perpetrators from engaging in this crime with vast benefits and supposedly little risks, FIFA should harness its external collaborations to introduce a more prosecution-oriented approach which contains severe

¹⁷²⁷ Haynes, Dina Francesca. "Used, abused, arrested and deported: Extending immigration benefits to protect the victims of trafficking and to secure the prosecution of traffickers." *Hum. Rts. Q.* 26 (2004): 221. p/259

¹⁷²⁸ IPEC, *Combating trafficking in children for labour exploitation: A resource kit for policy-makers and practitioners* (International Labour Office; ILO International Programme on the Elimination of Child Labour, Geneva 2008). Book 4 page 29

¹⁷²⁹ European Commission, "Answer to question on People trafficking in football" (April 2019) E-000535/2019 <https://www.europarl.europa.eu/doceo/document/E-8-2019-000535-ASW_EN.pdf> accessed on 20/07/2020

¹⁷³⁰ Haynes, Dina Francesca. "Used, abused, arrested and deported: Extending immigration benefits to protect the victims of trafficking and to secure the prosecution of traffickers." *Hum. Rts. Q.* 26 (2004): 221. p/246

¹⁷³¹ Gallagher, Anne, and Paul Holmes. "Developing an effective criminal justice response to human trafficking: Lessons from the front line." *International criminal justice review* 18, no. 3 (2008): 318-343. p/338

penalties for errant behaviours of this kind.¹⁷³² In essence, FIFA's policies should be able to criminalise both the traffickers and those who use the services of the victims within the sport.¹⁷³³ The severity of this punishment alludes to what Ayres and Braithwaite referred to as the "benign big gun",¹⁷³⁴ which is often employed by regulators to signal the point at which greater punitive action becomes necessary for compliance.¹⁷³⁵ Considering the non-compliant behaviours of FIFA's regulatees to its current anti-trafficking policies, if the organisation is unable to persuade its members to comply with its rules on ITMs, it is recommended that the benign big gun should be applied to enable FIFA effectively punish the perpetrators and their partners for engaging in football trafficking. The big gun, in this footballing context, could include lifetime bans from the sport and subsequent criminal prosecutions for the culpable individuals involved in perpetrating the crime.

FIFA's deterrence approach should also escalate the severity of punishments according to the defaulting parties and the nature of their contravening act. FIFA should be able to assess its regulatees and consider factors such as the deliberateness of their breach, the duration of the contravention, and the existence of prior contravening conduct of this kind.¹⁷³⁶ These factors will enable the organisation to produce more tailored punishments reflective of the circumstances of the regulatees. Defaulting regulatees who are repeat offenders should be punished severely to illustrate that FIFA is willing to go beyond the mild reprimands currently being meted out for non-compliance with its anti-trafficking policies. Such a stance will signal FIFA's intention to make football a less vulnerable sport for the minors,¹⁷³⁷ as it shows an essential prioritisation of safeguarding child players from the precarious circumstances related to trafficking.

As Baldwin and others noted, the aim of effective enforcement lies principally in the reduction of harmful behaviour.¹⁷³⁸ In this instance, for FIFA to reduce the harmful behaviours that have caused a precarious footballing environment for the aspiring young players, the organisation must be prepared to invest significantly in its enforcement practices to achieve the intended outcome of curbing football trafficking. The call for significant

¹⁷³² Haynes, Dina Francesca. "Used, abused, arrested and deported: Extending immigration benefits to protect the victims of trafficking and to secure the prosecution of traffickers." *Hum. Rts. Q.* 26 (2004): 221. p/244 & 246

¹⁷³³ European Commission, "Answer to question on People trafficking in football" (April 2019) E-000535/2019 <https://www.europarl.europa.eu/doceo/document/E-8-2019-000535-ASW_EN.pdf> accessed on 20/07/2020

¹⁷³⁴ Ayres, Ian, and John Braithwaite. *Responsive regulation: Transcending the deregulation debate*. Oxford University Press, USA, 1992. p/19

¹⁷³⁵ Tombs, Steve. "Book Review: Understanding Regulation?" *Social & Legal Studies* 11, no. 1 (2002): 113-133. p/119

¹⁷³⁶ Yeung, Karen. *Securing compliance: A principled approach*. Bloomsbury Publishing, 2004. p/169

¹⁷³⁷ Andrews, Matthew, and Peter Harrington. "Off pitch: football's financial integrity weaknesses, and how to strengthen them." (2016) CID Working Paper No. 311. p/204

¹⁷³⁸ Baldwin, Robert, Martin Cave, and Martin Lodge. *Understanding regulation: theory, strategy, and practice*. Oxford University Press on Demand, 2012. p/247

financial backing stems from the understanding that enforcement activities are not cost-free,¹⁷³⁹ and insufficient financial resources and incapable staff are factors which could combine to hinder the effectiveness of FIFA's policies,¹⁷⁴⁰ and could lead to the occurrence of regulatory failure.

10.2.4 Assessment

Regulators must continuously self-assess the performance of their regulatory provisions to determine if the policies are successful or failing to institute the requisite behaviour change. The assessment shows how well the current system may be working and will highlight the undesirable behaviours escaping the adopted regulatory strategy.¹⁷⁴¹ FIFA should be aware that a comprehensive self-assessment is important in instituting effective anti-trafficking regulations, especially because it provides an avenue to identify and prevent any negative impacts which may impinge on the existing rights of the victims.¹⁷⁴² These assessments could take four main approaches: input; process; output; and outcome-based assessments. Of the approaches, the outcome-based method is recommended to FIFA as the best means of evaluating the performance of its anti-trafficking policies. The outcome-based assessment will provide the best means for FIFA to estimate the true impact of its anti-trafficking policies on those the policies are supposed to protect (the football minors). Moreover, the assessment will determine if the policies have been able to achieve the intended outcome of preventing non-compliant behaviours in the regime (such as, deterring teams from engaging in illicit ITMs).¹⁷⁴³

It is reasoned that FIFA can only achieve an effective self-assessment of its anti-trafficking policies when there is improved monitoring (and detection) regarding instances of trafficking within the sport. In line with earlier recommendations to improve its human trafficking data collection practices,¹⁷⁴⁴ FIFA are also advised to introduce more independent personnel or groups with human rights expertise into the organisation. These expert groups would be called upon to assess the human rights issues and complaints around the sport,¹⁷⁴⁵ as well as

¹⁷³⁹ Lodge, Martin, and Kai Wegrich. *Managing regulation: Regulatory analysis, politics and policy*. Macmillan International Higher Education, 2012. p/75

¹⁷⁴⁰ Baldwin, Robert, Martin Cave, and Martin Lodge. *Understanding regulation: theory, strategy, and practice*. Oxford University Press on Demand, 2012. p/421

¹⁷⁴¹ Baldwin, Robert, Martin Cave, and Martin Lodge. *Understanding regulation: theory, strategy, and practice*. Oxford University Press on Demand, 2012. p/254

¹⁷⁴² Gallagher, Anne T. "Two cheers for the trafficking protocol." *Anti-Trafficking Review* 4 (2015). p/4

¹⁷⁴³ Bryant, Katharine, and Todd Landman. "Combatting human trafficking since Palermo: what do we know about what works?" *Journal of human trafficking* 6, no. 2 (2020): 119-140. p/133

¹⁷⁴⁴ 10.2.1: Improving Data Collection

¹⁷⁴⁵ Kirschner, Florian. "Breakthrough or much ado about nothing? FIFA's new bidding process in the light of best practice examples of human rights assessments under UNGP Framework." *The International Sports Law Journal* 19, no. 3-4 (2019): 133-153. p/149

to determine the true effects of FIFA's anti-trafficking policies in affording the football minors their requisite protections. Improved monitoring and data collection will allow FIFA to conduct a more comprehensive self-assessment on the efficacy and overall impact of its anti-trafficking policies.¹⁷⁴⁶ Plus, with better data, FIFA will be able to highlight what modifications could be made to its policies to bring about increased behaviour change amongst its regulatees, thereby ensuring that the intended outcome of curbing football trafficking can be achieved and maintained.

10.2.5 Modification

Regulators must be able to adjust their regulatory strategies to improve compliance and address any undesirable behaviours detected during the assessment of the regime.¹⁷⁴⁷ Having previously conducted an outcome-based assessment on FIFA's anti-trafficking policies,¹⁷⁴⁸ the modifications being proposed in this section are based on the results of that assessment. The suggested modifications can be divided into three main aspects: modifications as a regulator, modifications for the regulatees, and modifications for the children involved with the sport.

As a regulator

For FIFA to modify its anti-trafficking approach to be more effective, FIFA must attain a better understanding of the factors that lead to football trafficking in different contexts.¹⁷⁴⁹ As the regulator and dominant actor within football's regulatory space, FIFA must be aware of the factors that affect the populations which interact with and within its regime, and how these factors combine and lead to the occurrence of football trafficking. For example, there are differing circumstances that would lead to the trafficking or exploitation of a young European player, that would be different for that of an African or South American player. Therefore, for FIFA's anti-trafficking policies to be modified in a manner that would make it more effective in tackling the problem, such a difference should be accounted for within its policy provisions, rather than a blanket approach which views football minors, their motivations (and that of the team looking to exploit them) through the same limited lens. By hindering most ITMs in a bid to protect the football minors, FIFA's current approach signifies that FIFA (as the regulator) is not fully aware of the varying circumstances and complexities related to the football trafficking problem. Thus, modification of FIFA's

¹⁷⁴⁶ Bryant, Katharine, and Todd Landman. "Combatting human trafficking since Palermo: what do we know about what works?" *Journal of human trafficking* 6, no. 2 (2020): 119-140. p/132

¹⁷⁴⁷ Baldwin, Robert, Martin Cave, and Martin Lodge. *Understanding regulation: theory, strategy, and practice*. Oxford University Press on Demand, 2012. p/227

¹⁷⁴⁸ Chapter 5 - Evaluating FIFA's Regulations - Policy Objectives

¹⁷⁴⁹ Kiss, Ligia, and Cathy Zimmerman. "Human trafficking and labor exploitation: Toward identifying, implementing, and evaluating effective responses." (2019): e1002740. p/1

policies is essential to prevent further instances of non-compliance with its anti-trafficking provisions. The modified FIFA policies must accommodate for the variations in the vulnerabilities of the at-risk football minors, and the policies should be able to afford these young persons with the requisite protections which are reflective of their circumstances.

For the regulatees (Raising Awareness)

FIFA's policies should be modified to account for the motivations of its regulatees and their non-compliant behaviours.¹⁷⁵⁰ It is recommended that FIFA should adopt tailored awareness raising campaigns that inform its regulatees, the perpetrators on the periphery of the sport, and the foreign minors who are often the victims of this form of trafficking, about the dangers, downsides, and punitive repercussions of engaging in football trafficking. The recommended use of awareness raising campaigns as part of an effective anti-trafficking response is common, though their results are often varied. Prior anti-trafficking campaigns focused on educating the public on human trafficking,¹⁷⁵¹ and informing them of how to report cases and protect children from becoming the victims of traffickers.¹⁷⁵² FIFA themselves have previously supported (and abandoned) the use of these awareness raising and education campaigns to address child trafficking and modern-day slavery.¹⁷⁵³

It is contended that awareness campaigns at times failed because they relied on a mistaken belief that traffickers prospered chiefly owing to the misconstrued aspirations of migrants and their hopes for a better life abroad. This perception led to awareness campaigns which focused heavily on the harsh realities that may befall an irregular migrant in a foreign country, and the risks involved for the persons who embarked on the clandestine and precarious migratory trips abroad. Najarian argued that targeted awareness raising campaigns for youth footballers in renowned source regions could be the most effective way to eliminate instances of football trafficking, as families would be more aware of the dangers of doing business with unlicensed intermediaries/agents and illegal football academies.¹⁷⁵⁴ Yet, previous football trafficking awareness campaigns have been ineffective, arguably due to the flawed premise in which they were based.

¹⁷⁵⁰ Lodge, Martin, and Kai Wegrich. *Managing regulation: Regulatory analysis, politics and policy*. Macmillan International Higher Education, 2012. p/93

¹⁷⁵¹ Bryant, Katharine, and Todd Landman. "Combating human trafficking since Palermo: what do we know about what works?" *Journal of human trafficking* 6, no. 2 (2020): 119-140. p/133

¹⁷⁵² Guild, E., B. Andrees and M. Linden, *Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement* (Geneva: International Labour Office, 2005). p/62

¹⁷⁵³ Scott, Matt, "Fifa 'abandons' child trafficking campaign" (*The Guardian*, February 2010) <<https://www.theguardian.com/sport/2010/feb/04/fifa-child-trafficking-sepp-blatter>> accessed 21/12/2020

¹⁷⁵⁴ Najarian, Alex C. "The Lost Boys: FIFA's Insufficient Efforts to Stop Trafficking of Youth Footballers." *Sports Law. J.* 22 (2015): 151. p/190

Unscrupulous persons and agents continue to deceive the young players in Africa because the awareness campaigns focused on the dangers associated with migration. Rather than publicising the availability of viable means which young players in the source regions could use to exercise their embedded agency and achieve a career in professional football. The previous awareness campaigns failed to comprehend how young people in Africa understand risk and how they view danger when making their migratory decisions.¹⁷⁵⁵ Research in the field has since shown that the aspiring African players do not harbour the same negative connotations and perceptive dangers associated with precarious migratory routes that the trafficking awareness campaigns expected them to have.¹⁷⁵⁶ Thus, attempts at eradicating football trafficking by discouraging irregular migration and engagement with unscrupulous agents/intermediaries is an approach which is not reflective of the socio-economic circumstances (and other push factors) that play a role in the young person's decision to migrate regularly or irregularly. The aspiring players in the targeted source regions reportedly viewed the previous anti-trafficking awareness campaigns as being biased against them, because the youths felt that the images were aimed at preventing them from travelling abroad and 'enjoying the West'¹⁷⁵⁷ like the other successful football migrants before them.

Therefore, for FIFA's future anti-trafficking awareness campaigns to be effective, the focus should be on the reduction of avenues for exploitation and trafficking,¹⁷⁵⁸ rather than on discouraging the at-risk youths and their families from engaging with potential traffickers, unscrupulous agents/intermediaries, or enrolling at illegal football academies. Effective awareness campaigns should involve local people residing in the respective African countries,¹⁷⁵⁹ but should not be exclusively based around the African football minors who are the potential victims of football trafficking. Other groups, e.g., MAs, football teams, legal and illegal football academies, club owners, and the unscrupulous agents/intermediaries on the periphery of the sport perpetuating the crime, should all be targeted with clear and adaptable messages¹⁷⁶⁰ that underline the severity of football trafficking and highlights the gravity of the punishments to be given to those caught engaging and facilitating in its continued occurrence. FIFA should equally employ a means of increasing public awareness

¹⁷⁵⁵ *ibid.* p/525

¹⁷⁵⁶ Esson, James. "Better off at home? Rethinking responses to trafficked West African footballers in Europe." *Journal of Ethnic and Migration Studies* 41, no. 3 (2015): 512-530. p/525

¹⁷⁵⁷ *Ibid.* p/524

¹⁷⁵⁸ Cyrus, Norbert and Dita Vogel, 'Learning from demand-side campaigns against trafficking in human beings: evaluation as knowledge-generator and project-improver' (2017) DemandAT Working Paper No 9. p/22

¹⁷⁵⁹ Esson, James. "Better off at home? Rethinking responses to trafficked West African footballers in Europe." *Journal of Ethnic and Migration Studies* 41, no. 3 (2015): 512-530. p/524

¹⁷⁶⁰ Bryant, Katharine, and Todd Landman. "Combatting human trafficking since Palermo: what do we know about what works?" *Journal of human trafficking* 6, no. 2 (2020): 119-140. p/133

which could help external bodies, law enforcement, and the public, to better understand the extent of the trafficking problem,¹⁷⁶¹ and which would also enable FIFA to educate the public about the peculiarities of football trafficking, and inform the public about what is being done to curb the crime.

By modifying its regulatory approach to adopt effective awareness raising campaigns to show this clear, public friendly stance on football trafficking, FIFA could decrease the avenues which the unscrupulous agents/intermediaries use to deceive and cheat young African boys and their families in the source countries.¹⁷⁶² More awareness will also aid in the identification of football trafficking victims and in providing them with the requisite support they deserve. Additionally, FIFA's modified anti-trafficking policies would be able to better deter regulatees from further breaches to its regulations, as the organisation will equally raise awareness about the increased severity of the punishments for defaulting parties who are found to have engaged in football trafficking.

Though awareness campaigns are beneficial, they tend to only have a positive impact on reducing problems like labour exploitation and human trafficking when used in combination with other interventions,¹⁷⁶³ such as a child-centred regulatory approach.

For the Children

Regulatory theorists posit that effective regulatory modifications should consider broader issues which could be affecting regulatory performance.¹⁷⁶⁴ Consequently, FIFA's anti-trafficking regulatory strategy should also be modified to accommodate for a broader issue which has affected and undermined the performances of its anti-trafficking policies thus far. This, it is argued, is the significant absence of a child-centred approach.

10.3 A CHILD-CENTRED APPROACH

Lewis and Taylor argued that Sport's Governing Bodies (SGBs), in general, have a higher duty of care owed to children and the young people involved in their respective sports.¹⁷⁶⁵ Therefore, SGBs are expected to take appropriate steps to address and prevent any risks

¹⁷⁶¹ Saner, Raymond, Lichia Yiu, and Laurel Rush. "The measuring and monitoring of human trafficking." *Public Administration and Policy* (2018). p/102

¹⁷⁶² Lembo, Christina. "FIFA transfers regulations and UEFA player eligibility rules: major changes in European football and the negative effect on minors." *Emory Int'l L. Rev.* 25 (2011): 539. p/584

¹⁷⁶³ Bryant, Katharine, and Todd Landman. "Combating human trafficking since Palermo: what do we know about what works?" *Journal of human trafficking* 6, no. 2 (2020): 119-140. p/133

¹⁷⁶⁴ Baldwin, Robert, Martin Cave, and Martin Lodge. *Understanding regulation: theory, strategy, and practice*. Oxford University Press on Demand, 2012. p/257

¹⁷⁶⁵ Lewis, Adam, and Jonathan Taylor. *Sport: law and practice*. Bloomsbury Professional, 2014. p/713

associated with participating in their sport for young persons. Such as, the adverse human rights problems faced by the foreign football minors, which FIFA should have curtailed. Football trafficking was borne out of football's regulatory environment that is dependent on child labour, and which engages many children, yet the sport has failed to establish adequate child-protection measures able to effectively combat this problem.¹⁷⁶⁶ FIFA, as a TPR and global regulator of football, has the capacity to introduce policies which ameliorate some of the risks associated with pursuing a professional playing career. But FIFA's regulatory responses have failed to reflect its moral duty to effectively safeguard the football minors from the potentially precarious situations that come about as a result of their pursuit.

It is recommended that a child-centred approach to FIFA's anti-trafficking policies will aid the production of more effective regulations. Through this approach, FIFA will be able to offer the requisite protections for the football minors, as the organisation's regulatory decisions will revolve around measures that put the child as the primary 'rights holder',¹⁷⁶⁷ and the policies would be centred on the child's best interests as a means of protecting them from the adverse human rights risks associated with the sport. For the child-centred approach to be effective it is essential that the regulations be based on the UN Convention on the Rights of the Child (UNCRC) which provides a means for developing common standards which FIFA should adopt.

10.3.1 UNCRC

The UNCRC offers wide-ranging and globally accepted standards for children's rights. The provision recognises children as holders of human rights and renders several laws in advancement of these rights of the child, such as article 3(1) which requires that primary consideration must be given to the best interests of the child in all actions affecting them.¹⁷⁶⁸ The main issue with the football environment (and FIFA's current anti-trafficking laws) is that the recruitment processes employed by teams,¹⁷⁶⁹ and FIFA's subsequent regulatory responses to these problems, have not always been operated in the best interests of the child.¹⁷⁷⁰ This has undermined the performance of the policies in being able to offer the requisite protections to the football minors, as the commercial incentives created by the

¹⁷⁶⁶ Kerr, Gretchen A., and Ashley E. Stirling. "Child protection in sport: Implications of an athlete-centered philosophy." *Quest* 60, no. 2 (2008): 307-323. p/307

¹⁷⁶⁷ Esson, James, Paul Darby, Eleanor Drywood, Carolynne Mason, and Serhat Yilmaz. "Children before players: Current risks and future research agendas." <<https://hdl.handle.net/2134/11590800.v1>> accessed 2 March 2020. p/52

¹⁷⁶⁸ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, Article 3(1)

¹⁷⁶⁹ Esson, James, Paul Darby, Eleanor Drywood, Carolynne Mason, and Serhat Yilmaz. "Children before players: Current risks and future research agendas." <<https://hdl.handle.net/2134/11590800.v1>> accessed 2 March 2020. p/47

¹⁷⁷⁰ FIFA, "Second Report by The FIFA Human Rights Advisory Board: Including the Board's Recommendations and FIFA's Responses" (*FIFA Human Rights Advisory Board*, September 2018) <<https://resources.fifa.com/image/upload/fifa-second-human-rights-advisory-board-report.pdf?cloudid=hw134aljrosbxevkwvh>> accessed on 13/02/2019. p/22

popularity of football globally has created tensions between ensuring the rights of young players are protected, and harnessing a football environment that has a truly global and profitable transfer market.

Football's global transfer system aims to provide an increased availability of accessible talent for the football workforce but does so without offering the necessary protections from exploitative situations for the children involved with the sport, contrary to Article 32 UNCRC. Such a gap in FIFA's regulations leaves the football minors open to serious harm, as football teams use academies and schools in developing countries to recruit and exploit minors for economic gain in Europe. Through FIFA's current anti-trafficking approach, the organisation (and by extension, the involved State parties) have failed to introduce the requisite national, bilateral, and multinational measures which would prevent the cross-border networks that culminate in the abduction, sale, and trafficking of these children,¹⁷⁷¹ contrary to Article 35 UNCRC.¹⁷⁷² Moreover, FIFA's restrictions on ITMs have also been adopted in a way which contravenes Article 27 UNCRC, as it denies football minors legitimate opportunities to migrate and improve their standard of living which would have upheld their rights, protected them from exploitation,¹⁷⁷³ and furthered their physical, mental, spiritual, moral, and social development.¹⁷⁷⁴

Thus, an effective child-centred approach to FIFA's anti-trafficking policies should consider the longstanding impact the policies could have on minors, and it should take into account how certain provisions could impinge on the rights of the child. The child-centred approach should be guided by the UNCRC throughout the planning, implementation, monitoring, and evaluation stages of the regulatory process.¹⁷⁷⁵ The policies should emphasise that the individuals are children first before they are sports persons, and the protections they are afforded should be able to prevent their exploitation without restricting the avenues for them to develop, in line with their best interests.

¹⁷⁷¹ Mason, Carolynne, Paul Darby, Eleanor Drywood, James Esson, and Serhat Yilmaz. "Rights, Risks and Responsibilities in the Recruitment of Children within the Global Football Industry." *The International Journal of Children's Rights* 27, no. 4 (2019): 738-756. p/747

¹⁷⁷² UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, Article 35.

¹⁷⁷³ Esson, James, Paul Darby, Eleanor Drywood, Carolynne Mason, and Serhat Yilmaz. "Children before players: Current risks and future research agendas." <<https://hdl.handle.net/2134/11590800.v1>> accessed 2 March 2020. p/48

¹⁷⁷⁴ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, Article 27(1)

¹⁷⁷⁵ Esson, James, Paul Darby, Eleanor Drywood, Carolynne Mason, and Serhat Yilmaz. "Children before players: Current risks and future research agendas." <<https://hdl.handle.net/2134/11590800.v1>> accessed 2 March 2020. p/5

10.3.2 The voice of the child

Article 12(1) UNCRC provides that children should be given a voice in all matters affecting them, including during regulatory processes.¹⁷⁷⁶ Within the context of anti-trafficking regulations, the ILO concurred with the UNCRC provision, stating that children should be involved at the planning stages of policies against child trafficking because the information they can provide is of great value to protecting children and preventing other instances of this form of trafficking.¹⁷⁷⁷ Thus, effectively implementing Article 12 UNCRC is important, as it provides a means of realising other relevant UNCRC provisions for the child, and because enabling children to be involved in the decision-making will improve the quality of the decisions being made on their behalf.¹⁷⁷⁸ Lundy proposed a generally accepted model to implement the Article 12 UNCRC provision.¹⁷⁷⁹ The model has an explicit chronology, and requires consideration of the implications of the following four factors:

- *Space: children must be given the opportunity to express their views.*
- *Voice: children must be facilitated to express their views.*
- *Audience: the view must be listened to.*
- *Influence: the view must be acted on, as appropriate.*¹⁷⁸⁰

Space

Lundy explained that there is a need for a greater awareness of the fact that respecting children's views on matters concerning them, and involving them in the decision-making processes, is not an option, but is a legally binding obligation.¹⁷⁸¹ Therefore, children should be given an opportunity for involvement in the decision-making processes, e.g., there should be a space in which children are encouraged to express their views.¹⁷⁸² To actualise this within FIFA's anti-trafficking policy processes, FIFA must create an inclusive space during its deliberations whereby a diverse range of views from African minors (and other young

¹⁷⁷⁶ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, Article 12(1)

¹⁷⁷⁷ IPEC, *Combating trafficking in children for labour exploitation: A resource kit for policy-makers and practitioners* (International Labour Office; ILO International Programme on the Elimination of Child Labour, Geneva 2008). Book 3 page 36 and Book 2 page 27

¹⁷⁷⁸ Welty, Elizabeth, and Laura Lundy. "A children's rights-based approach to involving children in decision making." *Journal of science communication* 12, no. 3 (2013): C02. p/4

¹⁷⁷⁹ McCafferty, Paul. "Implementing Article 12 of the United Nations convention on the rights of the child in child protection decision-making: A critical analysis of the challenges and opportunities for social work." *Child Care in Practice* 23, no. 4 (2017): 327-341. p/327

¹⁷⁸⁰ Lundy, Laura. "'Voice' is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child." *British educational research journal* 33, no. 6 (2007): 927-942. p/933

¹⁷⁸¹ Lundy, Laura. "'Voice' is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child." *British educational research journal* 33, no. 6 (2007): 927-942. p/930-1

¹⁷⁸² Ibid. p/931

players) involved in football is sought. Seeing as participation within the deliberations should not only be afforded to articulate and literate persons,¹⁷⁸³ FIFA should consult the victims of football trafficking, including the successful and unsuccessful players, as they are considered to be the “true anti-trafficking experts”.¹⁷⁸⁴ The children consulted should be asked questions which elucidate whether firstly, they would like to participate in the decision-making process; secondly, how they would like to influence the outcome of the decisions; and thirdly, what aspects of football’s transfer system and the path to making it as professional players they consider to be of most importance or concern, based on their understanding. It is argued that the information provided by the child players will aid FIFA in designing and developing a more coordinated response to combatting the underlying causes of football trafficking in the source regions.¹⁷⁸⁵

Voice

Article 12 UNCRC contains the restriction that the child’s right to express their view is to be afforded to a child “who is capable of forming his or her own views”.¹⁷⁸⁶ However, Lundy explained that the provision should not be translated into questions about the capacity of the child or “the age and maturity of the child”.¹⁷⁸⁷ She posited that the child’s right to express their view is not dependent upon their capacity to express a mature view, but rather, is dependent only on their ability to form their view, irrespective of maturity.¹⁷⁸⁸ To form a view, children may need the help of others, and the child has a right to receive direction and guidance from adults in the course of this.¹⁷⁸⁹ Within FIFA’s processes, the organisation is advised to directly obtain the views of former victims of football trafficking during its policy design processes,¹⁷⁹⁰ as well as the successful football migrants, or those who would be impacted by FIFA’s anti-trafficking provisions. Alternatively, FIFA can solicit the assistance of football trafficking charities (such as Culture Foot Solidaire) who are informed

¹⁷⁸³ Ibid.

¹⁷⁸⁴ Brennan, Denise, and Sine Plambech. "Moving forward—Life after trafficking." *Anti-Trafficking Review* 10 (2018). p/1

¹⁷⁸⁵ Guild, E., B. Andrees and M. Linden, *Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement* (Geneva: International Labour Office, 2005). p/48

¹⁷⁸⁶ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, Article 12(1)

¹⁷⁸⁷ Lundy, Laura. "‘Voice’ is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child." *British educational research journal* 33, no. 6 (2007): 927-942. p/935

¹⁷⁸⁸ Ibid.

¹⁷⁸⁹ Welty, Elizabeth, and Laura Lundy. "A children’s rights-based approach to involving children in decision making." *Journal of science communication* 12, no. 3 (2013): C02. p/3

¹⁷⁹⁰ IPEC, *Combating trafficking in children for labour exploitation: A resource kit for policy-makers and practitioners* (International Labour Office; ILO International Programme on the Elimination of Child Labour, Geneva 2008). Book 4 page 9

about football trafficking and have the capacity to give football minors the direction that will enable them form views beneficial to FIFA's anti-trafficking decision-making processes.

Audience

Article 12 requires children's views to be given "due weight". Lundy explained that implicit within the notion of due weight is that children have a right to have their views listened to (not just heard) i.e., a "right of audience".¹⁷⁹¹ It is expected that the children's views are listened to by an identifiable individual or body with the responsibility to listen, and an ability to make decisions which could give effect to the children's views.¹⁷⁹² Thus, FIFA must find ways to increase its capacity and allow room for valuable contributions from children as part of its anti-trafficking policy deliberations process. Previously, football's regulatory landscape (and sport more broadly) has not consulted children, or treated the results of such consultations with children seriously when enacting their policies.¹⁷⁹³ For example, it can be argued that the child's right to be heard in all decisions affecting them was not reflected in FIFA's decision to ban the international transfer of minors in the first instance.¹⁷⁹⁴ The ban failed to consider the perspectives and lived experiences of the young African players who are often the victims of trafficking,¹⁷⁹⁵ but who continuously exercise a rational agency to undertake precarious migratory conditions as part of their calculated risks towards becoming professional players.¹⁷⁹⁶ To produce effective policies, FIFA must be able to consult child players, and FIFA should be ready to consider their views seriously, by listening to the various verbal and non-verbal ways which they could use to express their perspectives on this issue of football trafficking.¹⁷⁹⁷

Influence

The Committee on the UNCRC warned that "appearing to 'listen' to children is relatively unchallenging; [but] giving due weight to their views requires real change."¹⁷⁹⁸ Lundy

¹⁷⁹¹ Lundy, Laura. "'Voice' is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child." *British educational research journal* 33, no. 6 (2007): 927-942. p/936

¹⁷⁹² Welty, Elizabeth, and Laura Lundy. "A children's rights-based approach to involving children in decision making." *Journal of science communication* 12, no. 3 (2013): C02. p/3

¹⁷⁹³ Brackenridge, C. H. "Children's rights in football: Welfare and work." (2010) <<https://idrottsforum.org/articles/brackenridge/brackenridge110608.html>> accessed on 02/03/2020

¹⁷⁹⁴ Esson, James, Paul Darby, Eleanor Drywood, Carolynne Mason, and Serhat Yilmaz. "Children before players: Current risks and future research agendas." <<https://hdl.handle.net/2134/11590800.v1>> accessed 2 March 2020. p/47

¹⁷⁹⁵ Ungruhe, Christian. "Mobilities at play: the local embedding of transnational connections in West African football migration." *The International Journal of the History of Sport* 33, no. 15 (2016): 1767-1785. p/1773

¹⁷⁹⁶ Mason, Carolynne, Paul Darby, Eleanor Drywood, James Esson, and Serhat Yilmaz. "Rights, Risks and Responsibilities in the Recruitment of Children within the Global Football Industry." *The International Journal of Children's Rights* 27, no. 4 (2019): 738-756. p/750

¹⁷⁹⁷ Welty, Elizabeth, and Laura Lundy. "A children's rights-based approach to involving children in decision making." *Journal of science communication* 12, no. 3 (2013): C02. p/3

¹⁷⁹⁸ Committee on the Rights of the Child, "General Comment No. 5: Implementation. UN/CRC/GC/2003/1" (2003, Geneva, United Nations). para/12

posited that the due weight aspect of Article 12 is complex because of the difficulty in ascertaining what constitutes as being “due” in “due weight”, and the fact that the provision ties the due weight requirement to the “age and maturity” of the child.¹⁷⁹⁹ This complexity often leads to debates about a tension between Article 12 and Article 3 (best interests) UNCRC. Since authorities and adults are to use discretion when acting in the best interests of children, it is not uncommon for this discretion to result in adults silencing a child or even side-lining their views, as opposed to fulfilling their Article 12 obligation.¹⁸⁰⁰ Therefore, to navigate this obstacle, Lundy contended that the provision should be interpreted and applied in a generous and child-empowering context, rather than a negative and opportunity-restricting manner.¹⁸⁰¹ Seeing as authorities cannot ensure specific outcomes from the processes, nor can they guarantee that the child’s views will be given anything more than “due” weight, it is argued that there should be formal channels of communication in place where children are told how their views are to be taken into account, and what decisions are being made as a consequence of their views.¹⁸⁰² The communication channels will ensure that whilst children’s views are taken seriously, ultimately, the final responsibility remains with the adult/authorities,¹⁸⁰³ who retain the capacity to decide to go against the child’s view.¹⁸⁰⁴

The rational agency that is often exercised by the African football minors necessitates the need for FIFA to give them an opportunity to participate, be listened to, and to have their views be given due weight and influence during FIFA’s anti-trafficking policy deliberations process. Academics have noted how policies designed to combat child trafficking without consulting the children tend to not meet the child’s needs,¹⁸⁰⁵ and are at times reductive in nature.¹⁸⁰⁶ By not accommodating the voice of the child, the policies could even have an

¹⁷⁹⁹ Lundy, Laura. “‘Voice’ is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child.” *British educational research journal* 33, no. 6 (2007): 927-942. p/937

¹⁸⁰⁰ Tisdall, E. K. “Children and young people’s participation.” In Vandenhoe W and others, *Routledge international handbook of children’s rights studies* 185 (2015). p/196

¹⁸⁰¹ Lundy, Laura. “‘Voice’ is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child.” *British educational research journal* 33, no. 6 (2007): 927-942. p/938

¹⁸⁰² Welty, Elizabeth, and Laura Lundy. “A children’s rights-based approach to involving children in decision making.” *Journal of science communication* 12, no. 3 (2013): C02. p/3

¹⁸⁰³ Krappmann, Lothar. “The weight of the child’s view (Article 12 of the Convention on the Rights of the Child).” *The International Journal of Children’s Rights* 18, no. 4 (2010): 501-513. p/507-8

¹⁸⁰⁴ Tisdall, E. K. “Children and young people’s participation.” In Vandenhoe W and others, *Routledge international handbook of children’s rights studies* 185 (2015). p/196

¹⁸⁰⁵ IPEC, *Combating trafficking in children for labour exploitation: A resource kit for policy-makers and practitioners* (International Labour Office; ILO International Programme on the Elimination of Child Labour, Geneva 2008). Book 3 page 36

¹⁸⁰⁶ Esson, James, Paul Darby, Eleanor Drywood, Carolynne Mason, and Serhat Yilmaz. “Children before players: Current risks and future research agendas.” <<https://hdl.handle.net/2134/11590800.v1>> accessed 2 March 2020. p/5

injurious impact on the child's rights,¹⁸⁰⁷ and could place them at further risk of abuse and exploitation.¹⁸⁰⁸ Therefore, for FIFA to create effective anti-trafficking regulations, the organisation should welcome the input of football minors, which would ensure that the policies subsequently produced are tailored to their specific needs and are able to protect them from exploitation. As Esson and Drywood argued, there is a balancing exercise which regulatory bodies such as FIFA must be aware of, which is that regulations on children's rights must be "sensitive both to the need to protect children from harmful situations, on the one hand, and the importance of acknowledging their rational, decision-making capacities, on the other."¹⁸⁰⁹ Hence, by giving the child players and victims of football trafficking a platform to share their experiences and to have a valid input in the formation of effective anti-trafficking policies,¹⁸¹⁰ the minors could provide the key information needed to fight this form of trafficking in the long-term.¹⁸¹¹

10.3.3 Specific Child Protection

FIFA's child-centred anti-trafficking regulatory approach must reflect special protections and status-related rights for the child victims,¹⁸¹² in light of their particular vulnerabilities and needs.¹⁸¹³ The foreign football minors involved in the instances of football trafficking are the most at-risk and discriminated group in the football industry,¹⁸¹⁴ and effective policies should be able to ensure that this group is afforded the requisite protections needed to limit their vulnerabilities. Once identified and rescued from situations of football trafficking and labour exploitation, all necessary steps should be taken to rehabilitate the child victim, such as giving the child access to education and training, where they wish to partake. Furthermore, reintegration into their home societies, local sports teams,¹⁸¹⁵ and/or

¹⁸⁰⁷ Mason, Carolynne, Paul Darby, Eleanor Drywood, James Esson, and Serhat Yilmaz. "Rights, Risks and Responsibilities in the Recruitment of Children within the Global Football Industry." *The International Journal of Children's Rights* 27, no. 4 (2019): 738-756. p/750

¹⁸⁰⁸ Esson, James, Paul Darby, Eleanor Drywood, Carolynne Mason, and Serhat Yilmaz. "Children before players: Current risks and future research agendas." <<https://hdl.handle.net/2134/11590800.v1>> accessed 2 March 2020. p/5

¹⁸⁰⁹ Esson, James, and Eleanor Drywood. "Challenging popular representations of child trafficking in football." *Journal of Criminological Research, Policy and Practice* (2018). p/65

¹⁸¹⁰ Acheampong, Ernest Yeboah. "The Journey of Professional Football Career: Challenges and Reflections." *Journal of Sport and Social Issues* (2020): <https://doi.org/10.1177/0193723520958341>. p/16

¹⁸¹¹ IPEC, *Combating trafficking in children for labour exploitation: A resource kit for policy-makers and practitioners* (International Labour Office; ILO International Programme on the Elimination of Child Labour, Geneva 2008). Book 5 page 8

¹⁸¹² Guild, E., B. Andrees and M. Linden, *Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement* (Geneva: International Labour Office, 2005). p/62 & 41

¹⁸¹³ Gallagher, Anne T. "Two cheers for the trafficking protocol." *Anti-Trafficking Review* 4 (2015). p/5

¹⁸¹⁴ Esson, James, Paul Darby, Eleanor Drywood, Carolynne Mason, and Serhat Yilmaz. "Children before players: Current risks and future research agendas." <<https://hdl.handle.net/2134/11590800.v1>> accessed 2 March 2020. p/52

¹⁸¹⁵ Anderson, Jack, *Modern Sports Law: A Textbook* (Oxford: Hart, 2010) p. 293-4.

family groups, should be undertaken depending on the child's wish,¹⁸¹⁶ or when it is in their best interests to do so.¹⁸¹⁷

The far-reaching nature of these recommended practices requires that FIFA not only sponsors the process, but that FIFA also relies on international and national levels of cooperation to effectively enforce the policies and ensure the safety of the child players. As Lewis and Taylor equally note, there needs to be a full commitment and co-operation of all international and national sports federations (as well as external non-sport related institutions) for this child-centred approach to be successful.¹⁸¹⁸ The heightened need for cooperation is important considering the purported difficulties in regulating, and providing protections for the international movement and transfer of players which spans nation-states, continental regions, and multinational regulatory frameworks.¹⁸¹⁹ To afford the child the necessary protections, FIFA's anti-trafficking laws must be comprehensive and reflective of the transnationality of the problem.

10.4 THE LEGAL ROUTE INTO FOOTBALL

As part of an effective anti-trafficking response, it is recommended that FIFA would need to introduce more legitimate avenues for migration through the sport, in addition to improving the conditions in the host countries and tackling the root causes of the problem. Creating a legal route will enable the aspiring child players realise their dreams of socio-economic betterment and personal and professional development through football, which would be in line with the provisions of the UNCRC. This proposed policy approach stems out of an overriding perspective on the trafficking problem that concurs with Gallagher's assertion on human trafficking being the predictable outcome of global, political, and economic realities (and inequalities).¹⁸²⁰ This includes inequalities such as the restrictions on migration that limits an individual from securing legal access to their preferred destinations abroad. Since the absence of legal means to migrate and play professionally abroad has contributed to the trafficking of thousands of African football minors, it is contended that the creation of more

¹⁸¹⁶ Guild, E., B. Andrees and M. Linden, *Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement* (Geneva: International Labour Office, 2005). p/62

¹⁸¹⁷ Lelliott, Joseph, 'Smuggled and Trafficked Unaccompanied Minors: Towards a Coherent, Protection-Based Approach in International Law' (2017) 29(2) *International Journal of Refugee Law* 238. p/251

¹⁸¹⁸ Lewis, Adam, and Jonathan Taylor. *Sport: law and practice*. Bloomsbury Professional, 2014. p/731

¹⁸¹⁹ Jarvie G, Thornton, James and Mackie, Hector, *Sport, Culture and Society: An Introduction* (Third edition., Routledge 2018) p/146

¹⁸²⁰ Gallagher, Anne, and Paul Holmes. "Developing an effective criminal justice response to human trafficking: Lessons from the front line." *International criminal justice review* 18, no. 3 (2008): 318-343. p/321

legal routes could result in a reduction of the crime, as it could disincentivise the perpetrators behind the trafficking and reduce the vulnerabilities of the child players.

10.4.1 An Absent Path

One of the main factors leading to trafficking, in general, is the lack of legal migration options for the aspiring migrants.¹⁸²¹ In football, FIFA's laws like the ban on ITMs exemplifies the restrictive immigration policies within the sport which have limited the chances for aspiring African footballers to gain opportunities in more lucrative leagues abroad. The underlying problem, however, is that despite the ban, there remains an insatiable 'demand' for cheap and profitable football labour, as seen with the several clubs across Europe.¹⁸²² Yet, these labour demands remain largely unmet, due to the limitations of available opportunities for the persons in the regions with significant 'supply' to be able to legally migrate to the EU teams which are in need of their services. Football clubs, their owners and stakeholders, parents of players, and the players themselves, are then put in a situation where they are all looking for opportunities (both legitimate and illegitimate) for the players to be transported abroad to play professionally.¹⁸²³ Thus, the current limitations applied by FIFA's ban have been unable to deter the young players from chasing their dreams,¹⁸²⁴ and it has also not dissuaded the EU teams from identifying and utilising regulatory loopholes to conduct illicit ITMs.

The absence of legal pathways into professional football for the African players has denied some children access to the potential positive effects of migration.¹⁸²⁵ With the absence of safe and regulated means of labour migration, the restrictions have pushed children and their families to depend on criminal networks to orchestrate clandestine trips abroad. For example, in 1989 (albeit prior to FIFA's current rules on ITMs), the Ghanaian player Nii Odarthey Lamptey, who was aged 15 at the time is said to have undergone a perilous and dangerous journey to Nigeria, without travel documentation, because that was the only way he could attain a transfer to the Belgian side RSC Anderlecht.¹⁸²⁶

¹⁸²¹ Haynes, Dina Francesca. "Used, abused, arrested and deported: Extending immigration benefits to protect the victims of trafficking and to secure the prosecution of traffickers." *Hum. Rts. Q.* 26 (2004): 221. p/257

¹⁸²² Esson, James, 'Better off at home? Rethinking responses to trafficked West African footballers in Europe' (2015) 41(3) *Journal of Ethnic and Migration Studies* 512. p/518

¹⁸²³ Esson, James. "Playing the victim? Human trafficking, African youth, and geographies of structural inequality." *Population, Space and Place* (2020): e2309. p/6

¹⁸²⁴ Lindsey, Iain, and Paul Darby. "Sport and the Sustainable Development Goals: Where is the policy coherence?" *International Review for the Sociology of Sport* 54, no. 7 (2018): 793-812. p/805

¹⁸²⁵ O'Connell Davidson, Julia. "Moving children? Child trafficking, child migration, and child rights." *Critical social policy* 31, no. 3 (2011): 454-477. p/469

¹⁸²⁶ Acheampong, Ernest Yeboah. "The Journey of Professional Football Career: Challenges and Reflections." *Journal of Sport and Social Issues* (2020): <https://doi.org/10.1177/0193723520958341>. p/11-12

10.4.2 Labour Migration as a Remedy

Since the African players are known to demonstrate their rational agency despite the dangers involved in irregular migration or being trafficked abroad, the creation of more legal routes into professional football for the aspiring players should be seen as a key remedy to tackling this trafficking problem. Mullally similarly argued that for trafficking to be taken seriously as a human rights violation, and if we admit the contributory role played by receiving countries (and in the context of this research, FIFA and its associated football teams) through their search for cheap labour, the provision of a secure/legal path to migration should be viewed as a human rights remedy to trafficking.¹⁸²⁷ Thus, FIFA and its collaborators in the form of external sport and non-sport related bodies, should be able to consider means in which equality of opportunity and freedom of movement across borders can be granted to the aspiring football minors as part of: one, their fundamental rights;¹⁸²⁸ two, doing what is in the best interests of the child in compliance with the UNCRC; and three, the organisation's overall fight against football trafficking.

Effective anti-trafficking regulations should provide for these legitimate options for migration. Such provisions will admittedly involve extensive work between FIFA, the State, and local NGOs,¹⁸²⁹ to create these avenues for the aspiring football minors to migrate on fair and ethical grounds.¹⁸³⁰ However, as the ILO contended, the creation of legal routes is an essential factor in preventing child trafficking, as it will promote safer, legal, migration for those of the appropriate working age.¹⁸³¹ Creation of the legal routes will also reflect the agency and subjectivities of the African football minors, and will provide a basis in which some of the problems and socio-economic reasons which makes them susceptible to being trafficked,¹⁸³² could be averted safely through sport.

10.4.3 The Benefits

The creation of legal routes will provide several benefits for the football minors, football teams, FIFA, and the nation States.

¹⁸²⁷ Mullally, Siobhán. "Migration, Gender, and the Limits of Rights." *Human Rights and Immigration* (2014): 145-176. p/152

¹⁸²⁸ Bader, Veit. "The Ethics of Immigration. By Joseph Carens. New York: Oxford University Press, 2013." (2014). p/309

¹⁸²⁹ Haynes, Dina Francesca. "Used, abused, arrested and deported: Extending immigration benefits to protect the victims of trafficking and to secure the prosecution of traffickers." *Hum. Rts. Q.* 26 (2004): 221. p/256

¹⁸³⁰ Klein Solomon, Michele, and Suzanne Sheldon. "The global compact for migration: From the sustainable development goals to a comprehensive agreement on safe, orderly and regular migration." *International Journal of Refugee Law* (2018). p/588

¹⁸³¹ IPEC, *Combating trafficking in children for labour exploitation: A resource kit for policy-makers and practitioners* (International Labour Office; ILO International Programme on the Elimination of Child Labour, Geneva 2008). Book 4 page 33-4

¹⁸³² Haynes, Dina Francesca. "Used, abused, arrested and deported: Extending immigration benefits to protect the victims of trafficking and to secure the prosecution of traffickers." *Hum. Rts. Q.* 26 (2004): 221. p/256

First, through the legal route, the talented players would be able to migrate to a foreign country, league, and team without fear of exploitation and with limited risks involved in their transfer from the continent. The transfers involving ITMs would be conducted more transparently without the need to bypass FIFA's regulations, thereby protecting a wide range of young players involved in the sport. FIFA and the football environment would therefore be able to openly bridge the gap between the 'insatiable' demand for cheap football labour which exists in developed countries, and the 'endless' supply of talented players present in the developing African regions. By bridging this gap and offering more transparency within the football transfer market, FIFA will be promoting international and transnational values of more opportunities for human mobility as a means of remedying and curbing human trafficking.¹⁸³³ And also, this will align FIFA's practices with the UN SDG of reducing inequality by increasing labour migration.¹⁸³⁴

Second, because sport has often been viewed as an avenue to escape from poverty and an opportunity to achieve personal and collective development,¹⁸³⁵ the legal route will provide the circumstances for the talented African football minors to achieve these aspirations. It will increase opportunities for children with limited options and will provide them with access to a range of benefits that would otherwise be unavailable to them in their home countries and region. For example, through legitimate labour migration, the African football minors would be able to escape settings of extreme poverty, or other general circumstances where they are not able to enjoy the basic rights as set out in the UNCRC.¹⁸³⁶ With the legal route, the African football minors would be afforded protections from exploitation,¹⁸³⁷ and would potentially be provided with improved standards of living adequate for their physical, mental, spiritual, moral, and social development.¹⁸³⁸ The route will ultimately enable FIFA to strike the requisite balance between engaging minors in the sport and providing them with the benefits associated with sporting participation and migration, whilst simultaneously protecting them from any adverse human rights risks that may be related to their sporting involvement.

¹⁸³³ Mauro, Max. "Inclusive sport or institutional discrimination? New FIFA regulations, organized football and migrant youth in Italy." *Sport in Society* 20, no. 7 (2017): 833-847. p/844

¹⁸³⁴ UN General Assembly, "Sustainable Development Goals." *SDGs, Transforming our world: the 2030 Agenda* (2015). Goal 10.7

¹⁸³⁵ Jarvie G, Thornton, James and Mackie, Hector, *Sport, Culture and Society: An Introduction* (Third edition., Routledge 2018) p/488

¹⁸³⁶ O'Connell Davidson, Julia. "Moving children? Child trafficking, child migration, and child rights." *Critical social policy* 31, no. 3 (2011): 454-477. p/467

¹⁸³⁷ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, Article 36

¹⁸³⁸ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, Article 27

Third, the legal route will make football minors less likely to be enticed and tricked by traffickers looking to transport and exploit them in foreign countries through fake offers of professional playing contracts. Through the route, there will be better means of monitoring the international transfers and movements of footballers. This will give FIFA and its external collaborators more visible insight into the incoming and outgoing player transactions, whilst ensuring that players are protected from any exploitative conditions during the course of their transfer. In the past, some countries have trialled legal routes of migration to counter the well-known routes used by traffickers and smugglers. For example, Italy granted 5,000 work visas annually to Albanians because Albania was its largest source country for trafficking and smuggling victims.¹⁸³⁹ It is recommended that FIFA could use a similar model to tackle football trafficking, considering the existence of well-known colonial links, and with more data to be gathered on the common migratory/trafficking paths utilised by unscrupulous persons to exploit the African football minors. By granting visas and valid opportunities to migrate legally (even if for a limited number of people), the gesture will inform the African football minors that they do not need to rely on unscrupulous persons and precarious migratory conditions to achieve their professional footballing aspirations abroad.

Conclusion

This chapter has made recommendations to FIFA which would enable the organisation to create more effective anti-trafficking policies. The first subsection considered the importance of conducting a preliminary regulatory impact assessment for FIFA and its stakeholders to foresee the potential impact of the proposed policies in the regime. It was recommended that a human rights impact assessment would be important because it will ensure that the protections offered to the at-risk minors are of the requisite standard and would not result in adverse human rights risks for the young players. The second subsection considered the importance of the “DREAM” framework as an ideal means of ensuring the effective creation and subsequent enforcement of FIFA’s further anti-trafficking regulatory strategies. The third subsection considered the recommendation of the child-centred regulatory approach in more detail, by analysing how the strategy would be useful in effectively curbing football trafficking. The analysis showed that for the child-centred approach to be successful, it must be modelled on the UNCRC to ensure that regulatory decisions involving children are always conducted in the child’s best interests. The fourth subsection considered that as part of an effective anti-trafficking regulatory response, FIFA

¹⁸³⁹ Haynes, Dina Francesca. "Used, abused, arrested and deported: Extending immigration benefits to protect the victims of trafficking and to secure the prosecution of traffickers." *Hum. Rts. Q.* 26 (2004): 221. p/257

would need to create more legal routes for the football minors to migrate and play professionally abroad. Thus, increased opportunities for labour migration should be viewed as a viable human rights remedy to tackling human trafficking. The legal route will afford the African football minors with opportunities to enjoy several rights, as stated in the UNCRC, which they may not otherwise enjoy outside the environment which football can provide for them.

Chapter 11 - ALTERNATE REGULATORY MODEL

The recommendations provided to FIFA thus far give leeway for the formation of a more nuanced solution to the football trafficking problem, such as through an alternate regulatory model. This alternate model is being proposed as a more imaginative,¹⁸⁴⁰ targeted, and effective way of remedying football trafficking. Generally, anti-trafficking regulations have often focused on addressing the trafficking problem by targeting the demand for cheap labour,¹⁸⁴¹ or instituting preventative regulations that limit migration and the open supply of labour. However, the alternate model suggests a different approach to anti-trafficking regulations, mainly by attempting to counter the effects of the push-pull factors of migration, as relevant to the occurrence of football trafficking. FIFA's anti-trafficking policies do not account for these push-pull factors, and this evidently contributed to the meagre performance of the enacted regulatory responses. Thus, the alternate model proposes a means for FIFA to consider the effects of these push-pull factors within its anti-trafficking policy approach, such as, through the introduction of practices which can tackle some of the root causes of football trafficking.

Despite the creation of more legal routes to migrate and play football professionally abroad, the overriding situation in football remains that the demand for cheap labour from the developed countries does not have the capacity to match with the extensive supply of the willing African football minors looking to migrate from the developing regions.¹⁸⁴² Hence, the large majority of players who aspire to migrate legally but cannot do so are left in a situation that could reignite their purported reliance on unscrupulous persons to facilitate clandestine trips abroad. The alternate model considers a way to engage the talented players who are unable to migrate legally but still harbour intentions of being successful professional players. The model stems out of the notion that the insufficient number of opportunities to play professionally and earn adequate sums in Africa (due to the limited economic *pull*), is consequently *pushing* aspiring football minors into precarious trafficking situations. It is therefore recommended that FIFA and its external collaborators should focus on tackling football trafficking through the development of Africa and African football, as this is one of the root causes of the problem. This alternate model provides a long-term and more

¹⁸⁴⁰ Baldwin, Robert. "Better Regulation: Tensions aboard the Enterprise." In *Better Regulation*, edited by Stephen Weatherill, London: Hart Publishing, 2007. 27–48. p/34

¹⁸⁴¹ IPEC, *Combating trafficking in children for labour exploitation: A resource kit for policy-makers and practitioners* (International Labour Office; ILO International Programme on the Elimination of Child Labour, Geneva 2008). Book 4 page 29

¹⁸⁴² Darby, Paul, James Esson, and Christian Ungruhe. "Migration, sport for development and sports academies: The case of football in Africa." Routledge, 2018. p/18

sustainable means of reducing the key vulnerabilities that puts the African football minors at an increased risk of trafficking and exploitation.

11.1 DEVELOPING AFRICAN FOOTBALL

Former FIFA President, Joseph Blatter, once said "Our world is one that is rich in natural beauty and cultural diversity, but also one where many are still deprived of their basic rights or have to deal with the daily realities of conflict. FIFA now has an even greater responsibility to reach out and touch the world, using football as a symbol of hope and integration".¹⁸⁴³ It is contended that in using football as a symbol of hope and integration, FIFA should consider the development of African football as a significant step in the right direction.

The underdevelopment of African football is a key push factor for the African players. This is underlined by the instances of Ghanaian players travelling to countries such as India, Thailand, or Vietnam, in search of playing contracts, and despite these countries not being renowned for their footballing prowess.¹⁸⁴⁴ The players put themselves at risk of exploitation due to the absence of opportunities being made available to them in Africa for financial rewards.¹⁸⁴⁵ Therefore, it is argued that the development of African football should be an important part of FIFA's long-term anti-trafficking policy response. This is because steps to provide opportunities for football migrants and to enhance anti-trafficking policy compliance are likely to be undermined and limited if the global inequalities that push the football minors into the precarious trafficking circumstances remain unaddressed.¹⁸⁴⁶ These global inequalities can only be resolved through significant financial investment and capacity building in the source countries, to improve the circumstances of those who are most at-risk and vulnerable in the regions. The investments should target structural vulnerabilities in African football,¹⁸⁴⁷ which would help to diminish the risk factors such as poverty and the poor infrastructure that leads to instances of football trafficking. The investments should elevate the African game to a level that will allow it to be more self-

¹⁸⁴³ FIFA, "Remarkable interest in 2018 & 2022" (*FIFA.com*, February 2009) <<https://www.fifa.com/worldcup/news/remarkable-interest-2018-2022-1014151>> accessed 26/10/2020

¹⁸⁴⁴ Poli, Raffaele. "African migrants in Asian and European football: hopes and realities." *Sport in Society* 13, no. 6 (2010): 1001-1011. p/1009

¹⁸⁴⁵ Darby, Paul, and Eirik Solberg. "Differing trajectories: football development and patterns of player migration in South Africa and Ghana." *Soccer & Society* 11, no. 1-2 (2010): 118-130. p/125-6

¹⁸⁴⁶ Lindsey, Iain, and Paul Darby. "Sport and the Sustainable Development Goals: Where is the policy coherence?" *International Review for the Sociology of Sport* 54, no. 7 (2019): 793-812. p/805

¹⁸⁴⁷ Chuang, Janie, "The Challenges and Perils of Reframing Trafficking as 'Modern-Day Slavery'" (2015) (5) *Anti-Trafficking Review* 146. p/149

sufficient and able to give players increased financial rewards and opportunities for professional and personal development, even whilst they remain on the African continent.

FIFA possesses the invaluable resources that will enable the organisation to undergo such a significant investment and development of African football. In 2019, FIFA's president Gianni Infantino, said that FIFA would mobilise companies and entrepreneurs to raise around \$1bn to improve the infrastructure and build world class stadiums across Africa.¹⁸⁴⁸ However, the problem with such a declaration is that merely investing in African football without a concrete framework on how specific development goals can be met through the investments would make the investments ineffective. The large sums generated without an appropriate framework will also open the door for the sums to be misappropriated by corrupt personnel within the African FIFA Member Associations, as there could be situations where the sums are diverted for private gain, especially considering the recurrent themes of conflicting interests taking place within FIFA's operations. Therefore, significant investments able to develop African football should not be implemented using a scattergun approach, but the investments should be tailored towards the specific conditions of the teams and leagues on the continent. The development of African football should enable the teams to not only offer better opportunities for the African players,¹⁸⁴⁹ but also, it should empower the African sides to be self-sufficient and no longer dependent on foreign aid to survive. The investments should be made in an attempt to support the African clubs to improve their economic standing and to generate their own sustainable revenues, thereby creating more opportunities and better jobs for the poor and at-risk minors in the rural areas. These suggestions can be best explained through the "Sport for Development and Peace" initiatives.

11.2 SPORT FOR DEVELOPMENT AND PEACE (SDP)

Sport has a popularity which transcends national, cultural, socioeconomic, and political boundaries, and can reach the world's poorest people in a way that other mainstream development policies are unable to.¹⁸⁵⁰ For this reason, Sport for development and peace (SDP) initiatives provide a means to achieve a holistic development of Africa and African football. SDP is the "intentional use of sport and physical activity as a tool to contribute to

¹⁸⁴⁸ Gondwe, Kennedy, "Fifa announce plans to raise \$1bn for Africa" (*BBC Sport*, November 2019) <<https://www.bbc.co.uk/sport/football/50599595>> accessed 01/12/2019

¹⁸⁴⁹ Darby, Paul, and Eirik Solberg. "Differing trajectories: football development and patterns of player migration in South Africa and Ghana." *Soccer & Society* 11, no. 1-2 (2010): 118-130. p/122

¹⁸⁵⁰ Lindsey, Iain, Tess Kay, Ruth Jeanes, and Davies Banda. "Sport for development in policy, practice and research." In *Localizing global sport for development*. Manchester University Press, 2017. p/21

development and peace goals”,¹⁸⁵¹ and it provides a means of pursuing wider, non-sporting, social¹⁸⁵² and educational goals.¹⁸⁵³ SDP has, over the past two decades,¹⁸⁵⁴ gained popularity because of significant statements about the power of sport, such as that of former UN Secretary-General Kofi Anan in 2002, who claimed:

*Sport can play a role in improving the lives of individuals, not only individuals, I might add but whole communities. I am convinced that the time is right to build on that understanding, to encourage governments, development agencies and communities to think about how sport can be included more systematically in the plans to help children, particularly those living in the midst of poverty, disease and conflict.*¹⁸⁵⁵

More recently, the UN’s Sustainable Development Goals (SDGs) also featured an endorsement of sport’s role and its ability to promote global development,¹⁸⁵⁶ stating in Article 37 that:

*Sport is also an important enabler of sustainable development. We recognize the growing contribution of sport to the realization of development and peace [...] and the contributions it makes to the empowerment of [...] young people, individuals and communities as well as to health, education and social inclusion objectives.*¹⁸⁵⁷

Both statements are indicative of the widespread developmental goals FIFA and its external collaborators could pursue through sport, but the achievement of their development objectives depends largely on their chosen conception of “development”.¹⁸⁵⁸ As, SDP could either be “sport development” or “sport for development”.¹⁸⁵⁹

¹⁸⁵¹ Giulianotti, Richard, Simon Darnell, Holly Collison, and P. David Howe. "Sport for development and peace and the environment: The case for policy, practice, and research." *Sustainability* 10, no. 7 (2018): 2241. p/1

¹⁸⁵² Richelieu, André, and Andrew Webb. "A tale of two networks: Contrasting sport for development and peace actor-networks." *Journal of Global Sport Management* 4, no. 4 (2019): 371-391. p/371

¹⁸⁵³ Svensson, Per G., and Jeffrey Levine. "Rethinking sport for development and peace: The capability approach." *Sport in Society* 20, no. 7 (2017): 905-923. p/905

¹⁸⁵⁴ Peachey, Jon Welty, Adam Cohen, Nari Shin, and Bruno Fusaro. "Challenges and strategies of building and sustaining inter-organizational partnerships in sport for development and peace." *Sport Management Review* 21, no. 2 (2018): 160-175. p/160

¹⁸⁵⁵ Right to Play, "Harnessing the Power of Sport for Development and Peace. The Athens Roundtable Forum. Position Paper." *Athens, Greece. Retrieved on March 12 (2004): 2010. p/5*

¹⁸⁵⁶ Giulianotti, Richard, Simon Darnell, Holly Collison, and P. Howe. "Sport for development and peace and the environment: The case for policy, practice, and research." *Sustainability* 10, no. 7 (2018): 2241. p/3

¹⁸⁵⁷ Assembly, UN General. "Transforming our world: the 2030 Agenda for Sustainable Development." (2015) *New York: United Nations* 1. Para/ 37

¹⁸⁵⁸ Hartmann, Douglas, and Christina Kwauk. "Sport and development: An overview, critique, and reconstruction." *Journal of sport and social issues* 35, no. 3 (2011): 284-305. p/286

¹⁸⁵⁹ Kidd, Bruce. "A new social movement: Sport for development and peace." In *Sport and foreign policy in a globalizing world*, pp. 36-46. Routledge, 2013. p/373

On the one hand, sport development (also known as *sport-plus*¹⁸⁶⁰) are programmes involving efforts by SGBs and their partners to develop the institution of sport in certain regions, by improving sport practices, and raising sport participation and sport performance levels.¹⁸⁶¹ Sport development involves programmes designed to assist those already engaged in organised sport (such as athletes, coaches, officials, administrators) to strengthen the infrastructure of facilities and institutions within which organised sport takes place.¹⁸⁶² As beneficial as these initiatives may be, the issue with sport development is that simply recognising or improving sports participation will do little to support persons or develop communities in the long-run.¹⁸⁶³ Moreover, without a long-term developmental impact, the sport development initiatives are unlikely to cause the requisite social change amidst the target communities.¹⁸⁶⁴

On the other hand, sport for development (also known as *plus-sport*¹⁸⁶⁵) is more central to the concept of SDP.¹⁸⁶⁶ Sport for development is deemed as a vehicle for multiple forms of development and is used to attract youth¹⁸⁶⁷ and seek out those not already involved in sport.¹⁸⁶⁸ The initiatives target populations that are more impoverished and disempowered,¹⁸⁶⁹ and are unconcerned about whether participants ever become involved in organised sports training and competition.¹⁸⁷⁰ The goal of these *plus-sport* programmes is often to achieve non-sport related development goals¹⁸⁷¹ such as education¹⁸⁷² and the eradication of poverty. Sport for development, therefore, provides a direct means for FIFA

¹⁸⁶⁰ Coalter, Fred. "The politics of sport-for-development: Limited focus programmes and broad gauge problems?" *International review for the sociology of sport* 45, no. 3 (2010): 295-314. p/298

¹⁸⁶¹ Lindsey, Iain, Tess Kay, Ruth Jeanes, and Davies Banda. "Sport for development in policy, practice and research." In *Localizing global sport for development*. Manchester University Press, 2017. p/32

¹⁸⁶² Kidd, Bruce. "A new social movement: Sport for development and peace." In *Sport and foreign policy in a globalizing world*, pp. 36-46. Routledge, 2013. p/371

¹⁸⁶³ Darnell, Simon. *Sport for development and peace: A critical sociology*. A&C Black, 2012. p/37

¹⁸⁶⁴ Hartmann, Douglas, and Christina Kwauk. "Sport and development: An overview, critique, and reconstruction." *Journal of sport and social issues* 35, no. 3 (2011): 284-305. p/290

¹⁸⁶⁵ Coalter, Fred. "The politics of sport-for-development: Limited focus programmes and broad gauge problems?" *International review for the sociology of sport* 45, no. 3 (2010): 295-314. p/298

¹⁸⁶⁶ Lindsey, Iain, Tess Kay, Ruth Jeanes, and Davies Banda. "Sport for development in policy, practice and research." In *Localizing global sport for development*. Manchester University Press, 2017. p/32

¹⁸⁶⁷ Svensson, Per G., and Jeffrey Levine. "Rethinking sport for development and peace: The capability approach." *Sport in Society* 20, no. 7 (2017): 905-923. p/911

¹⁸⁶⁸ Kidd, Bruce. "A new social movement: Sport for development and peace." In *Sport and foreign policy in a globalizing world*, pp. 36-46. Routledge, 2013. p/373

¹⁸⁶⁹ Hartmann, Douglas, and Christina Kwauk. "Sport and development: An overview, critique, and reconstruction." *Journal of sport and social issues* 35, no. 3 (2011): 284-305. p/288

¹⁸⁷⁰ Kidd, Bruce. "A new social movement: Sport for development and peace." In *Sport and foreign policy in a globalizing world*, pp. 36-46. Routledge, 2013. p/373

¹⁸⁷¹ Sherry, Emma, Nico Schulenkorf, and Laurence Chalip. "Managing sport for social change: The state of play." (2015): 1-5. p/1

¹⁸⁷² Lindsey, Iain, Tess Kay, Ruth Jeanes, and Davies Banda. "Sport for development in policy, practice and research." In *Localizing global sport for development*. Manchester University Press, 2017. p/33

to tackle the core vulnerabilities of the at-risk football minors, and it will give FIFA the opportunity to achieve actual social change within the target communities.

Coalter reasoned that there is often a continuum occurring between *sport-plus* and *plus-sport* programmes, and that the differences may not always be clear.¹⁸⁷³ Thus, it is within this moving continuum that the recommended approach for the development of African football lies. FIFA and its collaborators should adopt both sport development and sport for development initiatives to grow African football. Through sport development, better infrastructure and sporting facilities would improve sport practices, sport participation, and sport performance for African football and its players, which will subsequently enable the leagues and teams on the continent to be more commercially viable, and ultimately, more self-sufficient. FIFA should also introduce programmes to train and aid the improvement of the players and coaches in the region.

With sport for development, FIFA and its collaborators should institute programmes that have non-sport related development benefits, to address some of the core vulnerabilities of the at-risk African football minors. These programmes should advance economic development to tackle problems such as poverty,¹⁸⁷⁴ and the initiatives should give the youths more opportunities to lift themselves and their communities out of otherwise challenging and marginalised conditions.¹⁸⁷⁵ For example, by creating avenues for the minors in the target regions to gain basic education. Through such programmes, FIFA would be able to limit the possibilities of the African minors falling prey to traffickers and unscrupulous persons looking to exploit them, whilst FIFA would concurrently be contributing to the achievement of several UN SDGs and UNCRC provisions.

11.3 ACHIEVING A SUCCESSFUL SDP

For SDP to have the desired impact, the following aspects must be abided by to bring about the requisite development across the African communities.

¹⁸⁷³ Coalter, Fred. "The politics of sport-for-development: Limited focus programmes and broad gauge problems?" *International review for the sociology of sport* 45, no. 3 (2010): 295-314. p/298

¹⁸⁷⁴ Levermore, Roger. "Sport: a new engine of development?" *Progress in development studies* 8, no. 2 (2008): 183-190. p/187

¹⁸⁷⁵ Hartmann, Douglas, and Christina Kwauk. "Sport and development: An overview, critique, and reconstruction." *Journal of sport and social issues* 35, no. 3 (2011): 284-305. p/288

11.3.1 Clear targets

Sport, it is said, cannot be the “panacea for all development challenges”,¹⁸⁷⁶ and sport is no guarantee of peace and development, nor is it a blueprint for solving major social problems.¹⁸⁷⁷ Yet, sport has the capacity to be utilised as a tool to achieve these broader developmental goals.¹⁸⁷⁸ For FIFA’s approach to harness this power of sport to bring about real social change able to limit football trafficking, the use of SDP initiatives should be guided by comprehensive planning, management, and a clear direction for the use of the programmes. FIFA must not have a “simplistic view” about the prosocial outcomes and effects of SDP in the target communities. Rather, FIFA should set clear targets for the intended development outcomes being sought. The programmes should be able to meet and reflect the local demands within the communities,¹⁸⁷⁹ and should respond to any new needs or changing dynamics that arise.¹⁸⁸⁰ For example, sports related development goals could include targets such as the improvement of infrastructure, building stadia, and providing access to sports equipment for various African teams.¹⁸⁸¹ Whereas, the non-sport development goals could be cultural, educational, health-related, and economic for the target communities.¹⁸⁸²

11.3.2 Collaborations and Monitoring

FIFA are advised that collaborations between the organisation and the organisers of the SDP initiatives are essential for the programmes to have the desired effect.¹⁸⁸³ The collaborations are part of the concerted approach to achieving development, as the increased communication and transparency in the actioning of the programmes will help to mitigate several challenges associated with the operation of SDPs,¹⁸⁸⁴ such as in bringing about better accountability. Furthermore, due to the nature of SDPs, there may not be clear insight into

¹⁸⁷⁶ Hartmann, Douglas, and Christina Kwauk. "Sport and development: An overview, critique, and reconstruction." *Journal of sport and social issues* 35, no. 3 (2011): 284-305. p/298

¹⁸⁷⁷ Coalter, Fred. "The politics of sport-for-development: Limited focus programmes and broad gauge problems?" *International review for the sociology of sport* 45, no. 3 (2010): 295-314. p/301

¹⁸⁷⁸ Hartmann, Douglas, and Christina Kwauk. "Sport and development: An overview, critique, and reconstruction." *Journal of sport and social issues* 35, no. 3 (2011): 284-305. p/298

¹⁸⁷⁹ Schulenkorf, Nico. "Sustainable community development through sport and events: A conceptual framework for sport-for-development projects." *Sport management review* 15, no. 1 (2012): 1-12. p/8

¹⁸⁸⁰ Svensson, Per G., and Jeffrey Levine. "Rethinking sport for development and peace: The capability approach." *Sport in Society* 20, no. 7 (2017): 905-923. p/915

¹⁸⁸¹ Levermore, Roger. "Sport: a new engine of development?" *Progress in development studies* 8, no. 2 (2008): 183-190. p/186

¹⁸⁸² Schulenkorf, Nico. "Managing sport-for-development: Reflections and outlook." *Sport Management Review* 20, no. 3 (2017): 243-251. p/244

¹⁸⁸³ Jarvie G, Thornton, James and Mackie, Hector, *Sport, Culture and Society: An Introduction* (Third edition., Routledge 2018) p/461

¹⁸⁸⁴ Peachey, Jon Welty, Adam Cohen, Nari Shin, and Bruno Fusaro. "Challenges and strategies of building and sustaining inter-organizational partnerships in sport for development and peace." *Sport Management Review* 21, no. 2 (2018): 160-175. p/171

how sport is playing a positive role in achieving the purported wider development goals.¹⁸⁸⁵ Therefore, the increased monitoring of SDP initiatives will help FIFA and the involved actors to examine the broader, long-term benefits, and the real impact of the programmes, in the development of persons and communities in the target regions.¹⁸⁸⁶ Such information will allow FIFA to comprehensively show what the practical benefits or positive outcomes¹⁸⁸⁷ of the programmes have been, or what the benefits are likely to be in the future.¹⁸⁸⁸ The monitoring will enable FIFA to highlight the possible challenges which may hinder the achievement of the development goals going forward,¹⁸⁸⁹ but will simultaneously put the organisation in a position where it is able to adequately respond and rectify such challenges in advance.

11.3.3 Local involvement

SDP initiatives have been criticised for being ineffective because of their top-down approach to development. The top-down approach allows for idealistic stakeholders and donors (without on-the-ground representation) to attempt to solve complex social problems in developing countries without first attaining an understanding of the local context or relevance of the proposed programmes.¹⁸⁹⁰ This approach often results in a wasteful investment,¹⁸⁹¹ as the SDP initiatives impose values based on the perceptions of the (top) high-income and first-world countries, upon problems which exists in the (bottom) disadvantaged low to mid-income countries,¹⁸⁹² which may ultimately not be applicable or relevant to the latter. For SDP to be successful, FIFA and its collaborators must be aware that a bottom-up community approach would be the most likely to achieve the desired development outcomes.¹⁸⁹³

¹⁸⁸⁵ Darnell, Simon. *Sport for development and peace: A critical sociology*. A&C Black, 2012. p/23

¹⁸⁸⁶ Lindsey, Iain, Tess Kay, Ruth Jeanes, and Davies Banda. "Sport for development in policy, practice and research." In *Localizing global sport for development*. Manchester University Press, 2017. p/34

¹⁸⁸⁷ Peachey, Jon Welty, Adam Cohen, Nari Shin, and Bruno Fusaro. "Challenges and strategies of building and sustaining inter-organizational partnerships in sport for development and peace." *Sport Management Review* 21, no. 2 (2018): 160-175. p/160

¹⁸⁸⁸ Coalter, Fred. "The politics of sport-for-development: Limited focus programmes and broad gauge problems?" *International review for the sociology of sport* 45, no. 3 (2010): 295-314. p/309

¹⁸⁸⁹ Schulenkorf, Nico. "Managing sport-for-development: Reflections and outlook." *Sport Management Review* 20, no. 3 (2017): 243-251. p/248

¹⁸⁹⁰ Kang, Seungmin, and Per G. Svensson. "Shared leadership in sport for development and peace: A conceptual framework of antecedents and outcomes." *Sport Management Review* 22, no. 4 (2019): 464-476. p/466

¹⁸⁹¹ Coalter, Fred. "The politics of sport-for-development: Limited focus programmes and broad gauge problems?" *International review for the sociology of sport* 45, no. 3 (2010): 295-314. p/304

¹⁸⁹² Kidd, Bruce. "A new social movement: Sport for development and peace." In *Sport and foreign policy in a globalizing world*, pp. 36-46. Routledge, 2013. p/377

¹⁸⁹³ Coalter, Fred. "The politics of sport-for-development: Limited focus programmes and broad gauge problems?" *International review for the sociology of sport* 45, no. 3 (2010): 295-314. p/304

The bottom-up approach will allow development actions to be tailored to the needs of the target country and community,¹⁸⁹⁴ as the programmes would be informed by a deep understanding of local contexts and culture.¹⁸⁹⁵ To attain this understanding of local contexts, there must be in-depth community involvement and consultations¹⁸⁹⁶ that will further the lines of communication between those at the bottom (who the SDP programmes are supposed to benefit) with those at the top (the stakeholders, donors, and FIFA who are heading the programmes). The local involvement will give the target communities the opportunity to participate and inform initiatives based on the community's needs.¹⁸⁹⁷ The local participants should be allowed to voice their opinions in all stages of the community development process. This will ensure that the programmes (both sport and non-sport related) are continuously shaped according to local preferences.¹⁸⁹⁸ In addition, FIFA should ensure that the communities are trained and empowered so that they have the capacity to guide and lead their own projects eventually.¹⁸⁹⁹ In so doing, FIFA would be enabling the local communities to be self-sustainable and less dependent on the donors and agencies abroad for resources, such as financial and human capital.¹⁹⁰⁰

11.4 THE ADVANTAGES OF SDP

When modelled according to the needs of a community, SDP can have a significant impact on the reduction of the risk factors that make the African football minors vulnerable to trafficking. Therefore, a key advantage of instituting these SDP programmes as an alternate anti-trafficking regulatory response, is that FIFA would be able to tackle several root causes of the problem through the development of Africa and African football. The programmes are able to target high-risk families, communities, or workplaces, which are susceptible to

¹⁸⁹⁴ Jarvie G, Thornton, James and Mackie, Hector, *Sport, Culture and Society: An Introduction* (Third edition., Routledge 2018) p/85

¹⁸⁹⁵ Svensson, Per G., and Jeffrey Levine. "Rethinking sport for development and peace: The capability approach." *Sport in Society* 20, no. 7 (2017): 905-923. p/915

¹⁸⁹⁶ Kang, Seungmin, and Per G. Svensson. "Shared leadership in sport for development and peace: A conceptual framework of antecedents and outcomes." *Sport Management Review* 22, no. 4 (2019): 464-476. p/466

¹⁸⁹⁷ Schulenkorf, Nico. "Sustainable community development through sport and events: A conceptual framework for sport-for-development projects." *Sport management review* 15, no. 1 (2012): 1-12. p/4

¹⁸⁹⁸ Svensson, Per G., and Jeffrey Levine. "Rethinking sport for development and peace: The capability approach." *Sport in Society* 20, no. 7 (2017): 905-923. p/915

¹⁸⁹⁹ Schulenkorf, Nico. "Sustainable community development through sport and events: A conceptual framework for sport-for-development projects." *Sport management review* 15, no. 1 (2012): 1-12. p/5

¹⁹⁰⁰ Peachey, Jon Welty, Adam Cohen, Nari Shin, and Bruno Fusaro. "Challenges and strategies of building and sustaining inter-organizational partnerships in sport for development and peace." *Sport Management Review* 21, no. 2 (2018): 160-175. p/163

exploitation,¹⁹⁰¹ and through SDP, FIFA could enhance the education, health,¹⁹⁰² and general well-being of the relevant persons in these areas, thereby reducing their vulnerabilities.

By adopting the use of SDPs, FIFA will be able to achieve several wide scale development and social outcomes.¹⁹⁰³ For example, SDP programmes which have an educational benefit will align FIFA with Article 28 UNCRC, which recognises children's rights to education and the importance of this in the child's development.¹⁹⁰⁴ SDP educational programmes which African football minors can benefit from will prevent situations such as that of Nii Odartey Lamptey from reoccurring. Lamptey was a talented Ghanaian football minor who was trafficked and exploited by his football representatives upon his arrival in the EU, due to his lack of formal basic education, as he was unable to read or write.¹⁹⁰⁵ Educated African football minors will be better informed about trafficking and the related aspects of exploitation. The minors would be notified about the availability of avenues for them to legally migrate and play professionally abroad if they wished to do so. The education provided to them will also enable the football minors to better resist the ploys of unscrupulous persons, whilst providing them with a viable plan B if they were unsuccessful in becoming professional players.

SDP initiatives could also lead to significant benefits for African football leagues. The development could foster economic growth at individual, community, and institutional levels,¹⁹⁰⁶ in a manner that influences the running of the sport on the continent and makes the leagues more commercially viable. Such advancements would allow the teams on the continent to be more self-sufficient, giving them the capacity to offer adequate financial incentives able to persuade the African players to stay and play on the continent,¹⁹⁰⁷ even if this is only for their formative years as professional players.¹⁹⁰⁸ Thereby, SDP would be

¹⁹⁰¹ IPEC, *Combating trafficking in children for labour exploitation: A resource kit for policy-makers and practitioners* (International Labour Office; ILO International Programme on the Elimination of Child Labour, Geneva 2008). Book 4 page 10

¹⁹⁰² Kidd, Bruce. "A new social movement: Sport for development and peace." In *Sport and foreign policy in a globalizing world*, pp. 36-46. Routledge, 2013. p/376

¹⁹⁰³ Schulenkorf, Nico. "Sustainable community development through sport and events: A conceptual framework for sport-for-development projects." *Sport management review* 15, no. 1 (2012): 1-12. p/7

¹⁹⁰⁴ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, Article 28.

¹⁹⁰⁵ Acheampong, Ernest Yeboah. "The Journey of Professional Football Career: Challenges and Reflections." *Journal of Sport and Social Issues* (2020): <https://doi.org/10.1177/0193723520958341>. p/13

¹⁹⁰⁶ Sugden, John. "Critical left-realism and sport interventions in divided societies." *International review for the sociology of sport* 45, no. 3 (2010): 258-272. Cited in Svensson, Per G., and Jeffrey Levine. "Rethinking sport for development and peace: The capability approach." *Sport in Society* 20, no. 7 (2017): 905-923. p/907

¹⁹⁰⁷ Esson, James, 'Better off at home? Rethinking responses to trafficked West African footballers in Europe' (2015) 41(3) *Journal of Ethnic and Migration Studies* 512. p/513

¹⁹⁰⁸ Darby, Paul, Gerard Akindes, and Matthew Kirwin. "Football academies and the migration of African football labor to Europe." *Journal of Sport and Social Issues* 31, no. 2 (2007): 143-161. p/157

limiting the effect of the muscle drain on Africa's football labour, and would be restricting the avenues which the unscrupulous persons use to deceive and exploit the aspiring football minors.

With the longstanding sporting and non-sporting benefits SDP programmes could provide, it is pivotal that initiatives of this nature should be centralised, mainstreamed, and supported by FIFA, other SGBs, and government bodies (IGOs and NGOs), so that a comprehensive and concerted approach is adopted to tackling this global trafficking problem. Through the development of Africa and African football, there will be substantial and significant impact and improvements on the lives of many across the continent, reducing their vulnerabilities, and making them less susceptible to trafficking situations. Therefore, even if sport was only able to make a small contribution to solving the global trafficking problem, this small contribution should not pre-empt the involved actors from introducing SDP programmes and policies which can effectively tackle the root issues that lead to football trafficking. As Jarvie and others rightly contended, "small contributions can sometimes make a big difference."¹⁹⁰⁹

Conclusion

This chapter has considered an alternate regulatory model which can be used to tackle football trafficking, which is through the development of African football. The development would enable FIFA to tackle some of the core vulnerabilities of the African football minors which pushes them into situations of trafficking. The proposed development should be conducted through SDP initiatives, which provides a framework in which sport is used to achieve various sustainable development goals and benefits for target communities. For FIFA's SDP to have the desired impact in tackling football trafficking, the organisation would need to adopt aspects of both sport development and sports for development in its attempt to improve Africa and African football. FIFA are advised to take a bottom-up approach to development, as this will allow for the participation and input of the local communities in the planning and actioning of the SDP programmes in their communities. This local involvement also improves the likelihood of the development programmes being successful, as the initiatives would be tailored to the specific needs of the target communities. Through a successful SDP, FIFA would be able to play a key role in achieving wide scale development and significant social outcomes which could limit the occurrences of trafficking. Furthermore, the development of African teams and leagues would provide the African sides with the commercial viability and financial incentives needed to retain

¹⁹⁰⁹ Jarvie G, Thornton, James and Mackie, Hector, *Sport, Culture and Society: An Introduction* (Third edition., Routledge 2018) p/91

certain players, and in so doing, protect the players from a variety of precarious trafficking and exploitation-like conditions. Ultimately, SDP will enable FIFA to have a significant and positive impact on Africa and African football, whilst simultaneously, providing an increased level of direct and indirect protection from trafficking situations for the at-risk African football minors.

Chapter 12 - CONCLUSION

This thesis has provided a holistic view of the football trafficking problem. The view has been attained by examining and exploring the full extent of football trafficking, and the factors that have contributed to its prevalence within the sport. The analysis in the project entailed an evaluation of FIFA's anti-trafficking policies, highlighting the core factors which have undermined its policy performance, and which ultimately resulted in FIFA's regulatory failure. The thesis then proposed a range of recommendations to FIFA that could better curb football trafficking. The recommendations included requests for FIFA to reform its organisational structure and regulatory practices, which would enable it to create more effective anti-trafficking policies. The thesis argues that the aim of these policies should be to prevent the occurrence of football trafficking, whilst simultaneously protecting the African football minors from the adverse human rights conditions related to the running of the sport.

12.1 ANSWERING THE RESEARCH QUESTIONS

At the start of this project, the thesis set out to answer the following three research questions:

1. What are the key factors leading to the trafficking and exploitation of African minors?
2. Are current regulatory responses to the problem adequate?
3. How could an alternate regulatory framework succeed in limiting football trafficking?

12.1.1 Question One

Chapter 2 uncovered that there were several key factors that contributed to the trafficking of African football minors. Such as: The *Bosman* ruling and the aftermath of the ruling. After *Bosman*, EU football teams were more inclined to use the non-EU football transfer markets as a means of sourcing a wider range of cheap players to make profits. Similarly, after *Bosman*, the football environment saw an increase in the commodification of children, and this was fuelled by certain FIFA policies and practices like the home-grown player rule and training compensation. The FIFA rules, thereby, gave unscrupulous persons and football teams a reason to capitalise on the increased commodification of children in the sport. Such as, by enabling them to utilise the availability of the cheaper but equally profitable football talent from outside the EU.

Thereafter, several football teams in developed countries and regions entered into transfer agreements with the teams and academies in developing regions in Africa. These agreements enabled the richer EU teams to essentially “farm” Africa and African talent, discovering the most talented players and grooming them for exportation. Upon arrival in Europe, and provided the player performs well, the player could be kept because he is improving the team’s performances and allowing them to achieve their sporting and commercial targets, or the player could be sold to a bigger team for significant profits. Thus, the football environment considers the players to be assets rather than children, and the younger they are, the easier it is for the teams to train and develop their playing ability to fit a European mould, thereby increasing the likelihood of the teams receiving greater profits from any subsequent sale of the player.

As the EU teams cherry-picked the best African players, the other aspiring players on the continent began viewing migrating to Europe for professional football as a prerequisite for achieving success through the sport. This contributed to the enhanced migratory disposition of the African football minors, which makes them increasingly susceptible to trafficking and exploitation when a professional playing opportunity is offered (irrespective of the validity of such an offer). The history of colonisation and previous colonial links between European teams and African source countries also supplements the players’ migratory disposition. Furthermore, several EU teams continue to harness their prior colonial links by conducting neo-colonial recruitment practises to attain the African players. By using their superior financial capabilities to obtain the best players from the smaller and financially inferior African sides.

Chapter 3 considered that the African football minors have been engaged in trafficking and exploitation-like situations due to the unique intersection between the push-pull factors of human migration, and the personal and professional development opportunities potentially on offer to them through football. The factors pushing the players to leave the African continent (poverty, youth unemployment, poor footballing infrastructure), and the football opportunities pulling them towards Europe (increased financial incentives) provides a dynamic in the sport where unscrupulous persons are able to deceive and exploit the boys through false promises of footballing stardom. The players are either defrauded and left in Africa, transported abroad and abandoned, or trafficked abroad and exploited upon arrival. Yet, despite these instances and stories of football trafficking and exploitation, more African players continue to take the “calculated risk” involved in going abroad through illicit means, owing to the absence of legal avenues for them to migrate.

This absence of migration opportunities for the African players can be attributed to FIFA's ban on ITMs. Discussions in the thesis identified how the ban has been counterintuitive for the players. As, rather than protecting them from exploitation, the ban pushes the players to depend on unscrupulous persons to make the clandestine trip abroad a possibility, thereby increasing the likelihood of them being trafficked and subsequently exploited. FIFA's anti-trafficking laws have not only been ineffective in affording the requisite protections for the African football minors, but the laws have arguably been contributory towards the establishment of the football environment where trafficking is rife. The lack of protection for non-EU minors in its laws, and the plethora of regulatory loopholes within its anti-trafficking policies, are factors which suggests that FIFA's regulatory responses have not been tailored to the problem. Instead, the rules have given leeway for unscrupulous persons and football teams to find means of creatively/not complying with FIFA's anti-trafficking policies, as they continue to export and exploit young African players, both within and beneath FIFA's radar.

12.1.2 Question Two

Chapters 5, 6, 7, and 8, involved a comprehensive evaluation of FIFA's anti-trafficking policies to determine the adequacy of its regulations. The assessment revealed that FIFA's policies did not have the desired impact in changing the behaviours of its regulatees. And without changed behaviours, FIFA's policies were not able to achieve the specific regulatory objective of curbing football trafficking, making the policies inadequate. However, the analysis revealed that the performance of FIFA's anti-trafficking policies was not completely dissimilar to the performance of the wider international law anti-trafficking instruments. The assessment uncovered that this similar performance was primarily due to the relevant policies all viewing the trafficking problem, and the possible solutions for preventing it, from prisms of criminality and migration, rather than from a perspective which provides a workable solution towards addressing some of the root causes of child trafficking.

Moreover, the evaluation of FIFA's policies showed that there were several key social, systemic, and structural factors, that hindered the organisation's anti-trafficking policies from being adequate. The social (i.e., recruitment strategies of teams pulling players to Europe through financial incentives, and the conditions in Africa which pushes the Africans to pursue professional playing contracts abroad), systemic (i.e., data deficits in football trafficking), and the structural factors (i.e., corruption and conflicting interests amidst FIFA officials), all allude to deficiencies in FIFA's policy deliberations and regulatory practices. These factors not only exacerbated the rate of the football trafficking problem in the regime,

but they also underlined the inadequacy of FIFA's regulatory responses to curbing football trafficking. Further analysis into FIFA's anti-trafficking policy performance showed that FIFA's deficient practices were augmented by the organisation's composition as a self-regulatory association. FIFA's status as an SRA, and a TPR with extensive regulatory powers, meant that FIFA's malfunctioning policies are often a by-product of the broader issue of its lacking legitimacy and accountability.

The absence of regulatory legitimacy meant that FIFA's regulations are at times not representative of the wishes of its regulatees (and other parties affected by its regime), thereby increasing the likelihood of noncompliance with FIFA's policies. Whereas, due to the absent accountability at FIFA, there is no external or overarching body or nation state able to impose essential consequences upon FIFA for the non-achievement of regulatory objectives. With no accountability, there is a limited incentive for FIFA to amend its regulations and prevent the further detrimental failings of its anti-trafficking policy actions. FIFA is therefore able to continue operating as normal, without any consequences, despite the violations to players' rights and the adverse human rights risks faced by the African football minors operating both within and on the periphery of the sport. The examination of FIFA's anti-trafficking regulatory responses concluded that the policies have been inadequate in curbing the football trafficking problem. This is because the policies were determined to be deficient in line with both the rhetorical and analytical approaches generally used to ascertain the existence of regulatory failure.

12.1.3 Question Three

In chapters 9, 10, and 11, recommendations were made to FIFA to undergo key organisational reforms as a means of remedying the identified regulatory failures. The reforms would rebalance FIFA's structure, and redistribute football's resources to limit the impact of the structural factors which undermined FIFA's anti-trafficking policy performance. Also, regarding the problems related to its status as a decentred body, it was recommended that FIFA should introduce better legitimacy and accountability practices for its regulatory operations. Such as, by adopting the use of a challenge function, and appointing truly independent personnel and groups able to hold FIFA to account from within. The aim of such practices is to improve the efficacy of FIFA's further anti-trafficking policies, in order to ensure that there are no adverse human rights risks or side-effects caused to the African football minors as a consequence of FIFA's policy actions.

It was proposed that FIFA should adopt essential processes during the preliminary policy deliberations stage, the decision-making stage, and the enforcement stages of actioning the

effective anti-trafficking policies, to counter the systemic factors undermining its prior policy performance. The preliminary stage should consist of the use of regulatory impact assessments, involving human rights experts, and including the views and lived experiences of the trafficked African football minors. During the decision-making stage, FIFA should welcome input from external IGOs, NGOs, and nation states, so that a concerted approach is adopted to tackling this transnational problem. For effective enforcement, it was suggested that FIFA should adopt an important practice from the regulatory literature, i.e., the “DREAM” framework. The framework provides a better means of *detecting* instances of football trafficking; offering a more tailored *response* to the problem; using both persuasive and deterrent methods to *enforcing* FIFA’s policies and achieving regulatory compliance; undergoing a continuous *assessment* of the policy performance; and *modifying* aspects of the provisions to react to the circumstances within the regime that may be resulting in non-compliant behaviour.

Furthermore, as an underlying response to the social factors which undermined FIFA’s anti-trafficking regulatory responses, there were three recommendations: the child-centred approach, the creation of more legal routes into football for the African minors, and the alternate regulatory model.

The child-centred approach will enable FIFA’s policies to be cognisant of the social factors that put the aspiring child footballers at an increased risk of trafficking and exploitation. The recommended child-centred approach should be guided by the UNCRC, putting the best interests of the child, and the child’s rights, as paramount factors in the regulations relevant to offering the children requisite protections from situations of trafficking and exploitation. To achieve the best interests of the child within the context of football trafficking, it is essential that children (specifically trafficked African football minors who have both been successful and unsuccessful in playing professional football abroad), are given a voice to contribute to vital policy actions. Through their essential input, the children will be able to give insight into how best to prevent the crime, and what key protections they would have benefitted from, based on their first-hand experiences.

FIFA, in creating more legal routes into football for the African minors, would also be able to counter some of the social factors which have hindered the performance of its anti-trafficking policies. The absence of legal routes previously propelled the minors into the hands of unscrupulous agents/intermediaries looking to traffic and exploit them, as the lack of options gave the aspiring players limited choices for regular migration through football. Hence, the aspiring footballers generally had to engage with unlicensed agents and football

academies in order to gain opportunities to go abroad, which was mostly to the players' detriment. Therefore, the creation of more legitimate routes into football should be viewed as a human rights remedy to countering football trafficking. Through these legal routes, it is believed that the African football minors would no longer be dependent on unscrupulous agents and illicit football academies to have a chance at playing professional football outside Africa. And due to the increased options made available to the players, the African minors and their parents would be less likely to fall for the deceptive ploys of *mala fide* persons looking to take advantage of them.

In countering the undermining social factors (and in line with answering the third research question) chapter 11 considered the use of a more nuanced alternate regulatory model to curbing football trafficking. The analysis entailed discussions on how developing Africa and African football would be a means of tackling the core vulnerabilities of the African football minors. Noting how sports development and sports for development programmes should be equally adopted to have the desired impact in the region. Core elements of successful SDP programmes were also explained, such as: FIFA and its collaborators must have clear targets about what the programmes intend to achieve; Collaborations and monitoring are essential to know the true impact the provisions are having in the target regions; and local involvement is essential for the initiatives to be successful. The local involvement emphasises the necessity of a bottom-up approach to instituting tailored programmes which are able to cater to the needs of the countries and communities in which the initiatives are being conducted. The SDP initiatives will empower the community, the football teams, and the personnel in the regions, to be more self-sustainable and less dependent on foreign aid and assistance. These significant development investments in Africa and African football could potentially have longstanding benefits for the region. Still, as widely significant as these programmes may be, the primary goal is that they limit the social vulnerabilities of the at-risk children, and that they lessen the avenues and opportunities for unscrupulous agents and intermediaries to engage, traffic, and exploit the African football minors.

12.2 THE SIGNIFICANCE AND IMPLICATIONS

This thesis is significant because it uncovers key flaws in the regulatory approaches to curbing football trafficking. The research identifies that the prevalence of football trafficking has stemmed, in part, from the misconceived policies introduced to tackle the problem. The study does not attain its significance by contradicting any previous research on the subject matter, but rather, acquires its significance through the extensive recommendations provided to counter FIFA's previously misconceived anti-trafficking regulatory responses.

The thesis underlines that banning or limiting the international transfer of minors, or providing additional immigration requirements and restrictions on labour migration, are policy responses that adopt a surface level stance to curbing a deep-rooted problem such as trafficking. Therefore, an adequate policy response must be able to target the root causes of the problem to have a longstanding and beneficial impact for the persons it is supposed to protect. Effective anti-trafficking policies able to curb football trafficking must be: 1) inclusive in its formation, attaining all necessary input and expertise possible to arrive at an enhanced policy response; 2) extensive in its reach, owing to the transnationality of the crime and the involved actors, the policy response must be able to limit all avenues for breach and provide extended protections for trafficked persons no matter the destination countries; and 3) fundamental in its long-term applicability and sustainability, able to improve and tackle the root causes of the problem, and limit the vulnerabilities of the common victims, who in this case are the African football minors.

The study provides key implications for various parties involved in football trafficking. At a general level, the study should be the basis for FIFA (as a regulator, and its regulatees in the form of football clubs and personnel), other sports governing bodies, IGOs, NGOs, nation states, and law enforcement personnel, to undergo a thorough re-orientation about all facets related to the occurrence of football trafficking. This will enable the involved parties to treat the football minors more appropriately upon discovery, which will then aid further efforts towards countering its occurrence. At a sporting level, the thesis has implications for FIFA and other SGBs affected by sports trafficking, as they would be able to use the recommendations as a basis to improve their regulatory practises and also their anti-trafficking policy responses. At an international policy level, practitioners and policymakers should consider this project as a call to action for more oversight, involvement, and collaboration with FIFA pertaining to the organisation's handling of this football trafficking problem. The increased collaboration would ensure that there is a concerted, transparent, and accountable approach towards tackling this transnational issue. At an academic level, the analysis lays the foundation for more data and empirical research to be conducted in furtherance of the thorough recommendations provided herein, to affirm how the improved policies would directly lead to curbing football trafficking.

Through the unique insight provided by this research, it is certain that effective regulation holds the key to countering the football trafficking problem in the long term. But to be impactful, the regulatory approach must be comprehensive and able to constantly react to the changing dynamics within the football environment. Adapting to the environment, whilst

maintaining the underlying protections the policies are supposed to provide for the at-risk children, is a key challenge for FIFA. Yet, it is a balance that FIFA must achieve in order to curb football trafficking and prevent the continued instances of child exploitation taking place within the sport.

12.3 CONTRIBUTIONS TO THE FIELD

This research provided a two-fold contribution to the literature on football trafficking. First, the theoretical perspective used (in combination with the socio-legal methodology) allowed the project to offer a unique insight into the causes of the football trafficking problem. The diagnostic and subsequent remedial application of the regulatory theory lens, then provided the platform for pertinent recommendations to be made to FIFA to improve its anti-trafficking policies. The thesis has made significant contributions that will enable FIFA to amend its regulatory processes and procedures, and to introduce more effective anti-trafficking laws that are tailored to the circumstances of football trafficking. The subsequent laws formed, if based on the recommendations of this research, would be better positioned to protect the African football minors. This is because the relevant anti-trafficking policies would be reflective of (and resistant to) the social, systemic, and structural factors that previously undermined and hindered FIFA's policy responses.

Second, this thesis has contributed to the growing legal commentary on football trafficking and has proposed a nuanced solution to curbing the problem in the long-term. By using the alternate regulatory model, FIFA would be able to effectively tackle some of the root vulnerabilities of the African football minors, which had previously led them into the precarious situations of trafficking and exploitation.

12.4 LIMITATIONS OF THE STUDY

There were some limitations to the research that hindered the provision of more concrete recommendations. These limitations may have subsequently reduced the validity of some of the proposals to tackling football trafficking, owing to the embedded generalisations within the research. The research was hindered by methodological limitations with the recruitment of participants who had experience of football trafficking. Without consulting the African football minors, the research was unable to evidence that the proposals would truly afford the requisite protections to the minors, nor did the research show how the recommendations could, in practice, prevent the occurrence of football trafficking. Instead, the recommendations were based on the desk-based research method, and the writer's own

intuition, rather than on the lived experiences and responses from the African minors with first-hand knowledge of football trafficking.

This lack of insight from the minors arguably limits the validity of some of the arguments entailed within the study. For example, even though the discussions on the workability of the alternate regulatory model to countering football trafficking are informative, it is noted that the discussions in chapter 11 only provides a partial answer to the third research question of: “*how* could an alternate regulatory framework succeed in limiting football trafficking?”. The analysis showed the necessary steps that should be taken to successfully action the alternate regulatory model, but the link between the model and any possible reduction or limitation in the instances of football trafficking are clearly hindered by the absence of empirical data within the study.

Part of the limitations in the recruitment of the participants came from the fact that the research has been self-funded. In this project, there were no budgetary provisions for undertaking significant empirical research in target regions, to interact and gain insight from the minors directly, in the same way as the scholars in sociology were able to achieve. Had the research been funded, the study would have benefited from similarly engaging conversations with the African minors, this time, through a socio-legal approach. The minors would have been able to provide key insight on: their thought processes when choosing to bypass relevant laws to undertake the clandestine trips abroad; their perception of FIFA’s anti-trafficking policies, and how the policies may be putting them in precarious situations; if the recommendations to FIFA provided in this study would have had any effect in limiting their migratory disposition or their core vulnerabilities; and, whether the proposed policies would have been able to protect them from trafficking and other exploitative situations.

Admittedly, despite the contributions to the field, the research’s limitations suggest that there are several avenues for growth, and that increased empirical data is essential going forward.

12.5 AREAS FOR FURTHER RESEARCH

There are key areas for further research to extend on the recommendations in this study. These can be described through the following questions for academics and policy advisers in the field:

1. Should generic recommendations for more effective anti-trafficking policies be put through a rigorous evaluations process? Perhaps, one that is tailored to the specific regime to ensure its workability and capacity to achieve the desired outcomes?

2. How can more empirical research be conducted in the field to uncover the direct effects of the anti-trafficking policy recommendations?
3. What tests would enable the regulators and policy makers to know when there is a reduction in football trafficking cases brought about by one recommendation and not another? For example, how would we know if there is a reduction in football trafficking due to the creation of more legal routes for labour migration as opposed to the development of African football?
4. What basis is there to determine if the vulnerabilities of a people or community has been reduced through the development programmes? And how can this be subsequently, and explicitly, linked to any diminished instances of football trafficking?
5. Using a wider range of international regulatory provisions for limiting human trafficking, how have these other instruments performed in their respective regimes, and what are the factors affecting (or leading to) optimal policy performance?
6. What other instances has regulatory theory been proposed as a viable lens to improve the regulatory practices of a self-regulatory organisation or an SGB? What was the result of the recommendations and how were the proposals actioned? Were the recommendations able to have the desired impact and bring about the requisite behaviour change in the regime?
7. What has been the response to sports trafficking amongst other SGBs, and what practices have they introduced to limit its occurrence?
8. Are the practices of the other SGBs regarding trafficking more comprehensive and successful when compared to that of FIFA's? Or are their regulatory responses more adequate because there are generally less instances of wider sports trafficking?
9. At what point can African football be said to have developed to an appropriate level able to restrict the occurrence of football trafficking?

These questions are pertinent for further analysis into football trafficking, they are essential in creating a structured plan towards preventing the crime and protecting the African football minors from exploitation.

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