

PATHWAY TO MATERNITY REGULATIONS FOR PROFESSIONAL FOOTBALLERS



Introduction



"In this article I intend to explain the incorporation by FIFA of maternity protections for women's football, which have been a long time coming, but thankfully have now arrived, in great part due to the impulse of FIFPRO. I provide a brief history of women's football, exposing the realities of the game and reasons that these types of progressive policy have been held back until now, the positives and negatives of the current regulations, as well as areas that have not yet been regulated but that are necessary and likely to be included in the next stage of reform."

Alexandra Gómez Bruinewoud
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WOMEN'S FOOTBALL OVER THE YEARS

Reality vs. Perception

Many justifications and excuses are put forward for the inequality of treatment, development, appreciation, financial support and profits between the female and male footballing worlds. Many argue that these differences are partly due to the fact that women's football is new and that we must give it time to develop. This is precisely what we have been taught and the story that the media presents. The fact is that we have only been able to watch women's football in the media for three decades (and to a very limited extent). On that basis we might assume it originated fairly recently, however, the reality is quite different. As the historian Brenda Elsey explains in her book "Futbolera", women's football has been played in much of the world for more than a century.

Elsey shows (via women's memoirs and press comments) that women's football actually became very common in the 1910s, particularly in teams organised by physical education teachers. And by the 1920s women were forming teams in their workplaces, unions, neighbourhoods and even (informally) at sports clubs. However, they faced a great deal of opposition.

Elsey was asked in an interview: "What is the greatest obstacle for a Latin American woman who wants to play football?" Her answer was no surprise: "There are still a lot of people who think that women playing football are transgressive. In that case they may face opposition from parents, friends and partners, who are afraid that their femininity is at stake in a "men's sport". Everything related to women being successful in football is a threat to men's sense of superiority. It threatens their monopoly of leisure time and public resources for entertainment. It is not an implicit feeling; the men who complained about women's football at the beginning of 1910 described them as "invaders". Because of its association with virile masculinity, women in football found their femininity and heterosexuality being called into question."

In another interview, Elsey, a specialist in women's football and specifically that of Latin America, explained the professionalisation of football in general as follows: "There is a key misunderstanding of the way in which men's football was professionalised, which ignores the substantial state investment and the role of the media in promoting it. It did not grow organically. What is required, therefore, is outside support, integration into physical education, which also helped to popularize men's football, and a reconsideration of sponsors and how federations deal with them [...]."

In Brazil, when women's football was at the height of its development and stadiums were being filled to watch them (there is photographic evidence of this), the sport was subsequently banned for 40 years (from 1941 to 1981). The same thing happened in England, where women's football was prohibited for nearly 50 years (between 1921 and 1969). One might wonder: if nobody cared about it, if it was not popular, if it did not represent a "risk", why ban it?

As Gabriela Garton explains in her book "Guerreras", historically, women have been systematically excluded from football, with excuses such as (lack of) genetic predisposition and the moral values that women represent. Therefore, when physical education was introduced in schools, football was reserved for the male sex.

Indeed, when I myself was at school in Uruguay, girls had no option to play football as part of the curriculum. This was reserved only for the boys. We were not even taught how to play the game during physical education, instead we were offered team sports that were presumably considered more neutral, such as handball or volleyball. And this was in a country that lived and breathed football, where the main news programmes spent thirty minutes of every hour talking about football and where football was the country's main source of pride. 50% of the population had virtually no chance of being allowed to play. What's more, very few football clubs accepted girls and generally people did not realise it was possible for girls to play football, as incredible as this may seem.

It was only a few years ago that women's football started to become stronger at club level and be introduced into schools. However, this was done half-heartedly, in mixed groups, which were separated upon reaching a certain age. The female section was also sometimes disbanded as there were not enough girls to make up a team. As well as the prejudices associated with being a female player (which can have an even more powerful impact in adolescence), these factors are likely to explain why many of girls who felt like playing when they were children, no longer do so as teenagers.

In view of all this, one can at least question some of the classic explanations as to why women's football has not entirely "taken off".

¹ Brenda Elsey and Joshua Nadel, *Futbolera: A History of Women and Sports in Latin America* (Austin, TX: University of Texas Press, 2019).

² <https://www.eldesconcierto.cl/nacional/2018/04/30/historiadora-analiza-el-futbol-femenino-la-exclusion-brutal-de-las-mujeres-en-el-futbol-de-la-region-es-simbolica-y-social.html>

³ <https://www.nodal.am/2019/05/brenda-elsey-y-joshua-nadel-autoras-de-futbolera-una-historia-de-la-mujer-y-el-deporte-en-america-latina/>

⁴ Ibid.

⁵ Gabriela Garton is an American-Argentine professional footballer who is a member of the Argentine national team and plays for the W-League club Melbourne Victory. She is also a member of FIFPRO's Global Player Council.

⁶ Gabriela Garton, *Guerreras: fútbol, mujeres y poder* (Buenos Aires: Capital Intelectual SA, 2019).



WOMEN'S FOOTBALL TODAY

As explained in great detail in the FIFPRO report "Raising Our Game", published in 2020, the general picture of women's football today is that: "in the absence of global standards for women's working conditions, they are subject to a variety of adversity". This situation constitutes a barrier to the growth of the industry. Although it is true that football is beginning to open its doors to women, the professionalisation of women's football still faces the effects of decades of exclusion and insufficient investment. A shortage of competitive leagues, a lack of matches, short seasons, large disparities between the elite teams and the rest, and an absence of market opportunities, all limit the chances for the development of women players and commercial investment. Nevertheless, and very importantly, there is a growing interest in watching, and the sponsorship of, women's football.



According to "Raising Our Game", although women's football has long been considered a 'cost' to the industry, it is actually a valuable asset for both the sport and society, which can lead the game in a positive and sustainable direction. The women's football industry is growing and there is greater commercial interest in it; attendance figures at both league and international matches are showing signs of incredible potential, broadcaster viewership is increasing, and new sponsors are emerging as partners. Professionalisation is underway. At national level, more leagues and clubs are being formed and professionalised, others are under development, and elite competitions are adopting new models.

However, as adverse working conditions continue, actions are required to establish, implement and enforce global industry standards for women's football. This applies both to employment contracts and to international competitions, to protect players and allow the industry to grow in a fair, decent and stable manner.

FIFA, the Confederations, and some of their member associations, have made progress in recent years, creating development plans for women's football and making commitments around "non-discrimination". Many areas have improved and we can see that by enhancing protection for female players the product itself is also improving. It is said that we should not compare women's and men's football, because they are two different and independent products. I think this is correct, but what we can compare is the different treatment received by players practising a sport which has the same rules for both its female and male counterparts and is governed at international level by the same non-profit organization (FIFA). We can and should compare their playing conditions and whether both sexes enjoy the same rights. Even with FIFA's commitment and its statutes prohibiting gender discrimination, female footballers continue to play under different conditions, like during World Cup competitions for example, an event organised by FIFA themselves, which, as already mentioned, is a non-profit organisation. It is difficult to understand how one of the wealthiest organisations in the world is unable, even in competitions organised directly by them, to ensure equality. Currently, conditions differ in terms of the personnel accompanying female players, the number of teams taking part in the World Cup and the prize for winning, amongst many others. This remains the case, even in 2021.

FIFPRO has reviewed the regulations for the Russia 2018 World Cup and the France 2019 Women's World Cup and has identified several differences related specifically to the conditions for female and male players. In short, men receive treatment that facilitates higher levels of performance. This is important not only because women are being discriminated against, but also because better conditions help to produce better performance, and better performance will promote women's football, bringing more fans, financial investment and overall participation. It is no accident that the national teams that enjoy the greatest protection for women players are those that perform best (United States, Sweden, Netherlands, etc.).

To give some actual examples of the differences at the last two World Cups, women's official delegations for France 2019 consisted of 35 people (23 players and 12 officials) whilst the official delegation for men in Russia 2018 was 50 people (23 players and 27 officials). As a result, FIFPRO has proposed that for the 2023 Women's World Cup the delegation should be increased to 50 people, comprising 23 players (plus additional reserve players for pre-tournament preparation only in the event of injury) as well as 18 officials (including 5 coaches, 9 for human performance and 4 support staff), 1 independent players' representative and 8 additional officials to be decided by the Football Association. Considering that the official positions tend to be male dominated, FIFPRO proposed that it should be ensured that there is gender diversity among them, suggesting a 30% quota as a very minimum.

"WE CAN AND SHOULD COMPARE THEIR PLAYING CONDITIONS AND WHETHER BOTH SEXES ENJOY THE SAME RIGHTS."

At the France 2019 Women's World Cup, accommodation was available from 4 days before the team's first match until 1 day after its elimination. Whilst at the Russia 2018 World Cup, it was available from 5 days before the first match and 2 days after the team's elimination. As for flights, in the France 2019 Women's World Cup, flights of up to 5 hours were designated as economy class and those of more than 5 hours were allocated to business class, for 35 people from each participating football association. In the Russia 2018 World Cup on the other hand, it was stipulated that all 50 delegates from the participating football association would fly in business class.

These are some of the many subjects being discussed with FIFA's Women's Football department. And with the willingness that exists within the department to remedy this inequality there is hope that we will have fairer regulations for the 2023 Women's World Cup. The same issues can be seen at Confederation level. It is striking that within competitions organised by UEFA, CAF, CONMEBOL, AFC, CONCACAF and OFC, the conditions for male and female players are far from equal. Still, step by step, things are improving in women's football, both within FIFA and in some federations such as Australia, England, the Netherlands, Sweden, Mexico and Argentina.

In 2017, FIFPRO issued its global report on employment in women's football, which revealed several worrying facts. One of these is that women players retire too early, before reaching their peak. Indeed, according to the research, 69% of female players are between only 18 and 23 years of age. Not only is this bad for the players themselves (since they have a very short career), it is also bad for the development of women's football, which is prevented from seeing players perform at their peak age (25-27).

Of the female players surveyed, 90% stated they were going to retire early. But why should they retire earlier? The main reasons given are starting a family (47%) and the need to pursue other career opportunities to ensure an income. Choosing between being a mother or being a footballer is an unfair choice but a very real one, because there were very few clubs that would provide support to a player if she became pregnant. For most players this meant the end of their career. The report also provides further details on maternity. For instance, only 2% of the players surveyed had children. Of these, 61% had received no childcare support of any kind and only 8% received some kind of maternity pay from their club or federation.

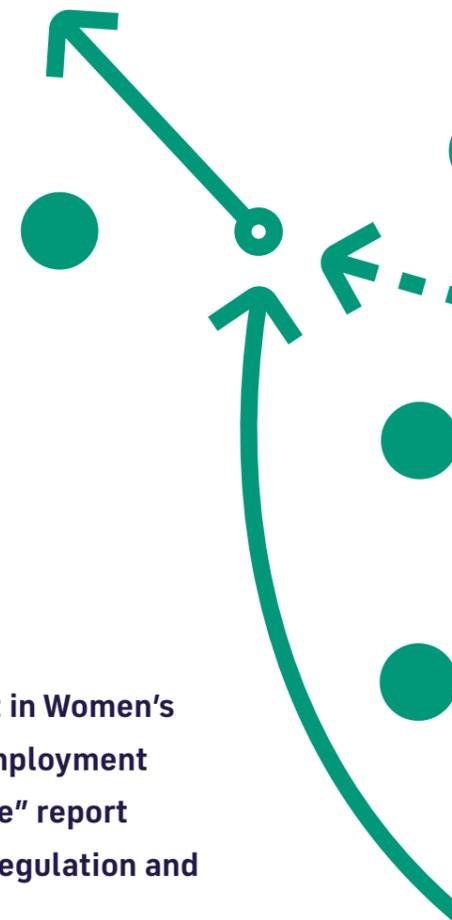
⁷ https://www.fifpro.org/media/vd1pbtbj/fifpro-womens-report_eng-lowres.pdf

⁸ <https://www.fifpro.org/en/industry/women-s-global-employment-report>



THE PROCESS LEADING UP TO MATERNITY PROTECTION

One of the conclusions of FIFPRO's Global Report on Employment in Women's Football was that work was urgently needed around minimum employment standards, including maternity protection. The "Raising Our Game" report reached the same conclusion. The need was clear, but effective regulation and implementation was still required.





In 2019, we were consulted by the Asociación de Futbolistas Españoles (AFE: Association of Spanish Footballers) and Futbolistas Agremiados Argentinos (FAA: Argentine Players' Union), both members of FIFPRO, on FIFPRO's position with regard to maternity protections, with both parties requesting documentation. This was because negotiations to regulate the issue were beginning at national level.

Although our position on the subject was clear following a great deal of internal discussion, we did not have a formal document that we could share or promote. For this reason, we immediately formed a multidisciplinary team and set to work. It wasn't an easy job as legislation differed between countries and there were nuances to be considered. We looked for information on how the subject of maternity had been resolved in other sports, but there was not much information available. The regulations introduced by the United States NCAA (National Collegiate Athletic Association), as well as those for rugby in Australia and New Zealand, and netball in Australia, were the most comprehensive regulations. We soon realised that as a starting point it would be best to focus our attention on the International Labour Organization (ILO) and its Convention No. 183 of 2000, which regulates maternity protection for female workers at the international level. It is a simple regulation, but well founded, supported and international in scope, so was considered the most relevant and best basis to work from.

Whilst finalising the document we spoke with Emilio García, FIFA's Legal Director, who was delighted that we shared the concern and was very interested in regulating the issue. García was sent the document in its final form, after we had consulted with female players on FIFPRO's Global Player Council, as well as with our members. The document is named the "FIFPRO Parental Policy" and formed the basis for the current regulation together with the ILO's Convention No. 183 of 2000.

⁹ Ibid., p. 40.

FIFPRO PARENTAL POLICY

The FIFPRO "Parental Policy" is the document developed by FIFPRO to serve as a guide to FIFA, the federations, clubs and any other organisation proposing to regulate the matter of maternity conditions in women's football.

In developing this policy we were convinced that professional women footballers should have a secure and inclusive work environment, including those who are pregnant or have young children. The pregnancy and parental management policy had to be based on the premise that no action could be tolerated that could constitute discrimination against a player by reason of pregnancy, breast-feeding or caring for a baby or infant. It recognised that all players have different needs but there are certain minimum conditions that must always be provided to prevent violation of their rights.

FIFPRO's Parental Policy is divided into two parts. The first specifies the obligatory requirements for a parental policy, with fundamental and mandatory elements related to the protection of pregnancy, maternity leave, leave for the parental figure who did not bear the child (non-bearing child parent), and a clear regulation of the return to play. The second part sets out certain recommendations which FIFPRO believes are key to guarantee the protection and promotion of women players' rights and their welfare in relation to parental management and travel.

If you compare FIFPRO's Parental Policy with what was finally adopted by FIFA, there are many similarities. However, there are some aspects of FIFPRO's Parental Policy that FIFA has not yet introduced and that FIFPRO believes should be regulated. This will be discussed later in the article.



Protection ON THE FIFA REGULATIONS ON THE STATUS AND TRANSFER OF PLAYERS (RSTP) IN THE EVENT OF PREGNANCY AND MATERNITY

After several meetings (organised by FIFA) with international stakeholders, including FIFPRO, the ECA, the WLF, UEFA and the FFA, the draft regulation was discussed exhaustively and an agreement was finally reached, which led to FIFA concluding the document as we now see it incorporated in their RSTP.

The discussions with international stakeholders began in August 2020 and finished in November 2020, which is very fast compared to some other subjects, many of which have been on the negotiating table between these stakeholders for years. The amendment to the FIFA RSTP, which was finalised in November, was approved by the FIFA Council in December and has been in force since 1st January 2021.

The RSTP, which dictates the global and binding rules on the status of male and female players, their aptitude to participate in organised football and their transfer between clubs in different associations, lays down certain principles. Although its provisions apply to both male and female players, until this reform there was only one explicit reference to women's football, in relation to training compensation. Maternity protection is the first example of the incorporation of a detailed article that applies only to women's football, as well as additions in other articles referring specifically to the rights of female players.

Although all the provisions in the FIFA RSTP are obligatory at international level, it also contains some requirements that must be incorporated into the national regulations of member associations exactly as laid down in the RSTP, and others that must still be incorporated, but with more flexibility, where it is sufficient simply for the principle to be reflected. The rules on pregnancy and maternity protection were included within the mandatory provisions, so these must be incorporated in the national regulations of every member association of FIFA exactly as indicated in the FIFA RSTP, unless there are better protections at national level, set by law or CBA.

In view of the stringency of the requirement, member associations were given 6 months to implement it within their own regulations. This means that by July 2021 all 211 member associations of FIFA must have maternity protections not only regulated but implemented. This is no minor requirement. Let us not forget that among the 211 member associations, some come from countries that do not have pregnancy and maternity protections for female workers at all, so this will be a revolutionary move and may perhaps serve as an impetus to extend it to all working women. It is also true that for a few member associations it will not have any impact at all, as in these female players already enjoy the maternity benefits applicable to all other female employees, which are equal or better than those stipulated in the FIFA RSTP. Or there may already be collective bargaining agreements in place by which this matter has been regulated to an equal or higher standard. But what are the minimum conditions that FIFA has determined?

¹⁰ FIFPRO's Global Player Council is a group of elite male and female players whom we consult directly on some subjects of interest and who advise us.

¹¹ Players' associations and unions which are members of FIFPRO.

¹² <https://www.fifpro.org/media/z4npufvw/2020-fifpro-parental-policy-guide.pdf>

¹³ European Clubs Association.

¹⁴ World Leagues Forum.

¹⁵ Football Federation Australia.

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WEEKS

Maternity leave

The first and probably the most important protection is the inclusion of a period of maternity leave of at least 14 weeks, of which a minimum of 8 weeks must occur after the birth of the child. The decision on when maternity leave begins is exclusively a matter for the player to decide, provided it also complies with the minimum of 8 weeks to be taken after the birth of the child.

The ILO Convention No. 183 of 2000, which proposes 14 weeks as a minimum, was taken as the standard, but in that regulation the minimum period after the birth of the child was only 6 weeks.

“IT IS ALSO IMPORTANT NOT TO CONFUSE MATERNITY LEAVE WITH SICK LEAVE”

Several points need to be clarified here. In order to calculate the minimum 8 week time period after the birth, the estimated due date is required. So for example, if the player is expected to give birth on 1st April, she can decide to begin her maternity leave 6 weeks before this, i.e. 18th February. In the event that the child is born on 1st April she will be on maternity leave for 8 weeks after the birth, i.e. until 27th May, as a minimum.

However, if the child is born 10 days after the estimated due date instead (11th April), the player would enjoy an extra 10 days' maternity leave (until 6th June) because the minimum period of 8 weeks following the birth would apply.

Where the child is born before the estimated due date, for example 10 days before, the minimum of 14 weeks must still be completed, therefore the mother will enjoy a bit less time of leave while pregnant, but will have a longer leave with her born baby.

It is also important not to confuse maternity leave with sick leave. A player cannot be asked to begin her maternity leave earlier because she has health problems during her pregnancy. These are medical issues and therefore the regulations on sick leave (not maternity leave) would apply. Maternity leave is granted to prepare for giving birth and to look after a new-born baby. Although this is seemingly obvious, it was one of the subjects discussed in the working group with the international stakeholders, so it is worth clarifying.

This is an area that needs to be improved in FIFPRO's view, by giving more guaranteed time for the player to be with her baby, i.e. those 8 weeks after the birth should be extended. Why?

The solution adopted in the regulations is a good one, giving the player the freedom to decide when to return to playing. However, although the regulation seeks to use sanctions to protect players against clubs that pressurise them to take maternal leave at a particular time, we know that in practice these pressures exist and are not easy to deal with nor to prove. Clearly a conflict of interests could arise. The club will want the player to take leave as early as possible, since she's unlikely to be able to play in the final months of pregnancy but could be ready soon after giving birth (some players recover very quickly and after 8 weeks may be fully fit). However, even if the player prefers to return to work as soon as possible, she may also want to enjoy being with her new baby during this crucial period of its life. What's more, it is also the right of the baby, who is small and dependent, to be with his/her mother. For these reasons FIFPRO believes that in order to protect the interests of women players and their babies effectively, a minimum maternity period of 10 weeks from the birth of the child should be established, instead of 8.

PAID MATERNITY LEAVE

During maternity leave, players will receive at least two-thirds of their salary. This is the minimum amount as laid down by the ILO Convention No. 183 of 2000. One cannot claim to be granting maternity leave unless it is partially remunerated, otherwise, leave would only be granted to mothers who can support themselves financially (without their salary), and these are a very small percentage, so it would be a dead letter.

Two-thirds of salary is not much, especially considering the meagre salaries in women's football. According to the "Global Report on Employment in Women's Football", compiled in 2017, 60% of women footballers earn less than USD 600 per month. The 2020 "Raising Our Game" report indicates that even elite female players (national team players who went to the last World Cup) only earned an average of EUR 4,123 per month. However, the two-thirds is a minimum requirement and FIFPRO hopes that the clubs, especially in cases where salaries are low, will pay a mother enough to live in a respectable manner. If either collective bargaining agreements or national legislation stipulate a higher minimum amount, then those shall take precedence.

¹⁶ <https://www.fifpro.org/en/industry/women-s-global-employment-report>

¹⁷ https://www.fifpro.org/media/vd1pbtbj/fifpro-womens-report_eng-lowres.pdf



PROTECTION DURING PREGNANCY

The FIFA RSTP stipulates that payment of the full salary must be maintained during pregnancy, and until the player starts her maternity leave. This is regardless of whether the player continues playing during pregnancy (either for health reasons or by personal choice). This is an extensive protection and is extremely well judged.

The regulation adopts several measures to protect the player. Firstly, her health is to be assessed by her own practitioner (not the club doctor) and by a medical professional chosen by consensus between the parties. This is so that there is no conflict of interest and the assessment is as objective as possible. The doctors will provide an opinion on the player's health and whether they recommend she continues training or playing, and if so under what conditions.

If the doctors authorise the player to carry on playing, she is free to adopt that course or to decide, at her own discretion, that she does not wish to do so because she considers it could put her pregnancy at risk. If the doctors state that the player is fit to continue playing and the player decides to do so, then the club is obliged to comply with this and consider the player for the squad. In this case the player will continue to be monitored and a training plan appropriate to her situation will be formulated.

If the player is unable to play and train any longer or decides not to do so during her pregnancy, she will continue to be entitled to receive her full salary. She also has the right, if she so wishes, to ask the club to enable her to perform alternative duties. The club is obliged to discuss it with her and find work appropriate to her situation, and the player will continue to receive the same salary. It is important to emphasize that this is a right (not an obligation) for the player, but if the player requests it, it is an obligation for the club.

Article 18 quater section 1 of the FIFA RSTP establishes a protection for the player in the event that the club informs the player that they will only sign a contract if she accepts a clause that renders the contract invalid if she becomes pregnant. In other words, the regulations prohibit the anti-pregnancy clause and if it exists it is deemed null and void. The article reads as follows: "The validity of a contract may not be made subject to a player being or becoming pregnant during its term, being on maternity leave, or utilising rights related to maternity in general."

THE PLAYER'S REGISTRATION

The regulations establish the requirement to maintain a player's registration unless she consents to the contrary. It may also be agreed with the player that she is de-registered, but in that case, there is an obligation to re-register her immediately when she returns from maternity leave. To allow this to be applied, Article 6 of the RSTP (referring to the registration period for male and female players) was amended, and the possibility of registering a female player returning from maternity leave, even outside the registration period, was added.

To provide for the interests of the club, given that for a certain period they are deprived of the services of the player, the possibility of registering a replacement during the player's maternity leave was included. This replacement player can be registered outside the registration period and in principle her contract will last for the duration of the player's maternity leave (until the day prior to the start of the first registration period after the return of the female player that has taken maternity leave).

This means that another female player, who may not have had an opportunity of playing professionally before, may be given an opportunity, and for this reason we welcome it. This is not unusual and is the typical situation where any female worker goes on maternity leave and is replaced by another person to do her job during that leave.



DISMISSAL FOR PREGNANCY IS DISMISSAL WITHOUT JUST CAUSE

The FIFA RSTP clearly stipulates that if a dismissal occurs for any reason related to pregnancy or maternity, that dismissal is without just cause.

At first glance this seems obvious, however, practice showed it needed to be stated explicitly. For example, as recently as November 2017, Flor de Patria (a club in Venezuela) dismissed a player for being pregnant. I remember talking about this case with the Asociación Única de Jugadores Profesionales de Venezuela (AUFPPV, the Venezuelan players' association), which represented her in the case in front of the country's national dispute resolution chamber, the Cámara Nacional de Resolución de Disputas (CNRD). The case involved a Venezuelan player in a Venezuelan club so there was no international dimension. Before the case was presented in the CNRD, the AUFPPV reassured me, saying that labour law in Venezuela was very protective of pregnancy and that the CNRD would undoubtedly rule that it was a dismissal without just cause. We were greatly surprised and disappointed when the CNRD found that the dismissal by the club on grounds of pregnancy had been with just cause. The tribunal ruled that the club, Flor de Patria, had legally terminated its contractual agreement with the 24-year-old professional footballer.

Flor de Patria, based in Trujillo, were the Venezuelan women's league club champions in 2016. When the player concerned informed the team manager that she was pregnant, she was dismissed and instructed to return her sports equipment to the club immediately. In its judgement (delivered in writing) the Venezuelan Federation's tribunal declared that the player should only receive remuneration arrears up to the time when the pregnancy became known. In other words, as well as dismissing her for being pregnant, they owed her 3 months' salary.

In a decision that ignored every general principle of labour law and was in clear breach of international and national provisions, the CNRD flippantly stated that it was "an indubitable fact that by being pregnant the player was unable to continue fulfilling her contract and the contractual relationship is therefore deemed to be terminated". But that was not all. The decision further stated: "At the time when a contract is entered into, the parties that sign it undertake to guarantee the conditions required for its execution. In this case, maternity, as an unpredictable and uncertain event, makes it impossible for the player to execute the contract. We are therefore dealing with an unforeseen circumstance that gives rise to breach of contract by the claimant player and it is so ruled." It is because of cases like this that enshrining the simple statement that "dismissal for pregnancy is without just cause" is so important, unfortunately.



RIGHT TO Special compensation

PRESUMPTION AGAINST THE CLUB

We know how complex it is to prove these cases. The club may inform the player of the dismissal verbally, without witnesses, and evidence is difficult to obtain as to why the dismissal took place. This is why there is a simple presumption that if the player is dismissed during her pregnancy or maternity leave, the dismissal is for that reason and therefore without just cause.

This means that the burden of proof falls on the club in demonstrating that the dismissal is for a reason completely unrelated to the pregnancy. It is also important to make it clear that the reason must be totally unconnected with the pregnancy; in other words, if the club alleges that there were several factors, one of which was the pregnancy, that is already enough for it to be considered a dismissal without just cause, which also gives rise to additional compensation.

When it is determined that a dismissal took place without just cause, on grounds of pregnancy or maternity, the player will be entitled to receive compensation equal to the residual value of her contract (the agreed salary and other payments that remain due up to the contractual date of termination of her contract), minus the remuneration received from any new professional football contract for the period during which they overlap (as regulated in general in Article 17 of the FIFA RSTP).

Up to here, the regulation is the same as for any other termination without just cause. But in the case of termination during pregnancy or maternity leave, in addition, the player will receive an extra compensation of 6 monthly salary payments, which may not be mitigated, and is not capped by the original rest value of the contract. The latter is the special compensation granted for being dismissed by reason of pregnancy.

Moreover, sporting sanctions will be imposed on the offending club in the form of a ban on registering any new female players, either nationally or internationally, for 2 entire and consecutive registration periods. This may also be accompanied by a fine.





RIGHT TO RETURN TO PLAY

Clearly, we would not be granting proper rights to the player if we did not guarantee the right to return to the sporting activity at the end of the maternity leave. For the player's safety, this will occur only after confirmation by the specialist who supervised the pregnancy and by an independent medical professional (chosen by mutual agreement between the player and the club) that it is safe for her to do so.

If there is a medical decision confirming that the player can return to play (and provided that the maternity leave has come to an end), the club has an obligation to respect her decision, facilitate her incorporation into football activity and offer her ongoing medical support. These last two points may not seem that significant, but they are extremely important to make sure we protect the physical and mental health of players who have just become mothers.

On her return to sporting activity the player is also to be given the opportunity to breastfeed her baby and/or express breast milk while she is providing sporting services to her club.

The club must make suitable facilities available to her in accordance with applicable national legislation or collective bargaining agreements in the country where it is domiciled. The basic point is that the facilities should be suitable. It remains to be seen how this is implemented in each member association but we understand "suitable" to imply, as a minimum, a quiet, heated, private place (that can be locked), with access to drinking water and a place to sit. It is also important to emphasise that the regulation says she is to be given the opportunity to breastfeed/express milk, and this means that if the player needs that opportunity several times in a training session, provided it is reasonable, it must be given to her.



URGENT MATTERS FOR *improvement*

As stated earlier, this is a huge step forward in the protection of rights of female players as workers and is therefore to be applauded and celebrated. However, we believe there are still some aspects that urgently need to be improved.

MEMBER ASSOCIATIONS AS EMPLOYERS

Because of the nature of women's football, these provisions should apply not only to clubs, but also to member associations for national team players. It is not uncommon in women's football for the member association to sign contracts with the players and for their main source of income to come from the national team and not from their clubs, where they may not even have a contract.

Therefore, the importance of the protection must lie with their (main) employer. This is what FIFPRO proposed in its Parental Policy and we consider this to be very important in order to maintain the impact of the protection.



CLEAR PROTECTION FOR PLAYERS WHO ARE PREGNANT OR ON MATERNITY LEAVE REGARDLESS OF THE DATE OF TERMINATION OF THEIR CONTRACT WITH THE CLUB OR MEMBER ASSOCIATION

The regulations have not resolved the issue of what happens to players whose contract comes to an end (term expires) during their pregnancy, or during their maternity leave.

In FIFPRO's view, if players are being provided with guaranteed protection, the only possible interpretation is that they are protected beyond the term of their contract. Otherwise, the provisions would be a dead letter. To state that the player will enjoy paid maternity leave and protection in her pregnancy, yet if her contract comes to an end, the whole system of protection that took so long to introduce becomes invalid, would make no sense.

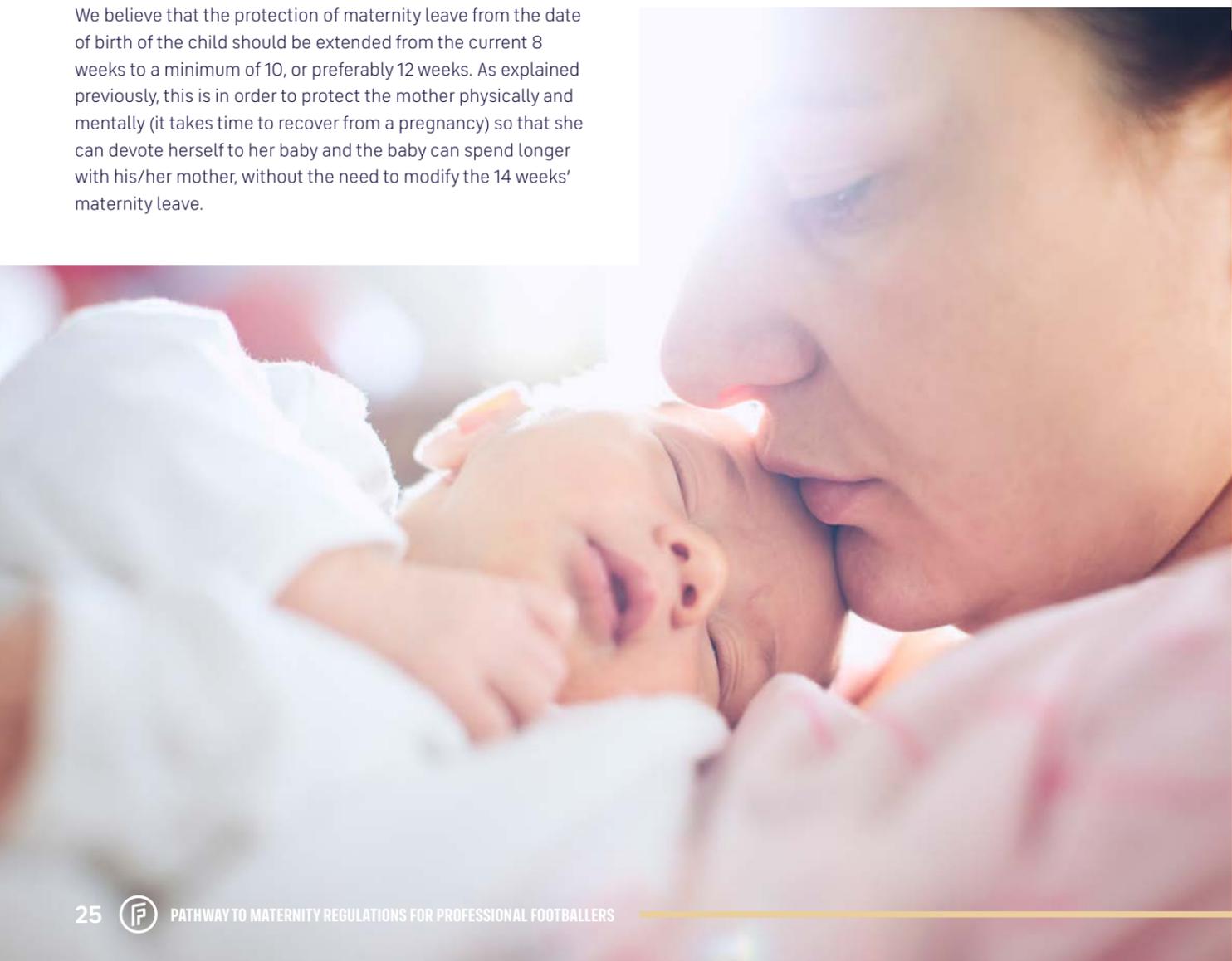
However, and regardless FIFPRO's clear position in terms of how this should be interpreted, this is something that needs to be clearly regulated, to prevent abuse. This is particularly important considering that the average length of a professional female player's employment contract is 12 months. This means that it is likely that by the time the player intends to exercise her rights to maternity leave, her contract will have already come to an end, or will be due to end. If we were to adopt a strict interpretation

that would understand that the protections are only granted during the term of the contract, regardless of when the player becomes pregnant, we would have a nice regulation, but one that is not applicable. Therefore, it makes no sense for FIFA to oblige all its member associations to have a minimum period of protection for maternity leave and pregnancy, whilst at the same time allowing them to simply abandon players in this delicate situation.

This is an issue that must be clearly defined in the regulations so that it does not give rise to debate. To provide the greatest possible protection, we would stipulate that the players should be protected at least until the next registration window after returning to work from their maternity leave. A contract extension would be granted until then.

MINIMUM OF 10 WEEKS (PREFERABLY 12) OF MATERNITY LEAVE TO BE TAKEN FOLLOWING DELIVERY OF THE BABY

We believe that the protection of maternity leave from the date of birth of the child should be extended from the current 8 weeks to a minimum of 10, or preferably 12 weeks. As explained previously, this is in order to protect the mother physically and mentally (it takes time to recover from a pregnancy) so that she can devote herself to her baby and the baby can spend longer with his/her mother, without the need to modify the 14 weeks' maternity leave.



LEAVE FOR FATHERS OR NON-PREGNANT MOTHERS: NON-BEARING CHILD PARENTS LEAVE

An important, related topic is paternity leave, or leave for the 'other mother' who was not pregnant (in the case of homosexual couples). In FIFPRO's Parental Policy we proposed 14 days' mandatory leave for them. 14 days is not a long period but it is better than nothing, which is what we have now, and it reflects the recommendations of the ILO and UNICEF.

And one thing is clear here, people have children as a couple (unless one is deliberately a single mother/father) and there are therefore rights and responsibilities for both parents. These 14 days would give the father or the other mother the right to enjoy being with their son or daughter and contribute to his or her care, which is very intense in the early days. Moreover, it is a crucial time for connecting with their child, since they were not the ones who carried him/her in their womb. It is that child's right to have his/her father or other mother care for him/her as well. As the ILO explains: "Paternity leave offers fathers an important opportunity to bond with their new-born child and allows them to be more involved at home. There is evidence that

the involvement of fathers in their children's early days has a positive impact on the child's development and health. Moreover, increased participation of men in household activities benefits women by allowing women to balance professional priorities better".

This issue was discussed in the meetings with the international stakeholders and although it was unanimously agreed to be important, it was considered more important to approve the other regulations quickly to allow immediate protection to a large amount of players. This left this issue to be dealt with separately because its approval was going to be more complex. It is pending and we shall continue to press for it to be approved as soon as possible.

¹⁸ Maternity, Paternity at Work. https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/briefingnote/wcms_410183.pdf/media/vd1pbtbj/fifpro-womens-report_eng-lowres.pdf

OTHER MATTERS TO BE *improved*

We believe it is important to regulate what happens with female or male players who adopt a child. In our view they are also entitled to maternity and paternity leave, but when we look at the definition of maternity leave in FIFA's RSTP we see that it refers specifically to leave "granted to a female player due to her pregnancy". Of course, the main object of maternity leave is for the mother to have time to care for her child, and it therefore seems appropriate and necessary to regulate this situation specifically. We think that the same provisions should apply to adoption. Another similar scenario would be having a child through surrogacy, where the player is not pregnant herself, but it seems reasonable that she should have the same maternity rights.

Another issue which has not been regulated in the FIFA RSTP as it is complex and regulated very differently from country to country, is abortion. What happens with a player who aborts spontaneously (has a miscarriage), and what happens with a player who decides to have an abortion?

In my view, spontaneous abortion (miscarriage) could be regulated using a minimum rest period before returning to sporting activities (as psychological protection, even though she may be physically well). Naturally, it will be her own doctor who tells her when she is ready to resume training, after the mandatory rest period. Perhaps different provisions should be made according to when the miscarriage occurs, i.e. the physical and psychological impact is not the same for miscarriages in the first trimester, compared to the second or third. This is an important subject, as it is quite common, especially in the first 3 months of pregnancy, so it would be helpful to have clarity on players' rights in this scenario. Induced abortion, due to its controversial nature, is something that would perhaps be better left to be resolved at national level, depending on applicable law.

It would also be valuable to add provisions around creating a supportive environment for female and male players with children. This could be incorporated as a set of FIFA recommendations or guidelines since it would involve costs that not all clubs could currently afford. We believe that the proposals in this area in the FIFPRO Parental Policy are a good

"IT WOULD ALSO BE VALUABLE TO ADD PROVISIONS AROUND CREATING A SUPPORTIVE ENVIRONMENT FOR FEMALE AND MALE PLAYERS WITH CHILDREN"

start, and could be adopted as a FIFA recommendation, thereby supporting those players who are mothers or fathers from another angle. For example, if the player requests it, the club should do everything possible to ensure that the baby (at least up to the age of 12 months, or longer if he/she is still breastfeeding) and a caregiver can travel with her on the same flight and stay in the same hotel. We know that one of the primary obligations of players is to travel with their teams to play an away match or take part in certain tournaments. It is very difficult for a female player to do this and almost incompatible with maternity if she has a 4 or 5 month-old baby whom she has to feed and who is so dependent on her. This type of support is therefore key.

CONCLUSIONS

We are living in a historic time for women's football. Paid maternity leave and other pregnancy protections will undoubtedly contribute to its development. There is still more to be done; fathers and other mothers also have the right to exercise their paternity and maternity rights, so we will keep pushing to improve and extend the regulations.

But for now, bravo to FIFA for listening to the needs of women players and being open to introducing and building these new regulations with international stakeholders.



BIBLIOGRAPHY

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

Garton, Gabriela, *Guerreras: fútbol, mujeres y poder* (Buenos Aires: Capital Intelectual SA, 2019).

Web pages, in order of mention

Interview with Brenda Elsey (in Spanish): <https://www.eldesconcierto.cl/nacional/2018/04/30/historiadora-analiza-el-futbol-femenino-la-exclusion-brutal-de-las-mujeres-en-el-futbol-de-la-region-es-simbolica-y-social.html>

Interview with Brenda Elsey and Joshua Nadel (in Spanish): <https://www.nodal.am/2019/05/brenda-elsey-y-joshua-nadel-autoras-de-futbolera-una-historia-de-la-mujer-y-el-deporte-en-america-latina/>

Raising Our Game: Women's Football Report 2020: https://www.fifpro.org/media/vd1pbtbj/fifpro-womens-report_eng-lowres.pdf

2017 FIFPRO Global Employment Report: Working Conditions in Professional Women's Football: <https://www.fifpro.org/en/industry/women-s-global-employment-report>

Player Pregnancy & Parental Management: FIFPRO Policy Guide: <https://www.fifpro.org/media/z4npufvw/2020-fifpro-parental-policy-guide.pdf>

Maternity, Paternity at Work; Baby Steps Towards Achieving Big Results: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/briefingnote/wcms_410183.pdf

ABOUT FIFPRO

FIFPRO represents the collective international voice of the world's professional footballers and over 65 national player unions. We work every day on behalf of more than 65,000 players, both men and women, spread across our affiliated national player associations.

IF YOU WOULD LIKE TO PLAY A MORE ACTIVE ROLE ON THE ISSUES ADDRESSED IN THIS BRIEFING OR REQUIRE FURTHER PLAYER SUPPORT PLEASE FEEL FREE TO CONTACT FIFPRO AT [GPC@FIFPRO.ORG](mailto:gpc@fifpro.org) OR YOUR NATIONAL PLAYERS' ASSOCIATION.

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