

An unequal playing field

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Mariyam Mohamed (Facebook: Football Association Of Maldives)

On International Women's Day, Mark Mangan, Ananya Mitra and Miranda Elvidge of Dechert in Singapore look at the use of arbitration to correct gender discrimination in sports and as a force for achieving greater diversity in society, with reference to aspiring football leader Mariyam Mohamed's recent appeals to the Court of Arbitration for Sport, in which they acted.

Much has been written about the need for greater diversity in the conduct of international arbitration, particularly in relation to the composition of arbitral tribunals. The arbitration process itself, however, can also be used as a force for achieving greater diversity in society.

In this article, we explore that proposition through the prism of efforts to combat discrimination against women in sports administration - with reference to the case of Mohamed, a former footballer from the Maldives who stood for election for a position on the Asian Football Confederation executive committee and the FIFA Council.

The theme for this year's International Women's Day is 'Women in leadership: Achieving an equal future in a covid-19 world'. It is therefore an appropriate time to recognise that the strides made by women for equality on the sporting field are not matched by the opportunities afforded to them in the corridors of power and boardrooms of sporting organisations.

The historical under-representation of women in sport administration

Historically, women have been under-represented in sport administration. The Fédération Internationale de Football Association (FIFA), established in 1904, for instance, did not elect a woman to its executive body until 2013. According to recent studies, women today still make up less than 20% of those serving in an official capacity in international sport federations (as members of any committee, commission, board, or council).

Michele Krech, a specialist in gender and global sport governance at New York University, explains that the higher up the decision-making ranks one goes, the fewer women one finds. For instance, among the executive board members and presidents of international federations, women's representation falls to below 14% and 6%, respectively. Likewise, only about 10% of regional confederation presidents and 9% of national association presidents are women.

The former Japanese prime minister, Yoshiro Mori, recently complained about the involvement of women in meetings of the organising committee for the Tokyo Olympic and Paralympic Games, which led to an outcry and his resignation. While Mori was (ironically) replaced as the president of the organising committee by a woman, the disparity between men and women in the running of most sporting organisations remains.

Such under-representation continues despite widespread recognition of gender balance in leadership as a key indicator of good governance. Its documented benefits include contributing to fairness and therefore to the legitimacy of sport governing bodies; improving leadership performance; expanding the issues and interests that are taken

into account in decision-making; and creating role models and mentors for other women to pursue similar careers.

In any event, gender equality is a fundamental principle of human rights, recognised in most national laws and is required under the 2011 UN Guiding Principles on Business and Human Rights, which are increasingly being incorporated by companies and other organisations.

Mariyam Mohamed v the AFC

Consider the recent case of Mohamed, which illustrates the formidable obstacles that remain in the path of women seeking leadership positions within sporting organisations and the potential power of arbitration for seeking redress.

Mohamed stood for election in April 2019 for a position on the Asian Football Confederation (AFC)'s executive committee and the FIFA council. In rulings handed down a month ago by the Court of Arbitration for Sport, she was found to have been subjected to bribes and threats by a third party (in the presence of a senior AFC official) seeking to influence the election results.

She was also found to have suffered from gender discrimination in that many more seats were made available for men to contest in the elections than were made available for women. In effect, the AFC had created a *ceiling* on the participation of women in positions of leadership rather than a *floor*, as it was required to do under FIFA statutes which seek to advance the participation of women in football sports governance.

Worse still, the AFC refused to take Mohamed's written complaints seriously, failing to address them for many months, thereby committing a further wrong in the form of a denial of justice.

Mohamed deserves enormous credit for refusing to yield to established interests and having the courage to appeal the AFC's failure to respond appropriately to CAS, where all of her allegations were upheld in first-of-their-kind landmark decisions.

Ordinarily, it is difficult to prove attempted corruption (which by definition lurks in the shadows), gender discrimination, or indeed a denial of justice, let alone prove all

three in two consolidated appeals as Mohamed did. And she did so on a virtual platform in the midst of a global pandemic, with participants joining from locations around the world. The authors of this article represented her during the AFC investigation and subsequent appeals to CAS, with Michele Krech, who is quoted above, appearing as an expert witness.

The CAS decisions upholding Ms Mohamed's appeals represent a significant triumph in the struggle for diversity and transparency in sports governance, particularly here in Asia. But more needs to be done.

The CAS panel ruled that it did not have the power to annul the elections tainted by the aforementioned conduct. Accordingly, officials continue to sit in leadership positions of both the AFC and FIFA despite the 2019 AFC elections having been impugned by CAS. On International Women's Day, and every other day, questions need to be asked of these elected representatives as to why they continue to serve organisations that have been found by CAS to have failed Asian women.

The baton – to use a sporting analogy – has surely passed to these elected officials to take the appropriate steps to carry out the necessary reforms to their organisations' statutes and election procedures. This includes holding fresh elections as soon as possible so that Asian women can aspire to rise to positions of leadership within the AFC and FIFA unmolested by the twin scourges of corruption and gender discrimination.

Lessons for the future

FIFA's bid evaluation document ahead of the vote to select Australia and New Zealand as host countries for the 2023 FIFA Women's World Cup stated that "giving women's football the importance and respect it deserves" is of "paramount" importance to the current FIFA administration. The same principle must apply to the participation of women in Asian football administration.

In the meantime, the CAS rulings serve as a beacon of hope for persons in sporting organisations around the world who suffer from discrimination or corruption, for whom a path to CAS has been opened.

As for sporting organisations, the message is a simple one. In the words of the late US Supreme Court Justice **Ruth Bader Ginsburg**: “Women belong in all places where decisions are being made.”

Finally, the successful appeals brought by Mohamed highlight the potential of arbitration to confront discrimination against people based on a protected characteristic, whether it be gender, race or sexuality. There is scope for such claims against corporations and states.

Although at times criticised, arbitration can shine a spotlight on discriminatory conduct and, hopefully over time, force substantive change.