

# High Press: Stakeholders and the Legal Fight Against Racism in World Football

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*“Death to the Arabs.” “Forever Pure.” “War.” These have been but a few of the hateful slogans cried out in Teddy Stadium by members of La Familia, Beitar Jerusalem Football Club’s far-right nationalist supporters group. Racism in football is not a recent, nor regional, development. While the Fédération Internationale de Football Association (FIFA) has long promoted a “Say No to Racism” campaign, racial discrimination is still prevalent across global football. Decision makers at the top of club and federation hierarchies have struggled to proactively address the confluence of football-related hooliganism and racism. With the 2022 World Cup fast approaching, there is a broad imperative to engage in deep consideration of ways to discourage hatred that may manifest itself through the sport. However, before undertaking practices that might help eliminate racial discrimination in football, it is necessary to consider both who should be held responsible for implementing these practices and which stakeholders are in the best position to do so.*

*Part I of this Note briefly sketches the relationship between racism and football and follows with an analysis of the implications of football-related violations of human rights from an international law perspective. Part II presents a case study focusing on the discriminatory practices apparent at Beitar Jerusalem and among its supporters. This section illustrates the ways in which stakeholders seek to combat racism in football and analyzes how and why these stakeholders have been successful, or not, in addressing racism in its structural form.*

*Finally, Part III of this Note proposes a tailored framework through which football stakeholders might effectively address racism at the club and national team level. In doing so, this Part highlights the foundational element of cross-stakeholder communication as a prerequisite to the implementation of practices that can combat systemic racism in world football.*

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## I. Racism in Modern Football and Its Legal Implications

### A. *The Convergence of Racism and Modern Football*

Violence, on the field and in the stands, has always been part of “the beautiful game.” From its very inception, football provided an outlet for individuals to air their personal and political grievances.<sup>1</sup> Medieval football matches frequently devolved into violent free-for-alls and were often used as opportunities to settle tribal feuds, personal arguments, and land disputes.<sup>2</sup> Consequently, in 1314, King Edward II banned football because he believed the disorder surrounding matches threatened social stability and public safety.<sup>3</sup>

This behavior, now regarded as “football hooliganism,” resurfaced and became particularly apparent in England in the early 1960s and continues to be associated with political and socioeconomic protest.<sup>4</sup> The term “ultras,” coined in Italy in the late 1960s, has come to encompass a wide spectrum of fan groups organized around radical, and often violent, ideologies.<sup>5</sup> While historically associated with anti-authority principles, football hooliganism has shifted to encompass ideologies associated with populist and xenophobic parties across the globe.<sup>6</sup> In many instances, fringe political parties have united with ultras who are willing to publicly demonstrate against immigrants, minorities, and LGBTQ communities.<sup>7</sup> Indeed, the highly televised nature of modern football provides a unique platform for the voicing of radical beliefs deemed too hateful for mainstream media.<sup>8</sup> Clashing with the increasingly diverse and multicultural image of Western society, football stadiums, packed with large pockets of fans, offer radical supporter groups an avenue for controversial (and, sometimes, illegal) expression, with a higher-than-usual degree of anonymity. Surrounded by legions of like-minded compatriots, members of these organizations seize the

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1. GIOVANNI CARNIBELLA, ANNE FOX, KATE FOX, JOE MCCANN, JAMES MARSH & PETER MARSH, SOC. ISSUES RSCH. CTR., FOOTBALL VIOLENCE IN EUROPE 5 (1996).

2. *Id.*

3. Sean Ingle & Mark Hodgkinson, *When Did Football Hooliganism Start?*, GUARDIAN (Dec. 13, 2001), <https://www.theguardian.com/football/2001/dec/13/theknowledge.sport> [<https://perma.cc/W9LK-48QG>].

4. CARNIBELLA, *supra* note 1, at 5–6.

5. Amos Barshad, *When Extremist Soccer ‘Ultras’ Aligned with Israel’s Right-wing Government, Mayhem Followed*, WASH. POST (Oct. 6, 2020, 8:00 AM), <https://www.washingtonpost.com/sports/2020/10/06/la-familia-beita-jerusalem-israel-netanyahu-protests/> [<https://perma.cc/R9L4-7JC8>].

6. *Id.*

7. *Id.*

8. *See* CARNIBELLA, *supra* note 1, at 8 (explaining that television makes football hooliganism highly visible).

opportunity to spew racist messages towards players on the pitch and entire communities in the abstract.<sup>9</sup>

This phenomenon has not gone unnoticed. Due to the wide popularity of football, when instances of supporter racism occur, an entire host of stakeholders, from individual fans sitting at home to government politicians, bear witness.<sup>10</sup> In response, national and international bodies have sought solutions to prevent, respond to, and raise awareness of racism adjacent to the sport.<sup>11</sup> However, despite widespread acknowledgement of the issue, there has been little agreement on who is responsible, how racism should be combatted, and when any steps should be taken.<sup>12</sup>

As I will discuss in greater depth in Part II, while stakeholders like FIFA have long promoted “Say No to Racism” campaigns, they have almost exclusively prioritized the fight against individual instances of discrimination over taking measures against institutional and structural discrimination.<sup>13</sup> That is not to say that, economically speaking, FIFA is wrong for failing to do so. Still, FIFA’s refusal to referee instances of institutional and structural discrimination begs the question: which stakeholders have the power and responsibility to act against racism in football?

### *B. The Legal Implications of Racism in Modern Football*

Before analyzing how stakeholders ought to address racism, it is important to acknowledge that stakeholders often have a legal responsibility to tackle this issue. In the case of global football, international law provides a useful starting point. On a foundational level, the principles of equality and nondiscrimination are “enshrined at the heart of modern international law.”<sup>14</sup> Articles 1 and 2 of the Universal Declaration of Human Rights (UDHR) emphasize the dignity inherent in, and the rights entitled to, all human beings

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9. *Id.* at 9.

10. *E.g.*, Mark Landler, *Boris Johnson Finds Himself in a Quandary over Racism and Sports*, N.Y. TIMES (July 18, 2021), <https://www.nytimes.com/2021/07/18/world/europe/boris-johnson-racism-uk-soccer-euro-2021.html> [<https://perma.cc/E4D9-ZAE4>].

11. *See* Rory Smith, *In Fight Against Racism, Soccer Can Choose the Playing Field*, N.Y. TIMES (Oct. 16, 2019), <https://www.nytimes.com/2019/10/16/sports/soccer-racism-england-bulgaria.html> [<https://perma.cc/RMS4-XAAB>] (discussing responses to racist incidents on football fields including fines levied by governing football bodies and calls for action by elected politicians).

12. *See id.* (describing various suggestions for how to combat racism in football and the lack of consensus); *see generally* Yaron Covo, *Beyond Individual Discrimination: Why FIFA Fails to Address Discriminatory Practices in World Football*, 20 TEX. REV. ENT. & SPORTS L. 133 (2019) (discussing FIFA’s unwillingness to address issues of societal, rather than individualized, racism).

13. Covo, *supra* note 12, at 136. For the purposes of this Note, institutional and structural forms of racism can be understood as forms that are pervasive within and reflected by a system (political, communal, etc.) rather than existent within a system but reflected by an individual (fan, player, etc.).

14. *Fight Racism: Resources*, U.N., <https://www.un.org/en/fight-racism/resources> [<https://perma.cc/6VB5-YGXN>].

“without distinction of any kind, such as race.”<sup>15</sup> Article 8 provides for a right to a remedy in competent national tribunals for violations of fundamental rights.<sup>16</sup>

The legal basis for the right to antidiscrimination further permeates two key international human rights covenants (the Covenant on Economic Social and Cultural Rights and the Covenant on Civil and Political Rights), as well as countless other declarations and treaties.<sup>17</sup> The International Convention on the Elimination of All Forms of Racial Discrimination (CERD), in particular, provides a comprehensive denunciation of racism.<sup>18</sup> CERD’s first set of considerations emphasizes the “dignity and equality inherent in all human beings” and declares “that *all Member States have pledged themselves to . . .* promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion.”<sup>19</sup> Article 2 obligates State Parties to “condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in *all* its forms.”<sup>20</sup> Article 4 mandates legislative action to enforce CERD’s provisions and requires Member States to “prohibit organizations . . . [that] promote and incite racial discrimination.”<sup>21</sup>

At the same time, since its inclusion in Article 19 of the UDHR, the right to freedom of opinion and expression has been ratified by an overwhelming majority of countries and protected in nearly all relevant international human rights treaties and covenants, including the ones listed above.<sup>22</sup> Indeed, Article 5 of CERD links freedom from racial discrimination with a variety of concurrent rights, including “the right to freedom of opinion and expression.”<sup>23</sup> The plain text of Article 5, however, makes it clear that the protection of first and second generation rights must accommodate CERD’s overarching principle “to prohibit and eliminate racial discrimination in all

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15. G.A. Res. 217 (III) A, arts. 1 & 2, Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter UDHR].

16. *Id.* art. 8.

17. U.N., *supra* note 14.

18. *See generally* International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 9464 [hereinafter CERD] (condemning racial discrimination).

19. *Id.* para. 1 (emphasis added).

20. *Id.* art. 2 (emphasis added).

21. *Id.* art. 4.

22. UDHR, *supra* note 15, art. 19; Emily Howie, *Protecting the Human Right to Freedom of Expression in International Law*, 20 INT’L J. OF SPEECH-LANGUAGE PATHOLOGY 12, 12 (2018).

23. CERD, *supra* note 18, art. 5.

its forms.”<sup>24</sup> Unlike in the United States, where freedom of expression is protected in sacrosanct fashion, many countries have prioritized Holmesian limits on freedom of expression to secure democratic order and protect the human dignity of all citizens.<sup>25</sup> Conflict between these two principles is unavoidable, and the balancing act depends on the context.<sup>26</sup> Article 4’s opening paragraph reflects this give-and-take by stating that measures should be adopted “with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention.”<sup>27</sup> In any case, Member States may not use the “due regard” clause as a way of “cancelling the obligations relating to the prohibition of the racist activities concerned.”<sup>28</sup>

In the context of football, there is also the related question of whether there is a human right to sport. While none of the principal global instruments provide specifically for a right to sport, exceptions to this silence exist concerning the rights of athletes as enumerated in the International Convention Against Apartheid in Sports.<sup>29</sup> And, despite the lack of specific enumeration, foundations for such a protection can be found in “first generation” rights (to freedom of speech, association, and non-discriminatory treatment), “second generation” rights (to enjoyment of culture and employment), and “third generation” rights (to heritage, a clean environment, good health, peace, and development).<sup>30</sup>

Under the comprehensive language of CERD and similarly formed conventions, modern football is not exempt. The plain language of the statute

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24. *Id.* (“In compliance with the fundamental obligations laid down in article 2 of this Convention, State Parties undertake to prohibit and to eliminate racial discrimination . . . notably in the enjoyment of the following rights . . .”).

25. See Jacob Poushter & Dionna Givens, *Where the World Sees Limits to Free Speech*, PEW RES. CTR. (Nov. 18, 2015), <https://www.pewresearch.org/fact-tank/2015/11/18/where-the-world-sees-limits-to-free-speech/> [<https://perma.cc/A9ES-QSGP>] (discussing how public opinion in non-U.S. countries favors more stringent regulation of speech as compared to public opinion in the U.S.); Theodor Meron, *The Meaning and Reach of the International Convention on the Elimination of All Forms of Racial Discrimination*, 79 AM. J. INT’L L. 283, 299 (1985) (discussing how “certain provisions of the Convention [might seem] overbroad when viewed against the U.S. legal and social systems,” but “it does not necessarily follow that they are overbroad for some of the other countries” because it is difficult “to find a common legislative policy for the member states of the United Nations in view of their diverse stages of development, and their different cultures, traditions, conditions of social peace and security”).

26. See, e.g., Meron, *supra* note 25, at 298–99 (noting that the United States’ approach reflects the “feeling of confidence and security in a developed and relatively stable society that, while failing to eradicate racism, has found orderly means of dealing with its racial problems, as well as the traditional preference for individual freedoms over the regulatory power of the state”).

27. CERD, *supra* note 18, art. 4; Meron, *supra* note 25, at 299.

28. Meron, *supra* note 25, at 300–01 (quoting Rep. of the Comm. on the Elimination of Racial Discrimination, at 112, U.N. Doc. A/33/18 (1978)).

29. JAMES A.R. NAFZIGER, *INTERNATIONAL SPORTS LAW* 126–27 (2d ed. 2004).

30. *Id.* at 127.

exhorts all Member States to “by all appropriate means and without delay [enact] a policy of eliminating racial discrimination in *all its forms*.”<sup>31</sup> Thus, while these treaties bind only states and not private actors, they put an onus on Member States to address and remedy issues related to racial discrimination, freedom of speech, and, arguably, freedom of sport in their respective jurisdictions. Often, as in the case of modern football, these issues overlap. When the protection of one right requires the violation of another, democratic states must make law to reflect the degree to which the rights under question are valued amongst their respective populations.<sup>32</sup> For states that have ratified conventions like CERD, this requires ensuring that freedom from racial discrimination remains a top priority. As immigration has increased in most Western countries,<sup>33</sup> the need for actors, governmental and private, to protect diverse communities from such discrimination has grown. Nowhere, perhaps, has this need been as visible as within the realm of mass-attended and televised football matches.

In response, the European Commission against Racism and Intolerance (ECRI) published General Policy Recommendation No. 12, “On Combating Racism and Racial Discrimination in the Field of Sport.”<sup>34</sup> The Recommendation cites to the European Convention on Human Rights and the European Sports Charter as the bases for its authority and emphasizes the exigency for a set of protections “against racism and racial discrimination . . . which must be secured also in the field of sport.”<sup>35</sup> In an explanatory memorandum, the Recommendation tasks Member States with the “duty to ensure that all the relevant actors . . . take effective action against racism and racial discrimination in the field of sport.”<sup>36</sup> Crucially, the document suggests policies to be undertaken not only by Member States, but also by local authorities, police, sports federations and clubs, athletes and coaches,

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31. CERD, *supra* note 18, art. 2 (emphasis added).

32. See ISAIAH BERLIN, *Two Concepts of Liberty*, in *FOUR ESSAYS ON LIBERTY* 118, 171 (reprint, 1970) (explaining that in a pluralistic society, when human goals clash, men choose between ultimate values); see also LORENZO ZUCCA, *Conflicts of Fundamental Rights as Constitutional Dilemmas*, in *CONFLICTS BETWEEN FUNDAMENTAL RIGHTS* 19, 28–31 (Eva Brems ed., 2008) (discussing the use of “balancing” to define the scope and strength of conflicting fundamental rights and to determine the prevalence of one right over another).

33. Eduardo Porter & Karl Russell, *Migrants Are on the Rise Around the World, and Myths About Them Are Shaping Attitudes*, N.Y. TIMES (June 20, 2018), <https://www.nytimes.com/interactive/2018/06/20/business/economy/immigration-economic-impact.html> [<https://perma.cc/6YK4-S98X>].

34. Eur. Comm’n Against Racism and Intolerance, *General Policy Recommendation No. 12 on Combatting Racism and Racial Discrimination in the Field of Sport*, CRI(2009) 5 (Dec. 19, 2008) [hereinafter ECRI General Policy Recommendation No. 12].

35. *Id.* at 3.

36. *Id.* at 10.

referees, supporters' organizations, the media, sponsors, and all other relevant actors.<sup>37</sup>

While not technically binding, the Recommendation has not gone unnoticed. In *Šimunić v. Croatia*,<sup>38</sup> a Croatian national football player filed a complaint under Article 10—the freedom of expression clause of the European Convention on Human Rights—in the European Court of Human Rights.<sup>39</sup> After an international match, Šimunić had made an expression with a fascist connotation towards the Croatian fans and was convicted by the local authorities of a minor offense.<sup>40</sup> The court cited the Recommendation in finding “no strong reasons which would require [the court] to substitute its view for that of the domestic courts and to set aside the balancing struck by them.”<sup>41</sup> The court concluded that the Croatian authorities had struck a fair balance between Šimunić's interest in free speech and society's interest in promoting mutual respect and combatting discrimination in sport.<sup>42</sup> The court also noted that the applicant, being a famous football player and public figure, should have been aware of the negative impact of the provocative expression on the fans' behavior.<sup>43</sup>

In a parallel case in front of the Court of Arbitration for Sport (CAS), the court held that FIFA's fine and suspension of Šimunić was not disproportionate to the severity of the offense committed.<sup>44</sup> The court applied FIFA regulations and, in particular, Article 58(1)(a) which reads that:

Anyone who offends the dignity of a person or group of persons through contemptuous, discriminatory or denigratory words or actions concerning race, colour, language, religion or origin shall be suspended for at least five matches. Furthermore, a stadium ban and a fine of at least CHF 20,000 shall be imposed. If the perpetrator is an official, the fine shall be at least CHF 30,000.<sup>45</sup>

In rejecting Šimunić's various arguments related to the connotation and intentionality of his expressions, the court found that Šimunić's words could reasonably be found to be associated with the fascist regime and that he

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37. *Id.*

38. App. No. 20373/17 (Jan. 22, 2019), <http://hudoc.echr.coe.int/eng?i=001-189769> [<https://perma.cc/4RPT-QUWV>].

39. *Id.* ¶ 17.

40. *Id.* ¶¶ 3, 5.

41. *Id.* ¶ 48.

42. *Id.*

43. *Id.* ¶ 45.

44. *Šimunić v. Federation Internationale de Football Association (FIFA)*, CAS 2014/A/3562, Judgment, ¶ 121 (Ct. of Arb. for Sport 2014).

45. *Id.* ¶ 44 (emphasis removed).

showed knowledge of this fact.<sup>46</sup> Thus, the court upheld FIFA's sanctions as proportionate to the offense committed.<sup>47</sup>

While these cases took place within a European framework for the defense of human rights, they present an illustration of how interrelated action by international and domestic courts, national legislatures, sports federations, and players can promote or combat discrimination in sport. Having ratified CERD,<sup>48</sup> Israel, like Croatia, has a duty under international law to protect groups and individuals from racial discrimination in all its forms. Although Israel is not bound under European conventions and recommendations on human rights, its clubs often appear in European tournaments.<sup>49</sup> Israel, thus, has moral and publicity incentives to ensure that its clubs and their supporters do not violate the laws of the lands in which they play. Furthermore, while international law binds Member States—not private actors—to abide by the treaties that they ratify, Member States have an obligation under treaties like CERD to actively seek to promote tolerance and provide remedies for instances of discrimination.<sup>50</sup>

In focusing on Beitar Jerusalem and its supporters in Part II, I hope to provide a microcosmic illustration of the ways in which a broad host of stakeholders might or might not address instances of racial discrimination in the world of club football. While, of course, each organization's relationship with racism is idiosyncratic to its context, scholars generally agree that there are many revealing psychological patterns common to racial discrimination in sport.<sup>51</sup> Furthermore, within the globalized structure of modern football, the list of stakeholders for football clubs remains largely homogeneous.<sup>52</sup> In analyzing Beitar's problematic supporter group, La Familia, and the responses taken and not taken by various state and private stakeholders, I hope to provide a framework for Part III's discussion concerning which actors are best suited to address instances of racial discrimination.

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46. *Id.* ¶¶ 88, 107.

47. *Id.* ¶¶ 122–23.

48. *Ratification Status for Israel*, OHCHR, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=84&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=84&Lang=EN) [https://perma.cc/6Y9Z-9JRZ].

49. *E.g.*, *FIBA Women's Eurobasket Qualifiers 2021*, FIBA, <http://www.fiba.basketball/womenseurobasket/2021/qualifiers> [https://perma.cc/89FX-56D2]; *UEFA Champions League Clubs*, UEFA, <https://www.uefa.com/uefachampionsleague/clubs/> [https://perma.cc/PP9V-KZ3H].

50. CERD, *supra* note 18, art. 6.

51. *See, e.g.*, CARNIBELLA, *supra* note 1, at 6–7 (discussing common trends of socioeconomic, political, and cultural factors that underlie football-related racism across Europe).

52. *See Football Stakeholders*, FIFA, <https://www.fifa.com/legal/football-regulatory/stakeholders> [https://perma.cc/M9J2-VDXK] (describing “stakeholders,” including clubs, players, leagues, football governing bodies, players associations, and sponsors).

## II. Beitar Jerusalem and La Familia: A Case Study

### A. *Historical Background*

Football in Palestine has always been a uniquely political activity.<sup>53</sup> The very first clubs were offshoots of main political movements.<sup>54</sup> Today, many Israeli Premier League (IPL) clubs still represent their founding ideologies and party allegiances through associated names and uniform colors.<sup>55</sup> Since its creation in 1936,<sup>56</sup> the Beitar Jerusalem Football Club has been associated with the eponymous nationalistic movement, and many of its supporters carry extreme views against the Arab population to this day.<sup>57</sup> Most infamously, Beitar is the only club in the IPL to never have rostered an Arab player.<sup>58</sup> While management has long considered recruiting talented Arab players, due to heavy opposition from Beitar's fan base, this interest has never materialized.<sup>59</sup> Currently, the vast majority of Beitar's fans are Mizrahi Jews, most of whom are first and second generation emigrants from neighboring Arab countries.<sup>60</sup> However, Beitar's link with its original right-wing Zionist politics remains strong, and these politics continue to reinforce the club's actions and identity.<sup>61</sup>

The most vocal anti-Arab group of Beitar supporters is known as "La Familia."<sup>62</sup> Since its establishment in 2005, La Familia has become infamous and earned global headlines for chanting "death to Arabs" during matches,<sup>63</sup> and for displaying signs with slogans such as "Beitar, forever pure."<sup>64</sup> La Familia's racial discrimination extends past ethnic lines and targets non-Arab

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53. Issam Khalidi, *Sports and Aspirations: Football in Palestine, 1900–1948*, 58 JERUSALEM Q. 74, 74 (2014).

54. *Id.* at 78; Szymon Beniuk, *Football and Politics in Israel*, PHYSICAL ACTIVITY REV., 2018, at 8, 10.

55. Tobias Buck, *The Not-So-Beautiful Game of Football in Israel*, FIN. TIMES (Jan. 2, 2010), <https://www.ft.com/content/d6849396-ef64-11de-86c4-00144feab49a> [<https://perma.cc/X6WN-AV77>].

56. Barshad, *supra* note 5.

57. Buck, *supra* note 55. It should be noted, however, that not all Beitar supporters share these views. Notably, in 2014, a group of disturbed Beitar supporters established a break-off football club, which in its very first year signed two Arab players. Covo, *supra* note 12, at 139–40.

58. Barshad, *supra* note 5.

59. Covo, *supra* note 12, at 138–39.

60. *See* Barshad, *supra* note 5 ("Beitar is known as the club for Mizrahi Jews, whose origins are in the Arab world.").

61. Shira Rubin, *Sickened Fans Set Up a Non-Racist Beitar in Jerusalem*, JEWISH CHRONICLE (Sept. 3, 2015, 8:01 AM), <https://www.thejc.com/news/israel/sickened-fans-set-up-a-non-racist-beitar-in-jerusalem-1.57389> [<https://perma.cc/D6Y2-GQMC>].

62. Raphael Geller, *La Familia, the Hate Group that Influences One of Israel's Top Soccer Teams*, VICE (May 6, 2015, 10:20 AM), <https://www.vice.com/en/article/z4daxw/la-familia-the-hate-group-that-influences-one-of-israels-top-soccer-teams> [<https://perma.cc/PQQ5-AT5P>].

63. *Id.*

64. Covo, *supra* note 12, at 139.

Muslims as well. In 2013, hoping to soften the club's image—and improve its football squad—Beitar signed two young Chechen–Muslim players.<sup>65</sup> In a highly publicized incident following the dual signing, members of La Familia launched a fervent campaign against the ownership and management of the club, resulting in an arson attack on the club's offices.<sup>66</sup> Ownership backed down and the players were ultimately transferred from the team.<sup>67</sup> More recently, La Familia demanded that Ali Mohamed, a Nigerian–Christian player, change his name as it did not want the Muslim-sounding name “heard at [] Teddy Stadium.”<sup>68</sup>

Unfortunately, Beitar's relationship with anti-Arab sentiment is not limited to one fan organization. The roots of its discriminatory practices run through the club's founding and have deepened over time.<sup>69</sup> Many of Beitar's infamous practices stem from inside the organization itself.<sup>70</sup> Club officials have defended the status quo, echoing that Beitar is not ready for Arab players.<sup>71</sup> Just two years after the club's failed attempt to integrate two Chechen–Muslim players into its squad, coach Guy Levi remarked that he would not hire an Arab player, explaining that doing so “would create unnecessary tension.”<sup>72</sup> These discriminatory remarks, sounding in practical consideration, pay homage to the pull that La Familia and like-minded supporters have had on the club.

### B. Stakeholder Responses

In identifying the ways in which stakeholders have responded to Beitar and its errant supporters, I have chosen to organize my findings along the

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65. Barshad, *supra* note 5.

66. Covo, *supra* note 12, at 140.

67. Ayelett Shani, ‘Anti-Arab Group La Familia Is Only as Violent as Israel’s Leaders Allow It to Be,’ HAARETZ (Sept. 12, 2020), <https://www.haaretz.com/israel-news/.premium.MAGAZINE-anti-arab-group-la-familia-is-only-as-violent-as-israel-s-leaders-allow-it-to-be-1.9146308?v=1630251214220> [https://perma.cc/XFS5-GQKM].

68. Michael Schwartz & James Masters, *Beitar Jerusalem: Soccer Club Owner Ready to Sue ‘Racist’ Fans*, CNN (Dec. 5, 2019), <https://edition.cnn.com/2019/07/24/football/beitar-jerusalem-ali-mohamed-racism-soccer-spt-intl/index.html> [https://perma.cc/MFS7-GSG4].

69. See JAMES M. DORSEY, *SHIFTING SANDS: ESSAYS ON SPORTS AND POLITICS IN THE MIDDLE EAST AND NORTH AFRICA* 58 (2017) (noting that the club was founded during the second Palestinian uprising in 1936 and has continued to get support from right-wing politicians).

70. Covo, *supra* note 12, at 141.

71. See, e.g., *Israeli Club Paying the Price for Racist Fans*, DESERET NEWS (Jan. 19, 2012), <https://www.deseret.com/2012/1/20/20245832/israeli-club-paying-price-for-racist-fans> [https://perma.cc/UL2V-CQAJ] (“‘We are against racism and against violence and we pay a price for our fans,’ said Assaf Shaked, a team spokesman. ‘But we aren’t going to bring an Arab player just to annoy the fans.’”).

72. Haim Bior, *Beitar Soccer Club Ordered to Retract Coach’s Ban on Arab Players*, HAARETZ (Apr. 10, 2018), <https://www.haaretz.com/israel-news/sports/.premium-beitar-j-m-told-not-to-ban-arab-players-1.5353307> [https://perma.cc/GU9G-E3TM].

lines described by ECRI General Policy Recommendation No. 12.<sup>73</sup> I will first identify the ways in which the State of Israel, through its various apparatuses, has sought to deal with the conflagrations surrounding the club and then methodically move towards the private reaches of the stakeholder domain in which football, culture, economics, and politics coexist.

*1. The Domestic Legal System.*—Under Article 6 of CERD, Israel has a duty to ensure “effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms.”<sup>74</sup> While Israel has a body of laws that enshrine the rights and duties of its citizens, no single written constitution or bill of rights exists in ratified form.<sup>75</sup> Rather, Israel’s amorphous constitutional law can be found in the Basic Laws of Israel (a collection of principles set forth in the Declaration of the Establishment of the State of Israel),<sup>76</sup> ordinary laws, abstract legal norms defined by the Supreme Court, and customs and practices.<sup>77</sup> Israeli constitutional law is thus evolutionary by nature, and the protection of fundamental human and civil rights lies largely within the purview of the Supreme Court as determined on a case-by-case basis.<sup>78</sup>

Israel’s criminal justice system provides a more direct avenue to address racial discrimination. A series of criminal statutes confront the issue of hate speech and, by extension, the issue of racial discrimination. Chapter Eight of Israel’s Penal Law defines sedition, an offense with a penalty of five years imprisonment, as including “the creation of discontent or resentment among Israel residents” and “the promotion of conflict and enmity between different parts of the population.”<sup>79</sup> Section 144B of the same chapter prohibits publication of racist incitement.<sup>80</sup> Sister Section 144F(a) doubles the penalty for any offense committed out of a racist motive.<sup>81</sup> In 2008, the Knesset

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73. See *supra* notes 34–37 and accompanying text for a description of ECRI General Policy Recommendation No. 12.

74. CERD, *supra* note 18, art. 6.

75. Raphael Cohen-Almagor, *Is Law Appropriate to Regulate Hateful and Racist Speech?*, *ISR. STUD. REV.*, Winter 2012, at 41, 47.

76. For example, Basic Law: Human Dignity and Liberty purports to protect human dignity and liberty, but is general in nature and does not explicitly guarantee freedom from discrimination. Basic Law: Human Dignity and Liberty, SH 1391 (1992) 60 (Isr.).

77. Cohen-Almagor, *supra* note 75, at 47.

78. *Id.*

79. *Id.* at 48 (citing Penal Law, 5737-1977, §§ 133, 136 (1977–1978), <https://www.oecd.org/investment/anti-bribery/anti-briberyconvention/43289694.pdf> [https://perma.cc/P8HC-BXUG] [hereinafter Penal Law]).

80. *Id.* (citing Penal Law §144B).

81. *Id.* (citing Penal Law § 144F(a)).

passed another criminal statute that broadly prohibits association with, preaching, or encouraging Nazism or racism.<sup>82</sup>

Israeli prosecutors and courts have not shied away from charging and sentencing individuals with extreme political views for racist incitement. In an article entitled *Is Law Appropriate to Regulate Hate Speech?*, Israeli political scientist Raphael Cohen-Almagor examined the tension in Israel between liberalism and orthodoxy as it relates to censorship.<sup>83</sup> Cohen-Almagor recounts a case involving a group of Kahanite supporters who stood trial for painting graffiti saying “Kahane was right” and “Expel the Arabs.”<sup>84</sup> In deciding the case, the judge cited to Section 144B of the Penal Law and held that the second statement constituted incitement to racism.<sup>85</sup> The perpetrators were fined and sentenced to conditional imprisonment.<sup>86</sup> However, as Cohen-Almagor notes, individuals with racist political views have often been successful in reducing their sentences on appeal, and many view such convictions as part of a cat-and-mouse game that can be played well by waiting for periods of conditional imprisonment to expire before committing similar offenses.<sup>87</sup>

The issue of what to do with Beitar and its supporters has taken center stage within this larger legal struggle. As Cohen-Almagor argues, “[i]n a heated and violent atmosphere, a responsible policy requires state intervention to mitigate tensions before they erupt and inflict tangible harm on vulnerable individuals.”<sup>88</sup> Along similar lines, Israeli courts have rejected freedom of expression defenses as illegitimate, finding that when the freedom at issue involves calls to harm people due to their nationality or religious affiliation, it is not a valid competing interest against society’s aim in preventing racism to safeguard human dignity, social peace, and public order.

In one such case, a Beitar supporter who chanted “[d]eath to Arabs” was arrested by police officers at the stadium.<sup>89</sup> In front of the Jerusalem Magistrate Court, the supporter argued that he had merely said “[d]eath to

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82. Amnon Meranda, *Nazism and Racism Outlawed in Israel*, YNET NEWS (Feb. 25, 2008, 8:56 PM), <https://www.ynetnews.com/articles/0,7340,L-3511212,00.html> [<https://perma.cc/KZ8K-7JP9>].

83. See generally Cohen-Almagor, *supra* note 75.

84. *Id.* at 50.

85. *Id.* at 50–51 (citing Criminal File 2110/03 (Kfar Saba), *State of Israel v. Haim Pniri and Yair Ben Shimon Shriki* [in Hebrew] (2005)(1), 826).

86. *Id.* at 51.

87. See *id.* at 51–53 (discussing law enforcement monitoring of extremists and the occasional decision to put them on trial, as well as the “customary” practice of extremists appealing any conviction up to the Israeli Supreme Court).

88. *Id.* at 57.

89. *Id.* at 54 (citing Criminal File 11382/05, *State of Israel v. Meni Semirly* [in Hebrew], Jerusalem Magistrate’s Court (13 November 2005)).

terrorists.”<sup>90</sup> The magistrate judge saw no difference between the two within the context of a football game between a Jewish team and an Arab team.<sup>91</sup> He sentenced the supporter to a two-year suspension from attending Beitar football games.<sup>92</sup> To ensure compliance with the court’s sentence, the judge further ordered that the supporter report to a local police station during each Beitar game.<sup>93</sup>

Other judges handling similar cases have served sentences involving conditional imprisonment, minor fines, or community service hours.<sup>94</sup> While racist supporters are probably unhappy to pay fines that benefit Arab–Israeli dialogue or spend hours working for peace-building initiatives, the deterrence effect of such punishment is low. On the other hand, the threat of a years-long match ban coupled with mandatory reporting to a police station may act as a strong deterrent against individuals considering racist expression at football games. Whatever the punishment, it is clear that education alone will not solve the issue—insufficient measures have the effect of legitimizing racist behavior.<sup>95</sup>

2. *The National Legislature.*—As discussed above, the Knesset, Israel’s legislature, has passed laws to address the issue of racism in Israeli society. And yet, Beitar and La Familia’s shared anti-Arab identity has continued to be an unfortunate and uniquely tangible flashpoint within the realm of national politics and public representation. With the high visibility that comes with being one of Israel’s most historic football clubs, Beitar is a frequent touchpoint in the nation’s political dialogue. Right-wing politicians, such as former Prime Minister Benjamin Netanyahu and Miri Regev, have voiced solidarity with Beitar, many of whose fans share a jingoistic *esprit de corps* with the Right’s voter base.<sup>96</sup> And while politicians on the Right have condemned La Familia for some of its more heinous acts,<sup>97</sup> many tacitly support the organization.<sup>98</sup> In contrast, left-wing politicians, many of whom

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90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *See, e.g., id.* at 55–56 (citing various cases in which Israeli courts handed out minor penalties and criticizing the judgments as lacking in deterrent effect).

95. *Id.* at 56–57.

96. Barshad, *supra* note 5.

97. *E.g.,* Michael Bachner, *Israeli Soccer Club Vows Crackdown on Racist Fans After Anti-Arab Chants*, TIMES ISR. (Jan. 23, 2018, 10:24 AM), <https://www.timesofisrael.com/israeli-soccer-club-vows-crackdown-on-racist-fans-after-anti-arab-chants/> [<https://perma.cc/2SW8-5MDM>].

98. *See* Yossi Klein Halevi, *Can a Protest Movement Topple Netanyahu?*, ATLANTIC (Aug. 13, 2020), <https://www.theatlantic.com/ideas/archive/2020/08/can-protest-movement-topple-netanyahu/615223/> [<https://perma.cc/G465-K4P8>] (discussing Netanyahu’s “half-hearted and self-pitying” condemnation of La Familia’s violent attack on anti-Netanyahu demonstrators).

support Beitar's historic rival Hapoel Tel Aviv,<sup>99</sup> consider Beitar and its supporters to be representative of racist and ethnocentric elements within Israeli society that must be rooted out.<sup>100</sup>

This partisan divide aids the intractability of racism at Beitar. As long as one powerful party identifies political benefit from La Familia's racist expression, it will lack the incentive to regulate or disband the blatantly hateful group.<sup>101</sup> So, while racism, in general, is periodically condemned and even sometimes legislated upon, the issue of which specific actions to take against Beitar's unique form of racism remains unaddressed.

3. *The International Sport Federation.*—As mentioned earlier, FIFA<sup>102</sup> has a set of regulations that bind member federations and which are appealable to the CAS. Article 58(1)(a)<sup>103</sup> applies specifically to instances of intentional discriminatory practices.<sup>104</sup> However, while FIFA is willing to confront offensive behaviors performed by individuals in or around football stadiums, it largely overlooks nonindividual discriminatory policies and practices of football clubs and their supporters.<sup>105</sup> In the case of Beitar, FIFA has not been completely silent regarding its disapproval of Beitar's tolerance for racial discrimination. As a matter of policy, however, the international football governing body has limited itself to a few isolated and private warnings to the Israeli Football Association (IFA).

According to a widely disseminated 2013 report by the Israeli media, FIFA officials had sent messages to the chairman of the IFA warning that they were considering shutting down the club if the riots surrounding the signing of the Chechen–Muslim players were not quelled.<sup>106</sup> No public reprimand ever materialized, but the report was enough to alarm the IFA and

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99. Buck, *supra* note 55 (discussing Hapoel Tel Aviv's "proudly leftwing" fans and its association with the modern Labour party in Israel).

100. See, e.g., Leon Sverdlov, *Left to Gantz: Designate La Familia as a Terrorist Organization*, JERUSALEM POST (Aug. 1, 2020, 06:07 PM), <https://www.jpost.com/israel-news/left-to-gantz-declare-la-familia-a-terrorist-organization-637123> [<https://perma.cc/M9MH-RSEN>] (discussing calls by leftist politicians to designate La Familia as a terrorist organization).

101. See Shani, *supra* note 67 (discussing the connection between La Familia and politicians).

102. The Fédération Internationale de Football Association (FIFA) "governs all facets of the game: regulating the rules of play, overseeing the transfers of players internationally, organizing international competitions such as the FIFA World Cup, establishing standards for refereeing, coaching and sports medicine, and encouraging soccer's development around the world." *FIFA – Soccer's World Governing Body*, US SOCCER, <https://www.ussoccer.com/history/organizational-structure/fifa> [<https://perma.cc/A46K-49T8>].

103. See *supra* note 45 and accompanying text.

104. See *Šimunić v. Fédération Internationale de Football Association (FIFA)*, CAS 2014/A/3562, Judgment, ¶ 56 (Ct. of Arb. for Sports 2014) (noting that the panel must be convinced that a player "intentionally . . . discriminated and/or offended a certain person or group of persons in line with article 58(1)(a)" (emphasis added)).

105. Covo, *supra* note 12, at 133.

106. *Id.* at 140.

the national media.<sup>107</sup> Then, in 2015, the Palestinian Football Association (PFA) requested that the FIFA Congress suspend the IFA, asserting, among other claims, that the IFA had not attempted to combat Beitar's discriminatory practices.<sup>108</sup> Specifically, the PFA requested a suspension on the basis that the IFA had failed to "uphold its obligation to FIFA in taking a stance against discrimination and racism by taking serious measures against racism and human rights violations within its area of jurisdiction."<sup>109</sup>

This second warning was apparently also taken seriously by the IFA. A 2015 UN report on stakeholders in football reported that the IFA, fearing that FIFA might suspend the whole of Israeli football, had asked Beitar to suspend their policy of not hiring Palestinian athletes.<sup>110</sup> While the PFA ultimately withdrew its motion, the motion's core concerns led to the establishment of the FIFA Monitoring Committee for Israel and Palestine.<sup>111</sup> However, despite showing some willingness to consider issues related to the development of football in Palestine,<sup>112</sup> the Monitoring Committee has yet failed to address the issues underlying Beitar's discriminatory practices.

4. *The National Sport Association.*—The IFA, as a FIFA member association, reports to and communicates with the greater international polity. The IFA is also a member of the Union of European Football Associations (UEFA),<sup>113</sup> which enables the association to send Israeli clubs to play in a variety of European club competitions and the national team to play in UEFA championships.<sup>114</sup> Thus, the IFA has a strong economic incentive to ensure that its clubs and their supporters avoid European human rights violations that could prevent its clubs from participating in international competition. Indeed, the IFA has adopted antidiscrimination measures and partnered with local organizations like "Kick It Out" to encourage Israeli footballers and their supporters to promote tolerance and

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107. *Id.* at 140–41.

108. *Id.* at 142–43.

109. *Id.* at 143.

110. UNESCO, COLOUR? WHAT COLOUR? REPORT ON THE FIGHT AGAINST DISCRIMINATION AND RACISM IN FOOTBALL 27 (2015).

111. Covo, *supra* note 12, at 143.

112. Notably, the PFA submitted another motion to the FIFA Congress, seeking recognition of the PFA and entitlement to all the rights described in the FIFA statutes. Rejecting the opportunity to vote on the issue, the Congress shifted responsibility to the Monitoring Committee, which submitted a final report on the issues raised by the PFA. On the basis of the report, the FIFA Council decided not to take any action on the matter, stating that FIFA "must remain neutral with regard to political matters." *Id.* at 143–44.

113. UEFA, *Member Associations*, <https://www.uefa.com/insideuefa/member-associations/> [https://perma.cc/3K9E-VV7K].

114. UEFA, *About UEFA: Administration*, <https://www.uefa.com/insideuefa/about-uefa/administration/> [https://perma.cc/68UB-ARMM] (last updated June 22, 2020).

condemn racism.<sup>115</sup> While the IFA has taken proactive measures to combat racism, it has struggled to curtail anti-Arab behavior among Beitar's management and supporters. In its sporadic attempts to address instances of racial discrimination at Beitar, the IFA unsuccessfully issued ad hoc disciplinary action including individual fines (usually against ownership),<sup>116</sup> crowd bans,<sup>117</sup> and, in extreme cases, docking points in the league standings.<sup>118</sup>

5. *Ownership.*—Since the club's inception, few owners of Beitar have sought to take on the radical elements at the club or within its fan base. Although the racism exhibited by many Beitar supporters has affected the club's finances,<sup>119</sup> ownership has generally weighed the costs of alienating core supporters over the benefits that may accrue from stemming external criticism. Indeed, as in the case of the Chechen–Muslim players, rare instances of progressive action at Beitar have invariably yielded intense and sometimes violent backlash. And yet, for a time, positive change appeared to be on the horizon.

In 2018, Moshe Hogeg, a former tech magnate from Tel Aviv, purchased Beitar Jerusalem and pledged to rid the racist elements surrounding the club.<sup>120</sup> Among his first acts as owner was to sign Ali Mohamed, a Nigerian native of Muslim descent. While the signing caused an uproar among the radical portions of Beitar's fanbase,<sup>121</sup> Hogeg publicly

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115. Aaron Kalman, *English, Israeli Players Give Red Card to Racism*, TIMES ISR. (June 9, 2013, 8:27 PM), <https://www.timesofisrael.com/english-israeli-players-kick-racism-out-of-soccer/> [<https://perma.cc/3TMQ-UXPR>].

116. E.g., Amos Barshad, *How Soccer Explains Israel*, GRANTLAND (Mar. 19, 2013), <https://grantland.com/features/jerusalem-fc-beitar-signed-two-muslim-players-russia-february-stirred-national-controversy/> [<https://perma.cc/7H5B-2PYS>].

117. E.g., Li Botz, *Soccer Team Penalized for Fans' Behavior*, YNET NEWS (Nov. 8, 2007, 12:38 PM), <https://www.ynetnews.com/articles/0,7340,L-3469169,00.html> [<https://perma.cc/X5HR-RVLG>].

118. E.g., *Beitar Jerusalem Docked Two Points for Racist Chanting*, REUTERS (May 7, 2015, 10:43 PM), <https://www.reuters.com/article/uk-soccer-israel-beitar/beitar-jerusalem-docked-two-points-for-racist-chanting-idUKKBN0NS2JM20150507> [<https://perma.cc/K8DR-72YE>].

119. See Steven Zeitchik, *The Battle to Reform a Soccer Club Notorious for Racist Fans Reveals Israel's Deep Divide*, WASH. POST (Sept. 22, 2019), [https://www.washingtonpost.com/world/middle\\_east/the-battle-to-reform-a-soccer-club-notorious-for-racist-fans-reveals-israels-deep-divide/2019/09/22/6617a844-d01b-11e9-a620-0a91656d7db6\\_story.html](https://www.washingtonpost.com/world/middle_east/the-battle-to-reform-a-soccer-club-notorious-for-racist-fans-reveals-israels-deep-divide/2019/09/22/6617a844-d01b-11e9-a620-0a91656d7db6_story.html) [<https://perma.cc/U2GV-K8FV>] (noting comments from Moshe Hogeg that “sponsors . . . abandoned the team because of its [racist] reputation”); Joshua Mitnick, *Red Card for Emirati Royal's Soccer Diplomacy?*, FOREIGN POLICY (Jan. 9, 2021, 10:00 AM), <https://foreignpolicy.com/2021/01/09/beitar-soccer-uae-israel-abraham-accords-deal/> [<https://perma.cc/52GU-P88R>] (discussing how La Familia's racist campaign against the Chechen–Muslim players “hurt the team's image and cut into its revenue”).

120. Zeitchik, *supra* note 119.

121. *Beitar Jerusalem Fans Insist on Changing Name of Latest Signing Mohamed*, JERUSALEM POST (Dec. 22, 2020), <https://www.jpost.com/israel-news/sports/la-familia-we-are-happy-that-mohamed-is-coming-592141> [<https://perma.cc/B66W-P9K2>].

cited Mohamed's first goal and the cheers of "Mohamed!" that rang throughout the stadium as the high point of his ownership.<sup>122</sup> In a further bold development, Hogeg had agreed to sell half his stake in the club to a member of one of the United Arab Emirates' ruling families.<sup>123</sup> Hogeg presented the new arrangement as a chance to recast the club's message "that we are all equal and that we can work and do beautiful things together."<sup>124</sup>

Though there are many Beitar fans who supported Hogeg's initiative to shift the racist narrative, there are some factions, notably members of La Familia, who bristled at what they perceived as his outsider authority.<sup>125</sup> Hogeg took the battle in stride. One of his preferred tactics was to sue supporters who exhibit discriminatory practices, accusing them of damaging the reputation of the club.<sup>126</sup> It is questionable as to whether any such claim would hold up in Israeli court, but faced with potentially enormous payouts and the high legal costs needed to defend themselves, most supporters backed down.<sup>127</sup> In addition to threatening civil litigation, Hogeg revoked offenders' season tickets and barred La Familia from selling its merchandise at the stadium.<sup>128</sup> His unorthodox approach seemed to be working. In Hogeg's first year as owner, there were only two racist incidents, and, in his second, zero.<sup>129</sup> In light of these off-the-field victories, Hogeg touted the threat of civil action as viable in combatting racism, and he encouraged FIFA and UEFA to take notice.<sup>130</sup>

Despite Hogeg's optimism, some supporters believed the "ceasefire" between Hogeg and La Familia would not last.<sup>131</sup> For many, the real test of

122. Alex Capstick, *Beitar Jerusalem: How Do You Change 'the Most Racist Club' in Israel?*, BBC (Dec. 20, 2019), <https://www.bbc.com/sport/football/50842424> [<https://perma.cc/BDA2-3V2K>].

123. David M. Halbfinger & Adam Rasgon, *Israeli Soccer Team, Infamous for Anti-Arab Fans, Has New Co-Owner: A Sheikh*, N.Y. TIMES (Dec. 22, 2020), <https://www.nytimes.com/2020/12/07/world/middleeast/israel-soccer-uae-beitar-jerusalem.html> [<https://perma.cc/7JY2-Y4NX>]. Due to questions surrounding the Sheikh's finances, the purported sale has been frozen as of February 2021. *Beitar Jerusalem Sale Frozen Amid Disclosure of UAE Sheikh's Iffy Finances*, TIMES ISR. (Feb. 11, 2021, 8:39 PM), <https://www.timesofisrael.com/beitar-jerusalem-sale-nixed-amid-disclosure-of-uae-royals-iffy-finances/> [<https://perma.cc/HKV5-3LEL>].

124. Halbfinger, *supra* note 123.

125. *See, e.g.*, Zeitchik, *supra* note 119 (quoting a member of La Familia as saying "Moshe Hogeg thinks he can come in and tell us how to live our lives, like he knows better than us").

126. Capstick, *supra* note 122.

127. *Id.*

128. Zeitchik, *supra* note 119.

129. Capstick, *supra* note 122.

130. *Id.*

131. As recent developments demonstrate, they were right. Between the time this Note was submitted and its publication, Moshe Hogeg announced his intention to sell the football club. Among the stated reasons were the racism of La Familia and the "nonstop" antagonism directed against himself and his family. *See Beitar Jerusalem Owner Hogeg to Sell Soccer Team Cites*

progress will come if and when an Arab player joins the club.<sup>132</sup> Regardless, club officials have pointed out that they have been forced to act alone in their fight against racism, noting the utter lack of accountability from the Sports and Public Security ministries, and demanding the creation of a special unit to deal directly with the issues of violence and racism in Israeli football.<sup>133</sup>

6. *Athletes and Coaches.*—I have been unable to find many concrete instances of athletes or coaches taking directed action against the racist and discriminatory practices at Beitar. For the most part, it appears that these stakeholders have sought to remain somewhat neutral. While the players on the team have supported some of the controversial signings, such as the Chechen–Muslim players,<sup>134</sup> there have been few instances of direct confrontation between Beitar players and ownership or the supporters on account of racism exhibited by the latter. Presumably, this can be explained by Beitar players not wishing to draw the ire of radical factions within the supporter group.

Past coaches have acted in a similarly muted fashion. In most cases, they have stood behind controversial signings, with few making public statements or taking strong action against racial discrimination exhibited by the club or its supporters. A somewhat recent notable exception is Itzik Kornfein, a Beitar goalkeeping great who served as general manager of the team.<sup>135</sup> After he spoke out against racism at the club, angry supporters began to show up and curse him out at practice.<sup>136</sup> Some even attempted to attack him physically.<sup>137</sup> Such reactions, left unaddressed for decades, have likely contributed to the dearth of athlete and coach activism.

7. *Supporters.*—As discussed above, there are many Beitar supporters who do not engage in racially discriminatory behavior. Some have refused to

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*Ungrateful, Racist Fans*, TIMES ISR. (Sept. 9, 2021, 6:18 PM), <https://www.timesofisrael.com/beitar-jerusalem-owner-hogeg-to-sell-soccer-team-cites-ungrateful-racist-fans/> [https://perma.cc/7S95-XJ77] (citing racist fans as one of the reasons Hogeg has chosen to sell Beitar). Even so, Hogeg spoke optimistically about the ongoing struggle to “[f]ight racism and violence without fear.” *Id.* (“This struggle isn’t stopping and will continue after me.”). What was argued then is clear now: without a broad coalition of invested stakeholders, strong ownership alone is incapable of eradicating racism at Beitar.

132. Capstick, *supra* note 122.

133. Bachner, *supra* note 97.

134. Ron Friedman, *Beitar Jerusalem Signs First Muslim Players*, TIMES ISR. (Jan. 31, 2013, 1:46 AM), <https://www.timesofisrael.com/beitar-jerusalem-signs-chechen-players/> [https://perma.cc/D4JC-3UY7].

135. *Israeli Club Paying the Price for Racist Fans*, FOX SPORTS (Jan. 20, 2012), <https://www.foxsports.com/stories/soccer/israeli-club-paying-price-for-racist-fans> [https://perma.cc/QX66-9EVL].

136. *Id.*

137. *Id.*

continue to support the club due to its failure to address its longstanding issues. In 2018, for example, a group of 4,000 Beitar fans broke away from the club and shifted their allegiance to a new club called Beitar Nordia Jerusalem.<sup>138</sup> Beitar Nordia, which had been formed by a smaller group of Beitar Jerusalem supporters four years earlier, was created in direct response to the racism exhibited at the former club and has already fielded four Arab players since its inception.<sup>139</sup>

Other supporters have simply walked away. In a particularly famous defection, former Prime Minister Ehud Olmert, who had been a Beitar supporter for more than four decades, announced that he would no longer attend matches due to the fans' behavior.<sup>140</sup> In a widely circulated Op-Ed he wrote: "[T]his is a matter that concerns all of us. Either we remove this group of racists from our field and cut it off from the team, or we are all like them. Until that happens, I will not go to games."<sup>141</sup>

8. *The Media.*—Like the government that it frequently covers, Israeli media largely falls along partisan lines. However, despite the partisan split in media coverage, newspapers on both sides of the aisle have largely condemned the discriminatory practices of Beitar's supporters. In particular, left-leaning newspapers have long decried the discriminatory atmosphere inside Teddy Stadium and point to Beitar as an example of the high tolerance for racist rhetoric within Israeli society. In 2015, Haaretz ran a campaign entitled "Until an Arab plays for Beitar Jerusalem . . ." to raise awareness to the fact that no Arab had played for the club in its 80-year history despite being based in a city with a population that is 40% Palestinian.<sup>142</sup> In response, Beitar banned Haaretz reporters from its press box and accused them of espousing elitist Ashkenazi sentiments.<sup>143</sup> Following the transfer of Beitar's ownership to Moshe Hogeg, however, news outlets across the political spectrum expressed optimism and supported his initiative to alter the

138. Ori Lewis, *Fans of Beitar Jerusalem Soccer Team Fed Up With Racism, Form New Club*, JERUSALEM POST (Feb. 22, 2018, 4:07 PM), <https://www.jpost.com/israel-news/fans-of-beitar-jerusalem-soccer-team-fed-up-with-racism-form-new-club-543384> [https://perma.cc/Y252-BVUR].

139. *Id.*

140. Harriet Sherwood, *Israel President Demands Crackdown on Racism in Football*, GUARDIAN (Jan. 29, 2013, 9:54 AM), <https://www.theguardian.com/world/2013/jan/29/israel-president-crackdown-racism-football> [https://perma.cc/3TA9-U55R].

141. *Id.*

142. Yoav Borowitz, *Until an Arab Plays for Beitar Jerusalem . . .*, HAARETZ (Apr. 10, 2018), <https://www.haaretz.com/israel-news/sports/.premium-until-an-arab-plays-for-beitar-jerusalem-1.5375966> [https://perma.cc/DYU6-RAKB].

143. Peter Beaumont, *Israel's Beitar Jerusalem Bans Reporters from Press Box in Racism Row*, GUARDIAN (Apr. 8, 2016, 7:01 AM), <https://www.theguardian.com/world/2016/apr/08/israels-beitar-jerusalem-bans-haaretz-reporters-racism-row> [https://perma.cc/9D4Q-F435].

reputation of the club and its supporters.<sup>144</sup> The ban on Haaretz has since been lifted.<sup>145</sup>

9. *Sponsors.*—I have been unable to find any specific instances of the cancelling of sponsorships between corporate partners and Beitar as a result of the latter’s discriminatory practices or reputation. However, it does appear that (1) Beitar’s owners have long been concerned about the eventuality of such cancellations and (2) Beitar’s pool of sponsors has always been smaller than it would otherwise be due to the negative press surrounding the team.<sup>146</sup> As a team that regularly competes in the UEFA Europa League, Beitar has had many opportunities to gain significant streams of income from corporate sponsors. Thus, there has always been at least a strong hypothetical incentive for Beitar to address issues of racial discrimination.

Most recently, and likely due to Moshe Hogeg’s links to the industry,<sup>147</sup> Beitar received a sponsorship from a Bitcoin-related company called CoinMarketCap.<sup>148</sup> Additionally, and to the surprise of the Israeli soccer world, Hogeg engaged in talks with an investor from the United Arab Emirates to purchase an interest in Beitar.<sup>149</sup> While these talks eventually fell through, they represented another opportunity for cross-stakeholder dialogue and for sponsors seeking to capitalize on a brand focused on promoting racial awareness and tolerance.<sup>150</sup>

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144. See, e.g., Joshua Halickman, *A Complete Culture Change in Beitar Jerusalem*, JERUSALEM POST (Aug. 14, 2019, 10:17 PM), <https://www.jpost.com/israel-news/sports/a-complete-culture-change-in-beitar-jerusalem-598652> [<https://perma.cc/8FPE-8E8N>] (discussing how Hogeg’s “no-nonsense stance against the racism that has run rampant throughout the team’s so-called fan groups over the past decade” is “laying the foundation for Beitar to reach the success he has come to expect in the hi-tech world”); Editorial Board, *No Longer ‘Forever Pure,’* HAARETZ (Dec. 9, 2020), <https://www.haaretz.com/opinion/editorial/no-longer-forever-pure-1.9358116> [<https://perma.cc/VT6E-4RRP>] (discussing Hogeg’s “courage, vision and steadfastness” in his efforts to root out racism at Beitar).

145. I reached out to Haaretz and confirmed that its news respondents are back in the press box.

146. See *supra* note 119 and accompanying text.

147. *Moshe Hogeg*, LINKEDIN, <https://il.linkedin.com/in/moshehogeg> [<https://perma.cc/JE4T-NMLV>].

148. Samantha Chang, *Bitcoin Data Giant CoinMarketCap Sponsors Major Israeli Football Club*, YAHOO! FIN. (May 24, 2019), <https://finance.yahoo.com/news/bitcoin-data-giant-coinmarketcap-sponsors-184503712.html> [<https://perma.cc/78HY-PW63>].

149. JTA, *Emirati Royal in Talks on Buying Jerusalem’s Beitar Soccer Club*, JERUSALEM POST (Nov. 29, 2020, 7:46 AM), <https://www.jpost.com/breaking-news/moshe-lion-meets-with-uae-sheik-beitar-jerusalem-owners-on-purchase-offer-650458> [<https://perma.cc/24AT-SBN2>].

150. *Beitar Jerusalem Sale Frozen Amid Disclosure of UAE Sheikh’s Iffy Finances*, TIMES ISR. (Feb. 11, 2021, 8:39 PM), <https://www.timesofisrael.com/beitar-jerusalem-sale-nixed-amid-disclosure-of-uae-royals-iffy-finances/> [<https://perma.cc/HKV5-3LEL>].

### III. Analysis and Recommendations

#### A. *Analysis*

The various means taken (and not taken) by stakeholders to address racial discrimination at Beitar Jerusalem are revealing. First, most of these solutions are punitive and thus, reactive by nature. Recently, the most lauded action has been Hogege's willingness to prosecute individual perpetrators for hate speech in domestic courts. Isolated remedial measures, however, only meet a sliver of Israel's obligations under CERD. Second, the various stakeholders tend to operate out of narrow self-interest. For example, the IFA has a strong interest in mitigating damage to the international brand of Israeli football; thus, its responses tend to be aimed in ways that attract media attention, but do no more than offer a façade of control. Third, there is a distinct lack of cross-stakeholder communication about how best to address these issues. Without a framework to divide responsibility, stakeholders are disincentivized to seek solutions to systemic problems.

At this point, a broad coalition of stakeholders is not just a nice idea for Beitar, it is an existential imperative. Moshe Hogege, the stakeholder with the greatest ability to make a direct impact on the club, has recently thrown in the towel, citing La Familia's racism and personal antagonism towards his family as the final straws.<sup>151</sup> Like many Beitar owners before him, he came to the club with strong intentions to change its infamous culture. As one leading Israeli newspaper put it, "it is doubtful that anyone other than a naïve idealist or someone who needs to launder some ill-gotten gains would want to become the owner of Beitar Jerusalem."<sup>152</sup> For Beitar to survive, broad and concerted action is required.

#### B. *Recommendations*

1. *The Domestic Legal System.*—As discussed in Part I, Israel has an obligation under international law to take active measures in promoting tolerance and ensuring that redress is available for victims of racial discrimination. As discussed in Part II, Israel has prescribed legislation aimed at curtailing racial incitement. In doing so, Israel has already followed part of ECRJ Policy Recommendation No. 12's guidance to ensure that general and specific legislation against racism and racial discrimination in sport is in place. Moreover, Israel's process by which individual perpetrators are arrested, detained, charged, and sentenced is streamlined between the local

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151. *Beitar Jerusalem Owner Hogege to Sell Soccer Team Cites Ungrateful, Racist Fans*, *supra* note 131.

152. Greer Fay Cashman, *Grapevine: Full Flower*, JERUSALEM POST (Sept. 22, 2021), <https://www.jpost.com/israel-news/grapevine-full-flower-680010> [<https://perma.cc/YZ37-CJS7>].

authorities and the justice system. Still, Israel should not leave it up to the discretion of individual judges to hand down appropriate sentences for the types of racial discrimination exhibited by Beitar supporters. Rather, Israel should prescribe specific minimum penalties that deter such behavior. In this respect, minimum sentences for sport-related racism including season-long bans and mandatory police-reporting requirements are appropriate, whereas conditional sentencing and small fines are not. Finally, while individual criminal prosecution has, at times, been effective as an individual deterrent, Israel must take on a greater role in leading the fight against systemic manifestations of racism.

2. *The National Legislature.*—As the internationally bound party and governing authority, the Knesset is legally and ideally positioned to build a coalition against racism in sport to facilitate inter-stakeholder communication and coordination. To its credit, the national government has already identified Beitar's actions as problematic. In 2015, the Economy Ministry's Equal Opportunity Commission summoned Beitar representatives to appear before the Commission and explain why it does not hire Arab players.<sup>153</sup> However, the probe was conducted discreetly, and its findings were not published.<sup>154</sup> To help other stakeholders identify the necessary steps to be taken, the Knesset should form a commission to investigate racial discrimination at Beitar. In forming this commission, the Knesset should seek to include representatives from a diverse array of stakeholders including politicians, judges, IFA representatives, team representatives, supporters, and journalists. As such, the commission would derive its legal authority from the government and its public authority from its membership. Perhaps most consequentially, this form of action could serve as a test run for addressing forms of racism found throughout Israeli society. At the very least, it would serve as a strong symbol that the Knesset is willing to investigate and address racism in its own backyard. Formed, in part, by ministers with longstanding ties to the club, the commission would further represent a unified front in the fight against discrimination across political, cultural, and sport lines in Israeli society.

To further this end, the national government should partner with and finance anti-racism-awareness organizations and campaigns. Education as a supplementary measure to promote tolerance should not be overlooked. Nongovernmental organizations like Kick It Out (KIO) have long

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153. Yoav Borowitz, *State Asks Beitar Jerusalem Soccer Club to Explain Its Lack of Arab Players*, HAARETZ (Apr. 10, 2018), <https://www.haaretz.com/israel-news/sports/.premium-beitar-jm-why-no-arab-soccer-players-1.5375854> [<https://perma.cc/5DYR-4JXX>].

154. *See id.* (“[R]epresentatives of the commission would neither confirm nor deny that a probe had been launched . . .”). I have been unable to find any additional information regarding the probe following the initial reports of its occurrence.

campaigned to highlight and solve the problems of racist chanting and signing practices at Beitar.<sup>155</sup> When Moshe Hogeg took ownership, organizations like KIO were welcomed into the fold.<sup>156</sup> With sustained governmental support, organizations like KIO are likely to have a greater impact on the team and its supporters. In addition, the government should support educational initiatives, such as the ones coordinated by the Peres Center for Peace, that are geared towards integrating Israeli and Arab children through sport.<sup>157</sup> Such initiatives may pay out long-term dividends as children grow up to become citizens with a mutual understanding and respect for human dignity and racial differences.

3. *FIFA*.—ECRI General Policy Recommendation No. 12 has specifically called out sports federations for their low level of public commitment to combating racial discrimination.<sup>158</sup> As discussed above, while FIFA has shown a willingness to act against individual instances of racism, in general and in the case of Beitar, it has limited itself to private warnings and has rarely taken notable action.<sup>159</sup> As scholars and the Policy Recommendation have noted, FIFA has a strong incentive to avoid taking such action; it would be economically disadvantageous for FIFA to highlight facets of “the beautiful game” that are not quite so beautiful.<sup>160</sup> And yet, FIFA’s failure to take a preventative approach to systemic racism enables the stain “to fully develop its corrupting power, thereby tainting sport’s image and undermining its very values.”<sup>161</sup>

While FIFA is not the optimal stakeholder to address wholesale systemic racism, it does have a role to play. By establishing internal mechanisms and clear lines of communication with national federations, like the IFA, FIFA can aid these federations in making informed decisions for dealing with cases of racial discrimination in their respective jurisdictions. In doing so, FIFA should encourage the national federations to nominate a

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155. *Kicking Racism Off the Soccer Field*, NEW ISR. FUND (July 10, 2019), <https://www.nif.org/stories/shared-society-combating-racism/kicking-racism-off-the-soccer-field/> [https://perma.cc/86F5-XVNA].

156. *Id.*

157. *See Twinned Peace Sports Schools*, PERES CTR. FOR PEACE & INNOVATION, <https://www.peres-center.org/en/the-organization/projects/sports/tpss/> [https://perma.cc/2ALA-XTVR] (describing the Peres Center’s program that brings Jewish and Arab youths together to play on mixed-group sports teams).

158. ECRI General Policy Recommendation No. 12, *supra* note 34, at 18.

159. *See supra* section II(B)(3).

160. *See Covo, supra* note 12, at 133–34 (discussing how commercial interests lead to a lack of incentive for FIFA to fight non-individual forms of discrimination); ECRI General Policy Recommendation No. 12, *supra* note 34, at 18 (explaining that fears of “destroy[ing] the positive image of sport play a considerable role” in sports federations’ low commitment to combatting racism).

161. ECRI General Policy Recommendation No. 12, *supra* note 34, at 18.

representative responsible for overseeing self-regulatory, disciplinary, and awareness measures and confirming whether those measures are, at a minimum, in line with FIFA standards. National federations will then be able to seek the advice of the parent polity via open channels of communication and use FIFA procedures as a baseline of support in their own decision making. In turn, FIFA will be able to monitor and more accurately assess whether those decisions fall short of, meet, or exceed their standards. In the former instance, FIFA may reserve the right to take action. In the latter, FIFA may identify best practices that can be translated to other jurisdictions.

4. *UEFA*.—While UEFA does not have continuous authority over Beitar, it is possible that with an influx of new investment, Beitar will become a frequent fixture at UEFA tournaments going forward.<sup>162</sup> As a result, UEFA can participate in the stakeholder dialogue, even in an indirect way. Being familiar with ECRI General Policy Recommendation No. 12, UEFA should seek to promote the exchange of good practices between Beitar and European clubs facing similar issues with racism.<sup>163</sup> Furthermore, by setting clear standards regarding racist behavior, UEFA has a unique ability to deter conduct harmful to minorities. While UEFA has been coy about sharing its newest ideas for an antiracism campaign,<sup>164</sup> when that campaign launches, it should be sure to engage all member organizations, such as the IFA, in its promotion and adoption.

5. *The IFA*.—The IFA has a vested interest in ensuring that the racism displayed by at Beitar and among its supporters does not tarnish the IFA and its members. As a stakeholder, it has a central role to play. Its value lies in its ability to set forth clear standards for teams to follow, to monitor the success or failure of individual clubs in meeting these standards, and to take disciplinary action when necessary. While the IFA has been somewhat inconsistent in meting out punishment, it has taken many of the steps advocated by ECRI General Policy Recommendation No. 12, including expelling racist offenders from stadiums, pronouncing stadium bans for supporters, and, in more serious cases, imposing fines on or withdrawing points from Beitar.<sup>165</sup> The IFA can improve its disciplinary processes by setting clearer codes of conduct applicable to a wide set of scenarios, thereby

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162. But see *supra* note 123 for a discussion of the temporary holdup of the ownership sale.

163. See Council of Europe, *Combating Racism and Hate Speech at Sports Events* (Apr. 12, 2021), <https://www.coe.int/en/web/portal/-/combating-racism-and-hate-speech-at-sports-events> [<https://perma.cc/2R9E-T54A>] (discussing collaboration between UEFA's Director of Social Responsibility and the chair of the ECRI, among others, regarding racism in football).

164. Associated Press, *Taking Players' Lead, UEFA Seeks Better Anti-Racism Campaign*, SEATTLE TIMES (June 17, 2020, 8:19 AM), <https://www.seattletimes.com/sports/taking-players-lead-uefa-seeks-better-anti-racism-campaign/> [<https://perma.cc/ET55-JX53>].

165. See *supra* notes 116–118 and accompanying text.

providing clubs with expected standards of conduct and removing the need for the disciplinary committee to determine punishments on an ad hoc basis.

In addition to external regulation, the IFA can partake in a series of self-regulatory measures that will better enable stakeholders within the federation to address instances of racism within the organization's ranks. The IFA has already begun some of this work. Its website proudly exhibits the federation's unequivocal commitment to antiracism and equality principles.<sup>166</sup> In addition to publicizing these commitments, the federation should ensure that its staff, volunteers, coaches, and sports officials are trained to act on these principles in their respective capacities. To make this happen, the IFA should organize regular trainings and awareness-raising sessions for the above-listed stakeholders. Furthermore, it should provide coaches and referees with clear guidelines on how to address racist and discriminatory behavior. If the IFA can commit itself to safeguarding equality principles, it will be in a stronger position not only to identify behavior that does not meet its standards, but also to address it via procedures that are familiar and consistent with the federation's mission.

Discipline and self-regulation, however, should not be the IFA's sole prerogatives. To effectively combat racism, the federation must continue to take preventative measures that seek to raise awareness. The IFA has already taken a series of public steps to promote social initiatives dedicated towards combatting racism and safeguarding human dignity. In addition to committing itself to the fight against violence and racism, the IFA has partnered with a variety of social justice organizations such as the Peres Center for Peace, Fair Chance for Children, and Kick It Out.<sup>167</sup> By lending public and financial support to these organizations, the IFA empower social justice experts to raise awareness against racism, while ensuring that their messages are integrated into the Israeli football landscape, from the youth level up to the professional ranks.

6. *Ownership*.—As the history of the club reveals, Beitar cannot fix its internal issues without substantial investment and support from ownership.<sup>168</sup> And even then, it is an uphill battle.<sup>169</sup> With Moshe Hogeg in charge, Beitar's future had never looked brighter. From the very beginning, Hogeg directly

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166. Israeli Football Association, *Social Responsibility*, <https://www.football.org.il/en/> [https://perma.cc/P8Y4-NMCP].

167. *Id.*

168. See, e.g., Peter Beaumont, *Beitar Jerusalem Owner Quits Over Fans' Violence at European Game*, GUARDIAN (July 17, 2015, 9:44 AM), <https://www.theguardian.com/football/2015/jul/17/beitar-jerusalem-owner-quits-fans-violence-eli-tabib-israel-belgium-charleroi> [https://perma.cc/TCV7-FSTQ] (discussing a former owner's decision to sell the team rather than address issues of racism).

169. See Shani, *supra* note 67 (discussing the extent of the power that Beitar's fans have over club signings and operation).

linked his desire to buy the club with his desire to see a Beitar Jerusalem free of racism. While Hogeg mostly sought to achieve this end through litigious means, his willingness to hold individuals accountable for racist behavior was cause for optimism. With support from the Knesset, FIFA, and the IFA, Hogeg would not have been left with a single indirect avenue (the court system) towards progress. Rather, via open communication and diversity of action, the stakeholders could have promoted long-term change in a more efficient and comprehensive manner.

Hogeg has already engaged the club in utilizing the sort of preventative and disciplinary measures prescribed by ECRI General Policy Recommendation No. 12. As the Šimunić case illustrates, identification of discriminatory behavior can be highly contextual and often requires distinct background knowledge.<sup>170</sup> Via Hogeg's directive, Beitar has been successful in identifying and adequately dealing with racist incidents on the sporting ground.<sup>171</sup> Despite protestations by arrested supporters that certain coded language is inoffensive, Jerusalem district and magistrate judges have been strict in interpreting such language.<sup>172</sup> Indeed, Hogeg had based his entire strategy to eradicate racial discrimination from Beitar's stands on the cooperation of local police and the municipal courts. Thus, from a disciplinary perspective, the Hogeg framework is nearly in line with the Policy Recommendation.

And yet, there is still work to be done in terms of self-regulatory and awareness-raising measures. Hogeg has acknowledged as much and had expressed a desire to sign the first Arab player to Beitar's squad.<sup>173</sup> In his signing of Ali Mohamed, a Nigerian–Christian football player with a Muslim-sounding name, Hogeg had already displayed the courage necessary to go against the heinous wishes of Beitar supporters.<sup>174</sup> Moreover, he has publicly cited Mohamed's first goal for the club and the subsequent roar of approval from the stands as his accomplishment as owner.<sup>175</sup>

If there is another owner willing to finish the project that Hogeg has started, they must seek to work in tandem with the IFA and its partner organizations. This way, rather than present these initiatives as the devices of

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170. See *supra* notes 38–47 and accompanying text.

171. See, e.g., Simon Griver, *Beitar Jerusalem Hails a Year Free of Racist Chanting in the Stands*, JEWISH CHRONICLE (Jan. 1, 2019, 10:52 AM), <https://www.thejc.com/news/israel/beitar-jerusalem-football-club-hails-a-year-free-of-racist-chanting-in-the-stands-1.477861> [https://perma.cc/XSE4-QFMH] (noting the elimination of the organized “death to Arabs” chant by Beitar fans in 2018); *Kicking Racism Off the Soccer Field*, *supra* note 155 (discussing a drop in racism at Beitar games and giving credit to Hogeg).

172. See, e.g., *supra* notes 89–93 and accompanying text.

173. See Capstick, *supra* note 122 (discussing Hogeg's willingness to make an offer to an Arab Israeli if he could help the team win and a previous attempt to sign an Arab Israeli).

174. Schwartz & Masters, *supra* note 68.

175. See *supra* note 122 and accompanying text.

one wealthy outsider at odds with the wishes of the supporters, the owner can present a unified front of Israeli stakeholders seeking to educate and promote equality through non-disciplinary means.

*7. Athletes and Coaches.*—As the saying goes, athletes are people first and athletes second. As people, Beitar players are bound by the laws of the relevant jurisdiction and, in the case of Israel, are subject to legislation that regulates hate speech to a certain extent. Furthermore, as particularly famous people within their communities, athletes, whether they like it or not, are role models for many in society and, in particular, the youth. While Beitar athletes should not be required to be activists, they can play a role in ensuring that human dignity is not trampled on. The minimum that players can do is abstain from engaging with or encouraging racial discrimination. For the most part, this has been the case at Beitar. At the same time, players can aid Beitar by reporting racist behavior when it occurs so that proper action can be taken. Finally, because of their outsized effect on the supporters, Beitar athletes are in a unique position to effect change by their words and actions. Public statements to the effect that Beitar should sign Arab players would be a big step in normalizing the idea for supporters. While it may be too much to demand progressive activism, when it does happen, it should be publicized and celebrated.

Coaches are in a similar position as players. They share a public-facing role and what they may lack in the role-model department, they make up for in the consequentiality of their decision making. As history suggests, a Beitar coach who voices a willingness not only to field but to start an Arab player would likely face fierce resistance, at first. Still, despite the racist tendencies of some Beitar supporters, at the end of the day, most fans want to see their team win. If starting players like Ali Mohamed or a newly signed Arab player helps Beitar achieve football glory on the domestic and international stages, the coach will be praised. Moreover, coaches tend to have more sway within the club than all but the most celebrated players. With the support of ownership and the IFA, a Beitar coach would likely be able to enact positive change not only within the squad, but possibly in the stands as well.

*8. Supporters' Organizations.*—As the racism demonstrated by many Beitar supporters is the cause for this inquiry, it is difficult to ascertain how best to fit them within the stakeholder network of communication and responsibility. Of course, the supporters and their organizations cannot be ignored. Their love and enthusiasm is what makes sporting events such a unique experience. And yet, their racism is what tarnishes sport and society. ECRI General Policy Recommendation No. 12 suggests the creation or modification of supporters' charters to include anti-racism clauses, which set out the club's obligations to its supporters and the supporters' obligations

towards the club and clearly define each party's rights and duties.<sup>176</sup> In the recent past, ownership and the controversial supporters do not seem to have engaged in any form of direct communication. Rather, Hogege would make statements to the media, which, in turn, were left to typically ungenerous interpretation by the fans. Or Hogege would prosecute fans, the act of which brought a certain clarity, but did not leave room for conversation. At the very least, this recommendation seeks an avenue for cross-stakeholder communication and division of responsibility. Whether or not the existence or modification of such charters would lead to any progress is a question best left to speculation. What is important at this stage is opening up channels of communication and mediation.

Furthermore, through these charters, ownership would have the ability to incentivize individual members and entire supporters' organizations to engage in positive behavior and report racist incidents. To illustrate, following a string of racist incidents, La Familia was essentially decertified as a supporter organization and stripped of its right to sell its own Beitar-related merchandise at Teddy Stadium.<sup>177</sup> While it may be difficult to imagine a certifying charter having an outsized effect on the most infamous supporter organization, it is not difficult to imagine the "silent majority" of less radical supporter organizations being swayed by its benefits. Such charters may include further incentives related to seating assignments or, conversely, on the punitive spectrum, the wholesale ban of members of violative organizations from attending football matches. While the latter seems extreme, the existence of such charters as the basis for action allows stakeholders to understand each other more clearly and to adjust their behavior accordingly.

9. *The Media.*—Identifying the proper role of the Israeli media within this framework is tricky for the reasons discussed in Part II. Israeli media is largely a partisan affair, and various outlets have strong allegiances to both club and party. At the same time, however, nearly every mainstream outlet has voiced concern about the racist elements at Beitar. While the media's motivation to portray racist incidents may stem more from its desire to attract viewership than a benevolent desire to raise awareness of racism, the media has a positive role to play. In addition to its ability to draw attention to the occurrence of racist incidents at Teddy Stadium, the media should be encouraged to highlight initiatives by the club to combat racism and promote equality. To accomplish this, the club must be willing to grant the media access to the games themselves and to club officials who are willing to discuss anti-racism initiatives.

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176. ECRI General Policy Recommendation No. 12, *supra* note 34, at 6, 21.

177. Zeitchik, *supra* note 119.

10. *Sponsors.*—By the time of this writing, the issue of Beitar sponsorship had undergone a sea change. Upon Moshe Hogege's arrival and professed desire to change the racist image of the club, sponsors had started coming back to Beitar.<sup>178</sup> With Hogege now gone, the question of who is willing to financially support Beitar is entirely up in the air.<sup>179</sup> Sponsors considering whether or not to attach their names to Beitar's brand should consider the role that they might play in directly or indirectly supporting racism. To ensure positive association with a reformed Beitar, sponsors should not only seek to put their name on the jersey or in the stands, but should also take an active approach to supporting owner and league initiatives to eradicate racism. As sponsors, they have a unique ability to highlight the accomplishments of individual players. Thus, if and when an Arab player signs with Beitar, sponsors should not shy away from celebrating the milestone and the player's accomplishments. Rather, sponsors ought to take this opportunity to promote the progress made by the club on the pitch and in the arena of human rights.

### Conclusion

Some may reasonably ask whether it is the responsibility of stakeholders in sport to police forms of discriminatory expression or "fix" racism. No matter the answer, countries and sports clubs across the globe face this question at an increasingly frequent rate. At the time of this writing, for example, both the Mexican national team and Liverpool Football Club face backlash over multiple instances of antigay chants among their supporters.<sup>180</sup>

This issue is not limited to world football and has found particular expression in the United States. Multiple Major League Baseball players have come forward and recounted consistent experiences of being called racial epithets by fans in arguably the sport's most famous ballpark.<sup>181</sup> The National Basketball Association has a long and undisturbed history of fan-related racism stretching from Kareem Abdul-Jabbar's heyday to this past

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178. *Id.*

179. Cashman, *supra* note 152.

180. *FIFA Reduces Penalty on Mexico for Anti-Gay Chants at Games*, USA TODAY (Aug. 25, 2021, 7:09 PM), <https://www.usatoday.com/story/sports/soccer/2021/08/25/fifa-reduces-penalty-on-mexico-for-anti-gay-chants-at-games/118470536/> [<https://perma.cc/3JCE-MENJ>]; *Liverpool Condemn Anti-Gay Chants Aimed at Chelsea*, ESPN (Aug. 28, 2021), <https://www.espn.com/soccer/liverpool-engliverpool/story/4464128/liverpool-condemn-anti-gay-chants-aimed-at-chelsea> [<https://perma.cc/TA47-SL65>].

181. Joon Lee, *Committed to Promoting Change at Fenway Park, Red Sox Say Torii Hunter's Comments on Racism in Boston Are 'Real,'* ESPN (June 10, 2020), [https://www.espn.com/mlb/story/\\_/id/29294392/committed-promoting-change-fenway-park-red-sox-say-torii-hunter-comments-racism-boston-real](https://www.espn.com/mlb/story/_/id/29294392/committed-promoting-change-fenway-park-red-sox-say-torii-hunter-comments-racism-boston-real) [<https://perma.cc/7C9D-8BEU>].

year's playoffs.<sup>182</sup> It is clear that the problem is systemic and not limited to one team, sport, or country. Systemic problems require systemic solutions, and many countries, including Israel, have not only a moral burden but a legal obligation to begin to identify them.

Anti-Arab racism did not begin and does not end with Beitar Jerusalem. In Israel, however, where Beitar symbolizes an incendiary flashpoint in the greater Arab–Israeli conflict, dealing with instances of racism should not be left to the club alone. On the other hand, the legislature and court systems can only do so much. To satisfy its moral and legal obligations, Israel and Beitar must work together and enlist a broad coalition of stakeholders in the fight against racism.

To the end of promoting proactive, disciplinary, and awareness-generating measures, communication and division of responsibility are crucial. In Moshe Hogeg, Israel had a willing partner to begin the process of building mutual respect between Israelis and Arabs on a uniquely public platform. Hogeg's struggle to eliminate racism at Beitar is less a reflection of his dedication than a lesson in how necessary it is to attack this seemingly intractable disease from multiple angles. Through the creation of a broad coalition and a clear division of responsibility, stakeholders can put themselves in a strong position to address not only individual instances of racism but structural ones as well. If these stakeholders can find a way to turn Beitar around, there should be optimism that Israel can find original ways to address institutional racism within its society and to promote mutual respect with its Arab neighbors. "I see myself as an Arab Jew," Hogeg said. "They say 'Yalla.' This is the most symbolic thing for me."<sup>183</sup>

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182. Etan Thomas, *The Ugliness of NBA Fans Attacking Players*, UNDEFEATED (May 28, 2021), <https://theundefeated.com/features/the-ugliness-of-nba-fans-attacking-players/> [<https://perma.cc/W7U4-3ZJ8>].

183. Halbfinger, *supra* note 123. Yalla, Arabic for "let's go," forms the imperative of Beitar's rallying cry "Yalla Beitar!" *Id.*