Arbitration CAS 2019/A/6388 Karim Keramuddin v. Fédération Internationale de Football Association (FIFA), award of 14 July 2020

Panel: Prof. Luigi Fumagalli (Italy), President; The Hon. Michael Beloff QC (United Kingdom); Mr José María Alonso Puig (Spain)

Football
Violation of the FIFA Code of Ethics
Hearing of anonymous witnesses and fundamental right to a fair trial
Right to be heard and to a fair hearing and de novo hearing
Assessment of the evidence
Lack of protection, respect or safeguard (violation of articles 23 para. 1 FCE)
Sexual harassment (violation of articles 23 para. 4 FCE)
Threats and promises of advantages (violation of articles 23 para. 5 FCE)
Abuse of position (violation of article 25 FCE)
Proportionality of the sanction

1. **As a matter of principle, the hearing of "anonymous" witnesses is not *per se* prohibited as running against the fundamental right to a fair trial, as recognized by the European Convention on Human Rights (ECHR, Article 6) and the Swiss Constitution (art. 29(2)). As a result, when evidence is offered by means of anonymous witness statements, the right to be heard and to a fair trial is affected, but anonymous witnesses may still be admitted without violating such right if the circumstances so warrant and provided that certain strict conditions are met. In this respect, cross-examination should be ensured through "audiovisual protection" and by an in-depth check of the identity and the reputation of the anonymous witness by the court.The anonymity of the witnesses is necessary to avoid a risk of retaliation by the party they are testifying against if their identities were known. The extension of certain deadlines imposed under the CAS Code may also counterbalance the limitations placed on the right to check the identity of the witnesses.**

2. **Under Article R44.2 of the CAS Code, it is a party's responsibility to make itself and its witnesses available for the hearing. In this respect, a party fails to exploit the opportunity to make its case by failing to be present at the hearing despite the fact that the hearing date was set by the panel in agreement with the parties and while being given the right to attend the hearing in person or through telephone or video-conference. Furthermore, allowing post-hearing video-recorded examination of the witnesses would violate the applicable rules to the proceeding, in particular Article R51 of the CAS Code. Indeed, under Swiss law, the right to produce evidence must be exercised timely i.e. before the closing of the hearing and according to the applicable formal rules i.e. the authenticity of the recording and the ability to cross-examine the witnesses should be guaranteed. In any event, the appeals arbitration proceeding**

rectifies any alleged procedural violations committed by the previous instance, because the CAS panel is hearing the case *de novo*.

3. **There is no reason to doubt the credibility and reliability of similar witnesses' depositions where there is no satisfying evidence that the witnesses had personal undisclosed reasons to accuse a football official of violations of the FIFA Code of Ethics (FCE) or that they concocted and coordinated their stories. Moreover, if an anonymous witness statement is insufficient on its own to convict an individual, the fact that there is not only *one* anonymous witness statement on file but *five* separate, coherent, consistent and reliable witness statements from anonymous witnesses who were subject to cross-examination is relevant. Furthermore, a document supporting witnesses' depositions before the CAS issued from the office of the attorney general of the relevant country, can be admitted as additional evidence.**

4. **Under Article 23, para. 1 FCE, any football official has the duty to protect, respect and safeguard the integrity and personal dignity of others. It is without a doubt that by verbally and sexually assaulting and abusing four players and by raping another player, a football official fails to uphold the principles of protection and safety embedded in that provision.**

5. **Based on the common meaning of "sexual harassment" in the English language, it is without question that a football official sexually harasses players, both verbally and/or physically, by inappropriately talking to them, sexually assaulting and abusing them and even raping one.**

6. **Under Article 23, para. 5 FCE, a football official has a duty to refrain from threating, coercing or making promises of advantages. A football official violates this provision by pointing a gun at a player after having raped her and threatening to fatally shoot her in the head if she does not keep quiet about the incident. Additionally, he violates this provision by offering another player sporting and financial rewards if she gives in to his sexual advances and threatening to fire her if she does not.**

7. **By using his position of president of a national football federation and, more specifically, the players' sporting and financial dependency on him to try to obtain sexual favors or simply to get the players to meet him personally in his offices so that he is in the position to sexually harass and abuse them, a football official takes advantage of his position for private aims or gains and thus violates Article 25 FCE.**

8. **Abusing one's position to sexually harass, abuse and even rape is of the most serious, illegal, and immoral kind and, as such, there is an obvious and substantial need to deter similar misconduct in the future from any FIFA officials. It is an offence that is disgraceful and which cannot be tolerated from any official, let alone the president of a national federation, who bears the responsibility to set a proper example for the federation's employees, the others individuals affiliated thereto, and more generally to all those involved in the world of football. If lifetime bans from football-related activity and fines of CHF 1,000,000 have been imposed on officials for offences related to**

bribery, corruption and match-fixing, the same sanction – being the maximum allowable under the FIFA regulations – is certainly proportionate for a case of unprecedented gravity such as abusing one's position to sexually harass, abuse and rape.

I. INTRODUCTION

1. This appeal is brought by Mr Keramuddin Karim against a decision of the Adjudicatory Chamber of the FIFA Ethics Committee taken on 8 June 2019 (hereinafter the "Appealed Decision"), which held that Mr Karim violated Articles 23 (*"Protection of physical and mental integrity"*) and 25 (*"Abuse of position"*) of the FIFA Code of Ethics, 2018 edition (hereinafter the "FCE"), and sanctioned him with a lifetime ban from taking part in any football-related activity at national and international level (administrative, sports or any other) and a fine of CHF 1,000,000.

II. THE PARTIES

2. The Appellant, Mr Karim, is an Afghan national who was the President of the Afghanistan Football Federation (the "AFF") from 2004 until December 2018, when FIFA imposed on him a provisional suspension from all football-related activity. He was also as a member of the Organizing Committee for the FIFA U-20 World Cup from 2012 to 2014.

3. The Respondent, FIFA, is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the world governing body of international football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and football players worldwide.

4. The Appellant and the Respondent are collectively referred to as the "Parties".

III. BACKGROUND

5. Below is a summary of the main relevant facts, as submitted by the Parties in their written pleadings and adduced at the hearing. Additional facts may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

6. On 30 November 2018, the Chairperson of the Investigatory Chamber (the "IC") of the FIFA Ethics Committee (the "FIFA Ethics Committee") sent a letter to the AFF in which she:

   i. informed the AFF that the IC, pursuant to Article 59 FCE, had initiated a preliminary

investigation into serious allegations of *"severe mental, physical, sexual and equal rights-abuse of the female players by male Afghan Football Federation-official"* made public by "Hummel" (the main sponsor of the AFF women's national team); and

ii. requested the AFF to provide the IC with all relevant information in its possession related to the matter.

7. On the same day, the Guardian newspaper published an article entitled *"FIFA examining claims of sexual and physical abuse of Afghanistan women's team"*. It reported that FIFA was examining allegations that the Appellant, among other AFF officials, had sexually and physically abused players from the AFF women's national team.

8. On 9 December 2018, the Attorney General of Afghanistan, Mr Mohammad Farid Hamidi, informed FIFA that his office (the "AGO") had, a few days before, commenced an investigation into the matter and had provisionally suspended the Appellant, along with Mr Mohammad Yousuf Kargar (the AFF vice president), Mr Sayed Alireza Aghazada (the AFF general secretary), Mr Mohammad Nader Alemi (head of the goalkeeping committee) and Mr Abdul Saboor Walizanda (head of the communications department with the provincial federations).

9. On 10 December 2018, the IC interviewed five players – Player A, B, C, D and E – by Skype or telephone.

10. On 12 December 2018, the IC provisionally suspended the Appellant for 90 days. The Appellant appealed this provisional suspension.

11. On 8 January 2019, the Adjudicatory Chamber of the FIFA Ethics Committee dismissed the appeal and confirmed the provisional suspension.

12. On 8 March 2019, the IC extended the provisional suspension for additional 90 days.

13. On 27 December 2018, the Guardian newspaper published a second article entitled *"'There was blood everywhere': the abuse case against the Afghan FA president"*. The article reported that several players of the AFF women's national team had allegedly been sexually and physically abused by the Appellant. In support, it quoted declarations made to the Guardian anonymously by the alleged victims.

14. On 23 April 2019, the IC informed the Appellant that, based on a preliminary investigation, it had determined that there was a *prima facie* case that he had committed violations of Articles 13, 15 and 23 FCE and, accordingly, that it had opened a formal investigation against him pursuant to Articles 60.1 and 61.1 FCE.

15. On 7 May 2019, the Chairperson of the IC issued her final report in the investigation, concluding that the Appellant had indeed committed violations of Articles 13 and 15 FCE, of Article 23 paras. 1, 3, 4, and of Article 5 FCE (hereinafter the "Final Report"). Annexed to this Final Report were excerpts from the interviews of Players A, B, C, D and E conducted by the FIFA Ethics Committee (hereinafter the " FIFA Interview Excerpts").

16. On 13 May 2019, the lawyer who until that date had represented the Appellant in the FIFA proceeding informed FIFA that he was withdrawing himself as the Appellant's legal counsel in the case.

17. On 14 May 2019, in view of the fact that the Appellant no longer had legal representation and in accordance with Article 41.3 of the FCE (under which decisions and other documents intended for persons bound by the FCE may be addressed to the person directly and/or to the association concerned on condition that it forwards the documents to the intended recipient), the Chairperson of the Adjudicatory Chamber of FIFA notified the Appellant (via the AFF) of the opening of an adjudicatory proceeding against him.

18. On 8 June 2019, the Adjudicatory Chamber of the FIFA Ethics Committee issued the Appealed Decision, ordering as follows:

> *"1. Mr Keramuudin Karim (sic) is found guilty of infringement of art. 23 (Protection of physical and mental integrity) and art. 25 (Abuse of position) of the FIFA Code of Ethics.*
>
> *2. Mr Keramuudin Karim (sic) is hereby banned from taking part in any kind of football-related activity at national and international level (administrative, sports or any other) for life as of notification of the present decision, in accordance with Article 7 lit. j) of the FIFA Code of Ethics in conjunction with Article 22 of the FIFA Disciplinary Code.*
>
> *3. Mr Keramuudin Karim (sic) shall pay a fine in the amount of CHF 1,000,000 within 30 days of notification of the present decision. (…)*
>
> *4. Mr Keramuudin Karim (sic) shall pay costs of these proceedings in the amount of CHF 1,000 within 30 days of notification of the present decision, which shall be paid according to the modalities stipulated under point 23 above.*
>
> *5. Mr Keramuudin Karim (sic) shall bear his own legal costs and other costs incurred in connection with the present proceedings. (…)".*

19. On 6 July 2019, the AGO issued an "accusation letter" against the Appellant and other AFF officials (hereinafter the "Accusation Letter") in which it concluded *inter alia* – based on the testimony of Players A, B, C and D to the AGO, as well as that of Witnesses G, H and I, AFF officials, AFF employees, and Ms Khalida Popal (a former head of the AFF women's football department) – that the Appellant had raped Player C and Ms Neda Hussaini (another female football player) and *"intend[ed] and start[ed] to rape"* Players A, B, D and a player nicknamed "Rahima", in violation of the penal code of Afghanistan. In this regard, the Appellant's counsel confirmed during the CAS hearing that there is currently an arrest warrant out in Afghanistan for the Appellant.

20. On 8 July 2019, FIFA notified the grounds of the Appealed Decision to the Appellant.

IV. THE PROCEEDING BEFORE THE COURT OF ARBITRATION FOR SPORT

A. The Appeal and the Written Submissions

21. On 24 July 2019, the Appellant filed with the Court of Arbitration for Sport ("CAS") a

Statement of Appeal, in accordance with Articles R47 and R48 of the Code of Sport-related Arbitration (the "CAS Code"), to challenge the Appealed Decision.

22. On 10 August 2019, pursuant to Article R51 of the CAS Code, the Appellant filed his Appeal Brief. In the Appeal Brief, the Appellant named, in addition to himself, the following witnesses: Ms Behishta Naimi, Ms Laily Armghan, Ms Shogofa Naimi, Mr Abdul Saboor Walisada, Mr Mohammad Nader Alme, and Mr Mohammad Hanif Sediqi (nicknamed "Rustam"), as well as a "Mrs Sitora", whom he believed to be Player C. The Appellant did not, in accordance with Article R51 of the CAS Code, submit a summary of his witnesses' expected depositions along with his Appeal Brief.

23. On 29 August 2019, the Appellant requested that the Panel order the Respondent to disclose all communications it had with its intended witnesses, as well as with third parties regarding said witnesses, including Ms Popal and the international organizations involved in the case. In support of his request, the Appellant argued that: *"… in this case the decision solely relies up to now on anonymous statements and w(h)ere the background of the witnesses and their statements is a black box. For a fully informed decision and reliance on a possible statement (of the witnesses) it is necessary to know everything about the why and how the statements suddenly came into the light at the end of 2018 and what possible motives were"*. It was the Appellant's asserted belief that before and during the FIFA Ethics Committee investigation, the Respondent's witnesses were offered money and assistance in obtaining visas and asylum in exchange for their testimony.

24. On 9 September 2019, the Respondent objected to the Appellant's request, because in its view: (i) the request was inadmissible since the Appellant had failed to include it in his Appeal Brief, (ii) the request failed to meet the standards required by Article R44.3 of the CAS Code, since it was overly broad and vague and the documents sought were irrelevant, and (iii) the Respondent planned to request the Panel in its Answer to have the witnesses remain anonymous during the CAS proceedings.

25. On 24 September 2019, the Panel held that the Appellant's request was premature at that stage, because the Panel did not yet know with certainty what would be the Respondent's evidentiary requests. However, the Panel assured the Appellant that he would have the opportunity to state his case with respect to the procedural aspects of the hearing at a later time.

26. On 10 October 2019, in accordance with Article R55 of the CAS Code, the Respondent filed its Answer, along with exhibits which included anonymous witness statements from Players A, B, C, D and F. In its Answer, the Respondent made the following evidentiary requests for the Panel:

    i. to hear its witnesses anonymously;

    ii. to consider their witnesses' statements as evidence in chief, so that the witnesses would only be subject to cross-examination by the Appellant and to questions from the Panel, in order to *"avoid further traumatization … by making them re-live the details of what can only be qualified as a horrendous experience …"*;

iii. to order the Appellant to provide prior to the hearing the questions he intended to ask the Respondent's witnesses during cross-examination, in order to ensure that the questions were limited to factual issues and not aimed at identifying the protected witnesses.

27. The Respondent also offered in the Answer to provide the Panel with unredacted versions of the witnesses' statements and of the Accusation Letter, *i.e.* to provide the names of the alleged victims and other persons referenced in the Accusation Letter, not to be disclosed to the Appellant.

28. On 15 October 2019, the Appellant requested to be permitted a second round of written submissions to deal with the Respondent's request for anonymous witnesses and reliance on the Accusation Letter as evidence.

29. On 18 October 2019, the Respondent objected to the Appellant's request.

30. On 21 October 2019, the Panel granted the Appellant's request to be permitted a second round of written submissions.

31. On 3 November 2019, the Appellant filed his Reply.

32. On 4 November 2019, the Appellant requested to file new evidence – a witness statement from Mr Sediqi.

33. On 6 November 2019, the Respondent informed the CAS that it did not object to the admissibility of the Appellant's new evidence, while reserving its right to challenge its relevance and authenticity.

34. On 18 November 2019, the Respondent filed its Rejoinder.

35. On 22 November 2019, the Panel informed the Parties that, after examining their arguments on the issue of protected witnesses, it had decided to grant the Respondent's request to hear witnesses A to I anonymously, but also to grant the Appellant the opportunity to cross-examine them. The Panel declared that, subject to any objection raised by one of the Parties on or before 27 November 2019, the Parties would be deemed to have agreed that the protected witnesses would:

i. be in Switzerland for their testimony;

ii. stay in a location chosen by the Respondent in Switzerland (other than the hearing's location) to be notified to the CAS Court Office (which would give this information to the Panel only);

iii. have with them their respective passports;

iv. be accompanied during their respective depositions by a CAS counsel, who would identify them and ensure that their declarations were made alone and in a proper way (*i.e.*, that nobody in the room influence them or give them directions);

v. be accompanied if necessary during their respective depositions by an independent and impartial interpreter;

vi. not be accompanied in the protected witnesses hearing room by anyone else apart from a CAS-Counsel, the above-mentioned interpreter and, if necessary a technical assistant; and

vii. use a voice scrambler when testifying.

36. In that same letter of 22 November 2019, noting the Appellant's request for CAS assistance in obtaining visas for him and his witnesses to attend the hearing, the Panel requested the Appellant to provide the CAS Court Office with a copy of the passports of the individuals who would require requesting a visa.

37. On 26 November 2019, the Appellant declared that it had *"little trust in the identification proposed by the panel"* and that the Appellant had to have *"certainty that not only the current identity will be checked but also their the Afghan identities and their membership of the AFF and the specific team (sic)"*. The Appellant also requested that his brother be permitted to attend the hearing.

38. On 27 November 2019, in agreement with the Parties, the CAS fixed the hearing date for 11 and 12 February 2020.

39. On the same day, the Respondent reiterated the requests already submitted in its Answer to (i) have the witnesses' statements considered as evidence in chief, so that the witnesses be only subject to cross-examination and questions by the Panel, and (ii) order the Appellant to provide prior to the hearing his intended questions for the Respondent's witnesses (see *supra* at para. 26). With regard to the latter, the Respondent added that it would accept that such questions only be provided to the Panel for its *in camera* review.

40. On 29 November 2019, the Appellant objected to the Respondent's aforementioned requests:

"The panel had already limited the right to question the witnesses in a far-reaching manner with a motivation that didn't not (sic) comply with the right to a fair trial ex article 6 EVRM. Appellant at this moment has to accept those limitations but will not accept further limitations of his rights to a fair trial. Appellant already has to put his faith in the sound judgement and the power of the panel and the cooperation of the respondent to check the whole background of the witnesses as asked on his behalf. Not only the current name of the witnesses but also their identity in Afghanistan and their position as a player in the AFF. With all respect for the panel and bearing in mind the important and principal task that lies before the panel appellant will not supply any written questions beforehand and will not accept further limitations on his right ex 6 EVRM to challenge the statements of the witnesses".

41. In this same letter of 29 November 2019, the Appellant also asked the Panel whether some of his witnesses could testify by Skype, in particular the female players who *"live in Afghanistan and are not allowed to travel abroad without their husbands"*, and Mr Sediqi, since it would be *"very difficult (for him) to travel to Switzerland"*.

42. On the same day, the Respondent requested (i) to know in what capacity the Appellant's brother sought to attend the hearing, and (ii) the Panel to ensure that only the Appellant's

counsel, and not the Appellant or his brother, address the witnesses at the hearing. As to the identification of the witnesses prior to their testimony, the Respondent submitted that verification of their passports was sufficient to confirm their identity and that, in any case, their status at the AFF and the teams they played for had never been contested by the Parties, which made the Appellant's request belated and inappropriate.

43. In a second letter of the Appellant on 29 November 2019, the Appellant declared that his witnesses wanted to attend the hearing in person and not through Skype. It forwarded the passports of Mr Sediqi, Ms Armghan, Ms Behishta Naimi, Ms Farkhonda Yousufi, and indicated that he was still waiting for the passports of Mr Walisada and Mr Nader Alme.

44. On 2 December 2019, the Respondent requested that the Panel declare the testimony of Ms Yousufi inadmissible, because the Appellant had not indicated her as a witness in his Statement of Appeal or Appeal Brief. The Respondent also objected to the deposition of all of the Appellant's witnesses except Mr Sediqi, in particular of Ms Armghan and Ms Behishta Naimi, because the Appellant had failed to submit witness statements from them.

45. On 2 December 2019, the Appellant asserted that Ms Yousufi was mistakenly referred to as "Shogufa" in the Appeal Brief.

46. On 3 December 2019, the CAS Court Office, on behalf of the President of the Panel, issued an order of procedure (the "Order of Procedure"), which was accepted and countersigned by the Appellant and the Respondent on 16 and 11 December 2019, respectively. The Order of Procedure confirmed, *inter alia*, the CAS jurisdiction to hear the appeal brought by the Appellant.

47. On 3 December 2019, in addition, the Panel invited the Appellant:

    i. to clarify the role of his brother at the hearing;

    ii. to specify the circumstances on which his proposed witnesses were expected to testify; and

    iii. to provide the Panel only with a list of questions he intended to ask the Respondent's witnesses (hereinafter the "List of Questions to the Respondent's Witnesses"). In this regard, the Panel assured the Appellant that he would be able to ask additional questions at the hearing, provided that they would not be translated/posed to the witnesses until the Panel could confirm that they were not aimed at identifying the witnesses or might have the effect of so doing.

48. In that same letter, the Panel also requested the Respondent to have its witnesses prepared to be identified by the Panel and the CAS counsel, also with respect to their "Afghan identify" and affiliation to the AFF.

49. On 6 December 2019, in view of the Appellant's silence on the matter within the prescribed deadline, the Panel granted the Appellant additional time to clarify the role of his brother at the hearing.

50. On the same day, the Appellant's counsel explained that he was in Suriname with limited Internet access and needed more time to respond to the letters he had received from the CAS Court Office. In response, the CAS granted the Appellant an extension to reply in accordance with Article R32 of the CAS Code.

51. On 13 December 2019, the Appellant specified the circumstances on which his proposed witnesses were expected to testify. More specifically, he declared as follows:

"As already stated in the letter of 2 December the female players will testify about the relationship between the team and mr Karim in general and will rebuff the statement of the respondent that mr Karim had a scheme of luring female players to his office or a secret room, offering them money etc. They will state that in the past colleague players left the team and left Afghanistan by human traffic[k]ers to Greece, Turk[e]y and India to get a better life and that a player never fled Afghanistan because of threats by mr Karim. They will furthermore testify about the intern relationship within the team, the quest of mrs Popal and its background and the fact that no one has ever heard anything about abuse within the AFF. They furthermore are able to testify about the allegations by respondent and the attorney general about the training camp in Jordan.

Mr Rostam was the personal secretary of mr Karim for year and will testify about the handling of the case by the attorney general and the police in Afghanistan.

Mr Walisanda was the team manager and mr Nadir was responsible for the goalkeepers during the training camp in Jordan and they will testify about the general organization of the team within the aff, their and the relation between the players and mr Karim. They will also testify about the handling of the case by the attorney general.

Mr Karim wants to take his brother with him because mr Karim doesn't speak any English".

52. On 13 December and 16 December 2019, as requested by the Appellant, the CAS Court Office sent letters to the Swiss Cooperation Office SDC and Consular Agency in Kabul, Afghanistan requesting that visas be issued to the Appellant, Mr Ahmad Jahed Karim (the Appellant's brother), Mr Sediqi, Ms Armghan, Ms Shogofa Naimi, Ms Yousufi, and Ms Behishta Naimi enabling them to travel to Switzerland and attend the hearing (hereinafter "Invitation Letters"). It forwarded these letters to the Appellant.

53. On 20 December 2019, the CAS Court Office informed the Appellant that:

i. his brother was authorized by the Panel to attend the hearing, subject to a clarification about whether he would be acting as an interpreter for the Appellant's personal benefit only;

ii. the summary of the expected depositions of the Appellant's witnesses was admitted by the Panel to the file and that, therefore, they would be allowed to render their depositions during the hearing;

iii. he was again invited to submit to the Panel the List of Questions to the Respondent's Witnesses by 10 January 2020, re-assuring him that the Panel would not disclose it to the Respondent.

54. On 23 December 2019, per requested by the Appellant, the CAS Court Office sent an Invitation Letter to the Swiss Cooperation Office SDC and Consular Agency in Kabul,

Afghanistan for Mr Nader Alme. The CAS Court Office reminded the Appellant that the CAS would not follow up on the status of the visa application process before the Embassy or Consular Agency and that it was the sole responsibility of the person requesting the visa to do so.

55. On 10 January 2020, the Appellant indicated that *"all the witnesses have received a visum [sic] for Pakistan"* except for him. The Appellant requested that a new Invitation Letter be sent to the Swiss consulate in Dushanbe, Tajikistan. The Appellant also indicated that he needed more time to prepare the List of Questions to the Respondent's Witnesses and requested an extension for that purpose until 20 January 2020. On the same day, the CAS Court Office sent the requested Invitation Letter and granted the Appellant an extension for him to file the List of Questions to the Respondent's Witnesses.

56. On 21 January 2020, the CAS Court Office noted that the Appellant had not submitted the List of Questions to the Respondent's Witnesses within the prescribed deadline and informed him that the Panel had decided to grant him a final deadline of 24 January 2020 to do so, failing which it would consider that he had no questions to ask them.

57. On 23 January 2020, the Appellant informed the CAS Court Office that his witnesses were then in Islamabad, Pakistan in order to apply for visa but had been *"told that the application would proceed only on 11 February"*. The Appellant requested that the CAS Court Office send another letter in an attempt to expedite their visa applications. The Appellant also explained that he missed the deadline to file the List of Questions to the Respondent's Witnesses because he was sick and that he would submit it as soon as possible and at the latest on 24 January 2020.

58. On the very same day, the CAS Court Office sent a letter to the Swiss Cooperation Office SDC and Consular Agency in Kabul, Afghanistan, referencing his previous letters of 13, 16 and 23 December 2019 and requesting that it treat the relevant visa applications in an expedited matter to the extent possible, given that the hearing was scheduled for 11 and 12 February 2020. The CAS Court Office forwarded this letter to the Appellant and advised him that the support for the visa applications of the parties and/or witnesses was limited to the issuance of the Invitation Letters.

59. On 28 January 2020, the Panel noted that the Appellant had not submitted the List of Questions to the Respondent's Witnesses by the final deadline of 24 January 2020. Considering that the list was necessary for the Panel to ensure that the questions did not have the effect of identifying the protected witnesses and that it needed the list well in advance of the hearing in order to be in the position to evaluate for such purposes all factual elements of the dispute, the Panel further extended the deadline to file the list until 31 January 2020.

60. On 30 January 2020, the Appellant finally submitted to the Panel the List of Questions to the Respondent's Witnesses. The questions were directed to Players A, B, C, D, and F, as well as Witnesses G and I.

61. On 3 February 2020, the Appellant requested the postponement of the hearing as he and his witnesses would not be able to attend it in person on the set date of 11 and 12 February 2020.

The Appellant's counsel explained that *"As I understand the witnesses are still waiting in Pakistan for their vis[as] and mr Karim himself in Ta[ji]kistan. It is a bureaucratic hell and the embassy in Pakistan stated that the applicants there will probably receive their pas[s]ports first on 13 februar[y]. Mr karims application is still pending"*.

62. On the same day, the Respondent objected to the postponement of the hearing.

63. On 4 February 2020, the CAS Court Office informed the Parties that the Panel had decided to confirm the hearing for 11 and 12 February 2020, due to the considerable time spent and expense incurred already to arrange it, and invited the Appellant to organize his and his witnesses' participation by video-conference or telephone or to specify the detailed reasons (other than poor Internet or telephone connections) why he or his witnesses would, if that were the case, be unavailable to participate.

64. On 5 February 2020, the Appellant's counsel sent a letter to the CAS Court Office in which he declared that:

i. the Appellant's witnesses had been waiting in Islamabad, Pakistan since mid-January for their Swiss visa applications to be processed and that they were stuck there until they could get their passports back, which would be at the earliest on 13 February 2020;

ii. due to the seriousness of the accusations against him and the fine of CHF 1,000,000, the Appellant clearly wanted to attend, present and defend his case in person and was *"doing everything within his limited powers to realize that right"*.

65. In the same letter, the Appellant added that he was

"already confronted by the panel with an unprecedented and unmotivated decision that the accusing witnesses are granted the right to absolute anonymity which already constitutes a breach of his right to a fair trial. To this situation must now be added that his right to attend the hearing and his right to proper legal aid in this case is frustrated by again a decision without factual arguments only that activities and costs were made by FIFA and the CAS. It must be obvious that I cannot properly represent and replace my client in a case where I have to attend a hearing in Lausanne to cross examine anonymous witnesses on behalf of my client while he resides in Tajikistan and I have to present his witnesses who are residing in Islamabad. This all through a[n] internet connection that especially in Afghanistan, Pakistan and Tajikistan is not reliable. It is common knowledge that a reliable connection is only possible in the early hours. This ruling would be acceptable if client had a proper trial and hearing in first instance, if he could be blamed for stalling the procedure or that he clearly wants to give up his right to attend his trial. But that is not the case. Appellant started with the application immediately after the invitation letters were sen[t], he comes from country torn by war violence, travelled to another country with its own visa requirements and in this country has to apply for a second visa to come to Switzerland. That also counts for the witnesses for which he is paying up to now all the costs for coming to Lausanne. It is unknown what activity and what costs on the part of Fifa and CAS justify the denial of the right of appellant to attend the hearing in person in Lausanne and to present his witnesses. It is clear that they cannot be compared to the activities and costs appellant has made and that will now be useless. With all respect but as usual FIFA stated without any specification that it had problems to gather the witnesses to come to Lausanne. It is clear that all of them live in Europe in a country with at least a connection with Ryanair or

Easyflight and the cost of a flight of € 200,00. Also the members of the panel live in Europe. FIFA was invited already to specify the stated stress on the side of the witnesses but again failed to do so. The Panel cannot seriously state that these unspecified costs and activities justify denial of a proper court date and a denial of the ambition and the fundamental right of appellant to attend his trial in person and his willingness to present his witnesses to testify in person. For me it is clear that I cannot represent and replace my client during the planned court hearing and to safeguard his rights to a fair trial. With all due respect coming to Lausanne in this situation would mean that I will not properly represent my client anymore but I will only act as an argument that client received a fair trial. I wil[l] and cannot cooperate with that".

66. On 6 February 2020, the Swiss immigration authorities informed the CAS Court Office that the visa applications of the witnesses proposed by the Appellant were rejected and that the Appellant himself had not filed any visa application before the Swiss authorities. The CAS Court Office informed the Appellant of the communications sent by the Swiss immigration authorities and advised him that, in light of them, the hearing on 11 and 12 February 2020 would be maintained. The CAS Court Office invited the Appellant to make his best efforts to have himself and his witnesses participate by Skype or telephone and assured him that the Panel would hear at the hearing any submission the Appellant would want to make, in order to guarantee the Appellant's right to a fair trial. Finally, the CAS Court Office declared that the Appellant's counsel should attend the hearing to make submissions that he deemed convenient and to put questions to the Respondent's witnesses.

67. On 7 February 2020, the Appellant's counsel explained that it was *"not possible [for the Appellant] to apply for visa in Pakistan because his visa for Pakistan was rejected"*, but that *"immediately after the letter to the consulate to Tajikistan he applied for a visa to that country"*, which *"was not yet received"*. The Appellant's counsel also acknowledged that the visas for the Appellant's witnesses were rejected and that he had received a copy of the rejection letters that day. The Appellant's counsel requested (i) to participate in the hearing through a video-link so that he could arrange his own separate connection with the Appellant and consult him during the hearing in real-time, and (ii) a clear, permanent and undisturbed view of the courtroom during the hearing. The Appellant's counsel also informed that he would try to arrange a safe place in Kabul, Afghanistan with a steady Internet connection for the Appellant's witnesses to testify from.

68. On 10 February 2020, the CAS Court Office informed the Appellant's counsel that he was authorized to attend the hearing by video and requested his Skype contact details. In response, the Appellant's counsel provided his Skype contact details and requested to know when the Appellant's witnesses would testify as they *"just arrived from Pakistan"* to Kabul, Afghanistan and they had to set up a location from which to testify. The Appellant's counsel informed the CAS that he had attempted to connect with them, but that, frustratingly, the poor connections were ineffective.

69. The CAS Court Office replied that same day that the Appellant's witnesses would be heard on 12 February 2020 (*i.e.*, on Day 2 of the hearing).

B. The Hearing

70. On 11 and 12 February 2020, a hearing was held at the CAS headquarters in Lausanne,

Switzerland.

71. In addition to the Panel, Mr Francisco A. Larios, *ad hoc* clerk, and Mr Antonio de Quesada, CAS Head of Arbitration, the following people were in attendance:

- For the Appellant: Mr I.P. Sigmond (Counsel for Appellant) who appeared by Skype on Day 1 of the hearing and in person on Day 2;
- For the Respondent: Mr Miguel Liétard Fernández-Palacios, FIFA Director of Litigation, and Ms Marta Ruiz-Ayúcar (Senior Legal Counsel) who appeared in person on both hearing days. Mr Jaime Cambreleng Contreras, FIFA Head of Litigation, attended the hearing in person on Day 2.

72. At the very outset of the hearing, the Panel discussed some preliminary issues. First, the Panel noted, with regard to examination of the Respondent's protected witnesses on Day 1 of the hearing, that:

- the witnesses were all in a secret location in Switzerland accompanied by (i) a CAS counsel entrusted by the Panel to ensure that their testimony would be given directly and without any undue interference from third parties, and (ii) a psychologist in case of need;
- a FIFA representative (Mr Jaime Cambreleng Contreras) and a lawyer appointed by the witnesses to defend their rights were also present at that secret location, but not in the testimony room;
- only the witnesses would be entitled to answer questions and only FIFA's counsel in the CAS hearing room would be entitled to object to the questions posed by the Appellant;
- the witnesses would testify using a voice scrambler to protect their identity;
- the Panel had reviewed the List of Questions to the Respondent's Witnesses and determined that some of the questions had the effect of identifying the witnesses. Therefore, to the extent possible, the questions would have to be modified or, otherwise, disallowed altogether; and
- the questions posed to the witnesses should be related to the facts and should not be calculated, even if unintentionally, to identify the witnesses.

73. The Appellant's counsel agreed to having the Respondent's witnesses examined on Day 1. However, he requested that, after their examination, the hearing be adjourned to a later date. More specifically, the Appellant sought to adjourn the hearing until the Appellant (who had allegedly been denied a visa to Pakistan, but had an application pending for Tajikistan) had an opportunity to apply for and obtain a visa to Switzerland from Tajikistan to appear in person before the CAS, and until the Appellant's witnesses could travel from Afghanistan to another country such as Pakistan or Tajikistan, where they would have a better telephone or Internet connection which would enable them to testify. In support of his request, the Appellant:

i. explained that the day before he had attempted to connect with the Appellant and his

witnesses via phone and Internet, but that it was practically impossible to do so;

ii. argued that if no adjournment was granted and the Appellant and his witnesses were unable to testify on Day 2 of the hearing due to the technical issues, the Appellant's right to be heard under Article 6(1) of the European Convention on Human Rights (the "ECHR") would be violated.

74. The Respondent objected to the Appellant's request to postpone the hearing because:

i. the Appellant had not submitted any evidence that he had applied for a visa to Switzerland or provided any guarantees that he could obtain such a visa. Considering that the Appellant had an arrest warrant pending on him, the Respondent did not see how he could obtain a visa to Switzerland from any country; and

ii. the hearing had been set since 27 November 2019 with ample time for the Appellant to apply for a visa and try to organize his physical presence at the hearing, or to find a solution for him to participate via phone or video-conference.

75. The Panel indicated that it would decide on the Appellant's request in the course of Day 1 of the hearing.

76. The Respondent then clarified, upon questioning by Panel, that (i) Players A, B, C, D and F were all available for examination, (ii) witnesses G and I were not available for examination and, in fact, had never been called as formal witnesses, and (iii) Dr Brock Chrisholm was available to testify, if the Appellant wished to cross-examine him on the content of his expert report. The Appellant declined to cross-examine Dr Chrisholm, noting that he had not personally examined the protected witnesses and only spoke generally on trauma.

77. Additionally, at the outset of the hearing, the Panel also dealt with a request made minutes before the start of the hearing by the Appellant's counsel to admit to the record and show to Player B during her testimony a video of Ms Shaikhmiri Farishta in which, according to the Appellant's counsel, she declared that Player B's testimony was false. The Respondent objected to the introduction of the video because Ms Farishta had not been called as a witness. The Appellant's counsel replied that the video was mentioned in the List of Questions to the Respondent's Witnesses. After hearing the Parties' positions on the matter, the Panel held inadmissible the video of Mr Farishta, because it was made in a language not understandable by the Panel and without a translation into English, the language of the arbitration. Nevertheless, it informed the Appellant's counsel that should he wish, he could, without showing the actual video, make reference to Ms Farishta's declarations when cross-examining Player B.

78. After dealing with the preliminary issues, the hearing proceeded with the examination of the Respondent's protected witnesses, starting from Player A.

79. The Appellant's counsel was connected to the CAS hearing room through Skype. He was not connected on a separate line with the Appellant to consult him in real time as he had indicated on 7 February 2020 he would do (see *supra* at para. 67). As for the Respondent's witnesses and their interpreter, they were connected to the CAS hearing room through a phone call placed

on speaker.

80. Immediately upon starting the examination of Player A, the Appellant's counsel complained that he could not hear the witness or the interpreter, and suggested that the interpreter be heard without the voice scrambler. The Panel rejected this request, because the voice scrambler was necessary to protect the identity of the witnesses and it was not technically possible to only have the interpreter off the voice scrambler. However, even though it noted that the technical problem had been created by the Appellant's counsel absence from the hearing room, with a view of accommodating the Appellant's need, but also protecting the identity of the witnesses, the Panel suggested to solve the issue by muting the telephone from the side of the protected witnesses whenever they spoke and only unmuting it for the interpreter to speak. The Appellant's counsel agreed (with no objection by the Respondent provided that no recording of the hearing be made other than that done by CAS). The questioning proceeded in this manner, but the Appellant's counsel continued to have problems hearing the interpreter. To further accommodate the Appellant's need, the President of the Panel acted as an intermediary by relaying the Appellant's questions to the interpreter and accurately reporting the witnesses' responses. After the testimony of Player B, the Panel and Parties agreed (once again to further accommodate the Appellant) that the hearing room, the testimony room, and the Appellant's counsel all be connected using a Swisscom telephone conference, while keeping the Appellant's counsel on muted Skype so that he would have a visual of the hearing room. This method of proceeding worked perfectly for the remainder of the witnesses.

81. After a short break, and before turning to the examination of Player C, the Panel announced its decision on the Appellant's request to adjourn Day 2 of the hearing, denying it. The Panel first noted that the hearing had been announced in November 2019, which gave the Appellant ample time to make the necessary arrangements to ensure that he and his witness would be able to testify. With that in mind, the Panel urged the Appellant's counsel to make the Appellant and his witnesses available for examination on Day 2 of the hearing. The Panel saw no other alternative, considering that (i) it would not be possible for the witnesses to travel to Switzerland in any foreseeable future, since their visas had been denied, and (ii) there was no indication that the telecommunications problems would be solved, at least in the near future. The Panel suggested that the Appellant and his witnesses could testify by telephone using a fixed landline. This would be at no cost to the witnesses, as CAS would make calls. The Panel also requested that, if possible, the Appellant's counsel came to the CAS headquarters for Day 2 of the hearing. In addition, with the cooperation of FIFA, the parties managed to obtain the services of FIFA's interpreter for Day 2 of the hearing. Finally on this point, the Panel indicated that, irrespective of whether the Appellant's witnesses testified on Day 2, the Parties would be expected to submit their closing statements on that day.

82. During the questioning of the Respondent's witnesses, the Appellant's counsel asked a number of questions related to the date and times of the alleged incidents. For example, with relation to Player A, the Appellant's counsel asked what type of letter she was allegedly asked to pick up from the Appellant's office, by whom and why was she allegedly ordered to pick up the letter, and on what day she allegedly went to pick it up. The Appellant's counsel argued that the purpose of the questions was to allow the Appellant to verify the stories of the

Respondent's witnesses, test their credibility, and allow the Appellant to provide proper alibis. The Panel disallowed those questions, because the answers to them could lead to the identification of the protected witnesses.

83. The Panel also disallowed questions about the alleged sexual acts (*e.g.*, the touching, hugging, kissing, intercourse, etc.) because: (i) the questions would make the alleged victims relive an experience which, if true, are indisputably of a highly sensitive and traumatic nature, and (ii) each of the witnesses confirmed their witness statements at the beginning of their testimony and having to repeat the alleged sexual acts in their entirety would not advance anything.

84. The Appellant's counsel also asked open-ended questions on the non-sexual parts of the alleged incidents with the aim of having the witnesses retell their entire stores, part by part (*e.g.*, *"what happened next?"*, *"what happened when she [Player C] regained consciousness?"*, etc.). The Panel generally disallowed those questions, reasoning that the line of questions was simply aimed at *creating* an inconsistency (rather than *finding* or *exploring* an inconsistency) in the hope that the witnesses would say something different in their oral testimony to what they had previously stated in their various declarations before the FIFA Ethics Committee, the AGO and the CAS. On the other hand, the Panel allowed all specific questions on the non-sexual details related to the incidents, such as on the layout of the building/rooms, the fingerprint locks, and like matters.

85. At the close of Day 1 of the hearing, the Appellant requested that Day 2 of the hearing be made public pursuant to Article R57 of the CAS Code. The Panel denied the Appellant's request for a public hearing for two reasons. First, the request was made untimely (*i.e.*, not until the middle of the hearing) and, as a consequence, would not give the CAS sufficient time to prepare and organize a public hearing. Second, in accordance with Article R57 of the CAS Code, publicity would prejudice the interests of justice by creating an imbalance between the treatment of Respondent and Appellant's cases. Moreover even if the Parties had no privacy interests of their own to protect, protection of the witnesses' private lives required such denial. The right to a fair trial under Article 6 ECHR does not preclude protection of rights under Article 8 of the ECHR (*"Right to respect for private and family life"*), which itself extends to witnesses (see further paragraph 123 below).

86. After Day 1 of the hearing, the Appellant's counsel sent an email in which he requested that (i) Day 2 of the hearing be livestreamed online, and (ii) Mr Walisanda's name be kept confidential so that he did not risk losing his job with the AFF which he had just reacquired after his suspension was lifted.

87. The Panel dealt with these requests at the outset of the Day 2 of the hearing. As to the first request, the Panel reminded the Appellant that it had already ruled at the close of Day 1 of the hearing not to hold a public hearing. For good measure, the Panel added that not holding a public hearing would also be in the interest of protecting the Appellant's witness, Mr Walisanda, whose participation as a witness in the hearing the Appellant sought to keep confidential. As to the second request, the Panel took note of it and reminded the Appellant that (i) CAS proceedings are confidential by nature pursuant to Article R59 of the CAS Code except for the award, which is public, and (ii) sensitive information contained in the award

may, at the request of the Parties, be redacted prior to its publication.

88. The Panel then proceeded to clarify which witnesses the Appellant intended to have testify that day. The Appellant informed the Panel that Mr Karim, Ms Behishta Naimi, Ms Armghan, Ms Shogofa Naimi, Mr Walisada, Mr Nader Alme, Ms Farkhonda Yousufi and Mr Sediqi were set to testify. Upon hearing this list, FIFA maintained its objection of 2 December 2019 to have Ms Yousufi testify, as her name did not appear in the Appellant's Statement of Appeal or Appeal Brief and until a letter of 29 November 2019. The Panel ruled to allow Mr Yousufi the opportunity to testify, given that she would be heard on the same circumstances as the players.

89. The Panel then moved on to the questioning of the Appellant and his witnesses. At the request of the Appellant's counsel, the Panel began with the Appellant. Unfortunately, despite repeated attempts, it was not possible to establish a connection with the Appellant by Skype or telephone. The Panel then tried to connect with the Appellant's witnesses, who were all together in Kabul accompanied by an assistant of Mr Sigmund. However, despite repeated attempts this too was not possible by Skype or telephone due to a poor connection.

90. At this point, the Appellant's counsel reiterated his request to adjourn the hearing until the Appellant could travel to Switzerland and the proper examination of the Appellant and witnesses could be conducted. The Appellant's counsel explained that the witnesses could testify from Pakistan where the Internet and phone connections are better.

91. The Panel rejected the Appellant's request for an adjournment and ruled that it would move on with closing statements. The Panel reiterated that an adjournment would not solve the problem at hand, as there was no sign that the Appellant or his witnesses could obtain visas to enter Switzerland or that the communication issues would be solved in the near future. The Panel added that the CAS hearing was announced back in November 2019 with ample time for the Appellant to make the necessary arrangements for him and his witnesses to testify. In this respect, the Panel noted that:

i. the visa applications (to Switzerland or to another country, in which the Internet or phone connections could be of better quality) could have been filed earlier in order to have the decision of the immigration authorities earlier with more time to make alternative plans; and

ii. the Appellant never applied for a visa to Switzerland (because he could not even obtain a visa to another country from which to apply for a Swiss visa).

92. The Respondent then proposed that closing statements be made and that, after the hearing, the Appellant be allowed to file a final written declaration. When asked by the Panel what he thought about this proposal, the Appellant's counsel answered that, while he would agree to filing a final declaration of the Appellant, he insisted that the witnesses must still be heard.

93. After a break prior to the Parties' closing statements, with time to consult his client and the witnesses, the Appellant's counsel explained that this is an exceptional case which requires expectational measures and thus proposed that (i) the Appellant be allowed to submit a final

statement by video recording, and (ii) the Appellant's witnesses be examined by the Appellant's counsel in a post-hearing video recording, after which the Parties would have the opportunity comment on in post-hearing briefs. FIFA accepted the first proposal but objected to the second. Noting the exceptional nature of the case, the Panel indicated that it would consider the Appellant's requests carefully and that it would communicate its decision on the matter after the hearing.

94. At the close of the hearing, the Panel took note of the Appellant's procedural objection to the anonymity of the protected witnesses and of his request to have his witnesses testify through a post-hearing video recording. It also took note of FIFA's confirmation that it was satisfied with the manner in which the Panel conducted the hearing and that it had for its part no procedural objections.

95. On 28 February 2020, the CAS Court Office informed the Parties that the Panel had decided, for reasons that would be provided in the final award, to (i) authorize the Appellant to file within 20 days a video declaration subtitled into English, but (ii) reject the Appellant's request to submit a post-hearing video-recorded examination of his witnesses followed by post-hearing briefs. Those reasons are stated in this Award *infra* at para. 139 *et seq*.

96. On 20 and 27 March 2020, and 2 April 2020, the CAS then granted the Appellant extensions that he had requested for the filing of his video declaration. When granting the extensions, the CAS reminded the Appellant that his request to submit a post-hearing video recorded examination of his witnesses had been rejected.

97. On 3 April 2020, the Appellant indicated that three "witness statements" could be downloaded from the Appellant's YouTube account.

98. On 8 April 2020, the CAS informed the Appellant that the Panel would not log in to the Appellant's personal YouTube account and invited the Appellant to provide by 14 April 2020 a link allowing direct access to his video declaration. The Appellant did not answer this letter or provide the requested link.

99. As a result, on 15 April 2020, the CAS again requested the Appellant to provide the link. This letter also went unanswered and the Appellant did not provide the link.

100. Consequently, on 24 April 2020, the CAS gave the Appellant a final deadline until 30 April 2020 to provide his video declaration and informed him the Panel had decided that it would no longer authorize him to submit the declaration and would proceed with the award if he failed to file it on time.

101. On 4 May 2020, not having received the video declaration from the Appellant or any further communication related thereto, the CAS Court Office informed the Appellant that he would no longer be allowed to submit any declaration and that the Panel would proceed with the award.

V. SUMMARY OF THE PARTIES' SUBMISSIONS

A. The Appellant

102. The Appellant requests the following relief:

"Mr karim respectfully requests that the CAS sets aside the decision passed by the FIFA ethics committee where:

a. Mr Karim was found guilty of infringement if [sic] art 23 of the FIFA Code of Ethics.

b. Was banned from taking parting in any kind of football related activity etc.

c. Has to pay a fine of chf 1.000,000,00.

d. Has to pay the costs of the proceedings

e. Had to bear his onw [sic] legal and other costs

Mr karim wants the decissions [sic] to be annulled and that FIFA has to pay for the costs of this procedure".

103. In support of his requests for relief, the Appellant denies all accusations that he sexually harassed, abused and raped players of the AFF women's national team, and denies the existence of a "secret room" in the old AFF headquarters in which he allegedly engaged in such conduct. In more detail, the Appellant submits the following:

a. FIFA failed to provide sufficient evidence to meet its burden of proving that the Appellant sexually harassed, abused and raped players of the AFF women's national team. In particular:

   i. FIFA failed to provide any of the specific dates on which the alleged offenses supposedly occurred. The timeline of the alleged incidents is necessary for the Appellant to be able to properly counter the accusations and provide alibis;

   ii. FIFA failed to provide any proof that the "secret room" in the old AFF headquarters exists (*e.g.*, a picture or a video). In this respect, FIFA failed to search the building for the "secret room" and, instead, it merely relied on (i) an excerpt of the testimony of an unidentified AFF official, without presenting the full transcript of his testimony or calling him as a witness in the FIFA Ethics Committee proceeding or before CAS, and (ii) the Accusation Letter, which only contained excerpts of the players' witness statements prepared by Ms Popal and which was issued without the Appellant having the opportunity to question the witnesses or to study the file on which the Accusation Letter was based (a file of more than 600 pages of unknown content sent by the President of Afghanistan to the AGO). The evidence before the Panel actually proves that no "secret room" existed. First, no such room was found in the search of the old AFF headquarters conducted on 3 December 2018 by the Afghanistan police and by the *Tolonews* reporter. Second, it is evident – from the hand-drawing submitted by the Appellant in the present arbitration, as well as the screenshot of a video taken during the *Tolonews* reporter's search – that it was impossible to have a "secret room" adjacent to the Appellant's office, given the layout of that office;

iii. FIFA has merely provided excerpts of the alleged victims' witness statements and not the entire transcript;

iv. FIFA's witnesses are not reliable or credible because:

- Their declarations are affected by important inaccuracies. First, the alleged victims refer to a "secret room" in the old AFF headquarters. However, such a room did not exist and, in any case, it could not have been the location of any alleged sexual abuses, since the AFF moved out of that building in 2015 and none of the alleged victims claims that the alleged abuses occurred before that move. Second, the alleged victims refer to fingerprint locks. It is true that the new AFF headquarters has such locks on several doors. However, they are placed on the outside of the doors only, meaning that the doors can always be opened from the inside by turning the standard door handle. Third, the alleged victims claim that the Appellant withheld player salaries, fired players and labelled them as lesbians for refusing his alleged sexual advances. However, the Appellant did not have any power in his capacity as the AFF President in relation to the players' salaries or their positions on the national team. There is also no proof that the Appellant ever labelled any of alleged victims as lesbians. In fact, the alleged victims have not indicated how, when and in front of whom they were labelled as lesbians by the Appellant and, moreover, did not explain how being labelled a lesbian represents a social stigma in Afghanistan. What really happened was that, during a training camp in Jordan in February 2018, female players did not respect traditional clothing customs, which resulted in a diplomatic disaster that prompted the Appellant to suspend Messrs Walisanda and Alme and to require the players to sign a contract under which they agreed to respect the aforementioned customs. The players who did not sign the contract were dismissed from the women's national team, such as Ms Popal and Ms Shabnam Mobarez; they were not, as FIFA suggests, branded as lesbians and dismissed for that reason.
- Their depositions present many important inconsistencies if compared to their witness statements to the FIFA Ethics Committee and the Guardian.
- Their depositions lack sufficient detail (*e.g.*, the dates on which the alleged offenses were committed, what type of gun the Appellant allegedly pointed at Player C's head, etc.).
- Their depositions are contradicted by the fact that (i) the Appellant's health was poor and he did not have the sexual energy or physical power to attack or rape a fit and trained football player, and (ii) he always respected the players as if they were his own daughters.

v. The Guardian articles are unreliable because the reporters never spoke directly with the players and instead relied solely on written statements prepared by Ms Popal, and the Appellant did not have the opportunity to defend himself before they were published. Moreover, the articles cannot be considered as supporting evidence and do not make the alleged victims' depositions before the FIFA

Ethics Committee or the CAS any more trustworthy, given that they are simply a collection of the same written statements made anonymously to a reporter;

vi. The indictment against the Appellant in Afghanistan cannot be used as evidence that the accused committed the alleged offenses; only a criminal conviction can be used for that purpose;

vii. The fact that the alleged victims obtained asylum is irrelevant to the issue whether the Appellant committed the alleged offences;

b. The Panel must apply a strict fact-finding procedure and focus its attention on whether or not FIFA satisfied its burden of proof. The Panel cannot, as the FIFA Ethics Committee did, allow "emotions" or "feelings" to interfere with that process, or by-pass the rule of law because of any bias against the accused or any need felt to take a tough stance against the abuse of women. Nor can the Panel rely on hearsay, or "tunnel vision".

c. Ms Popal is the mastermind behind the case against the Appellant. In 2017 new elections were held for the AFF Presidency and Mr Haron Popal, backed by the President of Afghanistan (Mr Asraf Ghani), ran for that position. Mr Popal ultimately lost the election to the Appellant, after which Mr Popal tried in vain to *"seize control with his private armed forces"*. Since then, Mr Popal has mounted a smear campaign to eliminate him from office. Ms Popal, a relative of Mr Popal, had led said campaign, feeding the press, the main sponsor of AFF (Hummel), and FIFA, with false statements about the Appellant. Ms Popal searched out players forcibly demanding that they accuse the Appellant of having sexually harassed or assaulted them, supplied the dossier used by the AGO to indict the Appellant in Afghanistan and by the FIFA Ethics Committee to charge him with accusations of sexual abuse and rape, prepared the alleged victims' witness statements and coordinated their stories.

d. From December 2018 until June 2019 Afghanistan state prosecutors conducted an investigation on the Appellant without a lawful indictment and presented its case to the Afghanistan court which concluded that *"up to now"* there are no grounds for further prosecution.

e. The FIFA Ethics Committee and the CAS have violated the Appellant's right to be heard and to a fair trial under Article 6(1) ECHR, in particular by allowing the witnesses to testify anonymously and for convicting the Appellant on the sole basis of those declarations.

B. The Respondent

104. The Respondent requests the following relief:

"… CAS to issue an award on the merits:

(a) rejecting the reliefs sought by the Appellant;

(b) confirming the Appealed Decision;

(c) ordering the Appellant to bear the full costs of these arbitration proceedings; and

(d) ordering the Appellant to make a contribution to FIFA's legal costs".

105. In support of its motions for relief, the Respondent submits the following:

a. The Appellant sexually harassed, abused and raped players of the AFF women's national team between the years of 2013 and 2018 and enabled other AFF officials to commit sexual misconducts by turning a blind eye on them (in particular on sexual misconducts by Messrs Walisanda and Alme during a training camp in Jordan in February 2018). The Appellant had a *modus operandi* of finding a reason to summon the players to his AFF office (*e.g.*, to hand delivery a letter, to pay salary which he had purposely withheld, etc.), and then, once they were there, to touch them inappropriately, and, as the case might be, kiss them without consent, try to undress them, to force himself upon them, and to sexually abuse them. On one occasion (Player C), the Appellant even knocked the player unconscious and raped her as she bled from her injury. If the players rejected his sexual advances, the Appellant would threaten them (the most shocking example of which was Player C, at whom the Appellant pointed a gun and threatened to blow her head off), shunned them from the AFF national team, and labelled them (by spreading rumours) as "lesbians", which is a social stigma in Afghanistan. The Appellant would also make threats to keep the players quiet about his sexual attacks.

b. The incidents occurred in one of two places: (i) in the old AFF building in a "secret room" between the Appellant's office and the garage (this secret room could be accessed from the Appellant's office through a secret sliding door or from the garage through a normal door), and (ii) an office on the upper floor of the new AFF building (this was not a secret room; rather, it was a room for hosting guests which was only accessible with fingerprint authorization).

c. The victims could not come forward in their country because (i) they would be stigmatized by their families and friends, and (ii) the Appellant was a powerful man in Afghanistan who could cause harm to the victims and their loved ones: he was the Chief of Staff in the Ministry of Defence from 2002 to 2004 and the Governor of the Panjshir Province until November 2013, a region whose inhabitants have notoriously fought in the wars against the Soviet Union in the 1980s and the Taliban forces in the early 2000s.

d. The resulting pressure, the unsustainable situation of having been sexually victimized by the Appellant and branded as "lesbians", and the fear of retribution from one of the most powerful men in Afghanistan led at least five victims to flee their country and seek asylum, which they managed to obtain despite the difficulty in being given such protection.

e. The depositions in this case only paint a small – yet clear – picture of the Appellant's actions, and while it is impossible to know the full extent of the Appellant actions, the evidence on file is more than sufficient to prove the existence of at least 5 instances of sexual misconduct (Players A, B, C, D, and F), including two rapes (Player C and Neda Hussaini), as well as the more widespread culture of abuse of women and children at the AFF.

f. The Appellant's conduct is proven by the evidence submitted before the FIFA Ethics Committee, which included: (i) the interviews with several victims (players A, B, C, D, and E) conducted by the IC, (ii) an interview with an AFF official who confirmed the existence of a secret room and that several girls had been raped by the Appellant, (iii) the Afghan public authorities' investigation into a suspension of the Appellant, (iv) the reaction of the international and local institutions and their efforts and success in finding the victims asylum, (v) the fact that Hummel, one of the main sponsors of the AFF, cancelled a sponsorship agreement it had with the federation, and (v) a number of published media articles (more specifically, from the Guardian) which contained statements of the victims describing the Appellant's threats, sexual harassment and attacks (including rape).

g. The Appellant's conduct is also proven by (i) the witness statements and depositions to the CAS of Players A, B, C, D and F, and (ii) an Accusation Letter which was not available to FIFA during the FIFA Ethics Committee proceeding. The Accusation Letter contains excerpts of depositions:

- of Players A, B, C, and D, Witness I, a victim nicknamed "Rahima", and AFF officials (Mr Sediqi, as well as individuals nicknamed "Rangin", "Quaimuddin" and "Khodaidad"), confirming the sexual abuses perpetrated by the Appellant;
- of Mr Sediqi, as well as several AFF officials and employees (including Mohammad Mohsen, Mohammad Naeem Karimi, Ali Jawad Attae, Abdul Razaq Momrak, Farid Mawlawee, Mohammad Yousuf Kargar, Shahab, and Muhammad Ashraf Alam) and cleaners (Najbullah and Muhammad Qasim, Mohammad Yasin), confirming the existence of the "secret room" and that as soon as news broke out about the Appellant's abuses, said room was dismantled and filled with carton boxes with footballs to appear as a storage room;
- of Ms Popal and Witnesses G and H, confirming that the Appellant was aware of and actively enabled other AFF officials to sexually abuse players.

h. Even though the Accusation Letter does not contain witness statements but rather only a summaries of depositions, the Panel should give it significant evidentiary weight, as it comes from a separate investigation that led to the issuance of an arrest warrant against the Appellant.

i. The Appellant's conduct is a clear violation of Articles 23 and 25 FCE and warrants the sanction of a life ban and fine of CHF 1 million.

j. The Appellant bases his appeal on unfounded procedural complaints (such as the anonymity of the victims who testified against him). However, the Appellant's right to be heard and to a fair trial have been fully respected.

k. The Appellant also bases his appeal on the alleged wrong evaluation of the evidence by the FIFA Ethics Committee. However, it is clear that the FIFA Ethics Committee properly took and evaluated the evidence in accordance with the applicable FIFA regulations. Moreover, the victims' depositions are now also supported by other players, who have since come forward to the AGO (some anonymously and others – witnesses G, H and I – not), as well as by AFF officials who have confirmed to the

AGO that a secret room existed and that it was used by the Appellant to carry out the sexual harassment and abuse of players.

VI. JURISDICTION

106. Pursuant to Article R47 of the CAS Code:

"[a]n appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body".

107. Article 82 FCE states that:

"…decisions taken by the adjudicatory chamber are final, subject to appeals lodged with the Court of Arbitration for Sport (CAS) in accordance with the relevant provisions of the FIFA Statutes".

108. The FIFA Statutes then provide, in Article 58, para. 1, that:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS …".

109. The Parties do not dispute the jurisdiction of the CAS and confirmed it by signing the Order of Procedure.

110. It follows that the CAS has jurisdiction to decide the present dispute.

VII. ADMISSIBILITY

111. Article R49 of the CAS Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document".

112. According to Article 58, para. 1 of the FIFA Statues, appeals *"shall be lodged with CAS within 21 days of notification of the decision in question".*

113. FIFA notified the grounds of the Appealed Decision on 8 July 2019. The Appellant then lodged an appeal at CAS on 24 July 2019, *i.e.* within the 21 days allotted under Article 58, para. 1 of the FIFA Statutes. The Statement of Appeal complied with the requirements set by Article R48 of the Code.

114. It follows that the Appellant's appeal is admissible.

VIII. APPLICABLE LAW

115. Article R58 of the CAS Code provides as follows:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

116. Pursuant to Article 57, para. 2 of the FIFA Statutes:

"[t]he provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".

117. By reason of those provisions, the Panel must decide the present dispute in accordance with the FIFA Regulations (in particular, the FCE) and, subsidiarily, Swiss law.

118. As to the edition of the FCE applicable, the Panel observes that Article 3 FCE of the current 2018 edition states the following: *"This Code applies to conduct whenever it occurred, including before the enactment of this Code. An individual may be sanctioned for a breach of this Code only if the relevant conduct contravened the Code applicable at the time it occurred. The sanction may not exceed the maximum sanction available under the then-applicable Code".* In other words, the current FCE automatically applies to conduct occurring before its issuance, so long as (i) said conduct was sanctionable under the FCE in force at the time of the conduct's occurrence with a sanction equal to or more severe than the current applicable sanction, and (ii) the previous edition of the FCE was not more beneficial to the party.

119. With that in mind, the Panel notes that (i) the provisions the Appellant is accused of violating (Articles 23 and 25 FCE of the 2018 edition) have corresponding and equivalent provisions in the 2012 edition of the FCE (at Articles 24 and 13, para. 4, respectively), and (ii) the old provisions are not more beneficial to the Appellant as their application would lead to the same result the Panel reaches in the present Award on the merits. As a result, in accordance with Article 3 FCE and as undisputed by the Parties, the 2018 edition of the FCE is applicable to the present case.

IX. PROCEDURAL MATTERS

A. Anonymity of witnesses

120. During the course of the present CAS arbitration, the Respondent requested that:

i. its witnesses – Players A, B, C, D and F – be heard anonymously in order to protect them and their families from the danger to which they would be exposed if their names were disclosed to the Appellant. In that connection, the Respondent made reference to the threats already received by the victims and to the possible retaliation against them by the Appellant, a powerful man in Afghanistan, as is mentioned in the witness

statements signed by the witnesses;

ii. the witnesses' statements be considered as evidence in chief, so that the witnesses would only be subject to cross-examination by the Appellant and questioning by the Panel. With this request the Respondent sought to avoid that the witnesses relive their traumatic experiences when heard; and

iii. the Appellant be ordered to provide the Panel with the questions he intended to ask the Respondent's witnesses in writing and prior to the hearing, in order to ensure that the line of questioning would be limited to factual issues and not aimed at identifying the witnesses or having that effect. At the same time, the Respondent offered to provide the Panel with the identities of the witnesses and the unredacted versions of both their witness statements and the Accusation Letter, provided that the Panel would not share them with the Appellant (see *supra* at paras. 26 and 39).

121. The Appellant objected to the Respondent's requests, arguing that pursuant to Article 6(1) ECHR he has the right to be heard and is entitled to a fair trial and, as such, must be given the opportunity to confront his accusers. In the Appellant's view, anonymity for the Respondent's witnesses was not warranted because the Respondent failed to prove that the Appellant ever threatened the witnesses or their families. In this respect, the Appellant argued that:

i. the Respondent failed to submit evidence of any threatening statements or hate messages from the Appellant to the witnesses;

ii. the fact that the witnesses received asylum does not prove that the Appellant ever threatened them; and

iii. the witnesses' claim that the disclosure of their identities would subject them to a "potential" threat due to the Appellant's powerful position in the government is not credible, given that all of the witnesses used the same copy-pasted language on this point in their witness statements.

122. On 22 November 2019, the Panel decided to admit to the file the anonymous witness statements and allow the Respondent's witnesses to be heard anonymously, while offering the Appellant the right to cross-examine them (see *supra* at para. 35). Thereafter, on 3 December 2019, the Panel invited the Appellant to submit the list of questions which he intended to ask the protected witnesses so that the Panel could confirm that they were not aimed at identifying witnesses (see *supra* at para. 47). Finally, the witnesses were heard at the hearing, with their names disclosed to the Panel only (and therefore not to the Appellant).

123. The Panel confirms these decisions, and finds, contrary to the Appellant's submissions, that no violation of his fundamental rights can be claimed.

124. Preliminarily, the Panel underlines that, as a matter of principle, the hearing of "anonymous" witnesses is not *per se* prohibited as running against the fundamental right to a fair trial, as recognized by the ECHR (Article 6) and the Swiss Constitution (art. 29(2)).

125. The European Court of Human Rights (the "ECtHR"), in fact, allowed the use of "protected"

or "anonymous" witnesses even in criminal cases (covered also by the far-reaching guarantees set by Article 6(3) of the ECHR), if procedural safeguards are adopted (judgments in Doorson v. The Netherlands, Application No. 20524/92, 26 March 1996; van Mechelen and others v. The Netherlands, Applications No. 21363/93, 21364/93, 21427/93 and 22056/93, 30 October 1997; Krasniki v. Czech Republic, Application No. 51277/99, 28 February 2006; Balta and Demir v. Turkey, Application No. 48628/12, 23 June 2015). In those cases, the ECtHR noted that, strictly speaking, Article 6 of the ECHR does not require that the interests of the witnesses be taken into consideration when considering the fairness of a trial. However, the interests of the witnesses (with regard to their life, liberty and security) may be protected by other provisions of the EHCR (*e.g.*, Article 8). This means that States must organise criminal proceedings in a way that these interests are not unjustifiably put in danger. As a result, in order to verify whether domestic proceedings respected the fundamental rights of all the individuals involved, the relevance of the right to a fair trial implies that the interests of the defence must be balanced against those of the witnesses. In any case, the ECtHR underlined that a conviction cannot be based either solely or to a decisive extent on anonymous statements; the party should not be prevented from testing the witness' reliability, and the evidence derived should be treated with extreme care.

126. In the same way, the Swiss Federal Tribunal (SFT), in a decision dated 2 November 2006 (6S.59/2006, ATF 133 I 33, at § 4), confirmed that anonymous witness statements do not breach the right to a fair trial when such statements support the other evidence provided to the court. According to the Swiss Federal Court, if the applicable procedural code provides for the possibility to prove facts by witness statements, it would infringe the principle of the court's power to assess the evidence if a party was prevented from relying on anonymous witness statements. In support of such conclusion, the SFT referred to the jurisprudence of the ECtHR and noted that the right to be heard and to a fair trial must be ensured through other means, namely by cross-examination through "audiovisual protection" and by an in-depth check of the identity and the reputation of the anonymous witness by the court.

127. As a result, the CAS has also recognized that, when evidence is offered by means of anonymous witness statements, the right to be heard which is guaranteed by Article 6 of the ECHR and Article 29(2) of the Swiss Constitution is affected, but that a panel may still admit anonymous witnesses without violating such right to be heard if the circumstances so warrant and provided that certain strict conditions are met.

128. In such regard, this Panel notes that in the *Pobeda* case, for example, the CAS held that the use of anonymous witnesses, although held admissible, was made subject to strict conditions (CAS 2009/A/1920). Relying on SFT's and ECtHR's jurisprudence, the CAS adopted measures to ensure the right to be heard and to a fair trial of the party opposed to the witnesses' anonymity: the witnesses were heard through "audiovisual protection" and an in-depth check of the identity and the reputation of the anonymous witness by the court was conducted. The panel, in other words, struck a balance between the procedural rights of the party opposed to the witnesses' anonymity, on the one hand, and the necessity to protect the life and personal safety of the witnesses, on the other.

129. Similarly, in the *Contador* case, the CAS held that the use of protected witnesses is subject to

the following strict conditions: (i) that the witnesses motivate their request to remain anonymous in a convincing manner, (ii) that the court has the possibility to see the witnesses, (iii) that the witnesses would concretely face a risk of retaliation by the party they are testifying against if their identities were known, (iv) that the witnesses are questioned by the court itself, which must check their identities and the reliability of their statements, and (v) that the witnesses are cross-examined through an "audiovisual protection system" (see CAS 2011/A/2384 & CAS 2011/A/2386).

130. The Panel further notes that even the Appellant admitted in his Appeal Brief, in line with the *Pobeda* and *Contador* cases, that *"it is a necessary step [to] assess stated existing/potential threats and after that to find a proper balance between the position of witnesses and the right of an accused to cross exam[ine] witnesses"*.

131. In the current case, the Panel finds that all such conditions for the admission and the hearing of protected witnesses were satisfied.

132. The first question is whether the Respondent has proven that the anonymity of the witnesses was necessary.

133. In this regard, the Panel notes that the witnesses are alleged victims of serious crimes, including sexual harassment, assault and rape from an individual with significant political power in Afghanistan, still at large notwithstanding an arrest warrant pending on him, and who had, according to their witness statements (in particular, those of Player C and D), directly threatened their lives (even at gun point). Moreover, the Panel noted that because of their alleged situations, all of the witnesses fled Afghanistan and obtained asylum – a protective status which, generally speaking, is only granted to individuals that demonstrate a legitimate fear of persecution and threat or danger to his or her physical integrity and life. The Panel found this to be sufficient proof that disclosing their identity would create a serious potential threat to the lives and personal safety of the witnesses. Given the circumstances of this case, the Panel had no reasons to ignore those fears and could not disregard the possibility of such threats and the Respondent's assertion that the life and/or the personal safety of the witnesses and their families were at risk.

134. Contrary to the Appellant's submissions, the Panel does not find it extraordinary that the witnesses (young ladies not fluent in English) were assisted by someone in preparing a legal document in a foreign language, a fact which could explain the high similarity of the texts. In any case, all of the witnesses confirmed their declarations at the hearing, even the portions relating to the threats received and the dangers to which they remain subject.

135. In light of the witnesses' interest in keeping their identities anonymous, the Panel found that it could strike a proper balance between the Appellant's right to be heard and to a fair trial and the necessity to protect witnesses' interest. It did so by checking the identity, through a CAS counsel, of the witnesses, and giving the Appellant the opportunity to confront the protected witnesses as required under Article 6(1) ECHR, while placing certain limitations to protect them (see *supra* at para. 35). Indeed, the Panel granted the Appellant the opportunity to directly cross-examine the protected witnesses over the phone, while protecting the

identities of the witnesses by (i) having them use a voice scrambler, and (ii) requiring the Appellant to provide the Panel, in advance of the hearing, the questions he intended to ask the witnesses in order for the Panel to ensure that they were not aimed at, or have even the unintentional effect of, identifying the witnesses, all the while allowing the Appellant to ask additional questions not sent in advance so long as they were not translated/posed until after the Panel had an opportunity to vet them (see *supra* at para. 47). The Panel also sent a CAS counsel to the secret location from which the protected witnesses testified to properly identify them and ensure that they testified without any undue interference from any third party during the cross-examination (see *supra* at para. 35 and 48).

136. At the same time, in order to counterbalance the limitations placed on the Appellant's right to check the identities of the witnesses adduced by the Respondent, the Panel adopted a number of measures "expanding" the Appellant's right to provide evidence to contradict the depositions relied upon in the Appealed Decision.

137. In fact, the Panel extended certain deadlines imposed on the Appellant under the CAS Code. For example, the Appellant failed to file a summary of his witnesses' expected depositions along with its Statement of Appeal or Appeal Brief as required in accordance with Article R51 of the CAS Code, which reads: *"In its written submissions, the Appellant shall specify the name(s) of any witnesses, including a brief summary of their expected testimony … it intends to call and state any other evidentiary measure which it requests. The witness statements, if any, shall be filed together with the appeal brief, unless the President of the Panel decides otherwise"*). However, in order to counterbalance the limitations placed on the Appellant, the Panel granted him the opportunity to file that summary late (the Panel also allowed him to submit witness statements late, but he ultimately chose not to do so). Once filed, the Panel then admitted the summary of his witnesses' expected depositions to the record and allowed the witnesses to testify during the hearing (see *supra* at paras. 46 and 51). Additionally, the Panel twice unilaterally extended the deadline for the Appellant to submit the list of questions he intended to ask the Respondent's witnesses during cross-examination (see *supra* at paras. 56 and 59) before the Appellant finally did so on 30 January 2020 (see *supra* at para. 60). At the hearing, the Panel also granted the Appellant the opportunity to call Ms Farkhonda Yousufi to testify even though he had failed to name her as a witness in his Statement of Appeal or Appeal Brief and to provide a summary of her expected witness testimony (see *supra* at para. 88). Finally, the Panel authorized the Appellant to submit a personal declaration even after the hearing (see *supra* at para. 95).

138. In summary, the Panel finds that the limitations imposed on the Appellant, linked to the fact that he was not disclosed the names of the witnesses adduced by the Respondent, was counterbalanced by the measures adopted by the Panel to protect the fundamental rights of the witnesses and to allow the Appellant to prove his case through his witnesses.

B. Appellant's request for a post-hearing video-recorded declaration and examination of his witnesses

139. On 28 February 2020, the Panel rejected the Appellant's request for a post-hearing video-recorded examination of his witnesses, while granting its request to submit his own video declaration subtitled into English (see *supra* at para. 95). The Panel indicated that it would

provide the reasons for its decision in this Award and, accordingly, it does so in the paragraphs to follow.

140. The Panel rejected the Appellant's request for post-hearing video-recorded examination of his witnesses because:

i. it would essentially be a surrogate for witness statements which, in principle, must be submitted with the Appeal Brief under Article R51 of the CAS Code and thus before the close of the hearing;

ii. in any case, even if the post-hearing video-recorded examinations are considered as more than mere witness statements, *i.e.* as surrogates for in-hearing testimony, the Panel would have no control over the recording process and, in particular, no way of assuring that the videos were taken in "one shot" without editing, which would put into serious question the recordings authenticity. Moreover, the Respondent would not be able to cross-examine the witnesses which would be a violation of its right to be heard and to a fair trial.

141. As to the Appellant's request to submit his own video declaration, the Panel granted it because it would essentially constitute a surrogate for the last word or final statement made at the end of the hearing by the accused in a disciplinary case, on which the counterparty generally does not have right to comment. Moreover, the Respondent did not object to this evidentiary request and, in fact, expressly accepted it (see *supra* at para. 93).

142. In any case, the Panel notes that the Appellant did not file any post-hearing declaration (see *supra* at paras 95 to 101).

C. Unavailability of the Appellant and his witnesses at the hearing

143. At the hearing the Appellant's counsel argued that the Appellant's right to be heard would be violated if the hearing was not adjourned until the Appellant and his witnesses could attend a hearing at the CAS, or until he could make the necessary arrangements for them to testify by video-link or phone, or unless the Panel allowed him to submit a post-hearing video declaration and conduct a post-hearing video-recorded examination of the witnesses.

144. In the Panel's view, the Appellant's right to be heard has not been violated by the decision not to postpone the hearing because of the unavailability of the Appellant and his witnesses on 11 and 12 February 2020 or by the Panel's decision to reject the Appellant's request to submit a post-hearing video-recorded examination of his witnesses.

145. First, it was the Appellant's responsibility under Article R44.2 of the CAS Code (applicable in appeals proceedings on the basis of Article R57) to make himself and his witnesses available for the hearing: *"each party is responsible for the availability … of the witnesses … it has called"*. Nevertheless, the Appellant, despite having more than 11 weeks from the date on which the Panel set the hearing date in agreement with the Parties (*i.e.*, from 27 November 2019 until 11 February 2020), did not make sufficient efforts to make the necessary arrangements to have himself and his witnesses testify in person or remotely using phone or videoconferencing. In

this respect, the Panel notes that according to the Appellant's counsel, the Appellant's witnesses had visas to Pakistan (see *supra* at para. 55) and were present in Islamabad from 23 January 2020 until at least 5 February 2020 waiting for visas (see *supra* at paras. 57 and 64). At that time, the Panel had already (on 4 February 2020) denied the Appellant's request to postpone the hearing (see *supra* at para. 63). The Appellant, however, aware of the communication limitations in Afghanistan (as evidenced, for example, in his letters of 5 February 2020), inexplicably had his witnesses return to Kabul only to then request at the hearing for an adjournment to give them time to return to Pakistan (or to go to Tajikistan) where the telephone and Internet communications were, according to him, better. Not only is this course of action inexplicable, given that the Appellant's witnesses could have stayed in Pakistan for the hearing, but the Panel is of the view that the Appellant did not truly believe that testifying from Pakistan or Tajikistan would solve the issue. Indeed, in the Appellant's letter of 5 February 2020 his counsel affirmed that the *"internet connection … in Afghanistan, Pakistan and Tajikistan is not reliable"*.

146. Second, the absence of the Appellant and his witnesses at the hearing occurred due to circumstances completely beyond the control of the Panel. The Panel gave the Appellant the right to attend the hearing, whether personally or through telephone or video-conference. Moreover, the CAS Court Office, under the instructions of the Panel, fully cooperated in assisting the Appellant to obtain the necessary Swiss visas by sending, immediately upon all of the Appellant's requests, Invitation Letters to the specified consulates (see *e.g. supra* at para. 52, 54, 58). However, despite the CAS' cooperation, the Appellant never even filed a visa application to Switzerland, and his witnesses' visa applications were ultimately rejected by the Swiss immigration authorities (see *supra* at para. 66).

147. Third, there are no indications that in any foreseeable future:

i. the Appellant will be able to obtain a visa to Switzerland. The Appellant's counsel explained that the Appellant planned to request a visa to Switzerland through Tajikistan, since he has been denied a visa to Pakistan. However, the Panel finds that the origin of the visa application would not change the situation, since the Swiss immigration authorities can be reasonably expected to deny any application from the Appellant, given the outstanding arrest warrant issued against him in Afghanistan;

ii. the Appellant's witnesses, whose visa applications the Swiss immigration authorities have already denied, will be able to obtain a visa to Switzerland. In fact, the Appellant's counsel affirmed during the hearing that they would never be able to go to Switzerland or even Europe; and

iii. that the telecommunications from Afghanistan, Pakistan or Tajikistan will improve enough to allow them to testify by phone or video-conference.

148. Fourth, allowing post-hearing video-recorded examination of the witnesses would violate the applicable rules to the proceeding, in particular Article R51 of the CAS Code. As is well-established under Swiss law, the right to produce evidence must be exercised timely and according to the applicable formal rules (see SFT, 7 January 2011, 4A_440/2010; 28 February 2013, 4A_576/2012).

149. In summary the Panel considers that the Appellant's right to a fair hearing was properly respected. The right entitles a person in the Appellant's position to be given a fair opportunity to make his case: it is not violated by the Appellant's failure to exploit that opportunity.

X. MERITS

150. As noted above, the Appellant requests the Panel to set aside the Appealed Decision, which sanctioned him with a lifetime ban from taking part in any football-related activity at national and international level and a fine of CHF 1,000,000 for violations of Articles 23 and 25 FCE. The Respondent, for its part, seeks full confirmation of the Appealed Decision.

151. In view of the Parties' submissions and requests, the Panel must determine whether the Appellant violated Articles 23 and 25 FCE, and, if so, assess the proportionality of the sanction imposed by the FIFA Ethics Committee. For the purposes of such analysis, the Panel finds it necessary that a summary of the findings of fact is made before verifying whether on their basis the Appellant can be found responsible for the violations for which he was sanctioned by the Appealed Decision.

A. Alleged procedural violations in the FIFA Ethics Committee proceeding

152. Before assessing whether the Appellant violated Articles 23 and 25 FCE, however, the Panel must address the Appellant's contention that the FIFA Ethics Committee committed a number of procedural violations, which remain "uncured" by the CAS, including: (i) admitting anonymous witnesses; (ii) allegedly not properly notifying him of the hearing and granting him the opportunity to participate therein; (iii) allegedly not explaining how the identities of the Respondent's witnesses were verified; and (iv) not questioning the witnesses using *"specialised detectives"* to protect the interests of the accused.

153. Article R57 of the CAS Code provides that:

> *"[t]he Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance …".*

154. According to long-standing CAS jurisprudence, pursuant to this provision, a panel in an appeals proceeding hears the case *de novo* and must make an independent determination of the correctness of the parties' submissions on the facts and the merits, without limiting itself to assessing the correctness of the procedure and decision of the first instance (see *e.g.*, CAS 2016/A/4871, at para. 119).

155. As the Appellant's counsel explicitly acknowledged at the hearing, the *de novo* character of an appeals proceeding cures any procedural violations that may have been committed in the first instance (*Idem*). On this topic, CAS jurisprudence (CAS 2009/A/1920 at para. 87, emphasis added) has held:

> *"87. According to article R57 of the Code, the CAS has full power to review the facts and the law. The consequences deriving from this provision are described in the consistent CAS jurisprudence, according to which*

"if the hearing in a given case was insufficient in the first instance (…) the fact is that, as long as there is a possibility of full appeal to the Court of Arbitration for Sport, the deficiency may be cured" (CAS 94/129 award of 23 May 1995, par. 59). Later the CAS has reaffirmed this principle, holding that "the virtue of an appeal system which allows for a rehearing before an appeal body is that issues relating to the fairness of the hearing before the Tribunal of First instance 'fade to the periphery'" (CAS 98/211, award of 7 June 1999, par. 8). More recently, the CAS has further relied on the Swiss Federal Tribunal case law, which held that "any infringement of the right to be heard can be cured when the procedurally flawed decision is followed by a new decision, rendered by an appeal body which had the same power to review the facts and the law as the tribunal of first instance and in front of which the right to be heard had been properly exercised" (CAS 2006/A/1177, award of May 2009, par. 7.3). For another recent case, see for instance, CAS 2008/A/1594 para. 109, "However, as CAS has complete power to review the facts and the law and to rule the case de novo, the procedural deficiencies which affected the procedures before FIFA disciplinary bodies may be cured by virtue of the present arbitration proceedings (see e.g. CAS 2006/A/1175 paras. 61 and 62, CAS 2006/A/1153, para. 53, CAS 2003/O/486, para. 50)". This CAS jurisprudence is actually in line with European Court of Human Rights decisions, which in par. 41 of the Wickramsinghe Case concluded that "even where an adjudicatory body determining disputes over civil rights and obligations does not comply with Article 6 (1) [ECHR] in some respect, no violation of the Convention will be found if the proceedings before that body are subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of Article 6 (1)".

156. As a result, the Panel finds that it is unnecessary to rule on whether the FIFA Ethics Committee committed the procedural violations alleged by the Appellant and therefore makes no finding that any such violations were in fact committed, since, even if any of the Appellant's rights had been infringed upon by FIFA, the *de novo* proceedings before CAS would be deemed to have cured any such infringements.

157. The Appellant, however, disputes this conclusion, by submitting that said alleged procedural violations have not been cured by the CAS, since it allegedly committed procedural violations of its own in this arbitration proceeding.

158. Contrary to the Appellant's position, the Panel finds that in the present CAS arbitration the Panel has fully respected his procedural rights under the CAS Code. It has, for instance, allowed the Appellant to:

i. file written submissions, including a second round of written submissions which the Panel granted at the sole request of the Appellant and which is not generally afforded to parties in CAS appeals proceedings (see *supra* at para. 30);

ii. produce evidentiary documents, including a late summary of his expected witnesses' depositions;

iii. orally plead his case and rebut the Respondent's arguments and evidence; and

iv. call and examine/cross-examine witnesses.

159. Moreover, for the reasons already stated *supra* at paras. 120-148, the Appellant's right to be heard and to a fair trial was not violated by the Panel's decision to admit anonymous witnesses and to not adjourn the hearing or allow for a post-hearing video recorded examination of his

witnesses.

160. To conclude on this issue, the Panel holds that the present appeals arbitration proceeding has rectified any alleged procedural violations committed by the FIFA Ethics Committee, because the Panel is hearing the case *de novo*, making an independent determination on fact and law without affording any deference to the Appealed Decision, and has ensured that the Appellant's rights have been respected in the present arbitration.

B. Burden and standard of proof

161. According to Article 49 FCE (2018 edition) *"[t]he burden of proof regarding breaches of provisions of the Code rests on the Ethics Committee"*. Accordingly, the burden of proving that the Appellant committed a violation of Articles 23 and 25 FCE rests on the Respondent. That said, in accordance with CAS jurisprudence and Swiss law, each party bears the burden of proving the specific facts and allegations on which it relies (CAS 2017/A/5465, at para. 82).

162. As to the standard of proof, Article 48 FCE provides that *"the members of the Ethics Committee shall judge and decide on the basis of their comfortable satisfaction"*. Accordingly, the standard of proof is comfortable satisfaction.

C. Findings of fact

a. The depositions of the witnesses

163. The case revolves heavily around the depositions rendered by the witnesses adduced by the Respondent, alleged victims of the infringements imputed to the Appellant. As a result, in order to give a comprehensive view of the entire evidentiary picture of the case, the Panel will provide extensive excerpts of the relevant portions of the witnesses' declarations.

164. However, before doing so, the Panel finds it proper to note that:

i. Players A, B, C, and D submitted witness statements before the CAS dated 3 October 2019 (hereinafter also "CAS witness statements") containing excerpts from the interviews they had had before the FIFA Ethics Committee on 10 December 2018. As explained by the Respondent at the hearing, the witnesses had not, until time came to prepare their witness statements for the CAS proceedings, reviewed the aforementioned excerpts. When they finally did so, some of them noticed that the excerpts contained certain inaccuracies likely due to poor translation. As a result, the CAS witness statements contain, by way of insertions in brackets, clarifications about said inaccuracies. Those bracketed sentences are, where relevant, mentioned hereinafter in footnotes;

ii. in addition to submitting witness statements, each the Respondent's witnesses testified individually and anonymously at the hearing;

iii. at the outset of their depositions before this Panel, all the witnesses confirmed the content of their respective witness statements and declared that they were made

completely free of any outside pressures, truthfully, without cooperation from the other witnesses, and for no payment, reward, promise of asylum or any sort of benefit from FIFA or any third party;

iv. Players A, B, C and D testified that (i) they contacted FIFA through Ms Popal, (ii) except for Player B[1], they were the ones who initiated contact with Ms Popal, and (iii) except for Player F[2], they were also interviewed by the AGO.

Player A

165. In her witness statement dated 3 October 2019, Player A declared as follows:

"3. The incident involving me and of which I spoke to the FIFA Ethics Committee took place sometime in 2016 in a room in the new building of the AFF, in an office in the upper level. In my statement to the FIFA Ethics Committee on 10 December 2018, I gave a full recollection of the incidents involving Mr Karim, and I hereby confirm having stated to the investigator that:

- *In 2016:*

  "When I got inside, the boss was not in his normal office, he was in another office in the upper level. There is also a snooker table and other furniture. Some flowers and plants. There was a door to the left side, I hadn't seen what was inside that door and normally when I saw the boss I shook hands with him. When I gave him my hand, he held my hand and pressed my hand and he pulled me towards himself". (…)

  "There was a small table in front of us. When he pulled me towards him my leg came into contact with the table. He didn't leave my hand when I gave him to shake it. He pressed it and pulled me towards him with a lot of power. He said come, and I sat next to him and I was trying to get apart and he was coming always towards me".

  'Yes, I said to him you have made a mistake, Mr Keramuddin Karim. I am not such a girl, but he smiled and said to me: you are my friend you have to sit next to me and things like that. I tried to get a distance from him but he made it even with more power and hugged me. Then he tried to kiss me on the lips, I cried, I shouted. He said it is alright, don't make a noise. KK was the person who said so. When I fell down, -interrupted-

  I was on the sofa, I tried to get distance from him, he pulled me once again towards himself and his hands were on my shoulders and he tried to hug me. He wanted to kiss me on the lips I shouted, he said it's alright it's alright keep quiet, I stood up. When I got up, he threw the paper onto my face. I didn't take the paper, I went directly towards the door with the intention to open it. But whatever I did, the door didn't get open but it could only get open through a finger. When I was trying to open the door, he shouted, he said come and take your paper. When I came back towards him and took the paper, he said to me from now on we are no more friends. That was somehow a threat to me. But I didn't pay attention, once I again I went to the door but it didn't open. He called me and he said put your finger on the space where the finger print is recognised. When I did so, the door was opened and I could

[1] Player B was contacted by Ms Popal who told her that she was searching for players who had suffered sexual harassment and abuse by the Appellant, and asked her whether she would be interested in sharing her story with FIFA.
[2] Player F did not come forward until after the FIFA Ethics Committee proceeding and AGO investigation.

get out". (…)

4. *From the above, I wish to clarify that when I arrived to Mr Karim's office, he was in his other office on the upper level, and not in his normal office in the lower level. The discrepancy is likely due to a confusion in the translation.*

5. *After the incident, I was being affected negatively every day and I was transforming to a quiet and sad person. I used to think of the issues every day. I was eventually expelled from AFF after I complained about AFF. Later I found out from a teammate, that Mr Karim had told everyone I was a homosexual. He was the person who stopped my education, sport, and destroyed my human honour that I had among my teammates. Some of my teammates and some of the teams had cut relations with me. I used to hate everyone and I used to find myself helpless. (…)".*

166. At the hearing, Player A declared during questioning *inter alia* that:

- in addition to telling her story to FIFA, she told it to the Guardian. She did so by answering questions that Ms Popal had prepared, which Ms Popal then forwarded to the Guardian. She has since read the Guardian article of 27 December 2018 and confirms that it accurately reports her declarations;
- she went to see the Appellant on the day of the incident to collect a letter as she was instructed to do. She did not provide any further details about this letter as the Panel deemed any questions related thereto inadmissible since they could possibly lead to her identification (see *supra* at para. 82).

167. Player A also testified before the AGO. The Accusation Letter contained the following excerpts from her deposition:

"I participated in a seminar in 2016. … The goal of the seminar was to attract children especially school kids to the sport. At the end of the seminar, I and other participants of the seminar was responsible to (redacted) *I was responsible to prepare and bring* (redacted). *I needed an official letter in order to recruit* (redacted). (Name redacted) *drafted the letter, then I handed it over to Rustam Sediqi, the president's secretary and told him to get the president's signature. In the evening of the same day, Rustam called me and said that yourself must come and take the letter to the president for signature. I asked* (name redacted) *who was also a player to accompany me to the president's office and she went with me. When we wanted to enter the president's office, Rustam stood in front of us and said is this your aunt's house to go in groups. He said only (I) can go in. I had experience of going to the president's office before with other girls when his new office was inaugurated. I tried not to be afraid. I also heard that some girls were attacked in president's office so I was also a little afraid. But I stayed confident and strong and told myself that he can't do anything to me. I entered the office alone. When I knocked his door, he didn't answer. I told myself maybe he is not in the office. I told Rustam that he is not inside. Rustam told me to go in he is there. Rustam opened the door and guided me inside. Keramuddin was sitting on the couch. All the girls who visited Keramuddin Karim used to shake hand with him. I shook hand with him. He pressed my hand so hard then pulled me toward him. The amount of force he used made me to sit beside him. He kept holding my hand. When I wanted to explain him that why I was there (sic), he started talking like (My Darling you are so angry, let's how's (sic) your boobs… I want to enjoy with your body) I realized that he has a bad intention in his head. I tried to free my hand off him and get out of there. He pulled me again so hard, he started kissing my neck and face. When he was holding me I couldn't think freely, he rounded his hand around my back he was trying to kiss me by force. He hold me so hard with his*

other hand in order to kiss me. He tried to touch my breasts but I didn't let him and hit him with my elbow. Keramuddin told me wow you are so strong. Still he was touching me over my clothes. I started crying and told him to stop it. I am not like a girl who you think. I saw that he was so excited that he didn't know what he was doing. When he wanted to take his hand toward my sexual organ, I screamed out loud and said shame on you. I was considering you as my grandfather. I was considered you as a respectful person in my country, but today you showed me your real face. You are wild and animal. Finally, I managed to free myself from him. He cursed so bad and said get lost and take your letter. I was shaking and for some minutes I couldn't move. I couldn't feel my hands. He signed the letter and told me to get lost faster. I didn't stay quiet and I told him I will unveil your real dirty face. When I left his office I turned totally red and I was shaking. When I walked out (name redacted) *was still waiting. She told me what happened. I told him that Mother*Fxxxxx *wanted to sexually abuse me. He thought I am like the other girls to surrender myself to him.* (Name redacted) *told me to go…".*

Player B

168. In her witness statement dated 3 October 2019, Player B declared as follows:

"3. The incident which I relay below, involving Mr Karim, took place sometime end of 2017, in a room in the new building of the AFF, in an office in the upper level. I was a minor years old at the time of the incident.

4. In my statement to the FIFA Ethics Committee on 10 December 2018, I gave a full recollection of the incidents involving Mr Karim, and I hereby confirm having stated to the investigator that:

"That was about 9 or 10 months ago. (…) I was inside of the boss' room and he approached me. He took my hand with force with one of his hands. He said: allow me to have sex with you, or allow me to kiss you wherever I want to kiss you and to do anything I want to do with you, allow me to do so. He said when you have allowed to do so, I will allow you to go to any trip for the national team and he said, your salary will become more. And then I started arguing with him, there was a lot of noise. And I said I don't need your money at all.

Question: (Are you) still playing football?

No, after that matter that the boss said to me to do sex with him, I couldn't continue with the football because no other club wanted to accept me. I don't know, but he has said to all the other clubs, don't take that girl into your team[3]*.*

Question: How did (you) know this?

They were my friends who told me" (…).

5. I wish to add the following to the above statement, in reference to the incident described above, which I also told to the Attorney General's Office in Afghanistan:

- *During part of my time at the AFF, Mr Karim fixed 250 dollars to be my monthly salary.*
- *The incident described above took place at the end of 2017.*

[3] In a bracketed sentence, Player C clarified that *"by clubs he referred to national teams, and he had actually said to me that I couldn't continue to play football because he would tell my teammates (not other clubs) that I was a homosexual".*

- *On the day of the incident, Mr Karim told me that he will increase my salary in one condition: that I should be with him later, and I asked that what he meant. He got closer to me and touched my body and said that 'I want to kiss you and I want to have some pleasure.' I shouted and said that you are a dirty person, and you play with girls' honor. I uttered some other bad words as well.*
- *He said: I can touch you wherever I want to and you cannot stop me.*

6. Sometime after May 2018 (after I had left the AFF), I heard that Mr Karim accused me of homosexuality. This is serious accusation in Afghanistan I could have been arrested. My heart broke. I lost my job, my passion and my honour. (…)".

169. According to the FIFA Interview Excerpts annexed to the Final Report, Player B also testified before the FIFA Ethics Committee that her reason for meeting the Appellant on the day of the incident was to obtain salary owed to her:

"I went to the boss and I said: boss you said 250, you would pay me 250 and you wanted to help with my financial, economic problems, with my personal and university problems. But now I said: you have only given to me 150 and I cannot even pay for the car".

170. At the hearing, Player B declared during questioning *inter alia* that:

- in addition to telling her story to FIFA, she told it to the Guardian through Ms Popal;
- the players' salaries were paid by the AFF accounting department in cash against a receipt;
- national team players would receive a monthly salary of $100 USD. This was her salary until the Appellant hired her to also be an AFF employee and increased her salary by $150 USD per month to total $250 per month;
- in the first month following the new arrangement, she only received $100 USD, and in the second month she only received $150 USD;
- the Appellant threatened her during the incident, by telling her that she would be fired if she rejected his sexual advances; he did not threaten her after the incident;
- she heard about the Appellant accusing her of homosexuality through a close associate of his and through Ms Popal. They told her that she was supposed to go to a training camp in Jordan but that she had been "crossed out" from the list of selected players because she had refused the Appellant's sexual advances and had been accused by him of being a lesbian;
- she quit her job with the AFF at the end of 2017 because she was not getting paid and had been abused sexually and labelled as a lesbian.

171. Player B also testified before the AGO. The Accusation Letter contained the following excerpts from her testimony:

"In the beginning of 2018, I went to the president and complained that why my salary is not being paid because I need the money for my educational expenses. My family cannot afford my educational expenses I have to cover

it myself. The president told me I will raise your salary and put you in all the foreign trips but you have to be very open with me. I asked him what do you mean? He stood up his chair and came closed to me. He sat beside me took my hands and got closer, he touched my body, kissed my neck and said just make love with me. I screamed to him that you are a dirty man. You play with girl's honor and respect. I said some other bad things too. I can touch any party of your body, you can't stop me. He was cuddling when Nawid (the cleaner) entered the room. The President left me and I took the opportunity to escape. I took my scarf and ran away".

Player C

172. In her witness statement dated 3 October 2019, Player C declared as follows:

"2. During the above period, I was a victim of rape (and witness to) sexual assault and abuse by the AFF president, Mr Keramuddin Karim. This incident, involving Mr Karim, took place around January or early 2017, in the old building of the AFF, in a room that was hidden behind the President's office.

3. In my statement to the FIFA Ethics Committee on 10 December 2018, I gave a full recollection of the incident involving Mr Karim, and I hereby confirm having stated to the investigator that:

'I was a player in the national team football and I played. It is clear that the rights of the Afghan girls is not too much. They do not have any right. One day, I needed money and I was obliged to go to the boss of the football federation and I wanted to ask him for the fees for the car, for the expenses. I didn't have enough money to pay for the car to go home. (…)

Then, I went inside of his office and I asked him for help. I said to him I need to pay for a car, I want to get home and I didn't want the other girls to know about it, please help me, I only wanted to get home.

I needed the money and I said I am coming so often to the training, please help and give me the expenses to get home and then I sat down and the boss came and sat down next to me. He put his arms on my shoulders.

Question: Where was this?

Inside of his office, inside of his office.

Question: Was anyone else there?

No, nobody else.

Question: Was the secretary outside?

The secretary was outside. When you go to see the boss, the door gets closed and you can sit down and talk to the boss. He came and sat down next to me and touched me on my shoulders and he said: you see, finally you got forced to come and to ask me for money and then I said to him, boss you know that I am student and you know exactly how much we get from the federation, it is very little. It is not sufficient for me it's not enough to get home and to come back and I'm only asking you to give me some money to get home'.

'He came and sat down next to me and he touched my shoulders and he touched me on my body. How

shall I tell you?[4]

(…)

First of all, on my shoulders on my neck, he kissed me, he tried to hug me. Then I stood up and he got to know that I felt somehow offended[5] *and he said: come on, I am giving you some money. We were in the room and then we got out of that room. He took me through a room that leads to the place where the girls change their clothes. We were in the changing room. I asked what are we doing here, he said don't say anything, just come with me. I went behind him and he could see that I was trembling and shaking. He could see that the colour of my face changed.*

Then he came and took my hand and hugged me[6] *and then he said: I don't want to do you any harm. We went to the lavatory and opposite there, there was another room and there was a space we had never ever gone inside.*

And there was nothing inside. And there he opened a door and we went inside of that room and he took me inside too.

We went inside, into a room where it looked like an office, arm chairs, tables and everything was there. I sat down on the chair, I said I haven't seen this room, he said don't tell anyone you have come inside. You are the first person I have taken into this room. He said don't tell anyone about that. I said it's getting late, my family is going to be (worried) please give me the money for a car and I will be going. I need the money. I will be leaving.

On the chair, he approached me and kissed me and he hugged my kissed me (sic) and he was touching me everywhere. He touched me on my hips, he put my arms around him.

I was really angry, he tried to kiss me on my lips and he was touching me and he tried to kiss me on my lips.

He said: What is the matter with you, I don't know if you are a girl or a boy. What kind of emotions have you got? You haven't got any emotions. Then I didn't say anything. I only stood up and I said again.

Boss, I haven't got a lot of time, please, give me the money and I'll be going[7].

There were two wardrobes in that space and he opened one of the wardrobes. I thought this is his safe and he is going to give me some money. But then he said: come with me. I thought he was going to give me the money. He took me inside and I saw that there was a big room, there was a bed a washroom and toilet.

I also wanted to say, the room we had got inside through the changing room and this room, they could only be opened through his finger print recognition. The second room was also opened with his finger print recognition[8].

Question: The room where the bed was?

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[4] In brackets, Player C clarified this sentence to mean that *"at this stage he only touched my shoulder, not other parts of my body"*.
[5] In brackets, Player C clarified that the Appellant's action *"occurred after entering the secret room, not before"*.
[6] In brackets, Player C clarified also in this respect that *"he did not hug me at this stage, only later on after entering the secret room"*.
[7] In brackets, Player C declared that *"due to the way in which the interview was conducted it could appear that this happened before entering the secret room, so I wish to clarify that the highlighted section happened once inside the secret room"*.
[8] In brackets, Player C clarified that *"only the first door was opened with a fingerprint, not the second room"*.

Yes. You open the wardrobe with the fingerprint, then the door to the room is opened. You don't need any lock.

Question: So, she is saying about the secret office and the wardrobe?

Yes. He puts his finger on and the door gets opened. If you see it before you don't think it's a door. You don't see it.

Both rooms were opened with the finger print. And the door closed. And then he was standing opposite me and said: I want to know, I want to make sure, whether you are a boy or a girl. I said to him: Boss, it is not your business, what will you have, if you know I am a boy or a girl. I have my problems.

He came and touched me kissed me, hugged me and things like that. He said don't get nervous and he touched me too much, when it got too much, I packed him at this collar and I pushed him away and I said to him: Boss, don't approach me, don't touch, me I don't need your money, I don't want anything, open the door and let me go. He pushed me with his hand to the bed and then he came and he threw himself on my body, I tried to defend myself, but I couldn't. I tried to get away from him and we had somehow a fight and I tried to defend myself and he gave me a punch into my face, I started bleeding out of my nose. He had given me a punch into my face and I became somehow dizzy. When I got up, I saw that the whole bed was full of blood and that I had black spots and bruises on my neck and on my face.

I don't know how much time I was on the bed being weak and unconscious, and when I got conscious again, I got up, I saw everywhere was blood. I didn't have any clothes and I wasn't wearing anything.

I went to the bathroom and washed myself and I said to him: now you know that I am a girl, but I am not going to keep silent. I am going to the media and I'm going to record a video and I am going to file a complaint against you.

The boss was sitting opposite me. He took his pistol and he said to me: I am going to fire the pistol and your brain will explode. If you raise your voice, if anybody gets to know about this, and then he threw the money at my face, about 3 or 4 hundred Dollars, and he said: take the money and disappear from here. There was another door to the backside and I saw that there was a car from him standing there which he arrives at the federation with. This was at the back of the federation, this was completely separate from the federation, I felt I was in a very bad situation, I tried to get out of this situation as soon as possible. Then I saw his secretary, Mr (...), he is his General Secretary. I met him and I wanted to start crying and to tell him what had happened. I wanted to tell him in what situation I was.

Question: So, when you opened the back door, did you leave through the back door?

Yes, I came out of the back door, next to the place where his car was parked. (…)

(…) I was in very bad condition. I wanted to get out of the federation and to find a way to get home. (…) I had black spots on my face and on my neck and I tried to hide it and I went home, my mother asked me, what had happened and I said that it happened during football. Some time passed and a few people came towards our house. These people told my father, if you want to save your honour, because of your daughter, you shouldn't let her go to football or to school anymore. My mother came and asked me: what has happened?

I said to her that we had some fighting on the football field and I had some arguments and I have broken a window and I took a glass and I broke a window and I had some problems with my boss.

And I had thrown a glass into the face of my boss. My father and my mother talked to each other, and my father said to my mother said that I had done something very bad. For this reason, people come to our house and say something like that…" (…)

5. Further, Mr Karim ruined my reputation by telling publicly telling (sic) the girls at the federation that I was a lesbian. The word "lesbian" literally is enough for my father, only that word would be enough for my own father. In Islamic countries like Afghanistan if you only say in the public, if you say a girl is a lesbian, her own family will punish her. This word would have been enough for me not to be able to live a normal life again. I would have never been able to continue my life in Afghanistan. I would never be able to get married. There was no other way for me. I could stay with my own family.

6. When I heard this news, all paths were blocked for me. I didn't have permission to go to school neither practice. I was like a useless thing, and I hated myself and the world. I tried to commit suicide many times, and I used to shout and yell, all my family members were tired of me. Eight months passed. I was not a virgin anymore and could no longer get married. I appealed and requested relatives to allow me to leave my country. I fled from Afghanistan sometime in 2017 before Guardian broke the news. (…)".

173. At the hearing, Player C declared during questioning *inter alia* that:

- Players' salaries were paid in cash against a receipt. The day of the incident she went to the Appellant's office to ask for money, as the AFF had not paid her salary for three months;
- she first went to the Appellant's office in the new AFF building to request her money. However, the Appellant told her that he did not have the money there and asked her to follow him to the old AFF building, which she did. Even though the AFF had moved to the new building in 2015, the Appellant used both his office in that building and the one in the old AFF building after 2015;
- to get from the Appellant's office in the new building to his office in the old building, one had to go down the stairs, exit the building, and walk 2-3 minutes outside. Then one had to enter a small room with the secretary's desk. From there one could enter the Appellant's office;
- when she entered the Appellant's office the secretary, Mr Sediqi, was not there.
- the Appellant's office in the old AFF building used fingerprint recognition locks. They were set up on the outside of the rooms only. She did not remember whether this meant that one could open the door from the inside of the room by simply turning the door handle, but she has the impression that the Appellant also had a switch or some other mechanism under his desk that would allow him to lock/unlock the door from the inside;
- the Appellant's office in the old building had wooden walls decorated with awards and a large one way window;
- once inside the Appellant's office the Appellant went through a secret sliding door to another room. He called her over to this room and she complied, as she thought that was where the money was;

- she does not know the type of "revolver" the Appellant had or where exactly he got it from. In any case, she was in the bedroom when he took out his gun;
- the Appellant told her to wash up, threw three or four hundred dollars at her and kicked her out. After she washed her face, she opened the secret sliding door and then the door to the outside to exit. She went through a covered garage and then into the open air where there was an iron gate. She got home with the help of a colleague;
- after the incident, she did not see any doctor, but only because the conditions in Afghanistan are not such that she could go to one for a rape case. She also did not take any pictures of her bruises, since she did not have the means to do so; she only had a very primitive phone which was not advanced enough to take pictures;
- she learned from her friends that the Appellant had labelled her as a lesbian. This had a significant negative effect on her life, causing her to withdraw from football, from school, from society and from life. She even considered committing suicide.

174. Player C also testified before the AGO. The Accusation Letter contained the following excerpts from her testimony:

"I was always dressed up like a boy since I was a kid. From the beginning I had realized that Keramuddin Karim stares at me and he always wanted to get close to me. He always told me to come to my office, let's talk about the challenges of the federation and you report to me in order to solve it. They always didn't pay the player's money, sometimes even up to 4 months. In 2017 one day after I finished the training. I need money for my transportation. I couldn't borrow from my friends. With my training clothes I entered to Keramuddin Karim's office. I said hello then sit in his office. I told him I need some money to pay for taxi. He laughed at me and said finally you came to my office. He told me: now tell me whatever you need. I look my head down and said I don't have the money to pay for Taxi. He stood up from his chair and walked toward me. I was sitting on the couch. He also sat beside me. I was shaking and said excuse me but why you don't pay the cost of our transportation, we need it. Can you give me please? He put his hand over my shoulder and poured a tea for me. He said drink it. It's good and take some rest. After a few minutes he searched his pockets and said I have no money in my pocket, wait here I go to my other office and bring you money. I quickly drank the tea. He told me let's go. He walked toward the women's team's changing room. We entered the changing room, he told me to come. I was surprised that what he is doing here. I followed him. In the changing room there was a dark place where we used to put random stuff. It was full of dust and dirt, no one would go there. The president entered the same room and said we have to keep our money somewhere safe. When we entered he hit the wall so (h)ard. I was shocked then I saw there was a small hidden door. We entered, there was a small room with a table and a chair. The room looked like a reception, in front of that there was bigger door opened by fingerprint. He opened it. It was a big and facilitated room with table, chairs, dining area, furniture, big table, and a chair for Keramuddin. There was also a cabinet filled with medals, appreciation letters and so on. Next to the president's chair there was a cabinet. I sat on a chair, the president opened the cabinet. I went there. Then I spotted that the cabinet is a door to a room. He took my hand and told me that in this bad situation the money should be kept inside somewhere very safe. He took me into the room and closed the door. I saw the room was equipped with standard amenities like bed, shower, TV and everything. It was like a hotel.

(A) bedroom with everything inside and a bathroom. He told me to go in. I went in, he was behind me and he locked the door.

He told me to sit on the bed. I was worried. I was shaking. He said: 'Today I want to find out what is behind

your clothes'. I was telling him: 'Leave me alone. I want to go home'. I stood up and I said I wanted to go home and he said to me: 'Scream as much as you want, there won't be anyone hearing you, they can't hear you.'

Then he started pushing me towards the bed. I stood up again. I said: 'Leave me alone I only came for support. I don't want it any more, please leave me alone, let me go'.

He was telling me… that today he would find out if I was a lesbian or not because I was with girls a lot and I looked a little like a boy.

I stood up and tried to fight but he punched me in the face. I fell on to the bed. I tried to rise and go to the door but because the door used his fingerprint it was not possible to open it without his fingerprint. So I couldn't get out. He punched me on the face and on my mouth. Blood was coming from my nose and lips. He sta(rt)ed beating me. I fell on the bed and everything went dark …

When I woke up, all my clothes were gone and there was blood everywhere. I was shaking, I didn't know what happened to me. The bed was covered in blood, blood was coming from my mouth, nose and vagina. I went to the bathroom. I washed my face and put my clothes on. I went back and said: I will go like this and I will tell the media what happened to me[9].

He took a gun. his gun. Put it on my head and said: 'See what I have done to you? I can shoot (you) in the head and everywhere will be your brain. And I can do the same with your family. If you want your family to be alive you should keep quiet'.

Then he threw money at my face and told me to take it and get out. He said he didn't want to see my face. He opened the door and I left[10].

It was too late in the night. I was crying, I also had no money. The way was strange to me. I reached to the gate of the federation. The smaller door was open. I entered and I saw Ali (A)ghazda was there. I was crying I wanted to tell him what happened, he took his business card threw it at my face. He said whenever you needed money call this number otherwise get lose from here …".

Player D

175. In her witness statement dated 3 October 2019, Player D declared as follows:

> *"2. During that period, I was a victim of (and witness to) sexual assault and abuse by the AFF president, Mr Keramuddin Karim. The incidents took place in a room in the old building of the AFF, in a secret room that was hidden behind the President's office.*
>
> *3. In my statement to the FIFA Ethics Committee on 10 December 2018, I gave a full recollection of the incidents involving Mr Karim, and I hereby confirm having stated to the investigator that:*

[9] According to FIFA's translation of the Accusation Letter, this part should read as follows: *"When I returned to consciousness, I saw I wore no clothes and the blood covered the whole bed. I hardly moved from the bed. Keramuddin said go to bathroom and wash yourself. I put my clothes on which were half wet and half dry. I saw him on the chair staring at me, I asked him did you find out now that I am a boy or a girl? I won't let your action go without any response. I will tell all the media and complain against you. You made a mistake, I won't stay shut up like the others. Everybody should know you are a f****ing damn person".*

[10] According to FIFA's translation of the Accusation Letter, this part should read as follows: *"He threw some hundred dollar bills at me and opened another door which was in the room and told me to get lost. I didn't take the money and went out. Outside of the room, there was a place like a car garage and there was a big iron gate. I opened it and went out".*

- *Several years ago:*

  'Yes. I was sitting on the sofa and he came and sat down next to me and he slowly took my hand and he pressed my hand and he said: whenever anybody is looking into your direction, I will shoot into his eyes because I love you and I don't want anybody to have even a look into your direction. And then he slowly started, I was really afraid I said to him I'm not such a girl.

  Question: He started slowly what?

  He touched me, he hugged me. He tried to hug me and he wanted to do several things. Different things. I was shouting, I said I am not a bad girl, I am very young. I said to him: you are my boss and you are like a father to me.

  Question: What things did he want to do to her?

  He took my hand, he touched my hands, he hugged me and he kissed me, he wanted to kiss me on my lips. And he took all the efforts not to release me, to hold me tight and to take me into his bedroom which was also over there in his office, he tried to play with me, to get me out of that room and into the other room and I shouted, the secretary had kept the door from the back side tight.

  He closed the door and I knocked against the door and I wanted it to be open, I was crying and I was shouting and the secretary opened the door. And when he opened the door, the secretary pulled my hand and told me: don't go. I got out and I was very young and I didn't have such an experience and I didn't even have such ideas, so I was shocked. And then I went away, I tried to get into the office of the federation to take my belongings and I was crying. I was in that bad condition, I was crying and they could see that I was getting out of the boss' office in that bad condition. I got out and I went away and I didn't come back to the federation, I became depressive, I didn't come back (at all) …"[11].

- *In 2017:*

  'I was all alone, she was not there, she had a different plan. My phone rang. I looked on it and I saw that it was the number of Keramuddin Karim. I saw it's him and I didn't answer the phone. He phoned several times because he could see through his (glass window[12]*) from the opposite side. I was waiting there because it had already happened to me once, I was already afraid of him. From the back side, there is a door that leads to the football field.*

  Question: Back side where?

  There is a changing room and a door where people get out onto the field. Out of there a voice could be heard saying: why don't you answer?

  Question: Behind you?

---

[11] Player D clarified in relation to these sections that: (i) *"Mr Karim was not trying to bring me to a different room"*, (ii) *"I eventually escaped by biting his hand"*, and (iii) *"a former staff of AFF who is mentioned as a prosecution witness in the Attorney General's Accusation letter, saw me coming out of Mr Karim's office in a bad state and I told her what had happened"*.

[12] Originally read "camera" in the translation of her declarations to the FIFA Ethics Committee. Player D then clarified in the CAS witness statement that she meant "glass window".

Yes.

He said: answer the phone and do exactly what I tell you to do. I was afraid and no one else was around and I was all alone. I took the phone and he said whatever I tell you to do, you'll do it, the voice was behind me and the phone rang he gave the instruction through the phone.

I answered the phone. He went slowly in the direction of his bedroom.

Question: We are at the steps? Explain from there?

In front of me, there is the field and on the other side, there is the door. He gave me the instructions (by phone). He said come in through the door where the changing room is. He said to me: turn right and there is a big steel door. And the door got opened and then he said: enter the room. I went into the room and I passed through the door and he said: there is another door and open that door, too.

Question: When you entered the room, what was in the room? In the first room.

He wasn't in the first room.

Question: What was there?

In the first room, that was the place for his car. A parking lot. This is somehow like a garage for his car.

Question: When she got to the metal door, it got open, what did she see?

Look, there is a metal door. And then, there is another door. There is a space where his car is parked. And then you open the door and there is a lavatory together with a bathroom and then there is another door to the room where there is a bed inside.

Question: So, from the garage you go to the lavatory, then you go to the room?

Look, I went from the garage to a door and from this side, there is a room and a door. This is the door to his bedroom, the bedroom of Keramuddin Karim.

Question: Is there any other door?

There are four doors.

I entered the room, I saw everything was quiet. I went inside and I saw that Keramuddin Karim is sitting in his underpants on the bed. When I saw him in that condition, I was shocked. I hadn't imagined something like that, I hadn't thought about it. When I saw him in that condition, I wanted to flee and to escape. Only himself, he could open the door, nobody else could open the door.

Question: So, when you got in it, it got locked behind you? How did you get into the bedroom?

He told me what direction to go.

Question: How did she open the door of the bedroom?

He opened the door, he had opened all the doors.

Question: So, they were wide open?

Yes because he had gone before me inside. He had opened the doors himself.

Question: How did they close behind her? Were they opened or unlocked?

Look, I had the phone, he gave me the instructions and he had left the door open, when I entered, the doors got closed. When I saw him in that condition, I remembered how people said in the federation that (…) had been raped. They had been talking about that in the federation. When I saw him in that condition, I couldn't stand it. I thought for myself: your life is passed and you cannot live on. You are trapped. He stood up from the bed. He took off my veil, my headscarf. He started tearing off my clothes, whatever I was wearing. I was shouting all the time. Screaming. And over there, everything is silent, it's very quiet. I thought for myself you are lost, completely lost, I was crying, shouting, screaming, he tore off my clothes and wanted to pull off my complete clothes, and then I continued screaming and shouting and knocking at the door and screaming: help, help. I knew exactly that nobody could hear me.

Then he said: I am leaving you free. I don't want to do you any harm[13]*, but all his promise were lies, he only wanted me to come back and then he came back again and he wanted to harass and bully me. He talked in a bad manner to me and he was shouting at me and on some days he kicked me out of the federation, then he phoned me again to come, he made false allegations against me, he said wrong matters about me. I didn't say anything.*

(…)

He said you have to come to the federation. Everybody saw how you got out of my office, I will put your life in danger, I will endanger your family, he threatened me a lot, and I loved football (…).

Then I got always message saying to me you cannot escape. He was always bullying me,

[13] Player D made clarifications to this part as follows:
"Eventually, one day in 2017 I was a bit early for the national team practice. I always used to come with other team members but that day I was half an hour earlier. But I didn't go to the practice hall, as I was alone. I sat on a chair behind the door of the locker room and I saw my phone ringing. I noticed that the calls from the head of the federation, Mr Karim. I was scared, I quickly stood up and I wanted to find a way to run away.
When I stood up, I heard a voice saying: 'Hey girl, why don't you pick up the call? Come, the board of directors of Women Committee has meeting with you because of your absentees. Hurry up and follow me. Today I will finish the expulsion form of yours'. I was following him and saying that I do not have many absentees.
He had involved me in the conversation, and said 'don't be too responsive and follow me.' At the beginning, there was a big steel gate (half opened), he said 'come inside and close the door'. I thought he may go to his prior office because we had seen the door once and he had told us that the door is for him to run away. However, I didn't know that it is his room as well. From there, I went through the garage to a door on the side.
[I] came ahead, there was another door as well and he asked me to come and close the door. When I came ahead, there was around 4 to 5 stairs. Then, I think [I] entered a white door, and there was a small atrium. At the right side of the door, there was a room, and there was another door opposite to it. Mr Karim closed the door. When I saw there wasn't anyone else but a bed. I was very frightened and I looked all around the room. The color of the room was white, and its door was also white. When [I] entered the room, there was a black television on the wall, furniture, and carpet. At the corner of the room there was a bed, and there was make up table and make up cosmetics as well.
Opposite to the bed, the door to his office in white color was situated. I asked where this was. At this time, I turned to run away that the door closed, and I started shouting. He ran towards me and he took away my scarf from my head. I was shouting and knocking the door. He was trying to take my clothes off. Meanwhile, he was slapping and kicking me and was saying that 'today is the last day of you slut to run away from me'. I was shouting and I was hitting the door with punches and kicks. I resisted a lot, and I was kicking the door. I kicked him hard on his penis and he was in pain. He opened the door and I escaped. He said, 'now you could go but I will punish you next time. I will change your life', and when I was running I was thinking to go to police and complain against him.
Again, I though it is useless. In contrast, people will blame me because Mr Karim is rich and I though the government is his so whom could I complain".

harassing me, he threatened me about my family, he was mentally abusing me. (…) I had no more power to go on and for this reason, I had to flee and come to (...). I had his voice in my mobile. Unfortunately, I lost my phone in the waters. The reason why he was looking so badly at me and he said: There will be the time when I will kill you (…).

(…)".

5. Finally, I left football because my honor was more valuable than football. My life was bitter, and I had lost my peace of mind and body. I used to blame myself and used to be scared of my own shadow. I was scared of all the men in the world. He had turned my life into hell; I could neither sleep nor be in peace. My all body was burning, I didn't have good relation with family and I was going nowhere. I couldn't share with family that what had happened to me. (…)".

176. At the hearing, Player D during questioning *inter alia* declared, with respect to the 2017 incident, that:

- the Appellant went down to the field from the road behind. When he asked her to answer his calls he was three meters behind her. She does not remember what he was wearing at that time. He then went ahead of her, called her and gave her instructions on where to go. She could not see the Appellant as she received his instructions by telephone. To get to the Appellant, she went through four doors all of which he had left open;
- she was called a lesbian by the Appellant. In fact, during practices, before the coaches and trainers arrived, he would go down to the field and yell at the players that they were all lesbians.

177. Player D also testified before the AGO. The Accusation Letter contained the following excerpts from her testimony:

"First time it was in 2013. One day I participated the women committee meeting, the president's secretary. Rustam Sediqi came and told me that Keramuddin Karim wants to speak to you in his office. I went there because I thought maybe he has some important programs and he wants me to tell the other girls about it. When I entered the president's office, he was sitting behind his working desk. I sat on a sofa, he asked me how was the training. I said it's going well. Then he slowly came closer and sat beside me. I took little distance but he took my hands and said (to me) I love you. Anyone who looks at you I will kill him with a bullet. I was afraid I said no Mr President, no one stares at me. I stood up. Keramuddin Karim also stood up. I tried to free my hands from him. But he was trying to kiss me and hug me. I took the opportunity bite his hand. I shouted out loud and said Rustam! Please open the door. When Rustam opened the door the president left me. I took my chances and escaped. The president's office was in front of secretariat office. When I walked out Rustam took my hand and tried to hold me. I pushed him away and said go away pimp and I quickly escaped. I told them that I will take my revenge and complain. When I walked out I was feeling so bad. My friend (name redacted) *saw me, she told me what happened? I told her the whole story. When I felt better I went home. I told myself that I will never go back there. I left all my dreams behind. I felt so weak. A man like my grandfather, the president of an organization who is responsible for our security has done this to me? How is it possible?*

In my absence. He fired me and told everyone that (I) can't come to play football anymore. I also decided not to go. I turned my phone off. But no one including (names redacted) *had signed my termination letter. I was*

only in contact with (names redacted) *who were my best friends. Finally all my friends asked me to come back to the federation. I couldn't tell the real story to everyone, it wasn't acceptable for my friends. I was so badly broken, I was making my room so dark and always crying. I was afraid of everyone and I hated every men. After some time the president himself called. He smiled and said I will not bother you, come and resume your training. Everyone respects you. Everyone looks at me as a suspect. At the end he threated that If you don't come back I will not let your family to live freely.*

I couldn't tell my family about what happened. Everyone was asking why you are not going to the federation. I was really in a bad situation. Finally I decided to go back and promised myself to avoid anything to happen to me and any girl again. We all girls decided that from now on we will never go to his office alone.

I returned but, she says, her ordeal was far from over. The president, whenever I was going to training, was coming on to the pitch and in front of everyone saying I was not polite, I talked a lot, and was directly threatening me, saying he would cut out my tongue to silence me. He was non-stop abusing me and harassing me.

One day she says she was early for training at the federation. 'I was sitting on the benches waiting for the rest of the team. He started calling me on the phone. I was ignoring it, so he came out himself and told me to come. I had to follow him, there was nothing I could do. I had to cross four doors he had gone ahead and had me on the phone giving me instructions of where to go[14].

After the four doors I was in a bedroom. It was like a five-star hotel with a mirror, modern furniture, a bed. women's stuff, perfumes and stuff on the drawers. When I got there and saw that I started recalling the stories I had heard … I was scared and I started crying. I thought it was the end of my life[15].

The president was naked and was on the bed waiting for me. When I started crying he got up and ran towards me and held me and was trying to pull my scarf and dress away. He was attacking and tearing at my dress. I was crying, I was screaming, I was struggling. I was very lucky. He received a phone call: I started screaming, he pushed me away and tried to silence me but I didn't stop screaming. He had no choice then and he opened the door. When he opened the door I ran[16].

He told me that you managed to escape this time but next time you won't be able to do so I will turn your life

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[14] According to FIFA's translation of the Accusation Letter, this paragraph should read as follows: *"Finally in 2017, one day I was early for the training for the national team. Always we girls came together, but that day I was there half an hour early and because I was alone, I didn't go to the training place and I sat on a chair behind the changing rooms' door and then my phone rang. When I found out that this was a call from Keramuddin I was very afraid and was thinking to find a way to escape. When I stood up to go, I heard him who said 'Oh girl why don't you answer your phone. Come on with me because the Women committee's board of directors has a meeting because of your absence. Hurry up. Follow me. Today I will end your career, I will give your expulsion letter'. I followed him and I told him I haven't had many absences and he kept talking with me and told me 'don't be rude and just follow me'".*

[15] According to FIFA's translation of the Accusation Letter, this paragraph should read as follows: *"At first was a big iron gate which was half opened. He asked me to get in and close the door and I thought maybe he is going to his previous office room because I had seen the gate once before, he had told that this back door is my escape way but I didn't know it was also his room. I moved forward there were four or five stairways and then the door. I think it was white. I entered and there was a small corridor and on the right was the room door. and there was another door opposite to that. The head of federation Keramuddin karim closed the door and while I saw there was no one else there and I saw a bed, I was terribly afraid I looked around. The room and the door were white. There was furniture, a black TV and carpet and the bed was in the corner of the room and there was a makeup table and cosmetics on it and there was the bathroom door opposite to the bed. It was white. I asked him where are we. I was going to flee but the door was blocked [by the president]".*

[16] According to FIFA's translation of the Accusation Letter, the correct translation of this part is as follows: *"I started screaming and crying so he got up and ran towards me and held me and was trying to pull off my scarf and dress. He was attacking and tearing at my dress. He beat me, punched me and slapped me continuously. He was saying that this is the last day for you. You f***ing whore running away from me, and I was screaming and knocking on the door and resisting in front of him. He beat me a lot and I was screaming and I hit him in his testicle, he was hurt and he opened the door. I ran away".* There was no mention of the president naked on the bed.

into hell …".

Player F

178. In her witness statement dated 3 October 2019, Player F declared as follows:

"2. … I was a victim of sexual assault and abuse by the AFF president, Mr Keramuddin Karim. The incident took place in a room in the old building of the AFF, in a secret room that was hidden behind the President's office.

3. I have not testified before the FIFA Ethics Committee because at that time I was afraid of doing so. ….

- *In 2015, Rustam asked me to follow him. We moved towards the offices of Futsal, and we turned to the left. We went towards the parking lodge of cars. He pulled a grey garage gate to the left side, and we entered. I saw that it was open, (without ceiling), enclosure. We moved a bit ahead, there was another door at the corner of left side. I do not remember the exact color of the door. Rustam opened the door with a key and invited me inside. When I entered I saw that the head's car was parked. At the right side, there was a door. Rustam opened the door but he didn't go inside. I entered the room, and it was like a bedroom. Inside the room, at the right side was a washroom, and at the left side a bit forward was a two people bed. At the right side there was a couch for one person. I sat on the couch. I was astonished after seen the room and I felt fear in my heart. After few moments, from the side a dark brown door was pulled. The head of the federation entered the room and I paid him Salam.*

  He smiled, sat on the bed, and asked me if I was fine.

  He said: don't be scared. Sit on the bed.

  I didn't talk and all my body was shivering. He hugged me, and I was crying that do not touch me, and I used to push his hands away, and crying.

  I was attempting to release myself.

  He slapped me at the back of my neck and asked me to calm down. He stood up and kicked me on my waist with his foot. I fall off the bed and ran away shouting.

  He said: get lost the slut girl (sic). I ran away from the federation. …".

b. Consistency of the witnesses' depositions

179. The Appellant has raised a number of alleged inconsistencies in the witnesses' depositions. However, in the Panel's view, the witnesses' depositions are fully consistent in all material respects.

Player A

180. With respect to Player A:

- the Appellant alleges that there is an inconsistency as to where Player A met the Appellant. The Appellant points out that, on the one hand, before the CAS and FIFA

Ethics Committee, Player A declared that the Appellant *"was not in his normal office"*, whereas the Guardian article and her testimony to the AGO refer to the *"President's office"*.

Panel finds no inconsistency here. Player A clarified in her CAS witness statement that *"when I arrived to Mr Karim's office, he was in his other office on the upper level, and not in his normal office in the lower level"*. In other words, it appears that Player A first went to the Appellant's *"normal office"* before going to the office on the upper level;

- the Appellant alleges that there is an inconsistency as to how Player A got on the couch.

  The Panel finds no inconsistency on the point. It is clear from her testimony that she was forcefully pulled onto the couch by the Appellant. In her CAS witness statement she declared that *"He didn't leave my hand when I gave him to shake it. He pressed it and pulled me towards him with a lot of power. He said come, and I sat next to him and I was trying to get apart and he was coming always towards me"* (emphasis added). This is consistent with her statement before the AGO that *"Keramuddin was sitting on the couch…. I shook hand with him. He pressed my hand so hard then pulled me toward him. The amount of force he used made me to sit beside him"* (emphasis added);

- the Appellant alleges that there is an inconsistency as to where precisely the Appellant first tried to kiss her. The Appellant points out that, on the one hand, before the CAS and FIFA Ethics Committee she said *"lips"*, whereas to the AGO she said *"neck"* and to the Guardian she said *"neck and lips"*.

  The Panel finds that the particular to which this inconsistency, if any, refers is insignificant;

- the Appellant alleges that there is an inconsistency as to how Player A exited the room.

  The Panel finds no inconsistency. In her declaration to the FIFA Ethics Committee, which she confirmed at CAS, the witness declared that initially she could not open the door due to the fingerprint recognition locks. This declaration is not inconsistent with her statement to the AGO that she *"left the office"*. In both instances she in fact left the office and there is no indication in her statement to the AGO that she left the office unimpeded.

Player B

181. With respect to Player B:

- the Appellant alleges that there is an inconsistency as to the amount Player B claimed was owed to her. The Appellant pointed out that, according to the FIFA Interview Excerpt annexed to the Final Report, she told the Appellant the AFF owed her USD 150, whereas during cross-examination she stated she was owed USD 100.

  The Panel finds no inconsistency here. Upon further questioning, Player B clarified at the hearing that: (i) at the time of the incident she had recently received a pay raise, under which she would earn a total USD 250 monthly, USD 100 for being national team player and USD 150 for being an AFF employee; and (ii) in the first month of the new arrangement, she received only USD 100, and in the second month only USD

150;

- the Appellant alleges that there is an inconsistency as to when and how she came to hear that the Appellant allegedly labelled her as a lesbian.

  At the hearing, however, Player B explained that she came to hear about this *"sometime after 2018 (after I had left the AFF)"* from a close associate of the Appellant's and from Ms Popal, who told her that she had been *"crossed out"* from the list of the players selected to attend a training camp in Jordan because she had refused the Appellant's sexual advances and had been accused by him of being a lesbian. The Appellant questioned how the alleged lesbian accusations could be the reason for her being removed from the Jordan camp list, considering that said camp took place in February 2018 and that, according to her CAS witness statement and cross-examination, she had quit football after the alleged incident at the end of 2017. Still, the Panel does not know when the selection list was created and when her name would have been crossed out, and finds no proven inconsistency here: indeed, the "crossing out" of the list of attendees could have been "justified" by the "labelling" of the Player, to cover the real reasons of her giving up with football.

Player C

182. With respect to Player C:

- the Appellant alleges that there is an inconsistency as to where the incident occurred. During cross-examination, when asked where she met the Appellant, she answered in the *"new building"*. The Appellant's counsel was quick to point out that in her witness statement Player C had testified that the incident occurred in the *"old building"*. Upon further questioning, however, Player C explained that she initially went to the new building, but that the Appellant then asked her to follow him to the old building, which was in short walking distance. She added that the Appellant used both his office in the old building and one in the new building after 2015.

  In light of Player C's clarification, the Panel finds no inconsistency on this point;

- the Appellant alleges that there is an inconsistency as to whether Mr Sediqi was in the building when the incident occurred. The Appellant's counsel pointed out that Player C declared in her witness statement that when she went into the Appellant's office *"the secretary was outside"*, but that during cross-examination she declared that *"he was not there"*. The Appellant's counsel considered these statements as inconsistent, because he interpreted *"the secretary was outside"* to mean that Mr Sediqi was outside of the Appellant's office in the adjacent secretary's office.

  The Panel finds his interpretation to be incorrect. From the cross-examination, it is clear that Player C, in stating that he was *"outside"*, meant that he was *"outside of the building"*, *i.e. "not there"*;

- the Appellant alleges that there is an inconsistency as to where the gun came from. Player C declared in her CAS witness statement that the Appellant *"took his pistol"*. When asked at the hearing where the gun came from, she explained that she had no idea.

The Panel finds no such inconsistency. The fact that Player C does not know where the Appellant got the pistol from (*e.g.*, his belt, under a pillow, etc.) does not discredit that he took it and pointed it at her. In this regard, the Appellant also claims that he could not have possibly had a gun in the room since firearms were prohibited in the heavily guarded building. However, the Panel finds that it is not inconceivable, especially considering he held the highest position in the AFF, that he somehow managed to get a gun into the AFF building. Finally, on this point, the Appellant also points out that Player C did not describe the gun allegedly used. In the Panel's view, "gun", "pistol" and "revolver" – all terms used by Player C – are sufficiently descriptive and consistent; one cannot discredit the testimony of the player for not knowing what exact type of gun the Appellant used;

- the Appellant alleges that there is an inconsistency as to where he was when he pointed the gun at her.

  In Player C's witness statement it seems as though she was in the bathroom when it happened. However, in her testimony she confirmed that it occurred in the bedroom. The Panel thus finds no inconsistency.

Player D

183. With respect to Player D:

- the Appellant alleges that there is an inconsistency in relation to the 2017 incident as to how the door *"got opened"* and how, if the Appellant opened the doors, he managed to strip into his underpants before Player D arrived.

  In her CAS witness statement, Player D explained that the Appellant *"opened all the doors"*. However, in that same statement, as well as during cross-examination, Player D explained that he had left the doors open for her to walk through. Indeed, when asked by the FIFA Ethics Committee whether all the doors were *"wide open"*, she replied *"Yes because he had gone before me inside. He had opened the doors himself"*. Therefore, the Panel finds no inconsistency on this point;

- the Appellant alleges that there is an inconsistency in relation to the 2017 incident as to what the Appellant was wearing when she reached him.

  As pointed out by the Appellant's counsel, in the Guardian article dated 27 December 2018 it reports that she found the Appellant *"naked"*, whereas to the FIFA Ethics Committee and in her CAS witness statement she testified she found him in his *"underpants"*. Upon further questioning at the hearing, the Appellant confirmed that she found him in his underpants and explained that the cause of the apparent discrepancy must have been nothing more than a poor translation. In light of this, the Panel finds no inconsistency here. In any case, the alleged inconsistency is (i) with a document that has not been submitted to the record as evidence (FIFA only provided the link to the Guardian article) and, moreover, (ii) not significant enough to discredit Player C's testimony;

- the Appellant alleges that there is an inconsistency in relation to the 2017 incident as to how Player D left the room.

> To the Panel it is clear that Player D left the room after she kicked him and he opened the door. Indeed, in her CAS witness statement she said *"I kicked him hard on his penis and he was in pain. He opened the door and I escaped"*. This is fully consistent with her declaration to the AGO that *"I hit him in his testicle, he was hurt and he opened the door. I ran away"*.

c. Credibility and reliability of the witnesses' depositions

184. The Panel finds that the Respondent's witnesses' depositions are credible and reliable for two main reasons.

185. First, there is no evidence, which satisfies the Panel, that the witnesses had personal undisclosed reasons to accuse the Appellant or that they concocted and coordinated their stories.

186. Indeed, the Appellant has not submitted any evidence whatsoever to (i) cast doubt that the witnesses' depositions were not, as they affirmed at the hearing, completely free of outside pressures and without receiving any sort of benefit (including asylum) for their testimony, or (ii) support his allegation that Ms Popal orchestrated the whole case against the Appellant as a vendetta and wrote the witnesses' declarations to the FIFA Ethics Committee.

187. With respect to the first point, the submission made by the Appellant – that by accusing him the witnesses earned an "asylum" in Europe, and therefore had a personal interest in accusing him – neglects to consider the fact that by coming out and denouncing the Appellant the witnesses exposed themselves and their families to social stigma and possible retaliation by a powerful person, and that by seeking asylum the Players had to cut their ties to families, friends, occupation and country in the hope of a far from assured better future.

188. As to the second point, the Panel observes that the Appellant submitted a series of screenshots of messages that Ms Popal purportedly sent to other players of the AFF women's national team, in which she allegedly pressured them to go against the Appellant and accuse him of sexual harassment and abuse in exchange for money and asylum. The Panel, however, finds that the messages carry no evidentiary weight, also because the Appellant has failed to prove their authenticity. The Appellant has provided no evidence to validate that Ms Popal sent the messages. While the name *"Khalida"* appears on the top of some of the messages, this does not establish that Mr Popal was indeed the sender. As for the rest of the messages, they only show a telephone number without proof of who that number belongs to, or show no name or number at all. Finally, there is also no proof of the alleged recipients' identities.

189. The second reason for the Panel finding the witnesses' depositions credible and reliable is that, as determined *supra* at paras. 179-183, they are fully consistent with the declarations they made before the FIFA Ethics Committee and to the AGO. In so far as they clarified the record of their interviews with the FIFA ethics committee, in the Panel's view this enhanced rather than diminished their credibility, as illustrating that they were not speaking to a pre-arranged script.

190. In this respect, the Panel takes note of the Appellant's argument that the Accusation Letter,

as well as the indictment against the Appellant in Afghanistan, should not be considered as evidence in the present arbitration, because (i) the AGO allegedly did not interview the victims themselves and instead based the Accusation Letter only on a "dossier" submitted by Ms Popal, (ii) the Afghanistan human rights committee allegedly determined that no evidence existed against the Appellant and that the Appellant was not getting a fair trial, and (iii) the Accusation Letter is allegedly unreliable due to the corrupt Afghanistan justice system.

191. Regarding the indictment against the Appellant in Afghanistan, the Panel fully agrees that it cannot in itself be equated to a criminal conviction or constitute evidence that the Appellant committed the crimes of which he was accused. However, the Panel holds that the excerpts of the Respondent's witnesses' depositions made to the AGO contained in the Accusation Letter can be considered as additional evidence in this arbitration, as the Appellant has failed to submit any proof to support his claim that the Accusation Letter is totally unreliable. In the Panel's view, the Accusation Letter, in fact, can be used to cross-check the Respondent's witnesses' depositions made before the CAS and notes that, in fact, the Appellant himself used it in this manner in attempting to impeach the credibility of the witnesses by pointing to supposed inconsistent statements.

d. The Panel's assessment of the evidence

192. Based on the Respondent's witnesses' depositions, and even without the advantages that might have been gained by an opportunity to see and hear them in a conventional hearing, the Panel is comfortably satisfied from a factual point of view, that during the period of 2013 to 2018, when he was the AFF President, the Appellant sexually harassed and abused Players A, B, C and D of the AFF women's national team and on one occasion (Player C) even committed a rape, and that he also threatened and made promises of advantages to them in the process. With respect to the latter, the Panel finds that the fact the Appellant allegedly did not have any formal power as the AFF President over the players' salaries and their positions on the national team (which remains unproven by the Appellant and which the Panel reckons is unlikely) does not disprove that he actually made such threats and promises of advantages based on his perceived powers. The Panel is also comfortably satisfied from the same evidence that the incidents occurred in either an office on the upper level of the new AFF building, or the so-called "secret room" in the old AFF building. In the same way, the Panel does not find it material to verify whether the relevant doors could be opened on both sides by finger print-recognition system: it is in fact conceded also by the Appellant that such system existed, however limited to one side of the door; and such element would not change the findings of the Panel with respect to the harassment and abuses committed by the Appellant.

193. The Appellant makes several arguments as to why the Panel cannot reach such a conclusion.

194. First, the Appellant argues that the anonymous depositions cannot be the sole basis for convicting him. The Appellant submits that the anonymous depositions must also be corroborated by other evidence (such as pictures of the secret room, a medical report confirming rape, pictures of bruises sustained in the sexual attacks, testimony from third parties, etc.), which the Respondent has not introduced.

195. The Panel acknowledges that under CAS jurisprudence, which conforms with ECHR and Swiss law, an anonymous witness statement is insufficient on its own to convict an individual. However, the Panel notes that in the present case, there is not only *one* anonymous witness statement on file. The Respondent has submitted *five* separate, but coherent, consistent and reliable witness statements from anonymous witnesses who were subject to cross-examination by the Appellant and who all declared that the Appellant sexually harassed, assaulted and abused them. Additionally, the Respondent has submitted the Accusation Letter, which as stated *supra* at para. 184, the Panel has admitted as additional evidence and fully supports the Respondent's witnesses' depositions before the CAS. The Panel rejects the possibility that all five similar statements were the result of pure coincidence or of conspiracy to damage the Appellant in which the five were involved. Rather it concludes that the similarity is the product of the truth of what they assert.

196. Second, the Appellant contends that the Panel cannot reach its factual conclusion without hearing the Appellant's witnesses' depositions which he submits are crucial to his case, and, in particular, to impeaching the credibility the Respondent's witnesses. The Appellant argued that if the hearing was not adjourned or if the Panel allowed a post-hearing video recorded examination of his witnesses, the Panel would hear, as summarized in his letter of 13 December 2019 (see *supra* at para. 51):

- Mr Rustam to claim that his testimony before the AGO (in which he confirmed the existence of the secret room) was false and coerced;
- certain players of the AFF women's national team to assert that: (i) the Appellant did not have a scheme of luring female players into his office or a secret room, or of offering them money, and so forth, (ii) in the past other players left the AFF national team and fled Afghanistan using human traffickers to Greece, India and Turkey in search of a better life and not because the Appellant had allegedly threatened them, (iii) Ms Popal had a "quest" against the Appellant, and (iv) they have never heard of any abuse within the AFF;
- Messrs Walisanda and Nadir to discuss the general organization of the AFF national team, the relationship between the Appellant and the players and the AGO's handing of the criminal case against AFF officials in Afghanistan.

197. On this point, the Panel underlines that it cannot speculate as to would have been the content of the indicated depositions, if they had been rendered. The Panel just remarks that they were not rendered and that under the CAS Code the Appellant alone was responsible for making his witnesses available to testify at the hearing according to the applicable procedural rules; however, he failed to make a sufficient effort in that regard and, ultimately, for that reason, his witnesses were unable to testify (see *supra* at para. 145-146).

198. The Panel further recalls that its decision to reject the Appellant's requests for the adjournment of the hearing and to have a post-hearing video-recorded examination of his witnesses was fully compliant with the Appellant's procedural rights (see *supra* at para. 139-148). In this respect, the Panel underlines that according to the SFT the right to produce evidence must be exercised timeously and according to the applicable formal rules (7 January

2011, 4A_440/2010; 28 February 2013, 4A_576/2012).

199. Third, the Appellant argues that the Panel cannot rely on the anonymous witnesses' depositions, because he did not have the opportunity to properly test their content since he was limited by their anonymity, the non-disclosure of certain details related to the offenses (*e.g.*, the exact dates of the incidents, the specific reason for meeting with the Appellant on the day of the incidents, etc.), and the kind of questions he could ask. As an example, the Appellant claims that the limitations impeded him from proving that Player C concocted her story. The Appellant claimed to know the identity of this player (because she was the only one who *"dressed like a boy"*) and that she supposedly had already left the country in 2014 before the alleged rape. However, the Appellant claims that due to the limitations imposed on him, he did not ask about her whereabouts in 2015.

200. As a threshold response, the Panel observes that the Appellant never actually posed to Player C the question about her whereabouts in 2015. As the Appellant did not do so, it is unknown whether FIFA would have objected and, if so, whether the Panel would have disallowed the question.

201. With regard to the limitations placed on the Appellant deriving from the anonymity of the Respondent's witnesses, the Panel refers *supra* at para. 120 *et seq.*, where it confirms that it found a proper balance between the procedural rights of the Appellant and the life and personal safety of the Respondent's witnesses.

202. As to the limitations placed on the type of questions the Appellant could ask, the Panel underlines that it did not prevent the Appellant from testing the reliability of the witnesses' depositions. In fact, the Appellant was free to ask specific questions related to non-sexual details of the incidents in order to find any inconsistencies and in that way discredit the witnesses' reliability and credibility.

203. Fourth and finally, the Appellant complains that the Respondent's witnesses' statements were not "concrete" enough with respect to the so-called "secret room". The Panel finds, however, that the witnesses provided sufficient and coherent details to establish its existence and location. In the Panel's view, this testimony was enough for FIFA to satisfy its burden of proof and it was unnecessary, considering FIFA's limited investigatory powers, to provide photographs of the room. Further, their testimony is not outweighed by the hand-drawn "blue-print" of the Appellant's office and/or the screenshot of a video of that same office (both submitted by the Appellant in his written submissions) which the Appellant introduced in an attempt to prove the impossibility of having a secret room adjacent to his old office. The Panel considers this drawing and photograph to hold no evidentiary value whatsoever.

D. Violations of Articles 23 and 25 FCE

a. Applicability of the FCE

204. According to Article 2.1, the FCE applies to all *"officials"* defined as *"any board member (including the members of the Council), committee member, referee, assistant referee, coach, trainer or any other person*

responsible for technical, medical or administrative matters in FIFA, a confederation, a member association, a league or a club as well as all other persons obliged to comply with the FIFA Statutes (except players and intermediaries)".

205. Therefore, by virtue of his position as the AFF President during the time of the incidents, the Appellant was as an *"official"* as defined under the FCE and, as such, bound by the FCE.

b. Violation of Article 23 FCE

206. Article 23 FCE entitled (*"Protection of physical and mental integrity"*) reads as follows:

> *"1. Persons bound by this Code shall protect, respect and safeguard the integrity and personal dignity of others.*
> *2. Persons bound by this Code shall not use offensive gestures and language in order to insult someone in any way or to incite others to hatred or violence.*
> *3. Harassment is forbidden. Harassment is defined as systematic, hostile and repeated acts intended to isolate or ostracise or harm the dignity of a person.*
> *4. Sexual harassment is forbidden.*
> *5. Threats, the promise of advantages and coercion are particularly prohibited.*
> *6. Violation of this article shall be sanctioned with an appropriate fine of at least CHF 10,000 as well as a ban on taking part in any football-related activity for a maximum of two years. In serious cases and/or in the case of repetition, a ban on taking part in any football-related activity may be pronounced for a maximum of five years".*

i. Lack of protection, respect or safeguard

207. Under Article 23, para. 1 FCE the Appellant had the duty to protect, respect and safeguard the integrity and personal dignity of the players of the AFF's women's national team. It is without a doubt that by verbally and sexually assaulting and abusing Players A, B, C and D and by raping Player C, the Appellant failed to uphold the principles of protection and safety embedded in that provision. Indeed, instead of providing a safe environment for the players at the AFF, over which he presided as the highest-ranking official, and protecting their physical and mental integrity, he created a violent, dangerous and horrifying atmosphere for them and committed despicable and heinous acts against them. The Panel finds that the Appellant thus violated Article 23, para. 1 FCE.

ii. Sexual harassment

208. Pursuant to Article 23, para. 4 FCE, the Appellant was prohibited from engaging in sexual harassment.

209. The term used to be defined in the 2012 edition as *"unwelcome sexual advances that are not solicited or invited. The assessment is based on whether a reasonable person would regard the conduct as undesirable or offensive"*. However, the term is no longer defined in the 2018 edition of the FCE. Therefore,

the Panel must turn to its common meaning in the English language (CAS 2007/A/1377, at para. 19 *et seq.*). The Merriam-Webstar English dictionary defines it as an *"uninvited and unwelcome verbal or physical behavior of a sexual nature especially by a person in authority toward a subordinate (such as an employee or student)"*.

210. It is without question that the Appellant sexually harassed, both verbally and/or physically, Players A, B, C and D. Indeed, as established above at para. 192 *et seq.*, the Appellant inappropriately talked to them, sexually assaulted and abused them and even raped Player C.

iii. Threats and promises of advantages

211. Under Article 23, para. 5 FCE, the Appellant had to duty to refrain from threating, coercing or making promises of advantages. The Panel finds that the Appellant violated this provision by pointing a gun at Player C after having raped her and threatening to fatally shoot her in the head if she did not keep quiet about the incident: *"I am going to fire the pistol and your brain will explode"*. Additionally, the Appellant violated this provision by offering Player B sporting and financial rewards if she gave in to his sexual advances and threatening to fire her if she did not.

iv. Conclusion

212. In light of the above, the Panel holds that the Appellant violated Article 23 FCE.

213. For the sake of completeness, the Panel notes that the Respondent also submits the Appellant violated para. 3 of Article 23 FCE, claiming (as the Appealed Decision found) that once the players rejected the Appellant's sexual advances, he harassed them by casting them out of the national team and labelling them as "lesbians" knowing full well the negative consequences that such label would have against them in Afghanistan. However, given that the Panel has already confirmed the other violations of the overarching article, the Panel finds it unnecessary to determine whether the evidence before it is sufficient to establish to its comfortable satisfaction whether the Appellant engaged in such conduct and violated Article 23, para, 3 FCE.

214. Additionally, for the avoidance of doubt, the Panel wishes to clarify that its finding that the Appellant violated Article 23 FCE is limited to Players A, B, C and D only. The Panel does not assess whether the Appellant violated said provision in relation to Player F, Rahima (who FIFA presents as a *"new victim"* of harassment), or Ms Neda Hussaini (who FIFA claims, based on Mr Sediqi's testimony to the AGO, was raped by the Appellant). As is well-established under CAS jurisprudence, the Panel's power of review is limited to the objective and subjective scope of the Appealed Decision (see *e.g.*, TAS 2009/A/1879 and CAS 2014/A/3744 & 3766). Therefore, since Player F, Rahima, and Ms Hussaini did not testify before the FIFA Ethics Committee and were not subjects of the Appealed Decision, the Panel cannot assess whether the Appellant violated Article 23 FCE in relation to them.

c. Violation of Article 25 FCE

215. Article 25 FCE entitled *"Abuse of position"* provides that:

> *"1. Persons bound by this Code shall not abuse their position in any way, especially to take advantage of their position for private aims or gains.*
>
> *2. Violation of this article shall be sanctioned with an appropriate fine of at least CHF 10,000 as well as a ban on taking part in any football-related activity for a minimum of two years. The sanction shall be increased accordingly where the person holds a high position in football, as well as in relation to the relevance and amount of the advantage received".*

216. As established above at para. 192, between the years of 2013 and 2018, during the time in which he served as the AFF President, the Appellant, on AFF premises, sexually harassed and abused Players A, B, C and D and even raped Player C of the AFF women's national team, all of whom had gone to see him in his capacity as AFF President and for official business.

217. The Appellant used his position as the AFF President and, more specifically, the players' sporting and financial dependency on him for private aims and gains – *i.e.*, to try to obtain sexual favors (*e.g.*, Player B to whom he offered a spot on the national team and a salary raise in exchange thereof) or simply to get the players to meet him personally in his offices so that he would be in the position to sexually harass and abuse them (*e.g.*, Player A who went to collect a letter as instructed, Player C who went to obtain money owed, and Player D who followed the Appellant's instructions and went in the belief that she would have a meeting about her absences and potential expulsion).

218. In light of the above, the Panel finds that the Appellant took advantage of his position as the AFF President for private aims or gains and thus violated Articles 25 FCE.

219. For the avoidance of doubt, the Panel clarifies that this finding does not extend in relation to Player F for the reasons stipulated *supra* at para. 214.

E. Sanction

220. There is recent CAS jurisprudence to the effect that whenever an association uses its discretion to impose a sanction, CAS will have regard to that association's expertise but, if having done so, the CAS panel considers nonetheless that the sanction is disproportionate, it must, given its *de novo* powers of review, be free to say so and apply the appropriate sanction (see CAS 2017/A/5003 at para. 274).

221. As previously mentioned, the Adjudicatory Chamber of the FIFA Ethics Committee sanctioned the Appellant with a lifetime ban from taking part in any football-related activity at national and international level (administrative, sports or any other) and a fine of CHF 1,000,000 for his violations of Articles 23 and 25 FCE.

222. In order to assess whether this sanction is proportionate to the offenses committed by the Appellant the Panel must first turn its attention to the legal framework in the FCE for deciding

on the appropriate sanction.

223. According to Article 9, para. 1 FCE, when imposing a sanction the Panel must *"take into account all relevant factors in the case, including the nature of the offence; the substantial interest in deterring similar misconduct; the offender's assistance to and cooperation with the Ethics Committee; the motive; the circumstances; the degree of the offender's guilt; the extent to which the offender accepts responsibility, and whether the person mitigated his guilt by returning the advantage received, where applicable"*.

224. Article 11 FCE then provides that when a party is found to have committed concurrent breaches *"the sanction other than monetary sanctions shall be based on the most serious breach, and increased up to one third as appropriate, depending on the specific circumstances"*.

225. As the Appellant violated both Articles 23 and 25 FCE in the present case, the Panel must start by determining which breach is *"most serious"*.

226. The Panel finds that while both breaches are extremely serious, the Appellant's principal and, in turn, more serious breach was that of Article 25 FCE for the abuse of his position as the AFF President. This is because all of the Article 23 FCE violations the Appellant committed – *i.e.*, the violation of the players' integrity and personal dignity, the sexual harassment, and the threats and promises of advantages – were only possible due to his position as the highest-ranking official of the AFF.

227. Having decided that, the Panel notes that the minimum violation for committing an Article 25 FCE breach is at a fine of CHF 10,000 and a ban on taking part in any football-related activity for two years. Neither this nor any other provision of the FCE establishes a maximum ban from football-related activity for the abuse of one's position. Fines, on the other hand, are limited to a maximum of CHF 1,000,000 under Article 6, para. 2 FCE in conjunction with Article 15, para. 1 and 2 of the FIFA Disciplinary Code.

228. The Panel further observes that pursuant to Article 25, para. 2 FCE the minimum sanction *"shall be increased accordingly where the person holds a high position in football, as well as in relation to the relevance and amount of the advantage received"*.

229. With the above legal framework in mind, the Panel finds that the maximum sanction allowable under the FIFA regulations – a lifetime ban and a fine of CHF 1,000,000 – is proportionate to the offenses committed by the Appellant. In fact, the Panel finds that the Appellant's violation of Article 25 FCE alone is sufficiently grave to warrant said sanction. In reaching its conclusion the Panel reasons as follows.

230. First of all, the nature of the principal offence committed – abusing one's position to sexually harass, abuse and even rape – is of the most serious, illegal, and immoral kind and, as such, there is an obvious and substantial need to deter similar misconduct in the future from the Appellant, as well as from any other FIFA officials. It is an offence that is disgraceful and which cannot be tolerated from any official, let alone the president of a national federation, who bears the responsibility to set a proper example for the federation's employees, the others individuals affiliated thereto, and more generally to all those involved in the world of football.

231. Second, this is a case of unprecedented gravity. The Panel observes that in the past FIFA has imposed on FIFA officials lifetime bans from football-related activity and fines of CHF 1,000,000 for offences related to bribery and corruption (see *e.g.*, the FIFA Ethics Committee cases of Chuck Blazer, Jeffrey Webb, Héctor Trujillo, Kokou Hougnimon Fagla, and Ibrahim Chaibou). The Panel also notes that in the past the CAS has imposed on FIFA officials a lifetime ban for match-fixing (CAS 2017/A/5173), as well as bans ranging from two to ten years for bribery (see CAS 2017/A/5003, CAS 2016/A/4501, CAS 2016/A/4474, CAS 2011/A/2426, CAS 2011/A/2425 and TAS 2011/A/2433). In the Panel's view, those offenses of bribery, corruption and match-fixing, while very serious in their own right, are far less severe than the vile and horrendous offenses committed by the Appellant which have never before been (and hopefully never again will have to be) dealt with by the CAS. Indeed, unlike bribery and match-fixing which damages the integrity of the sport, the offenses committed by the Appellant violated basic human rights and damaged the mental and physical dignity and integrity of young female players. With his appalling acts, the Appellant has destroyed not only their careers, but severely or irreparably damaged their lives. As such, they warrant the most severe sanction possible available under the FCE.

232. Third, even the Appellant himself has not disputed the proportionality of the sanction in the event that the Panel were to hold that he violated Articles 23 and 25 FCE, as it has done. On the contrary, the Appellant unequivocally declared that in such a case he *"has not appealed against the fine and the lifelong ban"* and expressly admitted that *"the allegations if true deserve a harsh punishment"*. His exclusive and entire defence was that the allegations were untrue.

233. In light of the above, the Panel confirms the sanction of a life ban and CHF 1,000,000 fine.

F. Further or different motions

234. All further or different motions or requests of the Parties are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Keramuddin Karim on 25 July 2019 against the decision of the Adjudicatory Chamber of the FIFA Ethics Committee rendered on 8 June 2019 is dismissed.

2. The decision of the Adjudicatory Chamber of the FIFA Ethics Committee rendered on 8 June 2019 is confirmed.

(…)

5. All further or different motions or prayers for relief are dismissed.