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A FIFA Soap Opera: Scandal, Corruption, Crime . . . And Reformation?

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I. Introduction

The Fédération Internationale de Football Association (FIFA), the world governing body for football, was publicly scorned in the summer of 2015 when the rampant corruption of the international association was unveiled as a result of the indictments of several top FIFA officials by the U.S. Department of Justice.¹ In May of that

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¹ FIFA Corruption Crisis: Key Questions Answered, BBC NEWS (Dec. 21, 2015), <https://www.bbc.com/news/world-europe-32897066> [<https://perma.cc/CL6U-4NE6>] [hereinafter FIFA Corruption Crisis]. The sport referenced here as football is called soccer in the United States. FIFA, the world governing body for football, is based in Zurich, Switzerland and is formally registered as a non-profit association governed by Swiss law. Henrik Böhme, FIFA's Controversial Business Model, DEUTSCHE WELLE

year, at the request of U.S. authorities, the Swiss police descended upon a swanky Zurich hotel to arrest seven FIFA executives.² Between May and December of 2015, more than thirty FIFA officials and associates were indicted by the U.S. Department of Justice for charges of corruption, including racketeering, wire fraud conspiracies, money laundering conspiracies, and bribery.³ The Federal Bureau of Investigation (FBI) began investigating potential FIFA corruption three years before the 2015 indictments in response to the suspect bidding process for the Russia 2018 and the Qatar 2022 World Cups, only to later widen the investigation to include the past twenty years of FIFA dealings.⁴ In issuing indictments stemming from FIFA leaders' corrupt practices, U.S. authorities alleged in part that U.S. banks were involved in the money transfers tainted by the misconduct of FIFA officials.⁵ Alongside the ongoing FBI inquiry into FIFA corruption, the Swiss Attorney General launched a separate criminal investigation.⁶

FIFA is the governing body responsible for running international football, organizing the World Cup, and generating “billions of dollars in revenue from corporate sponsors, broadcasting rights[,] and merchandising.”⁷ As such, the corruption of their vast international affairs has had and will continue to have widespread consequences, ranging from criminal prosecutions of top executives and FIFA associates to potentially indefinite internal FIFA bans of involved individuals.⁸ Already, former FIFA President Sepp Blatter and Union of European Football Association (UEFA) President Michel Platini have been “found guilty of breaches surrounding a £1.3m (\$2m) ‘disloyal payment’ made to Platini in 2011,” and FIFA has openly expressed that Blatter and

(May 27, 2015), <https://www.dw.com/en/fifas-controversial-business-model/a-18479441> [<https://perma.cc/2A6H-5NNN>].

² *Id.*

³ *Id.* See also Press Release, United States Dep't of Justice, Nine FIFA Officials & Five Corp. Execs. Indicted for Racketeering Conspiracy Corruption (May 27, 2015), <https://www.bbc.com/news/world-europe-32897066> [justice.gov/opa/pr/nine-fifa-officials-and-five-corporate-executives-indicted-racketeering-conspiracy-and](https://www.justice.gov/opa/pr/nine-fifa-officials-and-five-corporate-executives-indicted-racketeering-conspiracy-and) [<https://perma.cc/8PD8-WBBJ>] [hereinafter Nine FIFA Officials].

⁴ *FIFA Corruption Crisis*, *supra* note 1.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

Platini “demonstrated an ‘abusive execution’ of their positions.”⁹ Independent of the criminal charges, FIFA internally punished Blatter and Platini with the decision by the FIFA Ethics Committee to ban both leaders from all football-related activities for eight years.¹⁰ The ongoing Swiss and U.S. criminal investigations and the growing number of FIFA officials and associates proven guilty of corrupt practices “cast doubt over the transparency and honesty for the process of allocating World Cup tournaments, electing [officials], and the administration of funds”¹¹ In spite of the doubts and pressures from external sources, FIFA has not given up the fight for its credibility as a capable governing body for the world’s most popular sport.¹²

Further motivated by the ongoing criminal cases, FIFA has moved forward with reform efforts that aim to combat corruption.¹³ FIFA is precariously positioned for further corruption to occur in the future due to the following considerations: (1) FIFA reform is predominantly guided by internal mechanisms for change within the organization; (2) external governmental bodies have minimal opportunities for review of FIFA practices; and (3) FIFA disciplinary measures have limited negative consequences for FIFA rule violations.¹⁴ Nevertheless, FIFA’s 2018 reforms of the FIFA Code of Ethics represent a strong initial attack on corruption.¹⁵ Moving forward, however, FIFA reform efforts should focus on building an internal culture of compliance, integrity, and public transparency.

This Note will proceed in six parts. Part I will briefly explain the Qatar controversy over the bidding process to host the 2022 World Cup and how FIFA responded internally to the allegations of

⁹ *Id.*

¹⁰ *Id.*

¹¹ *FIFA Corruption Crisis*, *supra* note 1.

¹² *See generally* *Amendments to the FIFA Statutes and Regulations*, FIFA (July 27, 2018), <https://resources.fifa.com/image/upload/1645-amendments-to-the-fifa-statutes-and-the-regulations-governing-the-applicati.pdf?cloudid=nxcm7twuakafdkf4yijl> [<https://perma.cc/T92E-PM2G>] [hereinafter *Amendments*].

¹³ *Id.*

¹⁴ *See generally id.* (amendments to FIFA regulations); *FIFA Statutes*, *infra* note 32 (laying out the governance structure of FIFA); *FIFA Disciplinary Code*, *infra* note 49 (enumerating the responsibilities of the Disciplinary Committee); *FIFA Code of Ethics*, *infra* note 58 (outlining the powers of the FIFA Ethics Committee).

¹⁵ *Id.*

corruption. Part II will describe FIFA's governance structure and the duties allocated to each FIFA body. Part III will summarize the amendments to the FIFA Code of Ethics that are most closely aimed at combatting corruption within FIFA. Part IV will present a sampling of recent recommendations for FIFA reform described in other law journals, and Part V will respond directly to the strengths and shortcomings of the commentators' recommendations in light of FIFA's recent reform efforts. Part VI will then recommend furthering FIFA reform through public transparency and taking steps toward creating an anti-corruption culture within FIFA.

II. The Qatar Controversy and FIFA's Response

FIFA's reputation has been tainted by corruption for decades.¹⁶ Although the FIFA Ethics Committee has historically monitored and resolved many specific instances of corruption, the most recent claims of bribery and corruption that swirled around the bidding process to host the 2018 and 2022 World Cup competitions have not been so easily brushed away by FIFA governance.¹⁷ In December 2010, the final vote for the hosting rights to the 2022 World Cup resulted in eight votes cast for the United States and fourteen votes cast for Qatar.¹⁸ In the wake of bribery and corruption claims prior to, during, and after the vote, a Qatar victory to host the 2022 World Cup added fuel to an already raging wildfire of controversy. The questionable nature of a Qatar victory was especially enflamed by the lack of logic in the choice of Qatar as host nation, considering the obstacles of weather conditions, suspected human rights violations, and a lack of existing football facilities.¹⁹ Although sparked by the controversial bid for Qatar, the United States and Swiss inquiries were not the only investigative efforts to sniff out misconduct.²⁰

In light of the controversy over the Qatar victory, FIFA moved

¹⁶ See Jack Rollin, *The FIFA Corruption Scandal*, ENCYCLOPEDIA BRITANNICA (Oct. 17, 2016), <https://www.britannica.com/topic/FIFA-Corruption-Scandal-The-2076091> [https://perma.cc/T7PY-HU7V].

¹⁷ See Kate Youd, Comment, *The Winter's Tale of Corruption: The 2022 FIFA World Cup in Qatar the Impending Shift to Winter, and Potential Legal Actions against FIFA*, 35 NW J. INT'L L. & BUS. 167, 171 (2014).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

forward with its own internal investigation of the suspect bidding process.²¹ On November 13, 2014, the investigatory chamber for the FIFA Ethics Committee reviewed the relevant bidding and award process in light of the FIFA Code of Ethics and other FIFA rules and regulations.²² The investigatory chamber prepared its “Report on the Inquiry into the 2018/2022 FIFA World Cup Bidding Process,” and in response, the chairman of the adjudicatory chamber issued an accompanying statement.²³ The statement’s cover letter stressed the concern to “strike a balance between the public’s – legitimate – demand for transparency with regard to the occurrences related to the relevant World Cup bidding and award process and the legal framework [of] the Ethics Committee[’s]” operations, particularly the provisions on confidentiality in the FIFA Code of Ethics that protects the integrity of information disclosed during Ethics proceedings.²⁴ The report was divided into three relevant sections: (1) the bidding process; (2) personalized information on individuals and bidders (with some restrictions); and (3) recommendations.²⁵ In addition to numerous recommendations to reform the World Cup bidding process for future host selections, on November 18, 2014, then chairman of the adjudicatory chamber of the FIFA Ethics Committee, Hans-Joachim Eckert, “recommend[ed] to the FIFA President – in line with the FIFA Code of Ethics – that a criminal complaint be lodged with the Office of

²¹ See generally Press Release, Hans Joachim Eckert, Statement of the Chairman of the Adjudicatory Chamber of the FIFA Ethics Committee on the Report on the Inquiry into the 2018/2020 FIFA World Cup™ Bidding Process prepared by the Investigatory Chamber of the FIFA Ethics Committee (Nov. 13, 2014), https://imgresources.fifa.com/image/upload/oixdbzuh94ae4p2w41lomm/document/affederation/footballgovernance/02/47/41/75/statementchairmanadjcheckert_neutral.pdf [<https://perma.cc/KK75-WY93>] [hereinafter *Eckert Statement*].

²² *Id.*

²³ *Id.* The FIFA Ethics Committee is one of three judicial bodies of FIFA, and it is further subdivided into an investigatory chamber, which leads the investigation of alleged misconduct, and an adjudicatory chamber, which follows an adjudicatory process to formally decide the issue and pronounce punishments when necessary. See *infra* Part IIB2.

²⁴ *Cover Letter to Eckert Statement*, FIFA, at 2 (Nov. 13, 2014), https://resources.fifa.com/mm/document/affederation/footballgovernance/02/47/41/88/statementcoverletter_neutral.pdf [<https://perma.cc/VXR4-28UL>] [hereinafter *Eckert Cover Letter*].

²⁵ *Ethics Committee Milestones (2012-2018)*, FIFA, at 7 (Sept. 5, 2018), <https://resources.fifa.com/image/upload/ethics-committee-milestones-2012-2016-2741972.pdf?cloudid=flai7jvu5ah88alhscjd> [<https://perma.cc/6HWD-264Z>] [hereinafter *Milestones*].

the Attorney General of Switzerland in Berne.”²⁶

Concurrent with the Swiss criminal investigation, the U.S. Department of Justice proceeded with its independent investigation, resulting in the indictment of more than thirty FIFA officials and associates by the U.S. Department of Justice in late 2015 for charges of corruption, including racketeering, wire fraud, money laundering, and bribery.²⁷ Although initially an investigation into the bidding process resulting in the Qatar victory to host the 2022 World Cup, the FBI later widened the investigation to include the last several decades of corrupt FIFA dealings.²⁸ In response to the facts presented by the U.S. investigation and on the basis of inquiries of the investigatory chamber of the FIFA Ethics Committee, the chairman of the adjudicatory chamber of the FIFA Ethics Committee implemented bans against numerous individuals involved in the corruption from carrying out any football-related activities at the national and international levels.²⁹ For example, FIFA leaders Sepp Blatter and Michel Platini were under investigation by the investigatory chamber of the FIFA Ethics Committee for a multi-million dollar payment from FIFA to Platini that occurred back in February 2011.³⁰ As a result of the FIFA internal investigation, on December 21, 2015, Blatter and Platini were officially banned from all national and international football-related activities for eight years.³¹

III. FIFA Organization and Duties

A. FIFA Governing Bodies

According to the most recent April 2015 update to the FIFA Statutes, FIFA governance is organized into separate governing bodies: the FIFA Congress (the legislative body), the FIFA Executive Committee (the executive body), the general secretariat (the administrative body), and other standing or ad hoc committees that provide advice and assistance to the FIFA Executive

²⁶ *Id.*

²⁷ Nine FIFA Officials, *supra* note 3. See also *FIFA Corruption Crisis*, *supra* note 1.

²⁸ *FIFA Corruption Crisis*, *supra* note 1.

²⁹ *Milestones*, *supra* note 25, at 10–14.

³⁰ *Id.* at 13.

³¹ *Id.* at 14.

Committee in the fulfillment of its duties.³²

1. *FIFA Congress*

The FIFA Congress “is responsible for adopting and amending the [FIFA] Statutes, the Regulations Governing the Application of the Statutes and the Standing Orders of the Congress.”³³ In order to validate a vote to amend the FIFA Statutes, an absolute majority quorum of FIFA Members eligible to vote must be present, and if the proposal to adopt or amend the FIFA Statutes is approved by three-quarters or more of the eligible Members, then the proposal will be adopted by the FIFA Congress.³⁴ A simple majority of valid votes is all that is required to adopt or amend the Regulations Governing the Application of the Statutes and the Standing Orders of Congress.³⁵ All elections of FIFA officials are conducted by secret ballot at a session of the FIFA Congress.³⁶

2. *FIFA Executive Committee*

The FIFA Executive Committee is comprised of twenty-five members, including the President (elected by the FIFA Congress), eight vice-presidents (elected by the Confederations and then installed by the FIFA Congress), one female member (elected by the FIFA Congress), and fifteen other members (elected by the Confederations and installed by the FIFA Congress).³⁷ The six Confederations under the umbrella of FIFA with the power to elect members of the FIFA Executive Committee are widely known by their acronyms: CONMEBOL, AFC, UEFA, CAF, CONCACAF, and OFC.³⁸

³² FIFA, FIFA STATUTES: APRIL 2015 EDITION 20 (2015), https://resources.fifa.com/mm/document/affederation/generic/02/58/14/48/2015fifastatutes_neutral.pdf [<https://perma.cc/CGM5-WX7P>] [hereinafter *FIFA Statutes*].

³³ *Id.* at 25.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 24, 26.

³⁷ *Id.* at 28.

³⁸ *FIFA Statutes*, *supra* note 32, at 29. “Members that belong to the same continent have formed the following Confederations, which are recognised by FIFA: a) Confederación Sudamericana de Fútbol – CONMEBOL b) Asian Football Confederation – AFC c) Union des associations européennes de football – UEFA d) Confédération Africaine de Football – CAF e) Confederation of North, Central American and Caribbean Association Football – CONCACAF f) Oceania Football Confederation – OFC.” *Id.* at

The FIFA Executive Committee is responsible for all decision-making that does not fall “within the sphere of responsibility of the [FIFA] Congress or are not reserved for other bodies by law or under [the] Statutes.”³⁹ One of the enumerated responsibilities of the FIFA Executive Committee is the appointment of the “place and dates of the final competitions of FIFA tournaments and the number of teams taking part from each Confederation,” with the exception of the decisions regarding the host country of the World Cup.⁴⁰ The President is the legal representative of FIFA with three primary responsibilities: (1) “implementing the decisions passed by the Congress and the Executive Committee through the general secretariat;” (2) “supervising the work of the general secretariat;” and (3) maintaining “relations between FIFA and the Confederations Members, political bodies and international organizations.”⁴¹

3. FIFA Standing Committees

Of the twenty-six standing committees, the most pertinent are the Finance Committee, the Audit and Compliance Committee, the Legal Committee, and the Associations Committee. The Finance Committee monitors FIFA’s financial management, advises the Executive Committee on financial matters, and analyzes the budget and financial statements that are submitted to the Executive Committee for approval.⁴² The Audit and Compliance Committee is responsible for “ensur[ing] the completeness and reliability of the financial accounting and reviewing the financial statements, the consolidated financial statement and the external auditor’s report.”⁴³ The Legal Committee analyzes “basic legal issues relating to football and the evolution of the Statutes and regulations of FIFA, the Confederations and Members.”⁴⁴ The Associations Committee oversees the “relations between FIFA and its Members as well as

17.

³⁹ *Id.*

⁴⁰ *Id.* at 30.

⁴¹ *Id.* at 31. The general secretariat performs the administrative work of FIFA under the guidance and direction of the Secretary General, the chief executive of the general secretariat. *Id.* at 51.

⁴² *Id.* at 35.

⁴³ *Id.*

⁴⁴ *FIFA Statutes*, *supra* note 32, at 41.

the Members' compliance with the FIFA Statutes and draw[s] up proposals for optimum cooperation."⁴⁵

B. FIFA Judicial Governance

In addition to the above governing bodies, FIFA has three judicial bodies: (1) the Disciplinary Committee; (2) the Ethics Committee; and (3) the Appeal Committee.⁴⁶ The FIFA Disciplinary Code governs the FIFA Disciplinary Committee, and the FIFA Code of Ethics governs the FIFA Ethics Committee.⁴⁷ The FIFA Appeal Committee is governed by both the FIFA Disciplinary Code and the FIFA Code of Ethics.⁴⁸

1. FIFA Disciplinary Committee

The FIFA Disciplinary Committee has the authority to “sanction any breach of FIFA regulations which does not come under the jurisdiction of another body.”⁴⁹ The object and purpose of the FIFA Disciplinary Code is to describe the infringements of FIFA rules, determine the resulting sanctions, regulate the organization and function of the decision-making bodies, and define the procedures for interacting with those bodies.⁵⁰ The FIFA Disciplinary Code has broad scope of authority to regulate.⁵¹ The FIFA Disciplinary Code applies in every circumstance that involves any match or competition organized by FIFA, any breach of the statutory objectives of FIFA, especially in regard to forgery, corruption, and doping, and any breach of FIFA regulations that are not the responsibility of another body.⁵² FIFA regulations include “the

⁴⁵ *Id.*

⁴⁶ *Id.* at 43.

⁴⁷ *Id.* at 44–45.

⁴⁸ *Id.* at 45.

⁴⁹ *FIFA Disciplinary Code*, FIFA, at 10 (May 9, 2017), <https://resources.fifa.com/image/upload/fifa-disciplinary-code-500276.pdf?cloudid=koyeb3cvhxnwy9yz4aa6> [https://perma.cc/QS9J-EW6C] [hereinafter *FIFA Disciplinary Code*]. “The Disciplinary Committee is responsible for: a) sanctioning serious infringements which have escaped the match officials’ attention; b) rectifying obvious errors in the referee’s disciplinary decisions; c) extending the duration of a match suspension incurred automatically by an expulsion; d) pronouncing additional sanctions, such as a fine.” *Id.* at 40 (citation omitted).

⁵⁰ *Id.*

⁵¹ *See id.*

⁵² *Id.* at 10–11.

statutes, regulations, directives and circulars of FIFA as well as the Laws of the Game issued by the International Football Association Board.”⁵³ Typical disciplinary measures include: a warning, a reprimand, a fine, a return of rewards, an expulsion, a forfeit, a ban from a stadium, a ban on taking part in any football-related activity, and others of similar consequence.⁵⁴ With respect to corruption, the FIFA Disciplinary Code mandates the following:

Anyone who offers, promises or grants an unjustified advantage to a body of FIFA, a match official, a player or an official on behalf of himself or a third party in an attempt to incite it or him to violate the regulations of FIFA will be sanctioned:

- a) with a fine of at least CHF 10,000,
- b) with a ban on taking part in any football-related activity, and
- c) with a ban on entering any stadium.⁵⁵

Additionally, “[p]assive corruption (soliciting, being promised or accepting an unjustified advantage) will be sanctioned in the same manner[,] [and] in serious cases and in the case of repetition, sanction 1b) may be pronounced for life.”⁵⁶ Furthermore, all assets involved in committing the infringement will be confiscated and used for football development programs.⁵⁷

2. FIFA Ethics Committee

The FIFA Ethics Committee is composed of an investigatory chamber and an adjudicatory chamber, and FIFA Ethics Committee proceedings include first an investigation and then an adjudicatory process.⁵⁸ The FIFA Ethics Committee has the authority to pronounce sanctions enumerated in the FIFA Code of Ethics, the

⁵³ *Id.* at 12.

⁵⁴ *Id.* at 14. Fines may be issued in Swiss francs (CHF) or U.S. dollars (USD) and may be no less than CHF 200 and no more than CHF 1,000,000. *Id.* at 15.

⁵⁵ *FIFA Disciplinary Code*, *supra* note 49, at 33.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *FIFA Code of Ethics*, FIFA, at 10 (June 10, 2018), <https://resources.fifa.com/image/upload/fifa-code-of-ethics-2018-version-takes-effect-12-08-18.pdf?cloudid=uemlky8wwdtlll6sy3j> [https://perma.cc/D5LF-AVQA] [hereinafter *FIFA Code of Ethics*].

FIFA Disciplinary Code, or the FIFA Statutes.⁵⁹ The FIFA Code of Ethics applies to “any conduct . . . that damages the integrity and reputation of football and in particular to illegal, immoral and unethical behavior of . . . all officials and players as well as match agents and intermediaries.”⁶⁰ Persons bound by the FIFA Code of Ethics may be punished for a breach of the Code or any other FIFA rule or regulation with one or more of the following sanctions: a warning, a reprimand, compliance training, a return of awards, a fine, social work, a match suspension, a ban from dressing rooms and/or the substitutes’ bench, a ban on entering the stadium, or a ban on taking part in any football-related activity.⁶¹ The FIFA Code of Ethics covers such areas of misconduct as commission, forgery and falsification, abuse of position, bribery, and misappropriation of funds.⁶² Additionally, a “Duty to Report” is built into the FIFA Code of Ethics such that persons bound by the Code who become aware of infringements are required to directly inform the investigatory chamber of the FIFA Ethics Committee or risk a fine of at least CHF 10,000 and a ban from taking part in any football-related activity for a maximum of two years.⁶³

3. *FIFA Appeal Committee*

The purpose of the FIFA Appeal Committee is to decide “appeals against any of the Disciplinary Committee’s decisions that FIFA regulations do not declare as final or referable to another body.”⁶⁴ The FIFA Appeal Committee may hear appropriate appeals of decisions of the adjudicatory chamber of the FIFA Ethics Committee that relate to infringements concerning the manipulation of football matches or competitions.⁶⁵

C. *Court of Arbitration for Sport (CAS)*

The FIFA Statutes authorize the independent Court of Arbitration for Sport (CAS), headquartered in Lausanne, Switzerland, to “resolve disputes between FIFA, Members,

⁵⁹ *Id.* at 11.

⁶⁰ *Id.* at 9.

⁶¹ *Id.* at 11.

⁶² *Id.* at 19–23.

⁶³ *Id.* at 16.

⁶⁴ *FIFA Disciplinary Code*, *supra* note 49, at 41.

⁶⁵ *FIFA Code of Ethics*, *supra* note 58, at 51.

Confederations, Leagues, Clubs, Players, Officials, intermediaries and licensed match agents.”⁶⁶ The Confederations, Members, Leagues and their members and affiliates, in addition to intermediaries and licensed match agents, are also obligated by the FIFA Statutes to recognize CAS as an independent judicial authority and to comply with CAS decisions.⁶⁷

CAS serves as the independent, international court of last resort for most sports matters.⁶⁸ However, FIFA “[r]ecourse may only be made to CAS after all other internal channels have been exhausted.”⁶⁹ CAS proceedings are governed by the CAS Code of Sports-Related Arbitration, but in deciding a case, CAS will primarily apply the relevant FIFA regulations, and when necessary, Swiss law.⁷⁰ With few exceptions, final decisions passed by FIFA’s legal bodies or decisions passed by Confederations, Members, or Leagues may be appealed to CAS within 21 days of notification of the final decision in question.⁷¹ Apart from CAS, “[r]ecourse to ordinary courts of law is prohibited unless specifically provided for in the FIFA regulations[, and] [r]ecourse to ordinary courts of law for all types of provisional measures is also prohibited.”⁷² In the large majority of circumstances, in the absence of a FIFA regulation or binding legal provision that allows or stipulates recourse to an ordinary court of law, disputes will be handled by an independent and duly constituted arbitration tribunal recognized by FIFA, Confederation rules, or by CAS.⁷³

IV. FIFA 2018 Reforms

In the interest of “safeguard[ing] the integrity and reputation of football worldwide . . . [and] protect[ing] the image of football from

⁶⁶ *FIFA Statutes*, *supra* note 32, at 47.

⁶⁷ *Id.* at 49.

⁶⁸ See *History of the CAS*, TAS/CAS, <https://www.tas-cas.org/en/general-information/history-of-the-cas.html> [<https://perma.cc/NPS3-89JG>].

⁶⁹ *FIFA Statutes*, *supra* note 32, at 47.

⁷⁰ *Id.*

⁷¹ *Id.* (“CAS . . . does not deal with appeals rising from: (a) violations of the Laws of the Game; (b) suspensions of up to four matches or up to three months (with the exception of doping decisions); (c) decisions against which an appeal to an independent and duly constituted arbitration tribunal recognized under the rules of an Association or Confederation may be made.”).

⁷² *Id.* at 49.

⁷³ *FIFA Statutes*, *supra* note 32, at 49.

jeopardy or harm as a result of immoral or unethical methods and practices,” FIFA implemented reform measures in the aftermath of the 2015 controversies.⁷⁴ On June 13, 2018, the sixty-eighth FIFA Congress approved amendments to the FIFA Statutes that came into effect August 12, 2018.⁷⁵ In addition to the amended FIFA Statutes, the FIFA Congress reviewed the 2012 FIFA Code of Ethics, through the collaborative effort of the chairpersons and members of the investigatory and adjudicatory chambers of the FIFA Ethics Committee and representatives of the Confederations, which resulted in the updated 2018 version of the FIFA Code of Ethics – approved by the FIFA Council on June 10, 2018 and admitted into force on August 12, 2018.⁷⁶ With the intention of “enabl[ing] the football world to have a standardised and generally recognised common agreement as to the conduct that is to be considered inappropriate by football officials,” FIFA mandated that its member associations and confederations include the updated provisions of the 2018 FIFA Code of Ethics in their respective applicable regulations.⁷⁷

Although there were many amendments to the FIFA Code of Ethics, the following updates most directly combat the internal corruption that surfaced in 2015: (1) the FIFA Code of Ethics now empowers the FIFA Ethics Committee to investigate and judge the conduct of all persons bound by the FIFA Code of Ethics; (2) the amendments further specify the degree of sanctions and add a new disciplinary measure in the form of compliance training; and (3) the updated Code additionally provides that most of the FIFA Ethics Committee decisions may be appealed directly before the CAS.⁷⁸

The revisions to the FIFA Code of Ethics now

provide[] for an exclusive competence of the Ethics Committee to investigate and judge the conduct of all persons bound by the Code of Ethics where such conduct: [(1)] [h]as been committed by an individual who was elected, appointed or assigned by FIFA to exercise a function; [(2)] [d]irectly concerns their FIFA-related duties or responsibilities; or [(3)] [i]s related to the use of FIFA

⁷⁴ *Amendments, supra* note 12.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

funds.⁷⁹

If the concerned conduct falls outside of the above designated scenarios, the member associations of FIFA and the Confederations, depending on the scope of the relevant conduct, may have the capability to lead their own investigations and render judgments on the matter.⁸⁰ However, if the member association or the Confederation fails to act within three months from the time that the FIFA Ethics Committee receives notice of the matter, the FIFA Ethics Committee reserves the right to exert its authority.⁸¹

In an effort to promote transparency and legal clarity in ethics proceedings, the FIFA Code of Ethics was amended to further specify the degree of sanctions, such that “[e]ach material article contains either a minimum or a maximum sanction, which is binding upon the Ethics Committee with the exception of cases with repeated breaches.”⁸² Additionally, the FIFA Code of Ethics now includes a new disciplinary measure, compliance training to be imposed at the discretion of the FIFA Ethics Committee, which is intended “to ensure that the football officials concerned understand and adhere to the applicable laws and regulations that apply to their roles.”⁸³ Finally, rather than a requirement that the FIFA Ethics Committee decisions must first be appealed to the FIFA Appeal Committee, the updated FIFA Code of Ethics provides that “most of the decisions of the Ethics Committee may be appealed directly before CAS.”⁸⁴ However, as mentioned in Part II(B), decisions of the FIFA Ethics Committee that specifically concern match manipulation will still first be appealed to the FIFA Appeal Committee, and then, where necessary, may be appealed to CAS.⁸⁵

V. Commentators' Recommendations

In concluding that FIFA has for some time needed internal reform in order to combat the corrupt practices of its individual members and member institutions, many commentators have

⁷⁹ *Id.*

⁸⁰ *Amendments, supra* note 12.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

weighed in on the debate and have expressed their opinions on how to best go about the process of reform.⁸⁶

Ali Eghbal, a graduate of Southwestern Law School and currently a law clerk for the presiding judge of the Los Angeles County Juvenile Court, argues for the implementation of the policy behind the Administrative Procedure Act of 1946 (APA) in order to curb the corruption in FIFA.⁸⁷ “The Administrative Procedure Act successfully solved the separation of powers and transparency issues stemming from federal administrative agencies in the United States.”⁸⁸ According to Eghbal’s recommendation, FIFA would benefit from mimicking various features of the APA, such as (1) the “organizationally independent” role of the “hearing examiner,” or the adjudicator who hands down decisions in regard to disputes; (2) the importance placed on public transparency; and most importantly, (3) the adjudicatory decision’s subjection to review in the federal court system.⁸⁹

In commenting on the “culture of corruption” within FIFA governance, Professor Bruce W. Bean of Michigan State University College of Law suggests that the Foreign Corrupt Practices Act of 1977 (FCPA) be amended to include FIFA on its list of international organizations subject to the provisions of the FCPA.⁹⁰ The FCPA “criminalizes bribes paid to foreign officials, including officials of ‘public international organizations.’”⁹¹ As such, if FIFA was included on the FCPA list of international organizations, “bribes paid to or extorted by FIFA officials would be subject to the provisions of the FCPA, and anyone with a connection to the United States paying such a bribe would be paying to an FCPA ‘foreign official’ and thus would be subject to the criminal provisions of the FCPA.”⁹² In a later essay, Professor Bean readdresses the

⁸⁶ See, e.g., Ali Eghbal, Note, *Enough Is Enough: FIFA Must Incorporate Principles from the Administrative Procedure Act of 1946 to Combat Ongoing Executive Committee Corruption*, 22 SW. J. INT’L L. 385, 400 (2015) (arguing that the implementation of the policy behind the Administration Procedure Act of 1946 will help curb FIFA corruption).

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.* at 402–03.

⁹⁰ Bruce W. Bean, *An Interim Essay on FIFA’s World Cup of Corruption: The Desperate Need for International Corporate Governance Standards at FIFA*, 22 ILSA J INT’L & COMP L 367, 391 (2016) [hereinafter Bean, *An Interim Essay*].

⁹¹ *Id.* at 390.

⁹² *Id.*

continuing problem of FIFA corruption by recommending a short list of approaches to reform, including the following: (1) self-reform by FIFA; (2) Swiss government action; (3) pressure, including prosecutions, from host governments; (4) pressure from sponsors; (5) action by the international community through a convention; and/or (6) action from the United Nations or another intergovernmental organization.⁹³

In a note for the *Cardozo Arts and Entertainment Law Journal*, then Senior Notes Editor Alexander Mandel, who currently practices as an associate with Greenberg Traurig in New York, recommended a “complete overhaul of [FIFA’s] current corporate structure” that would need to be set out in a series of long-term proposals and led by an independent board of directors.⁹⁴ According to Mandel, the implementation of an independent board of directors “will help attack [FIFA’s] corruption by laying out specific tasks of the members and increasing the power that these executives have within the organization.”⁹⁵ Mandel further concludes that true reformation will not occur within FIFA until there is “more accountability and more transparency amongst the entire organization.”⁹⁶

VI. Response to Commentators’ Proposals in Light of FIFA’s Reform Efforts

In review of the above recommendations for FIFA reform, it is evident that FIFA has historically lacked public transparency as well as adequate measures for checks and balances within FIFA leadership and management. However, a closer look at the FIFA rules and regulations, especially as they concern the most recent reforms to the FIFA Code of Ethics and the efforts of FIFA governance to create a new image of transparency, reveals strides in the right direction for FIFA in the war against internal corruption.⁹⁷ Granted, it will likely take many years of consistent effort for a

⁹³ Bruce W. Bean, *FIFA Is Corruption: What Is To Be Done?*, 27 MICH. ST. INT’L L. REV. 197, 243 (2019) [hereinafter Bean, *FIFA Is Corruption*].

⁹⁴ Alexander Mandel, Note, *Fixing Soccer: Changing FIFA’s Corporate Governance Structure in Response to the Current FIFA Corruption Scandal*, 35 CARDOZO ARTS & ENT. L. J. 449, 479 (2017).

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Amendments, supra* note 12.

culture of transparency and accountability to pervade an international organization with so far a reach as FIFA.

At least one of the above recommendations has already been implemented to some degree by FIFA.⁹⁸ In reference to Ali Eghbal's *Enough Is Enough*, the suggested creation of an "organizationally independent" role for the "hearing examiner" in reflection of a feature of the APA seems practically moot when FIFA has a fully-formed and fully-functional Ethics Committee that serves as an independent body for purposes of investigating and adjudicating potential conduct violations, including corrupt practices.⁹⁹ One potential way to improve upon the idea of a more "organizationally independent" role¹⁰⁰ for the FIFA Ethics Committee is to amend the FIFA Statutes to provide that at least a select number of the members of the investigatory chamber and adjudicatory chamber of the FIFA Ethics Committee include legal professionals with experience and familiarity with sports disputes, who are not otherwise already involved with FIFA, to fill non-voting advisory positions.¹⁰¹ As such, the FIFA Code of Ethics should be amended to allow for the existence of the proposed third-party advisory positions.¹⁰²

Other commentary that stresses the external regulation of FIFA as the cure-all for corruption overlooks the unique nature of sports law in the context of corporate corruption. For example, Ali Eghbal's suggestion – to implement a stronger checks and balances

⁹⁸ See generally *Independent Ethics Committee*, FIFA, <https://www.fifa.com/about-fifa/who-we-are/committees/committee/1882034/> [<https://perma.cc/4UZL-JWTM>].

⁹⁹ See *FIFA Code of Ethics*, *supra* note 58, at 26 ("The members of the Ethics Committee shall manage their investigations and proceedings and render their decisions entirely independently and shall avoid any third-party influence. The members of the Ethics Committee and their immediate family members shall not belong to any other judicial body within FIFA, to the FIFA Council or to any standing committee of FIFA. The members of the Ethics Committee shall not belong to any other FIFA bodies.").

¹⁰⁰ Eghbal, *supra* note 86, at 402–03.

¹⁰¹ In recent history, FIFA has shown a willingness to reform the organizational independence of the Ethics Committee. In 2013, FIFA took ultimately unsuccessful steps toward hiring independent executives, including German Judge Hans-Joachim Eckert as head of the adjudicatory chamber of the FIFA Ethics Committee, former United States Attorney Michael Garcia as head of the FIFA Ethics Committee's investigatory chamber, and additional independent executives in the roles of Chief Financial Officer and the heads of the Governance and Audit & Compliance Committees. Bean, *FIFA is Corruption*, *supra* note 93, at 249.

¹⁰² *FIFA Code of Ethics*, *supra* note 58.

protocol in regard to judicial review of FIFA conduct by subjecting FIFA adjudicatory decisions to review in the federal court system¹⁰³ – has one major flaw. The resulting system would give local courts, with less than adequate expertise in the delicacies of sports-related violations, the ultimate decision-making power on such matters.¹⁰⁴ Additionally, allowing national courts to review FIFA adjudicatory decisions would lead to inconsistent precedent across jurisdictional lines.¹⁰⁵ A more tenable solution would be to increase the appellate role of CAS as a final review of FIFA adjudicatory decisions, which has recently been implemented by the updated 2018 FIFA Code of Ethics.¹⁰⁶ The specific reform to the 2018 FIFA Code of Ethics provides that “most of the decisions of the Ethics Committee may [now] be appealed directly before CAS.”¹⁰⁷ Similar difficulties stemming from a lack of expertise in matters of sports law arise with regard to Alexander Mandel’s call to establish an entirely independent board of directors.¹⁰⁸

Lastly, Professor Bruce W. Bean’s suggestion to amend the Foreign Corrupt Practices Act of 1977 (FCPA) to include FIFA on its list of international organizations subject to the provisions of the FCPA, which “criminalizes bribes paid to foreign officials, including officials of ‘public international organizations,’”¹⁰⁹ is unlikely to resolve FIFA corruption with so simple a solution. In particular, although FIFA’s addition to the FCPA list may reduce some corrupt practices, any benefit gained in the battle against FIFA corruption would not extend beyond transactions with the United States,¹¹⁰ so this recommendation is inherently limited in its implementation. Professor Bean’s later recommendations of Swiss government action, pressure from host governments and sponsors,

¹⁰³ Eghbal, *supra* note 86, at 402 (suggesting a “hearing examiner” independent of the agency).

¹⁰⁴ See Matthew J. Mitten, “Sports Law”: Implications for the Development of International, Comparative, and National Law and Global Dispute Resolution, 85 TUL. L. REV. 269, 292 (2010).

¹⁰⁵ See *id.*

¹⁰⁶ *Amendments*, *supra* note 12.

¹⁰⁷ *Id.*

¹⁰⁸ Mandel, *supra* note 94, at 476–77 (suggesting that an independent board of directors will solve many of FIFA’s corruption issues).

¹⁰⁹ Bean, *An Interim Essay*, *supra* note 90, at 390–91 (arguing that subjecting FIFA to the FCPA could resolve corruption within FIFA).

¹¹⁰ See *id.* at 391.

and action by the international community,¹¹¹ may have some success in holding FIFA and its officials accountable for corrupt activities that have already occurred, but, without internal change, that external pressure will likely fail to prevent further corruption.¹¹²

FIFA has implemented reform measures in an effort to combat corruption.¹¹³ However, FIFA is still susceptible to further corruption due to its own predominant control over internal reform, limitations for external review of its practices, and limited consequences for rule violations.¹¹⁴ Although organized under Swiss law, FIFA is an international association that is almost completely accountable to itself,¹¹⁵ which means there is inherent potential for corruption to resurface even in the face of reform. Currently, most external accountability to FIFA comes from CAS, which works within FIFA rules and Swiss law, and only steps in as an appellate force deciding issues after the fact, rather than combatting corruption before it occurs.¹¹⁶ Additionally, the limitation of few available aggressive disciplinary measures – most aggressive being the ban from all football-related activity and, on the other end of the spectrum, social work or the mild new addition of compliance training¹¹⁷ – does not bode well in favor of discouraging corrupt behavior by FIFA officials.

VII. Further Recommendations for FIFA Reform

An alternative, or at the very least a complement, to increasing external review of FIFA affairs is an internal reform effort by FIFA leadership to increase public transparency and promote an anti-corruption culture. Corporate transparency and reporting generally represents “a contentious area of anti-corruption work” for

¹¹¹ Bean, *FIFA Is Corruption*, *supra* note 93, at 243.

¹¹² FIFA reform will benefit the most from the combination of both external pressure, such as the recent U.S. and Swiss investigations and the enhancement of Swiss anti-corruption laws, and internal pressure, including leadership’s commitment to the enforcement of FIFA reform measures and the implementation of additional reforms. *See* Matthew B. Dicenso, *A Long-Awaited Reboot: The FIFA Scandal and Its Repercussions for Football’s Governing Body*, 40 B.C. INT’L & COMP. L. REV. 115, 134–38 (2017).

¹¹³ *Amendments*, *supra* note 12.

¹¹⁴ *See generally* *Amendments*, *supra* note 12; *FIFA Statutes*, *supra* note 32; *FIFA Disciplinary Code*, *supra* note 49; *FIFA Code of Ethics*, *supra* note 58.

¹¹⁵ *See* *Amendments*, *supra* note 12.

¹¹⁶ *See* *FIFA Code of Ethics*, *supra* note 58, at 52.

¹¹⁷ *See* *Amendments*, *supra* note 12; *FIFA Code of Ethics*, *supra* note 58, at 12.

multinational corporations because “[t]ransparency can jeopardize a company’s competitive position where much of its action and strategy must be done away from the eyes of its competitors.”¹¹⁸ However, FIFA has been heralded as “the perfect global monopoly”,¹¹⁹ which creates an opportunity for FIFA, an unchallenged international sports association powerhouse, to set a revolutionary industry standard of “unilateral transparency.”¹²⁰

One way that FIFA could move toward unilateral transparency is to focus on “corporate social reporting.”¹²¹ Social reporting involves the disclosure of the processes that corporations use to manage corporate social responsibility issues and their performance on these matters, and “[w]ith this information, stakeholders . . . can seek to hold corporations accountable and pressure them to improve performance if needed.”¹²² If FIFA were to implement social reporting practices intended to demystify FIFA affairs with voluntary reports on the behind-the-scenes operations of the

¹¹⁸ Bryane Michael & Indira Carr, *How Can the ICAC Help Foster the Widespread Adoption of Company Anticorruption Programs in Hong Kong*, 40 N.C.J. INT’L L. & COM. REG. 355, 423 (2015).

¹¹⁹ Paul Mason, *FIFA Was the Perfect Global Monopoly – And Its Crisis Is a Parable about the Future of Capitalism*, THE GUARDIAN (May 31, 2015, 8:00 PM), <https://www.theguardian.com/commentisfree/2015/may/31/fifa-corruption-crisis-global-monopoly> [<https://perma.cc/3RZ9-C9MD>].

¹²⁰ Michael & Carr, *supra* note 118, at 423.

¹²¹ David Hess, *Combating Corruption through Corporate Transparency: Using Enforcement Discretion to Improve Disclosure*, 21 MINN. J. INT’L L. 42, 53–54 (2012) (“In policy debates centered around corporate accountability for social and environmental performance, transparency is always part of the discussion, if not the default approach. Often this transparency focuses on corporate social reporting – also known as sustainability reporting or non-financial reporting.”).

¹²² *Id.* at 54. “Increasingly, other stakeholders, such as non-governmental organizations (NGOs) and social investors, are also seeking information on corporate anti-bribery efforts so that they can serve as surrogate regulators, pressuring corporations to live up to their anti-bribery commitments, as well as assisting them in those efforts. In each of these ways, the development and use of new information can help to combat the environments that allow corruption to thrive. A key first step in taking advantage of these opportunities is conceptualizing anti-corruption as an issue of corporate social responsibility (CSR), and not simply as an issue of legal compliance. Just a decade ago, the topic of anti-corruption was excluded from many major CSR initiatives, but in the last few years it has become a central topic. Viewing anti-corruption as an issue of CSR does not mean that combating corruption is a purely elective activity, akin to corporate philanthropy; it means that anti-corruption efforts involve acting consistent with ethical values and it means taking actions that simultaneously create economic value for the corporation and social value for society.” *Id.* at 44–45.

international football association, continuous pressure from the fans, players, middle management, and the remaining public may be just enough to keep a lid on FIFA corruption.¹²³ However, in order for social reporting practices to be effective, FIFA must commit to producing quality social reports with special emphasis placed on curbing such concerns as “incompleteness of information in the reports, . . . lack of consistency from year to year, [and] the inability to compare social report data” with other comparable international entities.¹²⁴ Furthermore, public transparency must be paired with the supporting influence of an anti-corruption culture within FIFA governance.

Recasting FIFA’s internal affairs with a new anti-corruption culture will be no easy feat. “Establishing a good corporate culture takes thoughtful planning and thorough implementation of sound policies and procedures, but fixing a broken corporate culture is hard and painful, and regaining a lost reputation for integrity is virtually impossible.”¹²⁵

Rather than move forward with a complete upheaval of the FIFA executive governance structure, this Note, as a start, recommends that FIFA governance should embrace a mission of “high performance, high integrity, and sound risk management,” as recommended by Ben W. Heineman Jr., former General Counsel for the major U.S. corporation General Electric, in his book *The Inside Counsel Revolution*.¹²⁶ Heineman’s “high performance, high

¹²³ Per the recommended guidelines of the Global Reporting Initiative, the reports themselves may be broken down as follows: “The main body of the report consists of disclosures addressed toward a corporation’s general management approach and toward its performance with respect to various specified categories of economic, environmental, and social issues. The ‘social’ category is sub-divided into categories on labor practices, human rights, society, and product responsibility, and within the ‘society’ category are three ‘core’ required metrics related to corruption. The reporting corporation must disclose: (1) what business units it has analyzed for corruption risks; (2) the training provided to employees on the corporation’s anti-corruption policies; and (3) how the company has responded to any incidents of corruption related to its business activities. In addition to these performance indicators, the GRI requires corporations to disclose their general management approach to corruption. This includes disclosure of the corporation’s policies on corruption, its operational responsibilities, and its monitoring procedures.” *Id.* at 58–59.

¹²⁴ *Id.* at 55.

¹²⁵ Betsy P. Collins & Mignon Lunsford, *10 Corporate Culture Lessons from Deutsche Bank*, LAW 360 (May 19, 2015), <https://www.law360.com/articles/656754/10-corporate-culture-lessons-from-deutsche-bank>.

¹²⁶ Ben W. Heineman, Jr., *THE INSIDE COUNSEL REVOLUTION RESOLVING THE*

integrity, sound risk management” model was partly intended as a tool to combat the corruption that had pervaded corporate culture in the United States for decades, only to come to light with very public scandals in the early 2000s.¹²⁷ FIFA is both a governing body and a business, and as such, FIFA leadership and employees are tempted by the earning potential from shortcuts and corrupt practices in much the same way that business leaders are tempted toward misconduct in corporate practices.¹²⁸ However, a strong and consistent model of integrity and ethical practices encouraged by FIFA leadership, as well as a thorough cleansing of FIFA governance by disassociating the individuals with a tainted reputation for corruption, will positively impact the internal culture within FIFA.¹²⁹

Implementing a “high integrity”¹³⁰ mission for the international football association should begin with taking steps toward strengthening areas of FIFA that are vulnerable to employee and governance misconduct.¹³¹ In an effort to ensure that both governing officers and employees follow the “high integrity”¹³² mission, it is vital that all FIFA-affiliated personnel are “informed, responsive and ethical.”¹³³ FIFA “should promote and reward good behavior, develop ethical statements and codes of conduct, . . . take swift action to punish bad behavior[, and] . . . develop controls that will prevent, or at least expose, bad conduct.”¹³⁴ In light of FIFA reform efforts already underway, including the FIFA Code of Ethics’ incorporation of required compliance training as a potential

PARTNER-GUARDIAN TENSION 4 (ABA Publ’g 2016).

¹²⁷ See generally *id.*

¹²⁸ See Bill George, *Why Leaders Lose Their Way*, HARVARD BUS. SCH. WORKING KNOWLEDGE (June 6, 2011), <https://hbswk.hbs.edu/item/why-leaders-lose-their-way> [<https://perma.cc/2RVY-MC59>].

¹²⁹ See generally Heineman, *supra* note 126 (discussing the role of ethical leadership in improving internal corporate culture).

¹³⁰ *Id.*

¹³¹ See Collins & Lunsford, *supra* note 125.

¹³² Heineman, *supra* note 126.

¹³³ Collins & Lunsford, *supra* note 125.

¹³⁴ *Id.* One such control to help prevent, or at least expose, bad conduct will necessarily include implementing a comprehensive whistleblower program within FIFA. See Steven A. Bank, *Reforming FIFA from the Inside Out*, 52 VAND. J. TRANSNAT’L L. 265, 317–20 (2019).

disciplinary measure¹³⁵ and the existing “Duty to Report” described in the FIFA Code of Ethics,¹³⁶ FIFA has made strides in the right direction toward recasting the FIFA culture as one focused on preventing corruption. But change does not happen overnight. If FIFA has any true chance of ridding international football of corruption, a commitment to rooting out corruption must continue indefinitely.

VIII. Conclusion

In combatting corruption, FIFA should place continued emphasis on public transparency, which will provide a mechanism of public pressure to encourage good behavior, and consider amending the responsibilities of the existing FIFA governing bodies. Doing so would allow for more stringent monitoring of FIFA and its member institutions for violations of FIFA rules and regulations and ensure adherence to the FIFA Code of Ethics. Moving forward, if FIFA reform efforts are to have a lasting impact on how FIFA leadership and individuals who work under the FIFA umbrella interact with one other, FIFA governance and middle management must focus on building an internal culture of compliance, integrity, and public transparency.

¹³⁵ *Amendments*, *supra* note 12.

¹³⁶ *FIFA Code of Ethics*, *supra* note 58, at 17.

