Arbitration CAS 2011/A/2426 Amos Adamu v. Fédération Internationale de Football Association (FIFA), award of 24 February 2012

Panel: Prof. Massimo Coccia (Italy), President; Mr Quentin Byrne-Sutton (Switzerland); Mr Michele Bernasconi (Switzerland)

Football
Bribery of a member of the FIFA Executive Committee
Civil law standards applicable for disciplinary sanctions imposed by sports associations
Applicability of the ECHR in disciplinary matters carried out by sports governing bodies
Admissibility of illegally obtained evidence pursuant to the general duties of good faith
Role of the press according to the European Court of Human Rights
Use of unlawful evidence in disciplinary proceedings conducted within a private association
Use of the criteria on the admissibility of evidence found in the Swiss civil or criminal jurisprudence in arbitral proceedings
Standard of proof
Personality rights under Article 28 CC
Balance between a person's personality rights and protection of private or public interest
Gifts or other advantages offered, promised or sent
Obligation to refuse an improper offer

1. **Under Swiss law – as under most legal systems – associations, and in particular sporting associations, possess the power (i) to adopt rules of conduct to be followed by their direct and indirect members and (ii) to apply disciplinary sanctions to members who violate those rules, on condition that their own rules and certain general principles of law – such as right to be heard and proportionality – be respected. In this regard, the authority by which a sporting association may set its own rules and exert its disciplinary powers on its direct or indirect members does not rest on public or penal law but on civil law. Only civil law standards are relevant to the disciplinary sanctions imposed by sport associations.**

2. **With specific regard to the European Convention on Human Rights ("ECHR"), international treaties on human rights are meant to protect the individuals' fundamental rights vis-à-vis governmental authorities and, in principle, they are inapplicable per se in disciplinary matters carried out by sports governing bodies, which are legally characterized as purely private entities. However, some guarantees afforded in relation to civil law proceedings by article 6.1 of the ECHR are indirectly applicable even before an arbitral tribunal – all the more so in disciplinary matters – because the Swiss Confederation, as a contracting party to the ECHR, must ensure that its judges, when checking arbitral awards (at the enforcement stage or on the occasion of an appeal to set aside the award), verify that parties to an arbitration are guaranteed a fair proceeding within a reasonable time by an independent and impartial arbitral tribunal. These procedural principles thus form part of the Swiss procedural public policy.**

3. Pursuant to the general duties of good faith and respect for the arbitral process, a party to an arbitration may not cheat the other party and illegally obtain some evidence. Should that happen, the evidentiary materials thus obtained may be deemed as inadmissible by the arbitral tribunal.

4. With specific regard to interferences by the media in a person's private life, the European Court of Human Rights has recently emphasised the vital role of the press in informing the public and being a "public watchdog", underlining that not only does the press have the task of imparting information and ideas on matters of public interest but the public also has a right to receive them.

5. As long as there is no declaration by an official judge that the evidence was unlawfully obtained thereby prohibiting its use, it is not prevented in and of itself to use such evidence in disciplinary proceedings conducted within a private association.

6. The criteria on the admissibility of evidence that can be found in the Swiss civil or criminal jurisprudence are not used as guidance in arbitration proceedings before CAS panels, because they concern the application of Swiss rules of civil procedure.

7. According to article 97 of the FIFA Disciplinary Code (FDC), when evaluating the available evidence, the judging body decides on the basis of its "personal conviction". In practical terms, this standard of proof of personal conviction coincides with the "comfortable satisfaction" standard widely applied by CAS panels in disciplinary proceedings. According to this standard of proof, the sanctioning authority must establish the disciplinary violation to the comfortable satisfaction of the judging body bearing in mind the seriousness of the allegation. It is a standard that is higher than the civil standard of "balance of probability" but lower than the criminal standard of "proof beyond a reasonable doubt".

8. The guarantee of article 28 CC regulating personality rights extends to all of the essential values of an individual that are inherent to him by his mere existence and may be subject to attack. An attack on personality is unlawful, unless it is justified by (i) the victim's consent, (ii) an overriding private or public interest, or (iii) the law. It follows that such an attack is in principle unlawful but it can be redeemed to lawfulness if one of the three listed justifications is proven by the perpetrator. Unlawfulness is an objective concept, such that it is not crucial that the perpetrator be in good faith or be ignorant that he is involved in harming a personality right.

9. When evaluating whether there is an "overriding private or public interest" that might justify an attack on personality, the judging body has to conduct a balancing exercise to decide which interest should prevail, namely the individual's interest in not suffering an attack on his personality or the private or public interest of other individuals or entities in perpetrating such attack.

10. The wording of article 11 para. 1 of the FIFA Code of Ethics (FCE) – "any gifts or other

advantages that are offered, promised or sent" – is deliberately broad. The advantage can take any form and need not actually materialize as it is sufficient that someone "offers" or "promises" it. In other words, article 11 para. 1 FCE does not require that a gift or other advantage is actually received by the official, but makes reference to the offer, promise or delivery of "any" gifts or other advantage. The type or form of the advantage is of no relevance; it can be money or any other benefit, even not economically quantifiable (for instance, a career advancement). There is no indication that the gift or advantage must be "offered, promised or sent" for the personal or private benefit of the official. The advantage can well be for a third person or for an organization indicated by or close to the official. Otherwise, it would be too easy for an official to escape disciplinary liability by channelling the gift or other advantage through another person or an organization.

11. There cannot be any ambiguity or uncertainty in fighting corruption in sports. By the same token, there cannot be any ambiguity or uncertainty on the part of officials in refusing any improper offer. In particular, highly ranked officials must under any circumstance appear as completely honest and beyond any suspicion. In the absence of such clean and transparent appearance by top football officials, there would be serious doubts in the mind of the football stakeholders and of the public at large as to the rectitude and integrity of football organizations as a whole. This public distrust would rapidly extend to the general perception of the authenticity of the sporting results and would destroy the essence of the sport.

I. INTRODUCTION

1. The appeal is brought by a member of the FIFA Executive Committee – Dr Amos Adamu (hereinafter also the "Appellant") – against a decision of the FIFA Appeal Committee, which held him responsible for breaching various provisions of the FIFA Code of Ethics (articles 3, 9 and 11). The FIFA Appeal Committee imposed on him a ban from taking part in any football-related activity at national and international level for a period of three years as from 20 October 2010 as well as a fine of CHF 10,000.

2. The specificity of the case lies in the fact that the Appellant was filmed and recorded by hidden cameras and recorders, while meeting twice with undercover *Sunday Times* journalists posing as lobbyists purporting to support the United States football federation's bid for the 2018 and 2022 FIFA World Cups. The video and audio recordings of those meetings (hereinafter "the Recordings"), passed on by the *Sunday Times* to FIFA, are the basis of FIFA's case against Dr Amos Adamu.

II. THE PARTIES

3. At the time of the relevant facts, the Appellant, of Nigerian nationality, was a member of the FIFA Executive Committee, the President of the West African Football Union, an executive member of the Confederation of African Football (hereinafter "CAF"), the Chairman of the CAF Ethics Committee and the former Director General of Sports in Nigeria.

4. The Fédération Internationale de Football Association (hereinafter "FIFA") is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the governing body of international football at worldwide level. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.

III. BACKGROUND

5. This section of the award sets out a brief summary of the main relevant facts, as established on the basis of the parties' written and oral submissions. Additional facts ascertained by the Panel are set out, where material, within other sections of this award.

III.1 THE 2018 AND 2022 FIFA WORLD CUPS

6. The FIFA World Cup is an international football tournament held every four years. It is known as one of the most watched sporting events in the world and involves huge economic interests, particularly in terms of media rights, ticket sales, sponsoring and merchandising. This competition is open to the men's senior national teams of the FIFA members. After the qualification phase, the best teams from each continent proceed to the final phase. The current format of the final tournament involves thirty-two national teams, which compete over a period of about a month in the host country designated several years earlier by the FIFA Executive Committee.

7. The FIFA Executive Committee is the FIFA's executive body (articles 21.2 and 30 ff. of the FIFA Statutes). It consists of twenty-four members: the President, elected by the FIFA Congress, eight vice-presidents and fifteen members, appointed by the Confederations and the FIFA Member Associations (article 30 of the FIFA Statutes). The FIFA Executive Committee's role includes deciding the host countries and dates of the final phases of all FIFA tournaments (article 31 para. 11 of the FIFA Statutes).

8. Regarding the 2018 FIFA World Cup, the national football federations of the following countries submitted bids for the right to host the final phase: Russia, England, Belgium jointly with the Netherlands, and Spain jointly with Portugal. The bidders to stage the 2022 edition of the FIFA World Cup were the national federations of Qatar, Australia, Korea Republic, Japan and USA. The United States federation had initially submitted bids to FIFA for both editions of the World Cup but, in October 2010, it withdrew from the 2018 bid process to focus solely on the 2022 contest.

9. On 2 December 2010, the FIFA Executive Committee chose Russia to host the 2018 FIFA World Cup and awarded the 2022 FIFA World Cup to Qatar.

III.2 THE UNDERCOVER JOURNALISTS' INVESTIGATIONS

10. On 17 October 2010, the British weekly newspaper *Sunday Times* published an article entitled *"Foul play threatens England's Cup bid; Nations spend vast amounts in an attempt to be named World Cup host but as insight finds, $ 800,000 offered to a Fifa official can be far more effective"*. The newspaper reported strong suspicions of corruption within FIFA in connection with the selection process to host the FIFA World Cups. The article suggested that corruption was widespread within FIFA and came to the conclusion that, in the current state of affairs, it was more effective and less costly to obtain the organisation of the World Cup by offering bribes rather than by preparing and filing a thorough and well-documented bid. As a final point, the article concluded that *"Football has enough trouble maintaining fair play on the field. Fifa has to ensure that there is fair play off it, too, by stamping out corruption and cleaning up the World Cup bidding process. Fifa badly needs to introduce more transparency into the process and keep its decision makers under tighter control. That means an end to payments into private bank accounts or pet projects. It means each committee member judging the merits of the bids, not the bribes on offer. The Olympics has cleaned up its act after a series of bribery scandals, culminating in Salt Lake City in 2002. We have a right to expect no less of the World Cup"*.

11. The covert inquiry had been conducted by some *Sunday Times* journalists who had approached several FIFA executives and former executives pretending to be lobbyists working for a private company allegedly named *Franklin Jones*, hired by a group of United States companies eager to secure deals in order to unofficially support the official bids presented by the United States football federation for the 2018 and the 2022 FIFA World Cups.

12. With specific regard to Dr Adamu, during the Summer of 2010 he was contacted via email and telephone by two reporters – a man and a woman – who did not reveal their true identity and profession but presented themselves as "David Brewster" and "Claire" of *Franklin Jones*. The reporters obtained to organize two meetings with Dr Adamu, one in London and one in Cairo, in August and September 2010, respectively. Those meetings shall be reported in the following paragraphs.

a) The London meeting

13. On 31 August 2010, in a London hotel bar, the Appellant met the two undercover reporters allegedly working for *Franklin Jones*. The conversation lasted about 45 minutes and was video and audio recorded by the two reporters, without the knowledge of the Appellant.

14. The following transcript excerpts of the video and audio recordings of the said meeting are based on the transcript filed by the Appellant as well as on what the Panel members themselves saw and heard from the Recordings. For the sake of convenience, only the relevant excerpts of the Recordings are quoted hereafter. In particular, the unintelligible parts or the mere exclamations by the parties were skipped. The numbers indicated in the margin refer to the corresponding items in the transcript filed by the Appellant (exhibit 01 of his appeal brief), which was used by the parties in their various submissions and during the hearing before the CAS.

1 *Female Reporter: Our company is based in London and we've got a number of clients some in the Middle East, some in America and some in Europe. And one of our relatively new clients is a consortium of American businesses who are looking to kind of support the American bid for the*

2018/2022 World Cup. So one of the things that they've asked us to do is to try to forge relationships with kind of interested countries. And Nigeria was one of them. So really, we just in case of meeting you at convenient time and to find out what the best way is to kind of forge the relationship and one thing that has been suggested to us is about …

2 *Male Reporter: I don't know if you got my e-mail, but one of those we suggested is that maybe we might be able to invest in some way in football in Nigeria. That be that a sporting academy, a…*

3 *Female Reporter: Stadiums …*

4 ff *Male Reporter: Stadiums or something say youth sport related or maybe something for the association. I'm not sure what your connection is with the association as such, but we were just wondering whether … what we quite like we've been interested to know from you what sort of projects might take that sort of investment, what sort of things we could offer you.*

6 *Amos Adamu: So you are not talking on behalf of the American bid?*

7 ff *Male Reporter: We are not, no. Not talking on behalf of the American bid. We are talking on behalf of a number of businesses who very very much want the World Cup to go to America because they would do very well out of it.*

13 ff *Female Reporter: Yeah, their business will benefit obviously if the World Cup comes to America. Just as, you know, other businesses would benefit if it goes to Russia or the UK.*

16 *Amos Adamu: I understand now.*

17 *Male Reporter: So, we are looking at things that we might be able to help you with in order to improve relations.*

18 ff *Amos Adamu: Ok. Actually, I spoke with the American bid in South Africa and obviously the American embassy in Nigeria. I also spoke with him about the bid and I think the American bid if they are very aggressive, will be a commercial success. Very good commercial success.*

25 *Male Reporter: I mean they are saying to us, I know that everyone says they're more likely to get the 2022 but I think they would also like to still go for the 2018 as well.*

26 *Amos Adamu: I think they should go for 2022. Because you know, it follows that if you bid for 2018 and if you didn't get it, you try to go for 2022, maybe that you know …*

28 *Male Reporter: Yeah, exactly. I didn't ask, but that's the strategy, you know.*

29 *Female Reporter: Also, because practically …*

30 *Amos Adamu: Practically you… It's good to focus on one and then go for it and get it. Then to try this, if you don't get it, and then you try the other one. Maybe, anyway …*

31 *Female Reporter: So really that's what we've been kind of brought in to do, just kind of forge relationships really with countries, who have…*

32 ff *Amos Adamu: It's ok, it's ok. It is for the development of the game. Every time anything one can do to develop the game is very welcome.*

35 *Male Reporter: Yeah. You know better than I would, than we would, what schemes there are in Nigeria that could be investing in.*

36 *Amos Adamu: Basically, it is the same of infrastructure … providing of playing pitches.*

37 *Male Reporter: Playing pitches.*

38 *Amos Adamu: That's the major thing that we are doing now.*

39 *Male Reporter: Are we talking grass herb?*

40 *Amos Adamu: Yeah, grass. No, no, artificial, artificial, artificial, artificial pitches. This is the kind of thing we are going into now, because once you have good playing pitches, then the players can play better football.*

41 *Female Reporter: Yeah. And where do you need them? Do you need them in Abuja or Lagos or all over?*

42 *Amos Adamu: No, we built them about … We have them. We don't have any one in Abuja, we have one on Abuja, we have in Lagos, we have a lot. We have more than twenty in Nigeria now.*

(Follows a discussion on the development of sporting facilities in Nigeria)

56 *Female Reporter: And how many clubs are you looking or how many stadiums are you looking to build?*

57 ff *Amos Adamu: Well, we are building now, but the program I am in is looking at four facilities. That is my own project for the development of the game of football. And I am doing it not on commercial purposes but for me to also put back something into the system. To help to develop the game.*

65 *Female Reporter: Hopefully that's something we could help with.*

66 *Male Reporter: How much do you think it will cost? Say we would finance all four.*

67 *Amos Adamu: Standard pitch now costs about maybe a little bit less, about 200,000 dollars.*

68 *Male Reporter: Right ok. So we would be talking about 800,000 dollars.*

69 *Amos Adamu: Yes, yes.*

70 *Male Reporter: Well, that's within the budget.*

71 *Female Reporter: Yeah, yeah, absolutely. Have you already secured some funding for some of the four? Or are they…*

72 *Amos Adamu: I am just discussing with them. Not funding, but … like … I am already talking with some people to make land available for it.*

73 *Female Reporter: Ok. So, it is still at an early stage?*

74 *Amos Adamu: Yeah.*

75 *Female Reporter: I was just wondering whether it was something that we could get involved with or whether it was something that has already been sorted out with other organisations or countries or companies.*

76 *Amos Adamu: No, no. What I am doing is identifying schools … There are football pitches there but then to allow us to put them there then …*

(They move to a quieter spot of the bar)

78 ff *Male Reporter: How would it work, do you reckon? So, we'd have to go to back to our consortium and we have to say to them that these are projects that you personally arrange and would have to get permission. I don't think that would be a problem. They will be keen on it.*

81 *Amos Adamu: Ok, then.*

82 *Female Reporter: I think we would just need to get them to sign up the budget, really. But one thing, presumably some point down the line, we have to kind of get some plans in place for … you know, how it is developing and that kind of thing. Just formalise things a little bit.*

83 *Amos Adamu: How are they connected with the American bid?*

84 *Male Reporter: Oh, they are not. They are not part of it.*

85 *Female Reporter: No, they're American companies. And for instance one of them is a really large airline in America. So, if the World Cup came to America, they would make a lot of money out of it. So, really, that is their interest, they are not kind of part of the …*

86 ff *Male Reporter: Another, is one of the companies that does on stadium food. So, they have got franchises across American baseball and American football sites. When you get your burger or your hotdog at halftime. They are the ones that sell it. They see it as great selling opportunity. In all sorts of ways. So, I think they are very keen to sort of get a favourable impression.*

95 ff *Amos Adamu: I understand the project. I understand. Its ok, it's fine with me, it's fine with me and I think in the World Cup we say the USA it would be a very big commercial success.*

98 *Female Reporter: Yeah. It was successful last time. So you'd hope that people would have confidence and you know, when people go on inspection they think, oh yes, obviously America can do this. Yeah.*

99 *Amos Adamu: I also want to, I will be visiting the American bid committee too in the next one week or so. To see what they are doing, because that's why I went to Moscow … I also want to go … I always want to see it for myself. So when I am taking decisions I am taking a very objective way of doing things.*

(Discussion turns around Dr Adamu's contacts with the Russian's bid committee, its vague offer for cooperation with Africa, Dr Adamu's contact with the England bid committee, how all candidates ask "What can we do for you")

127 *Male Reporter: I don't know how you vote but do you vote with the other African countries or do you vote separately?*

128 ff *Amos Adamu: Separately. Separately. Of course, we have our independent mind to decide what you want to do.*

131 *Male Reporter: So you would be able to vote for 2018 for America if you wished?*

132 ff *Amos Adarnu: If I wish, yes. Yes, if I wish. I can vote for anybody. Nobody will compel me to vote for anyone. I must vote according to my conscience according to what I feel will benefit more the game. The most important thing is how do we improve the game of football.*

135 *Male Reporter: Yeah. But obviously these pitches would be a great way of helping. But who…in selling it to our consortium…Who would be playing on these pitches? What sort of teams? Would it be youth teams or would there be adult teams?*

136 *Amos Adamu: Youth teams. Youth teams.*

137 *Male Reporter: And all four would be in Abuja, would they?*

138 ff *Amos Adamu: No, no, no. They would be in different zones of the country. Because we have players coming from various zones.*

143 *Male Reporter: You reckon about 200 US dollars each? 200,000 US dollars each?*

144 *Amos Adamu: To buy the pitch.*

146 *Female Reporter: Yes, but then you need more things on top of that? That's doing the pitch. But then you need to restore the facilities or…?*

(Follows a discussion about how important good pitches are for football)

155 *Male Reporter: And how would it work? Do we pay the money to you?*

156 *Amos Adamu: No, it depends on … what it is … actually not about money, but the grass itself.*

157 *Male Reporter: the, what, sorry?*

158 *Amos Adamu: If you get the grass itself.*

159 *Female Reporter: To get the grants itself?*

160 *Amos Adamu: The grass. You can buy the grass and then send it. It is the same thing. Not necessarily dealing in cash if that is ok. If not, it doesn't really matter.*

161 *Female Reporter: Well, it doesn't really matter, actually. No, I don't think it matters. If necessary it can be paid in cash or otherwise it can be transferred.*

162 *Amos Adamu: Yes.*

163 *Female Reporter: I didn't know whether it would have to go via the Nigerian football confederation or it's better to go to you directly.*

164 *Amos Adamu: Directly, directly, directly. Of course the football federation would be involved, too.*

166 *Male Reporter: And would you prefer if we'd pay you in cash?*

167 *Amos Adamu: No, I prefer the grass to be given.*

168 *Male Reporter: Sorry, could we do it via bank?*

169 *Amos Adamu: No, if you don't have the grass yet, you have to buy it from Europe anyway.*

170 *Male Reporter: Yes, of course.*

171 *Female Reporter: The grass for the …*

172 *Amos Adamu: You buy the grass and ship it to Nigeria.*

173 *Female Reporter: Yeah, yes, but presumably that's not the only cost.*

174 ff *Amos Adamu: No, that's not all the costs. We now have to decide. Maybe we have to do a proposal on it. It's better to know what is involved in it.*

176 *Female Reporter: Yeah, absolutely. I think we need to kind of break it down. So can we need the grass and then it sounds like it's best for us to ship it over … but for the actual building costs presumably*

you'd need to get a local firm, contractor involved to do that, in which case it might be better to pay you the money directly to arrange that.

177 *Amos Adamu: Yes, yes, yes.*

178 ff *Female Reporter: Rather than us doing it. Because we do not have contacts in Nigeria, so…*

183 *Amos Adamu: Yes, it's better. It's better that way.*

184 *Male Reporter: It's sounds as a good idea. Where we go from here? What would be the next stage? We have to go back to our people and see if it is ok.*

185 ff *Amos Adamu: No, the next stage is you go back to them and if it is ok with them, then we can sit down, work out the modalities and what it takes and how do you go about it. But for me, it is agreeable. It is agreeable to me and then we go back to them and there this time we can arrange another formal meeting where we start direct negotiations and logistics on how to go about it.*

188 *Male Reporter: I am just trying to think about in terms of the formal meeting would it best for us to go to Nigeria or would it best … when I know you are travelling all over the place, you might be easier to meet somewhere outside it, out Nigeria?*

189 *Amos Adamu: Anywhere.*

(Follows a discussion on Dr Adamu's next travelling plans and where the next meeting could take place)

206 *Male Reporter: (…) I suppose one of the things I want to know, they will want to know from this, will you, will it help you make your decision in favour of America in some way?*

207 *Amos Adamu: Obviously, it may have an effect. Of course it may have an effect. It may have an effect. Because certainly if you are to invest on that, that means you also want the vote.*

208 *Male Reporter: Sorry, you have to?*

209 ff *Amos Adamu: I said if you are to invest in it you also need the vote. Yeah, because that is the purpose for which they are going to spend money on it. But like I mentioned 1 should be with them … before I go to Cairo. And I want to see what they have to offer. In terms of the game itself. How are they going about it.*

219 *Male Reporter: I think what our people would like to hear is, is that, yeah, that at some point, it may well be that you don't vote for them first, so, because quite often what happens is, that, you know, one country you know better than I do, gets knocked out in the first round, but then they might get your second vote.*

220 *Female Reporter: Yeah, your second or third preference, I suppose.*

221 *Male Reporter: It's at the point where it becomes serious that's when they want the vote.*

222 *Amos Adamu: Yes, yes, I know they want the first vote.*

223 *Female Reporter: Well, of course, you want the first vote. But, I think sometimes people are like, look, I've got to vote for … this country …*

224 *Amos Adamu: Yes, if they are out…*

225 *Female Reporter: Yeah, if they are out then I vote for you …*

226 ff *Amos Adamu: It depends on what you see and it depends on my meeting with them. To see what they are doing, because I have not made up my mind who to vote for, because I also want to talk to people. I just don't cast vote without having some background information and know what everybody is doing.*

(Follows a discussion on chances of other candidates to get the World Cup)

261 *Female Reporter: Yes, but I suppose you just need to kind of weigh up the different options.*

262 ff *Amos Adamu: What is more important is which one will benefit football. This is the most important thing. Which one will benefit football and how do we support them. Because in the final analysis if one is able to have the cooperation. It's good for the development of the game. In Africa especially.*

269 *Female Reporter: Yeah. Well, absolutely. I think that's what the American companies would like to do. To support football elsewhere in the world apart from in America. Obviously, they've got massive financial interests in football coming to America. But, if they can help do some good things …*

270 ff *Amos Adamu: I understand you very well. I understand.*

272 *Male Reporter: I am sure the Russians told you the same thing?*

273 ff *Amos Adamu: Everybody did. Everybody did. What can be done, what is there to be done and me I would tell you if I am voting for you or not.*

278 *Male Reporter: So that we have an idea. What sort of schemes are the Russians offering? Are they offering any … any …*

279 *Amos Adamu: No, not, just say that they can cooperate with us in terms of developing African football.*

280 *Male Reporter: What, so, they would vote for … in terms of voting or in terms of … ?*

281 ff *Amos Adamu: In terms of, if we vote for them, they need their votes, but they never say that, ok, if you vote for us, we do this …everybody talks like you also, but … if everybody talks like you …*

283 *Female Reporter: I know, but I think we all know what we mean.*

284 *Amos Adamu: But not in terms of … these are the conditions to be met.*

287 *Female Reporter: Yes, we're really diplomatic.*

288 ff *Amos Adamu: Everybody is. And we have to also be very careful also.*

291 *Male Reporter : Yeah, we understand, I understand.*

292 *Amos Adamu: You know, very careful.*

293 *Male Reporter: I'm just wondering whether in the process … there is a process that's going on. And it's just useful to know in terms of what other people might be offering …just that we make sure that …*

294 *Amos Adamu: Ok, you are on the same page. Alright.*

296 *Male Reporter: Our offer is a good offer.*

297 ff *Female Reporter: Yes, because we don't want to be, I suppose as to, would be beaten by someone who is offering, I don't know, two times more.*

300 ff *Amos Adamu: No, no. We have not sat down with them to really discuss in details what needs to be done. Would they, for instance, say they are developing facilities. We have companies that are producing*

these artificial pitches and we can look into business and relationship together. Yeah. Everybody is careful.

305 *Female Reporter: Well, that's what I think. When we looked into this we saw that actually the best way to kind of achieve what we want to achieve might be to developing business opportunities.*

306 *Amos Adamu: I also don't mind it. Don't mind it. And I believe that whenever you have an opportunity to develop the game … why not? Why not do it … as long as it is not a precondition … for voting, you know.*

(follows a discussion regarding the voting modalities within FIFA, the selection criteria, the fact that voting members do not visit all the facilities as they are "more of a political talk")

344 *Male Reporter: Have you been to Australia yet?*

345 *Amos Adamu: No. We have met. The have come to Nigeria. They are willing to host the game.*

346 *Male Reporter: willing to, sorry …?*

347 *Amos Adamu: Host the game.*

348 *Male Reporter: Are they offering anything?*

349 *Amos Adamu: No. Basically nobody is offering like, they are ok, or else what can we do for you?*

350 *Male Reporter: I see.*

351 *Female Reporter: That is a very open question.*

352 *Amos Adamu: Yes …What do you think you can do for us? What you can do? What is there to do for football? Pitches? What else can you do for football?*

353 *Male Reporter: Have you asked anyone else for the pitches?*

354 *Amos Adamu: No.*

356 *Female Reporter: Ok, that's good for us to know, you see. Because otherwise we would know that somebody else might ….*

357 ff *Amos Adamu: No, no, of course they said they can offer pitches, they can offer academies. They can offer …: I have not made any promises to anybody. And also, the most important thing is, is the reports. First and foremost you must know that the country is able to host.*

364 *Female Reporter: Yeah. Though, I'd imagine, you know, America and the UK and Russia and Australia, they're all going to be able to host. Then you have to find a different way, what else separates them.*

365 *Amos Adamu: There are other criteria. There are so many criteria that we use.*

366 *Female Reporter: There must be other things that kind of come into play.*

367 *Male Reporter: I wonder one question, say the Middle East, an African country's might favour Qatar for instance … cause it's quite to … it would be unusual to have one of the Middle East.*

368 *Amos Adamu: No, because Qatar has always been working hard.*

369 *Male Reporter: They're working hard.*

370 *Amos Adamu: Yes. I think they knew they are going to host, they are going to bid to host this thing long ago and then they have been on it for quite over four years, talking to people, who wanted, who wanted, who wanted…*

371 *Female Reporter: Yeah. What can we do for you?*

372 *Amos Adamu: Yes.*

374 *Female Reporter: You must get tired of all these offers? Must be the same conversations, over and over again?*

375 *Amos Adamu: But, it's good for the game.*

376 *Female Reporter: Yeah. Yeah, it's good for Nigeria.*

377 ff *Amos Adamu: Good for the game. It's good. I'd be happy to have the facilities for my country. It's a good contribution to the game.*

382 *Male Reporter: Yeah. It's interesting, because it's now everyone saying the same sort of thing. It's interesting to know …*

383 *Amos Adamu: Yeah, yeah everybody saying almost the same thing.*

(follows a discussion on consultants)

403 *Male Reporter: Yeah. What would be good from our point of views, is when you've got some idea of who you are gonna vote for to know …*

404 *Amos Adamu: I will let you know.*

405 *Male Reporter: To know how you gonna vote.*

405 *Amos Adamu: I will let you know.*

407 *Male Reporter: And we'll go back and discuss the proposal.*

408 *Amos Adamu: Discuss with them and then let's see what is their interest.*

409 *Male Reporter: How best is to contact you? Is it good to talk to you by phone or by e-mail?*

410 *Amos Adamu: E-mail or phone, any.*

411 ff *Female Reporter: Ok. And then I think maybe the next thing for us to do is … I am sure the consortium will sign off on what we've discussed, because they've been in the loop in the beginning and then we can meet again to discuss it more in detail to see how we practically might go about it. And then we can get things moving, because actually, you know, there is not very much time.*

416 *Amos Adamu: No, not much time. Everything must be done within a short period.*

417 *Male Reporter: You got to make a decision at the end of October, then we've got …*

418 ff *Female Reporter: … Two months. I'm sure we can get things moving by then.*

421 *Male Reporter: Well, maybe we can go to Cairo, I don't know?*

422 *Amos Adamu: Ok, I'll be there.*

b) The Cairo Meeting

15. On 1 September 2010, one of the two journalists – "Mr Brewster" – sent an email to the Appellant asking him questions about the modalities regarding the funding of the pitches and confirming his interest in a meeting in Cairo.

16. On 2 September 2010, the Appellant answered via email as follows:

"Dear Mr. Brewster,

Thanks for your mail and it was nice meeting and knowing you in London. As discussed the project is my personal project to improve the game in Nigeria which has been on for sometimes now. It has nothing to do with any bid committee for the world cup. As you might be aware it is against FIFA Code of Ethics to solicit, directly or indirectly, for anything that will influence any Executive committee member decision on the hosting of the world cup. I believe I made this point clear to you.

Your clients will be able to establish very good business relations in Nigeria and they should see this cooperation as a purely business one that will be mutually beneficial. Looking forward to seeing you in Cairo".

17. On 15 September 2010, in the garden bar of a hotel in Cairo, the Appellant had another meeting with the same two undercover journalists. The conversation lasted about 30 minutes and was also recorded on video and audio tape, without the knowledge of the Appellant. Here too, the following transcript excerpts were prepared on the basis of the transcript filed by the Appellant and of what the Panel members themselves saw and heard from the Recordings. Only the relevant excerpts of the Recordings are quoted hereafter. The numbers indicated in the margin refer to the corresponding items in the transcript filed by the Appellant (exhibit 02 of his appeal brief), which was used by the parties in their various submissions and during the hearing before the CAS.

1 *Female Reporter: The consortium are happy to go ahead. So now we just really need to sort some of the practicalities out about the football pitches in Nigeria. We need to work out how we pay the money and when, at what point we do it. And their proposal is that we pay, I think we agreed, 800,000 US dollars for four so the proposal would be that we pay half of that upfront over the next couple of weeks and then the other half, the remaining 400,000 US dollars, after the vote in December. So by mid to late December. So all we need from you really are the kind of bank details or the account where you'd like it transferred to and tell us how to do it and we get on top of it.*

3 *Male Reporter: Is that ok?*

4 *Amos Adamu: It's ok, it's ok by me. But really, let me make a call now.*

(Follows a discussion turning around phone calls)

11 *Male Reporter: So you've got to talk to your minister about it?*

12 *Amos Adamu: No, no, no, no. Just calling for … I'm going to talk my son.*

13 *Female Reporter: OK. The one in Miami?*

14 *Amos Adamu: No, no. The one in Nigeria. Because he's on the project.*

15 ff *Male Reporter: Oh. I see. Would he know where we should pay the money?*

17 *Amos Adamu: Yeah. He will handle everything.*

18 Male Reporter: *Should we deal with him then when he…?*

19 ff Amos Adamu: *Yeah. (On the phone) I'm going to give you somebody and you talk to him about the pitches, the football pitches. His name is David.*

22 Male Reporter: *David Brewster.*

23 Amos Adamu: *(On the Phone) David Brewster. Ha? Brewster. I will text you his number.*

24 Male Reporter: *Yeah. Ok.*

25 ff Amos Adamu: *(On the phone – 2:35 minutes long communication. Not everything is intelligible) I will text you his number and then you will take it off from him. I will give him your number too (…) Ok, so the governors are having their way (…) October 19 (…) So, good luck. I am having problem, really (…) So David will call you. I will send you a text right away on this phone.*

27 Amos Adamu: *This is my son.*

28 Male Reporter: *What's your son called?*

29 Amos Adamu: *Mike.*

30 ff Male Reporter: *Mike. And where is he? Is he based in Nigeria? And so we should deal with him?*

32 Amos Adamu: *Yeah.*

34 Male Reporter: *How we do the payment.*

35 ff Amos Adamu: *But I have some questions. I would like us to discuss that, you know, on what basis are we doing this? Suppose, because my vote alone cannot give USA the bid.*

38 Male Reporter: *Sorry?*

39 Amos Adamu: *My vote alone cannot give the USA the bid.*

40 Male Reporter: *No, of course not, but obviously we do want you to vote for the USA.*

41 ff Amos Adamu: *Yes. So what are their efforts in making sure that they convince others to vote?*

45 Female Reporter: *I think it's similar kind of schemes to this.*

46 Amos Adamu: *OK.*

47 Female Reporter: *Obviously, there is the formal bid team who are doing very straightforward lobbying so meeting people and explaining why they think the American bid is good and, you know, all its attributes and how it would make lots of money. How it would be well organised. How it would be successful.*

48 Amos Adamu: *It would be commercial success if the USA gets them but what happens on the condition that they didn't get it, what happens?*

49 Male Reporter: *As long as you've voted, you'd still get the second half of the money.*

50 Female Reporter: *Yes, it's about you personally rather what everyone else is doing. You can't account for what the other executive members are doing.*

51 Amos Adamu: *Yes, you can't know what other executive members do.*

52 Female Reporter: *No, it's just really about what you do.*

53 *Male Reporter: So, all these deals are individual with individual people, yeah.*

54 *Amos Adamu: Yeah … I just wanted to know what happens, what happens. And, you know, one has to be very discreet about these things.*

55 *Male Reporter: Yes.*

56 *Female Reporter: Of course, we understand that.*

57 ff *Amos Adamu: I will vote with my conscience but also I don't want to vote for somebody because he is giving me something. I don't want to do that. All what I'm doing is anybody that I can cooperate with, that can bring football development to Nigeria. So, not on personal gains or whatever it is. What I want to make sure that we develop the game of soccer in Nigeria. If I can have cooperation from anybody that can assist in making sure that we develop the game. I don't also want to make it as a precondition for voting or whatever it is. Do you understand what I am saying?*

59 *Male Reporter: We understand. But you will vote for the USA, yes?*

62 *Female Reporter: Because obviously that's what the consortium want to guarantee.*

63 *Amos Adamu: I know, I know, I know, that is a guarantee. That is, that is a, that is all about the guarantees.*

64 *Male Reporter: You guarantee that you vote for in 2018 and 2022?*

65 *Amos Adamu: No. 2022, I have my commitments.*

66 *Male Reporter: Right.*

67 *Amos Adamu: 2022, I have my commitments.*

68 *Male Reporter: OK, so 2018 you'll vote for.*

69 *Amos Adamu: Yeah, 2018 but are they going for the two?*

70 *Both Reporters: Yes.*

72 *Female Reporter: So it would be 2018, that you would be able to help us with?*

73 *Amos Adamu: 2022, I've already given my word to some other bid.*

74 *Female Reporter: The only question I would have about that, if you've given your word to another bid, if that other bid were to be knocked out, would it be possible for us to become your second or third preference?*

75 *Amos Adamu: Oh yes, yes, for sure, for sure, for sure.*

76 *Female Reporter: OK. Can I ask, I'm guessing it's Qatar is your first preference.*

77 *Amos Adamu: No. I won't let you know.*

78 *Female Reporter: OK. But we would need you to, after the vote, how would we know whether we are your second preference, we would need you to tell us.*

79 *Amos Adamu: No, I will tell you.*

80 *Female Reporter: Yes, ok.*

81 *Amos Adamu: I will tell you. I am very open about this.*

82 *Female Reporter: That's the only reason I asked just so otherwise.*

83 *Amos Adamu: No, no, I will.*

84 *Male Reporter: It's good that you're going to vote for 2018 and obviously if you do 2022, that's fine.*

85 *Female Reporter: Yeah, if we could be your second or third preference for 2022 that would be perfect and obviously, you know, that is the kind of terms of this agreement, that's why the consortium are investing.*

86 *Amos Adamu: That is, that is, that is.*

87 *Female Reporter: It seems quite straightforward. It should be quite straightforward hopefully.*

88 *Amos Adamu: Oh, it's very very very straightforward.*

89 *Female Reporter: The only thing I would ask…*

90 *Amos Adamu: The only thing I'm sure commercial success. But the only thing I am not sure of is that they are not very aggressive in their bid.*

91 *Male Reporter: No, some people are slightly more, aren't they?*

92 *Amos Adamu: Yes, some people have started long ago.*

93 *Female Reporter: Which is why we've been brought on.*

94 ff *Amos Adamu: I don't know what commitments people made. But, you know, you cannot know what any other person is thinking. Maybe they have been talking to other people long ago.*

99 ff *Female Reporter: Yes, obviously they are talking to lots of people and that was actually why we were brought in because there was a general feeling that the bid wasn't being very proactive. So they wanted us to do some deals.*

101 *Male Reporter: So you'd like us to talk to your son about it?*

102 *Amos Adamu: No, I will talk to him.*

103 *Male Reporter: Oh, I see. Will he ring me or…*

104 *Amos Adamu: He will ring you tonight. He will ring you tonight. For sure, he will ring you tonight.*

105 *Female Reporter: That sounds like a good plan. And what does he do? Does he work with you in Nigeria?*

(Follows discussion about the alleged son's private and professional profile, about Dr Adamu's stay in Cairo, and the phone details of the alleged son Mr Mike Adamu)

147 *Female Reporter: Yeah, if you need anything more from us we'll liaise with your son.*

148 *Amos Adamu: Yes, yes, yes.*

149 *Female Reporter: And if you have any questions or you need anything.*

150 *Amos Adamu: He will call you now.*

151 *Female Reporter: Ok, great.*

152 *Male Reporter: And we just talk about the final details with him.*

153 Amos Adamu: Yes. Talk about the final details with him.

154 Female Reporter: And if there's anything further you need from us…

155 Amos Adamu: I will let you know.

18. On 1 October 2010, via email and DHL courier, the FIFA Secretary General warned each member of the FIFA Executive Committee of the fact that a company operating under the name *Franklin Jones* had recently approached various members of the FIFA Executive Committee offering support and programs for football development in case the United States bid was to be appointed to host the FIFA World Cup. The FIFA Secretary General requested the said members to support FIFA by informing him about any possible attempt of the said company to approach them. The DHL's delivery report records that on 4 October 2010 the dispatch was received at Dr Amos Adamu's office in Abuja.

19. According to the Appellant, he did not read such communication from FIFA until the late morning of 14 October 2010, as between 1 October and 14 October 2010 he had been visiting his farm, located in a remote place of Nigeria, allegedly not covered by any Internet or phone network. It is the Appellant's case that during that period of time he had no access to his emails and could not be reached in any manner. At the hearing before the CAS, the Appellant testified to the Panel that he had returned to Abuja on 14 October 2011, at about 11 am.

20. On 14 October 2010, at 11:28, the "insight editor" of the *Sunday Times* sent an email to the Appellant informing him of the fact that an article was about to be published in the coming week-end, and that the article would report his meetings with the supposed representatives of *Franklin Jones* and his acceptance to sell his vote in favour of the United States bid. The *Sunday Times* insight editor gave a short summary of what was allegedly said during the Appellant's meetings with the undercover journalists and made clear that both conversations had been filmed and recorded.

21. According to the Appellant, he only received the said e-mail on 15 October 2011, after the *Sunday Times* sent it to him again.

22. On 14 October 2010, in the late afternoon, the Appellant answered the letter of 1 October 2010 of the FIFA Secretary General via email. He reported having met two representatives of *Franklin Jones*, who claimed to work for American companies *"looking at the bussiness* [sic] *aspect that can be explored with Africa if the world cup is hosted in America the companies are willing to be introduced to africa and Nigeria being a big country will be ideal to start with. [The representatives] made it clear that [they were] not part of the US bid committee that its purely business* [sic]*"*. The Appellant then explained how he told the said representatives that he was not a businessman but had the personal project to build artificial pitches for young players in Nigeria. According to the Appellant, he made it clear that his project had nothing to do with any bidding committee. The Appellant also exposed that as soon as he had received a written confirmation of the said representatives informing him that their clients were ready to invest USD 400,000 into his project, he *"immediately got suspicious"* and answered back that his *"project has nothing to do with any bid and that in fact FIFA code of ethics forbids soliciting for votes for any advantage and his clients must see it as purely business"*. In support of his assertion, the Appellant forwarded to the FIFA Secretary General his email of 2 September 2010 to one of the journalists. Further, the Appellant reported to FIFA about his meeting in Cairo: *"At that meeting I told him to contact a company in Nigeria that deals with artificial pitches and my*

son is with the company. That was the end of my interaction with him. However, I told the company not to continue any discussion with him until after the hosting countries have been selected".

23. On 17 October 2010, the *Sunday Times* published on paper and on its website the already mentioned article entitled *"Foul play threatens England's Cup bid* […]*"* (see *supra* at 10). In particular, the article contained an account of the contacts between the undercover journalists and the Appellant as well as excerpts of the Recordings, quoted verbatim (paras. 161 ff and 206 ff of the London transcripts and paras. 54, 59 ff and 173 ff of the Cairo transcripts).

24. The *Sunday Times* also posted on its web site a relevant portion of the Recordings showing Dr Adamu's conversations with the undercover reporters.

III.3 THE PROCEEDINGS BEFORE FIFA

25. On 18 October 2010, upon FIFA's request just after the publication of the article, the insight editor of the *Sunday Times* sent to FIFA a copy of the Recordings as well as transcripts of the London and Cairo meetings.

26. On the same day, the FIFA Secretary General requested the chairman of the FIFA Ethics Committee to open disciplinary proceedings against the Appellant, in accordance with article 16 of the FIFA Code of Ethics (hereinafter "FCE").

27. On 18 October 2010, the FIFA Ethics Committee opened disciplinary proceedings against the Appellant on grounds of possible violations of article 7 of the FIFA Statutes, article 62 of the FIFA Disciplinary Code (hereinafter "FDC") and articles 3, 6, 9, 10, 11 and 14 of the FCE. On the same day, the Appellant was notified of these disciplinary charges.

28. The Appellant and his counsel attended a preliminary hearing held by the FIFA Ethics Committee on 20 October 2010. In a decision issued on the same day, the FIFA Ethics Committee provisionally suspended the Appellant from taking part in any football-related activity at national or international level.

29. On 17 November 2010 and after having heard again the Appellant, the FIFA Ethics Committee decided the following:

> *"1. The official, Dr Amos Adamu, is found guilty of infringement of art. 3 par. 1, par. 2 and par. 3 (General Rules), art. 9 par. 1 (Loyalty and confidentiality) and art. 11 par. 1 (Bribery) of the FIFA Code of Ethics.*
>
> *2. The official, Dr Amos Adamu, is hereby banned from taking part in any kind of football-related activity at national and international level (administrative, sports or any other) for a period of three (3) years as from 20 October 2010, in accordance with art. 22 of the FIFA Disciplinary Code and in connection with art. 17 of the FIFA Code of Ethics.*
>
> *3. The official, Dr Amos Adamu, is ordered to pay a fine to the amount of CHF 10,000, in accordance with art. 10 c) of the FIFA Disciplinary Code and in connection with art. 17 of the FIFA Code of Ethics. The fine is to be paid within 30 days of notification of the decision. (…)*
>
> *4. Costs and expenses of these proceedings, in the amount of CHF 2,000 are borne by the official, Dr Amos Adamu, in accordance with art. 105 par. 1 of the FIFA Disciplinary Code and shall be paid according to the modalities stipulated under point no. 3. above.*

5. The official, Dr Amos Adamu, shall bear his own legal and other costs incurred in connection with the present proceedings.

6 This decision has been sent by fax to Dr Amos Adamu (…) in accordance with art. 103 par. 1 of the FIFA Disciplinary Code".

30. On 23 December 2010, the FIFA Ethics Committee issued the full reasoning for such decision.

31. The Appellant lodged with the FIFA Appeal Committee a timely appeal against the decision of the FIFA Ethics Committee.

32. On 3 February 2011, the FIFA Appeal Committee heard the Appellant. On 12 April 2011, the Appellant was notified of the reasoned decision issued by the FIFA Appeal Committee (hereinafter the "Appealed Decision").

33. The FIFA Appeal Committee, *inter alia*, held the following: 1) the proceedings before the FIFA Ethics Committee were properly carried out, 2) the FIFA Ethics Committee correctly applied the law in including the football-related activity on a international and on a national level in the ban imposed upon the Appellant, 3) the evidence consisting of written transcripts and recorded materials such as the audio and video tapes were admissible, and 4) the Appellant's right to be heard was not infringed. The FIFA Appeal Committee found that there was sufficient evidence to establish that the Appellant accepted unjustified advantage against his vote in favour of the American bid and that the requirements of article 11 para. 1 FCE (bribery) were met. In any event, it considered that the Appellant's behaviour was too ambiguous in regard to the specific standard of conduct requested by the said provision. The FIFA Ethics Committee deemed that the Appellant violated the principles set in article 9 FCE (Loyalty and confidentiality) as well as the duty of disclosure of illicit approaches prescribed by the applicable regulations in failing immediately to report to FIFA that he had been in receipt of offers by certain individuals to take an active part in their illegitimate scheme. Notably in view of 1) the regrets expressed by the Appellant for the publicity and damage caused by the coverage of his meeting with the journalists, 2) the degree of his guilt, 3) his motive and aims as well as 4) his position within FIFA and CAF, 5) the seriousness of the offence, which was increased by the fact that the Appellant agreed to two different meetings and 6) the Appellant's conduct in the period following the committing of the violations of the FCE, the FIFA Appeal Committee concluded that the sanctions imposed by the FIFA Ethics Committee were appropriate and upheld the first instance decision.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

34. Preliminarily, the Panel wishes to point out that the following brief summaries of the parties' submissions are only roughly illustrative and do not purport to include every contention put forward by the parties. However, the Panel has thoroughly considered in its discussion and deliberation all of the evidence and arguments submitted by the parties, even if there is no specific or detailed reference to those arguments in the outline of their positions or in the ensuing analysis.

IV.1 THE APPEAL

35. On 3 May 2011, the Appellant filed a statement of appeal before the Court of Arbitration for Sport (hereinafter referred to as the "CAS"). It challenged the Appealed Decision, submitting the following prayers for relief:

> *"I. the Appeal is admissible and well-founded; and*
>
> *II. the Appeal Committee Decision is replaced in the sense that: the Appellant is not guilty of any of the charges laid against him and is not guilty of infringement of Article 3 par 1, par 2 and par 3 (General Rules), Article 9 par 1 (loyalty and confidentiality) and Article 11 par 1 (bribery) of the FIFA Code of Ethics and, therefore, is released from any sanction;*
>
> *III. alternatively to II., the Appeal Committee Decision is replaced in the sense that: no ban on taking part in any kind of football activity is ordered against the Appellant and the fine is significantly reduced or, alternatively, the ban and the fine are significantly reduced;*
>
> *IV. alternatively to II. And III., the Appeal Committee Decision is annulled; and the Respondent shall pay in full, or in the alternative, a contribution towards:*
>
> *i the costs and expenses, including the Appellant's legal expenses, pertaining to these appeal proceedings before the CAS; and*
>
> *ii the costs and expenses, including the Appellant's legal expenses, pertaining to the proceedings before the FIFA Ethics Committee and before the Appeal Committee".*

36. The Appellant's submissions, in essence, may be summarized as follows:

- The Appealed Decision relies solely on the secretly procured Recordings of the two meetings between the Appellant and the undercover journalists. The evidence is illegal because the journalists' behaviour was in breach of the Swiss Penal Code and because the Recordings transgressed the Appellant's right to personality under article 28 of the Swiss Civil Code (hereinafter "CC"). Furthermore, the Recordings are also illegal as they contravene FIFA regulations, namely article 96 FDC. Under the standard applicable in criminal law proceedings as well as in civil law proceedings, such evidence is procedurally inadmissible.
- Should the evidence be considered as admissible, it does not establish that the Appellant has breached any provisions of the FCE. In any event, there is considerable doubt that the evidence presented by FIFA could support the charges against the Appellant and this doubt should benefit the Appellant, due to the *"in dubio pro reo"* principle.
- FIFA did not take into consideration the lack of quality in the evidence. In particular, it relied solely on the secret Recordings without carrying out further investigations. FIFA also did not contemplate the lack of reliability of the individuals who made the evidence available, i.e. the journalists who were deceitful and acted criminally. In addition, FIFA overlooked the fact that the journalists took advantage of the Appellant's poor command of English to manipulate him and to put words into his mouth.
- FIFA's assessment of the case was obviously not neutral nor independent, as it ignored the applicable burden of proof, charged the Appellant with several offences based on extracts from the Recordings taken out of their context, failed to address detailed

submissions filed by the Appellant and did not give any explanations as to why it dismissed without any explanation some of the charges initially held against the Appellant.

- There are three serious flaws or gaps in the bribe accusations held against the Appellant, for which FIFA does not and cannot give any answer:

  a) Why would a corrupt man (who ignores that he is being recorded) say so many times in both meetings that he would vote according to his conscience, that he would vote without preconditions, that he is not acting for personal gains and that he would not vote for somebody who is giving him something?

  b) The Appellant has actually never received anything from the journalists and has never provided any means by which he could have obtained the fruit of his corruption. Why would a corrupt man fail repeatedly to make available a method in order to collect what he was offered?

  c) In the first meeting, the journalists proposed a figure per pitch for the artificial grass of USD 400,000. Yet, the Appellant said that a pitch cost USD 200,000. Why would a corrupt man accept only half of the money proposed by the bribe-giver?

- Given his background and *"his responsibilities to the development of sport/football in Nigeria, the Appellant was interested in the idea of foreign companies looking to invest in football in Nigeria"*. At first, the Appellant wrongly understood that *"the meeting did not concern the World Cup bidding process but rather the exploration by corporate entities of ways to invest in and forge relationships with Nigeria"*. The misunderstanding was induced by the fact that, in the beginning, the journalists did not make any mention of the voting process. It is only during the Cairo meeting that the Appellant came to realize that the journalists were not serious. At that moment, he tried to see what their real intention was and to uncover a scam, before bringing rapidly the meeting to an end.

- The Appellant is not guilty of any violation of article 11 FCE, the requirements of which are not met: Not only did he not accept a bribe but he clearly refused it on several occasions. In addition, for a bribery to take place, the gains and advantages must go personally to the individual to whom the supposed offer is being made. In the present case, the Appellant did not seek to obtain any personal or private benefit but was acting in the interest of Nigerian youth football.

- Since the Appellant cannot be found guilty of bribery, he cannot be found in breach of articles 3 and/or 9 FCE, the requirements of which are also not met in the present case. In particular, the Appellant cannot be blamed for not having reported to FIFA the journalists' inappropriate approach. As a matter of fact, he has a long history of being involved in investment projects in Nigeria and has no reason to refer to FIFA every single deal he is negotiating in such a context. His fiduciary duty towards FIFA cannot be so far reaching and, practically, it would not make sense if he were to report to FIFA all the odd offers made to him on a daily basis. Furthermore, it is very common for FIFA executive members to be approached in the same manner as the journalists did, without any further consequences, in particular without any report being made to FIFA.

- The sanction imposed upon the Appellant is disproportionate.

IV.2 THE ANSWER

37. On 20 June 2011, FIFA submitted an answer containing the following prayers for relief:

"Based on the foregoing developments, FIFA respectfully requests the CAS to issue an award:

- *Rejecting Dr Adamu's prayers for relief.*
- *Confirming the Decision under appeal.*
- *Ordering Dr Adamu to pay in full, or pay a contribution of no less than CHF 40,000 towards the legal fees and other expensed incurred by FIFA in connection with these proceedings".*

38. FIFA's submissions, in essence, may be summarized as follows:

- FIFA disciplinary bodies made no procedural errors and carried out correctly the disciplinary proceedings against the Appellant for breaches of the FCE. In particular, the fact that the journalists had not been present at the FIFA hearings is completely irrelevant, as the former instances have rightly not placed any reliance on the journalists' account of the meetings in London and Cairo.
- The Recordings were lawfully obtained by the journalists because in England such behaviour is not criminally sanctioned. In any event, those recordings constitute admissible evidence in the present proceedings even if the journalists' recordings were unlawful, because FIFA rules allow them and because under Swiss law their use as evidence is not precluded.
- The breach of the FCE by the Appellant is established by very objective evidence: a) the recordings of what the Appellant said, b) his emails and c) his testimony before the CAS Panel.
- *"When one examines the sequence of events from the London meeting, up to and including the present CAS proceedings, one can observe a clear pattern of dishonesty in [the Appellant's] behaviour throughout the period"*:
  a) The Appellant was aware of the connection between the offer/promise of a gift/advantage by the journalists and the journalists' request that the Appellant would vote in favour of the United States World Cup bid.
  b) The Appellant accepted and/or failed to refuse a gift/advantage being offered/promised to him by the journalists and did not refuse the offered payment.
  c) The Appellant sought to mislead FIFA regarding his relationship with the journalists and did not report to FIFA breaches of the FCE which he was aware of.
- The wording of article 11 para. 1 FCE is very clear. For this provision to come into play, the advantage a) can take any form, b) does not need to be to the benefit of the official personally and c) is enough if it is only offered. In the presence of such an advantage, offered with the purpose to incite a breach of duty or dishonest conduct, the official has the obligation to actively refuse the offer. Furthermore, the Appellant cannot find any support in his alleged inability to understand or express himself in English. In view of his

position, there is no doubt that the Appellant was perfectly capable a) of understanding that a bribe was actually being offered and b) of making himself understood. If some doubts remained with regard to what was at stake, the Appellant had to take the necessary steps to clarify the situation and, if need be, to report and/or to seek advice from FIFA. In view of the facts and evidence, the Appellant breached article 11 para. 1 FCE.

- The Appellant breached article 9 FCE as he failed to immediately report to FIFA the inappropriate approach made by the journalists.
- Article 3 FCE also imposes general duties of behaviour, which were breached by the Appellant, who a) did not refrain from anything that could be harmful to the aims and objectives of FIFA (article 3 para. 1 FCE), b) did not behave with integrity during the two meetings (article 3 para. 2 FCE) and c) obviously abused of his position, which allowed him to enter into an agreement with the journalists, namely in order to receive an advantage (article 3 para. 3 FCE).
- The sanction imposed upon the Appellant is proportionate to the seriousness of the offense and is even lenient.

IV.3 THE HEARING

39. A hearing was held on 4 October 2011 at the CAS premises in Lausanne. The Panel members were present.

40. The following people attended the hearing:

- The Appellant was present and was accompanied by his counsel, Mr Paul Harris QC, Mr Stuart Baird and Dr Sébastien Besson.
- FIFA was represented by its director of legal affairs, Mr Marco Villiger (who left the hearing after some time) and by its counsel, Mr Adam Lewis QC, Dr Antonio Rigozzi and Mr David Casserly.

41. At the outset of the hearing, the parties confirmed that they did not have any objection as to the constitution and composition of the Panel. The Panel heard at length Dr Amos Adamu himself, who was examined by his counsel, cross examined by the Respondent's counsel and questioned by the Panel members. Then, the Panel heard evidence from the following persons, who were examined and cross-examined by the parties, as well as questioned by the Panel:

- Professor Hans Michael Riemer, called by the Respondent as an expert in Swiss civil law, assisted by an interpreter;
- Mr Michael Adamu, a relative of the Appellant. He was heard via teleconference, with the agreement of the Panel and pursuant to article R44.2 para. 4 of the Code of Sports-related Arbitration (hereinafter "the CAS Code").

42. The parties had then ample opportunity to present their cases, submit their arguments and answer the questions posed by the Panel. After the parties' final submissions, the Panel closed the hearing and reserved its final award. The Panel heard carefully and took into account in its discussion and subsequent deliberation all the evidence and the arguments presented by the

parties even if they have not been summarized herein. Neither during nor after the hearing did the parties raise with the Panel any objection as to the respect of their right to be heard and to be treated equally in these arbitration proceedings, with the sole exception put on record by the Appellant with respect to the Panel's rejection, pursuant to article R56 of the CAS Code, of the Appellant's request to submit expert evidence in response to Prof. Riemer expert report on Swiss civil law.

V. ADMISSIBILITY, JURISDICTION AND APPLICABLE LAW

V.1 ADMISSIBILITY OF THE APPEAL

43. The appeal is admissible as the Appellant submitted it within the deadline provided by article R49 of the CAS Code. It complies with all the other requirements set forth by article R48 of the CAS Code.

V.2 JURISDICTION

44. The jurisdiction of the CAS, which is not disputed, derives from articles 63 para. 1 of the FIFA Statutes, article 18 para. 2 FCE and article R47 of the CAS Code. It is further confirmed by the order of procedure duly signed by the parties.

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

V.3 POWER OF REVIEW OF THE CAS

46. Under article R57 of the CAS Code (*"The Panel shall have full power to review the facts and the law"*), the Panel shall hear the case *de novo*. According to the long-standing jurisprudence of the CAS:

"[I]t is the duty of a CAS panel in an appeals arbitration procedure to make its independent determination of whether the Appellant's and Respondent's contentions are correct on the merits, not limiting itself to assessing the correctness of the previous procedure and decision" (CAS 2009/A/1880-1881, at para. 146).

47. The Panel has taken note of the Appellant's allegation that the Appealed Decision was not rendered by an impartial disciplinary body and was taken in violation of the principle of due process and of his right to be heard. However, under the established jurisprudence of the CAS, any procedural defect of the previous disciplinary process is cured by virtue of the *de novo* character of the CAS arbitration proceedings and the procedural rights granted therein:

"[T]he appeal arbitration procedure cures any infringement of the right to be heard or to be fairly treated committed by a sanctioning sports organization during its internal disciplinary proceedings. Indeed, a CAS appeal arbitration procedure allows a full de novo hearing of a case with all due process guarantees, granting the parties every opportunity not only to submit written briefs and any kind of evidence, but also to be extensively heard and to examine and cross-examine witnesses or experts during a hearing" (CAS 2009/A/1545, at para. 78; see also CAS 2003/O/486, at para. 50; CAS 2008/A/1594, at para. 109).

48. The Panel is persuaded that in the present CAS proceedings the Appellant has been given ample latitude to fully plead his case and be heard. In the Panel's view, the Appellant's right to be heard has been fully protected even if the Panel rejected his request to submit additional expert

evidence in response to the expert evidence submitted by the Respondent (Professor Riemer's opinion on Swiss civil law related to the admissibility as evidence in disciplinary proceedings of the Recordings).

49. Indeed, article R51 of the CAS Code requires the Appellant to specify in the appeal brief any expert witnesses and to immediately file their witness statements. Then, article R56 of the CAS Code provides that, once the appeal brief has been filed, the President of the Panel may authorize the Appellant to supplement it only on the basis of "exceptional circumstances"; this could occur, for example, if the Respondent raised some new or unexpected arguments or legal issues. Here, however, no extraordinary circumstances were claimed; in particular, the Appellant cannot claim that the Respondent's expert opinion concerned a new question or caused an unexpected development. Indeed, the question of the evidentiary admissibility of the Recordings had been already discussed at length before the FIFA disciplinary bodies and was raised in this arbitration by the Appellant himself, who devoted to it an ample section of his appeal brief, quoting Swiss scholarly writings and jurisprudence. He could have attached an expert legal opinion to his appeal brief if he so wished, but he chose not to do it. The Swiss Federal Tribunal recently clarified that, absent any extraordinary circumstances for a subsequent admission of evidence under article R56, a CAS panel does not violate the mandatory procedural requirements of Art. 190 (2) (d) of the Swiss Private International Law Act if it rejects the request to introduce new evidence (Judgment of the Swiss Federal Tribunal of 20 July 2011, 4A_162/2011, at consid. 2.3.2-2.3.3). In any event, the Panel remarks that the Appellant was able at the hearing to rely on a prominent and able Swiss lawyer to fully express his view and to cross-examine Prof. Riemer in order to confute the latter's opinion. In addition, keeping in mind that the Panel is directly knowledgeable of Swiss law, in practical terms the Panel does not see much difference between an opinion on Swiss law proffered by a party-appointed Swiss expert and one submitted by a party's Swiss counsel; the weight to be given to either one depends on the intrinsic persuasiveness of the arguments rather than on the formal status of the speaker.

50. In conclusion, given that the Appellant's right to be heard has been respected in these arbitration proceedings, the Panel deems that any possible procedural deficiency or violation that might have affected the FIFA disciplinary proceedings has been cured, with no need to address the procedural grievances raised by the Appellant with respect to those FIFA proceedings.

V.4 APPLICABLE LAW

51. The applicable law in the present arbitration is identified by the Panel in accordance with article R58 of the CAS Code, which provides as follows:

"The Panel shall decide the dispute according to the applicable regulations and 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 application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

52. It is generally accepted that the choice of the place of arbitration may determine the law to be applied to arbitration proceedings. The Swiss Private International Law Act (hereinafter

"PILA") is the relevant arbitration law (DUTOIT B., *Droit international privé suisse, Commentaire de la loi fédérale du 18 décembre 1987*, Bâle 2005, N. 1 on article 176 PILA, p. 614). Article 176 para. 1 PILA provides that Chapter 12 of the PILA, governing international arbitration, applies to any arbitration if the seat of the arbitral tribunal is in Switzerland and if, at the time the arbitration agreement was entered into, at least one of the parties had neither its domicile nor its usual residence in Switzerland (cf. Judgement of the Swiss Federal Tribunal of 20 January 2010, 4A_548/2009, consid. 2.1; ATF 129 III 727, DUTOIT B., *op. cit.*, N. 2 ad. art. 176 LDIP, p. 615).

53. The CAS is recognized by the Swiss Federal Tribunal as a true court of arbitration (Judgment of the Swiss Federal Tribunal of 27 May 2003, 4P.267/2002, 4P.268/2002, 4P.269/2002, 4P.270/2002/ech). The CAS has its seat in Switzerland and Chapter 12 of the PILA shall therefore apply, the Appellant having neither his domicile nor his usual residence in Switzerland.

54. With respect to the applicable substantive law, article 187 para. 1 PILA provides that *"the arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected"*.

55. The choice of law made by the parties can be tacit or indirect, by reference to the rules of an arbitral institution (KARRER P., *Basler Kommentar zum Internationalen Privatrecht*, 1996, N. 92 and 96, ad. Art. 187 PILA; POUDRET/BESSON, *Droit comparé de l'arbitrage international*, 2002, N. 683, p. 613; DUTOIT B., *op. cit.*, N. 4 ad. art. 187 LDIP, p. 657; CAS 2004/A/574).

56. In addition, within the meaning of article 187 para. 1 PILA, the rules of law chosen by the parties do not need to be national laws, but can be non-governmental regulations (LALIVE/POUDRET/REYMOND, *Droit de l'arbitrage interne et international en Suisse*, Lausanne 1989, pp. 399-400), such as in particular the rules and regulations of international sport federations. It is common for the CAS to primarily apply the various rules and regulations of such federations. For example, in TAS 92/80 (Digest of CAS Awards I, p. 287, 292), the CAS panel stated as follows:

"Si le parties n'ont pas déterminé un droit national applicable, elles sont, en revanche, soumises aux statuts et règlements de la FIBA […]. Le droit fédératif adopté par la FIBA constitue une réglementation de droit privé, ayant une vocation internationale, voire mondiale, à s'appliquer dans le domaine des règles de sport régissant le basketball. Pour résoudre le présent litige, le tribunal arbitral appliquera donc ce droit fédératif, sans recourir à l'application de telle ou telle loi national au fond";

(or in English)

"If the parties have not chosen a national law, their dispute shall, however, be governed by the rules and regulations of FIBA […]. The rules of law adopted by FIBA are private law rules, with an international and worldwide perspective when it comes to the regulations governing the sport of basketball. To solve this dispute, the arbitral tribunal will therefore apply the rules and regulations of the said federation, without resorting to any substantive national law".

57. At the time of the relevant facts, the Appellant was a member of the FIFA Executive Committee, the President of the West African Football Union and an executive member of the CAF as well as the Chairman of the CAF Ethics Committee. In those capacities, he was (and is) subject to the FIFA Statutes and regulations (ATF 119 II 271; RIEMER H. M., *Berner Kommentar*, ad art. from 60 to 79 of the Swiss Civil Code No. 511 and 515, CAS 2004/A/574).

In expressly agreeing to be elected as a member of the FIFA Executive Committee (not to mention his other positions at continental level), Dr Adamu clearly accepted to submit himself to the Statutes and regulations of FIFA. Indeed, the Appellant never challenged the application of the various FIFA rules in this case.

58. Pursuant to article 62 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"*.

59. Therefore, lacking any more specific agreement between the parties, the Panel will apply, as the law applicable to the merits of the dispute, the various FIFA regulations. The Panel will also apply Swiss law complementarily, should the need arise.

60. The relevant facts at the basis of the present case arose after 1 January 2009, 1 September 2009 and 10 August 2010, which are the dates when, respectively, the revised FDC (2009 edition), the revised FCE (2009 edition) and the FIFA Statutes (2010 edition) came into force. In accordance with the principle of non-retroactivity, these are the editions of the rules and regulations under which the case shall be assessed (see articles 4, 146 FDC, 17 para. 2 FCE and 83 of the FIFA Statutes).

VI. ADMISSIBILITY OF THE EVIDENCE

VI.1 THE ISSUE RAISED BY THE APPELLANT

61. According to the Appellant, the Recordings that FIFA obtained from the *Sunday Times*, with the corresponding transcripts, must be considered as illegal evidence because the journalists' behaviour was in breach of the Swiss penal code and the evidence is, therefore, the result of a criminal offence. He claims that, under such circumstances, the use of the Recordings could not be justified in any manner, in particular not by the freedom of the press, which may not justify the violation of the Swiss penal code. The Appellant is of the opinion that the Recordings violate his right to personality under article 28 CC and that FIFA's interest to use them does not outweigh the Appellant's interest to keep them confidential. Furthermore, he puts forward that the Recordings are also unusable as they contravene FIFA regulations, namely article 96 FDC. It is the Appellant's case that, under the standards applicable in criminal law proceedings as well as in civil law proceedings, the evidence is procedurally inadmissible.

VI.2 IN GENERAL

62. Primarily, the Panel observes that under Swiss law – as under most legal systems – associations, and in particular sporting associations, possess the power (i) to adopt rules of conduct to be followed by their direct and indirect members and (ii) to apply disciplinary sanctions to members who violate those rules, on condition that their own rules and certain general principles of law – such as right to be heard and proportionality – be respected (cf. BADDELEY M., *L'association sportive face au droit*, Bâle 1994, pp. 107 ff., 218 ff.; BELOFF/KERR/DEMETRIOU, *Sports Law*, Oxford 1999, pp. 171 ff.).

63. In this regard, the Panel points out that the authority by which a sporting association may set its own rules and exert its disciplinary powers on its direct or indirect members does not rest on public or penal law but on civil law. Indeed, the Swiss Federal Tribunal clearly affirmed that sanctions imposed by sporting associations are purely a matter of civil law and not of penal law:

"Il est généralement admis que la peine statutaire représente l'une des formes de la peine conventionnelle, qu'elle repose donc sur l'autonomie des parties et peut ainsi être l'objet d'une sentence arbitrale […]. En d'autres termes, la peine statutaire n'a rien à voir avec le pouvoir de punir réservé aux tribunaux pénaux […], et ce même si elle réprime un comportement qui est aussi sanctionné par l'Etat" (Judgement of the Swiss Federal Tribunal of 15 March 1993, Gundel v. FEI, consid. 5a , Digest of CAS Awards I, p. 545 ; partially published in ATF 119 II 271);

or in English (as translated in Digest of CAS Awards I, p. 571):

"It is generally accepted that the penalty prescribed by regulations represents one of the form of penalty fixed by contract, is therefore based on the autonomy of the parties and may thus be the subject of an arbitral award […]. In other words, the penalty prescribed by regulations has nothing to do with the power to punish reserved by the criminal courts, even if it is punishing behaviour which is also punished by the State".

64. According to the established case law of the Swiss Federal Tribunal, only civil law standards are relevant to the disciplinary sanctions imposed by sport associations. In particular, the Swiss Federal Tribunal noted that criminal law principles may not be applied when dealing with evidentiary issues in disciplinary cases:

"la charge de la preuve et […] l'appréciation des preuves […] ne peuvent pas être réglés, en matière de droit privé, à la lumière de notions propres au droit pénal, telles que la présomption d'innocence et le principe "in dubio pro reo", et des garanties correspondantes figurant dans la Convention européenne des droit de l'homme" (Swiss Federal Tribunal, Judgement of 31 March 1999 [5P. 83/1999], N., J. Y. W. v. FINA, consid. 3d, making reference to its Judgement of 15 March 1993, Gundel v. FEI, consid. 8b);

or in English (as translated in Digest of CAS Awards II, p. 781):

"the duty of proof and assessment of evidence […] cannot be regulated, in private law cases, on the basis of concepts specific to criminal law such as the presumption of innocence and the principle of "in dubio pro reo" and the corresponding safeguards contained in the European Convention on Human Rights".

65. With specific regard to the European Convention on Human Rights ("ECHR"), which was invoked by the Appellant, the Panel remarks that international treaties on human rights are meant to protect the individuals' fundamental rights vis-à-vis governmental authorities and, in principle, they are inapplicable *per se* in disciplinary matters carried out by sports governing bodies, which are legally characterized as purely private entities. This view is consistent with the prevailing approach of the Swiss Federal Tribunal. In a decision concerning a sport governing body's decision to suspend an athlete, the Supreme Court held that *"The Appellant invokes Article 27 of the [Swiss] Constitution and 8 ECHR. However, he was not the subject of a measure taken by the State, with the result that these provisions are, as a matter of principle, inapplicable"* (translation of Swiss Federal Judgement of 11 June 2001, Abel Xavier v. UEFA, consid. 2 d, reproduced in *Bull. ASA*, 2001, p. 566; partially published in ATF 127 III 429).

66. However, the Panel is mindful that some guarantees afforded in relation to civil law proceedings by article 6.1 of the ECHR are indirectly applicable even before an arbitral tribunal – all the

more so in disciplinary matters – because the Swiss Confederation, as a contracting party to the ECHR, must ensure that its judges, when checking arbitral awards (at the enforcement stage or on the occasion of an appeal to set aside the award), verify that parties to an arbitration are guaranteed a fair proceeding within a reasonable time by an independent and impartial arbitral tribunal. These procedural principles thus form part of the Swiss procedural public policy.

67. Indeed, CAS panels have always endeavoured to ensure that fundamental principles of procedural fairness are respected in sports disciplinary proceedings, in accordance with the notion of procedural public policy as determined by the Swiss Federal Tribunal:

"L'ordre public procédural garantit aux parties le droit à un jugement indépendant sur les conclusions et l'état de fait soumis au tribunal d'une manière conforme au droit de procédure applicable ; il y a violation de l'ordre public procédural lorsque des principes fondamentaux et généralement reconnus ont été violés, ce qui conduit à une contradiction insupportable avec le sentiment de la justice, de telle sorte que la décision apparait incompatible avec les valeurs reconnues dans un Etat de droit" (Judgement of the Swiss Federal Tribunal of 11 Jun 2001, 4P.64/2001, ATF 127 III 429, Abel Xavier v. UEFA, consid. 2d, *ibidem*).

(or in English)

"Procedural public policy guarantees the parties the right to an independent ruling on the conclusions and facts submitted to the tribunal in compliance with the applicable procedural law; procedural public policy is violated when fundamental, commonly recognized principles are infringed, resulting in an intolerable contradiction with the sentiment of justice, to the effect that the decision appears incompatible with the values recognized in a State governed by the rule of law".

68. In view of the above, the Panel will not be guided by criminal law standards, and will not resort to rules of criminal procedure in order to assess the admissibility or inadmissibility of the Recordings as evidence in this arbitration. However, the Panel will endeavour to comply with all facets of Swiss procedural public policy.

VI.3 ILLEGAL NATURE OF THE EVIDENCE?

69. Preliminarily, with regard to the alleged illegality of the evidence, the Panel notes that pursuant to the general duties of good faith and respect for the arbitral process a party to an arbitration may not cheat the other party and illegally obtain some evidence. Should that happen, the evidentiary materials thus obtained may be deemed as inadmissible by the arbitral tribunal (cf. BERGER/KELLERHALS, *International Arbitration in Switzerland*, 2nd ed., London 2010, p. 343). A couple of examples can be given of arbitral proceedings where a violation of the principles of good faith and of respect for the arbitral process occurred:

- an international arbitral tribunal made clear that all parties owe a general duty to the others and to the tribunal to conduct themselves in good faith during the arbitration proceedings and that it is not acceptable for a party to an arbitration to gather evidence by having private detectives covertly trespassing into the other party's office building (UNCITRAL, *Methanex Corp. v. United States*, Final Award, 3 August 2005, pt. II, ch. A, at 13);

- another international arbitral tribunal, in a situation where a State who was a party to an ICSID arbitration had used its police powers and intelligence services to eavesdrop on the other party's telephone conversations, stated that *"parties have an obligation to arbitrate*

fairly and in good faith and […] an arbitral tribunal has the inherent jurisdiction to ensure that this obligation is complied with; this principle applies in all arbitration" (ICSID Case No. ARB/06/8, *Libananco Holdings Co. v. Turkey*, Award on Jurisdiction, 23 June 2008 at 78).

70. On the basis of the evidence before it, the Panel finds that the case at hand is very different from the just mentioned examples, as FIFA did not perform any illegal activity and did not cheat the Appellant in order to obtain the Recordings. There is no evidence on file, and the Appellant does not contend, that the *Sunday Times*' investigation was prompted or supported by FIFA or by anybody close to FIFA. FIFA transparently solicited and received such evidentiary material from the *Sunday Times* immediately after the publication of the article on 17 October 2010 and the disclosure of important portions of the Recordings' content (see *supra* at 23). The Panel thus finds that FIFA did not violate the duties of good faith and respect for the arbitral process incumbent on all who participate in international arbitration; as a consequence, such procedural principles may not constitute a legal basis to exclude the disputed evidence from these arbitration proceedings.

71. However, the Appellant argues that the *Sunday Times*' reporters violated the law and unwarrantedly intruded into his private life to gather the Recordings and, consequently, such evidence is "infected" – as vividly portrayed by his counsel – and cannot be used anyways in these arbitration proceedings, even if FIFA itself is not responsible for the journalists' conduct.

72. According to the Appellant, the lawfulness or not of the journalists' conduct should be evaluated under Swiss law, whereas the Respondent argues that English law should be applied for that purpose. The Panel observes that, under either English law or Swiss law two different rights would have to be comparatively weighed – the right to respect for private life and the right to freedom of expression. Both rights are protected in any democratic society but neither one is absolute, being subject to a number of legitimate exceptions and restrictions (cf. articles 8.2 and 10.2 ECHR). According to the current jurisprudence of the European Court of Human Rights, neither right has automatic precedence over the other and, in principle, both merit equal respect (European Court of Human Rights, Judgment 23 July 2009, *Hachette Filipacchi Associés "Ici Paris" v. France*, Application no. 12268/03, at para. 41)

73. With specific regard to interferences by the media in a person's private life, the European Court of Human Rights has recently emphasised the vital role of the press in informing the public and being a "public watchdog", underlining that not only does the press have the task of imparting information and ideas on matters of public interest but the public also has a right to receive them (European Court of Human Rights, Judgment 10 May 2011, *Mosley v. UK*, Application no. 48009/08, at para. 112). According to the European Court (*ibidem*, at para. 114):

"the pre-eminent role of the press in a democracy and its duty to act as a 'public watchdog' are important considerations in favour of a narrow construction of any limitations on freedom of expression. However, different considerations apply to press reports concentrating on sensational and, at times, lurid news, intended to titillate and entertain, which are aimed at satisfying the curiosity of a particular readership regarding aspects of a person's strictly private life. […] the Court stresses that in assessing in the context of a particular publication whether there is a public interest which justifies an interference with the right to respect for private life, the focus must be on whether the publication is in the interest of the public and not whether the public might be interested in reading it" (citations omitted).

74. The Panel notes that the *Sunday Times* journalists did not look for sensational or lurid aspects of the Appellant's strictly private life to lure the curiosity of the public. Rather, those journalists tried to expose possible cases of corruption in the FIFA World Cup bidding process, thus acting as "public watchdogs" (to use the European Court's terminology). The Panel finds it difficult to maintain that the exposure of illegal conduct in relation to important sports events – be it corruption, doping or match-fixing – would not be in the interest of the public. Taking into account the above recent jurisprudence of the European Court of Human Rights, it is not self evident that the journalists' conduct, albeit sneaky, was unlawful; if it were, the Appellant would be entitled to seek justice on that count by filing a criminal complaint and/or a civil action against the *Sunday Times* or its journalists. The fact that at the time of the hearing – about one year after the relevant facts – the Appellant had not started any lawsuit certainly does not lend support to the argument that the journalists illegally obtained the Recordings.

75. However, the Panel deems it unnecessary to assess whether or not the Recordings were illegally procured and whether or not the evidence was "infected" when it arrived in the hands of FIFA. Indeed, the Panel would be even prepared to assume in the Appellant's favour that the evidence was illegally obtained and, thus, "infected". As a matter of fact, the mere circumstance that some evidence has been illegally obtained does not necessarily preclude an international arbitral tribunal sitting in Switzerland to admit it into the proceedings and to take it into account for its award (see BERGER/KELLERHALS, *op. cit.*, p. 343). Indeed, an international arbitral tribunal sitting in Switzerland is not bound to follow the rules of procedure, and thus the rules of evidence, applicable before Swiss civil courts, or even less before Swiss criminal courts. As emphasized in the Swiss legal literature on international arbitration:

"La procédure arbitrale n'est pas soumise aux règles applicables devant les tribunaux étatiques. C'est d'ailleurs là un avantage souvent cité de l'arbitrage" (KAUFMANN-KOHLER/RIGOZZI, Arbitrage international. Droit et pratique à la lumière de la LDIP, 2nd ed., Berne 2010, at 294);

Or translated in English:

"Arbitral proceedings are not subject to the rules applicable before State tribunals. This is, after all, an often mentioned benefit of arbitration".

76. Accordingly, with regard to the admissibility of evidence, the Panel endorses the position articulated by a CAS panel in the recent matter CAS 2009/A/1879, paras. 134 ff:

"L'ordre juridique interne suisse n'établit pas de principe général selon lequel des preuves illicites seraient généralement inadmissibles dans une procédure devant les cours civils étatiques. Au contraire, le Tribunal Fédéral, dans une jurisprudence constante, est d'avis que l'admissibilité ou la non-admissibilité d'une preuve illicite est le résultat d'une mise en balance de différents aspects et intérêts juridiques. Sont pertinents, par exemple, la nature de la violation, l'intérêt à la manifestation de la vérité, la difficulté de preuve pour la partie concernée, le comportement de la victime, les intérêts légitimes des parties et la possibilité d'acquérir les (mêmes) preuves de façon légitime. La doctrine suisse prédominante suit cette jurisprudence du Tribunal Fédéral. L'approche adoptée par le Tribunal Fédéral et la doctrine dominante a, par ailleurs, été codifiée dans le nouveau CPC suisse (Article 152 alinéa 2), qui entrera en vigueur le 1er janvier 2011 […].

Les principes qui viennent d'être décrits ne constituent qu'une faible source d'inspiration pour la pratique des tribunaux arbitraux. […] En particulier, l'interdiction de se fonder sur une preuve illicite dans une procédure étatique ne lie pas en soi un tribunal arbitral. Selon le droit de l'arbitrage international un tribunal arbitral

n'est pas lié par les règles applicables à l'administration de la preuve devant les tribunaux civils étatiques du siège du tribunal arbitral. Comme l'on a vu supra, le pouvoir discrétionnaire de l'arbitre de décider sur l'admissibilité de la preuve n'est limité que par l'ordre public procédural. L'utilisation de preuves illicites ne relève par ailleurs pas automatiquement de l'ordre public suisse, car ce dernier est seulement atteint en présence d'une contradiction insupportable avec le sentiment de justice, de telle sorte que la décision apparaît incompatible avec les valeurs reconnues dans un Etat de droit".

Or translated in English:

"The internal Swiss legal order does not set forth a general principle according to which illicit evidence would be generally inadmissible in civil proceedings before State courts. On the contrary and according to the long-standing jurisprudence of the Federal Tribunal, whether the evidence is admissible or inadmissible depends on the evaluation of various aspects and legal interests. For example, the nature of the infringement, the interest in getting at the truth, the evidentiary difficulties for the interested party, the behaviour of the victim, the parties' legitimate interests and the possibility to obtain the (same) evidence in a lawful manner are relevant in this context. The prevailing scholarly writings agree with the jurisprudence of the Swiss Federal Tribunal. The approach taken by the Federal Tribunal and by most of the scholars has actually been codified in the new Swiss Code of Civil Procedure (CCP) (Article 152 paragraph 2), which will come into force on 1 January 2011 […].

The above described principles are only a feeble source of inspiration for arbitral tribunals. […] In particular, the prohibition to rely on illegal evidence in State court proceedings is not binding per se upon an arbitral tribunal. According to international arbitration law, an arbitral tribunal is not bound by the rules of evidence applicable before the civil State courts of the seat of the arbitral tribunal. As seen above, the discretion of the arbitrator to decide on the admissibility of evidence is exclusively limited by procedural public policy. In this respect, the use of illegal evidence does not automatically concern Swiss public policy, which is violated only in the presence of an intolerable contradiction with the sentiment of justice, to the effect that the decision appears incompatible with the values recognized in a State governed by the rule of law".

77. In light of these principles and under the particular circumstances of that matter, the CAS panel in the case CAS 2009/A/1879 considered as admissible a piece of evidence – a blood sample – which a Spanish first instance judge, whose order was subsequently confirmed by the Madrid Court of Appeals, (a) had expressly declared to have been illegally obtained and (b) had expressly prohibited to be used in any judicial or disciplinary proceedings. The CAS panel in the case CAS 2009/A/1879 held on the basis of such evidence that the athlete had at least tried to engage in prohibited doping practices and, consequently, imposed on him a disciplinary sanction. The athlete lodged an appeal before the Swiss Federal Tribunal, which upheld the decision without however dealing with this evidentiary issue (Judgment of 29 October 2010, 4A_234/2010, ATF 136 III 605).

78. The Panel remarks that, in the case at hand, not only there has been no ordinary judge declaring that the evidence was unlawfully obtained and prohibiting its use but, as observed (*supra* at 74), it is open to debate whether the Sunday Times journalists acted illegally. In light of the foregoing considerations, even assuming in the Appellant's favour the illegal acquisition of the Recordings, this does not prevent in and of itself their use as evidence in disciplinary proceedings conducted within a private association.

VI.4 THE APPLICABLE RULES OF EVIDENCE

a) Private autonomy and Swiss evidentiary rules

79. Chapter 12 PILA grants an important role to private autonomy in international arbitration, as it gives the parties the option to determine their own procedural rules, including rules relating to evidence. In particular, article 182 para. 1 PILA states that *"[t]he parties may, directly or by reference to rules of arbitration, determine the arbitral procedure; they may also submit the arbitral procedure to a procedural law of their choice"*.

80. This provision confirms the CAS 2009/A/1879 panel's statement that *"an arbitral tribunal is not bound by the rules of evidence applicable before the civil State courts of the seat of the arbitral tribunal"* (see *supra* at 76). This is particularly so if the parties make use of their private autonomy to lay down some rules of evidence.

81. The Panel notes that the parties to this arbitration did make use of their private autonomy – FIFA by adopting its rules and the Appellant by accepting them when he voluntarily became an indirect member and an official of FIFA – and did agree on some rules of evidence to be applied in FIFA disciplinary proceedings. Therefore, the Panel holds that the evidentiary issues of this case must be addressed applying those rules privately agreed between the parties and not the rules of evidence applicable before Swiss civil or criminal courts.

82. As a consequence, the criteria on the admissibility of evidence that can be found in the Swiss civil or criminal jurisprudence will not be used as guidance by the Panel. In particular, the Panel will not discuss the decisions of the Swiss Federal Tribunal that were cited by the parties, such as the judgments of 2 July 2010 (5A_57/2010, ATF 136 III 410) and of 15 June 2009 (8C_807/2008, ATF 135 I 169), that concern covert surveillance and secret video recordings of insured individuals made by private or public insurance bodies. Indeed, those cases do not concern arbitration proceedings but the application of Swiss rules of civil procedure. Incidentally, the Panel observes that those Swiss cases are also factually distinct from the case at hand, as they concern intrusions into privacy committed with the objective of gathering evidence by the same party which then introduced the evidence before the court, whereas FIFA – as already noted (see *supra* at 70) – cannot be blamed of having spied on the Appellant. FIFA rather faced evidence deriving from a *fait accompli*.

83. The applicable FIFA evidentiary rules in this case are those set forth by the FDC, which includes rules governing (i) the burden of proof, (ii) the standard and evaluation of proof, and (iii) the admissibility of evidence.

b) The FIFA rule on burden of proof

84. With regard to burden of proof, article 99 para.1 of the FDC provides as follows:

"Article 99 Burden of proof

1. The burden of proof regarding disciplinary infringements rests on FIFA".

85. The Panel notes that this FIFA provision is in line with the general principle for disciplinary cases according to which the burden of proof lies with the accuser. Hence, notwithstanding the

fact that FIFA is the Respondent in this arbitration, it is up to FIFA to prove its case against Dr Adamu.

c) The FIFA rule on standard and evaluation of proof

86. With regard to standard and evaluation of proof, article 97 of the FDC provides as follows:

"Article 97 Evaluation of proof

1. The bodies will have absolute discretion regarding proof.

2. They may, in particular, take account of the parties' attitudes during proceedings, especially the manner in which they cooperate with the judicial bodies and the secretariat (cf. art. 110).

3. They decide on the basis of their personal convictions".

87. The Panel notes that, under article 97 FDC, the Panel has a wide margin of appreciation and may freely form its opinion after examining all the available evidence. The applicable standard of proof is the *"personal conviction"* of the Panel (in the French version *"intime conviction"*, but according to article 143 para. 2 FDC the English version prevails).

88. The Panel is of the view that, in practical terms, this standard of proof of personal conviction coincides with the "comfortable satisfaction" standard widely applied by CAS panels in disciplinary proceedings. According to this standard of proof, the sanctioning authority must establish the disciplinary violation to the comfortable satisfaction of the judging body bearing in mind the seriousness of the allegation. It is a standard that is higher than the civil standard of "balance of probability" but lower than the criminal standard of "proof beyond a reasonable doubt" (cf. CAS 2010/A/2172, para. 53; CAS 2009/A/1920, para. 85). The Panel will thus give such a meaning to the applicable standard of proof of personal conviction.

d) The FIFA rule on admissibility of evidence

89. With regards to the admissibility of evidence – the evidentiary issue in controversy here – article 96 of the FDC provides as follows:

"Article 96 Various types of proof

1. Any type of proof may be produced.

2. Proof that violates human dignity or obviously does not serve to establish relevant facts shall be rejected.

3. The following are, in particular, admissible: reports from referees, assistant referees, match commissioners and referee inspectors, declarations from the parties and witnesses, material evidence, expert opinions and audio or video recordings".

90. The Panel notes that, pursuant to Article 96 para. 1 FDC, all means of evidence may be admitted without restriction in disciplinary proceedings to which FIFA rules are applicable. The Panel also notes that para. 3 of this provision expressly includes *"audio or video recordings"*. It thus appears that the FDC allows virtually all types of evidence, with the exception of those that violate "human dignity" or that are obviously immaterial (para. 2), the latter exception being clearly irrelevant in the case at hand. Incidentally, the Panel observes that such a liberal attitude

in the admission of evidence should not come as a surprise, given that intra-association disciplinary proceedings are, by their very nature, less formalistic and guarantee-driven than criminal proceedings.

91. According to the Swiss Federal Tribunal, the normative content of "human dignity" cannot be determined explicitly and exhaustively. Nevertheless, the Federal Tribunal stressed that human dignity is inseparable from the human condition and from the human beings (ATF 132 I 49, at consid. 5.1). In view of this, the Panel is of the opinion that the quoted FIFA rule tends to exclude from the evidentiary process proofs obtained as a result of, or connected with, acts of physical or psychological violence, brutality or any other forms of inhuman or degrading treatment. In the Panel's view, the facts of this case do not allow to conclude that the taking of the Recordings violated human dignity. The Panel remarks that the Appellant was not subject to any threat or violence, his meetings with the journalists were freely agreed upon and were comfortably held in hotel lobbies, and his video images do not show him in any degrading situation. In short, the Recordings appear to be permissible evidence under article 96 of the FDC.

92. Nevertheless, it is not enough for FIFA to respect its own rules. Indeed, while Swiss law endows associations with a large autonomy, their regulations cannot infringe their members' personality rights, unless such infringement is legitimate (see *infra* at 96) within the meaning of Swiss law (JEANNERET/HARI, in PICHONNAZ/FOËX, *Commentaire romand*, Bâle 2010, ad art. 63, para. 2 and ff, p. 474; PERRIN/CHAPPUIS, *Droit de l'association*, 3ème édition, Genève, Zurich, Bâle 2008, ad art. 63, p. 41).

93. Accordingly, the evidence allowed by article 96 para. 2 FDC must in any event be in compliance with the principle of protection of personality rights within the meaning of article 28 CC.

VI.5 THE PROTECTION OF THE APPELLANT'S PERSONALITY RIGHTS

94. The legal basis for personality rights are articles 27 and 28 CC. Article 27 CC protects the personality from excessive contractual duties and article 28 CC from illegal infringements by a third party. Only the latter provision is relevant here.

95. Article 28 CC states the following:

> *"1. Celui qui subit une atteinte illicite à sa personnalité peut agir en justice pour sa protection contre toute personne qui y participe.*
>
> *2. Une atteinte est illicite, à moins qu'elle ne soit justifiée par le consentement de la victime, par un intérêt prépondérant privé ou public, ou par la loi";*

Or translated in English:

> *"1 Any person whose personality rights are unlawfully infringed may apply to the court for protection against all those causing the infringement.*
>
> *2 An infringement is unlawful unless it is justified by the consent of the person whose rights are infringed or by an overriding private or public interest or by law".*

96. The guarantee of article 28 CC extends to all of the essential values of an individual that are inherent to him by his mere existence and may be subject to attack (ATF 134 III 193, at consid.

4.5, p. 200). According to article 28 para. 2 CC, an attack on personality is unlawful, unless it is justified by (i) the victim's consent, (ii) an overriding private or public interest, or (iii) the law. It follows from this provision that such an attack is in principle unlawful but it can be redeemed to lawfulness if one of the three listed justifications is proven by the perpetrator. Unlawfulness is an objective concept, such that it is not crucial that the perpetrator be in good faith or be ignorant that he is involved in harming a personality right (ATF 132 III 193, at consid. 4.6.2, p. 201). The Panel will need to assess the situation on the basis of an objective scale of values and not in consideration of the victim's perception or sensitivity (JEANDIN N.; in PICHONNAZ/FOËX, *Commentaire Romand*, Bâle 2010, ad. art. 28, para. 67 and ff, p. 261).

97. The Panel harbours no doubt that, in general terms, the right to privacy lies within the personality rights protected by article 28 CC. The Panel is also convinced that the journalists' furtive conduct intruded into the Appellant's private life, as he was not advised that his private conversations were being recorded. However, the question here at stake is not whether the journalists violated the Appellant's right to privacy but, rather, whether the use of the Recordings as evidence in this arbitration might violate his personality rights.

98. Taking into account the three possible justifications under article 28 para. 2 CC (*supra* at 96), two can be easily discarded – the victim's consent and the law – as they are clearly inapplicable to the case at hand. Therefore, the case falls on the evaluation whether there is an "overriding private or public interest" that might justify the use of the Recordings as evidence in these proceedings.

VI.6 THE BALANCE BETWEEN THE APPELLANT'S AND OTHER PRIVATE OR PUBLIC INTEREST

99. The Panel has to conduct a balancing exercise to decide which interest should prevail, namely the Appellant's interest in not suffering an attack on his personality or the private or public interest of other individuals or entities in perpetrating such attack. In this case, the balancing exercise must assess whether the Appellant's interest to keep his conversations private prevails over the interest in disclosing and using them in these disciplinary proceedings.

100. With regard to the Appellant's interest, the Panel observes that at the time of the disciplinary proceedings many details of the Appellant's conversations with the undercover reporters – including the most relevant and sensitive parts of the Recordings – had already fallen into the public domain with the publication of the article in the *Sunday Times* and on the Internet (publication that the Appellant, as said, has not attempted to judicially impede). The newspaper had not only reported the existence of the Recordings and the context in which they were made but also disclosed some of their contents and even made available on its website a video extract of the conversations. As a result, the Appellant's sphere of privacy with respect to such conversations has already been significantly narrowed. He can no longer reasonably expect to fully protect the privacy of conversations that, for a good part, have already been read or watched by hundreds of thousands of people. However, the Panel is persuaded that there still is a residual sphere of privacy of Dr Adamu which is worth of protection, as (i) a good portion of the conversations has never been disclosed to the public so far and (ii) the publication of this award, including the transcripts of the London and Cairo meetings, will draw the public attention once again on Dr Adamu's private conversations. Therefore, Dr Adamu retains a

concrete interest to impede the full disclosure of his conversations with the journalists and, to that end, to block the use of the Recordings as evidence in this proceedings.

101. Yet, the Panel finds that the Appellant's interest in keeping the Recordings confidential is contradicted by the interest of FIFA and of other private and public stakeholders in disclosing the full content of the Recordings and in using them for disciplinary purposes:

- There certainly exists a general public interest in the exposure of illegal or unethical conduct, such as corruption or other forms of dishonesty in relation to the awarding of the organization of a renown sporting event;
- There certainly is a private interest of FIFA to verify the accuracy and veracity of the information included in the *Sunday Times* article and, if necessary, to restore the truth and its image, given that the article described the whole FIFA organization as prone to corruption and questioned the impartiality and transparency of the bidding process for the organization of the World Cup;
- FIFA, like any other private association, has also a vested interest in identifying and sanctioning any wrongdoing among its officials and its members so as to dissuade similar conducts in the future;
- There is also a private interest of all the national football associations which were or will be candidates to host the FIFA World Cup in being fully informed and possibly reassured about the efficacy, transparency and correctness of the bidding process;
- Given the amount of public money notoriously spent by governments and public organisations to support the bids presented by their football federations and the well-known impact of the FIFA World Cup on a country's economy, there clearly is a public interest of each government pledging to support a bid (as well as of its taxpayers) to know whether the awarding of the FIFA World Cup is conditioned or altered by corrupt practices of FIFA officials;
- Finally, there is an interest of the general public, and especially of the football fans and of the peoples of the unsuccessful candidate countries, in being comforted about the fact that the FIFA 2018 and 2022 World Cups were awarded in a fair, impartial and objective manner.

102. In light of the above, the Panel has no difficulty in finding that the balance of interests definitely tilts in favour of the disclosure and utilization as evidence in these proceedings of the evidentiary material collected by the *Sunday Times*. Considering that the infringement of the Appellant's personality rights is justified by overriding public and private interests, the Panel thus holds that the Recordings submitted by the Respondent must be admitted as evidence into these arbitral proceedings.

103. The Panel must also ascertain whether the use of the Recordings might be in violation of Swiss procedural public policy. To this end, the Panel deems it appropriate to take particularly into account the following elements:

(i) the nature of the conduct in question and the seriousness of the allegations that have been made;

(ii) the ethical need to discover the truth and to expose and sanction any wrongdoing;

(iii) the accountability that in a democratic context is necessarily linked to the achievement of an elite position (be it in a public or private organization);

(iv) the general consensus among sporting and governmental institutions that corrupt practices are a growing concern in all major sports and that they strike at the heart of sport's credibility and must thus be fought with the utmost earnestness (cf. TRANSPARENCY INTERNATIONAL - CZECH REPUBLIC, *Why sport is not immune to corruption*, Council of Europe – EPAS, 1 December 2008); and

(v) the limited investigative powers of sports governing bodies in comparison to public authorities.

104. On the basis of those considerations, the Panel is of the view that in this case the use of the Recordings in a disciplinary context did not lead to an *"intolerable contradiction with the sentiment of justice"* and is not *"incompatible with the values recognized in a State governed by the rule of law"* (see *supra* at 7675). Therefore, the Panel holds that the admission of the Recordings as evidence in these arbitration proceedings does not violate Swiss procedural public policy.

105. Finally, in this relation, the Panel finds that the Appellant's contention that the evidentiary value of the Recordings is particularly frail and questionable in view of the lack of reliability of the individuals who made the evidence available – i.e. the journalists – is unconvincing. The Appellant has not claimed, nor is there any proof, that the Recordings are not authentic or have been manipulated. In addition, the arbitrators have extensively and personally listened to and watched the Recordings, and find them to be absolutely reliable in showing in all details the Appellant's attitude and conduct with regard to the FIFA World Cup bidding process.

106. In conclusion, the Panel finds that the Recordings are admissible and reliable evidence in this arbitration and that no proof or convincing argument was adduced in this case indicating that FIFA acted improperly when it relied on such evidence in the disciplinary proceedings against the Appellant.

107. However, these findings do not imply that the Panel believes FIFA is entitled to remain passive and to occasionally rely on accidental evidence in addressing issues of corruption. In order to promote transparency in its organization and correctly implement its ethical rules, FIFA is expected to continue to be proactive to prevent risks of corruption among its officials and to vigorously investigate, with lawful means and possibly seeking cooperation with judicial authorities, any attitudes or acts that appear suspicious.

VII. MERITS

108. The FIFA Appeal Committee found the Appellant guilty of infringement of article 3 para. 1, article 3 para. 2, article 3 para. 3 (General Rules), article 9 para. 1 (Loyalty and confidentiality) and article 11 para. 1 (Bribery) FCE. In this appeal arbitration the Appellant claims to be innocent while FIFA confirms its charges against him.

109. A common subjective requirement of the above mentioned provisions of the FCE is the status of "official" of the person committing the violation. Therefore, before examining the merits of

the above quoted provisions, the Panel must preliminarily ascertain whether the Appellant can be qualified as an official under the applicable FIFA rules.

VII.1 OFFICIAL STATUS OF THE APPELLANT

110. Article 1 para. 1 FCE reads as follows:

"Officials are all board members, committee members, referees and assistant referees, coaches, trainers and any other persons responsible for technical, medical and administrative matters in FIFA, a confederation, association, league or club".

111. In view of the positions the Appellant held within FIFA and the CAF at the time of the relevant facts (see *supra* at 3), the Panel has no doubt in finding that at that time the Appellant was an "official" as defined in the FCE. In any event, the Appellant never claimed otherwise.

112. Given that the subjective requirement of being an "official" is met, the provisions of articles 3, 9 and 11 are all applicable to the Appellant. The Panel will start the analysis from Article 11, both for its significance and because the Appellant claims that if he is not found guilty of bribery, he cannot be found in breach of articles 3 or 9 FCE.

VII.2 ARTICLE 11 PARA. 1 FCE (BRIBERY)

113. In essence, the Appellant claims that (i) the available evidence does not establish that he has breached the FCE, (ii) his attitude during the meetings was too ambiguous to support the charges held against him, (iii) there are serious flaws in the bribe accusations held against the Appellant, for which FIFA does not and cannot bring any answer, and (iv) the requirements of article 11 FCE are not met as the Appellant clearly refused the bribes. In any event, for a bribery to take place, the gains and advantages must go personally to the individual to whom the supposed offer is being made. In the present case, the Appellant did not seek to obtain any personal or private benefit but was acting in the interest of Nigerian youth football.

114. Article 11 para. 1 FCE reads as follows:

"11. Bribery

1. Officials may not accept bribes; in other words, any gifts or other advantages that are offered, promised or sent to them to incite breach of duty or dishonest conduct for the benefit of a third party shall be refused".

115. The Panel observes that Article 11 para. 1 FCE consists of two phrases. The first phrase reflects the basic principle according to which officials may not accept bribes. The second phrase makes clear that football officials must be liable to a high standard of ethical behaviour and actively turn down any potential involvement in dishonest practices, by setting out three cumulative elements of the offence:

i) A gifts or other advantage must be offered, promised or sent to an official;

ii) The official must be incited to breach some duty or to behave dishonestly for the benefit of a third party;

iii) The official has an obligation to refuse.

116. Article 11 FCE requires that these three elements are all present in order to find a violation. They will be separately examined hereafter.

a) Gifts or other advantages offered, promised or sent

117. With respect to the first element, the Panel notes that the wording of article 11 para. 1 FCE – *"any gifts or other advantages that are offered, promised or sent"* (see *supra* at 114) – is deliberately broad. The advantage can take any form and need not actually materialize as it is sufficient that someone "offers" or "promises" it. In other words, article 11 para. 1 FCE does not require that a gift or other advantage is actually received by the official.

118. The Panel also notes that article 11 para. 1 FCE makes reference to the offer, promise or delivery of *"any"* gifts or other advantage. In the Panel's view, this means that the type or form of the advantage is of no relevance; it can be money or any other benefit, even not economically quantifiable (for instance, a career advancement).

119. Then, the Panel finds that, contrary to the Appellant's allegation, there is no indication that the gift or advantage must be *"offered, promised or sent"* for the personal or private benefit of the official. Pursuant to article 11 para. 1 FCE, the advantage can well be for a third person or for an organization indicated by or close to the official. In the Panel's view, if the Appellant's position (that there is bribery only when the advantage is directly to the Appellant's benefit) were correct, it would be too easy for an official to escape disciplinary liability by channelling the gift or other advantage through another person or an organization.

120. The Panel is of the view that in the case at hand an advantage of some sort was indeed offered to the Appellant. As stated above, the precise nature of the advantage (whether it was football pitches, artificial grass, money or something else) and the identity of the recipient of the advantage (the Appellant, his son or a Nigerian non-profit organization) are irrelevant under article 11 para 1 FCE. So, the justification invoked by the Appellant that he was trying to direct resources towards his country for the benefit of Nigerian football is not pertinent. Obviously, an official is not prevented from working for the good of football in his country but he must do so in a virtuous and transparent manner. In this regard, the Panel is of the view that the proposed private support by the alleged consortium of American companies to the Appellant's "pet project" cannot be compared to the transparent commitments made by some bid committees – in particular the English, Korean and Australian bids – which publicly pledged during their campaign to raise and donate multi-million dollar funding for football and social development in less developed countries, should they be successful in obtaining to host the FIFA World Cup. The confidential character and ambiguous content of the meetings with the *Franklin Jones*' supposed lobbyists and the fact that the Appellant did not want to channel the funding through the Nigerian football association (see paras. 163-164 of the London transcripts) clearly differentiate the two situations.

121. The evidence demonstrates that, initially, the supposed lobbyists were willing to invest in infrastructures or football pitches in Nigeria (paras. 35 ff, 57 ff, 143 ff, 377 ff of the London transcripts), either with cash (paras. 155, 161, 166 of the London transcripts) or by providing artificial grass (paras. 156 ff, 167 ff of the London transcripts), directly to the Appellant (paras. 164 ff of the London transcripts). Subsequently, in Cairo, only money was offered to the

Appellant and the provision of artificial grass was not discussed anymore. The amount of USD 800,000 was agreed on (paras. 1, 4, of the Cairo transcripts) and was to be paid following the instructions of the Appellant's son (paras. 15 ff, 101 ff of the Cairo transcripts). The Appellant even expressed his concern about the consequences on the payment in his favour, had the World Cup not been awarded to the United States bid (paras. 35 ff, 48 ff and 54 of the Cairo transcripts).

122. In short, the Panel is comfortably satisfied that a gift or other advantage was offered to Dr Adamu and that, accordingly, the first requirement of article 11 para. 1 FCE is met.

b) Incitement to breach duty or behave dishonestly for the benefit of a third party

123. This second element of article 11 para. 1 FCE (see *supra* at 114-115) relates to the purpose for which the advantage is offered and focuses on the offeror's intent, not the offeree's. The offeror must aim at inciting football officials to breach their duties or to engage in dishonest conduct which would – if it eventually occurs – benefit a third party. It results from the wording of the provision that the offeror is not necessarily the beneficiary of the offence and that there is no need for an actual breach of duty or dishonest conduct to occur, as it is enough for the offeror to *"incite"* (i.e. to encourage, foment, instigate or provoke) such behaviour.

124. In view of the foregoing, the Panel cannot share the Appellant's position according to which the advantage offered or promised must have effectively influenced the conduct of the official. On the contrary, article 11 para. 1 FCE links the official's obligation to refuse the offer to the purpose for which the offer is made, that is to incite breach of duty or dishonest conduct. Article 11 para. 1 FCE does not require that the official actually breach duty or behave dishonestly. Obviously, the official must realize that the offer of an advantage is linked to some breach of duty or dishonest conduct that the offeror requires from him; otherwise, the official's obligation to refuse would not be prompted.

125. In the Panel's opinion, the evidence clearly shows that the offer made by the journalists was to incite the Appellant to breach his duty or to act dishonestly for the benefit of a third party. The supposed lobbyists expressly mentioned the link between the provision of the funding and the way the Appellant was required to vote (paras. 78, 127 ff, 207 ff, 219 ff of the London transcripts and paras. 1, 35 ff, 59 ff of the Cairo transcripts). They underlined the fact that they were not working for the official United States bid (paras. 1, 7, 84 of the London transcripts) but for a consortium of American companies (paras. 1, 78 of the London transcripts) that would gain great benefits from the awarding of the World Cup to the United States (paras. 7 ff, 13 ff of the London transcripts).

126. The Panel finds that the Appellant understood the journalists' intention and purpose very well, because he said so (paras. 16, 95 ff, 270 of the London transcripts) and also because of the following circumstances:

- At a very early stage of the conversation, the Appellant wondered about the connection between the supposed lobbyists and the official United States bid (para. 6 of the London transcripts). Later on, he made sure again of the consortium's independence from the United States bid (para. 83 of the London transcripts).

- The intention of the supposed lobbyists was well summarized by the Appellant himself: *"Because certainly if you are to invest on that, that means you also want the vote"* (para. 207 of the London transcripts) and *"I said if you are to invest in it you also need the vote. Yeah, because that is the purpose for which they are going to spend money on it"* (para. 209 of the London transcripts).
- More than once, the Appellant promised that he would let the journalists know about his vote (paras. 404 ff of the London transcripts and paras. 79 ff of the Cairo transcripts) and was well-aware of the tight schedule until the voting day (paras. 411 ff of the London transcripts).
- The Appellant declared that he understood the project, which was fine with him (para. 95 of the London transcripts) and *"agreeable"* (paras. 185 ff of the London transcripts).
- The Appellant then suggested organizing a meeting with the representatives of the consortium to *"sit down and work out the modalities"* (paras. 185 ff of the London transcripts), so he could see what they had to offer (paras. 209 ff, 226, 300 of the London transcripts) and *"what is their interest"* (para. 408 of the London transcripts).
- In Cairo, the Appellant confirmed that he accepted the principle of a first down payment of USD 400,000 over the coming two weeks, the remainder to be paid after the vote (paras. 1 to 4 of the Cairo transcripts); his son was supposed to deal with the money to be paid to him (paras. 17, 32, 102 of the Cairo transcripts) and the Appellant made sure that he would still get the remainder whether the American bid was awarded the World Cup or not (paras. 35 ff of the Cairo transcripts).
- The Appellant guaranteed that he would vote for the United States as the World Cup's host country for the 2018 edition (paras. 64 and 69 of the of the Cairo transcripts) but not for the 2022 edition, as he had already *"given [his] word to another bid"* (paras. 65 and 73 of the Cairo transcripts), which at the hearing he acknowledged to be the Qatar bid. Nevertheless, the Appellant expressly accepted to give his vote to the United States bid for the 2022 edition as a second or third choice, should the *"other bid"* be *"knocked out"* (paras. 74 and 75 of the Cairo transcripts).
- The Appellant was also aware of the unethical nature of what he was ready to do, as he recommended the journalists to be *"very careful"* (paras. 288 and 292, 300 of the London transcripts) and *"discreet"* (para. 54 of the Cairo transcripts).
- The Appellant is perfectly proficient in English and his international career, his conversations with the journalists, his written affidavit and his testimony at the hearing prove beyond any doubt that he understands and expresses himself very well in English.

127. In view of the above circumstances, the Panel is comfortably satisfied that the Appellant well understood that he was being incited by some American companies to behave dishonestly – i.e. to vote on the basis of the advantages offered rather than on the basis of the bids' intrinsic worth – in order to benefit the United States bid and those American companies. Accordingly, the Panel holds that the second requirement of article 11 para. 1 FCE is met to its comfortable satisfaction.

c) Obligation to refuse the improper offer

128. The third element of Article 11 para. 1 FCE (see *supra* at 114-115) is the obligation for an official who receives an improper offer to positively refuse such offer upon its making rather than to merely omit to act upon it. In other words, an official cannot escape liability by remaining inactive or silent in response to an attempt to corrupt him. In this connection, the Panel remarks that if no obligation were provided to actively refuse an improper offer, bribery could only be found once the bribe was actually accepted and collected, which would be most of the times impossible to prove for a private association with no investigative powers comparable to those of a state authority.

129. The Panel is of the view that there cannot be any ambiguity or uncertainty in fighting corruption in sports (cf. CAS 2009/A/1920, para. 85). By the same token, there cannot be any ambiguity or uncertainty on the part of officials in refusing any improper offer. In particular, officials as highly ranked as the Appellant must under any circumstance appear as completely honest and beyond any suspicion. In the absence of such clean and transparent appearance by top football officials, there would be serious doubts in the mind of the football stakeholders and of the public at large as to the rectitude and integrity of football organizations as a whole. This public distrust would rapidly extend to the general perception of the authenticity of the sporting results and would destroy the essence of the sport. In this respect, the Panel wishes to refer to a previous CAS award, whose words, *mutatis mutandis*, could serve as guidance in this case:

> *"The Panel notes, quite obviously, that honesty and uprightness are fundamental moral qualities that are required in every field of life and of business, and football is no exception. More specifically, however, the Panel is of the opinion that the notion of integrity as applied to football requires something more than mere honesty and uprightness, both from a sporting and from a business point of view. The Panel considers that integrity, in football, is crucially related to the authenticity of results, and has a critical core which is that, in the public's perception, both single matches and entire championships must be a true test of the best possible athletic, technical, coaching and management skills of the opposing sides"* (CAS 98/200, para. 56).

130. Indeed, in the Panel's opinion, the football officials' obligation to actively and unambiguously – one could even say loudly – refuse any bribe or other forms of corruption is importantly related to the fact that the public must perceive football organizations as being upright and trustworthy, otherwise both the sporting and business appeal of football would quickly decline. It is not merely of some importance but is of crucial importance that top football officials should not only be honest, but should evidently and undoubtedly be seen to be honest. The required standard of behaviour for top football officials is very high, as nothing is to be done which creates even a suspicion that the exercise of their duties (and voting to award the World Cup is possibly one of their most important duties) could be influenced by an improper interference.

131. Therefore, the question is not whether in this case the Appellant, in his meetings with the journalists, made any remark or proffered any words aimed at leaving a margin of uncertainty or ambiguity as to if he was in fact going to vote for the United States bid in exchange for the offered advantage; the question is whether he was so obvious and unambiguous in rejecting the offered bribe that the offeror (as well as any bystander) would necessarily conclude that the attempted corruption failed.

132. In the Panel's view, the answer to that question is clearly negative. Especially in the Cairo meeting, the Appellant was too ambiguous to lead the Panel to conclude that he obviously

refused to trade his vote for cash. In this regard, the Panel is of the opinion that the Appellant's various assertions during both meetings and in the email dated 2 September 2010 that he would vote according to his conscience and that he would not vote for somebody who is giving him something, are overcome by the clear assurance given at the end of the Cairo meeting of 15 September 2010 that he was going to give to the United States his first vote for the 2018 bid and his second or third vote for the 2022 bid (paras. 64 ff of the Cairo transcripts). In view of the context and of the agreement eventually reached, it appears to the Panel that the Appellant, with those assertions, was merely trying to provide some appearance of respectability to the dishonest conduct he was willing to engage in.

133. The Panel also finds unpersuasive the Appellant's various and contradictory explanations as to why he did not leave the Cairo meeting and/or did not clearly refuse the journalists' improper offer when he understood that they were trying to bribe him. In his email of 14 October 2010 to the FIFA Secretary General, his affidavit of 5 November 2010 and during the CAS hearing, the Appellant offered the following variety of explanations with regard to his attitude at the Cairo meeting:

- That he was ambushed by the journalists in the Cairo hotel and did not want to meet them (affidavit of 5 November 2010);
- That he was naïve and merely trying to be polite as his Nigerian culture does not allow him to abruptly interrupt a meeting (affidavit of 5 November 2010 and testimony at the hearing);
- That only at the end of the Cairo meeting he realized that the supposed lobbyists were attempting to offer him a bribe and that such thought had never crossed his mind before (testimony at the hearing);
- That he was merely having a meeting with two businessmen willing to promote an investment by American companies in his project related to football pitches that had nothing to do with any World Cup bid, and that he was clear to them that the investment would be unrelated to his voting (email of 14 October 2010, see *supra* at 22);
- That after the London meeting he thought that the two alleged lobbyists were actually conmen trying to swindle him, and that at the Cairo meeting he was trying to let them believe that he was accepting the bribe to discover their trick and warn as many people as possible (affidavit of 5 November 2010 and testimony at the hearing);

134. The Panel finds that the above explanations, taken all together, are untenable and contribute to making the Appellant's case unpersuasive:

- The Appellant's allegation that he did not want to meet the journalists in Cairo is contradicted by the fact that he wrote in his email to "Mr Brewster" of 2 September 2010 that he was looking forward to seeing him in Cairo (see *supra* at 16), as well as by the Recordings showing that when he was approached in the hotel he did not appear surprised nor attempted to avoid the meeting;
- The Appellant's explanation that his Nigerian culture did not allow him to be impolite and interrupt the meeting is not convincing – also in light of his long international career and wide experience as a top football official – because he could have avoided the Cairo

meeting and in any event even the best of manners cannot get in the way of professional ethics and duties;

- The Appellant's allegation that only at the end of the Cairo meeting he realized that he was offered a bribe is contradicted (i) by his oral statement that already in London he understood that the supposed lobbyists wanted his vote, (ii) by his written statement that after the London meeting he realized that *"they may try to compromise my obligations as a FIFA Executive Committee member"* (Dr Adamu's affidavit, para. 88), and (iii) by his email to FIFA of 14 October 2010 where he stated that he *"immediately got suspicious of his mission"* when he received an email from "Mr Brewster" after the London meeting (see *supra* at 22);
- The Appellant's explanation (emailed to FIFA) that the meeting was purely related to the football pitches and that he was clear to the supposed lobbyists that the investment in Nigeria would have nothing to do with any bid and with his voting is contradicted by his oral testimony that he was trying to make them think that he was accepting their bribe in order to find out what they were up to;
- The Appellant's explanation that he wanted to discover the conmen's trick to warn as many people as possible is contradicted by the fact that he did not promptly inform FIFA and did not provide any evidence that he advised anyone else.

135. In conclusion, in view of the evidence before it, the Panel is comfortably satisfied, bearing in mind the seriousness of the charge, that the Appellant was far from actively and unambiguously refusing the improper offer set forth by the alleged lobbyists. Accordingly, the Panel holds that the third requirement of article 11 para. 1 FCE is also met.

d) Conclusion with regard to article 11 para. 1 FCE

136. As already mentioned (*supra* at 36), the Appellant claims that there are three flaws or gaps in FIFA's case against him, because his behaviour was different from what could be expected from a corrupt man:

- The Appellant said several times in both meetings that he would vote according to his conscience and would not vote for somebody who is giving him something.
- The Appellant never received anything from the journalists and never provided any means by which he could collect the bribe.
- When, during the first meeting, the journalists stated that each artificial grass pitch would cost USD 400,000, the Appellant lowered the amount and said that a pitch would only cost USD 200,000.

137. As to the first point, the Panel already explained why it is not enough to make some remarks or proffer some words aimed at leaving a margin of uncertainty as to the availability to be bought. The standard of behaviour required from top football officials is higher than that; they should evidently and undoubtedly be perceived to be honest (see *supra* at 129-130). The Panel has also noted that towards the end of the Cairo meeting the Appellant was very clear in pledging his vote, regardless of his previous ambiguous disclaimers (see *supra* at 132).

138. The Panel is also not persuaded by the Appellant's argument that he has never received anything from the journalists and that he has never provided any means by which he could have obtained the fruit of his corruption. The Panel notes that, as already stated, the fact that the Appellant did not receive anything is irrelevant for the bribery requirements to be met (see *supra* at 117). The Panel also notes that the Appellant did provide the said means, as his son was going to be the discreet contact person to set up the final arrangements for the payment to be made. In this connection the Appellant's son testimony, according to which after the Cairo meeting he was contacted by someone asking for a bank account and that he declined to give any bank detail, is irrelevant because, apart for the limited reliability deriving from his close proximity to the Appellant, he in practice avoided being cross-examined on his phone conversation with the Appellant during the Cairo meeting, by alleging that he did not remember that phone call. The Panel finds that no weight can be given to the Appellant's explanation that he usually gives his son's contact details in order to get rid of people with whom he does not want to deal, as such allegation is not substantiated by any evidence apart from his own and that of his son, whose oral testimony was unconvincing.

139. As to the third argument, the Panel does not accept the Appellant's allegation that in the London meeting the journalists proposed a figure of USD 400,000 for each artificial grass pitch. The Panel carefully reviewed the different video and audio recordings and did not hear the figure of USD 400,000 allegedly proposed by the journalists. There does not seem to be any blank space in the recorded conversation, during which the journalist could have articulated the price of USD 400,000. In fact, the Panel is of the view that when the Appellant said *"Standard pitch now costs about maybe a little bit less, about 200,000 dollars"* (para. 67 of the London transcripts), he was making reference not to a previous figure mentioned by the journalists but to the fact that nowadays (*"now"*) artificial football pitches cost less than in the past. In any event, even if the Appellant had proposed a lower amount than that articulated by the journalists, in light of all the other evidence on record that would not be sufficient, in itself, to persuade the Panel that the Appellant had good and non-reprehensible intentions.

140. In view of the above, the Panel dismisses the Appellant's arguments related to the alleged three flaws or gaps in the Respondent's case.

141. In conclusion, the Panel is comfortably satisfied, in accordance with its personal conviction and keeping in mind the seriousness of the allegation, that the Appellant did violate Article 11 para. 1 FCE.

VII.3 Article 3 (General Rules) and Article 9 para. 1 FCE (Loyalty and Confidentiality)

142. Article 3 FCE reads as follows:

> *"1. Officials are expected to be aware of the importance of their function and concomitant obligations and responsibilities. Their conduct shall reflect the fact that they support and further the principles and objectives of FIFA, the confederations, associations, leagues and clubs in every way and refrain from anything that could be harmful to these aims and objectives. They shall respect the significance of their allegiance to FIFA, the confederations, associations, leagues and clubs and represent them honestly, worthily, respectably and with integrity.*

2. Officials shall show commitment to an ethical attitude while performing their duties. They shall pledge to behave in a dignified manner. They shall behave and act with complete credibility and integrity.

3. Officials may not abuse their position as part of their function in any way, especially to take advantage of their function for private aims or gains".

143. This provision imposes general duties of behaviour on officials. The standards are high as the officials are required to *"refrain from anything that could be harmful to these [FIFA's] objectives"* (article 3 para. 1 FCE), *"behave with complete credibility and integrity"* (article 3 para. 2 FCE) and *"not abuse their position as part of their function in any way, especially to take advantage of their function for private aims or gains"* (article 3 para. 3 FCE).

144. Article 9 para. 1 FCE states that *"While performing their duties, officials shall recognise their fiduciary duty, especially to FIFA, the confederations, associations, leagues and clubs".* This provision imposes on officials to comply with obligations of loyalty and good faith, which include the obligation to put FIFA's interest first and abstain from doing anything which could be contrary to FIFA's interests. The fiduciary obligations obviously extend to an obligation of disclosure, in the sense that the officials must fully and immediately report to FIFA, if an inappropriate approach is made and/or if they are considering to accept an arrangement, which might raise any question of appropriateness, objectively speaking.

145. Through his actions (as described above in relation with article 11 FCE), the Appellant damaged FIFA's image and credibility. His conduct was obviously harmful to FIFA's objective of preventing all methods or practices which might jeopardise the integrity of matches or competitions or give rise to abuse of Association Football (article 2 b and e of its Statutes). By failing to refuse to sell his vote, the Appellant had agreed to compromise the selection process of the candidate to be appointed to host the World Cup. The Appellant was approached by the journalists because of his position as a voting member of the FIFA Executive Committee and, therefore, he abused of his position and did not behave with integrity when he accepted to discuss the modalities related to the selling of his vote.

146. In addition, the Appellant failed to report promptly and fully the approach made by the journalists, who unambiguously told him their intention to buy his vote. As a member of the highest FIFA body and as the Chairman of the CAF Ethics Committee, this failure to disclose is particularly serious and obviously in breach of his fiduciary duty as provided under article 9 para. 1 FCE. It is evident that the journalists' objectives were contrary to FIFA's interests and the Appellant should have immediately reported them to FIFA in order to stop them to cause any further damages. The fact that the Appellant kept the said approach to himself is actually further evidence of the fact that he did not refuse the advantage offered to him to incite him to breach his duty or to act dishonestly.

147. The Appellant cannot reasonably contend that it is very common for members of the FIFA Executive Committee to be approached in the same manner as the journalists did, without any further consequences, in particular without reporting anything to FIFA. Not only did he not substantiate this allegation with convincing evidence, but also his assertion is contradicted by FIFA's letter dated 1 October 2010, according to which other members of the FIFA Executive Committee indeed reported to FIFA the fact that *Franklin Jones* had approached them.

148. The Appellant claims that he had knowledge of this letter only on 14 October 2010. Whether the Appellant's unproven explanation is correct can remain open. As a matter of fact, in his answer to FIFA, it appears that the Appellant gave an incomplete and biased account of his encounter with the journalists, thereby further breaching articles 3 and 9 FCE. In his answer, the Appellant related that the representatives of *Franklin Jones* were working for clients eager to invest in Africa and Nigeria but he omitted to mention the link between the funding and the way he was supposed to vote. In addition, he affirmed that he *"immediately got suspicious"*. However and in spite of his suspicions, the Appellant did not feel compelled to immediately and spontaneously report to FIFA the journalists' approach. Inconsistently with his letter dated 14 October 2010 to FIFA, the Appellant actually accepted to meet the journalists again in Cairo.

149. In view of the above, the Panel is comfortably satisfied, in accordance with his personal conviction and keeping in mind the seriousness of the allegation, that the Appellant breached article 3 para. 1, article 3 para. 2, article 3 para. 3 and article 9 para. 1 FCE.

VIII. SANCTION

150. Article 17 FCE together with article 59 of the FIFA Statutes and articles 10 ff FDC indicate which types of sanctions are applicable.

151. The FDC provide as follows, so far as material:

"Article 10 Sanctions common to natural and legal persons

Both natural and legal persons are punishable by the following sanctions:

a) warning;

b) reprimand;

c) fine;

d) return of awards.

Article 11 Sanctions applicable to natural persons

The following sanctions are applicable only to natural persons:

a) caution;

b) expulsion;

c) match suspension;

d) ban from dressing rooms and/or substitutes' bench;

e) ban from entering a stadium;

f) ban on taking part in any football-related activity.

[…]

Article 15 Fine

1. A fine is issued in Swiss francs (CHF) or US dollars (USD). It shall be paid in the same currency.

2. The fine shall not be less than CHF 300, or in the case of a competition subject to an age limit not less than CHF 200, and not more than CHF 1,000,000.

3. The body that imposes the fine decides the terms and time limits for payment.

4. Associations are jointly liable for fines imposed on representative team players and officials. The same applies to clubs in respect of their players and officials. The fact that a natural person has left a club or association does not cancel out joint liability.

[…]

Article 22 Ban on taking part in any football-related activity

A person may be banned from taking part in any kind of football-related activity (administrative, sports or any other).

[…]

Article 32 Combined sanctions

Unless otherwise specified, the sanctions provided for in Chapter I (General Part) and Chapter II (Special Part) of this code may be combined.

[…]

Article 39 General rule

1. The body pronouncing the sanction decides the scope and duration of it.

2. Sanctions may be limited to a geographical area or to one or more specific categories of match or competition.

3. Unless otherwise specified, the duration of a sanction is always defined. The body shall take account of all relevant factors in the case and the degree of the offender's guilt when imposing the sanction.

[…]

Article 41 Concurrent infringements

1. If several fines are pronounced against someone as a result of one or more infringements, the relevant body bases the fine on the most serious offence committed and, depending on the circumstances, may increase the sanction by up to fifty per cent of the maximum sanction specified for that offence.

2. The same applies if a person incurs several time sanctions of a similar type (two or more match suspensions, two or more stadium bans etc.) as the result of one or several infringements.

3. The body that determines the fine in accordance with par. 1 is not obliged to adhere to the general upper limit of the fine (cf. art. 15 par. 2)".

152. As held above, the Panel found the Appellant guilty of breaching article 3 FCE (general rules), article 9 para. 1 FCE (loyalty and confidentiality) and article 11 para. 1 FCE (bribery).

153. Match-fixing, money-laundering, kickbacks, extortion, bribery and the like are a growing concern in many major sports. The conduct of economic and business affairs related to sporting events requires the observance of certain "rules of the game" for the related activities to proceed in an orderly fashion. The very essence of sport is that competition is fair. This is also true for the organization of an event of the importance of the FIFA World Cup, where dishonesty should have no place. In the Panel's view, it is therefore essential for sporting regulators to demonstrate no tolerance against all kinds of corruption and to impose sanctions sufficient to serve as an effective deterrent to people who might otherwise be tempted, because of their greed, to consider adopting improper conducts for their personal or political gain. Members of the FIFA Executive Committee are an obvious target for those who wish to influence the designation of the country appointed to host the FIFA the World Cup.

154. When evaluating the degree of the Appellant's guilt, the Panel must take into account the objective and subjective elements constituting the infringement, the seriousness of the facts as well as the damage that the Appellant's deeds have caused, namely to those who are directly and indirectly involved with the FIFA World Cup selection process, to the image of the FIFA and to the sport of football in general.

155. In the present case, considering the extent and consequences of the Appellant's misconduct and the position he held at the time of the relevant facts, the various violations of the FIFA Code of Ethic must be regarded as serious.

156. To summarize, the Appellant was found involved in a bribery scandal over FIFA World Cup votes, which has been receiving an important media coverage. The Appellant did not act only in a negligent way but deliberately violated several provisions of the FCE. He accepted to meet on two occasions with the bribers and to discuss with them the price of his vote. For the reasons already exposed, the fact that the Appellant actually did not receive anything is of no relevance. However, significantly, the Appellant was willing to engage in the illicit activity and his conduct was obviously motivated by the pursuit of benefit. Whether he was disposed to accept the payments proposed by the consortium to promote football in Nigeria rather than for his own personal use is immaterial, as the voting process was compromised in any way for his personal or political advantage. In addition, the Appellant did not report spontaneously and immediately the approach made by the journalists who unambiguously told him their intention to buy his vote. And even when, after considerable time, he did tell FIFA about his contacts with the journalists, he presented a very incomplete and partial picture of the real story, in an obvious attempt to cover a behaviour which he knew to be unethical.

157. The Appellant's behaviour is particularly reprehensible given his position as a member of the FIFA Executive Committee, the President of the West African Football Union, and even the Chairman of the CAF Ethics Committee. In this capacity, the Appellant could not ignore the unethical and unlawful nature of the journalists' approach. Moreover, on account of his position, he had a special responsibility to comply with ethical standards and to serve as a role model, both at Confederation and at FIFA level.

158. In view of the importance of the FIFA World Cup, of the level of this competition and of the sporting and financial interests at stake, the highest standards of behaviour must be demanded of all the people involved, in particular of members of the FIFA Executive Committee, whose role includes deciding the place and dates of the final competition of FIFA. The whole bribery

scandal and in particular the allegation related to the manipulation of the voting process regarding the FIFA World Cup selection tarnished the reputation of the entire FIFA organization.

159. In setting the sanction, it is also necessary to take into account the range of the applicable sanctions, which include a warning, a reprimand, a fine that shall be no less than CHF 200 or 300 and no more than CHF 1,000,000, a ban from dressing rooms and/or the substitutes' bench, a ban from entering a stadium and a ban from taking part in any football-related activity. These sanctions apply for each of the relevant violations (article 3, article 9 para. 1 and article 11 para. 1) of the FCE.

160. As a source of inspiration, it is interesting to observe that article 62 FDC (which is not applicable under the *lex specialis* principle) punishes active as well as passive corruption with the cumulative three following sanctions: a) a fine of at least CHF 10,000, b) a ban on taking part in any football-related activity, and c) a ban on entering any stadium. In serious cases and in the case of repetition, the ban on taking part in any football-related activity may be pronounced for life (article 62 para. 3 FDC).

161. In the present case, the FIFA Appeal Committee confirmed the decision of the FIFA Ethics Committee to impose upon the Appellant a ban from taking part in any football-related activity at national and international level (administrative, sports or any other) for a period of three years as from 20 October 2010 as well as a fine of CHF 10,000.

162. The Panel finds no mitigating factor in the Appellant's case. Indeed, the Appellant did express regrets for the bad publicity and damage caused to FIFA's image by the coverage of his meeting with the journalists. At the same time, he has constantly denied any wrongdoing, let alone the violation of any provision of the FCE. The Appellant submits that given his clean record and the fact that he was not the instigator of the bribery, the sanction imposed is by far too severe. The Panel accepts that, until the recent events under scrutiny in this appeal, the Appellant's reputation was untarnished.

163. In weighing the proportionality of the sanction, the Panel has also taken into account a precedent CAS case where a life ban was imposed upon a referee who failed to report repeated contacts with a criminal organization which offered him EUR 50,000 to influence a Europa League match in November 2009 (CAS 2010/A/2172).

164. Accordingly, the Panel finds that, pursuant to articles 22 and 10.c FDC in connection with art. 17 FCE, a ban from taking part in any football-related activity at national and international level (administrative, sports or any other) for a period of three years as from 20 October 2010 as well as a fine of CHF 10,000 is not a disproportionate sanction and might even be deemed a relatively mild sanction given the seriousness of the offence. Therefore, the Panel holds that the Appealed Decision must be upheld in its entirety, without any modification.

165. This conclusion makes it unnecessary for the Panel to consider the other requests submitted by the parties. Accordingly, all other prayers for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Dr Amos Adamu against the decision issued by the FIFA Appeal Committee on 3 February 2011 is dismissed.

2. The decision issued by the FIFA Appeal Committee on 3 February 2011 is confirmed.

3. (…)

4. All other motions or prayers for relief are dismissed.