



Tribunal Arbitral du Sport  
Court of Arbitration for Sport

**CAS 2019/A/6220 Boniface Mwamelo v. Fédération Internationale de Football Association**

## **ARBITRAL AWARD**

**delivered by the**

## **COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition:**

President: Prof. Dr. Martin Schimke, Attorney-at-Law, Dusseldorf, Germany  
Arbitrators: Mr. Manfred Peter Nan, Attorney-at-Law, Arnhem, The Netherlands  
Mr. Ricardo de Buen Rodríguez, Attorney-at-Law, México City, México  
*Ad hoc* Clerk: Me. Marianne Saroli, Attorney-at-Law, Montreal, Canada

**in the arbitration between**

**Boniface Mwamelo, Zambia**

**Appellant**

**and**

**Fédération Internationale de Football Association (FIFA), Switzerland**

Represented by Mr. Emilio Garcia Silvero, Legal Director, and Mr. Jaime Cambreleng Contreras, Head of Litigation, Zurich, Switzerland

**Respondent**

## **I. PARTIES**

1. Mr. Boniface Mwamelo (“Mr. Mwamelo” or the “Appellant”) is a Zambian national and former official of the Zambia Football Association (“FAZ”). He served as the Treasurer of the FAZ from 7 May 2008 to 4 October 2010 and held the position of Vice President of the FAZ from 5 October 2010 until 18 March 2016.
2. The Fédération Internationale de Football Association (“FIFA” or the “Respondent”) is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the worldwide governing body of international football and exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players.

## **II. FACTUAL BACKGROUND**

3. This dispute concerns the decision of the Adjudicatory Chamber of the FIFA Ethics Committee (the “FIFA Ethics Committee”) on 25 January 2019 whereby Mr. Mwamelo was found to have conspired (or at least attempted to conspire) to manipulate the results of international matches in contradiction to Article 11, par. 1 (bribery) of the 2009 edition - FIFA Code of Ethics (the “2009 FCE”). As result, Mr. Mwamelo was banned for life from taking part in any kind of football-related activity at national and international levels (administrative, sports or otherwise). Additionally, a fine in the amount of CHF 10,000 was imposed on Mr. Mwamelo.
4. Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

### **A. FIFA Integrity Department’s investigation proceedings**

5. Pursuant to Article 62 par. 3 of the 2012 edition - FIFA Code of Ethics (the “2012 FCE”), the FIFA Integrity Department conducted a preliminary investigation into Mr. Mwamelo for potentially having committed breaches of the 2012 FCE.
6. The preliminary investigation surrounded the participation of Zambia's under-23 National Team (“U23”) at an international tournament held in July 2010 in Cairo (the “Tournament”) and focused on email exchanges for the period of June 2010 and August 2010 between Mr. Mwamelo and Mr. Wilson Raj Perumal (“Mr. Perumal”), an internationally convicted match-fixer. Mr. Perumal was a shareholder in “Football4U”, a Singapore-based match-fixing syndicate that manipulated the outcome of football matches for betting purposes. In 2011, Mr. Perumal was arrested in Helsinki, Finland, and became the first Asian match-fixer to collaborate with police authorities.
7. Upon examination of email exchanges between Mr. Mwamelo and Mr. Perumal, the FIFA Integrity Department determined that Mr. Mwamelo, while acting in 2010 as the FAZ Treasurer, potentially used his position within the FAZ to manipulate the results of certain Zambia U23 international matches for financial gains through betting purposes. The FIFA Integrity Department held that the nature of the email exchanges

between Mr. Mwamelo and Mr. Perumal, as well as the *modus operandi* of their relationship, could potentially be recognized as a match-fixing scheme for betting purposes in contravention of several FIFA regulations.

8. On 28 August 2017, the FIFA Integrity Department submitted its preliminary investigation report (the “Preliminary Report”) to the Investigatory Chamber of the FIFA Ethics Committee (the “Investigatory Chamber”).
9. In view of the documents and information collected, Ms. Maria Claudia Rojas (“Ms. Rojas”), the Chairperson of the Investigatory Chamber, determined that the preliminary investigation established a *prima facie* case against Mr. Mwamelo for potentially committing violations of the 2012 FCE and that the Investigatory Chamber should open investigation proceedings accordingly.
10. As such, on 18 October 2017, Mr. Mwamelo was notified that formal investigation proceedings were opened against him relating to possible violations of Articles 13, 15, 18, 19, 21 and 22 of the 2012 FCE (the corresponding provisions of the FCE 2009 are respectively Articles 3, 5, 9, 11, 12 and 14). Ms. Rojas decided to appoint Mr. Jiahong He (“Mr. He”) as Chief of Investigation in accordance with Article. 65 of the 2012 FCE.
11. On 22 November 2017, Mr. He requested Mr. Mwamelo to respond to certain questions during the course of his investigation.
12. On 10 April 2018, following an agreed-upon extension of time, Mr. Mwamelo provided his responses to the questions.

#### **B. The Final Report of the Investigatory Chamber**

13. In view of the evidence within the preliminary investigation report from the FIFA Integrity Department and the information provided by Mr. Mwamelo, Mr. He prepared his final report (the “Final Report”), which contained (i) the factual indications of potential improper conduct by Mr. Mwamelo; (ii) the factual analysis by the Investigatory Chamber; and (iii) the possible violations.

##### **(i) The factual indications of potential improper conduct by Mr. Mwamelo**

14. The Final Report listed the following indications of potentially improper conduct by Mr. Mwamelo:

##### Potential involvement in the Zambia U23 in the 2010 Cairo Olympic Tournament

15. On 29 June 2010, Mr. Mwamelo was requested by Mr. Perumal to “*please assemble a squad that can work together*” for the 2010 Cairo Olympic tournament. On 3 and 8 July 2010, Mr. Mwamelo confirmed to Mr. Perumal that he had discussed with his FAZ colleagues that the Zambia U23 would participate in the aforesaid tournament.
16. On 15 July 2010, Mr. Mwamelo sent the following email to Mr. Perumal:

*We have initially selected a provisional 21 man squad and a further 5 are being considered to be assessed for possible inclusion. These are the players who are all Under 23 and qualify to represent the Country in the Olympic Games. I have also ensured that players who have been picked are only those who will listen to orders.*

17. On 18 July 2010, Mr. Mwamelo and Mr. Perumal exchanged a series of emails, discussing the financial aspects of the participation of the Zambia U23 team in the tournament. Mr Perumal explained that his company could only pay an appearance fee for the Senior National Team and that he could pay USD 5,000 to Mr. Mwamelo as an advanced preparation fee for the Zambia U23 team when it arrived in Cairo. The email exchange went as follows:

Mr. Perumal: *“If as agreed you and your team give us your total co-operation you and your team stand to go home with 100,000 USD.”*

Mr. Mwamelo: *“I have done my work diligently by picking boys who will listen to orders. I had to do it discreetly because such schemes are illegal in Zambia and if one is caught, it's a life sentence in jail. This was the most difficult part which I have managed to sort out.”*

18. On 19 and 20 July 2010, another exchange of correspondences occurred in relation to financial matters, during which Mr. Mwamelo provided Mr. Perumal with official documentation from the FAZ. The email exchange went as follows:

Mr. Perumal: *“Please email me the breakdown on official Zambia letter head and signed by the general Secretary in order to get the funds released from my company. Or you can choose to pocket the money in Cairo if there is no such letter. It will be between the 2 of us.”*

Mr. Mwamelo: *“Dear Mr Wilson, Find attached the breakdown of costs to be incurred by the FA. Can you send the USD 5,000 as discussed? Regards Boniface”.*

Potential manipulation of the Cameroon CJ23 vs Zambia U23 match of 27 July 2010

19. On 28 July 2010, Mr. Perumal and Mr. Mwamelo exchanged emails with respect to the Cameroon U23 versus Zambia U23 match of 27 July 2010. They sent the following messages:

Mr. Perumal: *“Our agreement was that you have to bring players who are ready to work and listen to instructions. I get info from my people that this team is dying to win every match. This is not what u promised me. You told me u will hand pick players who will work with me.”* (...) *“I am not a holiday provider. I bring teams here to make money. Now because of your negligence I lost lots of money. If you can bring me 6 or 7 boys who are ready to do business we can work on something.”*

Mr. Mwamelo: *“Raj - this is unfair. The 4 boys I worked with played according to instructions but the Cameroon team was just too poor they could not even beat a school boy team. Even with the help they had from the referees they still could not beat a team which had boys who were tired from a long journey.”* (...) *“I did my part and my understanding was that it did not work out due to circumstances beyond my control. I believe in life we need to keep promises. I believe I have been unfairly treated here.”*

20. On 31 August 2010, Mr. Mwamelo expressed concern over the complaint of four unidentified Zambian players who were allegedly involved in the match-fixing attempt of the Cameroon U23 versus Zambia U23 match, and that two unidentified Zambian

players suspected him to have received money from Mr. Perumal. The email exchange went as follows:

Mr. Mwamelo: *“Dear Raj, Hope you are okay. I am in a bit of a fix – while our arrangement in Egypt did not go as expected, there were 4 players whom I had spoken to before we left Zambia and they played according to instructions. The unfortunate thing is that because they played so badly in Egypt, they have been dropped from the national team. Their biggest complaint is that because they played according to instructions, it has affected their international careers and yet I did not even give them any money.”*

(...)

*“Two of them (the players) actually suspect that maybe I was given money but I just pocketed it. I am therefore humbly requesting if you can just send me something so that I give them to keep quiet. My fear is that if they continue grumbling, the stories will leak out and I will be in similar situation like the officials of the Zimbabwe Football Federation. In future I promise, we will be better organized.”*

Mr. Perumal: *“Please note that I work for someone and I am not the boss myself. If your boys were not brought forward to the respective bosses no payment will be made. Your boys were never given instructions and they never followed any instructions. Airfare and accommodation for Zambia was a total waste because there was no business with your boys. You let me down. I specially told you to hand pick the players. But realise u had no authority over the players.”*

21. In 2014, FIFA’s Early Warning System (“EWS”), which monitors betting on all FIFA matches and competitions to prevent negative influences from betting, was asked to look at the Cairo International Olympic U23 Tournament 2010 since this competition was mentioned by Mr. Perumal in multiple emails. The EWS monitored, among others, the match between Cameroon U23 and Zambia U23 of 27 July 2010 for possible suspicious betting patterns, specifically on the live market. On 12 December 2014, EWS issued a report called “EWS Match Report Cairo International Olympic U23 Tournament 2010”, which only provided a short summary for the games in this competition. According to the EWS, the match between Cameroon U23 and Zambia U23 displayed suspicious behavior, which was defined as “Alarm level 3”. The EWS report stated, inter alia, the following:

*“27.07.2010 Cameroon U23 vs. Zambia U23 1:1*

*The 1X2 live market was offered just by SBO and was early suspended in minute 9 with no strange odds detectable. Cameroon U23 was a clear favorite with a handicap of -1.75. From around minute 15 to half-time the odds for Cameroon U23 to overcome the handicap dropped below explainable values. Abnormal odds were recorded up to around minute 64 – afterwards the market behaved normally (all the bets on Cameroon U23 were unsuccessful). The Asian Totals showed strange odds for four goals at least to be scored from around minute 18 to minute 61 – afterwards odds behaved properly (bets not successful).*

*Alarm level: 3”*

Potential future manipulation of matches

22. In an email exchange of 21 July 2010, Mr. Perumal wrote to Mr. Mwamelo “*U will be my man behind all the Zambia work. I need an inside man and u are the right person*”. Mr. Perumal also proposed to arrange a friendly match for Zambia in either Finland or Amsterdam, a Caribbean team like Jamaica to play in Europe (against Zambia) either in September or November 2010, specifying he would pay USD 30,000 per match for Mr. Mwamelo and his players. In response to Mr. Perumal’s email, Mr. Mwamelo asked how soon he could arrange a game in Finland or Amsterdam. The email exchange went as follows:

Mr. Perumal: “*Your 5,000 is safe and sound. We will handover to you once you arrive. Kindly tell us who will be in charge of your team and who is person we can talk to regarding business. We pay 30,000 USD per match. How much is your and what figure goes to your players and to your men in charge. I can arrange a friendly for Zambia in Finland or Amsterdam. If you agree i will look out for an oppanent [sic] for you. If you are free in November and September i can arrange a Carrebean team like Jamaica to play in Europe.*”

Mr. Mwamelo: “*How soon can you arrange the game in Finland or Amsterdam? I will be able to advise you who you can deal with regarding business although my preference would have been that you deal directly with me. In my absence I have to find someone who is trusted and can issue instructions.*”

23. On 31 August 2010, Mr. Perumal sent an email to Mr. Mwamelo in which he stated:

*I can work with you in future if only u can bring the team without the knowlegde [sic]of the FA. Select the players who are loyal to you and travel without FA's knowledege [sic]. These African nations never play outside other CAF competitions and the FA's make big Hoo Haa's because they dont get a cut. If u agree for such arrangements i can invite you without FA's knowledge”. To this email, Mr. Mwamelo replied “Ok fine”.*

24. In 2014, Mr. Perumal published a book called “Kelong Kings: Confessions of the world's most prolific match-fixer”. At pages 184 to 187 of his book, Mr. Perumal refers to match-fixing as “*doing the business*”.

**(ii) The conclusion of the Investigatory Chamber**

25. Based on the aforesaid facts, the Investigatory Chamber concluded that Mr. Mwamelo:

- i) *Facilitated the Zambia U23 squad participation in the Tournament;*
- ii) *Engaged in several email correspondences with Mr Perumal conspiring to manipulate and influence the result of at least one international friendly match/international tournament mentioned above;*
- iii) *His conduct demonstrated abuse of his administrative position as Treasurer of the FAZ in order to act as a middleman between an international match fixer (Mr Perumal) and the FAZ, a FIFA member association;*
- iv) *Agreed to the conspiracy to select only Zambian players who were willing to listen to orders to manipulate the results of the match;*

- v) *Acknowledged that his surreptitious conduct was criminal which could (potentially) result in a jail sentence if discovered;*
- vi) *Requested and accepted money (USD 5,000) in exchange for influencing/manipulating (albeit unsuccessfully) the results of the above-listed match/tournament; and*
- vii) *Agreed to continue working for Mr Perumal in manipulating results for future games in which FAZ would participate.*

**(iii) The possible violations**

26. Mr. He considered that likely violations took place in 2010 and at that time, the 2009 FCE was in force. Therefore, Mr. He concluded that Mr. Mwamelo breached Article 11 of the 2009 FCE and as such, infringed the analogous Article 27 of the 2018 edition - FIFA Code of Ethics (the “2018 FCE”).

**C. Proceedings before the FIFA Ethics Committee**

27. On 18 December 2018, the Investigatory Chamber informed Mr. Mwamelo that it had concluded its investigation proceedings and that it had submitted its Final Report to the FIFA Ethics Committee in accordance with Article 65 of the 2018 FCE.
28. On 19 December 2018, the FIFA Ethics Committee opened adjudicatory proceedings against Mr. Mwamelo in accordance with Article 68 par. 3 of the 2018 FCE. A copy of the Final Report and its enclosures were transmitted to Mr. Mwamelo, who was informed of certain deadlines to provide his response and request a hearing.
29. On 26 December 2018, following an agreed-upon extension of time, Mr. Mwamelo requested a hearing.
30. On 11 January 2019, following an agreed-upon extension of time, Mr. Mwamelo submitted his response to the allegations against him.
31. On 25 January 2019, a hearing took place in the absence of Mr. Mwamelo. The FIFA Ethics Committee issued the following decision (the “Decision”):
1. *Mr Mwamelo is found guilty of infringement of art. 11 (bribery) of the 2009 FIFA Code of Ethics.*
  2. *Mr Mwamelo is hereby banned for life from taking part in any kind of football-related activity at national and international level (administrative, sports or any other) as of notification of the present decision, in accordance with art. 7 let. j) of the 2018 FIFA Code of Ethics in conjunction with art. 22 of the FIFA Disciplinary Code.*
  3. *Mr Mwamelo shall pay a fine in the amount of CHF 10,000 within 30 days of notification of the present decision (...).*
  4. *Mr Mwamelo shall pay costs of these proceedings in the amount of CHF 3,000 within 30 days of notification of the present decision, which shall be paid according to the modalities stipulated under point 3. above.*

5. *Mr Mwamelo, shall bear his own legal and other costs incurred in connection with the present proceedings.*
  6. *This decision is sent to Mr Mwamelo. A copy of the decision is sent to the CAF and to FAZ, as well as to the chief of the investigation, Mr. Jiahong He.*
32. On 27 February 2019, the grounds of the Decision were notified to the Parties. The relevant points developed by the FIFA Ethics Committee in the Decision, read as follows:

33. *The clarity of the wording/content of the correspondence exchanged by Mr Mwamelo and Mr Perumal on one side, and the party's failure to provide any reasonable or satisfactory explanation for some of his statements made (in such correspondence) on the other, which relate to his involvement in Mr Perumal's schemes, lead to the conclusion that the accusable conduct contradicts Mr Mwamelo's most essential official duties.*

34. *First, it is evident, from the content of the relevant correspondences, that Mr Mwamelo was not only actively implicated in the selection of the Zambia U23 team for the Tournament (possibly together with others – “we have initially selected), but also responsible to ensure that the players selected would listen to orders (“I have also ensured”). The wording “listen to orders” used by Mr Mwamelo clearly indicates that the main criteria for his selection of players was to be open to manipulate results of the matches to be played in the Tournament. In other words, Mr Mwamelo was informing Mr Perumal, his “business partner” that he was implementing the plan/scheme as agreed, i.e., to use players of the Zambia U23 team, who had been previously selected in this respect, in order to manipulate matches of said team in the Tournament.*

35. *Second, the communications exchanged by Mr Mwamelo and Mr Perumal also refer to an “appearance fee”, to be paid by the latter in exchange for “total cooperation”. In this sense, the objective of Mr Mwamelo entering in this scheme was to obtain pecuniary betterments. In his e-mail dated 19 July 2010, Mr Mwamelo both requested and accepted a payment from Mr Perumal in the amount of USD 5,000 (amount which appears to have been handed to Mr Mwamelo in cash during such Tournament) for having selected the players of the Zambia U23 team “who listen to orders”. This shows not only that Mr Mwamelo comprehended what Mr Perumal was requesting for his “total cooperation”, but also that he was willing to involve himself in such scheme, in exchange for financial compensation. Furthermore, Mr Mwamelo directly and unambiguously accepted/declared that his surreptitious conduct was a criminal offence in Zambia (“such schemes are illegal in Zambia and if one is caught”), which could potentially result in a jail sentence if discovered. In view of the adjudicatory chamber, this is a clear evidence that Mr Mwamelo was aware of his wrongdoing.*

36. *Third, the relevant EWS report mentioned above (in particular the suspicious and unexplainable betting patterns), as well as the respective email correspondences exchanged by Mr Perumal and Mr Mwamelo in the day after the*



*match Cameroon U23 v. Zambia U23 (of 27 July 2010), indicate that the result of the aforementioned match was attempted to be manipulated for betting purposes. Mr Perumal's email to Mr Mwamelo of 28 July 2010, complaining about the good performance that the Zambian team had against Cameroon, clearly shows how unhappy the former was about the respective financial loss, which he blamed on Mr Mwamelo's incapacity to fulfill his part of the agreement (select players that are willing to listen to instructions/work for Mr Perumal, in order to ensure that the Zambia U23 team loses the match against Cameroon). In this respect, the explanations provided by Mr Mwamelo lack credibility or logic: in fact, if Mr Perumal had requested that Zambia U23 fields its strongest/most competitive team in the Tournament, why would he complain that the team was "dying to win every match"? Mr Mwamelo is rather denying the obvious - that he was part of a conspiracy, together with Mr Perumal, to manipulate the result of the respective match, albeit unsuccessfully. Another sign of Mr Mwamelo's involvement in the said conspiracy can be inferred from the complaint that the Zambian football players had against him, accusing him of keeping the money given by Mr Perumal for himself ("I just pocketed it"). In this respect, the fact that Mr Mwamelo was willing to cover up the failed manipulation attempts by paying for the silence of those football players, clearly indicates that he was conscious of his wrongdoing.*

*37. Fourth, the exchange of emails of 21 July 2010 and 31 August 2010 further shows Mr Mwamelo's agreement to be involved in organizing/arranging future matches (of the Zambia team) for manipulation with Mr Perumal, based on a proposal from the latter to pay USD 30,000 per match in order to have him on "Mr Perumal's team" Mr Mwamelo was thus accepting to be Mr Perumal's main contact person in the FAZ and assist him in manipulating future matches of Zambia.*

*38. Based on the content of the relevant emails, it is clear that the remunerations offered by Mr Perumal were conditioned on Mr. Mwamelo ensuring the "total co-operation" of the relevant players of the Zambia U23 team. Moreover, the content of Mr. Mwamelo's correspondences is to be interpreted as an acceptance of the offer made by Mr. Perumal, both in terms of the amounts mentioned/proposed and commitment to the scheme. After the match in question, Mr Mwamelo stated that he "did my part" and claimed that the manipulation attempt had failed "due to circumstances beyond my control" (meaning that the opposing team was "too poor" and could not beat the Zambia U23 team). In other words, the failure in the manipulation of the match was not due to Mr Mwamelo's renouncement to act in a corrupt manner, but rather due to external circumstances which, according to his own statements, did not allow him to fix the result.*

*39. Mr Mwamelo interactions with Mr Perumal appeared to be driven by his aim to gain a (pecuniary) advantage, i.e. a financial betterment. In particular, Mr Mwamelo was offered and accepted to receive USD 5,000 in relation to the Tournament, for having selected the players of the Zambia U23 team who would "listen to orders" (be susceptible to influences in order to manipulate the result of the matches played by the respective team in the Tournament). The email exchange between the aforementioned persons prove to the comfortable satisfaction of the adjudicatory chamber that the respective amount was offered and promised by Mr Perumal, and that Mr Mwamelo requested and accepted to receive such bribe.*

*Moreover, Mr Perumal offered Mr Mwamelo and his players (the players selected by the latter) an amount of USD 30,000 per match, for manipulating further matches, after the Tournament, an offer that Mr Mwamelo immediately accepted.*

*40. It is further noted that the ratio of equivalence between the (undue) advantage given and a specific action by the official obtaining the advantage appears to be given. In this context, the adjudicatory chamber would like to recall that in cases of bribery, it is often difficult to establish a correlation between a payment and a particular act of an official. Objective indicators are important in this context, such as, for instance, the amount of the payment, the timing of the payment and the act of the official, as well as the occurrence and frequency of contacts between the parties involved. At present, based on the email exchanges, it appears evident that the (undue) advantages were being paid to Mr Mwamelo in order to obtain the latter's participation in the manipulation of international matches, by selecting players who would agree to give their "total co-operation" and "listen to instructions" from Mr Perumal. Mr Mwamelo must have known that by being offered and accepting to receive the bribes, he was being incited by Mr Perumal to breach his core duties as a football official (of the FAZ) and to behave dishonestly. Equally, it seems evident that the bribes were specifically given for Mr Mwamelo's execution of an act ("We can pay you a sum of 5,000 preparation fee as soon as you arrive in Cairo. If as agreed you and your team give us your total co-operation you and your team stand to go home with 100,000 USD)", email of 18 July 2010). Accordingly, the adjudicatory chamber notes that incentive and misconduct were directly linked to each other.*

*41. Art. 11 of the 2009 FCE states that the undue advantage must be "for the benefit of a third party". The manipulation of matches is an (illegitimate) business with the sole aim of making profits by fixing the result of a match. Mr Perumal mentioned on different occasions that he expected specific results of the matches for which he had asked Mr Mwamelo to select the players ("I bring teams here to make money. because of your negligence I lost lots of money", email of 28 July 2010) and that only by ensuring that such players delivered/obtained the specific match results needed by Mr Perumal, the bribes would be paid ("Our agreement was that you have to bring players who are ready to work and listen to instructions. I get info from my people that this team is dying to win every match. This is not what u promised me. You told me u will hand pick players who will work with me"; "If you can bring me 6 or 7 boys who are ready to do business we can work on something", email of 28 May 2010).*

*42. In view of the above, the adjudicatory chamber concludes that the first two conditions of art. 11 of the 2009 FCE are met. The same applies to the third condition (obligation to refuse the bribe), since Mr Mwamelo evidently agreed to receive the bribe. It is however not relevant whether Mr Mwamelo actually received the amounts proposed and accepted to receive (USD 5,000 as a preparation fee", USD 100,000 for him and the team, USD 30,000 for any match after the Tournament), or whether he shared any such amount with others (e.g. the players). Furthermore, it should be pointed out that, in his email of 21 July 2010 (during the Tournament), Mr Perumal assured Mr Mwamelo that "Your 5,000 is safe and sound. We will handover to you once you arrive".*

**(...) Overall conclusion**

43. Taking into account the evidence at hand, the adjudicatory chamber is comfortable to conclude that Mr Mwamelo conspired (or at least attempted to conspire) with Mr Perumal to manipulate the results of international matches.

44. In the light of the foregoing, the adjudicatory chamber considers that by being offered and promised as well as by accepting to receive payments from Mr Perumal, in exchange for his involvement/participation in the (attempted) manipulation of matches, Mr Mwamelo has breached art. 11 par. 1 of the 2009 FCE.

45. Any other charges are deemed to be consumed by Mr Mwamelo's breach of art. 11 par. 1 of the 2009 FCE.

**(...) SANCTION**

46. First, the adjudicatory chamber would like to highlight that accepting (to receive) and receiving payments from a match-fixer to manipulate the results of football matches qualifies as one of the most serious offences/infringements under the FCE. Match fixing contravenes directly the fundamental principle of fair play, and thus poses one of the biggest threats to sports in general.

47. As a high-ranking official within the FAZ, Mr Mwamelo held a crucial position in association football in Zambia. As such, he had a special responsibility towards the respective stakeholders, in particular since he was part of the official Zambia U23 delegation in the Tournament. Yet, Mr Mwamelo has been found guilty of accepting to receive bribes, in relation to the manipulation of international matches. In addition, not acts of mere negligence are at stake here but deliberate actions (see art. 6 par. 2 of the 2018 FCE). In view of all these circumstances, Mr Mwamelo's degree of guilt must be regarded as very serious.

48. The adjudicatory chamber further notes the absence of remorse from the party, and his absolute denial of any wrongdoing. It is further noted that Mr Mwamelo was not only a mere participant in the match manipulation schemes and related bribes, but also selected, and therefore involved in the respective conspiracy, various players of the Zambia U23 team (young players, at the start of their international careers), assuring Mr Perumal of their faithful cooperation. Moreover, after his involvement in the Tournament, Mr Mwamelo accepted Mr Perumal's proposal/offer to be involved in further manipulations of matches. These circumstances are to be considered as aggravating factors.

49. Taking the relevant factors of this case into account, the adjudicatory chamber concludes that only a ban from taking part in any football-related activity is appropriate due to the inherent, preventive character of such sanction in terms of potential subsequent misconduct by Mr Mwamelo. Moreover, bearing in mind the seriousness of the misconduct displayed by Mr Mwamelo and the adjudicatory chamber's disapproval of such acts, only a life ban would seem to be appropriate in this case. Furthermore, considering that the breaches took place in the context

*of international matches, the adjudicatory considers that only a worldwide scope would be appropriate.*

*50. It has been established to the comfortable satisfaction of the adjudicatory chamber that Mr Mwamelo requested and accepted an amount of USD 5,000 in cash. The adjudicatory chamber therefore decides that a fine is to be additionally imposed on him for his serious infringement. However, in order to ensure a sanctioning and a preventive effect, the fine must be substantially higher than the benefit Mr Mwamelo obtained in cash as otherwise, it would only amount to a reclaiming of the respective benefit. The adjudicatory chamber thus considers a fine of CHF 10,000 to be proportionate.*

*51. The general amount of the fine shall not be less than CHF 300 and not more than CHF 1'000'000 (art. 7 par. 1 of the 2018 FCE in conjunction with art. 15 par. 2 of the FDC). However, art. 27 par. 3 of the 2018 FCE (which is the equivalent provision on bribery) imposes a minimum fine of CHF 100,000 for a violation of the respective provision. As the content of art. 11 of the 2009 FCE does not foresee any such minimum pecuniary sanction, the fine will be imposed based on the respective version of the FCE.*

*52. In conclusion, Mr Mwamelo is hereby banned for life from taking part in any football related activity (administrative, sports or any other) at national and international level. The ban shall come into force as soon as the decision is communicated (art. 42 par. 1 of the 2018 FCE). In addition, Mr Mwamelo shall pay a fine of CHF 10,000.*

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

33. On 18 March 2019, Mr. Mwamelo filed his Statement of Appeal with the CAS against the Decision in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the “CAS Code”) (which was later amended on 25 March 2019). In his Statement of Appeal, Mr. Mwamelo nominated Mr. Peter Van Minnen, Attorney-at-Law in Schoonhoven, The Netherlands, as an arbitrator.
34. On 29 March 2019, Mr. Mwamelo filed his Appeal Brief in accordance with Article R51 of the CAS Code.
35. On 10 April 2019, FIFA nominated Mr. Ricardo de Buen Rodríguez, Attorney-at-Law in México City, as arbitrator.
36. On 24 April 2019, FIFA filed its Answer in accordance with Article R55 of the CAS Code.
37. On 29 April 2019, FIFA notified the CAS Court Office that it preferred this matter to be decided solely on the parties’ written submissions, without the need to hold a hearing.
38. On 1 May 2019, Mr. Mwamelo notified the CAS Court Office of his preference for a hearing to be held in this procedure and to attend it by means of teleconference.

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39. On 3 May 2019, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed the appointment of the Panel as follows:

President: Prof. Dr. Martin Schimke, Attorney-at-Law, Dusseldorf, Germany  
Arbitrators: Mr. Peter Van Minnen, Attorney-at-Law, Arnhem, The Netherlands  
Mr. Ricardo de Buen Rodríguez, Attorney-at-Law, México City, México

40. On 22 May 2019, the CAS Court Office regrettably informed the Parties that Mr. Peter Van Minnen, CAS arbitrator appointed by Mr. Mwamelo in this procedure, passed away. Mr. Mwamelo was, therefore, invited to nominate a new arbitrator.

41. On 23 May 2019, the CAS Court Office informed the Parties of the appointment of Me. Marianne Saroli, Attorney-at-Law, Montreal, Canada as *ad hoc* clerk.

42. On 30 May 2019, Mr. Mwamelo nominated Mr. Manfred Peter Nan, Attorney-at-Law in Arnhem, The Netherlands, as an arbitrator.

43. On 11 June 2019, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, modified the Notice of Formation, which replaced the one that was issued to the Parties on 3 May 2019 and therefore, confirmed the appointment of the Panel as follows:

President: Prof. Dr. Martin Schimke, Attorney-at-Law, Dusseldorf, Germany  
Arbitrators: Mr. Manfred Peter Nan, Attorney-at-Law, Arnhem, The Netherlands  
Mr. Ricardo de Buen Rodriguez, Attorney-at-Law, México City, México

44. On 18 June 2019, the CAS Court Office, on behalf of the Panel, who has considered the Parties' submissions and their respective positions on the need for a hearing, notified the Parties that the Panel would proceed with a hearing in this procedure.

45. On 2 September 2019, FIFA and Mr. Mwamelo respectively, signed and returned the order of procedure in this appeal.

46. On 3 September 2019, a hearing was held in the present appeal. The Panel was assisted by Me. Marianne Saroli and joined by the following:

For Mr. Mwamelo:

Mr. Boniface Mwamelo, himself by telephone

For the FIFA:

Mr. Luís Villas-Boas Pires (Legal Counsel)  
Mr. Jaime Cambreleng Contreras (Head of Litigation)

47. At the outset of the hearing, the Parties confirmed that they had no objection as to the constitution of the Panel. At the conclusion of the procedure, the Parties expressly stated and confirmed that their right to be heard had been fully respected.

#### IV. SUBMISSIONS OF THE PARTIES

##### A. The Position of Mr. Mwamelo

48. In his statement of appeal, Mr. Mwamelo expressly stated the following, which resembles his specific request for relief:

1. *That the FIFA Ethics Committee misdirected itself by exclusively relying on electronic mails as a basis for its decision to sanction Boniface Mwamelo, the Appellant herein, without any other corroborating evidence when the Appellant in his response to the Questionnaire had raised a red flag regarding the authenticity and completeness of the electronic mails.*
2. *That the FIFA Ethics Committee conclusions are either based on conjecture or assumptions and in some cases are contradictory.*
3. *That credible lines of inquiry in the matter in casu such as the actual participation or interference by the Appellant with the Zambia Technical bench of the Under 23 players are not actually established.*
4. *That further to no. 3 above, another misdirection was the ignoring of the important line of inquiry as to whether or not the appellant was in receipt of any monies from Mr. Perumal.*
5. *That in the premises, taking all factors into consideration, that the sanctions imposed on the Appellant are excessive and ought to be set aside.*

49. Mr. Mwamelo's submissions, in essence, may be summarised as follows:

##### i. FIFA Ethics Committee misdirected itself

- The FIFA Ethics Committee mistakenly relied solely on email exchanges as a basis for its Decision.
- Mr. Mwamelo challenges the authenticity and the completeness of the emails. While Mr. Mwamelo had flagged this issue in his response to the Questionnaire during the investigation proceedings, the FIFA Ethics Committee failed to consider the integrity of electronic evidence in its Decision.
- In this respect, Mr. Mwamelo alleges that his mailbox was deleted after being tampered with. FIFA didn't provide any proof to establish that each message originated from Mr. Mwamelo, or that some emails were deleted or modified to lodge a compelling case against him. FIFA neither established the provenance of the emails, nor identified the user account or the computer address that was used to transmit the messages.
- The FIFA Ethics Committee conclusions are either based on conjecture or assumptions and are sometimes contradictory.

##### ii. Ambiguity in relation of the applicable FCE

- Mr. Mwamelo asserts ambiguity in the cited FIFA provisions that were allegedly breached. The investigation proceedings were opened against him relating to possible violations of Article 13, 15, 18, 19, 21 and 22 of the 2012 FCE. Then, in the Final Report and the Decision, FIFA referred to possible violations of 2009 and 2018 FCE. This created uncertainty as to which law was specifically applicable to his case and therefore, greatly disadvantaged him in replying to submissions made by FIFA.

### **iii. The requirements for the alleged offence are not established**

- Mr. Mwamelo claims that no proof could attest that he breached the 2009 FCE and that the conclusions of the final report/investigatory chamber were, to a large extent, based on assumptions. In particular, he alleged that no undue pecuniary or other advantage was offered in his “conduct of official duty” or “to guarantee a specific outcome in any of the matches that we participated in”, and that he was thus not “induced to perform an official act”. Moreover, he contests the existence of a link between the alleged bribe and the official act, claiming that both the payment and the act “*never happened*”.
- Mr. Mwamelo claims that the credible lines of inquiry in this proceeding, such as the actual participation or interference with the Zambia technical bench of the U23 team, are not established. He contends that there was no attempt, on his part or any other official, to influence the selection of the Zambia U23 team that participated in the Tournament, that he never had any input in relation to the team’s selection or training program before or during the Tournament, and that the team played all its matches in the Tournament “*competitively without any undue influence from anybody within the Zambian delegation or anyone else*”. The FIFA Ethics Committee erred by concluding that Mr. Mwamelo did not provide any evidence or documentation to prove his non-involvement in the team selection and to support his allegation that the team played competitively. The burden of proof lies on the party making allegations. There is nothing on record to show that the team was influenced by Mr. Mwamelo or that the team did not play competitively. Further, the benefit of the doubt should have been given to Mr. Mwamelo, especially considering that he didn’t attend the hearing on 25 January 2019
- The FIFA Ethics Committee failed to consider that Mr. Mwamelo never received any payment from Mr. Perumal either in cash or bank transfer or any other form of payment from him directly or through his agents or another third party acting on his behalf before, during or after the Tournament.

### **iv. Proportionality of the Sanction**

- As to the sanctions imposed on Mr. Mwamelo, they are excessive and should be set aside.

## **B. The Position of the Respondent**

50. In its Answer, FIFA requested the following relief:

*108. To reject the Appellant's appeal in its entirety.*

109. *To confirm the decision rendered by the FIFA Ethics Committee on 25 January 2019 hereby appealed against.*

110. *To order the Appellant to bear all costs incurred with the present procedure and to cover all expenses of the Respondent related to the present procedure.*

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

**i. Mr. Mwamelo's lack of evidence**

- Mr. Mwamelo's position is lacking any evidence to support his arguments. This absence of evidence reflects that his arguments constitute mere speculation and cannot be accepted or followed by the Panel.
- Pursuant to Article 8 of the Swiss Civil Code ("SCC"), *"the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact"*. Hence, Mr. Mwamelo's submissions should be dismissed.

**ii. The three cumulative requirements for bribery are established**

- At the time of the events, Mr. Mwamelo was a football official bound by the FCE and he was therefore forbidden from accepting bribes from any third party. According to Article 11 of the 2009 FCE, there are three cumulative requirements to establish bribery: 1) a gift or advantage must be offered, promised or sent to an official; 2) the official must be incited to breach some duty or to behave dishonestly for the benefit of a third party; 3) the official breached the obligation to refuse.

*1) A gift or advantage must be offered, promised or sent to an official*

- Article 11 of the FCE 2009 refers to the offer, promise or delivery of *"any"* gifts or other advantage, meaning that the advantage can be interpreted in a broad manner and can include money or any other benefit. Contrary to what Mr. Mwamelo states, Article 11 does not require that a gift or other advantage is received by the official. This was confirmed by the well-established CAS jurisprudence (See CAS 2018/A/5886; CAS2011/A/2426).
- The communications exchanged between Mr. Mwamelo and Mr. Perumal refer to an *"appearance fee"* to be paid by the latter in exchange of his *"total cooperation"*. When entering this scheme, Mr. Mwamelo's goal was to obtain pecuniary benefits. In his email dated 19 July 2010, Mr. Mwamelo requested and accepted a payment from Mr. Perumal in the amount of USD 5,000 for having selected the players of the Zambia U23 team *"who listen to orders"*. This shows not only that Mr. Mwamelo understood what Mr. Perumal was requesting from his *"total cooperation"*, but also that he was willing to get involved in this scheme in exchange for financial compensation.
- Mr. Mwamelo was aware of his wrongdoing and that his surreptitious conduct was a criminal offence in Zambia when he explicitly wrote *"such schemes are illegal in Zambia and if one is caught, it's a life sentence in jail"*.



- Mr. Mwamelo's interactions with Mr. Perumal were driven by his aim to gain a pecuniary advantage. In particular, Mr. Mwamelo accepted the offer from Mr. Perumal of receiving USD 5,000 to select the players of the Zambia U23 team who would “*listen to orders*”.
- The email exchanges of 21 July 2010 and 31 August 2010 show Mr. Mwamelo's agreement to be involved in organizing and arranging future matches of the Zambia team with Mr. Perumal, who offered him USD 30,000 per match. Mr. Mwamelo accepted to be Mr. Perumal's main contact person in the FAZ and to assist him in manipulating future matches of Zambia.
- While Mr. Mwamelo challenges the authenticity of the aforesaid emails, he failed to provide any evidence to support such statement.
- During the investigatory proceedings, Mr. Mwamelo confirmed the ownership of the email address (“mwamelb@MTNZambia.co.zm”), which was used when corresponding with Mr. Perumal.
- Moreover, FIFA argues that other elements demonstrate the integrity of those emails, namely (1) the official letter issued by the FAZ to participate in the Tournament; (2) that the Tournament was held in Egypt; (4) U23 Zambia national team and other teams participated in said Tournament; (5) the underperformance of four U23 Zambian players in the Tournament; (6) and the suspicious betting activities reported by the EWS corroborate the fact that the match was supposed to be fixed.

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

- The content of the extensive email exchanges between Mr. Mwamelo and Mr. Perumal establishes that the Appellant engaged in a match-fixing scheme. The wording used by both was very clear and consistent. Mr. Mwamelo was aware of Mr. Perumal's match-fixing scheme and of the nature of his involvement. He was willing to cooperate and benefit from it. Thus, he was acting deliberately and intentionally.
- Mr. Mwamelo was not only actively involved in the selection of the Zambia U23 team for the Tournament, but also responsible to ensure that the players selected would listen to orders. The wording “*listen to orders*” used by Mr. Mwamelo indicates that the main criteria for his selection of players was to manipulate results of the matches to be played in the Tournament.
- The EWS report, as well as the respective email correspondences exchanged by Mr. Perumal and Mr. Mwamelo on the day following the match Cameroon U23 versus Zambia U23 of 27 July 2010, indicate that the result of the match was attempted to be manipulated for betting purposes. Mr. Perumal's email to Mr. Mwamelo of 28 July 2010, complaining about the good performance of the Zambian team against Cameroon, demonstrates how unhappy he was about his financial loss. He also blamed it on Mr. Mwamelo's incapacity to fulfil his part of the agreement.

- Mr. Mwamelo's involvement can also be inferred from the Zambian players' complaint against him, accusing him of keeping the money given by Mr. Perumal for himself. The fact that Mr Mwamelo was willing to cover up the failed manipulation attempts by paying for the silence of those football players, illustrates that he was conscious of his wrongdoing.
- The remunerations offered by Mr. Perumal were conditional to Mr. Mwamelo's ability to ensure the "*total co-operation*" of the relevant players of the Zambia U23 team.
- Mr. Mwamelo's correspondence should be interpreted as an acceptance of the offer made by Mr. Perumal, both in terms of the amounts mentioned/proposed and of his commitment to enable the success of this scheme. Mr. Mwamelo stated that he "*did my part*" and claimed that the manipulation attempt had failed "*due to circumstances beyond my control*".
- As to the ratio of equivalence between the (undue) advantage given/promised and a specific action by the official obtaining the advantage, it is often difficult to establish a correlation between a payment and a particular act of an official in cases of bribery. Objective indicators are important in this context, such as, the amount of the payment, the timing of the payment and the act of the official, as well as the occurrence and frequency of contacts between the parties involved.
- Mr. Mwamelo must have known that by being offered and accepting to receive the bribes, he was being incited by Mr. Perumal to breach his core duties as a football official of the FAZ and to behave dishonestly.
- The bribes were specifically given for Mr. Mwamelo's execution of an act, like "*We can pay you a sum of 5,000 preparation fee as soon as you arrive in Cairo. If as agreed you and your team give us your total co-operation you and your team stand to go home with 100, 000 USD*". Accordingly, the incentive and misconduct were directly linked to each other.
- According to Article 11 of the 2009 FCE, the undue advantage must be "*for the benefit of a third party*". The manipulation of matches is an illegitimate business with the sole aim of making profits by fixing the result of a match. Mr. Perumal mentioned on different occasions that he expected specific results of the matches for which he had asked Mr. Mwamelo to select the players.

### *3) The official has breached the obligation to refuse*

- Mr. Mwamelo agreed to receive the bribe and it is not relevant whether he actually received the amounts proposed or whether he shared any such amount with others.
- In his email of 21 July 2010, Mr. Perumal guaranteed Mr. Mwamelo that "*Your 5,000 is safe and sound. We will handover to you once you arrive*". Mr. Mwamelo deliberately accepted and hence, breached his obligation to refuse.

### **iii. Proportionality of the Sanction**

- Match manipulation directly contravenes the fundamental principle of fair play, and thus constitutes one of the biggest threats to sports. FIFA takes a strong stance against any unethical act, including match fixing.
- As a high-ranking official within the FAZ, Mr. Mwamelo held a crucial position in the association. He had a special responsibility towards the respective stakeholders, especially since he was part of the official Zambia U23 delegation in the Tournament. In view of all these circumstances, Mr Mwamelo's degree of guilt must be regarded as very serious.
- Mr. Mwamelo shows no remorse and denies his wrongdoing.
- Mr. Mwamelo was not only a participant in the match-fixing schemes as he also selected and involved various young players of the Zambia U23 team by promising their cooperation to Mr. Perumal. After his involvement in the Tournament, Mr. Mwamelo accepted Mr. Perumal's proposal to be involved in further match manipulations. These circumstances are to be considered as aggravating factors.
- As a result, only a ban for life from taking part in any football-related activity is appropriate due to the inherent, preventive character of such sanction in terms of potential subsequent misconduct by Mr. Mwamelo.
- Considering that the breaches took place in the context of international matches, a worldwide scope should apply to the sanction.
- Mr. Mwamelo requested and accepted an amount of USD 5,000. However, in order to ensure a sanctioning and a preventive effect, the fine must be substantially higher than the benefit Mr. Mwamelo obtained in cash as otherwise, it would only amount to a reclaiming of the respective benefit. A fine of CHF 10,000 is proportionate.
- Nonetheless, the sanction imposed on Mr. Mwamelo is in line with previous practice of the FIFA Ethics Committee, namely in the cases of Mr. Oden Charles Mbagha dated 25 January 2019, Mr. Kokou Hognimon Fagla dated 24 January 2019, and Mr. Ibrahim Chaibou dated 18 September 2018. All three individuals were banned for life after being found guilty of bribery.
- Therefore, the sanction imposed on Mr. Mwamelo is neither disproportionate nor oppressive.

## V. JURISDICTION

52. The jurisdiction of the CAS derives from Article R47 of the Code in connection with Article 58 para 1 of the FIFA Statutes.
53. Article R47 of the Code provides as follows:

*An appeal against the decision of a federation, association or sports-related body may*

*be filed with the CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body.*

54. Article 58 para 1 of the FIFA Statutes reads as follows:

*Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question.*

55. The jurisdiction of the CAS is not contested by the Parties. Moreover, all Parties confirmed the CAS jurisdiction by the execution of the Order of Procedure, and no party objected to the proceedings or the jurisdiction of the CAS. It follows, therefore, that CAS has jurisdiction in this appeal.

## **VI. ADMISSIBILITY**

56. Article R49 of the Code provides as follows:

*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.*

57. As noted above, Article 58 para 1 of the FIFA Statutes provides that appeals “*shall be lodged with CAS within 21 days of notification of the decision in question.*” The same 21-day deadline is mentioned on the last page of the FIFA Decision as follows: “*The Statement of Appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision (...)*”.

58. The Decision was rendered on 25 January 2019; however, the grounds of the Decision were notified to the Parties on 27 February 2019. Mr. Mwamelo’s statement of appeal was filed on 18 March 2019, amended on 25 March 2019, i.e. within the expiry of 21-day deadline to file with the CAS. The statement of appeal complies with the requirements set by Article R48 of the Code. No Party objects otherwise.

59. It, therefore, follows that this Appeal is admissible.

## **VII. APPLICABLE LAW**

60. Article R58 of the Code 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.*

61. Article 57 par. 2 of the FIFA Statutes provides the following:

*The provisions of the CAS Code of Sports related Arbitration shall apply to the proceedings. CAS shall apply the various regulations of FIFA and additionally Swiss law.*

62. In light of those provisions, the Panel must decide the present dispute in accordance with, primarily, the FIFA Regulations (in particular, the FCE) and, additionally, Swiss law.

63. The Panel, however, notes that Mr. Mwamelo has reported some ambiguity in the cited FIFA provisions that were allegedly breached and that it was supposedly difficult for him to figure out which version of the FCE applied to his case. In his submissions, Mr. Mwamelo argued that the investigation proceedings were opened against him relating to possible violations of Articles 13, 15, 18, 19, 21 and 22 of the 2012 FCE and then, FIFA referred to possible violations of 2009 and 2018 FCE in the Final Report and in the Decision.

64. Therefore, the Panel needs to address the intertemporal issue as to which version of the FCE applies to this proceeding. In this regard, the Panel observes that:

- the Preliminary Report dated of 24 August 2017 stated the following: *“the preliminary investigation is found to establish a prima facie case against Mr Mwamelo. Therefore, in accordance with art. 63 of the FCE, it is hereby recommended that investigation proceedings are opened against Mr Mwamelo for potential breaches of arts. 13, 15, 18, 19, 21, and 22 of the - [2012] - FCE as well as the corresponding provisions of the FCE 2009 edition (respectively arts. 3, 5, 9, 11, 12 and 14).*
- the Notification for the opening of the investigation proceedings dated of 18 October 2017 indicated that: *“there is a prima facie case that you have committed violations of the FIFA Code of Ethics 2012. (...) art. 13, art. 15, art. 18, art. 19, art. 21 and art. 22 of the FCE. The list of possible violations may be supplemented as additional information becomes available.”*
- the Final Report dated of December 2018 referred to a potential breach of Article 11 of the 2009 FCE and of Article 27 of the 2018 FCE (bribery) by Mr. Mwamelo.
- The Decision dated of 25 January 2019 taken by the FIFA Ethics Committee found Mr. Mwamelo guilty of infringement of Article 11 (bribery) of the 2009 FCE and banned him for life from taking part in any kind of football-related activity at national and international level (administrative, sports or any other) in accordance with Article 7 let. j) of the 2018 FCE in conjunction with Article 22 of the FIFA Disciplinary Code.

65. As to the “Applicability of time”, the Panel notes that Article 3 of the 2018 FCE stipulates the following: *“This Code applies to conduct whenever it occurred, including before the enactment of this Code. An individual may be sanctioned for a breach of this Code only if the relevant conduct contravened the Code applicable at the time it occurred. The sanction may not exceed the maximum sanction available under the then-applicable Code.”*
66. The Panel must now thoroughly scrutinize the wording of Article 11 of the 2009 FCE, Article 21 of the 2012 FCE and Article 27 of the 2018 FCE: .

Article 11 of the 2009 FCE:

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.*
2. *Officials are forbidden from bribing third parties or from urging or inciting others to do so in order to gain an advantage for themselves or third parties.*

Article 21 of the 2012 FCE:

1. *Persons bound by this Code must not offer, promise, give or accept any personal or undue pecuniary or other advantage in order to obtain or retain business or any other improper advantage to or from anyone within or outside FIFA. Such acts are prohibited, regardless of whether carried out directly or indirectly through, or in conjunction with, intermediaries or related parties as defined in this Code. In particular, persons bound by this Code must not offer, promise, give or accept any undue pecuniary or other advantage for the execution or omission of an act that is related to their official activities and is contrary to their duties or falls within their discretion. Any such offer must be reported to the Ethics Committee and any failure to do so shall be sanctionable in accordance with this Code.*
2. *Persons bound by this Code are prohibited from misappropriating FIFA assets, regardless of whether carried out directly or indirectly through, or in conjunction with, intermediaries or related parties, as defined in this Code.*
3. *Persons bound by this Code must refrain from any activity or behaviour that might give rise to the appearance or suspicion of improper conduct as described in the foregoing sections, or any attempt thereof.*

Article 27 of the 2018 FCE:

1. *Persons bound by this Code shall not accept, give, offer, promise, receive, request or solicit any personal or undue pecuniary or other advantage in order to obtain or retain business or any other improper advantage to or from anyone within or outside FIFA. Such acts are prohibited regardless of whether carried out directly or indirectly through, or in conjunction with, third parties. In particular, persons bound by this Code shall not accept, give, offer, promise,*

*receive, request or solicit any personal or undue pecuniary or other advantage for the execution or omission of an act that is related to their official activities and is contrary to their duties or falls within their discretion.*

2. *Persons bound by this Code shall refrain from any activity or behaviour that might give rise to the appearance or suspicion of a breach of this article.*
3. *Violation of this article shall be sanctioned with an appropriate fine of at least CHF 100,000 as well as a ban on taking part in any football-related activity for a minimum of five years. Any amount unduly received shall be included in the calculation of the fine. The sanction shall be increased accordingly where the person holds a high position in football, as well as in relation to the relevance and amount of the advantage received.*

67. Further, the Panel refers to CAS 2017/A/5003 Jérôme Valcke v. FIFA, whereby it was considered that:

*139. According to well-established CAS jurisprudence, intertemporal issues in the context of disciplinary matters are governed by the general principle tempus regit actum or principle of non-retroactivity, which holds that (i) any determination of what constitutes a sanctionable rule violation and what sanctions can be imposed in consequence must be determined in accordance with the law in effect at the time of the allegedly sanctionable conduct, (ii) new rules and regulations do not apply retrospectively to facts occurring before their entry into force (CAS 2008/A/1545, para. 10; CAS 2000/A/274, para. 208; CAS 2004/A/635, para. 44; CAS 2005/C/841, para. 51), (iii) any procedural rule – on the contrary – applies immediately upon its entry into force and governs any subsequent procedural act, even in proceedings related to facts occurred beforehand, and (iv) any new substantive rule in force at the time of the proceedings does not apply to conduct occurred prior to the entry into force of that rule unless the principle of lex mitior makes it necessary.*

*140. Article 3 FCE (2012 edition) departs from the traditional lex mitior principle by reversing it so that the new substantive rule applies automatically unless the old rule is more favourable to the accused. The CAS has previously held that even if the starting point of Article 3 FCE (2012 edition) is different, the approach is equivalent to the traditional principle of lex mitior (CAS 2016/A/4474, at para. 147).*

68. According to the approach set out in CAS 2017/A/5003, the Panel must determine “*what constitutes a sanctionable rule violation and what sanctions can be imposed (...) in accordance with the law in effect at the time of the allegedly sanctionable conduct*”. In the case at hand, Mr. Mwamelo’s allegedly sanctionable conduct arose before the entry into force of the 2018 FCE.
69. Taking into account that this proceeding concerns events that took place from July to August 2010, the applicable FCE should normally be the 2009 FCE. As mentioned previously, the analogous provision to Article 27 of the 2018 FCE (bribery) in the 2009 FCE is Article 11.

70. The Panel also remarks that Mr. Mwamelo's conduct generally concerns the manipulation of sports results and that the 2018 FCE contains a specific provision about the manipulation of football matches or competitions, i.e. Article 29. Considering that the 2009 FCE should apply to this proceeding, the Panel must underline that the 2009 FCE does not contain any specific provision on the manipulation of sports results that could be equivalent to Article 29.
71. This being said, the Parties have requested the Panel to decide whether the Decision shall be upheld or dismissed. In this respect, the Panel highlights that the FIFA Ethics Committee in its Decision ruled that Mr. Mwamelo breached Article 11 of the 2009 FCE and considered that "*Bribes taken in the context of match manipulation shall be assessed based on the general provision regarding bribery (art. 11 of the FCE 2009), which covers various types of corrupt behavior*". The Panel concurs with the approach taken by the panel in CAS 2017/A/5003 and "*does not purport to adjudicate beyond the matter submitted*". Thus, the Panel finds that the 2009 FCE applies to the present proceedings.

## VIII. MERITS

### A. *De Novo* Hearing

72. Mr. Mwamelo stresses that the FIFA Ethics Committee erred by concluding he did not show proof as the hearing of 25 January 2019 was conducted in his absence. The Panel need not dwell on that complaint. Under Article R57 of the Code, the Panel considers both facts and law *de novo* on appeal. Accordingly, any procedural defects which (may or may not have) occurred in the internal proceedings of a federation are cured by the present arbitration proceedings before the CAS (*see F v. FINA CAS 96/156 and M v. Swiss Cycling CAS 2001/A/345*).
73. Since the Panel is conducting a *de novo* hearing pursuant to Article R57 of the Code, it will decide the appeal on the evidence before it, whether or not the same evidence was available to the FIFA Ethics Committee, subject only to its rejection of any fresh evidence under the discretion vested in it under paragraph 3 of the same Article.
74. For this reason, Mr. Mwamelo's argument concerning any perceived violation of his right to be heard before the FIFA Ethics Committee is dismissed as moot.

### B. Admissibility of the evidence

75. FIFA makes the point that the facts of the case are substantiated by concrete evidence from multiple email exchanges while Mr. Mwamelo claims that the FIFA Ethics Committee misdirected itself by exclusively relying on emails as a basis for its Decision.
76. In such context, the Panel is of the opinion that the origin of the emails is, on the face of it, questionable. When presenting its evidence, the Panel holds FIFA accountable to provide an explanation of the circumstances under which an item of evidence was searched for and seized.



77. During the hearing, FIFA explained that the emails were obtained in the course of an investigation into Mr. Perumal made by public authorities and provided by public prosecutors and included in as enclosures in the Final Report. But when asked by the Panel if it could have produced a statement from Mr. Perumal or called him as a witness, FIFA could not address this inquiry. Instead, it claimed to have enough emails to corroborate its case and the calling of Mr. Perumal was not warranted.
78. Based on the aforesaid, the Panel recognizes a legal paradox as it relates to the admissibility of such emails that, while not raised by the parties, gives the Panel pause. Therefore, for purposes of completeness, the Panel wishes to explore this issue.
79. In doing so, the Panel analyzes whether the admissibility of the emails in the present proceedings would qualify as illegally obtained evidence.
80. In the Panel's view, there is no indication that FIFA obtained the content of the emails in an inadmissible manner. And even if the emails had been obtained in an unlawful manner, the decision of whether or not to admit the evidence should be taken by the Panel through a careful balancing of the interests involved (CAS 2009/A/1879).
81. Indeed, the Panel highlights that Article 152 of the Swiss Civil Procedure Code indicates that a trier of fact shall consider illegally obtained evidence only if there is an overriding interest in finding the truth whereas Article 184 of Switzerland's Federal Code on Private International Law stipulates that the arbitral tribunal shall conduct the taking of evidence. Therefore, arbitrators have the power to rule on the admissibility of evidence, particularly since the CAS's long-lasting jurisprudence has established that a sport federation or an arbitration tribunal is not prevented from taking evidence into account, which may prove inadmissible in a civil or criminal state court (CAS 2013/A/3297 and CAS 2009/A/1879).
82. In such respect, the Panel recalls the approach in CAS 2011/A/2425, according to which evidence, possibly unlawfully obtained, is admissible considering the limited investigative powers of sports bodies in comparison to public authorities.
83. Furthermore, the Panel makes reference to CAS 2013/A/3297, whereby it was established that "*steps must be taken, in regard to the public interest in finding the truth in match-fixing cases and also in regard to the sport federations' and arbitration tribunals' limited means to secure evidence, to open up the possibility of including evidence in the case although such evidence could potentially have been secured in an inappropriate manner so long as the inclusion of such evidence in the case does not infringe any fundamental values reflected in Swiss procedural public policy.*" In this regard, the Panel considers that any breach of Mr. Mwamelo's rights would be justified by a preponderant interest and that the successful battle against match-fixing constitutes not only a private interest of FIFA but also a public interest (CAS 2009/A/1879).
84. The Panel is of the opinion that FIFA did not violate the duties of good faith and respect for the arbitral process, noting that the emails constitute admissible evidence for the purpose of the present proceedings.

**C. Consideration of Mr. Mwamelo’s submission about the authenticity and the completeness of the emails**

85. The Panel notes that Mr. Mwamelo challenges the authenticity and the completeness of the emails, claiming that the FIFA Ethics Committee failed to consider the integrity of electronic evidence in its Decision and that his mailbox was deleted after being tampered with.
86. According to Article 8 of the Swiss Civil Code, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact, unless the law provides otherwise. Hence, Mr. Mwamelo has the burden of proving that his mailbox was hacked and the emails were not authentic.
87. While Mr. Mwamelo raised an argument about the integrity of the emails, he did not bring any evidence in support of his mere allegations that they were not authentic or were manipulated, altered or destroyed by FIFA. Mr. Mwamelo argued that some email archives were destroyed deliberately by FIFA to hide evidence. While that could have been a fair assumption on his end, the Panel notes that Mr. Mwamelo did not try to find correlations between the alleged missing emails and the known events. He did not try to explain the content of the alleged deleted emails or the type of evidence FIFA was allegedly hiding. Mr. Mwamelo also failed to offer any explanation as to why FIFA would have attempted to shield some of his conversations with Mr. Perumal. Mr. Mwamelo does not contend to have so far attempted to recover the electronic communications that were allegedly missing. In this context, the Panel has absolutely no grounds to suspect that FIFA deleted significant evidence and that the emails it adduced were incomplete and not authentic. Otherwise, the Panel would be simply deciding a case based on speculation.
88. Moreover, Mr. Mwamelo, confirming that he was the owner of certain email accounts which were used in the exchange of correspondence with Mr Perumal, did not present evidence to justify the assumption that the emails have been tampered with and, as previously mentioned, he did not even specify which email account was hacked or used by non-authorized persons.
89. The Panel finds there is simply no evidence to back up his allegations while his line of reasoning appears contradictory on several fronts.
90. On a different note, Mr. Mwamelo failed to prove that the emails adduced by FIFA as evidence in the present proceedings were “cherry-picked” as asserted. And even if Mr. Mwamelo had successfully established that FIFA indeed selected some conversations, the Panel considers that FIFA was entitled to choose the evidence upon which it would rely to establish the charges laid against Mr. Mwamelo.
91. In sum, the Panel finds that the emails are credible and constitute an accurate record of the conversations between Mr. Perumal and Mr. Mwamelo. The Panel is not convinced by the explanations provided by Mr. Mwamelo and therefore, has no reason to believe that the emails were written by non-authorized persons, were taken out of context or

that he did not mean what he wrote in the emails. On top of this, Mr. Mwamelo did not substantially deny the content of the emails.

92. While the Panel assigns a great deal of probative value to the corroborative evidence available in this file, it must however admit that FIFA adduced a minimum amount of evidence. For instance, FIFA could have produced a statement from Mr. Perumal or called him as a witness.
93. Nevertheless, the Panel believes Mr. Mwamelo did not make any convincing argument to prove that FIFA acted improperly in relying on the emails in the course of the disciplinary proceedings.
94. The Panel is minded that Mr. Mwamelo chose not to give evidence, or explain the inconsistent statements made to the FIFA Ethics Committee that led it to conclude that he lacked credibility. There was no evidence to explain or rebut the matters on which the FIFA Ethics Committee relied to reach its conclusion. Accordingly, there is no reason for this Panel to call into question those conclusions.

**D. Is Mr. Mwamelo an official pursuant to the FCE applicable at the time of the relevant events?**

95. At the outset, the Panel notes that Article 1 of the 2009 FCE provides that the FCE applies to all “officials”, such as board members, committee members and any other persons responsible for administrative matters in FIFA, a confederation, association, league or club.
96. Mr. Mwamelo was the Treasurer of the FAZ from 7 May 2008 to 18 March 2016 and consequently, the Panel considers that he was an “official” within the meaning of Article 1 of the 2009 FCE at the time of the relevant events.
97. Mr. Mwamelo being an official, the FCE shall apply to him and in this context, the Panel must therefore examine whether Mr. Mwamelo violated the FCE rules.

**E. Is there ambiguity in relation of the applicable FCE?**

98. Mr. Mwamelo submits that, throughout the proceedings, FIFA referred to different provisions to support the charges against him and therefore, he could not properly defend himself appropriately as he didn’t know which law was specifically applicable to his case. FIFA contends that there is no ambiguity since intertemporal issues in the context of disciplinary matters are regulated by the general principle *tempus regit actum*, according to which a conduct is governed by the law that is in effect when the conduct occurs.
99. The Panel accepts that while the charge was not always particularised in relation to a particular provision, FIFA sufficiently explained how the email conversations related to particular matches and behavior from Mr. Mwamelo.

100. In this respect, the Panel notes that the requirements of procedural fairness mandate that Mr. Mwamelo knew the case made out against him. Here, the case to be met was set out in the charge. The Panel observes that Mr. Mwamelo did not assert that he did not know of the case to be met. He presented a written defence to the FIFA Ethics Committee and he was afforded one adjournment to provide his position on the Final Report, prepare his case prior to the hearing of 25 January 2019 and did not ask for further time. The Panel concludes that the charge and the case that Mr. Mwamelo had to meet were sufficiently particularised and with ample opportunity to respond.
101. No attempt has been made before this Panel, by which time he clearly knew the case against him, to cure any deficiency or call evidence. Mr. Mwamelo had the opportunity to present his defence to the Panel and to take account of the case made against him. Any assertion otherwise is, to the Panel, without merit.

**F. Has Mr. Mwamelo committed a disciplinary rule violation?**

102. The crux of the case against Mr. Mwamelo is that he conspired (or at least attempted to conspire) with Mr. Perumal to manipulate the results of international matches in exchange for his involvement or participation in the (attempted) manipulation of matches.
103. In considering the primary subject of the email conversations between Mr. Mwamelo and Mr. Perumal, the FIFA Ethics Committee concluded that Mr. Mwamelo breached Article 11 par. 1 of the 2009 FCE.
104. Mr. Mwamelo now requests the Panel to set aside “*the sanctions imposed*”, which are a life ban from taking part in any football-related activity at national and international level and a fine of CHF 10,000. FIFA, for its part, seeks full confirmation of the Decision. In view of these diverging positions, the Panel must determine whether Mr. Mwamelo violated Article 11 par. 1 of the 2009 FCE.

**i. Burden and standard of proof**

105. There is no burden of proof specifically allocated prior to the 2012 FCE. As explained in CAS 2016/A/4501, “*in cases related to alleged ethical violations prior to the entry into force of the 2012 edition of the FCE, for example in CAS 2011/A/2625, CAS panels have nevertheless held that FIFA carries the burden of proof by analogy to article 99(1) of the FIFA Disciplinary Code*”. Since 2012, however, the FCE has added a provision, which reads as follows: “*The burden of proof regarding breaches of provisions of the Code rests on the Ethics Committee.*”
106. Hence, FIFA has the burden of proof to establish that Mr. Mwamelo is guilty of bribery pursuant to Article 11 of the 2009 FCE. The standard, as agreed upon by the Parties and as set out in the FCE, is that of comfortable satisfaction, bearing in mind the seriousness of the offence committed and after evaluating all of the evidence. This standard has been confirmed in other cases by the CAS CAS 2017/A/5086, and CAS 2016/A/4501).

**ii. Article 11 of the 2009 FCE**

107. Pursuant to Article 11 of the 2009 FCE, officials are forbidden from accepting bribes and must refuse any potential involvement in corrupted practices.
108. Mr. Mwamelo's submissions in this proceeding centers on the FIFA Ethics Committee exclusive reliance on emails as a basis for its Decision, arguing that said emails do not prove that he violated the FCE. In fact, Mr. Mwamelo claims that no proof could attest that he breached the 2009 FCE and that the conclusions of the Final Report/investigatory chamber were principally based on assumptions.
109. The reasons in Mr. Mwamelo's statement of appeal and appeal brief refer, in essence, to FIFA Ethics Committee's failure to disclose the full contents of the emails and to examine the integrity of the electronical evidence. Mr. Mwamelo also alleges that his mailbox was deleted after being tampered with and that FIFA neither established the provenance of the emails, nor identified the user account or the computer address that was used to transmit the messages. FIFA counters that Mr. Mwamelo confirmed the ownership of his email address that was used in the exchanges with Mr. Perumal during the investigatory proceedings. On this point, the Panel observes that on 22 November 2017 (during the investigatory proceedings), the chief of investigation of the FIFA Ethics Committee sent Mr. Mwamelo a questionnaire, to which he replied on 10 April 2018.
110. Additionally, Mr. Mwamelo contends that the requirements set out at Article 11 of the 2009 FCE are not met. In this respect, the Panel notes that Article 11 of the 2009 FCE establishes three cumulative requirements to substantiate a violation: (1) a gift or advantage must be offered, promised or sent to an official; (2) the official must be incited to breach some duty or to behave dishonestly for the benefit of a third party; (3) the official has breached the obligation to refuse (CAS award 2011/A/2426).
111. To analyze the charge of bribery, the Panel must turn its attention to the wording of Article 11, which reads as follows:
  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.*
  2. *Officials are forbidden from bribing third parties or from urging or inciting others to do so in order to gain an advantage for themselves or third parties.*
112. The Panel will address each point in turn:
113. First, as it concerns gifts or other advantages offered, promised or sent, Article 11, para. 1 holds a wide-ranging scope of application by stipulating that officials may not accept "any gifts or other advantages that are offered, promised or sent". As explained in CAS 2011/A/2426, "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",

adding that “*any other benefit, even not economically quantifiable (for instance, a career advancement)*”.

114. On one hand, FIFA asserts that in the email dated on 19 July 2010, Mr. Mwamelo both requested and accepted a payment of USD 5,000 from Mr. Perumal for having selected the players of the Zambia U23 team “who listen to orders”. FIFA adds that Mr. Perumal also offered an amount of USD 100,000 to Mr. Mwamelo and the team, as well as USD 30,000 for any match after the Tournament. On the other hand, Mr. Mwamelo contends he cannot be guilty of bribery since he never received any payment from Mr. Perumal or his company, and that there was no offer of money, gifts or other compensation to guarantee a specific outcome in “any of the matches that we participated in”. Mr. Mwamelo asserts that the FIFA Ethics Committee ignored this important line of inquiry in its Decision. When asked by the Panel if it had any evidence that Mr. Mwamelo received the money, FIFA explained that the proof lies in the emails dated of 19-20 July 2010 and 31 August 2010.
115. FIFA further considers that Mr. Mwamelo accepted money namely by writing “*I just pocketed it*” in exchange of selecting *Zambian* players that would “*listen to orders*”. FIFA also refers to the email communications of 19 and 20 July 2010 where Mr. Perumal and Mr. Mwamelo exchanged the following messages:
- Mr Perumal: “*Please email me the breakdown on official Zambia letter head and signed by the general Secretary in order to get the funds released from my company. Or you can choose to pocket the money in Cairo if there is no such letter. It will be between the 2 of us.*”
- Mr Mwamelo: “*Dear Mr Wilson, Find attached the breakdown of costs to be incurred by the FA. Can you send the USD 5,000 as discussed? Regards Boniface*”.
116. While it is possible that Mr. Mwamelo never received any payment from Mr. Perumal either in cash or bank transfer or any other form of payment from him directly or through his agents or another third party acting on his behalf before or during or after the Tournament, the Panel recalls that the advantage does not *need to materialize as it is sufficient that someone “offers” or “promises”* whereas the “*nature of the advantage (...) and the identity of the recipient of the advantage (...) are irrelevant under article 11 para 1 FCE*” (CAS 2011/A/2426).
117. Regardless, it is expressly clear to the Panel that the relevant emails of 19-20 July 2010 and 31 August 2010 constituted an “offer” and offering an advantage is included in the scope of Article 11 of the 2009 FCE, which prohibits “*any gifts or other advantages that are offered, promised or sent*”.
118. In this respect, and when asked by the Panel at the hearing if he agreed to accept money from Mr. Perumal on this occasion, Mr. Mwamelo answered: “*I don’t remember, but maybe*”. The Panel finds Mr. Mwamelo’s declaration as lacking credibility.
119. Given the content of the email exchanges, the Panel is comfortably satisfied that undue advantages were offered to Mr. Mwamelo in exchange of his contribution to manipulate international matches.

120. Hence, the Panel accepts that Mr. Mwamelo was offered and promised an advantage of some sort from Mr. Perumal and that, accordingly, the first requirement of Article 11 para. 1 FCE is met.
121. Second, as it concerns the incitement to breach duty or behave dishonestly for the benefit of a third party, the Panel notes that such requirement concerns the offeror's intent to the extent of the purpose for which he offers an advantage to the offeree as an incitement to breach duties or to engage in dishonest conduct for the benefit of a third party. As established in CAS/2011/A/2426, "*the offeror is not necessarily the beneficiary of the offence and (...) it is enough for the offeror to "incite" (i.e. to encourage, foment, instigate or provoke) such behaviour.*".
122. FIFA argues that the email exchanges between Mr. Mwamelo and Mr. Perumal demonstrate that Mr. Mwamelo was involved in the selection of the Zambia U23 team for the Tournament who would listen to orders.
123. Mr. Mwamelo contends that he never attempted to influence the selection of the Zambia U23 team that participated in the Tournament, that he never had any input in relation to the team's selection or training program before or during the Tournament, and that the team played all its matches in the Tournament "competitively without any undue influence from anybody within the Zambian delegation or anyone else".
124. The Panel carefully considered the written answers provided by Mr. Mwamelo on 10 April 2018 to the chief of investigation of the FIFA Ethics Committee during the investigatory proceedings. The Panel highlights the following answers provided by Mr. Mwamelo:

***Question 7***

*The communication with Mr Wilson was about football promotion where his company was offering to secure opponents for us during international breaks. Our communication ended soon after the Four Nation Tournament in Egypt. During the course of the communication the kind of relationship was that of principal and agent where he offered his services to organize matches on behalf of the Zambian FA although this was offer was informal as there was no any signed agreement to this effect.*

***Question 8***

*I never spoke to any players because as a non-member of the technical bench it was outside my jurisdiction to dictate the team's approach to specific matches. I also had nothing to do with the players' selection for any matches as this was a prerogative of the coach. My understanding from the organizers' point of view was that we needed to field the strongest possible team in order to raise the profile of the tournament and which I believe the technical bench did despite not winning the tournament. The performance of the team was highly competitive and they exhibited high levels of fair play throughout the tournament.*

**Question 9**

*I never participated in the selection of players as well as giving instructions to play in a certain manner. All these were left to the coach to decide in terms of technical formation and approach for any particular match. It was also a sole responsibility of the coach and his assistants to decide the players to feature for matches.*

**Question 10**

*My understanding was that he needed someone who could assist him secure and conduct business with the Zambian FA and the people who recommended me to him probably thought I was the right person as I dealt with all sorts of Players Agents, Match agents and other people who desired to conduct business with the Zambian FA.*

**Question 11**

*I did my part by traveling because he insisted that I should also travel for the tournament. My inclusion on the travelling delegation was last minute action. The circumstances beyond my control were that we didn't win the tournament as expected. The selection of the team and the tactics employed in the matches were also outside my jurisdiction and control.*

125. In addition, the Panel notes the following communications between Mr. Mwamelo and Mr. Perumal:

- On 15 July 2010, Mr. Mwamelo sent the following email to Mr. Perumal titled "Urgent request for team list":

*We have initially selected a provisional 21 man squad and a further 5 are being considered to be assessed for possible inclusion. These are the players who are all Under 23 and qualify to represent the Country in the Olympic games. I have also ensured that players who have been picked are only those who will listen to orders. However you need to note the following:*

*1) The normal procedure is in cases where we receive an invitation like this one and there are no appearance fees for the team, we require that costs that we incur are borne by the organisers of the tournament. You will therefore need to send us funds to enable us camp the team for a week in residential camp in order to pick the final team, pay for their travel insurance and clearance fee with the National Sports Council of Zambia. This requirement is there because there are times when we have started preparing the team on the basis of an invitation and later on the tournament is cancelled at last minute and meanwhile we would have already incurred costs. Therefore I have asked the Finance Department to prepare the projected cost of team preparation.*

*2) We need the rules and regulations of governing the tournament and whether there will be any prize money*



3) *The National Sports Council of Zambia would like to know which are the other teams participating in the tournament:*

*Meanwhile we have confirmed our friendly with Bahrain on the 11th of August, which is a FIFA day.*

*We look forward to working with you.*

- On 18 July 2010, Mr. Mwamelo sent the following email to Mr. Perumal:

*I have done my work diligently by picking boys who will listen to orders. I had to do it discreetly because such schemes are illegal in Zambia and if one is caught, it's a life sentence in jail. This was the most difficult part which I have managed to sort out.*

- On 28 July 2010, Mr. Perumal wrote to Mr. Mwamelo the following:

*Mr Perumal: "Our agreement was that you have to bring players who are ready to work and listen to instructions. I get info from my people that this team is dying to win every match. This is not what u promised me. You told me u will hand pick players who will work with me."*

*"I am not a holiday provider. I bring teams here to make money. N because of your negligence I lost lots of money. If you can bring me 6 or 7 boys who are ready to do business we can work on something.*

- On that same day, 28 July 2010, Mr. Mwamelo responded the following to Mr Perumal:

*Raj - this is unfair. The 4 boys I worked with played according to instructions but the Cameroon team was just too poor they could not even beat a school boy team. Even with the help they had from the referees they still could not beat a team which had boys who were tired from a long journey. I did my part and my understanding was that it did not work out due to circumstances beyond my control. I believe in life we need to keep promises. I believe I have been unfairly treated here.*

- On 31 August 2010, Mr. Mwamelo wrote the following correspondence to Mr. Perumal:

*Dear Raj, Hope you are okay. I am in a bit of a fix – while our arrangement in Egypt did not go as expected, there were 4 players whom I had spoken to before we left Zambia and they played according to instructions. The unfortunate thing is that because they played so badly in Egypt, they have been dropped from the national team. Their biggest complaint is that because they played according to instructions, it has affected their international careers and yet I did not even give them any money.*

*Two of them (the players) actually suspect that maybe I was given money but I just pocketed it. I am therefore humbling requesting if you can just send me something*

*so that I give them to keep quiet. My fear is that if they continue grumbling, the stories will leak out and I will be in similar situation like the officials of the Zimbabwe Football Federation. In future I promise, we will be better organized.*

126. The Panel notes that Mr. Mwamelo admitted in his email dated of 18 July 2010 that he had selected - as instructed by Mr. Perumal - only Zambian players who were willing to listen to orders and that his conduct was a criminal offence in Zambia subject to a life sentence. However, Mr. Mwamelo expressed to the Panel at the hearing that he didn't remember sending said email to Mr. Perumal.
127. The Panel also noticed that the following email of 28 July 2010 was sent from a different account (i.e. a Yahoo account), which the Panel finds suspicious in itself given the context of the email.
128. In this regard, the Panel asked Mr. Mwamelo at the hearing whether this email account belonged to him and he testified as "not knowing this address". However, the Panel points out that Mr. Mwamelo provided an answer to question 11 on 10 April 2018 during the investigation proceedings in which he recognized having written this email – which was sent from the Yahoo account - claiming that his declaration "I did my part" simply meant that Mr. Perumal wanted him to travel for the Tournament. The Panel is not convinced by such explanation as this email specifically concerns the match's results and players' performance. Moreover, the Panel remarks that the Secretariat to the Investigatory Chamber of the FIFA Ethics Committee sent an email to Mr. Mwamelo using this Yahoo account on 4 April 2018. The Panel finds Mr. Mwamelo's assertion that he did not know this address as utterly lacking in credibility, especially since he replied on 10 April 2018 to the email of the Secretariat to the Investigatory Chamber of the FIFA Ethics Committee from the very same Yahoo account.
129. Also, when Mr. Mwamelo was required to explain what he meant by "*they played according to instructions*", he claimed that he never spoke to the players and had nothing to do with their selection for any matches during the Tournament. With respect to the selection of players, the Panel references the email sent from Mr. Mwamelo to Mr. Perumal on 15 July 2010. According to this email, Mr. Mwamelo was involved in expressly involved in or knowledge of the selection of the team members (for instance: "*We have initially selected a provisional 21 man squad and a further 5 are being considered to be assessed for possible inclusion*"). And interestingly, the Panel notes that Mr. Mwamelo did not deny sending this email throughout his oral and written submissions. Mr. Mwamelo simply argued that the FIFA Ethics Committee erred by concluding that he had failed to prove his non-involvement in the selection of players since the hearing dated of 25 January 2019 was conducted in his absence. The Panel points that, despite having given him the opportunity to prove his non-involvement at this hearing, Mr. Mwamelo simply failed –(again) to offer any explanation whatsoever in this respect.
130. Furthermore, the Panel notes that the EWS report that more goals should have been scored in the match of 27 July 2010 against Cameroon as Cameroon should have won by at least two goals. While FIFA details the match of 27 July 2010 as a "*failed attempt at match manipulation for betting purposes*", the Panel observes that Mr. Perumal sent an email to Mr. Mwamelo on 28 July 2010, blaming him of breaching an agreement to

bring players who were ready to work and listen to instructions. For the Panel, this is not a coincidence. The Panel is of the opinion that Mr. Mwamelo did not provide any plausible explanations that would contradict the content of the conversations. The Panel, therefore, holds that it has been convincingly established that Mr. Mwamelo was contacted before the match of 27 July 2010 by Mr. Perumal who offered him money to manipulate its result.

131. The Panel acknowledges Mr. Mwamelo's inferences that he communicated with Mr. Perumal for football promotion because "*his company was offering to secure opponents for us during international break*", that he never participated in the selection of players as this was the coaching staff's sole responsibility and that his email account was hacked. But inferences – without any factual or tangible support – cannot be relied upon. Mr. Mwamelo did not provide any evidence or documentation to prove his non-involvement in the team selection. He didn't even specify which email account was allegedly hacked or used un-authorised. Mr. Mwamelo should have brought *some* evidence in support of his mere allegations.
132. Mr. Mwamelo was offered money to execute an act and this is reflected in the emails' exchanges, namely "*We can pay you a sum of 5,000 preparation fee as soon as you arrive in Cairo. If as agreed you and your team give us your total co-operation you and your team stand to go home with 100, 000 USD*". Mr. Perumal expected specific matches' results from Mr. Mwamelo, notably when Mr. Perumal wrote: "*I bring teams here to make money. N because of your negligence I lost lots of money*" and "*Our agreement was that you have to bring players who are ready to work and listen to instructions. I get info from my people that this team is dying to win every match. This is not what u promised me. You told me u will hand pick players who will work with me*".
133. The Panel also observes that, in the email dated of 31 August 2010, Mr. Mwamelo appears to have requested money from Mr. Perumal to keep two unidentified players quiet. Mr. Mwamelo did not provide any explanations in this regard.
134. Based on the foregoing, the Panel finds that Mr. Mwamelo was aware and understood Mr. Perumal's intention and purpose. Indeed, the Panel is of the opinion that Mr. Mwamelo must have known that he was being incited by Mr. Perumal to breach his duties as a football official of the FAZ and to behave dishonestly by being offered and accepting to receive money.
135. Therefore, the Panel finds that the second requirement is met to its comfortable satisfaction.
136. The third requirement relates to the obligation for an official to refuse an improper offer instead of simply omitting to act upon it. It is well-established that "*an official cannot escape liability by remaining inactive or silent in response to an attempt to corrupt him*" (CAS 2011/A/2426).
137. The Panel recalls that Mr. Perumal offered USD 5,000 to Mr. Mwamelo as an "appearance or preparation fee" for the Tournament and promised an additional USD

100,000 for his total cooperation as well as USD 30,000 for any match after the Tournament.

138. The Panel in fact notes that Mr. Mwamelo never rebutted any of the messages sent by Mr. Perumal about the payment of USD 5,000, USD 100,000 and USD 30,000. On the contrary, Mr. Mwamelo clearly engaged in discussions with Mr. Perumal relating to his involvement in match-fixing. On several occasions, Mr. Mwamelo expressed that he was fully onboard with the scheme proposed by Mr. Perumal.
139. The Panel also observes that in his email of 21 July 2010, Mr. Perumal declared to Mr. Mwamelo that *“Your 5,000 is safe and sound. We will handover to you once you arrive”*. Thus, Mr. Mwamelo not only indulge in a behavior that potentially exert an influence on matches’ result, but he also failed to report bribery attempts. By doing so, Mr. Mwamelo did not act in the best interest of FIFA and the Panel finds that Mr. Mwamelo breached his obligation to refuse.
140. The fact that Mr. Mwamelo remained silent after having been approached by Mr. Perumal, who was looking to fix matches, constitutes a breach of the integrity expected under the FCE.
141. Mr. Mwamelo did not provide any explanation for his failure to notify FIFA about the improper offers. In this respect, the Panel finds that Mr. Mwamelo’s silence suggests that he had, at some point, accepted the idea of manipulating match results.
142. Hence, the Panel is comfortably satisfied that Mr. Mwamelo did not actively and unambiguously refused the improper offer from Mr. Perumal. Accordingly, the Panel finds that the third requirement of article 11 para. 1 FCE is met to its comfortable satisfaction.

**iii. Conclusion with regard to Article 11 para. 1 of the 2009 FCE**

143. Despite his criticisms, Mr. Mwamelo had the opportunity to correct or explain his allegation in the hearing and chose not to do so. It was open to Mr. Mwamelo to call evidence to cure the complaints of procedure and evidence and he has not done so.
144. It follows that, in the absence of any proper reason to reject the evidence that he gave before the FIFA Ethics Committee, that evidence stands. To the extent that his submissions before this Panel require evidence and are not supported by evidence, the Panel cannot consider those submissions.
145. The Panel finds that Mr. Mwamelo’s statements were not sufficiently convincing to address and contradict the available evidence on file and the conclusions of the FIFA Ethics Committee. It follows that Mr. Mwamelo has not succeeded in establishing any of the grounds of appeal against the bribery charge.

**G. Sanctions**

146. As previously established, the Panel must determine “*what constitutes a sanctionable rule violation and what sanctions can be imposed (...) in accordance with the law in effect at the time of the allegedly sanctionable conduct*” (CAS 2017/A/5003).
147. At the time of Mr. Mwamelo’s sanctionable conduct, the 2009 FCE, the 2009 edition of the FIFA Disciplinary Code (“2009 FDC”), and the 2010 edition FIFA Statutes were the laws in effect. Hence, this case shall be assessed in accordance with these rules.
148. The Panel remarks that Article 17 of the 2009 FCE in combination with Article 59 of the 2010 FIFA Statutes as well as Articles 10, 11, 15, 22 and 32 of the 2009 FDC cover the sanctions that can be imposed, which read as follows:

*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.*

149. With respect to sanction, the Panel endorses the position articulated in CAS 2010/A/2172, where it was stated “*that match-fixing, money-laundering, kickbacks, extortion, bribery and the like are a growing concern, indeed a cancer, in many major sports, football included, and must be eradicated. The very essence of sport is that competition is fair; its attraction to spectators is the unpredictability of its outcome (...) It is therefore essential in the Panel’s view for sporting regulators to demonstrate zero tolerance against all kinds of corruption and to impose sanctions sufficient to serve as an effective deterrent to people who might otherwise be tempted through greed or fear to consider involvement in such criminal activities. Match officials are an obvious target for those who wish to make illicit profit through gambling on match results (or indeed on the occurrence of incidents within matches). They must be reinforced in their resistance to such criminal approaches. CAS must, applying naturally to considerations of legality and of proportionality, respect in its awards the approaches of such regulators devoted to such virtuous ends.*”

**ii. What is the appropriate sanction?**

150. The Panel heard submissions as to the sanctions imposed on Mr. Mwamelo and on the appropriateness and proportionality of those sanctions, taking into account individual circumstances, such as his age, his dedication to the sport, the effect of the deprivation of his livelihood on himself and his family, his understanding of the consequences of bribery/match-fixing, his abilities as a football official, as well as the amount of the fine imposed.
151. For the Panel, the principle of proportionality is clear. The sanction must be proportionate, and the object must be to make the punishment fit the crime. This stems from the well-established CAS jurisprudence (see CAS 2007/A/1217, CAS 2012/A/2762 and CAS 2013/A/3139) according to which a sanction must be in line with the seriousness of the infringement and must not be excessive or unfair. Whether the sanction is proportionate depends upon all the circumstances of the individual case.
152. In addition, the principle of proportionality dictates that the most extreme sanction must not be imposed before other less onerous sanctions have been exhausted (CAS 2011/A/2670). The Appealed Decision, applying a life ban, was based on a variety of factors, notably the seriousness of Mr. Mwamelo’s breach, FIFA’s “*zero tolerance policy against all kinds of corruption*”, the need for sanctions to serve as an effective

deterrent to other individuals, the need to maintain the integrity of the sport, and the threat that corruption poses to sport and sports organisations. In imposing a life ban from football-related activities (notwithstanding an additional fine), Mr. Mwamelo is subject to the strongest sanction FIFA could impose.

153. In assessing whether this case is one deserving of the strongest sanction possible, assistance can be obtained from looking at jurisprudence in the sport of football and other sports involving match manipulation, although it is well-established (and uncontested by the Parties) that there is no principle of binding precedent (*stare decisis*) at CAS.

154. There are numerous CAS cases which are informative in this context. In particular, the Panel took note of several cases involving match manipulation and sport-fixing decided by CAS between 2009 and 2017:

- **CAS 2009/A/1920:** Mr. Aleksandar Zabrcanec, a club president, was found to have manipulated a match in a continental football competition after violating the principles of integrity and sportsmanship pursuant to Article 5 of the UEFA Disciplinary Regulations. The Panel upheld his lifetime ban from football activity.
- **CAS 2010/A/2172:** Mr. Oleg Oriekhov, a referee was found to have failed to report an approach to manipulate a match in a continental football competition and banned for life from football activity. The Panel considered said offence was serious enough to justify a lifetime ban.
- **CAS 2017/A/5173:** Mr Joseph Odartei Lamptey, a referee was found to have manipulated a match in an international football competition and therefore guilty of violating Article 69(1) of the FDC. He was banned for life from football activity.

155. Moreover, the Panel notes FIFA's assertion that the sanction imposed on Mr. Mwamelo is in line with the previous practice of the FIFA Ethics Committee in dealing with bribery cases concerning match manipulation, most notably:

- **Mr. Oden Charles Mbaga:** a former international referee and Tanzania Football Association official, was found guilty of having taken bribes at least in the amount of USD 80,000 connected with match manipulation, in violation of Article 11 of the 2009 FCE (Bribery). On 25 January 2018, he was banned for life and a fine of CHF 200,000 was imposed.
- **Mr. Kokou Hognimon Fagla:** a former international referee, guilty of having taken bribes at least in the amount of USD 500, in violation of Article 11 of the 2009 FCE (Bribery). On 24 January 2018, he was banned for life and a fine of CHF 3,000 was imposed.
- **Mr. Ibrahim Chaibou:** a former international referee, guilty of having taken bribes at least in the amount of USD 127,000, in violation of Article 21 of the

2018 FCE (Bribery). On 18 September 2018, he was banned for life and a fine of CHF 200,000 was imposed.

156. A review of the key features drawn from the aforementioned jurisprudence is noted by the Panel. In particular, the Panel observes that in all the above cases where a referee or an official was approached to manipulate a match, the sanction resulted in a life ban with a fine.
157. The Panel also considered sanctions imposed on players/athletes for violations related to match-fixing, that in many incidents, lifetime bans have been issued (plus partly a significant fine up to USD 250,000). As an exemplary document/source, the Panel refers to the webpage: <https://www.tennisintegrityunit.com/investigations-and-sanctions> which provides a good and representative overview of decisions regarding players/athletes who were found guilty of soliciting or facilitating any player to not use his or her best efforts in any event. A few of said lifetime ban decisions mentioned therein have subsequently been upheld by CAS (see e.g. CAS 2011/A/2490). Nevertheless, there are decisions in the area of match-fixing where athletes were sanctioned with significantly lower sanctions (see, for example, the two 7-year sanction cases CAS 2017/A/4956 & 2015/A/4231).
158. The aforementioned relatively large number of decisions specifically in the area of match-fixing (regardless of the numerous decisions about other forms of bribery and corruption) causes the Panel to highlight the following findings at this point.
159. As already stated above, precedents might provide helpful guidance but each case must be decided on its own facts and, *“although consistency of sanctions is a virtue, correctness remains a higher one: otherwise unduly lenient (or, indeed, unduly severe) sanctions may set a wrong benchmark inimical to the interests of sport”* (CAS 2011/A/2518, para 10.23). The jurisprudence in this area has not sought to set a formal tariff, equivalent, for example, to that exemplified in CAS 2013/A/3327 in the anti-doping area concerned with degree of fault. As such, the FIFA sanctioning regime for match-fixing is not a hybrid strict liability type system of the type seen in anti-doping, whereby a specific length of sanction is mandated as a “starting point” in certain cases, unless the individual responsible for that conduct can raise evidence to reduce the length of that sanction.
160. In light of these principles, the Panel does not view the indicated case law (with a tendency towards lifetime bans) as setting a floor for or – spoken in the language of CAS 201/A/ 4956 – *“...as mandating a sanction of permanent ineligibility for match-fixing”*. Moreover, the Panel adds that a lifetime ban should not be the starting point for consideration of a period of ineligibility.
161. As long as there are no corresponding clear rules on the respective federation level (e.g. a standardization/categorization of forms of particular forms of match-fixing to be specifically sanctioned with a lifetime ban) or more broadly applied as in the global approach to anti-doping seen in the WADA Code, a lifetime ban can never be the inevitable consequence or automatic sanction to be imposed in every case of match-fixing. Any other approach in this regard would be inconsistent with the principles of



proportionality as well as predictability and legality which are satisfied whenever the disciplinary rules have been properly adopted, describe the infringement and provide, directly or by reference, for the relevant sanction (see CAS 2018/A/5864). In other words, to adopt such an approach would represent an unjustified application of a rule which in fact affords the Panel a very wide margin of discretion (from a caution to a lifetime ban; see Article 11 of the 2009 FCE in connection with Art 69 of 2009 FDC). Thus, the given circumstances in each case remain the decisive factor for the question of whether a lifetime ban can be considered an appropriate and proportionate sanction in any given match-fixing case.

162. Looking at the present case, the Panel now deals with its facts in more detail. With respect to the **aggravating factors**, the Panel considers (i.e.) the following:

- The email conversations with Mr. Perumal clearly set out his pre-planned manipulation of football matches;
- Money was offered in exchange for the above activities;
- His attempt to involve young players (the Appellant himself calls them “boys”) of the Zambia U23 team during the Tournament, namely by requesting their assistance to manipulate the outcome of matches. He functioned as a guardian of the young players of the FAZ (U23), whose trust he exploited under their endangerment and involvement;
- He concealed the purpose of his messaging and provided explanations which were not credible and not accepted by the FIFA Ethics Committee;
- He denied any wrongdoing;
- He did not express any remorse or contrition;
- The email conversations demonstrate Mr. Mwamelo’s willingness to also participate in the paid manipulation of future games;
- There is no indication that Mr. Mwamelo was pressured or coerced into this corrupt behaviour, as the evidence shows that he entered it willingly, with the view to maximising profits through greed.

163. Considering these circumstances, the Panel has no doubt that the Appellant’s misconduct warrants a severe sanction and indeed justifies a serious consideration of a lifetime ban. In particular, any action or attempt to influence or convince players (let alone a U23 team) to actively engage in match manipulation is intolerable, and represents conduct which must be banished from the world of sport.

164. However, the Panel, obliged to consider all circumstances at hand and in the absence of a more specific sanctioning regime as indicated above, may not overlook potential **mitigating factors**. In this context, the Panel observes the following:

- the amounts at stake are relatively small (at least in comparison to other cases);
- the singularity of the occurrence of the attempted match manipulation, i.e. in the absence of any evidence to the contrary, the case concerns one attempted match manipulation and the Appellant’s first offence;
- the isolated nature of Mr. Mwamelo’s actions;

- the idea of match manipulation was not incited by the Appellant, but rather by Mr Perumal; and

165. Further, and in the absence of any submissions or convincing evidence in this regard, the Panel may have doubts as to whether the Appellant's behaviour must necessarily be automatically held to the highest standards, as stated by the Respondent. The Panel notes that at the time of the offence the Appellant held the position of FAZ Treasurer. While this, on any reasonable interpretation, makes him an "official" of the FAZ, it is not particularly clear how the Appellant's position should be classified beyond this in terms of his seniority in the world of football. How should his position be compared, for example, to those of the appellants in various CAS cases who could undoubtedly be counted among the most senior figures in sport on a continent or worldwide? How should his position be compared to that of an international referee or an elite professional and role model, for whom application of the highest standards would likely be required? The Panel has not found anything in the Parties' submissions to adequately answer these questions. In any case, said highest standards can only be applied when they are fully proven.
166. The Panel has also not overlooked the Appellant's email to Mr Perumal dated 18 July 2010: "*I have done my work diligently by picking boys who will listen to orders. I had to do it discreetly because such schemes are illegal in Zambia and if one is caught, it's a life sentence in jail. This was the most difficult part which I have managed to sort out...*". As much as this reprehensible attitude of the Appellant can be justifiably criticized, it serves in this context only to confirm the Appellant was aware of the seriousness of his deeds. This subjective factual element (i.e. the Appellant's intention and willingness to fix matches) is already considered in the above-mentioned list of aggravating circumstances and has thus been considered in the Panel's evaluation. Beyond this, the Appellant's speculation as to the criminal sanctions he might face in Zambia as a result of his conduct has no impact on the sanction to be applied by the Panel in this case (having in any case no knowledge of the veracity of that statement). The Appellant's stated belief that he would receive a life sentence in jail for his actions (whether truly held or not) does not mandate that a life ban under FIFA's regulations is proportionate here.
167. As indicated above, the Panel has deliberated at length as to whether the specific circumstances of this case justify the application of the strongest possible sanction available to the FIFA Ethics Committee (i.e. a lifetime ban), based not least on the multiple aggravating circumstances listed above, or whether the potentially mitigating factors set out above make this sanction a disproportionate one in all the circumstances. After said lengthy deliberation, a majority of the Panel is inclined towards the latter conclusion.
168. In reaching this decision, and bearing in mind the wording of the applicable provisions cited above, the Panel does not lose sight of the fact that every match-fixing incidence is "*serious*" in a way i.e. represents a form of egregious, reprehensible and often criminal conduct, which has no place in the sports world. However, as long as FIFA has opted for a clause which awards a panel a margin of discretion as to the appropriate sanction in every match-fixing case, it is required of the Panel to apply that margin of

discretion and exercise the principle of proportionality in relation to the specific facts of the case, considering the full range of sanctions available to it.

169. On the basis of an overall examination of all relevant factors, the aforementioned concepts and not least the principle that the most extreme sanction must not be imposed if a less extreme sanction can achieve the same justifiable aim, a majority of the Panel concludes that the length of the ban in the Appealed Decision is excessive, considering in particular the mitigating factors listed above. While there are undoubtedly more aggravating factors in this case than mitigating ones, to the extent that a lengthy consideration of this case as potentially belonging to that category where only the maximum available sanction of a lifetime ban is warranted, these mitigating factors cannot be ignored by the Panel.
170. As such, a majority of the Panel finds that a suspension of 15 years serves as an effective deterrent and represents a strong punishment for the conduct committed by the Appellant. Further, removing the Appellant from the world of football completely for a period of 15 years achieves the Respondent's aim of adopting a "zero tolerance" approach to all forms of corruption and strongly dissuading recidivism and similar conduct by others. In other words, this sanction is proportionate to the offence, since it does not exceed what is reasonably required in the search of a justifiable aim.
171. With respect to fine, the Panel finds that a fine of CHF 10,000 is not excessive. In light of the serious misconduct at stake, it is a proportionate sanction in this case. The figure is sufficient to serve as a deterrent to others (as well as to the Appellant) against this form of misconduct.

### **iii. Conclusion**

172. The majority of the Panel finds that the lifetime ban from all football-related activities contained in the Appealed Decision should be reduced to a ban from all football-related activities for fifteen (15) years.
173. The Panel upholds the fine of CHF10,000 in the Appealed Decision.

## **IX. COSTS**

174. Article R65.1 of the Code provides as follows:

*This Article 65 applies to appeals against decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports body. In case of objection by any party concerning the application of the present provision, the CAS Court Office may request that the arbitration costs be paid in advance pursuant to Article R64.2 pending a decision by the Panel on the issue.*

175. Article R65.2 of the Code provides as follows:

*Subject to Articles R65.2, para. 2 and R65.4, the proceedings shall be free. The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of CAS are borne by CAS.*

*Upon submission of the statement of appeal, the Appellant shall pay a non-refundable Court Office fee of Swiss francs 1,000.-- without which CAS shall not proceed and the appeal shall be deemed withdrawn.*

176. Article R65.3 of the Code provides:

*Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties.*

177. In consideration of the foregoing, the arbitration costs associated with this procedure shall be borne by the CAS. Separately, pursuant to Article R64.5 of the CAS Code, in consideration of the outcome of the present proceedings, the conduct and financial resources of the Parties, and noting that the Respondent did not retain outside counsel, the Panel finds it reasonable that each Party bear their own legal fees and expenses.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed by Mr. Boniface Mwamelo against the Fédération Internationale de Football Association (FIFA) on 18 March 2019, amended on 25 March 2019, with respect to the decision rendered by the Adjudicatory Chamber of the FIFA Ethics Committee on 25 January 2019 is partially upheld.
2. The decision rendered by the Adjudicatory Chamber of the FIFA Ethics Committee on 25 January 2019 is amended as follows:  
  
Boniface Mwamelo is 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 fifteen (15) years, commencing on 25 January 2019.
3. The award is pronounced without costs, except for the Court Office fees of CHF 1000 (one thousand Swiss Francs) paid by Mr. Boniface Mwamelo, which is retained by the CAS.
4. Each party shall bear its own costs and other expenses incurred in connection with this arbitration.
5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 7 July 2020

## **THE COURT OF ARBITRATION FOR SPORT**

Martin Schimke  
President of the Panel

Manfred Peter Nan  
Arbitrator

Ricardo de Buen Rodríguez  
Arbitrator

Marianne Saroli  
*Ad hoc* Clerk