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**CORRUPTION IN THE WORLD OF SPORT:  
FOCUS ON WORLD CUP, FIFA AND IOC**

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## **ABSTRACT**

Corruption in sports today affects virtually every nook and cranny of society going by various articles, news reports and observations daily. It is sad to learn that significant amount of money is exchanged not just between individuals but between corporations and organisations including notable world sporting bodies such as FIFA across jurisdictions and various institutions regarding sporting activities and competitions.

Many reports and articles abound of various acts of dishonesty and fraud in sports which has brought many forms of sport into disrepute, some of these have led to calls by intellectuals and sport commentators for changes and improvement in the interest of fair play and doing the right thing.

This dissertation will examine corruption in sport focussing on football's world governing body; FIFA, the allocation of the 2018 and 2022 world cups and consider corruption scandals surrounding the Summer Olympics of 2016 and the International Olympic Committee. The focus of this study is predicated on the unbelievable cases of corruption in sports at exalted levels that have thrived for years unchecked and has almost become a way of doing things in many societies.

This will include a review of the allegations and prosecution for fraud, dishonesty and bribery against FIFA officials and related others. Widespread corruption within the Fédération Internationale de Football Association (FIFA) has tarnished the beauty of the game of football. The perception of football being a corrupt business became more of a reality after the allegations of bribery and vote trading that surrounded the 2018 and 2022 World Cup bid process. This dissertation will consider among many arguments, the position that to restore public confidence in FIFA, specifically in the World Cup bid process, FIFA must punish individuals, nations, and confederations guilty of accepting or offering kickbacks, bribes, or vote trading, as well as protect those guilty, or reasonably believed to be guilty, of such crimes<sup>1</sup>. It has been argued that to bring about such a fundamental change, FIFA must work with other sports governing bodies to establish a World Anti-Corruption Agency. Additionally, FIFA, sports governing bodies and individuals in sport must act with honour, integrity, and transparency to regain credibility and public trust.

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<sup>1</sup> RJ Becker, 'World cup 2026 now accepting bribes: a fundamental transformation of FIFA's world cup bid process', online: [2013] 3(1-2) The International Sports Law Journal 132-147, <<https://doi.org/10.1007/s40318-013-0011-7>> accessed 10 August 2017.

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## INTRODUCTION

Corruption is depicted by dishonesty, fraud, bribery, cheating, exploitation, deceit using a few descriptors and incorporates the idea of giving something for something. Corruption in sport is not a new phenomenon it has been said to be generally innate in human beings<sup>2</sup>. As Barry Rider succinctly puts it, 'Corruption is something that we have all had to live with since Eve took the first bite of the serpents' apple, and it is but one manifestation of our human greed and insecurity [...] The fact that corruption is within us all, like the potential for violence, deceit and no doubt lust, does nothing to mitigate our responsibility as a matter of morality, good governance, or even self-interest in survival, to control and curb it'<sup>3</sup>.

History documents instances of Greek athletes who drank mixes of alcohol & ate mood-altering mushrooms & sesame seeds for enhancing performance; gladiators in Rome colosseum who used amphetamines to overcome tiredness and injuries; knights in the primitive era, who used stimulants to improve strength in battle<sup>4</sup>; also the case of match-fixing by boxer Eupolos of Thessaly who bribed three of his competitors to allow him win a gold medal at the Olympic Games of 338 BC in Greece<sup>5</sup> demonstrate inherent corruption from the past. It is noted that the scenario with Greek athletes above demonstrates unethical athletes' behaviour devoid of a benefit in return which is usually the case with corruption.

This phenomenon was also exhibited when Solon<sup>6</sup> established in the 5<sup>th</sup> century BC the Seisachtheia, that is debt cancellation. Aristotle documented that just before the announcement of the debt cancellation, Solon secretly told his friends to quickly obtain huge loans that were eventually cleared of any debt, thus making them very rich. This is dishonest conduct on Solon's part although he did not benefit directly from the steps he advised his friends to take. In addition, it shows that perpetrating corruption can be paired with power as Solon was a man in authority who had superior information no one else had. As Lord Acton stated in 1887: "Power tends to corrupt and absolute power corrupts absolutely."<sup>7</sup>

According to Barry Rider<sup>8</sup>, corruption is a representation of human greed and security, he states that corruption is rampant everywhere and even in heaven as Lucifer was cast out of heaven because of his corrupt practices. He opines that if the tendency for corruption is part of the human make up, therefore how is it possible to deviate from it. The argument that corruption is innate in human beings does not mean that morality, good governance

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<sup>2</sup> See Barry Rider (ed), Corruption: The Enemy Within (Kluwer Law 1997)1

<sup>3</sup> Op cit Barry Rider at pg 1.

<sup>4</sup> CE Yesalis and MS Bahrke, 'History of doping in Sport' [2015] 24(1) International Sports Studies 42 – 76.

<sup>5</sup> Georgios Antonopoulos, "'Eyes on the ball, head on the game (and hands in the honey pot)": an introduction to the special issue on "sports, corruption and organized crime"' [2015] 18(3) Trends in Organized Crime 169.

<sup>6</sup> A great Athenian legislator

<sup>7</sup> Lord Acton writes to Bishop Creighton 1887, online; Library of Liberty, <<http://oll.libertyfund.org/quote/214>> accessed 20 April 2017.

<sup>8</sup> Supra at no 2

and a sense of self perseverance for survival to control, fight and curb it should not be considered.

It has been opined that prior to 1990 a lot of people in the western world viewed corruption as a problem of underdeveloped countries that had growing political institutions, however, political scandals in developed democracies have shown that the regular occurrence of corruption has nothing to do with the level of development of political establishments<sup>9</sup>. It can be said to be rather systemic in nature and as earlier noted innately endemic in our psyche<sup>10</sup>.

It is noteworthy that corruption exists from the top echelons of society right down to the lowest levels throughout the fabric of everyday life regardless of class or standing in society and has led some writers to view it as a violation of human rights and a crime under international law. Recounting a fictional story of a day in the life of John and Jane Doe<sup>11</sup> highlights the effect of corruption in a different and sometimes un-thought of manner, that is being a smack on human dignity. The story goes thus:

From a small income, John Doe, the head of the family, supports his wife, Jane, their three children and a few elderly relatives who rely on him. On an ordinary weekday, he takes the bus from his house to his lowly paid job in the city. On the way, the bus driver must bribe the police officer who deceptively identifies a traffic violation for the journey to proceed. At work, John is exposed to toxic substances because he works in a factory producing goods for a multi-national manufacturer and does not use appropriate clothing. Labour inspectors have visited the factory and did not report any violation of health and safety regulations to their superiors, suggesting that health and safety requirements have been met.

On the home front, Jane takes two of her children to the village school and wishes to register her youngest child there as well. Although primary education in the country is supposedly free, Jane must give some money to the school's headmaster for her son's enrolment to be possible. Jane is worried about her daughter's complaints of school books and pencils and about the school building, which is near collapse. It has been rumoured that officials from the provincial authorities made educational funds somehow disappear.

After dropping the children in school, Jane takes her 75-year-old mother-in law to the local hospital as she is suffering from an unknown illness. She arrives at the poorly equipped hospital; the nurses pay no attention to them and they have to wait for hours. While waiting, Jane observes that some people arrive much later than them but have been attended to and received proper medical care. She realises that those people get privileged treatment because they can afford to bribe the nurses, whose salaries were not paid in the last few months. The doctor eventually attends to her mother-in-law and cannot help her because

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<sup>9</sup> Michael Levi, The Crime of Corruption in Barry Rider (ed), *Corruption: The Enemy Within* (Kluwer Law 1997) 1

<sup>10</sup> Barry Rider Supra at no 2.

<sup>11</sup> Martine Boersma, *Corruption: A Violation of Human Rights and a Crime Under International Law* (Intersentia Ltd 2012) 1-2

the medication is allegedly no longer available. He offers to provide treatment for her though at a private health clinic which he runs.

At the end of the afternoon, Jane attends a court case about a dispute with the landlord. As the landlord can afford to bribe the judge, the Doe family lose the case. Later in the evening, John and Jane Doe head for the polling centre to vote in the country's election and the couple hope that the opposition party will be able to deliver its promises to tackle looting of the country's wealth by the current government. Jane had read in the newspapers that many government officials live in big mansions and their wives go abroad on shopping sprees. She was sad to hear that the journalist responsible for that news item had been recently arrested. While they stood in line near the election office, they were approached by supporters of the current president, offering them money to vote for the ruling party but they declined. The couple find out later that the ruling party won the election with a massive 80 per cent of the votes and they tell each other that voting in the next round of elections would not be of any use anyway. Another day had ended for the Doe family and that was only one day in the life of a family where corruption had affected many facets of their family life as well as the socio-political fabric of society.

This fictional piece shows the extent corruption can affect lives of many people from the smallest to the biggest things in life and can have a severe negative impact on human dignity. According to Martine<sup>12</sup> though, the idea that this can be viewed as a violation of human rights is relatively new as global and regional human rights instruments do not contain any specific reference to corruption and anti-corruption treaties only rarely refer to human rights.

## CORRUPTION AND SPORTS

Sports has been affected by malpractices in many ways such as match-fixing, sport-fixing, bribery, dubious transfer-inspired deals known as "bungs" and other untoward activities which have damaged the integrity of sporting activity, both professional and at amateur level<sup>13</sup>. Not only have these activities damaged the reputation of sport and smothered the excitement and unparalleled anticipation of checking results by simple minded, ordinary members of society, it could have devastating effects on people or members of society that held some individuals in high esteem or view them in awe. Moreover, a parent's joy and pride in a child's achievement can be quickly and disappointedly abated where such joy and pride is found to be baseless and misplaced.

Tim Finn was an Irish racing trainer and the right-hand man to the Irish trainer Edward O'Grady, he is said to be respected in the world of National Hunt racing, but his involvement in a betting coup shot him to public glare making him become known to a wider audience. This scandal was referred to as the Gay Future affair. It is reported that on the August Bank Holiday weekend of 1974, a group of cunning Irish racing men organised a betting coup regarding a horse called Gay Future. The scammers presented a horse called

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<sup>12</sup> Ibid

<sup>13</sup> Walter Cairns, 'Various Compilation' [2013] 21(3) Corruption Watch 44

Arctic Chevalier to a small-time Ayrshire trainer, Anthony Carroll, telling him it was Gay Future. The horses are said to look alike. They persuaded Mr. Carroll to enter him in the race. However, Arctic Chevalier, known to everyone in Ayrshire as Gay Future, was not at that race that day. The real Gay Future was sent from Ireland and small bets were then placed on the horse throughout London. Gay Future won in a 10-1 victory landing the scammers the equivalent of £7 million in current monetary value. Bookmakers complained and the matter went to court. The court found the conspirators guilty and Tim Finn was the one who had disguised Gay Future's neck with sud to make the horse look fully race-ready. He is said to have worn a wig and sunglasses to accomplish this. Many years later, Mr. Finn recalled someone asked his father one day while he was returning from mass that "What do you think of your criminal son"? The old man, was thunderstruck as he knew nothing about the affair whatsoever<sup>14</sup>.

The bane of corruption is so widespread that it even extends to colleges. In an investigation into the affairs of Luis Michael Training Ltd ('LMT')<sup>15</sup> regarding football-based apprenticeship schemes financed by the Skills Funding Agency, the Serious Fraud Office<sup>16</sup> in May 2016, charged 6 men to court, (rising from 3 men arrested in May 2012), for fraudulent trading, false accounting and forgery. LMT purportedly claimed payments from several further education colleges for training and education services they did not provide. Trial is scheduled to commence in this matter by 4 September 2017 before Southwark Crown Court<sup>17</sup>.

In 2016, the former England football team manager, Sam Allardyce, was linked to allegations of impropriety where he used his position to negotiate a £400,000 deal and offered advice to businessmen on how to 'get around' FA rules on player transfers<sup>18</sup>. He resigned just two months into the job, having unfortunately yielded to corruption in football.

In April 2017, the London stadium and St James Park of premier league football clubs were raided in an investigation into tax matters and fraud investigation estimated at £5m. Newcastle's managing director was arrested and released without charge<sup>19</sup>.

As some of these are ongoing inquiries, it is not possible to review the allegations of corrupt practices, but it has been noted to show that corruption in sports is rampant in society than envisaged.

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<sup>14</sup> M. Cairns Supra referring to The Sunday Times of 5/1/2014, p. 18.

<sup>15</sup> See [www.sfo.org](http://www.sfo.org); LMT dealt with enrolment, assessment and verification for apprenticeships and NVQ programmes for young people working in community sport, mainly through football clubs and coaching companies.

<sup>16</sup> A specialist prosecuting authority in the United Kingdom tackling top level serious or complex fraud, bribery and corruption.

<sup>17</sup> <<https://www.sfo.gov.uk/cases/luis-michael-trading-ltd/>> accessed 27 August 2017.

<sup>18</sup> <<https://theconversation.com/sam-allardyce-sting-is-the-latest-chapter-in-a-new-era-of-investigative-reporting-66215>> accessed 18 August 2017

<sup>19</sup> <<https://www.theguardian.com/football/2017/apr/26/newcastle-west-ham-raided-hmrc-tax-fraud-investigation-transfers-lee-charnley-arrested>> accessed 27 April 2017.

The afore said suggests that sports corruption results in suspicion, cheating, loss of game integrity and an abuse of fan loyalty. According to a former FIFA President, 'Sports should not be a desperate affair to win at all costs, neither should it be trivialised and used as a board game to feed some people's fantasy of predicting game results. Football indeed is a game and must remain a game, it should not be regarded by everyone as a match between enemies. Defeat is not a disaster and victory does not confer the title of conqueror of the world<sup>20</sup>. This statement made 27 years ago, still appear as a mirage and a suggested vision for FIFA and sports personalities to imbibe.

## **PART 1**

### **DEFINITION AND FEATURES THAT CHARACTERISE CORRUPTION IN SPORT**

Oxford dictionary offers an ordinary meaning of corruption and defines it simply as 'dishonest or illegal behaviour, especially of people in authority'<sup>21</sup>.

According to David Cameron in his foreword in a policy paper; 'Against Corruption: a collection of essays' part of the Anti-Corruption Summit in London 2016<sup>22</sup>, 'Corruption is the cancer at the heart of so many of our problems in the world today. It destroys jobs and holds back growth, costing the world economy billions of pounds every year. It traps the poorest in the most desperate poverty as corrupt governments around the world syphon off funds and prevent hard-working people from getting the revenues and benefits of growth that are rightfully theirs. It steals vital resources from our schools and hospitals as corrupt individuals and companies evade the taxes they owe'. Albeit this is not a definition in itself, it aptly summarises the former prime minister's perception and possibly the objective thinking view of what corruption is.

In one of the essays in the collection, Francis Fukuyama<sup>23</sup> opined that corruption covers a wide range of behaviours whose economic and political effects vary greatly. He noted that despite all the academic efforts put into the study of corruption, there is no broadly accepted terminology for distinguishing between its different forms. He also noted that corruption exists in many contexts, from bribery in a sports organisation to a secretary

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<sup>20</sup> Dr Joao Havelange in 1990 as FIFA President.

<sup>21</sup> Margaret Deuter and others, *Oxford Advanced Learner's Dictionary* (9 edn, Oxford University Press 2015).

<sup>22</sup> <<https://www.gov.uk/government/publications/against-corruption-a-collection-of-essays/against-corruption-a-collection-of-essays>> accessed 22 August 2017.

<sup>23</sup> An American writer and political scientist: article entitled What is corruption?

stealing from the office pool. For his presentation, he focussed on political corruption, which he said concerns the abuse of public office for private gain<sup>24</sup>.

According to the World Bank Group, "A corrupt practice is the offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party"<sup>25</sup>.

This has however has been questioned for not reflecting the effects that corruption has on the social fabric of communities<sup>26</sup>. According to Costantino Grasso<sup>27</sup>, this is because corruption was officially considered as conduct that potentially violates fundamental human rights under the presidency of Barack Obama. In a white house statement, he averred that "We are working within the broader international system, including the U.N., G-20, Organization for Economic Cooperation and Development (OECD), and the international financial institutions, to promote the recognition that pervasive corruption is a violation of basic human rights and a severe impediment to development and global security."<sup>28</sup>

Documenting contributions from a workshop on law and corruption<sup>29</sup>, Carlisle and Voorhoeve<sup>30</sup> opined that participants from various parts of the world, explained corruption from personal perspectives. Their discussions were driven by theoretical, quantitative and qualitative approaches as well as research interests. The writers noted that each participant at the workshop demonstrated that, defining corruption is intertwined with struggle for power and that corrupt practices is defined by, and indicative of, power relations<sup>31</sup>.

This could suggest that individuals with power, be it political or economic define corruption. This suggestion is gleaned in further publications where authors state that matters and practices regarded as corruption are simultaneously products and producers of power relations<sup>32</sup>. According to Bedirhanoglu<sup>33</sup>, power enables some actors to determine what corruption is and who is considered responsible for it.

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<sup>24</sup> <<https://www.gov.uk/government/publications/against-corruption-a-collection-of-essays/against-corruption-a-collection-of-essays#francis-fukuyama-what-is-corruption>> accessed 22/8/2017. Also, see M Johnston, *Syndromes of Corruption* (Cambridge University Press 2005).

<sup>25</sup> <<http://www.worldbank.org/en/about/unit/integrity-vice-presidency/what-is-fraud-and-corruption>> accessed 27 April 2017.

<sup>26</sup> Costantino Grasso, 'The Dark Side of Power: Corruption and Bribery within the Energy Sector,' in Research Handbook on EU Energy Law and Policy (Edward Elgar: Rafael Leal-Arcas and Jan Wouters eds. forthcoming).

<sup>27</sup> Ibid

<sup>28</sup> 'National Security Strategy' White House (May 2010), at page 38, <[www.whitehouse.gov/sites/default/files/rss\\_viewer/national\\_security\\_strategy.pdf](http://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf)> accessed 25 April 2017

<sup>29</sup> A workshop on 'Law and Corruption in Turbulent Times: Theoretical and Empirical Perspectives from the Mediterranean and South-Eastern Europe, organized as part of the 14<sup>th</sup> Mediterranean Research Meeting of the European University Institute.

<sup>30</sup> Jessica Carlisle and Maaïke Voorhoeve, 'Law and Corruption ' [2014] 6(2) Middle East Law and Governance 63 – 69.

<sup>31</sup> Ibid.

<sup>32</sup> Pinar Bedirhanoglu, "The Neoliberal Discourse on Corruption as a Means of Consent Building: Reflections from Post-Crisis Turkey," [2007] 28 (7) Third World Quarterly 1251; Craig Jeffery, "Caste, Class, and Clientelism: A Political Economy of Everyday Corruption in Rural North India," [2002] 78(1) Economic Geography 39.

<sup>33</sup> Ibid

In his article on corruption in the field of sports in Lebanon, Nassif<sup>34</sup> sees corruption as a way of distributing money freely instead of following formal norms and agreements serving political interests. This definition highlights power tussles between the various confessions, showing the consequences of such struggles on money flows, which in turn influence sports performance.

Following a study from data gathered from 150 countries, W. Sandholtz and M Gray<sup>35</sup> surmised that levels of corruption in a country is determined by how much the country complies with international standards. International standard in this case being in the form of economic incentives such as networks of exchange, communication, and organization, on one hand and normative standards, referring to stigmatisation of corruption by international society on the other hand. As a result, they defined corruption as the misuse of public office for private gain. (This definition is the same as that of Francis Fukuyama). They argue that the extent of a country's international integration determines its level of corruption because they are more exposed to economic and normative pressures against corruption.

Looking at the TI CPI 2003, the Corruption Index<sup>36</sup> shows that corruption was perceived to be prevalent in Bangladesh, Nigeria, Myanmar, Haiti, Paraguay, Tajikistan, Cameroon, Azerbaijan, Georgia, Angola, Kenya, and Indonesia. Countries like Finland, Iceland, Denmark, New Zealand, Singapore and Sweden had scores higher than 9, with very low levels of perceived corruption. If the conclusion of the Sandholtz and Gray's study is to be followed, it could be argued that perhaps the first set of countries in the list were not conforming with international standards while the latter group could have been more conforming with international economic standards for their levels of corruption to have been perceived as low. The TI CPI 2003 showed high levels of corruption in many rich countries as well as poorer countries, making it necessary for developed countries to enforce international conventions to curb corruption.

A statement by Peter Eigen in 2003<sup>37</sup>, Chairman of Transparency International at the Foreign Press Association seemingly supports the conclusion of the study as well to the extent that the extent to which a country ties itself with international standards would lower its corruption levels. He highlighted that after the UN Convention against corruption at the time, the organisation and other civil societies had been given a much-needed tool to push governments to live to new standards of integrity and good governance.

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<sup>34</sup> Nadim Nassif, 'Corruption in Sport; The case of Lebanon' [2014] 6(2) Middle East Law and Governance 123-140.

<sup>35</sup> Sandholtz Wayne and Mark M Gray, *International Integration and National Corruption* (Cambridge University Press Autumn 2003) 761-800 accessed via <http://www.jstor.org/stable/3594846> on 07-08-2017 19:15.

<sup>36</sup> <[https://www.transparency.org/research/cpi/cpi\\_2003](https://www.transparency.org/research/cpi/cpi_2003)> accessed 20 August 2017. The scores relate to perceptions of the degree of corruption as seen by business people, academics and risk analysts, and ranges between 10 (highly clean) and 0 (highly corrupt). A total of 17 surveys were used from 13 independent institutions, and at least three surveys were required for a country to be included in the CPI.

<sup>37</sup> <[https://www.transparency.org/files/content/tool/2003\\_CPI\\_EigenStatement\\_EN.pdf](https://www.transparency.org/files/content/tool/2003_CPI_EigenStatement_EN.pdf)> accessed 20 August 2017.

In 2017, TI CPI 2016 shows that corruption and inequality complement each other thereby creating a vicious circle of corruption, unequal spread of power in society, and unequal spread of wealth<sup>38</sup>.

According to the current index, out of the 176 countries, 69 per cent scored below 50, on a scale from 0 (perceived to be highly corrupt) to 100 (perceived to be very clean). This showed that public sector corruption around the world has become massive. In addition, more countries this year declined in the index rather than improved, showing the need for urgent action by both international organisations and the countries as well. The lower-ranked countries are reported as having unreliable and badly functioning public institutions such as the police and judiciary who ignore and or do not enforce anti-corruption laws in the books.

There is no direct emphasis on compliance with international standards that was referred to in 2003, but a call for reforms to be entrenched in the governance structure to balance power and wealth equally<sup>39</sup>.

At the International level however, there are arguments that there is no consensus regarding a definition for corruption especially as the United Nations Convention against corruption did not include a definition of corruption<sup>40</sup>. This shows the challenges encountered in proffering a solution to the issue of corruption.

Due to this grey area, the best way to describe corruption is to view it figuratively as an creature with many feelers that has the power to infect every aspect of our society<sup>41</sup>.

This definition echoes Barry Rider's seemingly fitting description that "Corruption is something that we have all had to live with since Eve took the first bite of the serpents' apple, and it is a manifestation of human greed and insecurity<sup>42</sup>.

A similar view is expressed by the Secretary-General of the United Nations and is included in the foreword of the United Nations Convention against Corruption that "Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines

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<sup>38</sup> <[https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2016](https://www.transparency.org/news/feature/corruption_perceptions_index_2016)> accessed 20 August 2017.

<sup>39</sup> According to Transparency International Op Cit, such balancing act can be achieved through empowering citizens to end widespread disregard for corruption, hold the powerful to account, and citizens to have a real say in the decisions that affect their daily lives. These reforms must include disclosure through public registries of who owns companies as well as sanctions for professional enablers who are complicit in moving corrupt money flows across borders.

<sup>40</sup> The United Nations Convention against Corruption (United Nations Office on Drugs and Crime) <[http://www.unodc.org/documents/brussels/UN\\_Convention\\_Against\\_Corruption.pdf](http://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf)> accessed 27 April 2017.

<sup>41</sup> Costantino Grasso, 'The Dark Side of Power: Corruption and Bribery within the Energy Sector,' in Research Handbook on EU Energy Law and Policy (Edward Elgar: Rafael Leal-Arcas and Jan Wouters eds. forthcoming).

<sup>42</sup> Barry Rider Op cit

democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish"<sup>43</sup>.

From an economic, commercial point of view, corruption has been described as a plague for human civilization that exerts extremely adverse effects on society and reduces income and government revenues<sup>44</sup>. This is proved from increased costs undermining fair competition which distorts policy, leading to priorities being determined by personal interests. Following from this, disloyalty becomes inbred in public institutions, and resources are diverted from where they are most needed. Productivity therefore becomes reduced thus demotivating people that receive unfair rewards and ultimately, destroys cultures at all levels.

This reflects further views of the UN Secretary-General<sup>45</sup> when he described corruption as an evil phenomenon found in all countries big and small, rich or poor and that its most destructive effect is found in the developing world. He also said that 'corruption hurts the poor disproportionately by diverting funds intended for development, undermining a Government's ability to provide basic services, feeding inequality and injustice and discouraging foreign aid and investment. Corruption is a key element in economic underperformance and a major obstacle to poverty alleviation and development'. This position arguably leans towards a socio-economic perspective.

Traditional legal instruments define bribery as the core act of illegality to be punished when legislating on corruption. This is seen from statutory instruments that required prosecutors to prove that a bribe had been given or received dishonestly<sup>46</sup>. Bribery is only a form of possible corruption based on the nature of the payment or whether one is receiving or soliciting a private favour for official action.

From all these, it is apparent that sport corruption is difficult to define, given that a definition of corruption itself is not straightforward. It can be argued that definitions are made based on individual's perspectives and or social, economic or political situation. A simple definition by Adam Masters<sup>47</sup> suggests corruption in sport means a situation where public expectations that sports will be played and administered honestly is not met.

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<sup>43</sup> See United Nations Convention against Corruption, op cit at no 39 above.

<sup>44</sup> See Denis Osborne, Corruption as Counter-culture: Attitudes to Bribery in Local and Global Society. in Barry Rider (ed), *Corruption: The enemy within* (Kluwer Law 1997)

<sup>45</sup> This is with respect to the United Nations Convention against Corruption

<sup>46</sup> Peter Alldridge, 'The UK Bribery Act: "The Caffeinated Younger Sibling of the FCPA' [2012] 73(5) Ohio State Law Journal 4

<sup>47</sup> Adam Masters, 'Corruption in sport: From the playing field to the field of policy' online: [2015] 34(2) Policy and Society, <<http://dx.doi.org/10.1016/j.polsoc.2015.04.002>> accessed 22 August 2017

According to Antonopoulos G. A.<sup>48</sup>, three factors help to explain corrupt practices in sports namely; sports professionalization, sports politicization and sports commercialization. It can be argued that these features characterise corruption in the world of sport. Three other factors (illegal gambling networks, high levels of relative exploitation of players, and corrupt officials) also came to light while reviewing a paper<sup>49</sup> that examined the drivers of match-fixing in football and why some leagues collapse from corruption. These factors, concluded from over 220 interviews with players, referees, sports officials and law enforcement officers, as well as the gambling industry and corrupters, can be argued to typically arise from sports professionalisation; politicization and commercialisation.

Sports has become professional such that there is so much attention and status associated with it than before. The view can be taken that this consequently brings elitist problems like gambling, cheating of players and cheating by players and officials who are willing to look the other way in exchange for something owing to the high-profile position they occupy. It can perhaps also be claimed that fame, riches and westernisation contribute to rearing corruption in various sports. There appears to be a care-free attitude by some figures in the sporting industry which suggests an attitude of being above the law as seen in match fixing<sup>50</sup> and FIFA dealings<sup>51</sup>. The level at which sports operates presently also creates an opportunity for corrupt deals between some team owners and government officials. For instance, in 2002, billionaire Jeffery Loria purchased the Miami Marlins, a major league baseball team for \$159 million and agreed to sell it in May 2017 for \$1.3 billion earning a profit of over \$1.1 billion. In 2011, the Miami-Dade county contributed public funds totalling \$2.4 billion for the stadium which significantly added value to the investment. Prior to agreeing a deal for the sale of the team, Mr Loria donated significant amount of money to the county commission chairman in 2008 and to the mayor. Despite SEC's investigation into whether these payments were unlawful bribes, no action was taken and the investigation was dropped. It is noteworthy that huge sums of public money are spent on privately owned stadiums with the loans used to pay for these constructions typically tax-exempt municipal bonds that cost the federal government at least \$4billion in tax payers subsidies to bond holders. There is an argument about whether tax payers' money should be used to fund privately owned stadiums<sup>52</sup> but the focus here is on the implication that the practice creates an opportunity for greedy opportunist investors to take advantage of cheap investments and cash out after supposedly donating some money to government officials that consequently do not query the sale of such entities.

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<sup>48</sup> Georgios Antonopoulos, "'Eyes on the ball, head on the game (and hands in the honey pot)": an introduction to the special issue on "sports, corruption and organized crime"' [2015] 18(3) Trends in Organized Crime 169.

<sup>49</sup> Matthew B Dicenso, 'A Long-Awaited Reboot: The FIFA Scandal and its Repercussions for Football's Governing Body' [40 B.C.] 115 (()) Int'l & Comp L Rev online: <<http://lawdigitalcommons.bc.edu/iclr/vol40/iss1/5>> accessed 15 July 2017.

<sup>50</sup> Declan Hill, 'A critical mass of corruption: why some football leagues have more match-fixing than others', online: [2010] 11(3) International Journal of Sports Marketing and Sponsorship 38-52, < <https://doi.org/10.1108/IJSMS-11-03-2010-B005>> accessed 01 August 2017

<sup>51</sup> Roger Pielke Jr, 'How can FIFA be held accountable? ' online: [2013] 16(3) Sport Management Review 255-267, <<https://doi.org/10.1016/j.smr.2012.12.007>> accessed 7 August 2017.

<sup>52</sup> <<https://globalanticorruptionblog.com/2017/06/19/direct-democracy-as-the-solution-to-corruption-in-publicly-funded-sports-stadiums/>> accessed 14 August 2017.

Another feature that becomes apparent is a lack of political will by states in making laws that criminalise corruption. The OECD convention was championed by the United States of America, leading to the promulgation of the Foreign Corrupt Practices Act (FCPA) in 1977<sup>53</sup>. The country has since been actively involved in making laws to stamp out bribery. At that time as well, the US private sector pushed its government to extend the FCPA on trade laws to apply to international business feeling they were at an unfair trade disadvantage. Consequently, the government used the OECD to extend the FCPA to the international business community<sup>54</sup>. When the United Nations convention against corruption was negotiated, it was proposed<sup>55</sup> to extend the convention to criminalise bribery in the private sector but the U.S disagreed claiming it was an intrusion on 'purely private sector conduct' and that private sector bribery is not a crime in the U.S. and that as they deal with this in other ways<sup>56</sup>. This seems to be an unexpected U-turn by the U.S. considering the country led the way with the FCPA legislation outlawing bribes paid to obtain business, preceding the OECD Convention by two decades. It has been submitted though that the FCPA relates to bribes paid abroad in private-to-public sectors rather than private-to-private transactions, but the law gave US firms a head-start in developing corporate codes of conduct and many such codes cover purely private sector bribery<sup>57</sup>. The United States position was accepted in the final version of the Convention which only has a non-mandatory framework for criminalizing bribery and embezzlement in the private sector<sup>58</sup>.

Another feature that characterise sports corruption is secrecy. Corruption in sports flourishes in secret, fostering corrupt activities well hidden from public view and knowledge. Bogus companies are set up to pass the money used in bribe between the person or company who initiates the bribe to the other party who receives the payment. It may perhaps be argued that this thrives due to the prestige associated with the characters involved as ordinary members of the public would not expect or associate corrupt tendencies with such cadre of people.

Reviewing David Cameron's impassioned foreword, more characteristics can be gleaned that symbolise not just corruption in general but also corruption in sports. These include firstly, use of shell companies gathered from his call to end the use of secret shell companies, so that corrupt individuals no longer have an easy and unidentified way to hide their loot and move it across borders. Secondly, existence of rogue agents who facilitate

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<sup>53</sup> Foreign Corrupt Practices Act (FCPA), Pub. L. No. 95-213, 91 Stat. 1494 (codified as amended at 15 U.S.C. §§ 78m(b)(2), 78(m)(b)(3), 78dd-1, 78dd-1, and 78ff (2000).

<sup>54</sup> Susan Rose-Ackerman, *Corruption and Government: Causes, Consequences and Reform* (Cambridge: Cambridge University Press 1999) 177

<sup>55</sup> It was supported by the Latin American and Caribbean States whose representatives argued that in view of the linkage between the two sectors, adopting a 'limited' approach that only targeted the public sector 'would adversely affect the implementation of the future convention'. See *Report of the Ad Hoc Committee for the Negotiation of a Convention Against Corruption on its third session, held in Vienna from 30 September to 11 October 2002*, at 3, U.N. Doc. A/AC.261/9 (2002).

<sup>56</sup> Philippa Webb, 'The United Nations Convention Against Corruption: Global Achievement or Missed Opportunity?' [2005] 8(1) *Journal of International Economic Law* 191-229

<sup>57</sup> According to Philippa, while not limited to US firms, an OECD survey of corporate codes of conduct found that of 56 codes that dealt with bribery, 64 percent addressed bribery of private actors: Kathryn Gordon and Maiko Miyake, 'Business Approaches to Combating Bribery: A Study of Codes of Conduct' (OECD Working Papers on International Investment, No. 2000/1, 2000) at 6, <<http://www.oecd.org/dataoecd/45/32/1922830.pdf>>

<sup>58</sup> Articles 21 and 22 of the UNCAC.

and condone corruption. Thirdly, lack of transparency by government and those in authority that prevent people from seeing how certain decisions are made and the inability of people to be able to demand that government and those in authority are held to account. Fourthly, a need for sustained effort in the areas identified as prone to corruption which is essentially most international sporting activities. Fifthly and significantly, a lack of international co-operation in legislating against corruption. Closely linked to this is lack of international cooperation on transparency.

David Cameron also opined that in the United Kingdom, the government adopted legislation giving the public unrestricted access to beneficial ownership information on UK companies through a public central registry so that people can see who really owns and controls companies. It is noteworthy the U.K. originally opposed this position and the legislation came about as an EU member state binding requirement to adopt and implement the practice further to the 4<sup>th</sup> EU Anti Money Laundering Directive<sup>59</sup>. However, tracking international flow of finance requires international co-operation. It has been said that well-structured, transparent and accessible databases would facilitate automated searches of large, global datasets that would feed real-time alerts to journalists in every country<sup>60</sup>. Such a vision suggests a network of investigative journalists to help make transparency a natural enemy of international organised crime gangs and corrupt officials all over the world.

One other feature appears to be the absence of a system of dealing with corruption when exposed. This necessitates bringing perpetrators to justice, actively enforcing anti-corruption laws and working together across international borders to investigate the corrupt, prosecute them and send them to jail. Reviewing the suggestion by Prime Minister Lee Hsien Loong of Singapore<sup>61</sup>, that those charged with corruption should bear the burden of proof to show that they acquired their wealth legally rather than prosecutors having to prove the guilt of the corrupt, makes a lot of sense. It can be reasoned that this approach is a more responsive approach to current trends and sophistication in carrying out corrupt acts.

## APPLICABLE ANTI-CORRUPTION LAW

The applicable U. K. Anti-corruption law is the Bribery Act 2010 which came into effect on 1 July 2011. It replaced the common law on bribery repealing the Prevention of Corruption Acts 1906 and 1916<sup>62</sup>.

It created the offence of bribing another person in section 1 and applies to a person who offers, promises or gives a financial or other advantage to another<sup>63</sup>.

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<sup>59</sup> This came into effect from June 26, 2015 to bring a more robust risk-based approach to the prevention of money laundering and terrorist financing across all member states of the EU, it is uncertain what the future position will be if and when the 5<sup>th</sup> EU AML will be adopted/implemented taking Brexit into account.

<sup>60</sup> David Cameron Supra.

<sup>61</sup> <<https://www.gov.uk/government/publications/against-corruption-a-collection-of-essays/against-corruption-a-collection-of-essays>> accessed 22 August 2017.

<sup>62</sup> <[http://www.opsi.gov.uk/acts/acts2010/ukpga\\_20100023\\_en\\_1](http://www.opsi.gov.uk/acts/acts2010/ukpga_20100023_en_1)>.

Section 2 deals with the offence of being bribed either as a recipient of a bribe or a potential recipient of the bribe. Under the law, the person bribed is someone who requests, agrees to receive or accepts' an advantage, whether or not he/she actually receives it. In addition, this conduct is linked with an 'improper performance' of a relevant function or activity and can be for the benefit of another person regardless of whether the bribed person knows or believes that the performance of the function is improper.

The third innovation is in Section 6 which makes it an offence to bribe a foreign public official. It is hinged on the requirements of the OECD Anti-Bribery Convention and only covers the offering, promising or giving of bribes and not the acceptance of them. Thus, the person giving the bribe must intend to influence the receiver in the performance of his or her functions as a public official, and must intend to obtain or retain business or a business advantage.

The provisions above apply to human beings and following the identification principle, can also apply to corporations. The Act also increased maximum penalties to 10 years imprisonment from 7 years under the old statute.

There is however an interesting and arguably controversial aspect of the Act where failure of a commercial organisation to prevent bribery was introduced to criminal law<sup>64</sup>. Section 7 makes it an offence for commercial organisations that fail to prevent bribery. Under this provision, the prosecutor does not need to prove knowledge, intention, or recklessness by the commercial organisation, it would be sufficient to focus on liability for omissions, which is usually exceptional. English Courts have wide jurisdiction in applying this legislation because if the commercial organisation is incorporated or formed in the United Kingdom, or where the organisation carries out its business or part of its business in the U.K., U.K. jurisdiction will apply, irrespective of where in the world the acts or omissions which form part of the offence take place.

Further to Section 7(2), it will be a defence if the commercial organisation can show it had adequate procedures in place to prevent persons associated with it from engaging in acts of bribery. Therefore, any organisation with adequate anti-corruption compliance programmes would potentially avoid liability. It is worthy of note here that this offence is aimed at corporate culture<sup>65</sup>. The Secretary of State in furtherance of the Act publishes guidance and revisions to the guidance on the procedures which commercial organisations can put in place to prevent people associated with them from engaging in bribing<sup>66</sup>.

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<sup>63</sup> The meaning of 'financial or other advantage' is left to be determined as a matter of common sense by the tribunal of fact.

<sup>64</sup> Speech by Alun Milford, General Counsel, at World Bribery and Compliance Forum 2013, online: <<https://www.sfo.gov.uk/2013/10/15/world-bribery-compliance-forum-2013/>> accessed 20 August 2017.

<sup>65</sup> Ibid

<sup>66</sup> According to Alun Milford, the guidance recommends a risk-based and proportionate approach to determining what procedures should be put in place.

In the case of SFO vs ICBC Standard Bank Plc concluded in 2015, this section was applied in bringing a case of bribery against the defendant bank in a legal action instigated by the Serious Fraud Office (SFO)<sup>67</sup>.

The Foreign Corrupt Practices Act (FCPA)<sup>68</sup> is applicable in the United States and deals with transnational bribery and maintenance of internal accounting control by Securities and Exchange Commission registered companies. It makes it an offence for bribes to be paid by individuals and entities living or operating in the United States to foreign public officials, foreign candidates for office, and foreign political parties whether made directly or indirectly. The UK Anti-corruption law is however wider in application than the FCPA but analysing the differences do not come within the purview of this work.

At the international level, the United Nations Convention against Corruption and the OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions are the only legally binding universal anti-corruption instruments. The UN Convention (effective 14 December 2005) provides a framework for cooperation among states as well as an international standard to collectively prevent and detect various forms of corruption and return the proceeds. It hopes to send a clear message to corrupt officials that the international community is united in stamping out corrupt practices and recovering illicit gains derived therefrom.

The OECD Convention (15 February 1999) sets legally binding standards to criminalise bribery of foreign officials in international business transactions carried out by companies based in the Convention member countries. The purpose is to foster a genuine level playing field in the international business setting. The convention implements a peer driven monitoring system to ensure the implementation of international obligations by countries that adopted the convention.

The UN Convention provide a comprehensive set of standards that once ratified, is expected to assist countries fight corruption. It makes provisions on five main areas, namely; preventive measures, criminalization and law enforcement, international cooperation, asset recovery and technical assistance and information exchange. As of July 2017, 140 countries signed the convention from 182 parties while 15 UN member states have not ratified the convention though some have signed it<sup>69</sup>.

Although the UN Convention contains many innovative provisions, it has been suggested the convention suffers from some basic weaknesses that may prevent it from having a real

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<sup>67</sup> The SFO investigated the activities of Standard Bank plc ('SB plc') and its sister company Standard Bank Tanzania (Stanbic) in relation to a US \$600 million private placement on behalf of the Government of Tanzania. A fee of US \$6 million was paid to a third-party company, Enterprise Growth Market Advisors ('EGMA'). Allegedly this cash was used to facilitate bribery payments and EGMA represented the vehicle for giving the bribe. SB plc was charged of this offence for bribery perpetrated by its former sister company Stanbic through the actions of its top managers on the following elements: there was no evidence that the payment to EGMA represented reasonable consideration for services rendered on the financial transaction; EGMA's chairman was a PEP (member of the Government of Tanzania).

<sup>68</sup> Pub. L. No. 95-213, 91 Stat. 1494 (codified as amended in scattered sections of 15 U.S.C. (2012)

<sup>69</sup> <<https://www.unodc.org/unodc/en/corruption/ratification-status.html>> accessed 20 August 2017.

impact on corrupt behaviour<sup>70</sup>. In the article, aptly titled United Nations Convention Against Corruption; Global Achievement or Missed Opportunity, the author points out that state parties are required to absorb many of the provisions of the convention into domestic law but there is a lack of robust monitoring mechanism which makes enforcement low.

## **PART 2**

### **VENUE ALLOCATION FOR 2018 AND 2022 WORLD CUP TOURNAMENTS**

In a review of FIFA World Cups from 1998–2010<sup>71</sup>, the opinion was canvassed that FIFA appears to be more concerned with financial gain realised from making world cup allocations rather than ensuring participation of more members from its federations in the World Cup.

Using data from FIFA website, the author considered the performance of regions in relation to the number of World Cup qualification spots that each region is awarded and found that the organisation's system of qualification is based neither on ensuring the qualification of the best 32 teams in the world, nor does it fairly allocate qualification spots on the number of teams per federation or any other metric. A concerted plea for more transparent allocation processes was made at the time and it can be argued going by subsequent world cup allocations that there has not been significant changes or transparency.

As far back as 1990, following the draw for the opening matches of the 1990 football World Cup in 1989, one writer<sup>72</sup> argued that the draw was flawed as it was not as fair to all parties as it should have been. This was despite the world football authority stressing how fair the proceedings would be and supposed efforts of FIFA to be seen to live up to its "fair play" motto. According to the writer, the error was not from the process of drawing balls from the urns but in the algorithm used to define the drawing procedure. The problem arose from FIFA's decision to keep the four South American countries involved apart<sup>73</sup>. The writer did

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<sup>70</sup> Philippa Webb, *Supra* at no 55.

<sup>71</sup> Christian Berthsstone and Michael Rod, 'Unfair play in World Cup qualification? An analysis of the 1998–2010 FIFA World Cup performances and the bias in the allocation of tournament ' [2014] *Soccer & Society*, 1-18

<sup>72</sup> MC Jones, 'The World Cup Draw's Flaws, ' online, [1990] 74(470) *The Mathematical Gazette* 335-338, <<http://www.jstor.org/stable/3618128>> accessed 14 August 2017.

<sup>73</sup> The national football teams of 24 countries qualified to play in the 1990 World Cup finals and were divided into 6 groups of 4 teams each. They played matches on a round robin basis within their groups to determine which teams went through to the next stage of the competition. The draw in question was about allocating teams to the initial groups of 6. The seeding system was based on perceived strengths and keeping the "best"

not suggest anything was fixed but that there was incompetence by the football governing body and that having errors of this kind in such an overtly public affair is another sad indictment of the general lack of understanding of numerical and probabilistic matters in the public at large.

In 2014, when Brazil hosted the FIFA World Cup, it was claimed that the event was affected by corruption.<sup>74</sup> Mikhail highlighted that there had been little or no improvement despite many reports by sport commentators, investigative reporters and several big media outlets who uncovered and wrote about the depth of corruption in the global football industry as well and corruption at the highest levels involving FIFA and the awarding of the World Cup. It appears to that author that corruption involving the world cup is becoming more overt considering that World Cup scandals carried on like business as usual. This is perhaps because it was said that FIFA generated about \$4.5 billion (and that revenue was earned at least partly from corrupt practices with few repercussions) from the World Cup in Brazil, which was a single month-long event that occurs only every four years, therefore suggesting a basis to believe there is profit in crime.

Between 1984 and 2004 World Cup venues for FIFA World Cup Championships were selected separately whereby each venue was chosen six years in advance<sup>75</sup>. A decision was made in 2004 to host the 2010 World Cup in South Africa and this led to a change in procedures which permitted the FIFA Executive Committee to award both the 2018 and the 2022 World Cups in 2010<sup>76</sup>.

FIFA held the vote for the 2018 and 2022 World Cup competitions hosting rights in Zurich, Switzerland in December 2010. In contention for the 2022 tournament were Australia, Japan, South Korea, Qatar, and the United States<sup>77</sup>. There was a final round of voting between Qatar and the United States that concluded with fourteen votes for Qatar and eight for the United States. The twenty-four Member Executive Committee of FIFA announced the selection of Qatar on December 2, 2010<sup>78</sup>.

According to one writer, the selection of Russia for the 2018 World Cup and Qatar for the 2022 World Cup was a shocker for many<sup>79</sup>. As an integral part of the selection process, there is an exhaustive due diligence investigation of each of the nations' bidding to host the 2018 and 2022 World Cups. From the due diligence report, all venues were rated "low risk"

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teams apart early on and, under a purely random allocation scheme, one would take one team from each of the four seeded sets to make up a group. For more details of this interesting analysis please see full article by M. C. Jones *Ibid* as this paper's focus is on the 2018 and 2022 world cup allocation.

<sup>74</sup> Mikhail Reider-Gordon, 'Money Laundering, Corruption and the World Cup in the Wake of Brazil' [2014] 21(1) *Southwestern Journal of International Law* 97-124.

<sup>75</sup> <<http://www.newworldencyclopedia.org/entry/FIFA>> accessed 18 August 2017.

<sup>76</sup> See FIFA Statutes, *Supra*, note 22, at Art. 25.2(s).

<sup>77</sup> <[http://www.fifa.com/mm/document/fifafacts/mencompwc/51/97/81/fs-201\\_13a\\_fwc-bidding.pdf](http://www.fifa.com/mm/document/fifafacts/mencompwc/51/97/81/fs-201_13a_fwc-bidding.pdf)> accessed 18 August 2017.

<sup>78</sup> <<http://www.fifa.com/worldcup/news/y=2010/m=12/news=russia-and-qatar-awarded-2018-and-2022-fifa-world-cups-1344698.html>> accessed 13 May 2017 .

<sup>79</sup> Mikhail Reider-Gordon, 'Money Laundering, Corruption and the World Cup in the Wake of Brazil' [2014] 21(1), *HeinOnline: Southwestern Journal of International Law* 97-124, accessed 22 July 2017.

except for Qatar (which was rated “high risk”) and Russia (“medium risk”)<sup>80</sup>. Nevertheless, Russia and Qatar were selected, hence this naturally eats the imagination and justifiably described as nothing more than a stunner. Logical thinkers would argue that such decision has no justifiable foundation.

From the moment the decision was announced for Qatar to host the tournament, it generated a lot of controversy from fans and many others engaged in the football community actively against the decision<sup>81</sup>. The German football association president described it as a burden<sup>82</sup>, many writers called it “FIFA’s folly”<sup>83</sup>, a “farce”<sup>84</sup> and a “disaster”<sup>85</sup>. Someone else said it makes no sense<sup>86</sup> and it might as well be held in mars<sup>87</sup>.

Picking Qatar brought various concerns<sup>88</sup> including the absence of a strong football playing tradition in the country. It was argued that the country should not have been picked as it has no home-grown football fan base and its teams have never qualified for World Cup play. It could however be argued that such thoughts are sentimental rather than scientific as allocating the world cup has laid down process and requirements which the country should have satisfied. Having a home-grown football fan base or a strong football playing tradition would need to be a requirement in the process for such opinion to be justified. It was also contended that daytime temperatures at the normal time of year for playing the World Cup exceed 120 degrees Fahrenheit<sup>89</sup> in addition to the criticism that Qatar does not have adequate football stadiums and could possibly present an attractive target for terrorists from the region<sup>90</sup>. To make matters worse, various claims of bribery and corruption broke out over the years from the time the decision was announced<sup>91</sup>

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<[http://www.fifa.com/mm/document/affederation/footballgovernance/02/47/41/75/statementchairmanadjcheckert\\_neutral.pdf](http://www.fifa.com/mm/document/affederation/footballgovernance/02/47/41/75/statementchairmanadjcheckert_neutral.pdf)> - Statement of the Chairman of the Adjudicatory Chamber of the FIFA Ethics Committee on the Report on the Inquiry into the 2018/2022 FIFA World Cup Bidding Process prepared by the Investigatory Chamber of the FIFA Ethics Committee, FIFA (November 13, 2014), at 4.3.6.

<sup>81</sup> Kate Youd, 'The Winter's Tale of Corruption: The 2022 FIFA World Cup in Qatar, the Impending Shift to Winter, and Potential Legal Actions against FIFA ' [2014] 35(1) *Northwestern Journal of International Law & Business*.

<sup>82</sup> <[http://au.eurosport.com/football/world-cup/2014/german-soccer-bosses-call-qatar-world-cup-a-burden\\_sto3979271/story.shtml](http://au.eurosport.com/football/world-cup/2014/german-soccer-bosses-call-qatar-world-cup-a-burden_sto3979271/story.shtml)> accessed 28 August 2017.

<sup>83</sup> <<http://worldsport.blogs.cnn.com/2013/10/02/fifas-folly-whats-riding-on-the-qatar-question/>> accessed 28 August 2017.

<sup>84</sup> <<http://www.foxsports.com.au/football/a-timeline-of-the-farce-that-has-been-the-awarding-and-changing-of-date-of-2022-qatar-world-cup/story-e6frf423-1226717830805#.UjdJrGTXQv4>> accessed 20 August 2017.

<sup>85</sup> Tony Manfred, *Reasons Why the Qatar World Cup Is Going to Be a Disaster*, online: <<http://www.businessinsider.com/ll-reasons-why-the-qatar-world-cup-will-be-a-disaster-2013-9>> accessed 21 August 2017.

<sup>86</sup> Peter Fisher, *2022 World Cup - Qatar, FIFA and Winter Make No Sense*, online: SPORTIGE, <<http://sportige.com/world-cup-qatar-fifa-and-winter-make-no-sense-2013-09/>> accessed 21 August 2017.

<sup>87</sup> Dan Jones: *You Might As Well Hold the World Cup on Mars*, online: LONDON EVENING *Standard* & *ard* <<http://www.standard.co.uk/comment/dan-jones-you-might-as-well-hold-the-world-cup-on-mars-8858810.html>>

<sup>88</sup> Reider-Gordon *Supra* at 77.

<sup>89</sup> Walter Cairns, 'FIFA under pressure as allegations of bribery regarding Qatar World Cup award accumulate' [2013] 21(3) *Corruption Watch Sport and Law Journal*

<sup>90</sup> Reider-Gordon *Supra* at 77.

<sup>91</sup> Kate Youd *Op cit* at pg 169.

The controversy following the decision is such that another author<sup>92</sup> highlighted limited availability of alcohol in addition to the hot temperature, and other issues already raised. It is however contended that assuming the other issues in controversy can be justified, it should be wondered why alcohol needs to be available in abundant resources to host a successful world cup.

The controversy deteriorated when FIFA said it might move the tournament from its usual June-July timeslot to the winter months due to extreme heat in Qatar<sup>93</sup>. This proposal potentially has a lot of implications on logistics and finance and professional football leagues throughout the world. Moving the 2022 Qatar World Cup to winter would be financially detrimental to professional football leagues and the many businesses that depend on them<sup>94</sup>. This can be said to be a plausible argument especially as FIFA itself created the chaos and the resulting confusion it has found itself<sup>95</sup>. A technical report had been submitted to FIFA that advised that Qatar was a 'high risk' bid due to the heat in the Gulf state and the potential effect of this on the health of players fans and officials, yet the report was ignored, and a decision was made which is subsequently been debated as to whether it should be reviewed based on information that ought to have been originally considered<sup>96</sup>. The problem is made more delicate considering that FIFA would have to balance the value of honouring a decision it made to Qatar and if this is sufficient grounds to disrupt a pre-planned football agenda that could bring problems between leagues, national associations, confederations and FIFA, who all have various interests at stake.

It can be argued that this confusion should not be surprising considering that FIFA had been surrounded by various allegations of secret deals and corruption prior to the world cup allocation decision<sup>97</sup> and by opting to hold the ballot for the 2018 and 2022 World Cups on the same day<sup>98</sup>. FIFA thereby made it possible for countries bidding for one or the other tournament to collude with each other in their respective 2018 and 2022 bids. For instance, it was alleged though not proven that Spain and Qatar had an agreement regarding the Spanish-Portuguese bid for an extra four votes for Qatar in the world cup bid. Sepp Blatter commented about a bundle of votes between Spain and Qatar<sup>99</sup> adding more justification for such thinking.

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<sup>92</sup> Hounshell Blake, OPENING GAMBIT: The Qatar Bubble' [2012] 193(0) Foreign Policy <<http://www.jstor.org/stable/23242417>> accessed 18 August 2017

<sup>93</sup> Qatar World Cup Must Be Moved to Winter, Says FIFA Medical Chief, EUROSPORT, <[http://asia.eurosport.com/football/world-cup/2014/qatar-world-cup-must-be-moved-to-winter-says-fifa-medical-chief\\_sto3926095/story.shtml](http://asia.eurosport.com/football/world-cup/2014/qatar-world-cup-must-be-moved-to-winter-says-fifa-medical-chief_sto3926095/story.shtml)> (last updated 16/09/2013) accessed 28 August 2017.

<sup>94</sup> Kate Youd Op cit at pg 170.

<sup>95</sup> See Special Report: Qatar 2022 - A crisis of FIFA's own making, online: Eurosport, <[http://asia.eurosport.com/football/world-cup/2014/special-report-qatar-2022-a-crisis-of-fifa-s-own-making\\_sto3909761/story.shtml](http://asia.eurosport.com/football/world-cup/2014/special-report-qatar-2022-a-crisis-of-fifa-s-own-making_sto3909761/story.shtml)> accessed 28 August 2017.

<sup>96</sup> Philippe Auclair, Op cit at 92.

<sup>97</sup> Kate Youd Op cit at pg 171

<sup>98</sup> Philippe Auclair, Supra at 92.

<sup>99</sup> See Paul Pelso, FIFA President Sepp Blatter Admits Spanish and Qatar World Cup Bid Teams Did Trade Votes, online: TELEGRAPH (Feb. 7, 2011, 11:00 PM), <<http://www.telegraph.co.uk/sport/football/teams/england/8309934/Fifa-president-Sepp-Blatter-admits-Spanish-and-Qatar-World-Cup-bid-teams-did-trade-votes.html>> accessed 28 August 2017.

In addition, FIFA had been embroiled in many allegations of bribery and corruption before and after the vote was held. For example, a Qatari member of the Executive Committee, Mohammed Bin Hammam, who was relieved of his position and had a life time ban in sport involvement due to corrupt practices (such as bribing football-association members to vote him as FIFA president) shows one of the extents of corruption in the organisation indicating that all was not well with the football organisation.

The problems surrounding FIFA were not limited to bribery and corruption scandals, but extended to reports of human rights violations during the construction of new stadiums in Qatar for the tournament<sup>100</sup>. Although this is not the focus of this work, it highlights one of the consequences of allocating the 2022 World Cup to Qatar.

Problems from the bid and voting process to allocate the 2022 and 2026 world cup to Qatar and Russia and other problems besetting the world football governing body affected the organization's credibility and queried the validity of Qatar's hosting of the tournament<sup>101</sup>. In addition, Greg Clarke, one of England's 2018 bid delegation called for a re-run of the vote instead of moving the tournament to winter likening it with the public tender process whereby new tenders are made to replace invalid tenders<sup>102</sup>.

It is said that FIFA, may launch an investigation into allegations of bribery against the Qatari officials in securing victory in the selection process. In addition, it is also contended that Qatar needs to import millions of tons of raw building materials including, strangely, sand from Saudi Arabia to make the World Cup a success. The author claims this would be a point of leverage that the Saudis could use for many years to come as they have a long history of meddling in Qatari politics. It can however be argued that the focus of the author should be if Qatar fairly and justifiably satisfied the rules in being allocated the right to host the tournament rather than an argument partly based on Saudi Arabia been given the opportunity to meddle in Qatar's business in future years to come as that is a different area of International law and politics for both nations to deal with.

French prosecutors also commenced investigations into potential corruption relating to FIFA's vote for Russia and Qatar to respectively host the 2018 and 2022 World Cup finals with Sepp Blatter already interviewed<sup>103</sup>. Although in another vein it was reported that Sepp

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<sup>100</sup> Kate Youd Op cit at pg 172, see also Global Dispute over Qatar 2022 World Cup Needs Immediate Settlement to Save Lives, Int'l Trade Union Confederation (Oct. 4, 2013), <<http://www.ituc-csi.org/global-dispute-over-qatar-2022?lang=en>> accessed 28 August 2017.

<sup>101</sup> See David Conn, World Cup 2022: Only a Rerun of Votes by FIFA Will Achieve Credibility, GUARDIAN (Oct 3, 2013, 3:16 PM), <<http://www.theguardian.com/football/blog/2013/oct/03/world-cup-2022-fifa-qatar>> accessed 28 August 2017.

<sup>102</sup> Kate Youd Op cit at pg 169.

<sup>103</sup> <<https://www.theguardian.com/football/2017/apr/27/france-investigates-2018-2022-world-cup-votes-blatter-platini>> accessed 14 May 2017. This makes it three countries conducting criminal investigations into the World Cup vote. The US criminal proceedings investigations by the Department of Justice, includes the vote. The Swiss attorney general, Michael Lauber, also confirmed it was examining 152 reports of suspicious financial activity relating to the process.

Blatter<sup>104</sup> has suggested that the decision to award the allocation of the world cup to Russia had already been made before the official votes were held. This claim undoubtedly adds to the furore over the legitimacy of the 2018 and 2022 World Cup bidding process. The initial deal was to bring the event to Russia and the U.S. but the U.S deal probably did not work out. In an interview with the Russian news agency Tass, the suspended FIFA president referred to a discussion in 2010 on the future World Cups whereby a double decision was agreed to go to Russia because ‘it’s never been in Russia, eastern Europe, and for 2022 we go back to America’. He was also said to have told the reporter “And so we will have the World Cup in the two biggest political powers”.

Sebb Blatter further suggested it was former French president, Nicolas Sarkozy, who changed the pre-planned course of events and that if the U.S. was awarded the 2022 World Cup tournament instead of Qatar, the football governing body would not have been involved in the crisis it is in<sup>105</sup>. Following an inquiry by the FBI, the U.S. indicted current and former FIFA football officials on charges of corruption, but this is an issue dealt with in part 3 of this work.

It is not surprising that there have been agitations for Qatar to be stripped of hosting the World Cup following reports of inappropriate payments of millions of pounds to officials supporting Qatar’s bid for the 2022 World Cup<sup>106</sup>.

Prof Jack Anderson<sup>107</sup> suggests that although FIFA might see the calls as a good thing (especially due to controversies over anti-gay legislation in Qatar, reported migrant worker abuses, reports of FIFA president admitting Qatar was an error because of the hot temperatures), FIFA lawyers would find it difficult to implement. He pointed out that backing out of the decision has legal implications for FIFA in view of the agreement made although he also pointed out that a contract secured through corruption cannot stand as a person should not be allowed to keep an advantage they obtained by corrupt means. The corruption alleged needs to be proven, which may be an arduous task considering that Qatar’s 2022 Committee deny wrongdoing. The task is made more difficult because corruption based on secret bribes is more difficult to prove especially considering resources and time required to conduct investigation and translating evidential proof into acceptable legal evidence.

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<sup>104</sup> John T: Sepp Blatter Claims Russia World Cup Was Awarded Before Vote - <<http://time.com/4090867/fifa-sepp-blatter-vote/>> accessed 14 August 2017.

<sup>105</sup> <<https://www.theguardian.com/football/2015/oct/28/sepp-blatter-fifa-russia-2018-world-cup-vote>>, accessed 24 August 2017. All was well until Sarkozy attended a meeting in the company of Qatar’s crown prince, who is now the ruler of Qatar [Tamim bin Hamad Al Thani]. At lunch later with Mr Platini he said it would be good to go to Qatar and that changed the plan. There was also an election by secret ballot with four votes from Europe that were not cast for USA with the result being fourteen to eight. If the four votes had been cast for the U.S, it would have been twelve to ten. Sepp Blatter concluded that had the USA been allocated the World Cup, FIFA would not have any problems.

<sup>106</sup> Jonathan Calvert and Heidi Blake in The Sunday Times of June 1, 2014, online: <<https://www.thetimes.co.uk/article/plot-to-buy-the-world-cup-lvxdg2v7l7w>> accessed 18 August 2017.

<sup>107</sup> See Jack Anderson, Professor of Sports Law, Queen's University Belfast, online: <<https://theconversation.com/fifa-lawyers-would-find-it-hard-to-strip-qatar-of-the-world-cup-27488>> accessed 18 August 2017.

Moreover, investigations of this nature are complex and the Court of Arbitration for Sport demands due process to be followed always. If errors are identified, FIFA would become vulnerable to legal challenge by Qatari organising committee and he reasons that they will simply use the same resources that secured the cup for them in the first place to save it. Another possibility he points out is that the Qatar team could argue that the wrongdoing if any was made by rogue agents without their authority and this type of tactic is an old trick utilised not just in football but can be found anywhere. For example, GlaxoSmithKline put forward a similar argument when it was being investigated for illegal payments to foreign officials in China<sup>108</sup>.

He also points out that people who are not members of the “football family” cannot be compelled to cooperate with investigations and there is little or nothing the sport’s authority can do. He noted that this sort of situation occurred before with allegations of inappropriate payments regarding the bidding process for the 2002 Winter Olympics which eventually led to genuine reform of the Olympic Games’ bidding process and he hopes this may repeat itself. He concludes that his clamour is not for a re-vote for hosting the world cup but ensuring that the bidding process for future tournaments and people who vote conform with fair play.

The problems, criticisms and damage to FIFA’s reputation following the 2022 Qatar World Cup decision appears to have prompted the organisation to take remedial action through its ethics committee<sup>109</sup>. Michael Garcia, FIFA’s ethics investigator conducted a probe among nations that bid for the 2018 or 2022 world cup to ascertain whether officials breached the Ethics Code<sup>110</sup>.

It has been argued however that regardless of the outcome of the investigation, the decision that Qatar would host the 2022 World cup could not be overturn because only FIFA’s Executive Committee was empowered to make this decision<sup>111</sup> and in addition since Sebb Blatter supported the Qatar bid and his power within FIFA was described as unlimited<sup>112</sup>, the decision was not likely to change<sup>113</sup>.

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<sup>108</sup> Ibid.

<sup>109</sup> See Owen Gibson, FIFA Head of Ethics to Gather World Cup 2018 and 2022 Bid Evidence, online: GUARDIAN (Sept. 30, 2013) <<http://www.theguardian.com/football/2013/oct/OI/fifa-ethics-world-cup-2018-2022-investigation>> accessed 24 August 2017.

<sup>110</sup> See Nick Harris, Garcia Offers Whistleblower Anonymity During Qatar 2022 World Cup Investigation, SPORTING INTELLIGENCE (Mar. 12, 2013), <<http://www.sportingintelligence.com/2013/03/12/garcia-offers-whistleblower-anonymity-during-qatar-2022-world-cup-investigation-120301/>> accessed 25 August 2017.

<sup>111</sup> FIFA's Ethics Committee Has ‘No Power’ to Remove World Cup 2022 from Qatar Even If Bribes Took Place, TELEGRAPH (Nov. 14, 2013, 1:49 PM) - <<http://www.telegraph.co.uk/sport/football/world-cup/10449524/Fifas-ethics-committee-has-no-power-to-remove-World-Cup-2022-from-Qatar-even-if-bribes-took-place.html>> accessed 25 August 2017.

<sup>112</sup> Kate Youd Op cit at pg 173. She opines that he has been compared to North Korean President Kim Jong while referring to Jack Blanchard report; FIFA Boss Sepp Blatter Is “Like Kim Jong-un,) - <<http://www.irishmirror.ie/sport/soccer/soccer-news/fifa-boss-sepp-blatter-like-3896543>> accessed 27 August 2017.

<sup>113</sup> “There is no doubt that the World Cup in 2022 will be organised in Qatar and this decision is not reversible.” Online: Blatter-World Cup in Qatar Is Not Reversible, Al JAZEERA (Nov. 9, 2013, 7:16 PM), <<http://www.aljazeera.com/news/middleeast/2013/11/blatter-world-cup-qatar-not-reversible-2013119172121971208.html>> accessed 26 August 2017.

It is noteworthy and arguably unsurprising that Garcia's report when submitted, was not fully published by FIFA. A short version was published, written by Hans-Joachim Eckert and it stated that there was insufficient evidence of corruption during the bidding process to strip Qatar of its tournament hosting rights<sup>114</sup>. Garcia rejected this, made formal complaint to FIFA's Appeals Committee<sup>115</sup> pointing out that the summary was substantially incomplete and contained inaccurate representations of the facts<sup>116</sup>.

In a recent decision by new chairpersons of the independent Ethics Committee, Maria Claudia Rojas of the investigatory chamber and Vassilios Skouris of the adjudicatory chamber, the full report on the Inquiry into the 2018/2022 FIFA World Cup Bidding Process have now been published<sup>117</sup>.

Despite the controversies and allegations of bribery and corruption, it may be argued that some positive impact can be gathered from some past efforts of the country to improve its football standing and from a review of benefits accruing from hosting a world cup tournament.

According to Salma Thani and Tom Heenan, following the recruitment of former Leeds United and England manager, Don Revie, to manage the United Arab Emirates (UAE) national football team, this projected the Gulf State internationally and helped reshape the game's political economy. Similarly, Qatar also invested hugely in football reshaping football boundaries globally, although with some controversy such as corruption in the bidding process for the 2022 World Cup, inflated player salaries and creation of super-elite European clubs. This would mean that usual national based competitions and cups will disappear and potentially create a situation where elite club football becomes a competition between mega club brands who are either sponsored or owned by resource-rich states like the UAE and Qatar<sup>118</sup>.

In an interesting but short article on what the world cup is worth and the financial effects of the 2022 world cup in Qatar<sup>119</sup>, it is argued that to succeed at bidding for mega events, it must be guaranteed that the host country and wider region will benefit. These benefits could be positive development around infrastructure and cultural impact for the host nation. There could also be impact on stock markets and volatility as analysed in Qatar's stock

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<sup>114</sup> Owen Gibson, FIFA Report into Alleged Corruption Clears Qatar to Host 2022 World Cup, online: GUARDIAN (Nov. 13, 2014), <<http://www.theguardian.com/football/2014/nov/13/fifa-report-alleged-corruption-qatar-2022-world-cup>> accessed 24 August 2017.

<sup>115</sup> <[http://www.theguardian.com/football/2014/nov/13/fifa-appeals-committee-michael-garcia?CMP=tw\\_t\\_gu](http://www.theguardian.com/football/2014/nov/13/fifa-appeals-committee-michael-garcia?CMP=tw_t_gu)> accessed 26 August 2017.

<sup>116</sup> <<http://www.bbc.com/sport/0/football/30037729>> accessed 26 August 2017.

<sup>117</sup> <<http://www.fifa.com/governance/news/y=2017/m=6/news=fifa-statement-on-recent-media-coverage-regarding-the-garcia-report-2898791.html>> accessed 26 August 2017.

<sup>118</sup> Salma Thani and Tom Heenan, 'The ball may be round but football is becoming increasingly Arabic: oil money and the rise of the new football order' online: [2016] Soccer & Society <<http://dx.doi.org/10.1080/14660970.2015.1133416>> accessed 14 August 2017.

<sup>119</sup> Abuzayed, 'What is the World Cup really worth? The financial effects of the 2022 event in Qatar' [2014] 30(7) Strategic Direction <<https://doi.org/10.1108/SD-07-2014-0091>> accessed 14 August 2017

markets and those in the Gulf Cooperation Council countries. In his article, Abuzayed provided interesting background information on the future World Cup hosts, the region and expected benefits. He stated that almost 60 per cent of tourists said they were attracted to South Korea because of the World Cup in 2002 (shared with Japan), in addition, the 2002 World Cup generated \$1.3 billion in sales and created over 30,000 jobs in South Korea. In addition, South Korea achieved an additional \$117 million in import. It can thus be argued that despite the concerns raised by many, Qatar could be on the receiving end in terms of infrastructural development, stock market growth and boost in tourism in addition to any other added yet unknown advantage that hosting the event would bring.

Abuzayed however pointed out that Qatar, is a rapidly growing country and recorded the highest growth in the Arab region. As it is heavily reliant on oil and gas production, with half of its income generation sourced from oil and gas and a population of less than 2 million people and 42 listed companies on its exchange, it has a small-scale tourist industry and he therefore finds it difficult to understand why the country would want to commit to the vast infrastructure investment required to host a World Cup. He argued that potential benefits of hosting such mega events include positive effect on the stock markets of the host country as well as those nearby following the allocation of the world cup. But in his opinion the announcements of the World Cup did not lift stock markets simultaneously.

He further opined that investment in construction of the nature required to host the world cup should uplift related industries while employment should have a multiplier effect on the whole country. He however points out that based on previous studies, such uplifts only have positive effects on relatively small countries such as South Korea and Greece, whereas bigger countries such as the USA would record little impact. Thus, many of the effects could depend on subtler, largely unmeasurable indicators such as “mood”, which, for instance can be seen to influence markets or even productivity after a major sporting triumph or defeat.

According to Abuzayed’s study, Qatar stock market showed positive rise immediately after the announcement, but no such uplift was recorded across neighbouring markets in Dubai, Bahrain, Kuwait, Saudi Arabia or Oman. In addition, the service sector saw significant improvements following the announcement such as the tourist industry. Additionally, volatility in Qatar was also affected by the announcement, with only Saudi Arabia among neighbouring countries negatively affected.

Abuzayed contends that unless the World Cup opens tourism and diversified industry that also reaches out to other countries in the region, then Qatar could be left with a negative equity where it has spent much more on its infrastructure than it will be worth in the long run. He argued as well that though there was a short uplift in Qatari markets when the World Cup was announced, particularly in industries that would benefit directly, the announcement had minimal effect on neighbouring markets showing that no investors were stacking in expecting long-term returns from the region. In addition, it is contended that if hosting right is taken away from Qatar, they may be proved right.

Reviewing an article by J. E. Patterson<sup>120</sup> leads one to consider that perhaps hosting the world cup may be a good thing for Qatar whereby the event could act as an enabler in the country's rebranding process. According to Patterson, Qatar's integration and place in international system, has been influenced by first being a small state and secondly, Qatar's response to this. The response being that the country adopted a strategy of branding the state for survival. In that article, Qatar, despite being viewed as a micro state nonetheless that took certain steps to succeed. It was argued that Qatar has a short history as an independent state from 1971, but it went through changes and development placing it as one of the better known and more highly regarded Gulf states, partly because of its huge natural gas reserves, the third largest in the world, but more significantly because of its policy initiatives. These policies are said to have placed the country on the world map, it maintained its sovereignty since independence and gained membership of international organizations. Qatar fully participates in Gulf Cooperation Council (GCC) economic activities (as a founding member of the GCC especially getting involved in security matters including combat during the 1991 Gulf War. Although the country is said to enjoy widening recognition in the West and the United States, partly because of its oil production and expanding natural gas projects, Qatar has hosted major conferences in the international sporting arena such as tennis and golf. In tennis, the ExxonMobil Open tournament takes place in Qatar since 1998, with Roger Federer, successfully defending his title in the 2006 tournament. The Qatar Masters has been a fixture on the European and Asian Professional Golfers' Association (PGA) circuits since 1998. The country also hosts the annual Qatar International Rally and the Asian Games in December 2006. It can thus be argued that hosting the world cup in 2022 will be another feather in its cap towards development, rebranding and making a niche for itself amongst fellow Gulf States and indeed the world.

### **PART 3**

### **FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION (FIFA)**

It is perhaps not news anymore that in May 2015, fourteen (14) FIFA officials<sup>121</sup> and sport marketing executives were indicted by the United States of America (U.S.) on charges of corruption following an inquiry by the Federal Bureau of Investigation (FBI)<sup>122</sup>. 16 more officials were charged in December 2015<sup>123</sup> following the arrest of two FIFA vice-

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<sup>120</sup> JE Peterson, 'Qatar and the World: Branding for a Micro-State', online, [2006] 60(4) Middle East Journal <<http://www.jstor.org/stable/4330320> > accessed 7 August 2017

<sup>121</sup> Some were current officials at the time and some others were former officials.

<sup>122</sup> On May 27, 2015, the United States Department of Justice unsealed a 161-page indictment in the U.S. District Court for the Eastern District of New York - United States of America v. Jeffrey Webb et al. (2015), (No. 15-CR-0252-RJD).

<sup>123</sup> The subsequent charges covered bribes and kickbacks, traced to past tournaments and future World Cup qualifiers. <<http://www.wsj.com/articles/authoritiesmaking-new-fifa-arrests-in-switzerland-1449123950> [<http://perma.cc/QW8F-4C6H>]> accessed 12 August 2017.

presidents<sup>124</sup>. The accusations covered over \$200m (£132m) in bribes and kickbacks resulting in FIFA ethics committee banning FIFA President Sepp Blatter and UEFA President Michel Platini, for six years<sup>125</sup> from all football-related activities.

Subsequent investigation and reports<sup>126</sup> show that corruption in FIFA is global and that some of those tasked with responsibility of keeping FIFA clean are themselves corrupt.

According to reports<sup>127</sup>, in July 2017, Police in Spain arrested the president of Spain's football association, Angel Llona, further to an anti-corruption investigation. He was also a senior vice-president at FIFA and UEFA and was arrested with his son and three other executives while the federation headquarters in Madrid was raided. The case is ongoing in court and the former football association president has resigned his position. It is alleged that he used his position to channel funds into regional federations in exchange for votes to remain in power for eight consecutive terms. It is also claimed he used his influence on television rights during Spain's friendly matches to secure economic benefits for his son. It can be said that this is unsurprising as the handwriting had been on the wall since he was fined in 2015 and warned by FIFA's ethics committee for refusing to cooperate with the investigation into bidding for the 2018 and 2022 World Cup finals tournaments, having led the joint bid of Portugal and Spain for the 2018 tournament. It can be said that this demonstrates sports politicization identified in the characteristics of sports corruption but thankfully, sustained effort by appropriate authorities in investigations led to the eventual arrest and further investigation of the matter.

In another development, involving top football executives, Richard Lai, a member of FIFA's audit and compliance committee, in April 2017, pleaded guilty to wire fraud conspiracy charges related to almost \$1 million he received in bribes and facilitation of bribery of other officials<sup>128</sup>.

This case demonstrates the UN convention position<sup>129</sup> denouncing corruption as a far-reaching plague with no boundary where an audit and compliance committee member holding responsibility of keeping FIFA clean, abused the trust placed in him. It points to an

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<sup>124</sup> At 6 AM on December 3, 2015, Swiss police raided the Baur au Lac Hotel in Zurich and arrested two additional FIFA officials - <<http://www.theguardian.com/football/2015/dec/03/more-fifa-officials-arrested-in-corruption-investigation-reports-say>>, following which, a 236-page Superseding Indictment was unsealed by Attorney General Loretta Lynch – see United States of America v. Jeffrey Webb et al (Nov. 25, 2015), (No. 15-252 (s-1)).

<sup>125</sup> The initial suspensions were reduced in February 2016 from eight to six years in recognition of their services to the game. <<http://www.independent.co.uk/sport/football/international/sepp-blatter-french-football-federation-raided-and-documents-seized-as-part-of-investigation-into-a6920831.html>>

<sup>126</sup> Some of these will be discussed further below.

<sup>127</sup> <<https://www.theguardian.com/football/2017/jul/18/spanish-fa-president-angel-maria-villar-llona-arrested>>, accessed 24 August 2017.

<sup>128</sup> <<https://www.justice.gov/usao-edny/pr/fifa-audit-and-compliance-committee-member-pleads-guilty-corruption-charges>> accessed 23 August 2017. He was charged with two counts of wire fraud conspiracy further to his participation in various schemes to accept and pay bribes to soccer officials. He also pleaded guilty to one count of failing to disclose foreign bank accounts and agreed to pay more than \$1.1 million in forfeiture and penalties.

<sup>129</sup> United Nations Convention against Corruption Supra at 39.

abuse of position, that has earlier been identified as characterizing sports corruption by a corrupt official. Such abuse of position is echoed in the statement by Bridget M. Rohde, Acting United States Attorney for the Eastern District of New York, to wit “The defendant abused the trust placed in him as a soccer official to line his own pockets, and now he will be held to account. The defendant’s breach of trust was particularly significant given his position as a member of the FIFA Audit and Compliance committee, which must play an important and independent role if corruption within FIFA is to be eliminated.”

It was noted at the hearing heartwarmingly, that there had been a systemic culture of corruption and greed over many years with kickbacks and bribes becoming the norm for doing business with FIFA, and that with government’s investigation ongoing, this trend would not continue.

It was also pointed out that the guilty plea served as motivation and re-affirmation for the investigating bodies to trace and uncover corrupt schemes and illegal payments involving FIFA officials within the U.S. financial system and internationally around the globe. Again, this lends credence to the need for sustained efforts and international co-operation in dealing with corruption across borders.

Looking at the time span of the corrupt acts of this individual<sup>130</sup>, it may be argued that why did it take so long to investigate and prosecute him as the acts had become so entrenched that it could almost be viewed as the order of the day.

## MAY 2015 FIFA INDICTMENT

The Indictment covered corrupt malpractices spanning over twenty years including funds transfers made through the United States banking system<sup>131</sup>, charges of \$150,000,000 in bribes relating to selection of host nations for the quadrennial FIFA World Cup and sale of marketing and broadcast rights for FIFA events<sup>132</sup>. The charges also included “RICO” counts (the Racketeering Influenced Criminal Organizations Act<sup>133</sup>, originally enacted to secure convictions of Mafia members), plus wire fraud, conspiracy and other charges<sup>134</sup>.

The defendants and some others, colluded together in acts of bribery using their positions to exchange undisclosed and illegal payments in bribes and kickbacks. Although it is opined that they ultimately pursued the principal purpose of the organisation, the defendants and

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<sup>130</sup> Richard Lai pleaded guilty to receiving \$100,000 in bribes in 2011 from an official of the AFC who was then running for the FIFA presidency, in exchange for Lai’s vote and support in the then-upcoming FIFA presidential election. In addition, he was also involved and pleaded guilty to a scheme in which he received over \$850,000 in bribes between 2009 and 2014 from a faction of soccer officials in the AFC region in exchange for using his influence as a soccer official to advance the interests of the faction that bribed him, including by helping officials in that faction identify other officials in the AFC to whom they should offer bribes. This scheme went on for 5 years from 2009, through 2011 to 2014.

<sup>131</sup> United States of America v. Jeffrey Webb et al. (2015), (No. 15-CR-0252-RJD).

<sup>132</sup> Ibid

<sup>133</sup> 18 U.S. Code § 1961 et seq.

<sup>134</sup> United States of America v. Jeffrey Webb et al. (2015), (No. 15-CR-0252-RJD).

their co-conspirators had also engaged in fraud, bribery, and money laundering, for personal and commercial gain<sup>135</sup>. This is an example of sports commercialisation as a feature of sports corruption enabling corruption to thrive as well as abuse of position among the many features of sports corruption identified earlier in this work. It is a shocking abuse of their positions of trust and their fiduciary duties considering the vast sums of money involved. In addition, the corrupt acts had taken on a systemic and deep-rooted culture considering the length of time the corrupt practices lasted.

To aid their corrupt dealings, the defendants and their co-conspirators concealed each other's proceeds of crime and corrupt activities, and promoted the sustained carrying on of those activities<sup>136</sup>. From a socio-economic point of view, these acts of bribery and kickback deprived FIFA, the national member associations, national teams, youth leagues, and development programs that rely on financial support from their parent organizations, the full value of those rights<sup>137</sup>.

It is pertinent to note that these corrupt schemes amount to anti-competition, disorganising the market for soccer commercial rights and undermined the capability of other sports marketing companies to compete for these rights on more favourable terms to the rights of holders. Fair play has been eroded not just on the field of play but also in the organisation of sporting events and administrative tasks.

Reviewing the nature of the corrupt schemes and number of people involved, it can be argued along with Professor Bean<sup>138</sup> that increased commercialization and globalization of football in recent decades has magnified the value of corporate sponsorships, marketing and broadcast rights. In addition, sales of football team-related items, provides an attractive and easy source of making a quick buck whereby the corruption thrived unchecked in a big way.

It is noted that FIFA operates from Zurich, Switzerland as a Swiss non-governmental organization, and many writers and the Russian government questioned the appropriateness of the Department of Justice taking the lead to indict FIFA officials and its affiliates. Looking at the Indictment<sup>139</sup> however, it was made clear that the basis for jurisdiction was not just the wire transfers that passed through banks in New York<sup>140</sup>, but

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<sup>135</sup>Bruce W Bean, 'An Interim Essay on FIFA's World Cup of Corruption: The Desperate Need for International Corporate Governance Standards at FIFA' [Winter 2016] 22(2) ILSA Journal of International and Comparative Law 367-392.

<sup>136</sup> They used consulting services agreements and similar contracts as a façade of legitimacy for illicit payments; they also used trusted intermediaries, bankers, financial advisors, currency dealers, to facilitate their illicit payments; they created shell companies, nominees, and numbered bank accounts in tax havens and other secretive banking jurisdictions. They concealed foreign bank accounts, re-structured financial transactions to avoid currency reporting requirements; engaged in bulk cash smuggling, purchased real property and other physical assets, used safe deposit boxes, engaged in income tax evasion and obstruction of justice.

<sup>137</sup> Bean Supra at no 132.

<sup>138</sup> Ibid.

<sup>139</sup> As well as the Superseding Indictment.

<sup>140</sup> "In two cases, however, one involving a non-U.S. company and the other two U.S. companies, the U.S. enforcement agencies made it clear that the FCPA's territorial provisions, particularly as they apply to foreign

that there are FIFA offices in Miami, and each indictment also refers to U.S. citizens and residents. According to Professor Bean<sup>141</sup> a careful consideration of the facts alleged in the indictments established that the nature of the corrupt acts provided a substantial basis for United States traditional territorial jurisdiction.

It may however be argued though that there has been a lack of concerted intervention leading to court action before the May 2015 indictment, considering that the corrupt practices were sustained over twenty years and across various jurisdictions. It is however laudable that the indictment by the Department of Justice stirred other nations to suddenly discover FIFA-related crimes that were worth investigating. These include the Serious Fraud Office in the United Kingdom that disclosed possible investigation in October 2015 of money laundry claims against certain persons involved in the alleged payment of \$414,000 bribe paid from Sydney, Australia to a FIFA executive in Trinidad, which may have passed through London<sup>142</sup>.

The Swiss Federal Office of Justice also worked with the Department of Justice in coordinating the raids on FIFA in Zurich which resulted in the arrest of FIFA officials and is now also investigating possible money laundering violations by Swiss banks<sup>143</sup>. Furthermore, Swiss authorities commenced investigation of FIFA's President, Sepp Blatter in October 2015<sup>144</sup>.

## FIFA'S REFORM

Although Sepp Blatter has resigned as FIFA president and some top FIFA officials have been indicted, it remains to be seen if this will make a difference in ridding FIFA and global sports of corruption. In one of FIFA's attempts to address corruption, Maria Haberfeld<sup>145</sup> confirmed that FIFA invested money and time to address the problem of corruption in 2012 through an allocation of 20 million euros to Interpol to generate awareness about corruption in sports and fight corruption in football. Some of this money was used to pull together an international conference of experts that met in Singapore to discuss the problems of corruption in soccer and proffer suggestions.

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companies, confer jurisdiction over foreign bank transfers whose only connection to the United States is the use of correspondent accounts at U.S. banks to clear foreign U.S. dollar transactions." It doesn't take much: Expansive jurisdiction in FCPA matters, online: SHEARMAN & STERLING LLP (March 2009), <[http://www.shearman.com/~media/Files/NewsInsights/Publications/2009/03/It-Doesnt-Take-Much-Expansive-Jurisdiction-in-FC\\_\\_/\\_Files/View](http://www.shearman.com/~media/Files/NewsInsights/Publications/2009/03/It-Doesnt-Take-Much-Expansive-Jurisdiction-in-FC__/_Files/View)> accessed 13 May 2017.

<sup>141</sup> Bean Op cit at pg 8.

<sup>142</sup> <<http://www.foxsports.com/soccer/story/serious-fraud-office-looking-at-world-cup-money-laundering-102715>> accessed 02 August 2017.

<sup>143</sup> <<http://www.bbc.com/news/world-europe-33163918>> accessed 13 May 2017, BBC Staff, FIFA Corruption: Swiss banks 'reported possible money laundering', BBC NEWS (June 17, 2015) accessed 30 July 2017.

<sup>144</sup> <<http://www.nytimes.com/2015/10/09/sports/soccer/sepp-blatter-michel-platini-jerome-valcke-fifa-suspended>> accessed 30 July 2017

<sup>145</sup> <<https://theconversation.com/how-fifa-via-interpol-turned-to-academia-to-clean-up-the-beautiful-game-42730>> accessed 15 August 2017. Maria Haberfeld is a professor of Police Science at John Jay College of Criminal Justice.

The group was made up of academicians and they suggested educational solutions to help publicise international awareness and educate young people about integrity in sports. These solutions include designing training modules, academic courses and certification procedures to prevent match-fixing that would advance the study of corruption on one hand. On the other hand, they suggested educating people about integrity in sports. To achieve this, four areas of concern were identified that were crucial in fixing the problem:

Establishing a legal framework to harmonise global standards of what constitutes illegal behaviour.

Putting together consistent and standardized definitions of corruption.

Identifying an audience to be educated, for example, participants, the institutions, or the public and adapting the right means of effecting that engagement.

Asking public officials to work collaboratively by speaking publicly about why cheating is wrong and why it is a violation of professional sports ethics.

Maria Haberfeld believed that if the public is fully aware of the magnitude of corruption in football, then FIFA crisis and Sepp Blatter's resignation might be a tipping point to trigger change. She argues that FIFA's grant to INTERPOL was a genuine gesture and an attempt to create international awareness to a multinational problem that existed outside the focus of law enforcement organizations worldwide. She concluded that new leadership could influence changes in FIFA by bringing experts together to review the problem and by continuing to raise awareness through education and training.

According to Daniel Hough<sup>146</sup>, FIFA previously said it was making changes for the better and that it was going to reform itself against corrupt practices. A two-tier ethics committee was to be set up as well as a committee composed of "respected personalities inside and outside football to evaluate and propose solutions to the challenges faced by the organisation" to oversee FIFA's work. It was also claimed that a much more open process would be used to decide the host of the World Cup finals. It has been claimed that these reforms did not help FIFA deal with the outcome of the Qatar World Cup bid and thus can be argued that though the new strategies appear alright, they were not useful in clearing up the Qatar mess<sup>147</sup>.

There is a further suggestion that perhaps FIFA's failure is due to a lack of real intent to do so, or possibly because of factors outside its control. The professor of politics suggested that genuine intention can be determined from determining if FIFA itself pushed for change or if the call for change came from external actors. Where the answer is that the push came from external bodies other than FIFA, then that would make the push less committed. In FIFA's case, he noted that calls for changes came about following exposures by

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<sup>146</sup> Professor of Politics, University of Sussex, in an article: Serious about fixing corruption? Whichever way you look at it, FIFA doesn't come out well, online: <<https://theconversation.com/serious-about-fixing-corruption-whichever-way-you-look-at-it-fifa-doesnt-come-out-well-27532>> accessed 27 August 2017.

<sup>147</sup> Daniel Hough *Supra* at 144.

investigative journalists. On a positive note, he conceded that FIFA's new governance structures had improved from what it was before but claims there is still an unwillingness to let external eyes and ears make judgements on its internal processes.

More recently<sup>148</sup>, following the election of Gianni Infantino as FIFA President, there were promises of organisational reform and a quest to reclaim public confidence in FIFA. After one year in office, reports from Transparency International indicate that the public at large still lack confidence in the organisation.

Out of 25,000 football fans from over 50 countries that took part in a survey, 97% still worry mainly about match fixing and bribery, 53% do not trust FIFA, 33% believe FIFA is actively working against corruption in football, while 15% of fans have more confidence in FIFA than they did during the corruption scandal. Notwithstanding the lack of confidence gathered from the survey, it has been suggested that there are reasons to believe that under the new leadership, FIFA will change.

The new FIFA leadership is said to have made the following efforts to control corruption within football and the organization:

FIFA outsourced detection of match fixing to a neutral third party; Sportradar. The company is mandated to identify and analyse suspicious betting behaviour and patterns using its Fraud Detection System. Players also receive enlightenment about the ease with which regulators, and FIFA, can track match fixing.

FIFA also followed through on its "zero-tolerance" policy for referees involved in bribes. Article 69 of the FIFA disciplinary code, prohibits individuals from unlawfully influencing match results. In March 2016, FIFA banned three former South African officials over match fixing friendly games before the World Cup. In March 2017, Ghanaian referee Joseph Odartei Lamptey was banned for life for influencing the result of a World Cup qualifying match. With these measures, all football referees would see FIFA's determination to restore integrity in sport and should deter others from engaging in similar conduct.

In addition, FIFA took what can be arguably called baby steps to increase transparency within its top level to deal with corruption by creating the post of a chief compliance officer. The organisation employed Edward Hanover, an experienced international compliance executive and in addition, for the first time, FIFA declared the compensation of key management personnel to the public following requests from Transparency International.

Lastly, FIFA appointed a new auditor; Price Water Coopers and adopted IFRS 15, an accounting software to provide a more exact analysis of the organization's four-year revenue cycle.

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<sup>148</sup> Jimmy McEntee, <<https://globalanticorruptionblog.com/2017-reforming-fifa-why-recent-reforms-provide-reason-for-hope>> accessed 27 August 2017.

Although these reforms appear as baby steps in preventing corruption within football and FIFA, it can be argued that baby steps lead to giant strides especially bearing in mind the level at which corruption had been entrenched in the organisation and that a year is a short period of time to uproot the deep-rooted hold of corruption on the organisation.

Furthermore, FIFA Congress approved an extensive reform package in February 2016, that substantially changed the old structure of the organization<sup>149</sup>. With headquarters still in Zurich, Switzerland, the organization supplemented its leadership hierarchy with a Congress, a FIFA Council, a General Secretariat and several committees in addition to the president<sup>150</sup>.

The president holds the highest office and will be elected every four years by the member associations of the Congress<sup>151</sup>. The Congress represents the supreme body, made up of representatives from the 211 member-nations, it approves annual reports and elects the president<sup>152</sup>. The FIFA Council, is tasked with providing strategic direction for the organization and is made up of thirty-six members and the FIFA President<sup>153</sup>. The FIFA Council replaced the Executive Committee, which used to be the primary decision-making organ of FIFA. The General Secretariat is charged with executing the strategies designed by the FIFA council.

It is also good to note that with the new FIFA structure, each congress member, that is, the 211-member states, have equal voting powers regardless of its population, or dexterity at playing football. Further voting however is secret meaning accountability can still be an issue in future<sup>154</sup>.

It must be pointed out that before the change to equal single votes for congress members, the hitherto Executive Committee decided the World Cup host which was why in 2010, the Committee chose Russia to host the 2018 world Cup and, Qatar, the 2022 world Cup<sup>155</sup>. With the changes made, a new bidding process for the 2026 World Cup has been established which will be in four phases<sup>156</sup> and consists of a yearlong consultation period followed by three years of bid preparation and bid evaluation.

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<sup>149</sup> <<http://www.fifa.com/governance/how-fifa-works/thereform-process.html>> [<https://perma.cc/25VX-K267>] accessed 27 August 2017.

<sup>150</sup> <<http://www.fifa.com/governance/how-fifa-works/> [<http://perma.cc/P5AD-KG3T>]> and <<http://www.fifa.com/about-fifa/who-we-are/index.html> [<http://perma.cc/9SZH-QX4Y>]> accessed 27 August 2017.

<sup>151</sup> How FIFA Works, Supra.

<sup>152</sup> Brittney Balsler, The Structure and Policies of FIFA, SOCCER POL. BLOG (2013), <<http://sites.duke.edu/wcwp/tournament-guides/world-cup-2014/fifa-institutional-politics/the-structure-and-policies-of-fifa/> [<http://perma.cc/RK47-DUAC>]> accessed 11 August 2017.

<sup>153</sup> How the FIFA Council Works, Supra.

<sup>154</sup> David Goldblatt, How FIFA's Fouls May Revive the Beautiful Game, BLOOMBERG VIEW (June 3, 2011, 12:01 AM), online: <<http://www.bloombergvie.com/articles/2011-06-03/how-fifa-s-fouls-may-revive-the-beautiful-game-david-goldblatt> [<http://perma.cc/PT8S-A4GG>]> accessed 10 August 2017.

<sup>155</sup> Tony Manfred, 14 Reasons Why the Qatar World Cup Is Going to Be a Disaster, online: BUS. INSIDER (Apr. 21, 2014, 1:43 PM), <<http://www.businessinsider.com/qatarworld-cup-problems-2014-4> [<http://perma.cc/G7NA-W7KB>]> accessed 11 August 2017.

<sup>156</sup> 2026 World Cup Hosting Vote Postponed Three Years Until 2020, ESPN FC (May 10, 2016), <<http://www.espnfc.us/blog/fifa/243/post/2868917/2026-world-cup-hosting-vote-postponedthree-years-until-2020> [<https://perma.cc/2RXC-MFNJ>]> accessed 10 August 2017.

## **PART 4**

### **THE INTERNATIONAL OLYMPIC COMMITTEE AND THE 2016 OLYMPIC GAMES**

The International Olympic Committee ('IOC') was formed on 23 June 1894 as a committee in charge of organising Olympic games and has come a long way since then as an international organisation. The first Olympic games took place in Athens on 6 April 1896 and the most recent was celebrated in Rio De Janeiro, Brazil in August 2016.

The IOC is part of an Olympic movement that has grown in membership, scope and functions and is comprised of organisations, athletes and people who agree to be bound by the principles of the Olympic charter<sup>157</sup>. Accordingly, the Olympic Movement has as its objective, the mission to help build a peaceful and better world by educating youths through sport in an atmosphere of friendship, solidarity and fair play<sup>158</sup>.

The Olympic Movement comprises of the IOC, the International Federations (IFs), and the National Olympic Committees (NOCs) and it is important to note that the legal status and roles and responsibilities of the Olympic Movement is governed by the Olympic charter, the current Charter being effective from 2<sup>nd</sup> August 2016.

The Olympic Charter codifies all the principles, rules and bye-laws that the IOC adopts and it also regulates the celebration of the Olympic games<sup>159</sup>.

The Olympic Games has been described as the world's most recognised international sporting event alongside the FIFA World Cup<sup>160</sup>. Since the first game at Athens in 1896, it has been staged as summer Olympic games every four years except for those planned during World War II<sup>161</sup>. There is also the Winter Olympic Games with the first held in Chamonix, France, in 1924, it also holds every four years except those scheduled during World War II<sup>162</sup>.

The IOC has been described as an extraordinary association with a membership that chooses its own members following rules and limits set by itself<sup>163</sup>. On the official webpage, it is described as a not-for-profit independent international organisation made up of

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<sup>157</sup> <<https://www.olympic.org/about-ioc-institution>> accessed 29/8/2017.

<sup>158</sup> Ibid.

<sup>159</sup> Full text of the Charter online: <[https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf#\\_ga=2.230498652.1906888462.1504026182-1635291884.1503925476](https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf#_ga=2.230498652.1906888462.1504026182-1635291884.1503925476)>.

<sup>160</sup> Esther Cho, 'Olympics and International Sports Law Research Guide' online: [2012] 12(2) Legal Information Management < <https://doi.org/10.1017/S1472669612000291>> accessed 20 August 2017

<sup>161</sup> See factsheet, the Games of the Olympiad, <[http://www.olympic.org/Documents/Reference\\_documents\\_Factsheets/The\\_Olympic\\_Summer\\_Games](http://www.olympic.org/Documents/Reference_documents_Factsheets/The_Olympic_Summer_Games)>.

<sup>162</sup> < [http://www.olympic.org/Documents/Reference\\_documents\\_Factsheets/The\\_Olympic\\_Winter\\_Games](http://www.olympic.org/Documents/Reference_documents_Factsheets/The_Olympic_Winter_Games)>

<sup>163</sup> John Horne and Garry Whannel, *Understanding the Olympics* (2nd edn, Routledge 2012) online: <<http://ebookcentral.proquest.com/lib/ucl/detail.action?docID=728259>>.

volunteers<sup>164</sup>. It has a President who directs all its activities and a Session and Executive Board that are responsible for taking the main decisions for the organisation.

It is essential to note that despite the codification of its status, functions, roles and limitations in the Olympic Charter, the IOC has been likened to a club akin to an eighteenth-century aristocratic gentlemen's club membership structure<sup>165</sup>. This opinion is hinged on the system of self-election of members and subjective decision making involved in the selection of applicants for membership by a few rather than by a majority). There is also said to be a notion that new members should fit in socially which further suggests the club-ability label. Officially though, IOC members are said to be natural persons, who are representatives of the IOC in their respective countries, and are not delegates of their country in the IOC<sup>166</sup>.

The IOC has faced challenges to its integrity concerning the procedure for bidding to be a host nation and the development of the idea of an 'Olympic truce'. With respect to the former, since the early 1990s, investigative reporting by journalists and social researchers uncovered details of corruption in the Olympic movement. Although there had been reports of corruption and use of agents to help win bids in the Olympic bidding process in the 1990s, the Salt Lake City scandal revealed bribes that exchanged hands in choosing the host for the 2002 Winter Olympic Games.

## THE 2016 SUMMER GAMES – RIO 2016

The summer Olympics of 2016 more correctly referred to as The XXXI Olympiad was hosted by Rio de Janeiro following three rounds of voting held on 2 October 2009 by IOC members at the 121st IOC Session, in Copenhagen, Denmark<sup>167</sup>.

Brazilians celebrated the announcement<sup>168</sup>, which is understandable as hosting the event supposedly brings some benefits to the nation such as tourist attraction and spending, long term benefits of the Olympic legacy such as improvements in infrastructure and increased foreign investment and trade after the Games and other feel-good factors emanating from being a host city<sup>169</sup>. At the same time however, the people of Brazil also protested that hosting the event had brought along corruption by powerful corporate interests, profiteering, and greed<sup>170</sup>. Recession, public service cuts, unemployment and wasteful spending in addition to wilful allocation of resources on the Olympics were some more reasons cited for protests.<sup>171</sup>

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<sup>164</sup> <<https://www.olympic.org/the-ioc>> accessed 24 August 2017.

<sup>165</sup> J. Horne Supra at no 160.

<sup>166</sup> <<https://www.olympic.org/about-ioc-institution>> accessed 24 August 2017. IOC members only represent and promote the interests of the organisation in their countries.

<sup>167</sup> <<https://www.olympic.org/rio-2016>> accessed 14 August 2017.

<sup>168</sup> Dave Zirin, *Brazil's Dance with the Devil: The World Cup, The Olympics, and the Struggle for Democracy* (Haymarket Books 2014).

<sup>169</sup> Robert A Baade and Victor A Matheson, 'Going for the Gold: The Economics of the Olympics' [2016] 30(2) *The Journal of Economic Perspectives* <<http://www.jstor.org/stable/43783713>> accessed 1 September 2017 14 August 2017.

<sup>170</sup> Dave Zirin, Supra at no 168.

<sup>171</sup> Baade and Matheson Supra at no 167.

Relying on first hand investigations and reporting from Rio, Dave Zirin examined how politics and sports had become a means of exploitation and corruption leading on to consider the argument whether corruption can be a violation of human rights and possibly a crime under international law<sup>172</sup>. In his previous article, RIO on the brink<sup>173</sup>, the sports writer referred to an old expression in Brazil that “it is for the English to see.” He explained that this means Brazil creates a good-looking façade when necessary, for outsiders to see. This façade does not really represent what exists in the country. He suggested that because tourists and investors had carried on in this fantasy for a long time, the 2016 Summer Olympics was just another addition to the history of facades for foreign consumption. He noted that the decision to award the games to Brazil had detrimental effects on the people with purportedly 77,000 people displaced with no reliable program for rehousing, that there was patrol by 85,000 strong security forces on the street who were also killing and assaulting people on the pretence of presenting a secured nation to the outside world; an estimated \$11.9 billion spent on preparations for the game while the economy was not thriving. In addition to this was the impeachment of President Dilma Rousseff of the left-leaning Workers’ Party while 318 of 594 congress members were under investigation or facing corruption charges. Paramount at the time as well was the Zika virus with infection in Rio being the highest in the country. On the other hand, the government through Rio Mayor Eduardo Paes, assured the world that these were usual things to be expected when a developing world hosts an Olympic event.

According to Zirin<sup>174</sup>, the scenario in Rio portrays the corrupt attributes of cities that have hosted the games especially after 9/11, huge security costs and out-of-control budgets assume a focal point of spending for the games. He argues further that the corruption rife in Brazil represents the way elites operate in Brazil which facilitated the award of hosting the Olympics to the country. It can thus be argued that going by corrupt trends of sport governing bodies, this are attractive traits to the IOC when looking for an Olympic host city.

Many have argued<sup>175</sup> that owing to the requirements contained in the bids and proposals to be submitted by potential host nations, many governments use this as an opportunity to embark on wasteful projects some of which displace poor people from their homes while they claim hosting the games is for the good of the nation.

Bidding for the Olympics is a huge undertaking whereby the Evaluation Commission of the IOC physically assesses the condition of the applicant city. The applicant city tries to impress the Evaluation Commission and this forms part of the bidding expense which when summed with architectural proposals, financial estimates, and pre-event marketing, present a significant amount of money. This is especially as each applicant city would not know the plans of other applicant cities and each would try to impress the best. Chicago, for instance incurred between \$70 million and about \$100 million on its unsuccessful application to host the 2016 Games<sup>176</sup> while England spent about £21 million for a similarly failed bid to host

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<sup>172</sup> Martine Boersma Supra at no 11.

<sup>173</sup><<http://web.b.ebscohost.com/ehost/pdfviewer/pdfviewer?vid=1&sid=6083dff0-aeb3-4143-a721-ed569d885a31%40sessionmgr102>> accessed 22 August 2017.

<sup>174</sup> Zirin, Supra at no 168

<sup>175</sup> Baade and Matheson Supra

<sup>176</sup> Kate Youd Supra no 79.

the 2018 World Cup<sup>177</sup>. Major expenses usually include infrastructure to accommodate anticipated surge of tourists and athletes attending the event. Due to the number of visitors anticipated, the IOC usually requires host cities to have a minimum of 40,000 hotel rooms available for spectators, an Olympic Village with capacity for 15,000 athletes and officials, internal and external transportation facilities to individual sports venues<sup>178</sup>. It is contended that in the case of Rio de Janeiro, 15,000 new hotel accommodation was still required despite the city already being a popular tourist hive<sup>179</sup>.

In December 2014, it was alleged that majority of Russian athletes had been doping with active support and cover up by officials of Russian Athletics Federation (RAF)<sup>180</sup>. It was also claimed that the Russian Anti-Doping Agency (RUSADA) gave athletes and doctors performance enhancing drugs in exchange for 5% of an athlete's winnings and both bodies arranged the cover up for the athletes against positive tests. The Russian authorities denied the allegation while the International Association of Athletics Federations (IAAF) and the International Olympic Committee (IOC) undertook to consider the matter. In January 2015, it was revealed that IAAF President Lamine Diack, had allegedly taken 200,000 Euros in bribes to cover up positive Russian doping tests. WADA's report in November 2015 substantiated the allegation and implicated other RAF and IAAF officials as well as the Russian government officials. As pointed out by Binette, this is a state sponsored corrupt act that benefitted public officials and tarnished the image of sports at the highest level.

In response, IOC set up a disciplinary commission to review WADA's report regarding the doping violations by Russian officials and to consider Russia's participation at the Summer Olympics in Rio Olympics<sup>181</sup>. This step was said to be taken due to violations of the Olympic charter and the World Anti-Doping Code<sup>182</sup>.

A decision was made by IOC to allow 271 Russian athletes from an original entry group of 389 athletes to participate at Rio 2016 if a number of strict conditions were satisfied<sup>183</sup>. A summary of the conditions requires the athlete to satisfy specific criteria supervised by the athletes International Federation. In addition to this, and arguably more significant amongst the conditions is IOC's requirement that athletes' entries would be made subject to the decision of an independent expert who is not involved in any sports organisation or involved in the Olympic Games. It can be argued in IOC's favour that some objective level of adherence has been introduced to the conditions as a mere requirement for athletes to comply with their International Federation scrutiny would have defeated the whole purpose

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<sup>177</sup> Kate Youd Op cit at pg 171.

<sup>178</sup> Robert A. Baade and Victor A. Matheson Op cit at pg. 203

<sup>179</sup> Dave Zirin Supra at no 168

<sup>180</sup> Daniel Binette on Doping and Corruption in Sports: Why We Should Care, and What We Should Do, online: <<https://globalanticorruptionblog.com/2016/02/08/doping-and-corruption-in-sports-why-we-should-care-and-what-we-should-do/>> accessed 15 August 2017.

<sup>181</sup> <<https://www.olympic.org/news/decision-of-the-ioc-executive-board-concerning-the-participation-of-russian-athletes-in-the-olympic-games-rio-2016>> accessed 16 August 2017.

<sup>182</sup> Ibid.

<sup>183</sup> <<https://www.olympic.org/news/ioc-review-panel-decides-on-the-participation-of-russian-athletes-at-the-olympic-games-rio-2016>> accessed 16 August 2017.

of setting conditions since the officials and authorities were involved in the reverse bribery, doping and cover ups from the beginning.

Following various corruption scandals at the Sochi Winter Games 2014<sup>184</sup> and the Rio Summer Games 2016, the IOC attempted to make amends particularly with reference to the host city contract by introducing anticorruption and human rights requirements which have never featured in such documents.

The amendment requires that the host city must “refrain from any act involving fraud or corruption, in a manner consistent with any international agreements, laws and regulations applicable in the Host Country and all internationally-recognized anti-corruption standards applicable in the Host Country, including by establishing and maintaining effective reporting and compliance.”<sup>185</sup>

According to IOC President, Thomas Bach, this requirement was adopted from recommendations made by some international organisations<sup>186</sup> that promoted good governance and accountability which were key elements of the Olympic agenda 2020<sup>187</sup>.

Laudable as this step suggests, it has been argued<sup>188</sup> that the provision has no means of enforcement and therefore cannot be used to combat corruption. Part of the argument canvassed to justify this position is that firstly, IOC requires independent monitoring (an oversight body) of host cities to know when corruption occurs and this is not available. Secondly, IOC cannot enforce violations of the provision if there is non-compliance and a lot of other factors would make it logistically difficult to withdraw or withhold funds for host cities coupled with impracticalities of changing the location of the game. Thirdly, the language of the provision is vague and leads to uncertainty. It has been said that an effective anti-corruption provision would use clear language that commands agents and others acting on behalf of the host city to be equally bound by the provisions of the contract. At the end of the day, it was suggested that the step is nothing more than a public relation stunt by the IOC to improve its image following the barrage of criticisms and corruption scandals<sup>189</sup>.

The writer suggested that for the IOC to be taken seriously in fighting corruption, it should consider overlooking cities and countries enmeshed in corruption scandals (such as

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<sup>184</sup> According to Kate Youd, op cit, about 50-60% of the alleged cost of the Russian Olympics was embezzled. For instance, the 40,00-seat Fisht Olympic Stadium, which was first projected to cost about \$49 million ended up at an alleged cost of between \$520million - \$700million, many times more than the fair value for it.

<sup>185</sup> See Section 13(2) online: <<http://stillmed.olympic.org/media/Document%20Library/OlympicOrg/Documents/Host-City-Elections/XXXIII-Olympiad-2024/Host-City-Contract-2024-Principles.pdf>> accessed 22 August 2017.

<sup>186</sup> Transparency International, Amnesty International and the Sport and Rights Alliance.

<sup>187</sup> <<https://www.olympic.org/olympic-agenda-2020>> accessed 25 August 2017.

<sup>188</sup> Jimmy Mcentee, 'The International Olympic Committee's Revised Host City Contract: Another Failed Attempt at Preventing Corruption', online: (The Global Anti Corruption Blog, 1st May) <<https://globalanticorruptionblog.com/2017/05/01/the-interational-olympic-committees-revised-host-city-contract-another-failed-attempt-at-preventing-corruption/>> accessed 20 August 2017

<sup>189</sup> Supra

granting Beijing the 2022 Winter Olympics). It can be argued that such a stand might however be difficult considering that there is no one country that has a clean slate from corruption when reviewing Transparency Corruption Index from year to year. At best, the level of corruption would vary.

It is however important to note that above argument in no way takes away from the fair criticism of IOC's attempt at curbing corruption. As can be seen from opinions like that of Jimmy McEntee, some others<sup>190</sup> also argue that the language used in amending the host city contract does not represent genuine progress in fighting Olympic corruption. The latter position compares the steps taken by the IOC with the Union of European Football Associations (UEFA) Tournament Requirements for the EURO 2024 tournament with UEFA viewed as being on the same grading as the IOC. Although the UEFA tournament requirements do not address third-party risks either, the language setting out of the provisions demonstrates that UEFA is aware of compliance requirements. Therefore, by including a requirement for a comprehensive risk assessment in the provision, the view is taken that this simultaneously includes an assessment of third-party risks.

## **CONCLUSION**

This dissertation has focused on the general notion of corruption and the ones that pertain to corruption in the world of sport. It reviewed briefly a description of the most relevant legal instruments to fight corruption. It discussed corruption in the world of sport with great emphasis on World Cup, FIFA AND IOC.

It has looked at some attempts at defining corruption and found that a universal definition is not available but there have been some common trends in the way in which corruption is perceived and interpreted.

Corruption has been described as dishonesty, fraud, bribery, cheating, exploitation and deceit amongst other definitions but it is largely connected with the idea of giving something for something. However, corruption in sport is not new as corruption is seen to be inborn in human beings. Corruption is a vice that men have to live with because of human greed and security. Corruption can be linked to all categories of men, both high and low with heavy amount of money exchanged between individuals, corporations & organizations including notable world sporting bodies such as FIFA across various institutions regarding sporting activities and competitions.

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<sup>190</sup> Thomas Professor Kruessman, 'The IOC Is Lagging Behind In Fighting Corruption in Sports Mega Events' online: (The Global Anti Corruption Blog, 25th June 2017) <<https://globalanticorruptionblog.com/2017/06/15/guest-post-the-ioc-is-lagging-behind-in-fighting-corruption-in-sports-mega-events/>> accessed 24 August 2017.

From investigation, sports have been affected by mismanagement in many ways such as match-fixing, sport-fixing, bribery, dubious transfer inspired deals which have damaged the integrity of sporting activity at all levels. Corruption has been regarded as the bane of many of the problems in the world today. It hits hard on the poor because the high and mighty who steal do it for private gain. They are not interested in doing anything in favour of the poor. It impedes development & security and is a violation of basic human rights.

For corruption not to thrive well, FIFA must punish offenders and work with other sports governing bodies to establish a world corruption free Agency. This is necessary in order to regain credibility and public trust. Many reports and articles on dishonesty & fraud in sports have shown many forms of sports in disrepute, some of these have led to calls by different notable people for changes & improvement in the interest of fair play and doing things right for posterity.

This work focused on corruption in sports hinged on football world governing body; FIFA, allocation of 2018 & 2022 world cups as well as International Olympic Committee. This is due to the staggering instances of corruption at high levels unchecked from yesteryears and has almost become a daily routine & acceptable in many societies.

It has been opined that conflicts of interests, elaborate networks and widespread clientelism are the distinctive features of corruption in the political world<sup>191</sup>, it can be argued this is true for corruption in sports globally as well. There is indeed a need for proper regulations and corporate governance measures to minimise if not eradicate corruption as interwoven and close relationships between state actors, sport organisations and wealthy investors can make corruption flourish.

Prior to 1990, corruption was viewed as a problem of the underdeveloped countries. As years passed by, corruption has woven its way through the fabric of everyday life of all and sundry and has led to the conclusion that it's a crime under international law. In fact, corruption affects lives of the smallest and the biggest things in life and can have severe and negative impacts on human dignity. Corruption brings shame and disgrace to its perpetrators. It can also have devastating effects on people or members of the society that held some individuals in high esteem or regard them with awe. Corruption can also involve use of tricks or cunning ways to achieve success and fame. Even colleges offering sports apprenticeship training are also enmeshed in corruption e.g. fraudulent trading, false acting and forgery & claiming payments for educational services and training they never provided.

Corruption in sports has become a household name all over the world. Spirit of healthy sportsmanship should be promoted and encouraged. Sports should not be a do or die affair or games between enemies.

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<sup>191</sup> Costantino Grasso, Lessons from Samsung and South Korea in cracking down on corruption, <<https://theconversation.com/lessons-from-samsung-and-south-korea-in-cracking-down-on-corruption-74383>> accessed 21 July 2017.

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