

# ENOUGH IS ENOUGH: FIFA MUST INCORPORATE PRINCIPLES FROM THE ADMINISTRATIVE PROCEDURE ACT OF 1946 TO COMBAT ONGOING EXECUTIVE COMMITTEE CORRUPTION

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## I. INTRODUCTION

The International Federation of Association Football, soccer’s world “governing” organization,<sup>1</sup> shocked the soccer world on December 2, 2010, when it revealed that Qatar had defeated Australia, Japan, South Korea, and the United States for the privilege to host the 2022 World Cup.<sup>2</sup> The fact that FIFA chose an Arab nation the “size of Connecticut,”<sup>3</sup> where temperatures reach “120 degrees Fahrenheit” during the summer, to host the biggest and most-watched sporting event in the world<sup>4</sup> caused soccer fans around the world to react with surprise, shock, and even anger, including former President Bill Clinton.<sup>5</sup> President Clinton, who had spent the previous two years traveling around the world championing the United States’ cause to host the tournament, was so angry when he heard the news that he threw an ornament at his Zurich hotel room’s mirror, “shattering” it.<sup>6</sup>

Immediately following the Qatar decision, allegations of misconduct against FIFA and Qatar resulted.<sup>7</sup> These allegations included ac-

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1. *The Home of FIFA*, FIFA.COM (May 21, 2010), <http://www.fifa.com/about-fifa/administration/fifa-headquarters.html>.

2. *Russia & Qatar to Host World Cups*, BBC (Dec. 2, 2010, 7:05 PM), <http://news.bbc.co.uk/sport2/hi/football/9250612.stm>. Qatar is an unusual host for the World Cup because of its small size, lack of infrastructure to accommodate the millions of visitors during the tournament, and extreme summer temperatures. See FIFA, *Evaluation Reports on the Bids for the 2018 and 2022 FIFA World Cups*, at 28-29 (2010), <http://www.fifa.com/mm/document/tournament/competition/01/33/59/45/bidevaluationreport.pdf>. Before the announcement, Qatar was seen as the massive underdog. South Korea and Japan have already hosted a very successful world cup, *see id.* at 20, 24, and Australia is a massive, first world country. When looking at past host nations, such as France, Germany, the United States, Brazil, and even South Africa, Qatar does not fit the mold of a normal hosting nation.

3. Brent Latham, *Behind Qatar’s Football Success*, ESPN (Dec. 23, 2010, 5:38 PM), [http://espn.go.com/sports/soccer/news/\\_id/5933045/how-qatar-became-player-world-soccer](http://espn.go.com/sports/soccer/news/_id/5933045/how-qatar-became-player-world-soccer).

4. Samuel Chi, *Brutal Migrant Labor and Heat: Qatar Unfit to Hold the World Cup*, DIPLOMAT (Oct. 3, 2013), <http://thediplomat.com/2013/10/brutal-migrant-labor-and-heat-qatar-unfit-to-hold-the-world-cup/>; STEPHEN DOBSON & JOHN GODDARD, *THE ECONOMICS OF FOOTBALL* 407 (Cambridge Univ. Press 2d ed. 2011).

5. Brooks Peck, *Bill Clinton Was So Angry When Qatar Was Awarded the 2022 World Cup That He Broke a Mirror*, YAHOO! SPORTS (June 3, 2014, 7:01 PM), <http://sports.yahoo.com/blogs/dirty-tackle/bill-clinton-was-so-angry-when-qatar-was-awarded-the-2022-world-cup-that-he-broke-a-mirror-230144974.html>.

6. *Id.*

7. Paul Kelso, *Lord Triesman Alleges FIFA Corruption in World Cup Bidding Process at Commons Committee Hearing*, TELEGRAPH (May 10, 2011, 9:41 PM), <http://www.telegraph.co>

cusations of FIFA Executive Committee members' votes being bought in favor of Qatar, which brought demands for a "revote" in 2011.<sup>8</sup> In late 2013, more issues arose when *The Daily Mail* published a story disclosing close Qatari relations with Hamas and Al-Qaeda and the appalling treatment of migrant workers by Qatari construction companies.<sup>9</sup> This outraged the public and brought FIFA's integrity further "into question."<sup>10</sup> These unsavory stories, coupled with the extreme summer heat in Qatar that would threaten the safety of players, officials, and spectators, led some to believe the World Cup would eventually be moved to another country.<sup>11</sup> Any hope of a revote was still contingent upon FIFA volitionally making it happen with its typical ad hoc decision-making.<sup>12</sup> Sadly, those hopes were dashed when FIFA announced its plans to press on with Qatar hosting the 2022 World Cup during "winter months" instead of the traditional summer months.<sup>13</sup> FIFA has yet to have a revote, and after a few hollow statements from FIFA executives claiming the whole voting process was clean, Qatar 2022 appears to be going full steam ahead.<sup>14</sup>

The unfortunate truth about this situation is that FIFA's corruption is the norm, not the exception; Qatar's debacle is merely another chapter in an ongoing tragic story. The FIFA Executive Committee,

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uk/sport/football/international/8504841/Lord-Triesman-alleges-Fifa-corruption-in-World-Cup-bidding-process-at-Commons-committee-hearing.html.

8. See generally *id.*; Adam Withnall, *Qatar World Cup 2011 'Revote': Now Australia's Bid Could Face Ethics Investigators as FIFA Rocked by Corruption Allegations*, INDEPENDENT (June 2, 2014), <http://www.independent.co.uk/sport/football/news-and-comment/qatar-world-cup-2022-revote-now-australia-s-bid-could-face-ethics-investigators-as-fifa-rocked-by-9474059.html>.

9. Martin Samuel, *The World Cup Hosts in Bed with Terrorists*, DAILY MAIL ONLINE (Mar. 18, 2014, 7:41 PM), <http://www.dailymail.co.uk/sport/worldcup2014/article-2583721/MARTIN-SAMUEL-The-World-Cup-hosts-bed-terrorists.html>.

10. See Owen Gibson, *FIFA Faces Calls to Quash Qatar World Cup Vote After Corruption Allegations*, GUARDIAN (June 2, 2014, 2:32 AM), <http://www.theguardian.com/football/2014/jun/01/qatar-2022-world-cup-allegations-fifa-revote>.

11. Rick Klein, *World Cup America?*, ABC NEWS, (July 7, 2014, 12:42 PM), <http://abcnews.go.com/blogs/politics/2014/07/world-cup-america-why-a-senator-cites-fairness-to-strip-qatar-of-2022-contest/>. Moving a World Cup amidst corruption allegations has never happened in tournament history.

12. Most international sports organizations, including FIFA, are autonomous, and their decision-making is internally operated. Sean Ingle, *Solving FIFA's and IOC's Problems Is Easier Said than Done*, GUARDIAN (Nov. 22, 2015, 1:36 PM), <http://www.theguardian.com/sport/2015/nov/22/solving-fifa-ioc-problems>. Most notably, FIFA's Executive Committee and its President have dominant influence over the organization's ad hoc decision making. See also FIFA STATUTES, art. 33 (2015).

13. Sam Borden, *'22 World Cup in Qatar Is Shifted to December*, N.Y. TIMES, Mar. 20, 2015, at B10.

14. See Ewan Palmer, *FIFA Arrests: 'No Revote' for Russia 2018 and Qatar 2022 World Cups Despite Criminal Investigation*, INT'L BUS. TIMES (May 27, 2015, 11:49 AM), <http://www.nytimes.com/2015/03/20/sports/soccer/fifa-confirms-winter-world-cup-for-2022.html>.

the group that votes to determine where the World Cup will be hosted, has long been accused of corrupt practices that date back as far as the early 1990s.<sup>15</sup> Although many Executive Committee members have been accused of accepting or asking for bribes for their World Cup votes, most impropriety gets swept under the rug,<sup>16</sup> given the fact that FIFA is an international governing body operating under its own exclusive legislation.<sup>17</sup> Currently, either the FIFA Disciplinary Committee or the FIFA Ethics Committee must conduct any investigation of an Executive Committee member.<sup>18</sup> However, because the Executive Committee greatly influences those committees,<sup>19</sup> naturally these investigations are few and far between. Even when an investigation is actually pursued, the findings and disposition are often kept from the public.<sup>20</sup> It is a “see no evil, speak no evil” type of situation.

Despite this continuing injustice, the soccer world and FIFA itself must look toward the future while advocating and making the necessary changes within FIFA to stamp all corruption out of what soccer fans call, “the beautiful game.” This comment argues that the current FIFA dispute resolution and disciplinary system lacks transparency and objectivity, leading to ad hoc, arbitrary decision-making, all while fostering a generally corrupt environment amongst the powerful Executive Committee. Amidst pressure from the Swiss government and the public at large in the wake of the Qatar 2022 vote-buying scandal, FIFA must implement an impartial and unbiased dispute-resolution system mimicking the formal adjudication procedure promulgated by the Administrative Procedure Act of 1946. Doing so will create uniform adjudication procedures, public transparency, and implement a

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15. Leon Siciliano & Sophie Jamieson, *FIFA: A Timeline of Corruption – in 90 Seconds*, TELEGRAPH (Sep. 25, 2015, 5:17 PM), <http://www.telegraph.co.uk/sport/football/11633821/Fifa-A-timeline-of-corruption-in-90-seconds.html>; see also David Bond, *FIFA's Report into ISL Scandal Is Just Window Dressing*, BBC (Apr. 30, 2013, 1:55 PM), <http://www.bbc.com/sport/0/football/22355455>.

16. It was not until the summer of 2015 that FIFA's top executive officers were criminally prosecuted by US and Swiss authorities for accepting bribes in exchange for their World Cup votes. *FIFA Corruption Crisis: Key Questions Answered*, BBC (Dec. 21, 2015), <http://www.bbc.com/news/world-europe-32897066>; see also Denver Nicks, *FIFA Took Bribes over Germany's 2006 World Cup Bid, Report Says*, TIME (Oct. 16, 2015), <http://time.com/4077126/germany-fifa-bribery-scandal/>.

17. See FIFA STATUTES, art. 26.

18. FIFA CODE OF ETHICS, art. 27(3) (2012); FIFA DISCIPLINARY CODE, art. 109 (2011).

19. See FIFA STATUTES, art. 31(4).

20. See *FIFA Ethics Body Requests More Leeway to Disclose Investigation Details*, FIFA.COM (Sept. 22, 2015, 10:19 AM), <http://www.insideworldfootball.com/fifa/17929-fifa-ethics-body-wants-more-leeway-to-disclose-investigation-details>.

judicial review system, which will cull corrupt Executive Committee practices.

## II. THE WORLD CUP'S LOCATION MATTERS TO MANY PEOPLE

The FIFA World Cup is the most widely viewed sporting event in the world, surpassing “even the Olympic Games.”<sup>21</sup> During the 2006 World Cup in Germany, “the estimated cumulative television audience” for the entire tournament was 26.2 billion, which averaged out to “409 million viewers per match.”<sup>22</sup> The final match of the 2006 World Cup alone attracted 715.2 million viewers, a full 11% of the world population.<sup>23</sup> Even the broadcast of the 2006 World Cup draw, the process by which the 32 qualifying nations are distributed into their respective groups, and where no soccer is played, garnered an audience of 300 million strong.<sup>24</sup> This massive television audience owes itself to the extensive coverage by television broadcasters, who were able to generate 73,072 hours of coverage “across 214 countries and territories” during the 2006 World Cup.<sup>25</sup> The 2018 and 2022 World Cups will likely receive the same type of coverage, since FIFA has already “secured more than \$1.85 billion for [the] television rights to [both tournaments].”<sup>26</sup>

Many eyes are watching the sport, so both FIFA and the host nations reap the financial benefits. During the 2014 World Cup in Brazil, AmBev, Coca Cola, Nestle, Hundai, and Johnson & Johnson each paid \$75 million to Brazilian television network, Globo, to have a presence in Globo's broadcast.<sup>27</sup> That \$75 million can buy roughly “twenty thirty-second Super Bowl spots,”<sup>28</sup> “the holy grail of advertis-

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21. TOM DUNMORE, *HISTORICAL DICTIONARY OF SOCCER 235* (Jon Woronoff, ed., Scarecrow Press 1st ed. 2011).

22. DOBSON & GODDARD, *supra* note 4.

23. *2006 FIFA World Cup Broadcast Wider, Longer and Farther than Ever Before*, FIFA.COM (Feb. 6, 2007), <http://www.fifa.com/about-fifa/news/y=2007/m=2/news=2006-fifa-world-cuptm-broadcast-wider-longer-and-farther-than-ever-bef-111247.html> [hereinafter *2006 FIFA World Cup*].

24. FIFA, *Fact Sheet: The FIFA World Cup Final Draw History*, at 1, [http://www.fifa.com/mm/docudocu/fifafacts/mencompwc/51/97/68/fs-201\\_10e\\_fw-final-draw-history.pdf](http://www.fifa.com/mm/docudocu/fifafacts/mencompwc/51/97/68/fs-201_10e_fw-final-draw-history.pdf) (last visited Jan. 30, 2016).

25. *2006 FIFA World Cup*, *supra* note 23.

26. Tariq Panja, *FIFA Gets \$1.85 Billion for TV Rights to 2018, 2011 World Cups*, BLOOMBERG (Oct. 27, 2011, 2:19 AM), <http://www.bloomberg.com/news/2011-10-27/fifa-receives-1-85-billion-for-television-rights-to-2018-2022-world-cups.html>.

27. Laurel Wentz, *Super What? World Cup Sponsors Spending \$600 Million on Brazil Network*, AD AGE (2014), <http://adage.com/article/special-report-2014-sports/super-cup-sponsors-spending-600m-brazil-network/291117/>.

28. *Id.*

ing”<sup>29</sup> space in the United States. Over a million foreign tourists flocked to Brazil for the 2014 tournament, and overall the Brazilian economy experienced a “\$13.5 billion boost” resulting from a single month-long tournament.<sup>30</sup> The same month-long tournament generated an additional “\$4 billion in total revenue for FIFA.”<sup>31</sup>

#### A. *The FIFA Executive Committee Selects the Host Nation*

FIFA’s Executive Committee chooses the host country via an exhaustive ballot vote.<sup>32</sup> It is a twenty-five-member group including, among others, the FIFA President and eight Vice Presidents.<sup>33</sup> Any interested nation receives a “Hosting Agreement” from FIFA, which explains the steps in the bidding process and what is expected from “a strong bid.”<sup>34</sup> The prospective host nation then submits a form representing the association’s intent to confirm being a candidate for selection.<sup>35</sup> The prospective host nation then puts together its own Bid Committee,<sup>36</sup> which sells FIFA on the unique characteristics of the nation and why the nation would make a great host.<sup>37</sup>

Once the Bid Committees make their respective pitches, a designated group of FIFA inspectors visit the country to identify whether the country “meets the requirements needed to host the event and a report on the country is produced.”<sup>38</sup> Some of the factors that FIFA takes into consideration when evaluating bids are: the number of host cities available within the nation itself, available stadiums, stadium operations, stadium construction, transportation available for both the teams and the fans, television broadcasting, and overall operational

29. DENNIS DENINGER, *SPORTS ON TELEVISION: THE HOW AND WHY BEHIND WHAT YOU SEE* 164 (2012).

30. Joe Mellor, *Brazil Emerges Victorious as World Cup Host Nation*, LONDON ECON. (2014), <http://www.thelondoneconomic.com/2014/07/30/brazil-emerges-victorious-as-world-cup-host-nation/>.

31. Mike Ozanian, *World Cup Brazil Will Generate \$4 Billion for FIFA*, FORBES (2014), <http://www.forbes.com/sites/mikeozanian/2014/06/05/the-billion-dollar-business-of-the-world-cup/>.

32. FIFA STATUTES, art. 31.

33. *Id.* art. 30.

34. FIFA WORLD CUP 9 (Wikipedians ed.), [https://books.google.com/books?id=ibqbuTkY8w0C&pg=PA1355&lpg=PA1355&dq=fifa+bidding+agreement+\(2010\)+archives&source=bl&ots=9LdhqRNT3a&sig=mnFOunrVMkXOeAnxQ3Llpc4dPXE&hl=en&sa=X&ved=0ahUKEwjJsoW6-qTKAhVX5mMKHf0eBZIQ6AEISjAG#v=onepage&q=hosting%20agreement&f=false](https://books.google.com/books?id=ibqbuTkY8w0C&pg=PA1355&lpg=PA1355&dq=fifa+bidding+agreement+(2010)+archives&source=bl&ots=9LdhqRNT3a&sig=mnFOunrVMkXOeAnxQ3Llpc4dPXE&hl=en&sa=X&ved=0ahUKEwjJsoW6-qTKAhVX5mMKHf0eBZIQ6AEISjAG#v=onepage&q=hosting%20agreement&f=false).

35. *Id.*

36. *See id.*

37. FIFA, *supra* note 2, at 6-7.

38. FIFA WORLD CUP, *supra* note 34, at 9.

risk.<sup>39</sup> The Executive Committee takes all of this information into account, along with the FIFA objectives,<sup>40</sup> one of which is “promot[ing] integrity” and preventing corrupt practices,<sup>41</sup> and subsequently awards the hosting privilege to one nation.<sup>42</sup>

*B. After FIFA Gave Qatar the 2022 Hosting Privilege, a Major Fallout Occurred*

As mentioned above, before and after the December 2010 announcement, there were allegations of FIFA wrongdoing pertaining to 2022, namely “vote buying” and bribery. In early 2010, two members of the FIFA Executive Committee, Reynald Temarii and Amos Adamu, were accused of “offer[ing] to sell their votes” for the 2018 and 2022 World Cups “to undercover reporters.”<sup>43</sup> After the December 2010 announcement, persistent vote buying allegations were accompanied by major safety concerns when a report revealed that before the decision to award Qatar the World Cup was made, FIFA ignored a report from its own technical staff that Qatar’s oppressive summer heat would pose a significant “health risk to players, [match] officials, and spectators.”<sup>44</sup> FIFA also ignored a security briefing that found Qatar to be a “‘high risk’” target for terrorist attacks during the tournament.<sup>45</sup>

In May 2011, a United Kingdom parliamentary member claimed to possess evidence that two more FIFA Executive Committee members, Issa Hayatou and Jacques Anouma, had accepted \$1.5 million bribes to vote for Qatar.<sup>46</sup> Around the same time, four more Executive Committee members, Jack Warner, Ricardo Teixeira, Nicolas Leoz and Worawi Makudi, were accused of asking for bribes in exchange for their votes in favor of Qatar.<sup>47</sup> Specific to Jack Warner, there is alleged evidence that a firm closely linked to the Qatari bid

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39. FIFA, *supra* note 2, at 6-7.

40. FIFA STATUTES, art. 2.

41. *Id.*

42. *Id.* art. 80.

43. *Timeline of Events Surrounding FIFA Corruption Claims*, BBC SPORT (2011), <http://www.bbc.com/sport/0/football/13601803> (last updated June 1, 2011).

44. *Id.*

45. *FIFA Ignored ‘High Risk Terror’ Warning with Qatar Bid*, SYDNEY MORNING HERALD (2014), <http://www.smh.com.au/fifa-world-cup-2014/world-cup-news-2014/fifa-ignored-high-risk-terror-warning-with-qatar-bid-20140615-zs8cb.html>.

46. *Id.*

47. *Id.*

team paid him \$1.2 million for his vote.<sup>48</sup> FIFA has actually cut all ties with Warner, effectively ending its internal investigation, but as of March 2014 the Federal Bureau of Investigation was still investigating Warner's role in the alleged bribery.<sup>49</sup>

In 2013, additional reports began to surface claiming that many people involved with the Qatar football association were Hamas and Al-Qaeda supporters.<sup>50</sup> Abdul Rahman Omeir al-Naimi, the former President of the Qatar Football Association and a major Al-Qaeda financier, transferred \$600,000 to a Syrian Al-Qaeda representative in 2013.<sup>51</sup> In December 2013, the United States Treasury Department named al-Naimi a "Specially Designated Global Terrorist."<sup>52</sup> In April 2013, Sheik Hamad bin Khalifa bin Ahmed al-Thani, a member of the Qatari royal family and President of the Qatar Football Association, held a meeting with Hamas' leader, Ismail Haniyeh, to allegedly discuss "Qatar-Hamas relations."<sup>53</sup> Combining these facts, it is alarming that FIFA ignored the reported high risk of terrorism associated with 2022 Qatar World Cup.

In addition to vote buying allegations and Qatari terrorist links, Nepalese, Sri Lankan, and Indian migrant workers who journeyed to Qatar to help build the stadiums for the upcoming tournament are subjected to appalling working and living conditions,<sup>54</sup> all while not being paid promptly, or even at all.<sup>55</sup> FIFA was concerned that Qatar lacked the infrastructure necessary to support the influx of foreign fans, and lacked adequate stadiums to host the matches.<sup>56</sup> According to a 2022 bid summary, FIFA considered Qatar to be the only bidding nation with a "high operational risk" because of the lack of infrastructure.<sup>57</sup> Additionally, Qatar needed twelve stadiums—it only had three.<sup>58</sup> The existing stadiums needed to be completely renovated,<sup>59</sup>

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48. Owen Gibson, *Qataris Paid FIFA Official \$1.2 Million*, GUARDIAN (2014), <http://www.theguardian.com/football/2014/mar/18/qatar-fifa-jack-warner-world-cup>.

49. *Id.*

50. Samuel, *supra* note 9.

51. *Id.*

52. *Treasury Designates Al-Qa'ida Supporters*, U.S. DEP'T OF TREASURY (Dec. 18, 2013), <http://www.treasury.gov/press-center/press-releases/pages/j12249.aspx>.

53. Samuel, *supra* note 9.

54. Robert Booth, *Qatar World Cup Construction 'Will Leave 4,000 Dead'*, GUARDIAN (Sept. 26, 2013), <http://www.theguardian.com/global-development/2013/sep/26/qatar-world-cup-migrant-workers-dead>.

55. *Id.*

56. FIFA, *2022 FIFA World Cup Bid Evaluation Report: Qatar*, at 14 (2014), <http://www.fifa.com/mm/document/tournament/competition/01/33/74/56/b9qate.pdf>.

57. FIFA, *supra* note 2, at 9.

58. *2022 FIFA World Cup Bid Evaluation Report: Qatar*, *supra* note 56.



and an additional nine stadiums had to be built from scratch.<sup>60</sup> Around 1.2 million workers flooded to Qatar based on false promises of good pay and a better life for their families.<sup>61</sup> Instead, this is the reality: workers are living in squalor, not being paid at all, forced to work in 122-degree heat, denied clean drinking water, and worse yet, their employers withhold their passports and visas.<sup>62</sup> Traditional Qatari labor practices mandate that these workers must get the permission of their employers to leave the country,<sup>63</sup> and the employers are refusing to do so,<sup>64</sup> rendering the workers “modern-day slave[s].”<sup>65</sup>

Around 600 workers have already perished from unsafe working conditions and disease,<sup>66</sup> and it is estimated that at least 4,000 will die by 2022.<sup>67</sup> However, the FIFA Statutes do not espouse working standards for workers in the host nation,<sup>68</sup> let alone any sanctions for the host nation for playing home to these working conditions. Therefore, no explicit recourse is available within FIFA.<sup>69</sup> While FIFA recently released a statement indicating it will closely “monitor” the treatment of the workers, it did not acknowledge any responsibility for the treatment of the workers—FIFA is still working to make the tournament happen.<sup>70</sup> Currently, the only meaningful effort to improve the treat-

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59. *Id.*

60. *Id.*

61. Booth, *supra* note 54.

62. Tony Manfred, *The Qatar World Cup is a Disaster: 1,200 Workers Dead, New Bribery Investigation*, BUS. INSIDER (Mar. 18, 2014, 3:28 PM), <http://www.businessinsider.com/qatar-world-cup-workers-dead-2014-3>.

63. Azfar Khan, *Why it's Time to End Kafala*, GUARDIAN (Feb. 26, 2014), <http://www.theguardian.com/global-development/2014/feb/26/time-to-end-kafala>.

64. See Sam Wallace, *Fifa's Real Crime with Qatar is Ignoring the Workers' Plight*, INDEPENDENT (Mar. 2, 2015), <http://www.independent.co.uk/sport/football/news-and-comment/sam-wallace-fifas-real-crime-with-qatar-2022-is-ignoring-the-workers-plight-10081450.html>.

65. Nicholas McGeehan, *'Modern-day Slavery' in Qatar: There's Bad and Good News*, GUARDIAN (Sept. 27, 2013), <http://www.theguardian.com/commentisfree/2013/sep/27/qatar-modern-day-slavery-world-cup-2022>.

66. Wesley Stephenson, *Have 1,200 World Cup Workers Really Died in Qatar?*, BBC (June 6, 2015), <http://www.bbc.com/news/magazine-33019838>.

67. Booth, *supra* note 54.

68. See FIFA STATUTES (2015).

69. *Id.*

70. See Robert Booth, *FIFA: We Will Monitor Qatar's Treatment of Migrant Workers Closely*, GUARDIAN (July 30, 2014) <http://www.theguardian.com/global-development/2014/jul/30/fifa-monitor-qatar-treatment-migrant-world-cup-workers-closely>.

ment of the workers comes from the international human rights watch groups as well as the media shedding light on the misconduct.<sup>71</sup>

### III. THE CURRENT FIFA STATUTES, FIFA DISCIPLINARY CODE, AND FIFA CODE OF ETHICS DO NOT HOLD EXECUTIVE COMMITTEE MEMBERS RESPONSIBLE FOR THEIR CORRUPT PRACTICES

The issues surrounding the Qatar fallout—the vote buying, the terrorism links, and the egregious human rights violations—all transpired because FIFA Executive Committee members are not held accountable for their corrupt practices under the current FIFA legislation. FIFA’s Congress, Executive Committee, Disciplinary Committee, and Ethics Committee exist in a system that lacks proper checks and balances and separation of powers; ultimately, this means that the Executive Committee has free reign to do as it pleases.<sup>72</sup>

As FIFA’s supposed legislative body, the FIFA Congress is primarily responsible for “adopting and amending” the FIFA Statutes.<sup>73</sup> It is comprised of congressional delegates from each of the FIFA member associations, and “has met annually since 1998.”<sup>74</sup> The FIFA Statutes set out the basic functions of the previously mentioned three committees and the requirements that FIFA members must comply with to become and remain FIFA members.<sup>75</sup>

One of the bodies set out in the FIFA Statutes is the Executive Committee, FIFA’s “executive body.”<sup>76</sup> The FIFA Statutes portray the Executive Committee as a catchall executive body, responsible for passing decisions on all cases that are neither the responsibility of the FIFA Congress nor are reserved for any other FIFA body,<sup>77</sup> except for deciding the host nation for the World Cup Finals.<sup>78</sup> However, it is also responsible for issuing the FIFA Code of Ethics and FIFA Disci-

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71. Owen Gibson & Pete Pattison, *Qatar World Cup: 185 Nepalese Died in 2013*—Official Records, *GUARDIAN* (Jan. 24, 2014), <http://www.theguardian.com/world/2014/jan/24/qatar-2022-world-cup-185-nepalese-workers-died-2013>.

72. See Brittney Balsler, *The Structure and Policies of FIFA*, *SOCCER POLITICS* (2013), <http://sites.duke.edu/wcwp/world-cup-guides/world-cup-2014/fifa-institutional-politics/the-structure-and-policies-of-fifa/>.

73. FIFA STATUTES, art. 26.

74. *Id.* art. 23; *How Often Does FIFA Congress Meet?*, *FIFA.COM* (Apr. 11, 2003), <http://www.fifa.com/news/y=2003/m=4/news=how-often-does-the-fifa-congress-meet-86823.html>.

75. FIFA STATUTES, arts. 13, 30, 62-63.

76. *Id.* art. 21.

77. *Id.* art. 31.

78. *Id.* arts. 25, 31.

plinary Code,<sup>79</sup> a legislative function that should be reserved for the Congress.

The FIFA Disciplinary Code governs the FIFA Disciplinary Committee's function.<sup>80</sup> The Disciplinary Code "describes infringements of the rules in FIFA regulations, determines the sanctions incurred, regulates the organisation and function of the bodies responsible for taking decisions and the procedures to be followed before these bodies."<sup>81</sup> Executive Committee members are not subject to the Disciplinary Code, which makes sense when considering that in addition to writing the Disciplinary Code, the Executive Committee also enforces it.<sup>82</sup>

The FIFA Code of Ethics governs the FIFA Ethics Committee.<sup>83</sup> The Executive Committee once again issues the Code of Ethics,<sup>84</sup> and is also subjected to it.<sup>85</sup> The Code of Ethics generally proscribes immoral and unethical behavior that damages the integrity of the game, namely inappropriate conduct that "has little or no connection with action on the field."<sup>86</sup> Article 21 of the Code of Ethics even explicitly addresses bribery and corruption.<sup>87</sup> Those bound by the code "must not offer, promise, give or accept any personal or undue pecuniary or other advantage in order to obtain or retain business or any other improper advantage to or from anyone within or outside FIFA."<sup>88</sup>

Initially, the FIFA Disciplinary, Ethics, and Appeals Committees will handle any legal dispute internally according to the relevant FIFA legislation.<sup>89</sup> However, FIFA does have a form of judicial review. Article 64 of the FIFA Statutes states that "any decision by the FIFA Appeals Committee shall be irrevocable and binding on all the parties concerned."<sup>90</sup> This provision is subject to appeals lodged with the Court of Arbitration for Sport (CAS).<sup>91</sup> The CAS is an international arbitral institution established by the International Olympic Commit-

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79. *Id.* arts. 62-63; *see generally* FIFA CODE OF ETHICS (2012); *see generally* FIFA DISCIPLINARY CODE (2011).

80. FIFA STATUTES, art. 62.

81. FIFA DISCIPLINARY CODE, art. 1.

82. *See id.*

83. FIFA STATUTES, art. 63.

84. *Id.*

85. FIFA CODE OF ETHICS, art. 1.

86. *Id.* art. 21.

87. *Id.*

88. *Id.*

89. FIFA STATUTES, art. 61. In the context of the Qatar scandal, it appears that FIFA has sole discretion to decide what happens.

90. *Id.* art. 64.

91. *Id.*

tee in 1984 to resolve private international sports law-related disputes.<sup>92</sup> The CAS primarily applies FIFA regulations,<sup>93</sup> and CAS awards are appealable to the Swiss Federal Tribunal (SFT) in very limited circumstances, for instances such as lack of jurisdiction, “violation of elementary procedural rules,” or an award “incompatib[le]” with Swiss public policy.<sup>94</sup> The SFT will vacate a CAS award only if the CAS panel was “constituted irregularly, erroneously held that it did or did not have jurisdiction, ruled on matters beyond the submitted claims. . . [or] failed to rule on a claim. . . [or] if the parties are not treated equally by the CAS panel. . . .”<sup>95</sup>

The current FIFA judicial review has a few shortcomings. Firstly, the CAS was set up to deal with private international sports disputes, not white-collar crime and corruption issues.<sup>96</sup> The majority of issues before the CAS involve individual athlete eligibility,<sup>97</sup> or whether a nation is able to be a member of a continental soccer association, such as UEFA.<sup>98</sup> While the CAS is entirely competent to decide those types of disputes, alleged vote-buying and corruption that potentially determine the location of the world’s most popular and lucrative sporting event needs to be heard in a traditional court of law, not an arbitral tribunal that decides whether an athlete used steroids. This is especially important when the alleged vote buying, like the Qatar situation, has brought about scares of terrorism threatening spectator safety and hundreds, possibly thousands, of lives are being lost because of gross human rights violations.<sup>99</sup>

Second, an issue of impartiality still lingers.<sup>100</sup> In 2003, in *A. and B. v. IOC and FIS*, the SFT deemed the operation and structure of the CAS as sufficient to offer guarantees of impartiality, even when

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92. JAMES A.R. NAFZIGER, *INT’L SPORTS LAW* 40 (2nd ed. 2004).

93. *Id.* at 42; see FIFA STATUTES, art. 66.

94. *Frequently Asked Questions*, COURT OF ARBITRATION FOR SPORT, <http://www.tas-cas.org/en/general-information/frequently-asked-questions.html> (last visited Jan. 30, 2016).

95. Matthew J. Mitten, *Judicial Review of Olympic and International Sports Arbitration Awards*, 10 PEPP. DISP. RESOL. L.J. 54 (2009).

96. See NAFZIGER, *supra* note 92, at 47.

97. See *id.*

98. See *Gibraltar Fail to get UEFA Place*, BBC SPORT, <http://news.bbc.co.uk/sport2/hi/football/internationals/6302889.stm> (last updated Jan. 26, 2007). UEFA is The Union of European Football Associations.

99. Robert Mendick et al., *Qatar must lose World Cup over terror links*, TELEGRAPH (Nov. 9, 2014), <http://www.telegraph.co.uk/news/worldnews/islamic-state/11218555/Qatar-must-lose-World-Cup-over-terror-links.html>; Alice Sperti, *The 2022 World Cup Might Actually Not Be in Qatar After All*, VICE (June 2, 2014), <https://news.vice.com/article/the-2022-world-cup-might-actually-not-be-in-qatar-after-all>.

100. See Mitten, *supra* note 95, at 52.

the IOC was a party to the dispute.<sup>101</sup> A driving force behind this ruling is the role the International Council of Arbitration for Sport (ICAS) has in the CAS.<sup>102</sup> ICAS is a group of twenty jurists, only four of whom are appointed by the IOC, that is responsible for “safeguarding the independence of the CAS” and the rights of the parties involved.<sup>103</sup> Even though the IOC does not control ICAS, it does provide “one-third” of its budget, as it does for the CAS, as well.<sup>104</sup> When one realizes that Sepp Blatter, the FIFA President, has been an IOC member since 1998, and has even served on the IOC Congress for three years,<sup>105</sup> CAS impartiality and bias towards FIFA seem quite possible. Taking all of the connections and ties that FIFA, the IOC, and the CAS have in common, it makes sense that in order to be a FIFA member one must consent and agree that any dispute will be follow this form of adjudication.<sup>106</sup>

Given the current interrelation of the committees and the Congress, any remedy against an Executive Committee member via the Disciplinary Code will not happen because the Executive Committee is not subject to the Disciplinary Code, and the Code of Ethics does actually outlaw bribery,<sup>107</sup> and the Executive Committee is subject to its enforcement. So in theory, the Ethics Committee should be able to investigate and police Executive Committee members. Unfortunately, some things that look ironclad in the abstract are anything but in practice.

#### A. *A Lack of Transparency Leads to Selective Investigations, and Investigatory Findings are Undisclosed to the Public*

Despite the Code of Ethics specifically outlawing bribery, Executive Committee members are selectively investigated and the investigations’ findings are not disclosed to the public.<sup>108</sup> In the wake of the Qatar fallout, the Ethics Committee began to investigate Mohamad Bin Hammam and Jack Warner for their alleged involvement in the

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101. See *id.*; KLUWER LAW INT’L, RECUEIL DES SENTENCES DU TAS DIGEST OF CAS AWARDS III 2001-2003 674 (Matthieu Reeb ed., 1998).

102. See Mitten, *supra* note 95, at 52.

103. *Id.* at 52.

104. *Id.*

105. *It all began 95 years ago*, FIFA.COM (May 20, 1999), <http://www.fifa.com/about-fifa/news/y=1999/m=5/news=all-began-years-ago-70745.html>; Richard Farley, *Where it all went wrong – a timeline of Sepp Blatter’s rise and fall from power*, FUSION (June 2, 2015), <http://fusion.net/story/143637/where-it-all-went-wrong-a-timeline-of-sepp-blatters-rise-and-fall-from-power/>.

106. FIFA STATUTES, art. 64.

107. FIFA CODE OF ETHICS, art. 21.

108. *Id.*; FIFA CODE OF ETHICS, art. 27.

vote-buying scheme.<sup>109</sup> Superficially, it seemed like justice was done, but digging deeper reveals ulterior motives driving the investigation.

Bin Hammam was the president of the Asian Confederation and a major champion to the Qatar cause,<sup>110</sup> while Warner was the president of the Confederation of North, Central American and Caribbean Association Football (CONCACAF) and an Executive Committee member.<sup>111</sup> The investigation concerned a meeting between the two men at the Caribbean Football Union where Bin Hammam allegedly solicited Warner's vote in favor of Qatar.<sup>112</sup> The investigation began just after the 2010 FIFA World Cup in South Africa, when a new FIFA President was to be elected by the Congress,<sup>113</sup> and Bin Hammam was the only candidate running against incumbent Sepp Blatter.<sup>114</sup> At that time, FIFA, and particularly Blatter, were publicly harangued after awarding Qatar the 2022 World Cup Finals,<sup>115</sup> and Blatter was presumably worried about his long-tenured position being under threat.<sup>116</sup> Bin Hammam "withdrew his candidacy hours before his Ethics Committee hearing" amidst the investigation and was eventually banned from any football-related activity for life, as was Warner.<sup>117</sup> Blatter won the election by default.<sup>118</sup> Given the timing of the investigation and the nature of the actual event under investigation, FIFA likely saw this as the perfect time to save face with the public. Disciplining two men allegedly involved with the vote-buying shows a proactive effort to stamp out corruption, but also preserves Blatter's position as FIFA's president to maintain the status quo.

Not only are these ethics investigations self-serving and arbitrary, but the findings are not disclosed to the public.<sup>119</sup> The FIFA Ethics Committee recently ended its investigation of the 2022 Qatar bid, an investigation headed by Michael Garcia, "a former attorney for the

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109. *Timeline of Events Surrounding FIFA Corruption Claims*, *supra* note 43.

110. *Id.*

111. *Id.*

112. *Id.*

113. FIFA STATUTES, art. 25.

114. *Timeline of Events Surrounding FIFA Corruption Claims*, *supra* note 43.

115. *See id.*

116. Claire Phipps & Damien Gayle, *FIFA Crisis: Visa Sponsorship Threat Compounds Calls for Blatter to Resign*, *GUARDIAN* (May 28, 2015), <http://www.theguardian.com/football/2015/may/28/fifa-crisis-blatter-calls-resign-sponsors-disappointment>.

117. *See Timeline of Events Surrounding FIFA Corruption Claims*, *supra* note 43.

118. *Id.*

119. Owen Gibson, *FIFA Judge Hans-Joachim Eckert Says He Is 'Surprised' by Criticism*, *GUARDIAN* (Nov. 14, 2014), <http://www.theguardian.com/football/2014/nov/14/fifa-hans-joachim-eckert-surprised-by-criticism>.

southern district of New York.”<sup>120</sup> Garcia investigated for over two years, and eventually compiled a report for FIFA judge Hans-Joachim Eckert to examine.<sup>121</sup> Eckert eventually cleared Qatar of any wrongdoing, precluding a revote, and effectively clearing any lingering uncertainty over the Qatar 2022 World Cup going forward.<sup>122</sup> However, FIFA refused to make his 43-page report public.<sup>123</sup> This comes in the face of Garcia claiming that Eckert’s report contains “numerous materially incomplete and erroneous representations of the facts”<sup>124</sup> that he originally handed over to Eckert.<sup>125</sup> FIFA has experienced substantial backlash in the wake of deciding not to publish Eckert’s report,<sup>126</sup> and who knows, FIFA may yet publish on its own accord. Even if FIFA does publish the document, the fact remains that there are no rules, statutes, articles, anything that obligates FIFA to make any type of document available to the public.<sup>127</sup>

Past FIFA conduct shows that these investigations are conducted on an ad hoc basis<sup>128</sup> when they are temporally and substantively convenient for the FIFA elite in order to further their own personal and pecuniary interests. In practice, the corrupt Executive Committee is not checked or held accountable by any other body of FIFA or national government. It is as if FIFA does not care about money being exchanged under the table as long as the exchange takes place out of sight. FIFA’s integrity has long been questioned in the face of seemingly continuous corruption scandals that date back to the 1990s,<sup>129</sup> and a change is needed within FIFA to stem the tide of corruption and negative criticism to bring legitimacy back to the organization and the sport as a whole.

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120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. See generally FIFA STATUTES (2015); see generally FIFA CODE OF ETHICS (2012).

128. See FIFA STATUTES, art. 33; FIFA CODE OF ETHICS, art. 27; FIFA DISCIPLINARY CODE, art. 109.

129. Tom Peck, *FIFA Ask Swiss Police to Launch Criminal Investigation*, INDEPENDENT (Nov. 18, 2014), <http://www.independent.co.uk/sport/football/news-and-comment/fifa-call-the-swiss-police-to-look-at-possible-corruption-in-the-2018-and-2022-world-cup-bids-9868603.html>.

#### IV. DESPITE CONTEXTUAL DIFFERENCES, IMPLEMENTING THE POLICY BEHIND THE ADMINISTRATIVE PROCEDURE ACT OF 1946 WILL HELP TO CULL THE CURRENT CORRUPTION ISSUES IN FIFA

The Administrative Procedure Act successfully solved separation of powers and transparency issues stemming from federal administrative agencies in the United States.<sup>130</sup> The Administrative Procedure Act's (APA) origins go back to President Franklin D. Roosevelt's New Deal legislation<sup>131</sup> designed to rid the United States of the Great Depression.<sup>132</sup> Starting in 1933, Congress enacted several statutes that created various new laws and new federal administrative agencies throughout the government.<sup>133</sup> Eventually, Congress became "concerned" about expanding agency power as separation of power issues had begun to develop, and the APA was accordingly enacted in 1946.<sup>134</sup>

For example, in *Schechter Poultry Co. v. United States*, the 1933 National Industrial Recovery Act (NIRA) was found to impermissibly delegate legislative power to the executive branch by allowing the President to issue industrial codes of fair competition.<sup>135</sup> NIRA allowed the President to issue codes that regulated the poultry industry, but did not establish standards and rules itself.<sup>136</sup> A poultry company did not comply with the codes issued by the President, but the court deemed NIRA invalid because it merely delegated the authority to the President with no congressional direction,<sup>137</sup> thereby allowing the President "unfettered discretion" to create new laws that impacted many individuals in the poultry industry.<sup>138</sup> Government agency regulations and adjudications like NIRA often affect individual property and procedural rights, so the APA was enacted to mandate uniform, publicly-accessible adjudicatory and rule-making procedures for administrative agencies, and judicial review of agency decisions, to ensure that any party who is affected by an agency decision or rule is provided adequate procedural protections, notice, and an impartial

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130. McNollgast, *The Political Origins of Administrative Procedure Act*, 15 J.L., ECON. & ORG., 180, 181 (1999).

131. *See id.* at 195.

132. *See id.* at 213.

133. DANIEL HALL, *ADMINISTRATIVE LAW BUREAUCRACY IN A DEMOCRACY* 7 (Pearson, 4th ed. 2009).

134. *Id.* at 2.

135. *See generally* *Schechter Poultry Co. v. United States*, 295 U.S. 495, 537 (1935).

136. *Id.* at 541.

137. *Id.* at 538-39.

138. *Id.* at 537-38.



decision-maker.<sup>139</sup> Because of its success, the APA is widely viewed as “the most important [ ] legislation governing federal [ ] agenc[ies],”<sup>140</sup> with the Supreme Court adjudicating thirty-three cases implicating the adjudication provisions of the APA.<sup>141</sup>

The basic goals of the APA are to require agencies to keep the public currently informed of their organization, procedures and rules,<sup>142</sup> to prescribe uniform standards for administrative adjudicatory proceedings,<sup>143</sup> and to define the scope of judicial review of administrative adjudicatory decisions.<sup>144</sup> In practice, the APA has defined the procedural rights of individuals whose property rights are affected by agency action, and, because a court can review and overturn agency decisions, the agencies are incentivized to limit their discretion and follow the procedures defined by the APA.<sup>145</sup>

Notwithstanding coming from a context different than FIFA, an adjudication system that contemplates the APA’s basic goals would address the current corrupt Executive Committee practices. The APA was created by the United States Government to regulate federal agencies that were created by the United States Government itself.<sup>146</sup> FIFA is an international governing body that was founded by the national soccer associations of Belgium, Denmark, France, the Netherlands, Spain, Sweden, and Switzerland.<sup>147</sup> It is registered in the Swiss Commercial Register, headquartered in Zurich, Switzerland, but otherwise operates autonomously.<sup>148</sup> Despite these differences, the concept of an organization keeping the public privy to its operating rules while concurrently implementing those rules in a uniform standard is omnipresent, and not exclusive to the context of the APA.<sup>149</sup> For example, practically every retailer publicizes its return policy, and then

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139. ADMINISTRATIVE PROCEDURE ACT, REPORT OF THE COMM. ON THE JUDICIARY HOUSE OF REPRESENTATIVES, H.R. REP. NO. 1980, 79th Cong. 2d Sess. at 236-37 (1946).

140. McNollgast, *supra* note 130, at 181.

141. See generally *Wong Yang Sung v. McGrath*, 339 U.S. 33 (1950); *Joseph v. United States*, 405 U.S. 1006 (1972); *Butz v. Economou*, 438 U.S. 478 (1978); *N.L.R.B. v. Curtin Matheson Scientific, Inc.*, 494 U.S. 775 (1990); *Printz v. United States*, 521 U.S. 898 (1997).

142. ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C.A. § 553 (West 2011).

143. *Id.*

144. *Id.*

145. See McNollgast, *supra* note 130, at 181.

146. See HALL, *supra* note 133, at 2.

147. *History of FIFA*, FIFA.COM, <http://www.fifa.com/classicfootball/history/fifa/foundation.html> (last visited Jan. 30, 2016).

148. FIFA STATUTES, art. 1.

149. See generally § 553.

uniformly implements that policy.<sup>150</sup> Thus, the APA goals can transcend their initial context and address FIFA's current problems.

Requiring FIFA to keep the public informed of its procedures and rules, requiring FIFA to prescribe and maintain uniform adjudicatory standards, as well as implementing and developing some recognizable form of impartial judicial review, would undoubtedly change the FIFA environment for the better. Under a system promoting these goals, Eckert would have to publish his report, and any hidden corrupt practices would be unearthed, while public and uniform adjudicatory standards and procedures would no longer allow FIFA to pick and choose whom to investigate when it is convenient and self-serving.<sup>151</sup>

A. *Both in Theory and in Practice, the APA is the Perfect Guideline for FIFA to Follow When Overhauling its Adjudicatory Procedures*

Not only are the underlying goals behind the APA applicable to FIFA's current problems, but the APA in practice also serves as a template for FIFA to follow. First, the APA elevated the status and impartiality of the "hearing examiner," the examiner who would eventually render a decision in the dispute at hand.<sup>152</sup> These examiners had to be "organizationally independent" from the agency;<sup>153</sup> in other words they could not be supervised by persons engaged in investigation or prosecution.<sup>154</sup> During the proceedings, these examiners are given quite a bit of power.<sup>155</sup> Among other things, they may "administer oaths and affirmations, issue subpoenas, rule on offers of proof and receive evidence, take depositions or have depositions taken . . . , . . . make or recommend decisions [on the merits of the proceeding,]" and regulate the course of the proceeding in a judge-like manner.<sup>156</sup> One obvious limitation is that examiners may not perform any investigative or prosecuting functions on behalf of the agency on any case that they are issuing a decision for.<sup>157</sup> Additionally, they are hired and

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150. See generally Kit Yarrow, *Why a Good Return Policy is so Important for Retailers*, TIME (Sept. 2, 2012), <http://business.time.com/2012/09/04/why-a-good-return-policy-is-so-important-for-retailers/>.

151. See FIFA STATUTES, art. 1

152. See HALL, *supra* note 133, at 209, 213.

153. § 556.

154. See *id.*

155. See *id.*

156. *Id.*

157. *Id.* § 554

compensated by the Office of Personnel Management, not by the agency on whose behalf they are adjudicating.<sup>158</sup>

Another practically useful feature of the APA is public transparency. The APA sets forth what information must be made available to the public for various purposes.<sup>159</sup> The agencies must “state and . . . publish in the Federal Register for guidance of the public<sup>160</sup> [its . . .] rules of procedure,” statements of general agency methods and functions of operation, any applicable substantive rules or policy determinations, and any amendment, revision, or repeal of the proceeding.<sup>161</sup> The agencies must also allow the public to inspect and copy all “final opinions, including concurring and dissenting opinions, [. . . and] orders made in the adjudication of cases, [as well as any] statement[ ] of policy and interpretation which have been adopted by the agency [and] . . . not already published in the Federal Register.”<sup>162</sup>

Perhaps the most important feature of the APA is that any formal adjudicatory decision is subject to judicial review in the federal court system.<sup>163</sup> Since the APA requires a formal trial-like proceeding with a written record and a final decision,<sup>164</sup> federal courts can review agency decisions because they so closely resemble trial court proceedings.<sup>165</sup> To stand, agency decisions need to be supported by “substantial evidence” after the court has read the entire record.<sup>166</sup> Because Article III of the Constitution reserves judicial power for the court system, not these administrative agencies,<sup>167</sup> this APA provision is yet another safeguard against the separation of powers violations stemming from these administrative agencies.<sup>168</sup>

### *B. Applying the APA to the FIFA Context Elucidates its Beneficial Implementation*

It would be quite easy to assert for FIFA to do exactly what the APA proposes and be done with it. It seems simple enough in theory, but given the difference in the relationship between FIFA and Switzerland as opposed to the relationship between administrative agen-

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158. *See id.*

159. § 552.

160. *Id.*

161. *Id.*

162. *Id.*

163. § 702.

164. § 552.

165. *See* § 556.

166. *Id.*; § 706.

167. U.S. CONST. art. III.

168. U.S. CONST. art. III.

cies and the federal government in the U.S., FIFA would have to tailor some of the provisions and procedures of the APA for its environment.

Adjudicator impartiality in any FIFA-related dispute has been and will continue to be an issue.<sup>169</sup> Any internal FIFA proceeding is overseen and handled by FIFA-appointed Ethics Committee and Executive Committee members,<sup>170</sup> and because the SFT practically never has a say in the appeal process,<sup>171</sup> the only hope of an appeal must go through the CAS, an organization with substantial ties and potential bias towards FIFA.<sup>172</sup> One of the many associations that FIFA could go through to get an impartial adjudicator is the International Chamber of Commerce's International Centre for Expertise (Centre).<sup>173</sup> One of the Centre's functions is appointing an expert in the business subject relevant to the dispute.<sup>174</sup>

To have an expert appointed, one of the parties involved needs to make a request for an expert with the Centre's Secretariat in Paris.<sup>175</sup> Once the request is made, the Centre matches an expert with the correct qualifications and background to the particular dispute at hand.<sup>176</sup> The experts are to remain independent of the parties, and can be removed and replaced if their "independence" and "impartiality" is "call[ed] into question."<sup>177</sup> This allows a corruption allegation against an Executive Committee member to be heard and adjudicated by an impartial expert in the field of white-collar crime. If FIFA were to follow these rules, then the expert could be the one to oversee and execute the court-like adjudication of future corruption allegations.

One APA concept that is pretty easily transferrable to FIFA is the concept of having all of the rules, procedures, and general policies FIFA uses to hold and adjudicate these trial-like procedures available for the public to inspect and interpret. It would make sense for FIFA

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169. See generally U.S. CONST.

170. Samuel Rubinfeld, *Corruption Currents: FIFA Scandal Deters Potential Sponsors*, WALL ST. J. (July 24, 2015), <http://blogs.wsj.com/riskandcompliance/2015/07/24/corruption-currents-fifa-scandal-deters-potential-sponsors/>.

171. FIFA STATUTES, art. 66.

172. *Id.* arts. 66-67.

173. See Experts, *International Chamber of Commerce*, <http://www.iccwbo.org/products-and-services/arbitration-and-adr/expertise/> (last visited Jan. 30, 2016).

174. *Id.*

175. Int'l Chamber of Commerce, *ICC Expert Rules: Proposal of Experts and Neutrals, Appointment of Experts and Neutrals, Administration of Expert Proceedings, Proposal of Experts and Neutrals*, art. 1(2) (2015).

176. *Id.*

177. See *id.* arts. 2, 4.

to create its own functional equivalent to the Federal Register where its own rules and procedures, are available to the public. This is where FIFA would publish all of the procedural requirements, deadlines, and general procedures related to any action for corruption against an Executive Committee member.

Any ensuing decisions and opinions written by the expert should also be published in the FIFA-equivalent of the Federal Register. Doing so would allow precedents to develop among the various issues that are adjudicated, which would preclude the ad hoc decision-making procedure that is currently in place.<sup>178</sup> Ideally, these opinions would contain the basis for the decision and the factual background. This would allow an aggrieved party to research any prior cases with similar factual background to know if they actually have a claim, and allow future experts to come to an appropriate decision based on the facts. Currently there seems to be no discernible precedent with which ethics investigations are brought and conducted by FIFA.<sup>179</sup>

The judicial review aspect of the APA is perhaps the toughest to apply to FIFA. Agency adjudications are logically subject to review by federal courts because the same government that created the federal courts created the agencies.<sup>180</sup> Currently, the only ostensible authority the Swiss Government has over anything FIFA-related is the SFT's authority to review CAS decisions implicating FIFA,<sup>181</sup> and the SFT only has this authority because the Swiss Federal Code on Private International Law specifically provides for judicial review of CAS awards.<sup>182</sup> The SFT would be the ideal tribunal to review the expert decisions under this new FIFA regime, as long as the SFT is able to obtain assistance from the Swiss Government in the form of new legislation that would require subjecting the expert decisions to SFT review. This change in jurisdiction should give the SFT more discretion to alter decisions than it currently has to alter CAS awards.

If that change does not happen, then the next best option would be to submit an appeal from an expert decision to the CAS, thus preserving the ability to allow the SFT to review the decision, albeit with the very limited discretion it currently has. There are still lingering

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178. FIFA CODE OF ETHICS, art. 4.

179. *Id.*

180. See generally U.S. CONST.

181. Louise Reilly, *An Introduction to the Court of Arbitration for Sport (CAS) & the Role of National Courts in International Sports Disputes*, *An Symposium*, 2012 J. DISP. RESOL. 63, 76 (2012).

182. Switzerland's Federal Code on Private International law *reprinted* in COURT OF ARBITRATION FOR SPORT, CODE OF SPORTS-RELATED ARBITRATION, Appendix III at 162-76 (2004).

issues with FIFA/CAS relations, but at least an impartial expert instead of partisan FIFA personnel would make the underlying decision that the CAS would review.

### C. *Why Would FIFA End the “Gravy Train”?*

This new adjudication system seems perfect in theory. Sure, public disclosure of important information, impartial decision-makers, and adequate judicial review on paper goes a long way to stamping out corruption in FIFA. The most crucial step for these changes to happen is for FIFA to get the proverbial ball rolling and begin internal reforms. But why would FIFA executives end their “gravy train” and volitionally make these changes? Two reasons: the Swiss government hitting them in the place most dear to their hearts, their wallet; and good old-fashioned peer pressure.

Switzerland is to international sports governing bodies like Delaware is to corporations.<sup>183</sup> FIFA designated itself a non-profit organization, despite the fact it has over \$1 billion in the bank.<sup>184</sup> Moreover, the Swiss government affords non-profit organizations immense tax breaks.<sup>185</sup> FIFA shares this designation with many less affluent organizations, like “yodeling and folk danc[e] clubs.”<sup>186</sup> And because of FIFA’s vast wealth and long history of corruption, the Swiss government has considered enacting “new legislation” cutting FIFA’s “tax

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183. Compare Roger Pielke Jr., *Why Are International Sports Associations Located in Switzerland?*, LEAST THING BLOG (Apr. 30, 2012), <http://leastthing.blogspot.com/2012/04/why-are-international-sports.html> (stating that Switzerland is the home to 47 international sports governing bodies and Monaco is the next highest with only five) with LEWIS S. BLACK, *WHY CORPORATIONS CHOOSE DELAWARE 1* (2007) (stating Delaware is home to close to a million business entities, and more than half of the corporations that make up the Fortune 500 are incorporated in Delaware).

184. See Joshua Robinson & Matthew Futterman, *FIFA’s Sepp Blatter Investigated by Swiss Authorities*, WALL ST. J. (Sept. 25, 2015, 6:43 PM), <http://www.wsj.com/articles/fifas-sepp-blatter-investigated-by-swiss-attorney-general-1443192145> (stating that FIFA, a non-profit organization has \$1.52 billion of cash reserves); see also *FIFA’s Direct Financial Support Reaches USD 1 Billion Mark*, FIFA.COM (Jan. 14, 2014), <http://www.fifa.com/aboutfifa/footballdevelopment/news/newsid=2261088/> (announcing that the direct financial support of FIFA hit USD \$1 billion).

185. Pielke Jr., *supra* note 183; see also Samuel Jaberg, *How Switzerland Champions*, SWISINFO.CH (Jan. 25, 2010, 1:17 PM) <http://www.swissinfo.ch/eng/how-switzerland-champions-champions/8149794> (asserting that “Swiss authorities are experts at exploiting their own legislation to justify tax rebates”).

186. Carolyn Bandel & Tariq Panja, *FIFA Corruption Probe May End Switzerland Tax Privileges*, BLOOMBERG BUS. (June 9, 2011, 2:33 PM) <http://www.bloomberg.com/news/articles/2011-06-08/fifa-corruption-threatens-tax-privileges-as-switzerland-examines-payments> (positing that FIFA is a tax-privileged association, like yodeling and folk dancing clubs).

breaks.”<sup>187</sup> This could lead to a potential “\$1.3 billion” blow to “its annual revenue.”<sup>188</sup> Switzerland wants to end its image of being a “haven” for white-collar criminals,<sup>189</sup> and cutting FIFA’s “tax break[ ]” incentives would go a long way toward doing just that.

The Swiss government has demonstrated its willingness to reform laws in order to attract foreign investment.<sup>190</sup> Despite its notoriety for “banking secrecy,”<sup>191</sup> in 1994, the Swiss Government enacted a new law that allowed bankers to communicate with authorities regarding suspicions of criminal activity involving their financial institutions.<sup>192</sup> This action was aimed at “curbing [rampant] money laundering” and organized crime.<sup>193</sup>

If enough public outcry and outrage persists regarding FIFA’s unethical practices, coupled with a cut in FIFA’s tax breaks by the Swiss government, I believe FIFA’s top executives will eventually initiate reforms on their own. Soccer is the world’s most popular sport,<sup>194</sup> and its popularity is ever increasing, especially in the United States.<sup>195</sup> More people are watching and becoming fans,<sup>196</sup> and with more eyes watching the game, the likelihood of people becoming privy to FIFA’s corrupt practices increases. Having a global audience, like this, can bring the more humanized issues, like the migrant worker treatment and the terrorism ties discussed above, to light, making it possible for soccer fans to start pushing for change. After FIFA refused to release Eckert’s report, Britain’s Serious Fraud Office began looking into the matter.<sup>197</sup> Sajid Javid is but one politician questioning FIFA’s investi-

187. *Id.*

188. *Id.*

189. *See id.*

190. *See* U.S. DEPT. OF STATE, 2014 INVESTMENT CLIMATE STATEMENT 1 (2014).

191. Michele Moser, *Switzerland: New Exceptions to Bank Secrecy Laws Aimed at Money Laundering and Organized Crime*, 27 CASE W. RES. J. INT’L L. 321 (1995).

192. *Id.* at 341.

193. *Id.* at 321.

194. Eric Weil, *Football*, BRITANNICA.COM, <http://www.britannica.com/sports/football-soccer> (last visited Jan. 30, 2016).

195. Nicky Woolf, *World Cup Fans the Flams of USA Soccer Surge but MLS is Still the Test*, GUARDIAN (July 15, 2014, 11:48 AM), <http://www.theguardian.com/football/2014/jul/15/world-cup-fans-usa-soccer-mls> (stating that American audiences for the World Cup has more than doubled between 2006 and 2014, and that the MLS is getting more popular).

196. Theo Resnikoff, *Brazil 2014 World Cup Breaks TV Records, says FIFA*, CNN (June 21, 2014, 4:18 PM), <http://edition.cnn.com/2014/06/21/sport/football/world-cup-broadcasting-stats/> (reporting that the 2014 Brazil World Cup has demonstrated growing global interest in football and that the first round of group matches broke TV records worldwide).

197. Rob Harris, *UK’s Serious Fraud Office Mulls Criminal Investigation into World Cup Bid Allegations*, HUFFINGTON POST (Jan. 26, 2015, 5:59 PM), [http://www.huffingtonpost.ca/2014/11/26/uks-serious-frud-office\\_n\\_6227696.html](http://www.huffingtonpost.ca/2014/11/26/uks-serious-frud-office_n_6227696.html).

gation.<sup>198</sup> He criticized “their independence and transparency” and called for the entire report to be published.<sup>199</sup>

News and entertainment programs are also beginning to apply public pressure as well. John Oliver, host of HBO’s Last Week Tonight, delivered a thirteen-minute rant about how despicable FIFA is, and even compared the organization to ancient Egyptian slave masters and the makers of the obscene “Two Girls One Cup” YouTube video.<sup>200</sup> BBC’s exposé program, Panorama, also aired an episode outlining FIFA transgressions.<sup>201</sup> FIFA is being lambasted from multiple angles and from multiple information outlets. The corruption is being thrown into the public fold for everyone to see.<sup>202</sup> The more FIFA recoils and resists public calls for transparency and change, the more the public will turn on FIFA and the calls will only get stronger.

## V. CONCLUSION

Incorporating principles from the APA when reforming FIFA’s adjudication procedure will increase transparency throughout the organization, implement impartial third-party expert adjudicators, and potentially implement a thorough judicial review system. Such action will bolster efforts in stamping out corruption amongst FIFA’s executives and ensure the prevention of another debacle like Qatar 2022. However, pressuring FIFA into making the necessary changes will require a collaborative effort from many avenues.

The movement must come from the die-hard fans, casual fans, politicians, and ethical Executive Committee members alike. All must continue to voice his or her displeasure with FIFA’s conduct. From the horrendous treatment of migrant workers, to the illegal vote buying, or the simple fact that soccer is being run by an organization lack-

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198. Dan Roan, *FIFA ‘Corruption’ Report: Sajid Javid Calls to Publish Full Investigation*, BBC SPORTS (Nov. 26, 2015, 12:00 AM) <http://www.bbc.com/sport/0/football/30203666>.

199. *Id.*

200. Edward Helmore, *How John Oliver Started a Revolution in US TV’s Political Satire*, GUARDIAN (June 14, 2014, 7:04 PM), <http://www.theguardian.com/tv-and-radio/2014/jun/15/john-oliver-started-a-revolution-in-us-tv-political-satire>.

201. *Panorama: Three FIFA World Cup Officials Took Bribes*, BBC NEWS (Nov. 29, 2010), <http://www.bbc.com/news/uk-11841783>.

202. See Christie Smythe, Tariq Panja, Andrew Martin, *News Analysis: Decades of FIFA Corruption Exposed in US Courtroom*, BIZ NEWS (June 4, 2015), <http://www.biznews.com/news/fifa-scandal/2015/06/04/news-analysis-decades-of-ffa-corruption-exposed-in-us-courtroom/> (demonstrating how the corruption is in “the public fold” for all to see); see also Michael E. Miller, *How a Curmudgeonly Old Reporter Exposed the FIFA Scandal That Toppled Sepp Blatter*, WASH. POST (June 3, 2015), <https://www.washingtonpost.com/news/morning-mix/wp/2015/06/03/how-a-curmudgeonly-old-reporter-exposed-the-fifa-scandal-that-toppled-sepp-blatter/> (exposing the FIFA scandal and Sepp Blatter).



ing integrity, people must maintain their vigor and fight, and eventually FIFA will cave. However, the public needs help. The Swiss government must not just act but act decisively. Cutting FIFA's exorbitant tax breaks will likely be the first domino to fall. A \$1.3 billion annual loss will hit FIFA right in its wallet, the place that is most near and dear to its heart.<sup>203</sup> The APA is a readily available and proven solution once the decision to finally go ahead with internal FIFA reforms commences.

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203. Bandel & Panja, *supra* note 186.