



ANALYSIS OF THE CHANGES TO THE SAFA STATUTES - 2022

By Dennis A. Mumble

Abstract

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Dennis A. Mumble (March 2022)

GENERAL COMMENTS ON THE CONSTITUTIONAL CHANGES

On 13 August 2021, the SAFA NEC resolved to appoint a Task Team of three NEC Members to engage SAFA Members and to conduct a workshop with them “to include the Regional and Provincial structures” and “to ensure alignment with FIFA and CAF”.

Engagement with SAFA Members

The Task Team conducted workshops in three strategic locations, Durban, Johannesburg, and Cape Town, where the Presidents and Regional Executive Officers (REOs) as well as the Provincial Chairpersons and Provincial Executive Officers (PEOs) were invited to attend. Not all Regions attended the workshops. The results of these consultations were compiled by the Task Team and presented directly to the SAFA Congress. Members of the NEC and the then Legal & Constitutional Affairs Committee report that the final draft of the proposed amendments that was presented to the 26 March 2022 Congress was not approved by either committee.

Only the NEC and SAFA Members can propose constitutional amendments.

On the Alignment with the FIFA Statutes

The 2021 FIFA Statutes states as follows:

14 *Member associations’ obligations*

1.

Member associations have the following obligations:

- (a) to comply fully with the Statutes, regulations, directives and decisions of FIFA bodies at any time as well as the decisions of the Court of Arbitration for Sport (CAS) passed on appeal on the basis of art. 56 par. 1 of the FIFA Statutes;*
- (b) to take part in competitions organised by FIFA;*
- (c) to pay their membership subscriptions;*
- (d) to cause their own members to comply with the Statutes, regulations, directives and decisions of FIFA bodies;*
- (e) to convene its supreme and legislative body at regular intervals, at least every two years;*
- (f) to ratify statutes that are in accordance with the requirements of the FIFA Standard Statutes;*
- (g) to create a referees’ committee that is directly subordinate to the member association;*

- (h) to respect the Laws of the Game;
 - (i) to manage their affairs independently and ensure that their own affairs are not influenced by any third parties in accordance with art. 19 of these Statutes;
 - (j) to comply fully with all other duties arising from these Statutes and other regulations.
- (a) to be neutral in matters of politics and religion;
 - (b) to prohibit all forms of discrimination;
 - (c) to be independent and avoid any form of political interference;
 - (d) to ensure that judicial bodies are independent (separation of powers);
 - (e) all relevant stakeholders must agree to respect the Laws of the Game, the principles of loyalty, integrity, sportsmanship and fair play as well as the Statutes, regulations and decisions of FIFA and of the respective confederation;

2.

Violation of the above-mentioned obligations by any member association may lead to sanctions provided for in these Statutes.

3.

Violations of par. 1 i) may also lead to sanctions, even if the third-party influence was not the fault of the member association concerned. Each member association is responsible towards FIFA for any and all acts of the members of their bodies caused by the gross negligence or wilful misconduct of such members.

- (f) all relevant stakeholders must agree to recognise the jurisdiction and authority of CAS and give priority to arbitration as a means of dispute resolution;
- (g) that the member association has the primary responsibility to regulate matters relating to refereeing, the fight against doping, the registration of players, club licensing, the imposition of disciplinary measures, including for ethical misconduct, and measures required to protect the integrity of competitions;
- (h) definition of the competences of the decision-making bodies;
- (i) to avoid conflicts of interests in decision-making;
- (j) legislative bodies must be constituted in accordance with the principles of representative democracy and taking into account the importance of gender equality in football; and

Article 14(1)(f) obliges its Members “to ratify statutes that are in accordance with the requirements of the FIFA Standard Statutes”.

In addition, Article 15 of the 2021 FIFA Statutes state the following:

15 Member associations’ statutes

Member associations’ statutes must comply with the principles of good governance, and shall in particular contain, at a minimum, provisions relating to the following matters:

(k) yearly independent audits of accounts.

The 2021 FIFA Statutes is the result of a process which commenced in 2016 when FIFA embarked on a total overhaul of its governance system and restructured the entire organisation to meet the challenges of the post-Blatter football world. It adopted key governance instruments such as a radically revised FIFA Statutes and appointed independent committees to oversee the implementation of the new governance reform programme. The new approach was adopted at the FIFA Congress in Mexico in 2016. These changes were also made mandatory for all FIFA's Members.

To bring SAFA in line with the FIFA requirements, the following steps must be taken as part of its own governance reform programme:

FIFA's governance reform programme consists of three (3) key pillars and nine (9) principles that FIFA requires Members to incorporate in their Statutes, Rules and Regulations.

The three (3) pillars are:

1. LEADERSHIP: Principles of leadership to effect cultural change (at SAFA)
2. GOVERNANCE: Principles of governance reform (in SAFA)
3. PARTICIPATION: Principles to foster greater participation of member associations and stakeholders (in SAFA)

The Nine (9) Principles are:

1. Political and Religious Neutrality
2. No External Political Interference
3. Respect for Loyalty, Integrity; Fair Play
4. Avoidance of Conflicts of Interest
5. Annual Independent Audits
6. Prohibition of Discrimination
7. Clear-Cut Decision-Making Bodies
8. Independent Judicial Bodies
9. Representative Democracy

The South African legal system has long ago established that SAFA exercises a public power and must conform to the requirements of the Promotion of Administrative Justice Act (PAJA), amongst other laws. The changes must therefore reflect that SAFA exercises a public power. SAFA is registered as a public benefit organisation.

So, when constructing or aligning the statutes to incorporate the new governance framework, the basic structure of the SAFA Statutes must include the following pillars that are timeless and unbreakable:

1. It must clearly spell out the principles on which the organisation is founded;
2. It must establish the organisational framework;
3. It must define the relations between the organisation and its members and officials;
4. It must clearly define the bodies of the organisation;

5. It must precisely define the powers of the organisation and that of its bodies;
6. It must direct how the rules and regulations are made.

These parts of the basic structure must be difficult to change in order to ensure stability and to develop a culture of good governance as well as establishing a reasonable distribution of powers to preserve a healthy competitive balance within the organization.

The basic structure must also be influenced by the principles that underpin the global football law promoted by FIFA and must incorporate local South African sports law, as contained in the extensive library of court rulings in sporting matters over the years.

The list of legal principles is too long to list here, but it is important to point out the following key principles must remain prominent in South African football's dispute resolution system. The Latin terms for these principles are included to further illustrate their broad acceptance in the legal fraternity:

1. The **principle of clarity** must be a cornerstone of our Rules and Regulations and in the interpretation of the Statutes. For this, the legal principle of *ubi lex voluit dixit, ubi noluit tacuit* (if the law means something, it says it) must be applied;
2. The **principle of legality** requires that there can be no penalty without a law (*nulla poena sine lege*);
3. The **principle of predictability** requires that any rule or law must be clear and precise (*nulla poena sine lege clara*);
4. **Stare decisis** (development of the common law in football) must become a central pillar of the SAFA regulatory framework;
5. The **principle of proportionality** must be clearly defined. In line with this principle, the SAFA Disciplinary Code must be updated to incorporate this and the other principles mentioned here;
6. The legal **principle of sine poena nulla lex** (without penalty, there is no law) must take centre stage in South African football jurisprudence. The practice of allowing the judicial panels in different jurisdictions to set different standards for sanctions must end. A well thought out schedule of penalties must be developed;
7. The **audi alteram partem principle** (the right to be heard) must form the backbone of SAFA's disciplinary processes in line with the global sports law (the *lex sportiva*) and local laws such as the Promotion of

Administrative Justice Act (PAJA).

The Statutes must also promote the following principles in all spheres of South African football:

1. Active Membership Participation
2. Accountability
3. Transparency
4. Control of the Abuse of Power
5. Obedience to the Rule of Law / Respect for the Rules
6. Bill of Rights / Human Rights
7. Equality (gender, economic, status)
8. Political Tolerance / Freedom of Speech / Diversity / Freedom of Association
9. Regular and Free Elections and Accepting the Results of Elections

Any changes to the SAFA Statutes must therefore comply with these principles to be compliant with the FIFA governance reform programme. So the question must be asked: do the recent changes comply with the FIFA objectives? Let us see below:

A key component of a good governance system is the total adherence to the rule of law in everything we do. The provisions of the Statutes and its associated rules and regulations must therefore be clearly understood, purposefully interpreted and strictly adhered to at all times.

But, judging from the proceedings of the March 2022 SAFA Congress, the following analysis suggests that

SAFA's Members have been misled and the abovementioned principles were not observed.

So, what was wrong with the process leading up to and including the 26 March 2022 Congress?

1. The Agenda of the 26 March 2022 Congress was altered in violation of Art. 27.7.2 of the Statutes governing that meeting;
2. The appointment of the Independent Committees was fatally flawed;
3. There were serious procedural flaws in the processing of the amendments
4. There are no rules for how to conduct elections in SAFA;
5. The new amendments are not broadly drawn on standard principles of statutory construction;
6. The powers of Congress have been removed from the Statutes;
7. The proposed amendments fail the test of participation, rights of Members and separation of powers;
8. The changes fail the test of guaranteeing fundamental rights of Members and persons;
9. The changes create an all-powerful President;
10. The changes fail the separation of powers test;
11. The changes fail the good governance test by the abolition of key standing committees such as Women's Football Committee, Safety & Security Committee,

Dispute Resolution Committee, Players' Status Committee.

1. Fraud was committed in the signed and published version of the 2022 Statutes

- i. On 7 December 2022, SAFA circulated a proposed Statutes to Members. The Statutes were not adopted by a duly constituted NEC meeting. Only the NEC and a Member can propose amendments to the statutes in accordance with Article 29.2 of the 2018 SAFS Statutes. The SAFA NEC only discussed the proposed amendments at its 25 March 2022 meeting, as announced in the 26 March 2022 Congress.
- ii. On 8 March 2022, SAFA circulated a second version of the proposed Statutes to its members. This version differed from the first version.
- iii. On 14 April 2022, SAFA circulated a signed version of the Statutes purportedly approved on 26 March 2022. This version differed from the two previous versions. The variations in the signed version were not discussed at the Congress. Members were directed to either accept the changes *en bloc* and that no debates were allowed on the matter as it had already been workshopped with Members, even after SAFA Nelson Mandela Bay proposed exceptions to an article

to reflect that the President of the Association did not belong to any Member as per the 2018 SAFA Statutes. The following Articles were either removed or added to the final version:

- 5.3 Players called to do duty for the various national teams shall be released by their clubs. Failure to abide by this rule shall be considered a serious offence. For "A" national teams, player releases shall be governed by the FIFA Regulations for the Status and Transfer of Players. **REMOVED**
- 13.1.13 to immediately communicate to SAFA of its intention to discuss, consider or to enter into negotiations with a sponsor or any person or a group of persons for a sponsorship or the raising of funds. **REMOVED**
- 13.1.14 to ensure every sponsorship without exception is negotiated in the best interest of football in the country in consultation with SAFA and with the written permission of SAFA. **REMOVED**
- 13.1.15 to comply with the club licensing regulations of SAFA, CAF and or FIFA. **REMOVED**;
- iv. A new Article was fraudulently **ADDED** – designed to exclude any

former NEC Member from election to the NEC – to the signed version circulated to SAFA Members on 14 April 2022:

30.4 The Members of the SAFA NEC must

(f) not have served as a SAFA NEC Member previously and/or served at a higher level than as a SAFA NEC member

- v. There are two unrelated conditions listed in this clause, each with a distinct meaning. The first clause rules out former NEC Members and the second clause rules out those who served in a higher position than as an NEC Member. Since there is no higher office than President in SAFA, the only assumption is that this clause refers to higher office in football, such as at the Confederation of African Football (CAF) or FIFA level. However, the conjunctive-disjunctive phrase “and/or” renders the clause inoperable in reality and in law as it is vague and can convey two meanings simultaneously, i.e. the incumbent President can be deemed to be eligible and ineligible for election at the same time depending on which conjunction is applied in the moment. If the injunctive “and” is used, the President is eligible on the basis that he is not a “former” NEC Member. If the disjunctive “or” is applied, then the President

is ineligible because he served as the Vice-President of CAF previously.

- vi. On Saturday, 18 June 2022, the Congress was handed a fourth (4th) version of the SAFA Statutes since 7 December 2021, when it was given a version that did not include Article 30.4(f). This is an admission of fraud by those who signed the version that was circulated to all Members on 14 April 2022.

- vii. The following Article was not included in the two versions circulated to Members on 7 December 2021 and 8 March 2022 but magically appeared in the signed version circulated to Members on 14 April 2022:

44.4 Dealing with all disputes between SAFA and the League with a view to mutual respect and needed cooperation in developing and promoting football

- vii. This provision was part of all the previous editions of the SAFA Statutes. The omission is indicative of the flawed manner in which the Statutes was amended.

2. The AGENDA OF THE 26 MARCH 2022 CONGRESS WAS ALTERED IN VIOLATION OF ART. 27.7.2 of the Statutes governing that meeting:

- i. The approval of the Members of the Independent Committees was added to the agenda without a motion to alter the agenda. Art. 27.7.2 requires a 2/3 majority vote to alter the agenda;
 - ii. The NEC introduced a fresh motion to amend the Statutes to include the right of NEC Members to vote. A new motion to amend is not permitted by the statutes. Only an amendment to an amendment is permitted. According to Art. 29.4 of the SAFA Statutes, no new motions for additions should have been accepted. The rejection of the Nelson Mandela Bay amendment because it was a new addition demonstrated this.
 - iii. Congress rejected the motion from Tshwane to remove the right of NEC Members to vote. , it does not mean that the NEC regained the right in view of its exclusion from the proposals circulated to Members on 7 December 2021 and 8 March 2022 and the fact that the Chairperson did not allow Nelson Mandela Bay's amendment during the Congress.
 - iv. Also, Article 29.2 of the Statutes stipulates that the proposed amendment should have been sent to Members with a brief explanation in writing.
 - v. The addition of the motion to allow NEC Members to vote was therefore irregular since it was a new addition and it was not properly motivated. The Chairperson acted *ultra vires* his powers by ignoring this fundamental constitutional requirement;
 - vi. The item on elections was added to the agenda by the Chairperson without the required 2/3 vote to alter the agenda of Congress. This was not to be discussed under Item 19 of the Agenda as no election-related notice was issued for discussion at the Congress. Members were therefore ambushed in the meeting to approve an item not included on the agenda;
- 3. The APPOINTMENT OF THE INDEPENDENT COMMITTEES WAS FATALLY FLAWED:**
- i. The Governance Committee, created to ensure better governance, has no regulation that governs its activities – unlike what happens in FIFA. Ideally, the Governance Regulation should indicate:
 - a. How the members of the Governance Committee must be appointed;
 - b. The criteria members of the Governance Committee must fulfil to be appointed;

- c. How candidates for election must go about securing nominations;
- d. How candidates should conduct themselves during the campaign;
- e. Whether candidates can use SAFA resources during the campaign;
- f. The process for vetting candidates so that candidates are clear up front on what criteria they should fulfil to pass the vetting test;
- g. How the election will be conducted on the day of the election;
- h. Whether it will be a secret ballot or open vote;
- i. What the appeals procedures are if anyone has a complaint about anything related to the election;
- j. The method of investigating of the candidates' background must be clarified. Who provides the information on the length of service of the candidates? How and when
- k. Any other conditions under which the campaign must be conducted;

Candidates are entitled to know this information well in advance of the commencement of the process and the rules must be set by a SAFA Congress – not the Governance Committee.

- ii. The names of the proposed members of the Governance Committee were presented to Congress without prior notice to the Members and with no explanation on whether they were properly vetted – or properly qualified – for this important task.

Such requirements would ordinarily be contained in a Governance Regulation – which does not exist. Members were ambushed in the meeting to accept the names. The composition of the Committee must also face serious scrutiny for the following reasons:

- a. In view of the fact that the SAFA Electoral Code had not been rescinded in accordance with Article 78 of the 2022 SAFA Statutes, the Electoral Code still governs all elections in SAFA and continues to be used to govern elections in all SAFA's Members to date. The appointment of the Members of the Governance Committee is therefore pathologically flawed.
- b. The Chairperson of the Governance Committee is a government official, responsible for overseeing 57 sporting codes in his Province, but who agreed to serve on a body of one sporting code. This goes against a strong FIFA principle of non-interference in electoral affairs by governments and a violation of Article 3(d)(iii) of the SAFA Electoral Code. All references to the Electoral Code were removed from the SAFA Statutes in March 2022. But, as noted above, the Code remains valid until it is formally rescinded by a two

- thirds majority vote in a duly constituted Congress and for which motion to rescind was properly given at a previous Congress or 30 days before the Congress where the motion is to be rescinded;
- c. Another member of the Governance Committee has been a longstanding advisor to the current SAFA President (for about 8 years);
 - d. Another member is a former employee and direct reportee of the incumbent President at the 2010 FIFA World Cup LOC;
 - e. A fourth member served on the previous Electoral Committee that oversaw the 2018 elections in SAFA. This is a violation of Article 4(c) of the SAFA Electoral Code and the FIFA Standard Electoral Code. This goes against the principle that no member of an election body can serve more than one term;
- ii. The name of one proposed member of the Ethics Committee was presented to Congress without prior notice to Members and with no explanation on whether the member was properly vetted or suitable for the task. Whilst the person is an eminently qualified jurist, having served on the country's highest court, it still does not justify bending or breaking the procedural rules for such appointment to become valid. This Ethics Committee Member already sat on a matter involving Coach Luc Eymael in 2021, yet her appointment was not presented to the SAFA NEC for adoption as a recommendation to the SAFA Congress who possess the ultimate authority to approve the Members of the Ethics Committee. So, there is no question about the integrity of this eminent jurist, but the procedure by which her appointment was occasioned was unlawful and compromised her standing;
 - iii. During the 26 March 2022 Congress, the Chairperson called for Members to submit more nominations to the Governance and Ethics Committees for inclusion and that the CEO be empowered to add them to the Committee. This is highly irregular since Congress cannot delegate its original constitutional function to any other body. According to Article 21.1 of the 2022 SAFA Statutes, Congress "*is the meeting at which all of the Members of SAFA formally convene. Only a Congress that is properly convened has the authority to make decisions*". Congress has no authority to override a provision of the SAFA Statutes without instituting a formal procedure, in line with Article 29 of the Statutes, to

amend the Statutes to authorise such action.

4. There were SERIOUS PROCEDURAL FLAWS in the processing of the amendments:

- a. The NEC only approved a motion to amend the Statutes the day before Congress. It would have been highly irregular to present the NEC's recommendations on the day before the Congress to Members as it was not in compliance with Article 27.4 of the SAFA Statutes, which requires motions to be circulated to Members at least 14 days before the Congress. Yet, Congress was asked to approve the revised Statutes without debate on the extensive set of amendments. Ordinarily, constitutional amendments should be motivated (Article 29.2) one by one. Yet, this was not done;
- b. To compound the problem, two versions of the proposed amendments were circulated to Members (7 December 2021 and 8 March 2022). The NEC did not approve either of the two circulated versions before it was sent to Members. It is therefore not clear what amendments Congress was asked to approve as the presenter merely called for the adoption of the 'new statutes' without clarifying which of the circulated versions were being discussed and the Chairperson

ruled against debating any of the amendments, requesting instead the approval of the amendments *en bloc*.

5. The changes create a generalised CONFUSION AROUND THE CONDUCT OF ELECTIONS in SAFA:

- a. The new Statutes transfers the responsibility for election oversight to the Chairperson of the Governance Committee (Art. 50 of the new Statutes). However, as shown above, the Governance Committee itself does not have terms of reference regulating its conduct that goes beyond the broad provisions in Articles 25 and 30 of the 2022 SAFA Statutes. FIFA has a full-fledged Governance Regulation (75 pages long) that regulates the work of its Governance Committee. This lacuna effectively ensures that the Chairperson of the Governance Committee will make up the criteria to oversee the elections as and when the questions arise;
- b. SAFA's elections had been governed by the *SAFA Electoral Code* since September 2013. The SAFA Congress amended that Regulation in April 2018 and also added an Electoral Code of Conduct to regulate campaigning for office;
- c. Although the *Electoral Code* was removed from the new Statutes, it

has not been rescinded by a resolution of Congress in accordance with Art. 92.3 of the previous Statutes (now Art. 78.3 of the new Statutes without change). Therefore, the *Electoral Code* and the *Electoral Code of Conduct* remain in force until specifically rescinded by a 2/3 majority vote in a duly constituted Congress and for which notice of rescission was given by a Member in the previous Congress or notified to the CEO at least 30 days before the Congress where it is to be considered. Even if regard must be had for the principle of *lex posterior derogat priori* (a later law repeals an earlier one), the later law must either expressly repeal or be manifestly repugnant to, the earlier one.¹

- d. Moreover, Article 11.1 of the *Standing Orders for SAFA Meetings* regulation specifically prohibits any alteration of the SAFA Statutes or decision of Congress that invalidates any prior act of Congress which would have been valid if that alteration had not been made or the decision or direction had not been taken. This provision effectively bars gratuitous revisions of SAFA's Statutes to cater to the mood of the moment.

6. The new amendments are not broadly drawn on standard PRINCIPLES OF STATUTORY CONSTRUCTION such as:

- a. Effective separation of powers;
- b. Participatory democracy;
- c. Ease of entry;
- d. Fundamental rights of Members;
- e. Transparency;
- f. Unambiguous language;
- g. Accountability.

7. The POWERS OF CONGRESS HAVE BEEN REMOVED from the Statutes:

Congress only has "Incidental" Powers now!

The changes to the Statutes are a full frontal assault on the rights of SAFA's Members because **the Article that contains the powers of Congress have been removed** from the Statutes, violating a key principle of the basic structure of the constitution: a clear definition of the powers of the bodies of the organisation.

The Task Team responsible for the amendments stated in a previous report that the agenda of Congress in Article 27 of the Statutes reflects the powers of Congress. This is a fundamental violation of Article 15(h) of the FIFA Statutes and of the basic

¹ <https://openjurist.org/law-dictionary/lex-posterior-derogat-priori>, Black's Law Dictionary: 2nd Edition

Broom, Max. 29; Mackeld. Bom. Law, § 7

structure of the constitution, which requires that the powers of each of the decision-making bodies of SAFA must be clearly spelled out in the Statutes and not implied in an incidental manner, as is reflected in Article 27. The powers of the other six (6) bodies largely remain the same, with significant additional powers given to the NEC to justify actions it had previously taken without the authority to do so.

The removal of this fundamental provision of the Statutes creates a fatal structural weakness in the balance of powers provisions of the Statutes. It eliminated the separation between ownership and control by removing the powers of the owners (the shareholders, which are the Members) whilst simultaneously increasing the powers of the controllers (the executive body). It goes against the principle of separation of ownership and control.

Congress' Financial Oversight Has Been Completely Removed

Congress no longer has oversight over financial matters!!!

- a. The presentation of the budget is no longer included in the Congress agenda as was previously done in Article 27. There is also no provision anywhere in the Statutes to consider the budget by any constitutional body of SAFA – including the NEC!!!

- b. Congress can no longer approve the audited financial statement (AFS) because this responsibility was transferred to the National Executive Committee in Article 34.1.17. Article 26.7(j) removed the wording '*and approval*', as was provided in all previous Statutes. It now only allows for '*presentation*' of the AFS. This is a serious breach of generally accepted corporate governance principles. The previous editions of the Statutes always included the approval of the AFS under the Congress' Areas of Authority.
- c. The clause (Article 74.7 of the 2018 Statutes) mandating that the Chief Finance Officer be responsible for drawing up the annual consolidated accounts of SAFA and its subsidiaries as at 30 June was also completely removed from the Statutes.

These deletions and transfer of responsibility does not appear to be accidental because the entire process of financial oversight was removed from the supervision of Congress. The removal of these items creates a fatal flaw in the financial oversight responsibility of Congress, and leaves the Association vulnerable to financial manipulation.

8. The proposed amendments fail the test of PARTICIPATION, RIGHTS OF MEMBERS AND

SEPARATION OF POWERS in the following manner:

- a. Congress' powers have been removed, but the NEC's powers have been increased;
 - b. Members can no longer debate policy at the Annual Policy Congress because it has been removed from the Statutes. Important policy issues cannot be discussed in a Congress with a 20-point agenda;
 - c. Members can no longer alter the Agenda of Congress in the Congress itself;
 - d. Congress can no longer approve the AFS (Audited Financial Statement);
 - e. The SAFA Electoral Code was removed from the Statutes. The Code intended to guarantee free and fair elections. The Chairperson of the Governance Committee must now oversee the elections, yet there is no directive for that Chairperson to follow certain rules. FIFA has an extensive Governance Regulation which incorporates how to run the FIFA Presidential election – the only position up for election by the FIFA Congress;
 - f. NEC Members insist on their right to vote at elections despite a FIFA instruction to the contrary. Congress was told that the NEC decided on 25 March 2022 to insert their right to vote in the Statutes, but the signed Statutes does not include that provision – rightfully so. It runs against good corporate governance practice to blur the lines between ownership and control of the organisation, which is a fundamental principle of the country's company laws.
- SAFA is the only football association in the world where the Executive Committee Members can vote during its elections. This is an artificial creation to tilt the balance of power from the owners to the controllers of the Association;
- g. Members can no longer nominate a date for Congress if the NEC fails to do so by 30 June;
 - h. Members can now only receive Congress documents 14 days before the Congress instead of the previous 30 days before the Congress. It leaves Members unable to obtain mandates from their own Congresses should the need arise and militates against LFA participation in national governance matters;
 - i. Members can no longer nominate a person from another Region for a post on the NEC. This is undemocratic. SAFA is a national association, not a Regional body. This artificial barrier against participation goes against FIFA's reforms aimed at increasing participation. The restriction is

- arbitrary, needlessly constraining and promotes tribalism/regionalism and has no basis in the culture and history of SAFA as a unified organisation. What if a long-serving servant of the game has to relocate to another area after serving his/her Region diligently for many years?;
- j. SAFA becomes a closed society as a result of this artificial barrier, which keeps deserving candidates out, while putting members on committees based only on geographic and political factors, and not using expertise as additional criteria, SAFA will lose much-needed skills. Even Dr Patrice Motsepe, according to these rules, is unable to serve on the SAFA NEC — and this from the organisation that nominated Dr Motsepe for the CAF Presidency!
 - k. The changes create two classes of Members: one that can and another that cannot nominate freely for any post. Despite the fearmongering that the leaders of the League will compromise the Association like what happened 40 years ago, it can hardly be said that the League has brought South African football into disrepute given their own success in the marketplace. SAFA's wounds are self-inflicted and not caused by the actions of the League;
 - l. It abolished the Women's Football Committee in the face of a continuing need to pay special attention to women's participation in the sport in all spheres of administration, technical, refereeing and on the field, not just in competitions. Removal of the Women's Football Committee is tantamount to abandoning the mission to grow women's football by doing away with its biggest advocate. This move appears to be based on the assumption that women's football is all about women's competitions only. Matters such as GBV, Gender Testing protocols, the specificities of the women's game, general development, advocacy to increase women's representation and compensation in other areas of football will now come to an end;
 - m. It abolished the Provincial structure as a SAFA body, limiting its powers to just running its own competitions and leagues, nurturing relationships and cooperation through meetings, exercising oversight over representatives elected to SAFA bodies, establishing parallel committees similar to those at the national level, and concluding an agreement with the national office to perform any other duties the national structure deems fit;
 - n. Article 25.20(a) is so poorly drafted that it raises questions about the function of

the Provincial Structure in the nomination of Provincial List candidates and incorrectly refers to Article 25.5 (nomination of the League Members) in respect of nominations and elections of the Provincial Candidates. Nonetheless, without any constitutional authority, the Provincial Structures have organized meetings to elect candidates for the Provincial List of candidates for the 2022 elections – whilst the Statutes do not authorise them to do so.

9. The changes fail the test of guaranteeing fundamental RIGHTS OF MEMBERS AND PERSONS in the following manner:

- a. It removed the right of Members and persons to be heard (*audi alteram partem*) when they are sanctioned by Congress;
- b. It removed the definition of a 'Member', which assisted in distinguishing between juristic persons and natural persons;
- c. It does not provide increased guarantees against proven abuse of power that arises from domineering executive bodies. There is no effective balance of powers left in this Statutes;
- d. It has failed to mandate more rules & regulations to give everyone clarity on how to implement the provisions of the

Statutes. It should not continue to make the SAFA Statutes the first instance tool to resolve disputes.

10. The changes create an ALL-POWERFUL PRESIDENT in the following ways:

- a. Members no longer have the right to nominate persons for appointment to the Standing Committees in favour of centralising that power in the President;
- b. The NEC no longer has the power to appoint HODs. This power is now vested in the President;
- c. The NEC no longer has the power to decide where SAFA's competitions must be. That power is now to be exercised by the President exclusively, according to a previous communique from the Constitutional Task Team;
- d. The voting margin to elect the President has been reduced from a two-thirds majority to 50%+1 – a massive reduction;

11. The changes fail the test of ACCOUNTABILITY in the following manner:

- a. It redefines the meaning of 'conflict of interests' narrowly to only apply to financial interest.

Yet, FIFA defines conflict of interest as:

“A conflict of interest arises if a person bound by this Code has, or appears to have, secondary interests that could influence his ability to perform his duties with integrity in an independent and purposeful manner. Secondary interests include, but are not limited to, gaining any possible advantage for the persons bound by this Code themselves or related parties as defined in this Code”.

FIFA’s definition is much broader than just financial interest;

- b. It is now optional for Emergency Committee decisions to be ratified by the NEC because the language has been changed from “shall” to “may” be ratified (Article 34.4);

12. The changes fail the SEPARATION OF POWERS test in that:

- a. NEC Members are no longer prohibited from serving on a judicial body at the same time, removing the prohibition against interference in the work of the judicial bodies. More than a decade ago SAFA took a decision to prevent this practice when NEC Members also served on the judicial bodies and created massive conflicts of interest;
- b. It does not fully reflect the principles of the global sports law

that FIFA applies. FIFA incorporates all of the lessons learned from the Court of Arbitration for Sport (CAS) judgements into its rules and regulations and general governance. Standard conflict resolution methods; generally acknowledged legal concepts based on the respect of the right to dignity, particularly of athletes; and conscious acceptance of civil procedure norms are among them. FIFA conducts its own annual legal workshops to promote the development of the football jurisprudence;

- c. The Statutes does very little to curb the rising abuse of power by certain bodies of the Association, i.e.:
 - i. No timelines have been set for bodies to resolve disputes;
 - ii. The cost of appeals, arbitrations and legal defence is set so high that it hinders the delivery of justice to those least able to afford it;
 - iii. The use of administrative directives with no basis in the rules and regulations has multiplied and has placed recipients of these decisions in a compromising position of whether to obey obviously unlawful instructions or to simply ignore it. The risks in both circumstances are unacceptable;
 - iv. Football administrators routinely misunderstand their

authority to issue certain instructions. This conduct must be addressed through more precise language in the Statutes, Rules and Regulations of the Association.

in the country. The absence of such a committee raises the risk of serious liability for the Association.

Thank you!

13. The changes fail the test of GOOD GOVERNANCE in that:

- i. The Women's Football, Youth Football, Futsal, Players' Status, Media, Football, Strategic Studies, Commercial, Marketing & TV Advisory, Safety & Security & Fair Play, Dispute Resolution (DRC), Beach Football Committees have all been abolished.
- ii. Some of these committees never functioned or did not have sufficient capacity. However, some committees, like the Players' Status and the Dispute Resolution Committee, are mandated by FIFA and perform highly specialised functions. Their removal shows a fundamental lack of understanding of the FIFA requirements.
- iii. South African law also mandates that specialised committees such as a safety & security committee must oversee compliance with the Safety at Sports & Recreational Events Act (SASREA) be established. This followed the Ellis Park Disaster in 2001 and the new standards required to host a successful FIFA World Cup