

The 2022 Constitutional changes have significantly weakened the authority of the SAFA Congress

SAFA's CONGRESS HAS NO TEETH

About this Article

This article is extracted from a chapter titled "The Merits of the Revised 2022 Statutes" in the book named "*Red Card for a Stolen Victory*" by Dennis Mumble, former General Manager of FNB Stadium and former CEO of the South African Football Association



THE AUTHORITY OF THE SAFA CONGRESS HAS BEEN REMOVED

On the Separation of Powers, Participation and Members' Rights

The SAFA Congress' total jurisdiction is reduced in the new Statutes, which could be described as the most worrying of all the changes. A paragraph describing the areas of responsibility of Congress was included in the previous (2018) edition of the Statutes, but was completely removed in the new edition. This is in blatant contravention of Article 15(h) of the FIFA Statutes for the year 2021, which states that Members' statutes must include a "*definition of the competences of the decision-making bodies.*" As a result, defining Congress' domains of authority in the SAFA Statutes is not an option, but an obligation! Why would the powers of the organisation's highest decision-making body be removed?

Some members of the SAFA Legal and Constitutional Affairs Committee contended that these identical rules are included in Article 26 of the new Statutes (Ordinary Congress). This, however, demonstrates a fundamental misunderstanding of statutory construction standards and a profound disrespect for the rights of Members. The Statutes should not send an interpreter on a hunt to locate the powers of the highest decision-making body. The powers of Congress exist to ensure that Congress also does not overstep its authority so as to violate the supreme law of the Association – the Statutes!

The SAFA Statutes lists seven bodies in Article 19. According to the separation of powers principle, each body's powers must be clearly defined to establish an equitable balance of powers. Following this pattern, the new Statutes go on to outline the powers of each of the other six bodies — but notably omits the powers of Congress.

These Powers Have Been Removed from the SAFA Congress:

1. Adoption or amendment of the Statutes, Rules and Regulations;
2. Approval of the Minutes of the previous meeting;
3. Electing the President and Members of the NEC; appointing the scrutineers;
4. Approving the NEC Report;
5. Appointing the independent auditors;
6. Fixing the Membership subscriptions;
7. Deciding on the conferral of honorary membership of the NEC;
8. Admitting, suspending, or expelling a Member; revoking the mandate of a Member or members;
9. Dissolving SAFA; passing decisions at the request of Members; and
10. Approving the annual financial statements

Some of these powers now occur incidentally but not commensurate with its status as the supreme decisionmaking body of the association.

This omission firmly tilts the balance of power toward the executive body, consolidating SAFA's transition from a full-fledged democratic organisation to one dominated by its executive body — rendering SAFA an illiberal democracy!

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In contrast, the executive branch's powers were expanded with the addition of the power to intervene in a Member's administrative and/or financial matters, as well as the power to suspend a person - all of which were not available in prior editions of the Statutes.

The abolition of the Annual Policy Congress has also curtailed members' participation privileges. The Policy Congress was created to provide a forum for members to discuss the Association's strategic direction. The last Policy Congress took place in April 2015 and lasted two days. Members are now limited to attending the Ordinary Congress once a year, which normally lasts around 4 to 6 hours, and which has a 20-item agenda that prevents extended discussion of any one topic.

Members are further restricted by the lack of the ability to change the Congress' agenda while it is in session. A two-thirds majority vote was required for changes in the previous edition of the Statutes.

The removal of the provision allowing Congress to approve annual/audited financial statements (AFS) significantly limits Congress' authority over financial accountability. The wording of Article 27.7.1.10 of the previous Statutes was changed from "*Presentation and approval of the consolidated Annual Financial Statements and reports of the Auditors for the previous year*" to "*Presentation of the consolidated Annual Financial Statements and reports of the Auditors for the previous year*" in the previous Statutes. This is a significant change because the new term eliminates the words "*and approval*" from the congressional agenda.

The power of Members to nominate a date for Congress if the NEC fails to do so by June 30 was eliminated from the 2022 SAFA Statutes. In the previous iterations, this clause was one of the most important constitutional accountability mechanisms.

The 2018 revisions to the Statutes created a slew of questions about how the Association's elections should be conducted [for a detailed examination, see Chapter 20]. The 2022 version adds to the confusion by placing elections under the Chairperson of the defectively-populated Governance Committee while failing to provide detailed terms of reference or the manner in which elections will be held.



The Balance of Powers Has Shifted

The SAFA Extraordinary Congress in April 2018 amended the 2013 SAFA Electoral Code and also established an Electoral Code of Conduct that controls electoral campaigning. However, the SAFA Electoral Code is not included in the 2022 amendment of the SAFA Statutes, creating a perceptual gap in how elections are to be conducted in the Association.

All prior editions of the SAFA Statutes, as well as the 2022 SAFA Statutes, include a mechanism for rescinding congressional resolutions. According to Article 78.3 of the 2022 SAFA Statutes, "[n]o resolution may be reversed unless a two-thirds (2/3) majority of the affiliates present and empowered to vote are in favour of the rescission".

Furthermore, Article 11.1 of the *Standing Orders for SAFA Meetings* serves as additional evidence that the Electoral Code and the Electoral Code of Conduct remains valid in that it prevents a new decision of Congress from invalidating a prior decision without an explicit repeal of such decision.

11. VALIDATING OF CONGRESS DECISIONS

11.1 No alteration of the SAFA Statutes and no decision of Congress in general meeting shall invalidate any prior act of Congress which would have been valid if that alteration had not been made or that decision or direction had not been taken. A meeting of Congress at which a quorum is present may exercise all powers exercisable by Congress.

What is apparent is that FIFA still wants elections to be conducted according to the FIFA Standard Electoral Code. FIFA's Standard Electoral Code was republished as part of its September 2021 Legal Handbook, suggesting that adoption of an Electoral Code is still required to ensure that independent elections are held in all of its Members. The uncertainty stems from a lack of knowledge about whether the Governance Committee would use the SAFA Electoral Code and the SAFA Electoral Code of Conduct to carry out elections. Neither of these regulations has been repealed, thus they remain in effect.

SAFA's Electoral Code is Still Valid

SAFA conducted elections in June 2022 without using its FIFA-mandated Electoral Code.

This Code was approved in 2013 and not repealed, therefore it remains the applicable law for all elections in SAFA.

Instead, SAFA created a makeshift guide for the conduct of the election itself on election day and released it 72 hours before the election.

The 2022 election was therefore held without rules, only using an opaque provision which placed the Chair of the Governance as the overseer of the election.