THE INTERNATIONAL CRICKET COUNCIL ("ICC")

And

MR ENOCK IKOPE

AWARD

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1. INTRODUCTION

1.1 The ICC, the international federation responsible for the global governance of the game of cricket, has charged Mr Enock Ikope, a Zimbabwe national, with one charge under Code Article 2.4.6 (for failure or refusal to cooperate with an investigation) and two charges under Code Article 2.4.7 (for, respectively, delaying and obstructing an investigation). Mr Ikope denies these charges.

2. JURISDICTION

2.1 Code Article 1.4.2 provides that the following people will constitute Player Support Personnel and thus fall within the jurisdiction of the Code by virtue of being a Participant:

> "any coach, trainer, manager, selector, team owner or official, doctor, physiotherapist or any other person who:
>
> 1.4.2.1 is employed by, represents or is otherwise affiliated to (or who has been employed by, has represented or has been otherwise affiliated to in the preceding twenty-four (24) months) a team that participates in International Matches and/or a playing or touring club, team or squad that participates in Domestic Matches and is a member of, affiliated to, or otherwise falls under the jurisdiction of, a National Cricket Federation."

2.2 Mr Ikope is and has been at all relevant times a Player Support Personnel and thus bound by the Code for both the following reasons:

a. He is Chairman of the Harare Metropolitan Cricket Association ("HMCA"). The HMCA's representative team, the Mashonaland Eagles, participates in Domestic Matches in Zimbabwe and is affiliated to and/or otherwise falls under the jurisdiction of Zimbabwe Cricket ("ZC"); and

b. He is also a Director of ZC and, as such, he is also affiliated to teams that participate in International Matches i.e. Zimbabwe's national representative cricket teams.

2.3 Code Article 1.5 states that each Participant is bound by the Code and, among other things, is deemed to have agreed:

"1.5.1 not to engage in *Corrupt Conduct* in respect of any *International Match*, wherever it is held and whether or not he/she is personally participating or involved in any way in it;

1.5.2 that it is his/her personal responsibility to familiarise him/herself with all of the requirements of the *Anti-Corruption Code,* and to comply with those requirements (where applicable);

1.5.3 to submit to the jurisdiction of the *ICC* to investigate apparent or suspected *Corrupt Conduct* that would amount to a violation of the *Anti-Corruption Code*;

1.5.4 to submit to the jurisdiction of any *Anti-Corruption Tribunal* convened under the *Anti-Corruption Code* to hear and determine, (a) any allegation by the *ICC* that the *Participant* has committed *Corrupt Conduct* under the *Anti-Corruption Code*; and (b) any related issue (e.g., any challenge to the validity of the charges or to the jurisdiction of the *ICC* or the *Anti-Corruption Tribunal*, as applicable); … "

2.4 As a matter of record Jurisdiction has not been put in issue by Mr Ikope.

3. SUMMARY OF RELEVANT FACTS

3.1 The following facts are not in dispute but are in any event based on the Tribunal's findings on the evidence before it.

3A. Corrupt approach by Rajan Nayer to Graeme Cremer

3.2 In October 2017, Mr Rajan Nayer, then Treasurer and Marketing Director of the HMCA, together with Mr Ikope, had met with three Indian men who had travelled to Zimbabwe to discuss the potential sponsorship of a proposed Zimbabwe T20 premier league tournament that they wished to organise. One of those individuals was Mr Gaurav Rawat, who was known to the ICC Anti-Corruption Unit ("ACU") and was suspected of involvement in match-fixing and related activities.

3.3 On 9 October 2017, Mr Nayer engaged in a telephone call with Mr Rawat, during which Mr Nayer, at Mr Rawat's request, agreed to call Mr Cremer then captain of the Zimbabwe

men's senior national representative cricket team and ask him if he would be interested in fixing matches between Zimbabwe and the West Indies (scheduled to take place later that month).

3.4 On 10 October 2017, Mr Nayer proceeded to call Mr Cremer and told him that he had been approached by people who wanted to know if Mr Cremer would be interested in fixing those matches in return for US$30,000. Mr Cremer reported that approach to ZC's Anti-Corruption Manager, Mr Robson Manjoro, who in turn reported it to the ICC, which prompted an investigation by the ACU.

3.5 On 16 January 2018, the ICC initiated proceedings against Mr Nayer for, amongst other things, making the corrupt approach to Mr Cremer.

3.6 On 15 March 2018, the case against Mr Nayer ultimately concluded with Mr Nayer admitting to a breach of Article 2.1.4 of the Code, and accepting a period of Ineligibility of twenty (20) years (effective from 16 January 2018, the date on which Mr Nayer had been provisionally suspended).[1]

3B. The ACU's interview of Mr Ikope and the first Demand

3.7 As a result of its investigations arising from Mr Cremer's report, by January 2018 the ACU had established the following information about Mr Ikope, which led the ACU to have reasonable grounds to suspect that Mr Ikope might have been involved in Mr Nayer's approach to Mr Cremer (and therefore that he had engaged in Corrupt Conduct under the Code):

a. Mr Ikope had worked very closely with Mr Nayer within cricket through their positions with the HMCA.

b. Mr Ikope and Mr Nayer had first sought to promote the proposed Zimbabwe T20 premier league on behalf of the three Indian men referred to above in May/June 2017, and Mr Ikope had remained in close contact with those individuals. Further, Mr Ikope had sought to arrange a meeting in Harare between those men and the Chairman of ZC.

c. Mr Ikope had forwarded a letter on ICC letterhead dated 26 October 2017 to various people at ZC, including another Director. The letter was addressed to the Chairman of ZC and stated "We are happy to inform you that Zimbabwe Premier League T20 held in Zimbabwe has been approved by the ICC (International Cricket Council) and hence it is necessary to inform the Players registered Association that the ICC (International Cricket Council) has authorized this tournament for 2017 to 2022. That letter was forged (among other things, it was signed by Mr Jon Long, an individual

[1] See the reasoned decision issued by the ICC pursuant to Article 5.1.12 of the Code, dated 15 March 2018.

who had resigned from the ICC in October 2015 i.e. two years before the date of the letter), and Mr Ikope would not reveal the source of the letter to the Chairman of ZC.

3.8 Accordingly, on 15 January 2018, Messrs Alex Marshall (the ACU General Manager) and Martin Vertigen (ACU Coordinator Intelligence) interviewed Mr Ikope.[2]

3.9 In advance of the interview, Mr Marshall had prepared a Demand pursuant to Article 4.3 of the Code (the **January Demand**), which requested that Mr Ikope provide certain documentation and records to the ACU, and also required him to immediately hand over his mobile phone in order to allow the ACU to review the information in accordance with the ICC Standard Procedure ("SOP") (which is engaged when the ACU seeks to take possession of and/or copy or download information from Mobile Phones) since he was satisfied that the ACU had reasonable grounds to believe that there may be evidence on Mr Ikope's device(s) which may have been of relevance to the investigation.

3.10 At the 15 January 2018 interview:

a. Mr Ikope was presented with the January Demand, and signed a copy of the same to confirm receipt;

b. Mr Ikope was informed of the basis upon which the January Demand was issued to him, and the basis upon which he was bound by the Code;

c. Mr Ikope was warned that:

i. not allowing the ACU to take possession of and/or copy or download information from his mobile phone, or otherwise not cooperating fully with the Demand, may constitute conduct that amounts to an offence under the Code; and

ii. failing or refusing to cooperate with and/or obstructing or delaying an investigation are offences under the Code (with specific reference to Articles 2.4.6 and 2.4.7 of the Code); and

d. Mr Ikope was informed that he could obtain legal advice, but that the ACU would need to take reasonable steps to preserve the integrity of the information on his mobile phone.

3.11 However Mr Ikope repeatedly refused to hand over his mobile phone to the ACU. Initially, Mr Ikope's refusal was on the basis that he required his phone to contact

[2] The Tribunal has read the transcript of that interview in which all of the above matters were addressed. The transcript also verifies the Tribunal's findings below as to the content of that interview.

members of his family. After the ACU explained that he would be provided with an alternative phone and that other arrangements could be made in order to allow him to contact members of his family, Mr Ikope refused on the different basis that he needed his privacy. At the conclusion of the interview, Mr Ikope was provided with another opportunity to hand over his phone to the ACU, but he again refused to do so.

3.12 In refusing to hand over his phone, Mr Ikope expressly accepted that he was acting in breach of the Code.

3.13 The January Demand also requested that Mr Ikope provide various documents to the ACU. The deadline for Mr Ikope to provide those documents was 30 January 2018.

3.14 However, on 28 January 2018, Mr Ikope responded to the January Demand by way of letter stating that he did not consider that he was "duty bound" to respond to the Demand, and he made a number of allegations about the way the ACU had conducted its investigation (including that the ACU had operated a "patronizing and a Gestapo type of interrogation" and that he viewed things as a "subjugation of [his] race and taking [him] for granted"). Mr Ikope did not provide any of the documentation requested in response to the January Demand.

3C. The Second Demand

3.15 On 20 February 2018, Mr Marshall sent Mr Ikope a further Demand (the **Second Demand**), addressing the points Mr Ikope had made, and offering him another chance to provide the phone and copies of the information and documents requested in the January Demand (whilst at the same time expressly reserving the ICC's rights in relation to his failure to hand over his mobile phone on 15 January 2018, including the right to bring these disciplinary proceedings against him under Articles 2.4.6 and 2.4.7 of the Code).

3.16 The Second Demand provided Mr Ikope with a further 7 days in which to cooperate and provide copies of the information/documentation requested i.e. until 27 February 2018, and expressly advised him not to tamper with or alter in any way any of the data on his phone from the period 1 June 2017.

3.17 On or around 28 February 2018, Mr Ikope responded to the Second Demand by providing information and documentation, including by handing over possession of his mobile phone, which was then analysed by the ACU.

3.18 As appears from the witness statement of Colin Tennant of the ACU (which was admitted without challenge) an attempt by the ACU to download information from the phone proved to be largely unsuccessful. However, a manual search of the phone did reveal that:

a. there were no SMS or WhatsApp messages on the phone that predated January 2018 (despite there being a number of WhatsApp groups on the phone that significantly predated January 2018); and

b. efforts had been made by Mr Ikope to delete information from the phone, with one WhatsApp message sent by Mr Ikope (dated 28 February 2018) stating "I cleaned controversial issues in my phone".

3.19 On 11 June 2018, Mr Ikope was interviewed by the ACU again and was asked questions about the deletion of material on his phone. In that interview Mr Ikope accepted that he deleted information, claiming to have done so (at least in part) because the material belonged to the Zimbabwe Central Intelligence Organisation (despite the Zimbabwe Central Intelligence Organisation apparently consenting to Mr Ikope providing the ACU with the phone during the course of Mr Ikope's first interview on 15 January 2018).

3.20 Further, by way of later letter dated 25 June 2018 (Mr Ikope's response to the Notice of Charge see below paragraph 4.2), Mr Ikope accepted – via his lawyers - that he had deleted information from his phone, citing privacy and geography (on the basis he was '340km' away from his lawyers) as the reasons for doing so.

4. PROCEDURAL HISTORY

4.1 On 11 June 2018, the ICC sent a Notice of Charge to Mr Ikope, following the conclusion of his interview on the same date, charging him with a breach of Code Article 2.4.6 (in relation to his refusal to provide his phone to the ACU following receipt of the January Demand) and two separate breaches of Code Article 2.4.7 (in relation, respectively, to his delaying and obstructing the ACU's investigation). The Notice of Charge placed Mr Ikope under an immediate Provisional Suspension.

4.2 On 25 June 2018, Mr Ikope responded to the Notice of Charge via his lawyers, Manase & Manase of Harare, Zimbabwe, denying each of the charges.

4.3 On 30 July 2018, in light of Mr Ikope's denials, an Anti-Corruption Tribunal was appointed (pursuant to Code Articles 5.1.1 and 5.1.2) to hear and determine the charges against him. The Tribunal consisted of The Hon Michael Beloff QC (Chairman), The Hon Justice Winston Anderson and John McNamara. The parties agreed a procedural timetable, which was subsequently endorsed by the Tribunal.

4.4 On 14 September 2018, Mr Ikope's designated lawyer Mr Manase filed the Answer Brief.

4.5 On 12 October 2018, the ICC filed its Reply Brief.

4.6 On 18 December 2018, Mr Felix Muserere, an associate in Mr Manase's firm ("Mr Muserere"), applied by e mail for an adjournment of the hearing, scheduled to be held on 20 December 2018.

4.7 On 20 December 2018, after the hearing had concluded the Tribunal dismissed the application and, in lieu, gave Mr Manase the right to make written submissions within 14 days of receipt of the transcript of the proceedings on that date.

4.8 The circumstances in, and the reasons for which, that ruling was made are separately explained in paragraph 5 below.

4.9 On 22 January 2019, Mr Manase wrote to the ICC as follows:

> "As I said on the phone I could not deal with the matter due to some civil unrest in the country which precluded our staff from coming to work. Am going to attend to this task immediately.
> I requested and you thought it will be reasonably accepted to be granted 7 more days to read and respond to the evidence send. Please therefore await receipt of same".

4.10 The Tribunal decided in the interests of fairness to accede to his request.

4.11 There followed further communications between the parties and the Tribunal as to the final date for such response which it is not necessary to detail.

4.12 On 31 January 2019, Mr Manase transmitted his written submissions to the ICC ("The Response") which essentially repeated earlier submissions filed on 25 June 2018.

4.13 On 5 February 2019, the ICC filed its reply to The Response, which merely summarized the arguments advanced by the ICC to the Tribunal at the hearing of 20 December 2018.

4.14 The Tribunal has taken full account of all submissions, written or oral made by the parties.

5. ADJOURNMENT

5.1 The relevant provisions of the Code provide, so far as material, as follows:

i. Each of the *ICC* and the *Participant* has the right to be present and to be heard at the hearing and (at his/her or its own expense) to be represented at the hearing by legal counsel of his/her or its own choosing. Where there is compelling justification for the non-attendance by any party or representative at the hearing, then such party or representative shall be given the opportunity to participate in the hearing by telephone or video conference (if available) (Article 5.1.8).

ii. Without prejudice to Article 3.2.2, the *Participant* may choose not to appear in person at the hearing, but instead may provide a written submission for consideration by the *Anti-Corruption Tribunal*, in which case the *Anti-Corruption*

Tribunal shall consider the submission in its deliberations. However, the non-attendance of the *Participant* or his/her representative at the hearing, without compelling justification, after proper notice of the hearing has been provided, shall not prevent the *Anti-Corruption Tribunal* from proceeding with the hearing in his/her absence, whether or not any written submissions are made on his/her behalf (Article 5.1.9).

iii. The procedure to be followed at the hearing (including whether to convene a hearing or, alternatively, to determine the matter (or any part thereof) by way of written submissions alone) shall be at the discretion of the Chairman of the *Anti-Corruption Tribunal*, provided that the hearing is conducted in a manner that affords the *Participant* a fair and reasonable opportunity to present evidence (including the right to call and to question witnesses by telephone or video-conference where necessary), address the *Anti-Corruption Tribunal*, and present his/her case (Article 5.1.10).

5.2 The Tribunal interprets these provisions, so far as germane to these proceedings, as follows:

(i) Subject only to the overriding imperative of fairness **t**he Chairman of the Tribunal has a discretion as to the procedure to be followed for determination of any charge (Sir John Donaldson MR said in *R v Take Over Panel ex p. Guinness* 1990 1 QB 146 at 178A-B "As a general proposition a decision to adjourn or not a hearing is par excellence a matter for the exercise of judicial discretion by the Court of tribunal seized of the matter").

(ii) Subject to (iii) and (iv) below such discretion includes whether or not to accede to an application for an adjournment.

(iii) Where proper notice of a hearing has been given the Tribunal may proceed with a hearing in the absence of a party or his legal representative unless there is compelling justification for such non-attendance.

(iv) If there is such compelling justification for the absence of a party or his legal representative the Tribunal must not proceed with the hearing.

(v) A party is entitled to be represented by Counsel of his choice; i.e. neither the ICC nor the Tribunal can impose a Counsel upon him.

(vi) It does not follow from (v) that because a party's chosen counsel is or becomes unavailable for the hearing, the party has an automatic right to have a hearing adjourned; such conclusion would be inconsistent with (iii) above.

5.3 The Tribunal in its consideration of how to apply those provisions so interpreted to these proceedings and application took into account the following undisputed matters:

(i) The procedural timetable had been agreed on 21 August 2018 including the date for the hearing. Moreover, it had been agreed on 3 October 2018 to start the hearing at 11am Dubai time again to suit Mr Ikope and Mr Manase who were to participate by video conference from Harare in Zimbabwe.

(ii) It was accordingly clear that Mr Ikope had proper notice of the hearing.

(iii) The Tribunal and the ICC legal representative (Mr Jonathan Taylor QC and Ms Sally Clark, Senior Legal Counsel to the ICC) were already, before receipt of the application, present in Dubai for the purposes of the hearing for which all necessary administrative arrangements had been made.

(iv) It was therefore for Mr Ikope to provide compelling justification for Mr Manase's non attendance in order to secure an adjournment.

5.4 For the purpose of ascertaining whether such compelling justification had been provided, it was necessary to trace the sequence of material events.

(i) The e mail in which the application was made was sent by Mr Muserere at 9.40AM on 18 December 2018 stated as follows:

"We write to inform you that we seek to postpone the hearing of this matter to next year, 2019, for the simple reason that our Mr W. T. Manase who is Mr Enock Ikope's Legal Practitioner of choice is currently out of the country and will only be back after the Christmas season. He was supposed to return today from the United Kingdom but unfortunately he had to attend to an emergency in the United States of America. Mr Manase is the one who is supposed to handle this matter on the day of hearing. We now therefore request that this hearing be deferred to next year and we will get in touch with you with regards to the issue of the next proposed date and time of this hearing. **Accordingly, we shall not be appearing on the day of the proposed and agreed date, that is, on Thursday 20th December 2018 at 09:00 Zimbabwe time**". (Tribunal's emphasis)

(ii) On the same day the ICC promptly opposed the application as follows:

"The ICC opposes this last minute request to adjourn indefinitely a hearing that has been scheduled for many months, by agreement, to take place this Thursday.

We note that all three members of the Tribunal are already in Dubai, as is external counsel for the ICC, and bringing them all back to Dubai at a later date will incur a very considerable additional expense (which, we note, there is no offer to cover).

In such circumstances, the ICC would respectfully submit that such request should not even be entertained unless the reasons for it are compelling and are clearly substantiated.

Here, however, we note that the only excuse given is that Mr Manase, who is Mr Ikope's 'counsel of choice', has 'had to attend to an emergency in the USA' that apparently means he will be not be back in Zimbabwe till 'after the Christmas season'. No detail, let alone evidence, is given about what the emergency is, when it arose, why it means Mr Manase will suddenly have to be in the US until after the holiday season, and why there was no way to avoid this outcome.

Furthermore, while it is accepted that ideally each party should have the opportunity to be represented by their first choice of counsel, that is by no means an absolute rule that trumps all other considerations. In fact, in circumstances such as the present, we submit it should have limited weight. We note that Mr Muserere is also a qualified lawyer who has been representing Mr Ikope during this process, and that there are presumably many counsel in Zimbabwe who could be briefed now to appear on Thursday. If Mr Ikope wants to insist on having Mr Manase represent him, he could even appear by Skype from New York (he was going to appear by Skype from Zimbabwe anyway) while Mr Musere sits with Mr Ikope in Zimbabwe, although in that case the hearing would need to start at 5 pm Dubai time or so to accommodate the time difference from New York.

The ICC therefore is strongly of the view that the hearing should go ahead as planned. If absolutely necessary, it would agree to a 5pm start if acceptable to the Tribunal. It would even agree to do the hearing starting at 5pm tomorrow (Wednesday) or Friday, if acceptable to the Tribunal and if absolutely necessary to ensure the hearing gets done this week."

(iii) The Tribunal considered the rival positions and decided that unless and until the application for adjournment was granted, the hearing would proceed and it required Mr Muserere and Mr Ikope to attend at the scheduled time in order that it might receive fuller and better intelligence on Mr Manase's sudden unavailability on the eve of the hearing. It also indicated that, if necessary, it would hear Mr Manase by skype as proposed by ICC.

(iv) On 20 December 2018 Mr Muserere responded by e mail as follows:

"as indicated before, Mr F. Muserere is not in a position to represent Mr Ikope without the assistance and presence of Mr W. T. Manase, who is Mr Ikope's Legal Practitioner of choice in these proceedings, particularly on the hearing of this matter.

Accordingly, we have noted the ICC's objection to our request for a postponement of the hearing of this matter to a later date and also the Tribunal's comments and recommendations on this issue.

We wish to respond as follows:

1. On the issue of additional expenses, it is our humble submission and view that the Tribunal members, if possible, may have to appear by Skype from wherever they might be at the time of the next hearing.
2. On the second issue of Mr Manase's absence, we wish to categorically state that as of now we do not have the evidence to prove his unavailability because he has also not yet furnished us with the same. We also do not have the details of the nature of emergency he is attending to and the reason why it has coincided with these current proceedings and when he is coming back. With the Tribunal's permission, we

undertake to furnish the Tribunal with this information as soon as it has been availed to us.

3. On the issue of engaging another Legal Practitioner, we humbly submit that according to Zimbabwe's Constitution, every person has a right to choose a Legal Representative of his own choice. Mr Ikope chose Mr W. T. Manase and the later has not renounced agency. The writer is also representing Mr Ikope but in a limited capacity, specifically only on the issues of some legal research and drafting. Mr Ikope chose Mr Manase to represent him on the day of hearing of this matter.
4. We believe that the Tribunal will consider the Zimbabwean Constitutional requirement of a fair hearing in handling this matter. (See Section 69 of the Constitution of Zimbabwe).
5. We also noted that the Tribunal has insisted that we should appear on the day and time of hearing. We shall do so but only for the purposes of seeking an adjournment orally, basing on the points already raised on our emails to yourselves.
6. I wish to clearly state to this Honorable Tribunal that I have no instructions neither from our client nor from Mr Manase to represent Mr Ikope on hearing save for seeking a postponement."

(v) At the time fixed for the hearing Mr Muserere and Mr Ikope properly made themselves available. Mr Muserere, having stated that he had nothing to add to his two emails in support of his application, he and Mr Ikope were questioned by Mr Taylor and the Tribunal about the circumstances in which Mr Manase had found himself unable himself to attend.

(vi) In broad terms the following was established. Mr Ikope had contacted Mr Manase by WhatsApp on the afternoon of 18th December to confirm a meeting proposed for that day. Mr Manase who was in London said he had an emergency and he was supposed to travel to the USA; he asked Mr Ikope to contact Mr Muserere for the purposes, as Mr Ikope understood it, of seeking a postponement. Mr Ikope did not ask and was not told what the nature of the emergency was since he thought it Mr Manase's business, nor was he told when Mr Manase planned to return from the USA. Mr Ikope spoke again on the next day to Mr Manase who said expressly that Mr Muserere should ask for an adjournment. Mr Ikope made no protest to Mr Manase about his unavailability on the hearing day on either occasion given that he understood an adjournment would be sought. Mr Muserere also spoke to Mr Manase and was also told that he would be travelling to the USA.

(vii) It transpired during the above discussion that Mr Ikope was able to contact Mr Manase. Contact was duly made and it emerged that Mr Manase was in London, not the USA to the evident surprise of both Mr Ikope and Mr Muserere.[3] In response to questions by the Tribunal Mr Manase claimed, inter alia, that he had been detained in London because of his brother who was desperately ill apparently from a stroke

[3] And indeed of the Tribunal and Mr Taylor given the intelligence they had gained from (vi) above.

suffered two weeks earlier. He had become aware of his unavailability for the hearing for more than a week and; that he had asked his office to cancel his appointments.

(viii) The Tribunal offered him the opportunity to obtain any files he needed from Mr Muserere had then to make submissions by telephone from London 4 to 5 hours later.

(ix) At the request of the Tribunal the two lawyers for Mr Ikope conferred. Mr Muserere duly took instructions from Mr Manase and sent a further e mail as follows:

"Pursuant to the duty that I have just been tasked by the Honorable Tribunal to do, I hereby confirm that I have discussed with Mr Manase just now and he has advised me to respond as follows:

i. The Tribunal may proceed with questioning our client, Mr Ikope, only on the facts of the matter in the writer's presence - online at 11:45 a.m Zimbabwe time as per its Directive.
ii. Mr Manase's Personal Assistant has confirmed that indeed there are many appointments that have been cancelled due to Mr Manase's absence.
iii. Mr Manase only advised his Personal Assistant and a few of his staff members of his journey about a week ago. He did not notify Mr Muserere until last Tuesday.
iv. Both Mr Manase and I are not in a position to proceed with the hearing today at 2:30 pm - Zimbabwe time or any time soon to respond to the ICC's points of law on the basis that Mr Manase is not privy to all documents in the file of this matter and email messages will not suffice. He needs a thorough preparation. Moreover, he has also indicated that he has no time to do that at this moment since he is engaged with his other personal business.
v. Mr Manase has also indicated that he does not want to burden his Junior lawyer to argue orally on a matter that was initially meant to be argued by his Principal. In fact, Mr Manase is the one who wishes to argue that matter in his own way that pleases him and the client. Also it is our client's wish that this matter be argued by Mr W. T. Manase.
vi. It is also my Principal's view and request that this matter be argued orally in an open court on the merits, both on the points of law and facts. He has indicated that determining this matter on papers alone will be an injustice to the law of natural justice and fair hearing.
vii. In light of the above issues, my Principal is requesting that the matter be deferred to an agreed later date after the 15th of January 2019. Accordingly, we are not in a position to respond to the points of law at the proposed time of hearing at 2:30pm - Zimbabwe time. Hence we request that we may not appear at that time."

(x) The Tribunal determined nonetheless in order to make use of available time to hear Mr Ikope and to postpone decision on the application to adjourn until later. Mr Ikope answered questions from Mr Taylor about his refusal at the first interview to hand over his telephone and then, after it being suggested to him that his explanations were

discrepant with those he gave at the interview, declined to answer further in the absence of Mr Manase.

(xi) Shortly after the ICC had commenced their submissions at the invitation of the Tribunal, which again postponed any decision on the application to adjourn, both Mr Ikope and Mr Muserere declined to remain in communication at all to hear those submissions even though told (as was of course the case) that Mr Ikope would in no way be prejudiced by such passive participation.

(xii) Thereafter Mr Taylor continued with and completed his submissions.

(xiii) After deliberation and at the conclusion of the hearing, the Tribunal issued its ruling on the adjournment hearing as follows:

"The Tribunal has carefully considered all the submissions made on Mr. Ikope's behalf both by email and orally by his counsel for an adjournment but rejects that application for reasons which will be set out in the final award. *However on the basis that Mr. Ikope and his counsel are provided with a transcript of today's proceedings on or before the 31 December, 2018 Mr. Ikope's counsel is given until 5:00 PM Zimbabwe time on the 14 January, 2019 to respond in writing to the case made against Mr. Ikope by the ICC with particular reference to the arguments advanced in the ICC reply brief of the 12 October, 2018*. The response is to be sent to the chief operating officer and general counsel of the ICC for prompt onward transmission to the tribunal. The ICC will have five working days to reply in writing any such reply also to be sent to the same ICC officer". The italicized passage was modified (in the light of the imminent holiday period) to provide that the clock for submissions by Mr Ikope would start to run for 14 days after receipt of transcript, and for ICCs reply for 5 days thereafter.

5.5 In deciding that the threshold of compelling justification had not been crossed the Tribunal noted that no evidence to corroborate any of Mr Manase's claims (e.g. as to his brother's illness, his business commitments in the USA) has been offered or produced. More importantly it remained unclear to the Tribunal (and was never explained to it):

(i) How Mr Ikope (or Mr Muserere) had gained the impression that Mr Manase would on the date fixed for the hearing be in (or even travelling to) the USA (a fact which would be irrelevant if the true reason for his unavailability was that he would be in London);

(ii) On what basis Mr Manase could properly prioritize any engagement in the UK or USA over his long standing commitment to appear at the hearing by any means available e.g. by Skype;

(iii) For what purpose Mr Manase planned (if he did) to travel to the USA and for how long he would be there;

(iv) How Mr Manase would reconcile his commitment to his brother in London with travel to the USA; and

(v) How it was that Mr Manase's office, if he had cancelled his appointments over some period, had not informed Mr Ikope.

5.6 There were accordingly strong grounds to conclude that the application to adjourn was a colourable device designed simply to postpone determination of the charges against Mr Ikope. However the Tribunal need not, and does not for the purposes of its ruling, make an express finding to that effect. It is sufficient for it to conclude that the condition precedent under the Rules for a mandatory adjournment had not been made out.

5.7 The Tribunal declined to exercise its residual discretionary power to grant an adjournment for the following additional reasons:

(i) The present was not a case where Mr Ikope was unaware of the case against him or had been denied a reasonable opportunity to prepare his defence: *cf exp Polemis* 1974 1 WLR 1371 at p.1375. The battle lines had been drawn; the pleadings were complete.

(ii) The basic facts were not in dispute. It should be emphasized that the charges against Mr Ikope were not charges of corruption but of frustrating an investigation into his alleged corruption.

(iii) In so far as any facts fell to be investigated Mr Ikope (and not his lawyer) would provide evidence. The Tribunal expressly advised Mr Ikope that it had a duty itself to protect him against any (if any) questions put on behalf of the ICC which it deemed improper (e.g. because they trespassed into the territory of legal professional privilege) or were deemed by it to be harassing or abusive. In any event Mr Muserere, a qualified lawyer, was there by his side. Mr Ikope had wholly insufficient grounds to abort his testimony (and, no grounds whatsoever to decline even to hear the ICC's submissions).

(iv) The defence to the charges as articulated in the Answer Brief were essentially points of law. In the Tribunal's view, even at such short notice, another qualified lawyer (if not Mr Muserere himself) could have been instructed to argue those points (as habitually happens in English Courts). Yet in point of fact no attempt had been made to obtain alternative legal assistance.

(v) Mr Manase had been made aware by Mr Ikope (although curiously not by Mr Muserere) on the day before the hearing that the Tribunal would be prepared to hear him by Skype and on the day on the hearing by telephone, noting that he claimed to have already prepared for the hearing before his alleged unavailability. He declined the invitation.

(vi) Mr Manase should himself as a matter of professional courtesy, arguably of professional obligation, notified the Tribunal itself as soon as there was any risk that he might not be able to be physically present at the hearing so that an unpressured discussion as to how to best proceed could thereafter take place.

(vii) Mr Manase was himself in electronic communication with the Tribunal for a considerable period of time on the morning of 20 December 2018; arguably for a longer period than was necessary to make the substantive submissions became evident from his 3-page response to the ICC Reply, which essentially repeated his earlier submissions filed on 25 June 2018.

5.8 The Tribunal concludes that Mr Manase (and Mr Ikope) appears to have assumed that the application for adjournment would automatically be granted if Mr Ikope's chosen lawyer was unable, for whatever reason, to be present at the date fixed for the hearing. They in effect sought to put a gun to the Tribunal's head. They had no Plan B. They were not prepared even to entertain the possibility of any ways of dealing with the charges alternatively to oral submissions by Mr Manase coram the Tribunal. This attitude was incompatible with the rules governing the Tribunal's procedures and not justified by natural justice.

6. THE CHARGES

6.1 The charges against Mr Ikope are issued under both the Code effective from 1 September 2017 and the Code effective from 9 February 2018 (the alleged conduct in question occurring on a continuous basis from 15 January 2018 until on or around 28 February 2018 i.e. before and after 9 February 2018). However, there are no material differences between the two versions of the Code insofar as the substance of the charges is concerned.

6.2 Under Code Article 3.1 the burden is on the ICC to establish each of the elements of the charges against Mr Ikope to the 'comfortable satisfaction' of the Anti-Corruption Tribunal.[4]

6A. Charge No.1 – Breach of Code Article 2.4.6, in that Mr Ikope failed or refused, without compelling justification, to cooperate with an investigation being carried out by the ACU in relation to possible Corrupt Conduct under the Code

6.3 Code Article 4.2 provides so far as material as follows:

> "The *ACU* may at any time conduct an investigation into the activities of any *Participant* that it believes may have committed an offence under the *Anti-Corruption Code* … All *Participants* … must cooperate fully with such investigations, failing which any such *Participant* shall be liable to be charged with a breach of the *Anti-Corruption Code* pursuant to Articles 2.4.6 … ".

6.4 Code Article 2.4.6 makes the following an offence:

> "Failing or refusing, without compelling justification to cooperate with any investigation carried out by the *ACU* in relation to possible *Corrupt Conduct*

[4] Code Article 3.1 states: "Unless otherwise stated elsewhere in this Anti-Corruption Code, the burden of proof shall be on the ICC in all cases brought under the Anti-Corruption Code and the standard of proof shall be whether the Anti-Corruption Tribunal is comfortably satisfied that the alleged offence has been committed, bearing in mind the seriousness of the allegation that is being made. The standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt."

under the *Anti-Corruption Code* (by any *Participant*), including (without limitation) failing to provide accurately and completely any information and/or documentation requested by the *ACU* (whether as part of a formal *Demand* pursuant to Article 4.3 or otherwise) as part of such investigation."

6.5 Code Article 4.3 states:

> "As part of any investigation, the *ACU General Manager* may at any time (including after a *Notice of Charge* has been provided to a relevant *Participant*) make a written demand to any *Participant* (a "**Demand**") to provide the *ACU*, in writing and/or by answering questions in person at an interview and/or by allowing the *ACU* to take possession of and/or copy or download information from his/her *Mobile Device(s)* (as the *ACU General Manager* elects), with any information that the *ACU General Manager* reasonably believes may be relevant to the investigation. Such information may include (without limitation) (a) copies or access to all relevant records (such as current or historic telephone records, bank statements, Internet services records and/or other records stored on computer hard drives or other information storage equipment or any consent forms related thereto); (b) any data and/or messages and/or photographs and/or videos and/or audio files and/or documents or any other relevant material contained on his/her *Mobile Device(s)* (including, but not limited to, information stored through SMS, WhatsApp or any other messaging system); and/or (c) all of the facts and circumstances of which the *Participant* is aware with respect to the matter being investigated. Provided that any such *Demand* has been issued in accordance with this Article, and subject to any applicable principles of national law, the *Participant* shall cooperate fully with such *Demand*, including by furnishing such information within such reasonable period of time as may be determined by the *ACU General Manager*. Where such a *Demand* relates to the request to take possession of and/or copy or download information contained on a *Participant*'s *Mobile Device*, then such information shall be provided immediately upon the *Participant*'s receipt of the *Demand*. In all other cases, save where exceptional circumstances exist, a minimum period of fourteen days from receipt of the *Demand* will be provided. Where appropriate, the *Participant* may seek an extension of such deadline by providing the *ACU General Manager* with cogent reasons to support an extension, provided that the decision to grant or deny such extension shall be in the discretion of the *ACU General Manager*, acting reasonably at all times."

6.6 In respect of the charge under Code Article 2.4.6, the Tribunal finds that all the essential elements of the offence have, prima facie, been made out:

(i) The ACU was conducting an investigation under Code Article 4 into the activities of a *Participant* – namely, Mr Ikope himself;

(ii) By way of the January Demand, the ACU requested information and/or documentation from Mr Ikope in accordance with Code Article 4.3 - including a request to allow the ACU to take possession of and/or copy or download information from his mobile phone;

(iii) The ACU General Manager reasonably believed that the information and documentation held by Mr Ikope was relevant to the ACU's investigation; and

(iv) Mr Ikope failed and/or refused – despite all the warnings and information given to him at interview - to provide the ACU with his mobile phone (and various other information and documentation) in accordance with the January Demand (not doing so until on or around 28 February 2018), and thereby he did not cooperate with the ACU's investigation.

6.7 The Tribunal rejected the argument advanced to disturb this prima facie conclusion i.e. that Mr Ikope had "a compelling justification" for his refusal.

6.8 As to the meaning of this phrase the Tribunal concludes as follows:

> "Code Article 2.5.3 is clear that the burden of proof to establish the triggering of such get out clause lay on Mr Ikope providing that: 'Where a *Participant* seeks to rely on the existence of "compelling justification" to justify or excuse conduct under the *Anti-Corruption Code* which might otherwise amount to an offence (see Article 2.4.6), the burden shall be on that *Participant* to adduce sufficient credible evidence to prove, on the balance of probabilities, that genuine and powerful reasons exist (or existed) to objectively justify his/her conduct taking into account all the relevant circumstances'.
>
> This 'get out' clause is of necessity tightly drawn. The Tribunal bears in mind what was aptly said by the Court of Arbitration for Sport ("CAS") in Mong Joon Chung v. FIFA CAS 2017/A/5086 (at paragraph 189) – 'Preliminarily, the Panel recognizes the importance that sports governing bodies establish rules in their respective ethical and disciplinary codes requiring witnesses and parties to cooperate in investigations and proceedings and subjecting them to sanctions for failing to do so. Sports governing bodies, in contrast to public authorities, have extremely limited investigative powers and must rely on such cooperation rules for fact-finding and to expose parties that are violating the ethical standards of said bodies. Such rules are essential to maintain the image, integrity and stability of sport'.

6.9 Furthermore the concept of "compelling justification" is not unique to the Code. It is to be found, for example, in the IAAF anti-doping regulations where it can be deployed, if available to justify refusal to take a doping test. In the recent case of *Bett v IAAF Ad Hoc Sport* 178/2018, 212/2018, the Panel, borrowing on CAS jurisprudence, said this at paragraph 94:

> (i) "*If the Athlete can prove on a balance of probability that his act was compellingly justified, his rejection of the test will be excused*"; ***Brothers v FINA***, *CAS 2016/A/4631*, para. 76.

(ii) The existence vel non of such justification shall be determined objectively, the issue is not "*whether the Athlete was acting in good faith, but, whether objectively he was justified by compelling reasons to forego the test*". ***Troicki v ITF***, CAS 2013/A/3279, para. 9.15.

(iii) The phrase "compelling justification" in Article 2.3 ADR must be construed "e*xtremely narrow[ly]*", because otherwise testing efforts would be completely undermined. See e.g., ***Wium v IPC***, IPC Management Committee decision dated 7 October 2005, para 3: *"an efficient out-of-competition testing programme can only work if the boundaries of "compelling justification" are kept extremely narrow. Only truly exceptional circumstances should be allowed to justify refusal to submit to testing."*

(iv) For this purpose the athlete must show that the failure to provide a Sample, was unavoidable. See e.g., ***Jones v WRU***, NADP Appeal Tribunal decision dated 9 June 2010, para. 57: *"The phrase "compelling justification" connotes that the reason for an athlete refusing must be exceptional, indeed, unavoidable"*. See also SDRCC DT 07-0058 ***CCES v Boyle***, decision dated 31 May 2007, para. 53.

6.10 The Tribunal will adopt a similarly rigorous approach, mutatis mutandis, to its assessment of whether Mr Ikope can avail himself of this defence.

6.11 Accordingly the Tribunal must reject Mr Ikope's reliance on the privacy interests of himself and those with whom he communicated by means of his mobile device for the following reasons:

(i) Those interests can always be prayed in aid and, if they amounted to compelling justification, would deprive these articles of the Code of any utility.

(ii) As a matter of general law common to many democratic jurisdictions the right to privacy is not absolute and must yield to more potent public interests such as the suppression of crime or other cognate misconduct[5].

(iii) In any event the carefully drawn SOP, which has clearly been vetted by lawyers who are expert in human rights, requires downloaded material to be treated with sensitivity; the ACU will only search for material indicative of a breach of the Code. It has no concern with other matters and could not, even were it to wish to do so, make use of them by publication or otherwise. Mr Marshall emphasised that the ACU's investigators are trained to look for particular phrases which have an aroma of suspicion in this context. Reference to money making, would, the Tribunal infers, be potentially relevant, references to sex not.

(iv) A potential intrusion on a participant's privacy is in any event the price that a participant must pay for his participation in the sport.

[5] See e.g. the European Convention on Human Rights Article 8.2.

(v) A participant retains the right to refuse to permit the intrusion, albeit at the price, potentially, of further participation in the sport.

6.12 Mr Taylor for ICC also emphasized that:

(i) Mr Ikope was given at his own interview, every opportunity to make any necessary contact with any persons[6];

(ii) his concerns about disclosing his previous contacts with the Zimbabwe intelligence services were assuaged by the lack of such concern (as appears from the transcript) displayed by a member of those services with whom Mr Robson Manjoro made contact during the first interview;

(iii) (drawing an analogy with anti-doping law) prompt provision of what has been requested is essential to guarantee its integrity;

(iv) a refusal remains a refusal to do something even if there has been a later agreement to do it; the refusal cannot be retrospectively erased.

6.13 The Tribunal acknowledges the force of all these points which, accordingly, it accepts.

6.14 The Tribunal also adds that the alleged purity of Mr Ikope's allegedly altruistic motives is somewhat undermined by what he did with the data on the mobile telephone before he handed it in so much later.

6.15 In the Answer (reinforced and elaborated in the Response) Mr Manase supplemented this defence by reference to the Zimbabwe constitution) as follows:

(i) Section 2 of the Zimbabwean Constitution states that the constitution 'is the supreme law of Zimbabwe and any law, practice, custom or conduct inconsistent with it is invalid to the extent of the inconsistency'. The obligations imposed by this Constitution are binding on every person, natural or juristic, including the State and all executive, legislative and judicial institutions and agencies of Government at every level and must be fulfilled by them."

(ii) "As a matter of fact, and law therefore, the Constitution of Zimbabwe requires strict adherence to its provisions at two levels, namely:

a. Substantive rights or laws established or provided for by the Constitution directly or through delegated subsidiary legislation issued through Parliament; and adherence to any constitutional procedures or processes prescribed under the Constitution of Zimbabwe.

b. These two fundamental principles bind everyone. This includes the ICU and or/ ICC which is strictly obliged to follow the provisions of the Constitution of Zimbabwe as long as it is operating in Zimbabwean land

[6] The Tribunal was told that the contemporary practice is to have a spare telephone available.

and with its citizens. To act or hold otherwise would amount to a flagrant violation of the constitutional provision"[7]

(iii) Articles 2.4.6 and 2.4.7 of the ICC Anti-Corruption Code are inconsistent with the rights conferred on Mr Ikope by the Zimbabwe Constitution, and are therefore invalid and so unenforceable against him.

(iv) In particular, section 57 of the Zimbabwe Constitution gives every Zimbabwean citizen a right to privacy, including a right not to have his possessions seized or his private communications infringed.

(v) As a result:

a. Mr Ikope's phone and the information on it are his private property, that he can do with as he pleases (including deleting the information if he sees fit).
b. It was therefore a lawful exercise of his constitutional rights for Mr Ikope to decline to hand over his phone to the ACU and to delete 'personal, private and national information that had nothing to do with Cricket' from his phone before handing it over.
c. In Zimbabwe that no authority has rights over any citizen of Zimbabwe and that no one is entitled to search or seize someone's private property without a lawful court order or any approval by a relevant and competent authority'.
d. The ACU's demand to seize and examine Mr Ikope's phone infringed his constitutional right to privacy. The ACU 'had no mandate whatsoever to seize his phone without his consent. That is unconstitutional'.

6.16 It is not, however, submitted by Mr Manase in the Answer or the Response that Mr Ikope would commit any offence against Zimbabwean law (or indeed breach any duty to any third party) by handing over his telephone to the ACU. Indeed were such law to prohibit Mr Ikope or any similarly circumstanced Participant from so doing it might put at risk Zimbabwe's membership of the ICC since a sport such as cricket, which is played all over the world, 'is a global phenomenon which demands globally uniform standards. Only if the same terms and conditions apply to everyone who participates in organised sport, and the same rules given the same meaning and legal effect' albeit in different jurisdictions[8].

[7] The Response paragraph 8 verbatim.

[8] Peñarol v. Bueno, Rodriguez & PSG, CAS 2005/A/983 & 984, para 24), free translation set out in Haas, *Applicable Law in Football-Related Disputes*, [2016] (1) I.S.L.R. 9, 13. CONI, CAS 2000/C/255, para 56) In Foschi v FINA, CAS 96/156, para 10.2.4 CAS rejected an argument that appeal from decision of national panel should be determined by reference to the law of that nation, on the basis that 'an international federation deals with national federations and athletes from all over the world and it has to treat them

6.17 Moreover, Article 11.5 of the Code specifies that it 'is governed by and shall be construed in accordance with English law'. As the CAS has recently explained, the purpose of such a governing law clause in an international federation's rules 'is to ensure the uniform interpretation of the standards of the [sport] worldwide'.[9] Therefore, attempts to block enforcement of a sport's ethical rules by reference to so called 'mandatory' laws are presumptively to be rejected.[10]

6.18 The Tribunal observes that, in any event, Mr Manase's argument fails to recognize that rights can be waived (even if duties cannot be). Article 1.5.8 of the ICC Anti-Corruption Code expressly states that all Participants (including Mr Ikope) 'waive and forfeit any rights, defences and privileges provided by any law in any jurisdiction to withhold, or reject the provision of, information requested by the ACU General Manager in a Demand'. By virtue of his participation in cricket, and thus becoming bound by the Code, Mr Ikope is deemed to have agreed to waive and forfeit any rights and defences provided by the Zimbabwean Constitution (or any other provision of any national law) to withhold or reject the provision of information requested by the ACU General Manager in a Demand letter. Further, those who have communicated with such a person must accept the risk that as a Participant he might be obliged to disclose information about them.[11]

6.19 Therefore, the attempt to prevent application of the Code to Mr Ikope (or any other Zimbabwean citizen) by invocation of 'mandatory' provisions of the Zimbabwean Constitution is rejected.

6.20 Second, the Constitutional rights relied on protect citizens only against abuse by the state of its coercive powers. They do not apply to the rules of conduct imposed by

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on an equal basis. It therefore has to apply the same law to all of them. It is unacceptable that, based upon the same facts, different results might be reached depending on the law applied'.

[9] Valcke v FIFA, CAS 2017/A/5003, para 147.

[10] Ibid, para 160 ('While the Panel finds it unnecessary to resort to the principles of *lex sportiva* to resolve the matter at hand, it is mindful that under the Appellant's approach – where mandatory provisions of Swiss law would automatically apply to all sanctions imposed by a sport governing body under association law – a FIFA official with an employment contract (such as the FIFA Secretary General) and a FIFA official without such contract (e.g. a FIFA Executive Committee member) would effectively be treated differently, in that only the former – due to mandatory labour law – would be exempt from sanctions, creating an imbalance and incoherence in the application of the FCE, which would be unacceptable for the protection of ethical standards and of equality of treatment within the association. Consequently, for this additional reason the mandatory provisions of Swiss employment law are inapplicable to the present case. Instead the disciplinary authority of FIFA is solely based on the FIFA regulations supplemented by association law').

[11] The rights of such third parties were not relied on by Mr Manase in his arguments but the Tribunal nonetheless addresses the issue for completeness.

professional bodies such as international sports federations.[12] Chapter 1 of the Zimbabwe Constitution cited by Mr Manase does not - indeed could not - include among the persons bound thereby the ICC, a corporate body established under a different jurisdiction i.e. the BVI.

6.21 Third, Constitutional rights such as the right of privacy are not absolute. To the contrary, they may be restricted where necessary and proportionate to achieve a legitimate imperative.[13]As to this there is no absolute 'right' to participate in elite-level cricket. Those who want to do so, as part of a profession, have to submit to rules that are necessary to protect the integrity of the sport, even if those rules limit their rights, inter alia, to privacy.

6.22 Moreover, an international sports federation has to fight the insidious threat of match-fixing without the coercive powers of the state to assist it in investigating and uncovering corrupt conduct. That justifies imposing a positive obligation on participants to cooperate with investigations by the federation into possible wrongdoing, including an obligation to turn over a phone immediately upon demand, so that the investigators can examine it for any potential evidence. None of the participant's rights, whether a constitutional right to privacy or otherwise, are breached thereby.[14]

6.23 Fourth, Mr Ikope's arguments that his rights of privacy have been infringed must also be rejected on the facts:

(a) As is made clear in Mr Marshall's witness statement, at the time of the 15 January 2018 interview, the ACU was interested in speaking to Mr Ikope by virtue of the fact that he had been present at a meeting that the ACU was interested in, and had a close relationship with Mr Nayer, who had admitted making a corrupt approach to the captain of the Zimbabwe national team at the instigation of one of the attendees at the meeting of interest.

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12 Cf Valcke v FIFA, CAS 2017/A/5003, para 263 ('the guarantees recognised in a criminal trial are inapplicable per se in a disciplinary proceeding before the CAS, since FIFA is a private entity and the sanction imposed on the Appellant is based purely on private (Swiss association) law').

13 The ICC notes in this context that Zimbabwe Cricket has its own Anti-Corruption Code (effective as from 20 April 2016) analogous powers of and attendant upon investigation to those found in the ICC Code. The existence of this provision in the rules of a body of which Mr Ikope is a director sits uneasily with his present contention that this provision is inconsistent with the Zimbabwe Constitution and therefore invalid and unenforceable.

14 Valcke v FIFA, CAS 2017/A/5003, para 265. See also Mong Joon Chung v. FIFA, CAS 2017/A/5086, at para 189 ('Preliminarily, the Panel recognizes the importance that sports governing bodies establish rules in their respective ethical and disciplinary codes requiring witnesses and parties to cooperate in investigations and proceedings and subjecting them to sanctions for failing to do so. Sports governing bodies, in contrast to public authorities, have extremely limited investigative powers and must rely on such cooperation rules for fact-finding and to expose parties that are violating the ethical standards of said bodies. Such rules are essential to maintain the image, integrity and stability of sport').

(b) In such circumstances, the Code clearly gives the ACU a lawful and valid mandate to seize Mr Ikope's phone and to examine it for relevant information.

(c) As noted above, by Article 1.5.8 of the Code Mr Ikope expressly waived any rights and defences provided by the Zimbabwean Constitution (or any other provision of any national law) to withhold or reject the provision of information requested by the ACU General Manager in a Demand letter. There is no suggestion from Mr Ikope's lawyers, nor could there be, that this waiver of rights is in any way invalid or unenforceable against him.

(d) The SOP ensures that the ACU only exercises that power proportionately and with proper protections for the subject's rights:

i. They 'acknowledge that the use of the Equipment has the potential to impact adversely on the privacy of individuals and this is recognized through this SOP which seeks to put in place appropriate safeguards to maintain confidence in the use of the Equipment and the protection of privacy'.

ii. They require that the ACU General Manager's authority be obtained before using the downloading equipment, which he will only grant 'where he is satisfied that the use of the Equipment is proportionate, legal, necessary and that there is accountability in the process'.

iii. They say the equipment may only be used 'where either (a) the ACU has reasonable grounds to suspect that the Participant in question has committed an offence under the Code; or (b) where the ACU has reasonable grounds to believe that there may be evidence contained on any Mobile Device in the possession of any Participant …'.

iv. They say that 'no data should be extracted from the Mobile Device until such time as the Participant has consented to use of the Equipment'.

v. They note that 'it is not intended that the Equipment would be used to extract every bit of data from the Mobile Device. Instead, … a focused extraction would take place, extracting only those bits of data which the ACU considers might reasonably be likely to contain relevant information… Further, once the data is extracted the Equipment allows the operator to conduct a search and sift across the data extracted using keywords to narrow the material that will be manually analysed'.

As a result, neither the Code itself, nor the ACU's actions in this case, can properly be said to offend against or be inconsistent with section 57 of the Zimbabwean Constitution.

6.24 In addition Mr Manase argued that (as is indisputable) under section 70(1) of the Zimbabwe Constitution, 'Any person accused of an offence has the following rights:

(a) to be presumed innocent until proven guilty;
(b) to be informed promptly of the charge, in sufficient detail to enable them to answer it;
(c) to be given adequate time and facilities to prepare a defence;
(d) to choose a legal practitioner and, at their own expense, to be represented by that legal practitioner …

and that, in consequence (as is certainly disputed)

i. The ACU infringed Mr Ikope's section 70(1) rights by failing in its 'initial communication' with him to state that he was under investigation, so that he did not know to bring a lawyer with him to the interview.

ii. At the interview, 'the reason why he refused with his phone, delayed in submitting his phone to the ACU and deleted his important and personal information from his phone … is because he wanted to exercise his constitutional right by seeking legal advice and legal representation' first.

iii. The ACU also infringed Mr Ikope's section 70(1) rights in that they 'presumed him guilty before it was proven so'.

iv. "The ICU acted unlawfully hence everything that follows is void ab initio".[15]

6.25 The Tribunal rejects, as a matter of law, the proposition that the ICC Anti-Corruption Code is subject to, and unenforceable to the extent it is inconsistent with, the Zimbabwe Constitution, it does not accept that there is any such inconsistency. It is encouraged to note that the Board of Zimbabwe Cricket has adopted the same Code without, accordingly, any concern that it in any way infringes the constitutional rights of national participants in the sport.

6.26 As to the admitted lack of warning to Mr Ikope, when asked to attend an interview by the ACU, that he was suspected of being involved in corrupt conduct:

i. (in law) Mr Manase unsurprisingly identifies no provision of the Zimbabwe Constitution (or jurisprudence based on it) that gives him a right to such advance notice. Any such right would deal a fatal blow to the investigation, by giving a suspect sufficient warning and opportunity to interfere with evidence before appearing for the interview.

[15] Response paragraph 9 verbatim.

ii. (in fact) At the time of the interview, there were no charges against Mr Ikope, nor had any decision been made to bring such charges.

6.27 The Tribunal also notes that once it was decided to bring charges against Mr Ikope:

(i) he was given prompt notice of the charges (in the form of the Notice of Charge);
(ii) he was given sufficient detail in the Notice of Charge to enable him to answer the charges (as is shown by the detailed response that was received on his behalf);
(iii) he has been afforded adequate time and facilities to prepare his defence (as is demonstrated by the fact that he agreed the procedural timetable for this matter, and filed his Answer in a timely fashion); and
(iv) he has been permitted to be represented by legal counsel throughout if (even if, as previously detailed, his lawyer was not always available).

In short all Mr Ikope's rights guaranteed under section 70 of the Constitution have been, in the Tribunal's view, fully respected.

6.28 As to the alleged infringement of his asserted right to consult a lawyer before being required to hand over his phone:

a. The ACU Standard Operating Procedures state that Participants served with a demand to hand over a phone 'are entitled to appropriate legal advice… it will be open to a Participant to request that he/she takes legal advice before deciding whether or not to provide consent to the use of the Equipment. If that is the case, reasonable and appropriate steps must be taken by the ACU to ensure that the integrity of the Mobile Device is not lost and that potential evidence is not concealed, altered or destroyed in meeting the request for legal advice (for example, by securing the Mobile Device in a tamper proof bag or sealed, signed envelope). This may involve the Participant obtaining telephone advice or the ACU securing any Mobile Device pending the Participant's decision. In circumstances where a Mobile Device is secured pending further enquiries by the Participant, (a) if possible it should be placed into airplane mode; and (b) no data should be extracted from the Mobile Device until such time as the Participant has consented to the use of the Equipment'.

b. Consistent with this, at the beginning of the interview on 15 January 2018, after handing over the demand that Mr Ikope turn over his phone, the ACU representative said to Mr Ikope: 'you may wish to consider obtaining independent legal advice following receipt of this demand, but in circumstances where you wish to do so, the ACU will need to take reasonable steps to ensure that the integrity of your mobile devices are not lost, and that potential evidence is not concealed, altered or destroyed in meeting the request for legal advice. This may

involve you seeking telephone advice and/or the ACU securing the mobile devices pending your decision'.

c. The assertion that 'the reason why he refused with his phone, delayed in submitting his phone to the ACU and deleted his important and personal information from his phone .. is because he wanted to exercise his constitutional right by seeking legal advice and legal representation' is therefore factually baseless.

(The Tribunal does not accept the ICC's description of this purported reason as wholly "nonsensical" since legal advice might have been to the effect that he was not obliged to hand over his phone, but it does note that the deletion of information from the phone necessarily pre-empted the taking of any legal advice as to whether such information could properly be withheld).

6.29 As to the alleged infringement of Mr Ikope's right to be presumed innocent guaranteed by the Zimbabwe Constitution, Section 70(1) in that the ICC 'presumed him guilty before it was proven so', the Tribunal shares the ICC's perplexity as to how this right has been infringed. The ICC has expressly acknowledged that it bears the burden of proving the charges that it has brought against Mr Ikope to the comfortable satisfaction of the Tribunal. The Tribunal naturally respects the principle of presumed innocence and could certainly be trusted to uphold it.

6.30 As to the allegation of breach of Mr Ikope's 'right to bodily and psychological integrity', including the right to 'freedom from all forms of violence' guaranteed by Sect. 52 of the Zimbabwe Constitution in that at the interview on 15 January 2018, Mr Ikope was 'harassed and ill treated as the Investigation team refused him his constitutional right to make a phone call'. The Tribunal would require persuasion by authoritative case law or commentary (with which it was not provided) that this right was breached by nothing more than refusal to allow Mr Ikope (or anyone) to make a phone call. But in any event it is factually wrong: as noted above, he was specifically advised he may seek advice by telephone from his lawyer before handing over his phone. To the extent the allegation extends beyond that - there is no evidence on the transcript of any harassment/ill-treatment.

6.31 As to the allegation that 'the ICC is fabricating their charges against Mr Ikope basing their allegations, charges and arguments on perceptions rather than facts', it appears to be admitted (and the Tribunal has so found) that Mr Ikope refused to hand over his phone on 15 January 2018, then delayed handing it over for almost six weeks, and in the meantime deleted information from it. These are facts not (unsubstantiated) perceptions. If the crux of the allegation is rather that the ACU did not have any grounds to investigate him in the first place, that is rebutted by Mr Marshall's testimony which the Tribunal, having both seen and heard him, wholly accepts.

6.32 As to the allegation that '[t]he hearing was done in an unfair manner, based on allegations and charges that emanated from the unconstitutional conduct done by the ACU, infringing our client's Constitutional rights. Consequently, the investigation, charges, hearing and verdict are null and void *ab initio*', the Tribunal is prepared to interpret that not as a premature and necessarily prophetic assertion that the Tribunal would in some unspecified way conduct the actual hearing unfairly, but rather than it would be unfair for the Tribunal to hear the charges at all given that they were sourced in unconstitutional conduct by the ACU. As to this the Tribunal repeats and relies on its previous analysis on paragraphs 6.16-6.18. The Tribunal notes that in the Response Mr Manase did not seek to re-open an allegation of unfair process against the Tribunal itself.

6B. Charge No.2 – Breach of Code Article 2.4.7 in that Mr Ikope delayed an investigation being carried out by the ACU in relation to possible Corrupt Conduct under the Code

6.33 Code Article 2.4.7 makes the following an offence:

> "Obstructing or delaying any investigation that may be carried out by the *ACU* in relation to possible *Corrupt Conduct* under the *Anti-Corruption Code* (by any *Participant*), including (without limitation) concealing, tampering with or destroying any documentation or other information that may be relevant to that investigation and/or that may be evidence of or may lead to the discovery of evidence of *Corrupt Conduct* under the *Anti-Corruption Code*."

6.34 In respect of this charge under Code Article 2.4.7, the Tribunal finds prima facie that all the essential elements of the charge are made out in that, Mr Ikope delayed the ACU's investigation by:

i. not providing the ACU with his mobile phone as required on 15 January 2018 by way of the January Demand; and/or

ii. not providing the ACU with various documentation and/or information required by the January Demand by the specified 30 January deadline.

6.35 Mr Ikope did not fulfil (or purport to fulfil) those requirements until on or around 28 February 2018 (after the requirements of the January Demand had been repeated by way of the Second Demand).

6.36 'Interestingly' as Mr Taylor for the ICC put it, there is no defence of compelling justification to this charge. Therefore Mr Ikope's reasons for failing timeously to provide either mobile phone or documentation do not have to be considered by reference to such notional defence.

6.37 To the extent that Mr Manase's arguments set out in the Answer Brief and repeated in the Response are said to be applicable to this charge, the Tribunal rejects them for reasons already given.

6C. Charge No.3 – Breach of Code Article 2.4.7 in that Mr Ikope obstructed an investigation being carried out by the ACU in relation to possible Corrupt Conduct under the Code

6.38 The Tribunal finds that all the essential elements of this Article 2.4.7 charge are also made out, in that Mr Ikope admittedly deleted information from his phone before he handed over possession of it to the ACU, which information may have been relevant to that investigation and/or may have evidenced or led to the discovery of evidence of Corrupt Conduct under the Code so obstructing the ACU investigation.

6.39 Unsurprisingly (and therefore uninterestingly) there is no defence of compelling justification to such charge. Therefore Mr Ikope's reasons for failing timeously to provide either mobile phone or documentation do not have to be considered by reference to such notional defence either.

6.40 To the extent that Mr Manase's arguments set out in the Answer Brief or Response are said to be applicable to this charge, the Tribunal rejects them for reasons already given.

7. CONCLUSION

7.1 For the reasons set out above the Tribunal finds that:

Mr Ikope has breached Code Article 2.4.6 in that he refused to provide the ACU with his mobile phone and other information pursuant to the first demand ("the Refusal Breach").

Mr Ikope has breached Code Article 2.4.7 in that he delayed an ACU investigation ("the Delay Breach").

Mr Ikope has breached Code Article 2.4.7 in that he obstructed an ACU investigation ("the Obstruction Breach").

8. SANCTIONS

8A. Procedure

8.1 The ICC and/or Mr Taylor were invited, within 7 days of receipt of the above sections of this Award to address the Tribunal on the issue of sanction consequent on the above findings.

8.2 Mr Manase (and/or Mr Ikope himself) were invited, within 7 days of receipt of the ICC's submissions on sanction, to address the Tribunal on the issue of sanction consequent on the above findings.

8.3 On 19 February 2019 the ICC duly sent its submissions on sanction.

8.4 No submissions on sanction were sent by or on behalf of Mr Ikope.

8B. Mr Ikope's breaches of Code Articles 2.4.6 and 2.4.7 and range of sanctions

8.5 In the present case, the range of periods of ineligibility for offences under Code Article 2.4.6 (the Refusal Breach) is prescribed by Code Article 6.2 as a minimum of six (6) months and a maximum of five (5) years, and for offences under Code Article 2.4.7 (the Delay Breach and the Obstruction Breach) it is a minimum of zero and a maximum of five (5) years.

8.6 Additionally, for an offence under each Article, the Tribunal has the discretion to impose a fine of such amount as the Tribunal deems appropriate.

8C. (Non-) Application of Code Article 6.3.2

8.7 Code Article 6.3.2 specifies that if the Anti-Corruption Tribunal were to determine that Mr Ikope 'is guilty of committing two offences under the Code in relation to the same incident or set of facts, then (save where it orders otherwise for good cause shown) any multiple periods of Ineligibility imposed should run concurrently (and not cumulatively)'.

8.8 The precondition for the application of Code Article 6.3.2 is that two offences found proven relate to "the same incident or set of facts". Even if that precondition is satisfied, Code Article 6.3.2 is <u>not</u> of automatic effect: in as much as in the event of 'good cause shown' ("the exception") it is open to the Anti-Corruption Tribunal not to give effect to it; but otherwise, and contrary to ICCs submission, the Article requires the Tribunal to impose any multiple periods of ineligibility concurrently rather than cumulatively. Even if there may be a distinction between the words "should" and "must" in some contexts, in this context, in the Tribunal's view, there is none. The word 'should' tells the Tribunal what it ought to do. The exception would be meaningless if, even in its absence, the Tribunal had a choice.

8.9 There are therefore two issues to determine in relation to Code Article 6.3.2:

(i) Do any combination of the three offences relate to the same incident or set of facts?

(ii) If so, is there good cause nonetheless to impose cumulative periods of ineligibility?

8.10 As to (i) the ICC concedes that Mr Ikope's breach of Code Article 2.4.6 (the Refusal Breach) and one of his breaches of Code Article 2.4.7 (the Delay Breach) were committed in relation to the same incident/set of facts, (i.e. Mr Ikope's failure promptly to hand over his mobile phone and timeously to provide various other information and documentation both amounting to non-compliance with the First Demand); but contends that the other Code Article 2.4.7 breach (the Obstruction Breach) relates to a different incident/set of facts, being Mr Ikope's deletion of information from his mobile phone after the Second Demand (i.e., a deliberate action by Mr Ikope constituting a further incident distinct from his previous failure to provide his mobile phone and other information/documentation).

8.11 Code Article 6.3.2 does not define the degree of proximity for the requisite relationship to subsist between the offence and the relevant incident or set of facts. Under English law, which is the governing law of the Code,[16] proximity is dictated by context,[17] and the context here is of potential exception to the general rule that would allow the Anti-Corruption Tribunal freedom to determine whether periods of ineligibility should run cumulatively or concurrently. Hence as a matter of general principle 'in relation to' should be construed narrowly in the context of Code Article 6.3.2. Against that background, while recognising that the existence of a relationship between A and B is quintessentially a question of fact and degree, the Tribunal considers that both concession and contention are correct for the reasons expounded in the parentheses in paragraph 8.10.

8.12 Code Article 6.3.2 does not define what constitutes "good cause" so as to disapply the prohibition which would otherwise exist on cumulative periods of ineligibility. ICC submit that the seriousness of the offences might constitute such good cause; indeed the ICC state that "In the context of a provision designed to provide amelioration to a Participant guilty of multiple offending (it) cannot readily envisage what other form of 'good cause' could be shown in order to deprive a Participant from the benefit otherwise afforded to him/her by Code Article 6.3.2".

8.13 The Tribunal does not need to speculate on whether the concept of "good cause" is so limited; on its face the phrase assigns to the Tribunal, acting reasonably and in good faith, the ability to determine whether any given set of facts satisfies the test inherent in that phrase. But accepting that the seriousness of the offences may provide at least one example, in the Tribunal's view that seriousness must be of the offences which arise out of the same incident or set of facts; any other offence which *ex hypothesi* arises out of a different incident or set of facts and carries with it its own sanction is not relevant. Viewed from that perspective, the "good cause" exception does not apply. It is the Obstruction Breach which is most serious - an active rather than a passive breach of the Code.

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[16] Per Code Article 11.5, ' The Anti-Corruption Code is governed by and shall be construed in accordance with English law …'.

[17] See, for example, Svenska Petroleum Exploration AB v Lithuania [2006] EWCA Civ 1529, at para 137, and the Tribunal's decision in ICC v Ansari 20 February 2019, para 7.10.

8D. Factors relevant to the Anti-Corruption Tribunal's determination of sanction

8.14 In accordance with Code Article 6.1, as the Tribunal has already noted in the case of ICC v Ansari paragraph 7.5 where a breach of the Code is upheld by a Tribunal, it is necessary for it to impose an appropriate sanction upon the Participant from the range of permissible sanctions set out in Code Article 6.2. In determining that sanction, the Anti-Corruption Tribunal must first determine the relative seriousness of the offence, including identifying any relevant aggravating and mitigating factors (Code Articles 6.1.1 and 6.1.2).

8.D.1. Inherent seriousness of the offending – the starting point

8.15 It is submitted by the ICC that Mr Ikope's misconduct constitutes the most serious forms of offending contemplated by the relevant Code Articles, and therefore (before considering any aggravating or mitigating factors), sanctions at the top end of the range of permissible sanctions are the appropriate starting point, i.e. a period of 5 years of ineligibility in each case.

8.16 With respect to Mr Ikope's failure to cooperate with an ACU investigation, i.e. the Refusal Breach:

8.16.1 This offending conduct is at odds with one of the imperatives underpinning the Code (at Code Article 1.1.4): '[I]t is the nature of this type of misconduct [i.e. corruption] that it is carried out under cover and in secret, thereby creating significant challenges for the ICC in the enforcement of rules of conduct. As a consequence, the ICC needs to be empowered … to require Participants to cooperate fully with all investigations and requests for information.'

8.16.2 The Tribunal has already noted, in the context of its consideration of the meaning of "compelling justification", the analogy to be drawn between Code Article 2.4.6 and the anti-doping rule violation of refusal and/or failure to submit to sample collection.[18] The ICC submits that that analogy extends to the consideration of sanction.

8.16.3 In the doping context, an athlete who refuses and/or fails to provide a sample will receive the same sanction as an athlete who intended to cheat by using a prohibited substance i.e., the equivalent to the highest ban that would apply (which, in that context, is four years).[19]

8.16.4 It is obvious why this is so: if an athlete could get a smaller ban when he/she has a prohibited substance in his/her system by simply failing

[18] Award, para 6.9.

[19] See Articles 2.3 and 10.3.1 of the World Anti-Doping Code 2015.

and/or refusing to provide a sample, then cheaters could easily avoid proper punishment.[20]

8.16.5 In the same way, in the anti-corruption context, a failure and/or refusal (without compelling justification) by a Participant, following a valid Demand, to hand over requested documentation/information - including in particular (where requested) his/her Mobile Device(s) - gives rise to an obvious inference that a Participant has committed another serious anti-corruption offence.[21]

8.16.6 However, whereas in the anti-doping context there is only one possible relevant offence that can be inferred (namely, presence of a prohibited substance), in the context of the Code a Participant might have committed any one or more of a number of offences set out in the Code.

8.16.7 For that reason, it is submitted that the starting point in considering the appropriate sanction for an offence under Article 2.4.6, where a Participant has failed or refused to hand over a Mobile Device following a valid Demand, must be a period of 5 years of ineligibility. This is the minimum sanction for offences under Article 2.1 of the Code, i.e., the most serious corruption offences,[22] and it is essential that Participants are offered no incentive not to cooperate with an ACU investigation.

8.17 The Tribunal considers the ICC's submissions, similar to those advanced in the case of ICC v Ansari cit sup. to be highly be persuasive and accepts both the anti-doping analogy, *mutatis mutandis*, and the consequent analysis, as it did in that earlier case at paragraph 7.1.

8.18 While the Tribunal notes - again as it did in the Ansari case - that the existing jurisprudence does not generally address a failure to hand over a Mobile Device[23] it there found and now finds of considerable assistance an anti-corruption case from the field of tennis PTIOs v Gaviri (30 April 2018) in which a tennis player refused to provide his mobile phone to investigators upon demand (at para 80 *et seq*.) where the esteemed Anti-Corruption hearing officer Richard McLaren said "80. The idea behind TACP provisions on supplying information is based on a principle of those who are innocent have nothing to hide, and inversely by inference, that those who appear to be hiding something possibly may have reasons for doing so ... 82. The gravity of the conduct in breaching F.2.b. and c.

[20] See e.g. Azevedo v FINA, CAS 2005/A/925, para 91.

[21] Particularly in light of the protections afforded to Participants under the Code and the ACU Standard Operating Procedures, meaning that privacy concerns cannot amount to "compelling justification" (Award, para 6.11).

[22] See Code Article 6.2.

[23] Moreover, those found guilty of 'failure to cooperate' offences are often simultaneously sanctioned for other offences on an undifferentiated basis.

at the level of non-cooperation as an offense goes to the very heart of the TACP. The TIU has no coercive investigative powers. It is dependent upon the contractual agreement of the Player to cooperate fully with investigations conducted by the TIU. This principle must be rigorously observed and applied when a Player fails to cooperate. The conduct here is one of the most serious categories of breaches of the TACP that could occur. Furthermore, no justification for the Player's conduct has been proffered at all. 83. *A Player who engages in the type of conduct exhibited in this case may well be engaged in a fallback position to receive a lighter charge of non-cooperation to avoid the more serious charges which the TACP provides for up to ineligibility for life. The TACP would be undermined if this is the case … 85. The gravity of the conduct in failing to make the phone available* is aggravated by the failure to complete the interview process. These two matters combine to make this Player's conduct of the most serious nature. Therefore, a penalty at the maximum level is justified in this case" (emphasis added). See also the earlier decision of PTIOs v Klec, of the same Anti-Corruption Hearing Officer (also Prof. Richard McLaren) decision dated 21 August 2015.

8.19 Moreover, where the CAS has had cause to consider 'failure to cooperate' offences, it is clear that such offences are considered to be of a serious nature. See, e.g., Mong Joon Chung v FIFA CAS 2017/A/5086 (cited by the ICC previously and referred to at para 6.8 of this Award) and, similarly, Valcke v FIFA, CAS 2017/A/5003, CAS award dated 27 July 2018, at para 266 ('The cooperation of the individuals subject to the ethics or disciplinary rules of a sports association is necessary if the integrity of sport is to be protected …').

8.20 Further, and particularly in light of the inherent seriousness of the offences, the ICC submits that the Tribunal should weigh heavily the fundamental sporting imperatives undermining the Code (Code Article 1.1) in determining the appropriate sanction - including in particular

(i) deterring others from similar wrongdoing (i.e., preventing corrupt practices from undermining the sport),[24] and

(ii) maintaining public confidence in the sport.[25]

The Tribunal would accept that submission too.

8.21 In the context of Mr Ikope's offending under Code Article 2.4.7:

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[24] See, e.g., ICC v Butt, Asif and Amir Tribunal decision dated 5 February 2011 (, para 217, 'We must take account of the greater interests of cricket which the Code itself is designed to preserve and protect. There must, we consider, be a deterrent aspect to our sanction.'

[25] See e.g., in relation to the point of principle, Bolton v Law Society [1994] 1 W.L.R. 512 (at 518, 'To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied readmission … A profession's most valuable asset is its collective reputation and the confidence which that inspires'. Also, in the sporting context, Bradley v Jockey Club [2005] EWCA Civ 1056 (at para 24, 'Where an individual takes up a profession or occupation that depends critically upon the observance of certain rules, and then deliberately breaks those rules, he cannot be heard to contend that he has a vested right to continue to earn his living in his chosen profession or occupation. But a penalty which deprives him of that right may well be the only appropriate response to his offending.'

8.21.1 The above points apply (*mutatis mutandis*) to the Delay Breach.

8.21.2 The above points also apply (*mutatis mutandis*) to the Obstruction Breach, but with even more force. Not only did Mr Ikope frustrate the progress of an ACU investigation, by deleting material from his phone he has actively prevented the ACU from conducting further investigation. It is difficult to envisage conduct that could be more seriously prejudicial to the work of the ACU than this.

8D.2. Aggravating factors

8.22 The ICC submits the following are aggravating factors that apply to Mr Ikope's offences under both Code Articles 2.4.6 and 2.4.7:

8.22.1 Mr Ikope is (or was) a Director of Zimbabwe Cricket, holding (or having held) one of the most senior administrative positions in international cricket.[26]

8.22.2 There can obviously be no question of naivety or folly in this case. Mr Ikope was well aware of his anti-corruption obligations, not least because Zimbabwe Cricket promulgates its own Anti-Corruption Code. And he was certainly well aware of his obligations at the time of his offending, because the ACU had reminded him of his obligations – including his specific obligations in respect of Code Articles 2.4.6 and 2.4.7 - at his 15 January 2018 interview (both in person and in writing).[27]

8.22.3 As a consequence of his position with Zimbabwe Cricket, Mr Ikope's offending obviously damages Zimbabwe Cricket (and has at least the potential to damage cricket more generally, not only in Zimbabwe but globally).

8.22.4 Further, Mr Ikope's conduct directly undermines the fundamental sporting imperatives of the Code, not least the preservation of public confidence in the readiness, willingness and ability of National Cricket Federations to protect the sport from corrupt practices.[28]

[26] The ICC notes that, while Mr Ikope's conduct would be extremely serious if carried out by an official of any ICC Member (or indeed any Participant), Zimbabwe Cricket is one of the ICC's twelve **Full** Members.

[27] See Award, para 3.10.

[28] Code Article 1.1.5.

8.22.5 Apart from his directorship of Zimbabwe Cricket, Mr Ikope (in modest paraphrase) is also a generally experienced Participant, having been involved with cricket in Zimbabwe for many years. He is (or was) Chairman of the Harare Metropolitan Cricket Association, and in light of his position(s) within the sport, Mr Ikope should have acted at all times as a role model.[29]

8.22.6 Mr Ikope has to date shown no remorse for his conduct.[30]

8.22.7 Mr Ikope with his legal representatives have willfully frustrated the efficient conduct of these proceedings, and sought to put 'a gun to the Tribunal's head' by virtue of their apparent assumption that Mr Ikope's application for an adjournment would be automatically granted if his chosen lawyer was unable to be present for the hearing (the date for which had been agreed months in advance).[31]

8.D.3. Mitigating factor

8.23 The Tribunal notes that Mr Ikope has no previous disciplinary record.[32]

9. CONCLUSION

9.1 In the light of its above analysis in paragraph 8.5-8.22 the Tribunal imposes on Mr Ikope three periods of ineligibility, first, for the Refusal Breach, 5 years, second, for the Delay Breach, 5 years (to run concurrently with each other) and third, for the Obstruction Breach, 5 years to run consecutively to the first two penalties, i.e. 10 years in total, subject to the consideration referred to in 9.2.

9.2 In accordance with Code Article 6.4, any period of provisional suspension served by the Participant is to be credited against any period of ineligibility to be served. Mr Ikope was provisionally suspended on 11 June 2018. The ICC accepts that Mr Ikope has respected that provisional suspension. The period of ineligibility imposed pursuant to paragraph 9.1 above will therefore run from that date.

9.3 The Tribunal notes that the ICC does not seek a fine. The Tribunal, while free to do so of its own volition considers that the ineligibility sanction meets the justice of the case.

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[29] See Butt v ICC, CAS 2011/A/2364, award dated 17 April 2013, para 74 (sanction imposed on Salman Butt 'could reasonably be described as lenient, given that Mr Butt was captain of the Pakistan Test Match cricket team at the time and he had a responsibility as role model…').

[30] Code Article 6.1.1.The other factors all fall within the scope of Article 6.1.1.8 "any other aggravating factor(s) that the Anti-Corruption Tribunal considers relevant and appropriate."

[31] see Award, para 5.8.

[32] Code Article 6.1.2.2.

9.4 The Tribunal will, however, make a costs order against Mr Ikope (as sought by the ICC) in respect of the ICC's (i) costs in convening the Anti-Corruption Tribunal, (ii) costs in staging the hearing, and (iii) legal costs i.e. the costs incurred by Bird & Bird LLP – all such costs to be assessed by the Tribunal (absent any other procedure for taxation under the Code) if not agreed.

The Hon Michael J Beloff QC (Chair)
John McNamara
The Hon Justice Winston Anderson
as from Dubai

5th March 2019