

Decision of the adjudicatory chamber of the Ethics Committee

passed on 31 August 2022

DECISION BY:

Mr Vassilios SKOURIS (Greece), Chairperson

Ms Maria Claudia ROJAS (Colombia), Deputy Chairperson

Mr Fiti SUNIA (American Samoa), Deputy Chairperson

ON THE CASE OF:

Mr Obert Zhoya, Zimbabwe

(Decision FED-263)

REGARDING:

Art. 13 of the FIFA Code of Ethics (FCE) - General duties

Art. 23 of the FCE - Protection of physical and mental integrity

Art. 25 of the FCE - Abuse of position

I. FACTS

A. Proceedings before the Investigatory Chamber

1. Procedural background and communications with the parties

a. The Respondent

1. Mr Obert Zhoya (**Mr Zhoya** or **the Respondent**) is a Zimbabwean citizen who has been engaged in football since 1989.
2. He started in lower leagues refereeing up to 1999, and then moved to “the Elite local panel” from 1999 until 2012. Moreover, Mr Zhoya was a match commissioner at the Zimbabwe Football Association (**ZIFA**) from 2013 to 2019.
3. Finally, Mr Zhoya held the position of General Secretary of the ZIFA Referees Committee (**ZRC**) from March 2019 to March 2022.

b. Preliminary investigations and opening of proceedings

4. On 11 September 2020, a local sports journalist reported – through FIFA’s [BKMS Incident Reporting platform](#) – allegations of sexual harassment made against ZIFA female referees by two senior ZIFA officials, including Mr Obert Zhoya. According to the claim, instances of the harassment took place before important refereeing courses with a promise of promotion as the incentive.
5. On 14 September 2020, Ms Blessing Mpande, a ZIFA referee, sent an email to the Investigatory Chamber of the FIFA Ethics Committee (**Investigatory Chamber**) claiming that she had been sexually harassed by Mr Zhoya, who, allegedly, invited her to spend a night with him in a hotel. The correspondence contained two audios and a WhatsApp screenshot revealing an exchange of communication between Ms Mpande and Mr Zhoya.
6. On 15 June 2021, pursuant to art. 30 (2) of the FIFA Code of Ethics (**FCE**), the Chairperson of the Investigatory Chamber decided to transfer the case to the Confédération Africaine de Football (**CAF**) as the FIFA Ethics Committee did not have exclusive jurisdiction to investigate the abovementioned allegations.
7. After the case was transferred to CAF, the Investigatory Chamber monitored the investigations carried out by CAF and/or ZIFA.
8. On 24 February 2022, the FIFA Council decided to suspend ZIFA for undue third-party interference in the activities of the football association.
9. On 28 February 2022, the Chairperson of the Investigatory Chamber considered that, in view of the foregoing, no proper proceedings could take place at national level. Consequently, ZIFA was

informed that the FIFA Ethics Committee was entitled to investigate and adjudicate the present case in accordance with art. 30 (2) FCE and, as a result, was requested to provide FIFA with the complete file of the investigations carried out at national level.

10. On 4 March 2022, ZIFA provided the Investigatory Chamber with the complete case file. In particular, the file included, *inter alia*, the written statements of Ms Blessing Mpande and Ms Sandra Muchuchu, two ZIFA female referees, levelling allegations of sexual harassment against Mr Zhoya.
11. As the above preliminary investigation revealed *a prima facie* case that Mr Zhoya had committed violations of the FIFA Code of Ethics, the latter was informed on 16 March 2022 of the opening of the formal investigation proceedings for potential breaches of arts. 13 (*General Duties*), 23 (*Protection of Physical and Mental Integrity*) and 25 (*Abuse of Position*) of the FCE.
12. On the same day, the Chairperson of the Investigatory Chamber designated Ms Margarita Echeverria, member of the Investigatory Chamber, as Chief of the Investigation in accordance with art. 63 FCE.
13. In the course of the investigation, several requests for documents and information were made to different persons and entities and, between 6 April 2022 and 5 May 2022, Ms Echeverria interviewed the following ZIFA officials:
 - Ms Blessing Mpande, former ZIFA Referee (potential victim 1);
 - Ms Sandra Muchuchu, ZIFA Referee (potential victim 2);
 - Ms Claris Simango, FIFA Referee (potential victim 3 and witness);
 - Ms Progress Chatsawama, ZIFA Referee (witness);
 - Ms Sabelo Maphosa, member of ZRC and ZIFA referee chief instructor (witness).
14. On 25 May 2022, Ms Echeverria invited Mr Zhoya to provide his position on the allegations levelled against him, together with any evidence in support thereof.
15. On 3 June 2022, Mr Zhoya provided the Investigatory Chamber with his written statement.
16. On 5 July 2022, the Chief of the Investigation interviewed Mr Zhoya in the presence of his legal representative.
17. On 13 July 2022, the investigation proceedings were closed, and the Final Report on the investigation (**the Final Report**) was transmitted to the Adjudicatory Chamber.

2. Factual findings of the Investigatory Chamber

18. The present section aims at summarising the case file constituted by the Investigatory Chamber as well as the related findings contained in the Final Report.

a. Ms Blessing Mpande, former ZIFA Referee

i. Ms Mpande's written statement

19. In a statement dated 14 September 2020, Ms Mpande described an incident of unwelcome sexual advances that occurred through the exchange of WhatsApp messages with Mr Zhoya on 4 March 2020 and continued on the next day via phone calls with the latter.

20. More specifically, Ms Mpande described this incident in her written statement as follows:

[...] I was surprised to hear an unwelcome message of sexual advancement which left me offended, humiliated, intimidated and degraded [...]

"[...] This person is my superior and holds so much authority in as far as my refereeing career is concerned. For him making unwelcome sexual advances towards me and him being my superior who decides on my career as a referee, I felt cornered. As a result, I recorded the conversations to create a safety net should this issue come out into the public domain as it has done now [...]"

"[...] He was asking me to come from Bulawayo 440 KM away and spend a night with him at a Harare hotel (Jameson). I tried to brush it aside and he had the audacity to call and question why I had not acceded to his request. He insisted that I get on the bus on Saturday and spend the night with him before he drops me off the following morning so that I board a bus back to Bulawayo. In his pursuit and unwelcome advances, he was very relentless. He stated that he was booked alone so as to make it clear it was a personal visit not a work visit. Him alluding to the fact that he was booked alone also, is an interpretation that he wanted us to meet in private without anyone knowing or seeing us. If it was work related, we would have met during the day, in a public place, there was no need to be sneaky about it. He even offered to send me transport money, which is not the normal way. Referees fund themselves for official workshops and meetings [...]"

"[...] I then got the courage from the evidence I had and learning that I am not the only one who was subjected to this harassment [...]"

21. In support of her allegations, Ms Mpande provided the screenshot of a WhatsApp message from Mr Zhoya informing her that he had booked a room at the Jameson Hotel in Harare to which she replied "what about me? If I get to Harare where will I be".

22. Ms Mpande further submitted the recording of two phone conversations with Mr Zhoya. The transcript of the first audio revealed the following¹:

¹ Parts of the conversations (underlined) were in vernacular (Shona) and were interpreted into English in the Final Report.

MPANDE: *I'm fine, how are you?*

ZHOYA: *Do you have flu? A person working for a doctor gets the coronavirus.*

MPANDE: *It's not coronavirus. It's called influenza.*

ZHOYA: *But you child, let me ask. We were agreeing all along and then you asked me where I will go, and then I say to you... I'm in town (...) You come Saturday evening; I pick you [up]. We spend time together, then Sunday morning you go back... Now yesterday, you were asking me a lot of questions, like we're starting it all over. Why? Where did those questions come from? Yet we'd agreed.*

MPANDE: *No, I was following. And then I had to ask.*

ZHOYA: *You were following what?*

MPANDE: *The conversation and then I had to ask.*

ZHOYA: *I couldn't keep on answering. I just said, "let me call tomorrow".*

MPANDE: *OK.*

ZHOYA: *It's also we agreed that you are visiting to see me and I said it's fine, me I'm alone, I'm in town isn't it and I'm booked alone isn't that so for the course but I will be staying alone I don't have any other people the Bulawayo guys are in Bulawayo; they are not coming over here. You know we agreed that you get onto a bus at 12:00 o'clock, 1:00 o'clock Saturday, then you arrive here at 6-7 PM. I wait for you. I pick you [up] and we spend the night together. Sunday, early in the morning before I go to fitness, I drop you by showground to get in the bus. By 12 midday, you are in Bulawayo.*

MPANDE: *OK, sorry there's someone by my door. Can I attend to this person?*

ZHOYA: *So, what are you saying? Have we agreed?*

MPANDE: *Can I attend to the person and then you call after 10 minutes?*

ZHOYA: *Ah OK, fine. Alright, I will.*

23. Further to this conversation, Mr Zhoya called Ms Mpande again, the transcripts of the second audio revealing the following conversation:

ZHOYA: *What are you having for lunch?*

MPANDE: *I haven't eaten yet. I was so busy. I will take my lunch at 14:00.*

ZHOYA: *Ah, OK.*

MPANDE: *Yes.*

ZHOYA: *Yes, I was waiting for the response to the [what did you say].*

MPANDE: *Apparently, I'm the preacher on Sunday, so I won't be able to travel.*

ZHOYA: *Oh at your church? ah no, that's fine. I thought we'd agreed. Sorry if I was pushing. I thought we'd agreed. I thought we'd agreed, initially. So, I was very optimistic.*

MPANDE: *No, it's OK. I'm the preacher on Sunday, so I will not be able to travel.*

ZHOYA: *It's OK. We'll plan for next time When you have time let me know – ok, thanks.*

MPANDE: *OK.*

ii. Ms Mpande's interview with the Chief of the Investigation

24. On 6 April 2022, Ms Mpande was interviewed by the Chief of the Investigation.

25. Through this interview, Ms Mpande ratified the content of her written statement dated 14 September 2020 and provided further details of the incident(s) she experienced, describing the unwelcome sexual advances from Mr Zhoya, which allegedly started as follows:

"[...] Every time he would meet me during our course, when we are done with lessons in class, he would invite me to come to his room and see him and spend the night with him in his room after classes. He would look at me, maybe during the day when I pass through, he maybe would say, 'Mmm,' making those funny looking and unwelcome gestures, but I would just brush it aside because he was my boss [...]"

"[...] He said I should come and spend quality time, spend nice time with him, and the Bulawayo guys will not be there so they will not see me [...]."

"[...] He asked me to spend a night together with him [...]"

26. During the interview, Ms Mpande also explained that rejecting Mr Zhoya's advances impacted her career since she was no longer appointed as a referee or invited to referee's courses. In particular, she pointed out that:

"[...] I would get maybe one or 2 premiere league matches and 3 division one matches. But ever since I stopped and ever since I refused to go to Harare, they stopped appointing me to matches regularly, as I used to have been given games because I would go to a game maybe once in 2 months [...]"

"[...] Mr Zhoya was the General Secretary of the referee's committee, and any correspondence amongst and between the referees and the committee was sent through Mr Zhoya to referees via email. He stopped sending me correspondence. I would see important correspondence that is supposed to be sent to me directly, I would hear it from other fellow referees. I stopped being invited to referee courses, but I would see and hear people being invited for courses. They never removed me from the WhatsApp group that we have. We used to have a referee's WhatsApp group where we used to discuss clips and talk. They never removed me from that group, but they never involved me. When I sent a comment, they would all ignore me as if I said nothing. Others would get correspondence as to when, where and how much courses would be, when people should come, where they would be staying, I never got that. And our courses are by invitation. You go to your course by invitation. So, I wasn't allowed to go to a course because I never got invitations, but on paper, I was there. Because in their records and in the WhatsApp group I was there. So, they could present evidence that I was there in the WhatsApp group, but in the system and physically, I wasn't there. I was only there on paper [...]."

iii. Witnesses' interview with the Chief of the Investigation

27. As part of the investigation proceedings, the Investigatory Chamber identified two individuals as potential witnesses of the events described by Ms Mpande. In particular, the Chief of the Investigation interviewed Ms Sabelo Maphosa, former ZIFA referee chief instructor, and Ms Claris Simango, ZIFA referee, on 29 April and 5 May 2022 respectively. The content of these interviews can be summarized as follows:

- Ms Sabelo Maphosa confirmed the culture of abuse and intimidation in the ZIFA Referees Committee towards female referees under the promise of promotion. Ms Maphosa further explained that Ms Mpande had made her aware of Mr Zhoya's harassments and also admitted that Ms Mpande's career progression stopped after she rejected the unwelcome sexual advances².
- Ms Claris Simango confirmed the events described by Ms Mpande.

iv. Circumstantial evidence

28. Through the exchange of communications with ZIFA officials, the Investigatory Chamber identified that the ZIFA Referees Committee had organized a course for class one referees and match commissioners from the Northern Region of Zimbabwe. This course took place at the Prince Edward High School in Harare from 6 to 8 March 2020.
29. Moreover, Mr Malandule, former Chairperson of the ZIFA Referees Committee, confirmed to the Investigatory Chamber that the ZIFA Referees Committee had covered Mr Zhoya's accommodation from 6 to 8 March 2020 at the Cresta Jameson Hotel in Harare.

v. Summary

30. Based on the above, the Investigatory Chamber deemed that the circumstantial evidence confirmed the consistency and accuracy of Ms Mpande's testimony, namely that Mr Zhoya made sexual advances and unwelcome proposals to spend "quality time" and "nice time" together at the Jameson Hotel in Harare. Especially, the Investigatory Chamber pointed out that the dates and places identified by Ms Mpande in her testimony are corroborated with the above elements and sequence of event as it has been established that Mr Zhoya stayed at the Cresta Jameson Hotel in Harare from 6 to 8 March 2020.
31. To sum, the Investigatory Chamber found that the above revealed that Ms Mpande was subject to unwanted words and/or actions of a sexual nature by Mr Zhoya, which were not solicited nor invited, and that made her feel uncomfortable, humiliated, intimidated, degraded and disrespected.

² Statement of Ms Maphosa was reported in the Final Report as follows:

"[...] Mr Malandule and Zhoya, they were targeting the weak or the vulnerable, in the sense that women referees, naturally, their progression is very difficult. For a woman referee to rise and reach high levels in refereeing, it is very difficult. They were being promised promotion into the top league or being promised a position into the FIFA panel. That is what they were doing. Some of the women referees gave in, they did sleep with these men, but now they are afraid to come out and say, 'Yes, this is what happened.' Because they are afraid of their families. They are afraid, if their husbands find out, they stand to lose their families. They are afraid to come out and say it [...]"

"[...] Blessing Mpande told me that, on a number of occasions, Zhoya phoned her and asked her to come to Harare and meet with him, spend a night with him, during courses, when Zhoya would be booked at a hotel. He wanted Blessing to come to Harare, so that he could spend a night with her during those courses [...]"

"[...] When the proposal didn't materialize, when she turned the advances down, her progression stopped. She was sidelined. She was sort of frozen out. She was dropped from everything. She was removed, I would say. Basically, she was removed from the panel where she was. There was no explanation as to why, she was just dropped [...]"

b. Ms Sandra Muchuchu, former ZIFA Referee**i. Ms Muchuchu's written statement**

32. In a statement dated 14 September 2020, Ms Muchuchu explained that on 6 March 2020, Mr Zhoya approached her and made unwelcome sexual advances when he asked her to spend the night together at the Jameson Hotel:

"[...] he asked me to come with him to a local hotel (Jameson) and spend the night with him. I was shocked and even I told him that I don't do such things and I was adamant about it. This conversation made me feel angry and uncomfortable as his sexual advances were very much unwelcome [...]"

"[F]ollowing day which was the 7th of march 2020 Mr Brighton Mudzamiri who is the Vice Chairman of the ZIFA referees committee approached me, in a loud voice shouting that I was busy spreading the news to people that they are not promoting me to ZIFA panel because I refused sleep with the men who were proposing love to me. It has been my core-value that I have a professional relationship with everyone I interact with [...]"

ii. Ms Muchuchu's interview with the Chief of the Investigation

33. On 11 April 2022, Ms Muchuchu was interviewed by the Chief of the Investigation.
34. During the interview, Ms Muchuchu confirmed her written statement and provided further details relating to the unwelcome sexual advances made by Mr Zhoya on 6 March 2020 and further explained that the latter offered her a promotion if she would spend the night with him:

"[...] We were outside the school. It's a school, like a boarding school, they have dining rooms. So, by that time we were sitting-, maybe a mini break, or maybe some tea. So, people, they were moving around outside [...]"

"[...] I was coming from another site with a friend. Then my friend, she just walked aside talking to somebody. So, then she left me alone. Then Mr Zhoya took the advantage I was alone [...]"

"He was going to promote me if I sleep with him".

35. Finally, in this interview, Ms Muchuchu also described how she suffered retaliation, since after having rejected Mr Zhoya's advances, she was appointed for far fewer matches than before.

iii. Witnesses' interview with the Chief of the Investigation

36. As part of the investigation proceedings, the Investigatory Chamber identified two individuals as potential witnesses of the events described by Ms Muchuchu. In particular, the Chief of the Investigation interviewed Ms Progress Chatsawama, ZIFA referee, and Ms Sabelo Maphosa, former ZIFA referee chief instructor, on 25 and 29 April 2022 respectively. The content of these interviews can be summarized as follows:

- Ms Progress Chatsawama confirmed the events described by Ms Muchuchu. Specifically, she stated that during a seminar they both attended, Ms Muchuchu told her in confidence about the unwelcome and inappropriate proposals made to her by Mr Zhoya.
- Ms Sabelo Maphosa confirmed that Ms Muchuchu had not been promoted with no motive:

[...] Sandra also, it was a similar situation, where Zhoya had made advances towards her. When she turned the advances down, she had been part of those who were meant to go for promotion but without any reason, her name was dropped [...]."

iv. Summary

37. Based on the foregoing, the Investigatory Chamber deemed that the circumstantial evidence outlined above (see paras. 28-29 *supra*) confirmed the consistency and accuracy of Ms Muchuchu's testimony, namely that Mr Zhoya made sexual advances and unwelcome proposals to spend a night together at the Jameson Hotel on 6 March 2020.
38. In particular, it has been confirmed that Ms Muchuchu attended the ZIFA course given on 6 to 8 March 2020 at the Prince Edward High School in Harare. Bearing in mind that it has already been established that Mr Zhoya was also present at the abovementioned course, the circumstantial evidence revealed that Mr Zhoya was indeed in Harare when he proposed to Ms Muchuchu to spend the night together at the Jameson Hotel, thus confirming Ms Muchuchu's allegations against Mr Zhoya.
39. Finally, the Investigatory Chamber noted that the incident described by Ms Muchuchu confirms Mr Zhoya's *modus operandi*, who during the weekend when the course took place in Harare, first invited Ms Mpande to spend the night together, but facing her rejection, he then made similar sexual advances to Ms Muchuchu.

c. Ms Claris Simango, former ZIFA Referee

i. Ms Simango's interview with the Chief of the Investigation³

40. On 5 May 2022, Ms Simango explained to the Chief of the Investigation that in 2019, after moving to a new city, Mr Zhoya would call her recurrently to invite her to go out and to spend what he called "*quality time together*". Despite her repeated rejections to his unwelcomed sexual advances, Mr Zhoya continued to call her and insisted to go out together:

"[...] In 2019, I started working in Mhangura. By that time, Mr Zhoya actually was staying and working in Banket. I'm not actually sure of the kilometers from where I live but I think it's about 100km from where I was teaching. It was totally a new place for me. I had to tell the committee that, 'Now I am in Mashonaland province,' so that, in terms of match appointments, they would know where I am. Mr Zhoya, that's the time that he knew that now I was within their province. When I relocated, when I started working, in May, in Mhangura, Mr Zhoya started calling me,

³ Ms Simango did not submit any written statement to the Investigatory Chamber.

which I wouldn't expect, a call, just a call from my superiors, without an intention to that call. What happened, Mr Zhoya used to call me. He started calling me, the first time he called me, he said, 'Hello, Claris, how are you?' I would say, 'I'm okay.' Then he'd say, 'We'll come to Mashonaland province,' then I say, 'Thank you.' I actually thought it was something good "[...].

"[...] Then he said, 'I would want to invite you to out with me.' Then I said, 'I cannot come with you because I'm actually busy.' He called again the following afternoon. He used to call me at 1:00pm. As he was calling now, the second time he called me, he was, 'Claris, I need to go out with you. When I'm going out with you, it's just for us to be happy and excited.' I told him, 'Mr Zhoya, I cannot go out with you because I've got a boyfriend and you are a family man, I cannot do that.' He said, 'It doesn't matter. You know things that no-one knows about, actually exciting, so we need to go out and have quality time together.' Then, when he said that, he continued saying, 'Our going out won't interfere with football.' Then I was, 'Why?' I said I cannot go out with you and you are still insisting.' It was a whole week of him calling me, and by that time, I could not actually record him because I was not using a small phone. (My smartphone had smashed). The following week, he started calling again at 1:00pm. That's when I put my phone on silent. When he called, I would just see missed calls from him because I didn't want to entertain him [...]"

"[...] his calls went on about 3 weeks and it was almost like I went to Mhangura, we opened the school, I think, around 12th May. From then on, around 15th, 17th May, he started calling me and it went on about 3 weeks of him calling me every day [...]"

"[...] Most of his contact with me was through voice messages. There were no texts, WhatsApp because, by that time, I did not have a smartphone. I was using those small phones. My smartphone had smashed. He used to call me, no messages. Even text message on my mobile number, there were none, but it was mainly calls from him."

41. Ms Simango also described a specific incident in which, after being appointed as referee to a match in Harare in October 2019, Mr Zhoya called her to inform her that she would be travelling together with him and two other referees, Mr Yasini and Mr Masamban, in his car in order to reduce costs. In this respect, Ms Simango provided the following details:

"[...] When I arrived at his workplace around 9:00am, I expected to see Yasini and Masamban and they were not there. Then I had to ask, 'Where are the other 2 guys?' He said, 'They are already in Harare.' Then I said, 'Okay, that's fine.' I left my car locked, then I went into his car, then we drove to Harare. Now, when we were in his car, he started this conversation, I am picking from where I have left, 'Today, we will be going to Harare.' He had a match in Bindura, with Yasini and Masamban, and the other two referees away from Harare. Now he said, 'I'm going to tell Yasini and Masamban that I'm not coming back to Banket. I will be having a meeting tomorrow in Harare. Then it will allow me and you to have a quality time, to spend the night together at Jameson Hotel. I'll actually book us a room at Jameson Hotel.' I said, 'Mr Zhoya, look, I am not interested in all this. I want a family. You are a family man. Why do you expect me to spend a night with you? What good does it do to me?' Then he said, 'Claris, this is just a time for us to have a good time, an exciting time.' He kept on insisting, then I said, 'Mr Zhoya, you are a family man. I am just Claris. I also want my own family. I can't have this time

with you. I can't spare myself just for a night with you. I cannot do that. I fear God, and I have an understanding that you are a deacon.' He's an elder at his church. 'Why are you doing this? Then he kept on insisting. Then I had to lie, 'Now I'm going to call my boyfriend, so that he comes when you are going to drop me off. I will tell him that you are insisting on spending the night with me at Jameson Hotel.' He said, 'There is no need to call him because it's between you and me.' I said, 'Okay.' Then what I did was, I contacted Yasini and Masamban and I asked them where they were waiting for Mr Zhoya [...] After their game, they would pick me in Harare, then we would go back together and he would drop me at his workplace. I would pick my car, then I would be on my way, at my workplace [...]."

"[...] They went to Bindura for their match, and I went for mine, at Rufaro Stadium in Harare. Then, after the match, my match commissioner, Mr Montoga actually called Mr Zhoya and he said, 'I'm leaving Claris at-', there was a local restaurant, Chicken Inn, he said, 'I'm leaving her there. You guys, you don't need to delay, you can pick her up.' I think he said, 'Yes, I will be there on time,' but, surprisingly, he was not there on time. Around 9:00pm, that's when I saw Yasini coming. Then I was, 'Where is Mr Zhoya?' He said, 'He has got another lady.' He said, 'I will be back to pick you up.' It was now a retaliation for the things that I said against you. He came around 10:00pm and he picked us, with Yasini, and Masamban, he'd already found his way home. It was me, Mr Zhoya and Yasini, then we went to Banket. Then, on the way back, there was no way of him saying anything because Yasini was now there, a third party, and he's also a referee, and he's also a male referee. He couldn't risk saying anything to me. He dropped me off then. Then, at his workplace, I got in the car with Yasini, I dropped Yasini in Chinoyi, then I had to arrive at my school around 1:00am in the morning [...]."

42. As with Ms Mpande and Ms Muchuchu, Ms Simango stated that after rejecting Mr Zhoya's sexual advances or not answering his calls, she was appointed for far fewer matches than before, which had a serious impact on her daily life.
43. Finally, Ms Simango explained that after Ms Mpande's harassment allegations were made public, Mr Malandule, during one of the fitness tests held in 2021, expressed himself rhetorically to the female referees, asking if "[y]ou thought we were going to lose you ladies. Did we ever propose love to you? Did we ever do that?". Ms Simango considered that this statement was "victimization because there was no way of us saying, in a lecture, "yes, Mr Zhoya did that to me". There was no evidence, so we had to keep quiet".

ii. Circumstantial evidence

44. The information provided by Ms Simango in her oral statement were further corroborated by the Investigatory Chamber. In this respect, the match records collected during the investigations revealed that Ms Simango officiated a match as second assistant referee on 6 October 2019 at Rufaro Stadium in Harare. Likewise, the Investigatory Chamber, upon review of Mr Zhoya's interview with the Chief of the Investigation, confirmed that the latter was based in Banket at the time of Ms Simango's allegations.
45. Finally, evidence in the file, including that provided by Mr Mudzamiri, former vice-president of ZRC, enabled the Investigatory Chamber to conclude that Mr Zhoya was the commissioner of the

Muschu vs CU match played on 6 October 2019 in Bindura and that Mr Yasini and Mr Masamban were the referees for that match.

iii. Summary

46. In view of the above, the Investigatory Chamber found that the facts reported by Ms Simango, including the dates, places, appointments and persons, are corroborated by the aforementioned circumstantial evidence, thus confirming the consistency and accuracy of her oral statements.
47. Moreover, the Investigatory Chamber noticed that Ms Simango's statement revealed that Mr Zhoya exercised the same *modus operandi* with her as with Ms Mpande and Ms Muchuchu. Indeed, Mr Zhoya would offer the accommodation covered by ZRC (*i.e.*, at the Jameson Hotel) for the performance of his duties in the said committee to make unwelcome sexual advances to female referees by inviting them to spend the night with him. It is also quite relevant to highlight that Ms Mpande and Ms Simango concurred on the exact same words used by Mr Zhoya, in the sense that he invited them to "*spend quality time together*".

d. Mr Zhoya

i. Mr Zhoya's written statement

48. In his statement submitted on 2 June 2022⁴, Mr Zhoya denied all accusations levelled against him. He further stated the following:
- With respect to Ms Mpande's allegations, he explained that he has never invited her to the Jameson Hotel, nor has he side-lined her from refereeing. He pointed out that another person was responsible for the appointments of the referees, so that "*there was no way*" he could have side-lined her. In this respect, Mr Zhoya lastly argued that if Ms Mpande was not being allocated to matches, it was because of her physical condition as she failed the fitness tests.
 - With respect to Ms Muchuchu's allegations, he stated that the appointments for the Northern region were made by another person, Mr Lovemore Marange.

ii. Mr Zhoya's interview with the Chief of the Investigation

49. On 5 July 2022, the Chief of the Investigation conducted an interview with Mr Zhoya⁵. In this interview, the latter was asked several questions about his role and specific tasks as General Secretary of ZRC. Mr Zhoya explained his duties as General Secretary of the said committee and how the decision-making process was made within ZRC and claimed that he attended all meetings as he was responsible for minute taking. He further pointed out that he was able to share his input and to participate in the committee meetings and discussions.

⁴ Cf. para. 15 *supra*

⁵ Cf. para. 16 *supra*

50. Additionally, Mr Zhoya explained that the ZIFA Referees Committee was responsible for national level referees (*i.e.* elite panel of referees), and confirmed that Ms Mpande was on this elite panel.
51. The Investigatory Chamber also reported that Mr Zhoya was asked whether or not he had stayed at the Jameson Hotel, the latter reluctantly confirmed that he had stayed at the said hotel when on duty. Mr Zhoya further explained that in Zimbabwe, match commissioners and referees travel together to the match venues, as the association only covers one transport expense claim.
52. However, when asked to confirm whether he had shared a car with Mr Yasini and Ms Simango for a match in Bindura, Mr Zhoya stated *"I don't know what I'm supposed to say. I can't confirm... I had a lot of matches as a commissioner. Before I was a referee, I've attended a lot of MA courses. I... I... I... I... I [...], so it's difficult for me right now because I travelled with a lot of referees to different matches on different dates"*. Following up on this question, Mr Zhoya agreed to clarify whether he had travelled or not to Bindura on 6 October 2019.
53. In this regard, Mr Zhoya informed the Investigatory Chamber on 12 July 2022 that he *"cannot remember off head"* whether he travelled to Bindura on that date and that he can only confirm that in Zimbabwe it is common that a set of four (4) match officials travels together to a match venue.

3. Conclusions of the Investigatory Chamber

54. After careful analysis of the gathered information and documentation at its disposal, the Investigatory Chamber concluded that Mr Zhoya has been involved in acts of sexual harassment, and other hostile acts intended to isolate, ostracise, or harm the dignity of the female referees under his remit. In particular:
 - he failed to protect and respect the integrity and dignity of the female referees under his remit,
 - he sexually harassed the female referees Ms Mpande, Ms Muchuchu and Ms Simango, and
 - he promised advantages to Ms Muchuchu and Ms Simango.
55. Therefore, the Investigatory Chamber considered that Mr Zhoya has violated the prohibition of engaging in conducts of art. 23 (1), (3) and (4) FCE. In addition, the said Chamber held that Mr Zhoya further breached arts. 25 and 13 (3) and (4) FCE since:
 - he took advantage of his position for private aims, *i.e.*, to obtain sexual favour, and
 - he inherently failed to exercise his duties and responsibilities diligently and to behave in a dignified and ethical manner.

B. Proceedings before the Adjudicatory Chamber

1. Opening of adjudicatory proceedings and communications with the Respondent

56. On 15 July 2022, Mr Zhoya was informed (i) that the Adjudicatory Chamber had opened adjudicatory proceedings against him based on the Final Report as per art. 68 (1) FCE, and (ii) of his right to request a hearing. In these circumstances, Mr Zhoya was provided with a copy of the Final Report – along with the entire case file – and was requested to submit a written position.
57. On 20 July 2022, Mr Zhoya submitted his position to the Adjudicatory Chamber claiming, *inter alia*, that his right to be heard had not been respected⁶.
58. On 28 July 2022, the Secretariat to the Adjudicatory Chamber addressed a correspondence to Mr Zhoya to clarify the adjudicatory procedure. In particular, Mr Zhoya was reminded that he had the possibility to exercise his right to be heard by requesting a hearing pursuant to art. 69 (1) FCE but that he also had the right to submit his position, to present evidence and to inspect the evidence that would be taken into account by the Adjudicatory Chamber in making its decision in accordance with art. 71 FCE. Finally, Mr Zhoya was invited to inform the abovementioned secretariat if he wished a hearing and was given the opportunity to supplement his initial position.
59. On 5 August 2022, Mr Zhoya filed his supplementary submission but did not request a hearing⁷.
60. On 18 August 2022, Mr Zhoya was informed of the composition of the Adjudicatory Chamber appointed to decide his case on 31 August 2022.

⁶ The position is summarized in the following section.

⁷ The supplementary position is summarized in the following section.

2. Mr Zhoya's written positions

a. First correspondence dated 20 July 2022:

61. The first correspondence received from Mr Zhoya can be summarised as follows:

i. Procedural Comments

- The Final report is incomplete as it does not include the exhibits that were submitted by Mr Zhoya to the Investigatory Chamber. Furthermore, the Final report does not comment on these exhibits.
- The above raises the question of whether the investigation was impartial.
- All the exhibits that were handed over to him at the opening of the adjudicatory proceedings were never given to him. In this regard, any evidence used against a person should first be disclosed to that person so that it can respond and comment. In particular, Mr Zhoya claimed that he should have had the opportunity to check and verify the authenticity of the alleged WhatsApp message and audio files before they were used against him.
- In view of the above, he could not prepare his defence and the circumstances did not allow him to request a hearing. Furthermore, despite the right to be heard, the Final Report had already concluded that the events took place without him having had the opportunity to examine the evidence on file or to respond.

ii. Comments on the Final Report

- Mr Zhoya's interview lasted 44 minutes, but the Final Report contained only two paragraphs while it contained a detailed description of the alleged victims' position and statement.
- The Final Report misinterpreted the facts in the sense that Mr Zhoya did not confirm that he stayed at the Jameson Hotel as mentioned in the report, but rather said that he had stayed at many hotels.
- Mr Malandule has already confirmed that Mr Zhoya was not in charge of the match, so Ms Mpande's claim that she was prevented from being appointed as a referee was false. On the other hand, Ms Mpande failed to pass two fitness tests in 2019 and therefore could not be appointed or promoted. Furthermore, "[Ms Mpande] resignation letter clearly stated that she was constantly failing tests because of her medical condition".
- Mr Zhoya rejected Ms Muchuchu's statement, saying that *"she once reported it at local police and it was not prosecuted for lack of evidence and substance"*. He also pointed out that there was no Division 1 football from 2020 to 2022 due to the pandemic, so she could not be promoted in the absence of matches. Finally, he reiterated that he was not responsible for her matches but that the Northern Region Committee had jurisdiction.

- Finally, with regard to Ms Simango's assertion, Mr Zhoya stated that they were false and *"should be treated with caution since it's a question of her words against Mr Zhoya's."*

b. Second correspondence dated 5 August 2022:

62. The second correspondence received from Mr Zhoya can be summarised as follows:

- Mr Zhoya denied the allegations levelled against him and put forward the elements mentioned hereafter.
- He never abused his power and authority by side-lining the complainants as he was not responsible for assigning matches.
- Ms Mpande was not allocated matches because she failed the fitness tests and, as a result of these continued failures, she subsequently resigned of her own accord.
- As already stated, Ms Muchuchu was not under the control of Mr Zhoya, hence he had no influence over her matches. Furthermore, no Division 1 football matches were played from 2020 to 2022 due to the Covid pandemic. Therefore, she could not be promoted in the absence of matches.
- One of the complainants' witnesses, Ms Maphosa, was a member of ZRC. So, if the "ladies" were not promoted out of malice on the part of Mr Zhoya, why did she not raise the issue at the Committee meetings? Her statement is not true and is intended to mislead the Adjudicatory Chamber.
- The allegations against Mr Zhoya were false and were the result of politics affecting the ZIFA Board.

63. In support of his position, Mr Zhoya provided various documents, namely:

- "Circular 1" of 2019 which assigned duties to the ZIFA Referees Committee.
- Ms Mpande's resignation letter in which she indicated that she was failing due to her chronic illness.
- Four documents showing that Ms Mpande was failing the fitness test.
- Invitation letter dated 6 September 2021 by which Ms Mpande was invited to a referee fitness test.
- Composition of ZRC confirming that Ms Maphosa was one of its members.

64. The Adjudicatory Chamber reiterated that it has considered all the facts, allegations, legal arguments and evidence provided by the Respondent, and in the present decision had only referred to those observations and evidence regarded as necessary to explain its reasoning.

II. CONSIDERATIONS OF THE ADJUDICATORY CHAMBER

65. In view of the circumstances of the present matter, the Adjudicatory Chamber first addressed some key procedural aspects, before entering into the substance of the case at stake.

A. Procedural aspects

1. Jurisdiction and competence

66. To begin with, and although its jurisdiction has not been challenged, the Adjudicatory Chamber recalled that the competence of the FIFA Ethics Committee is defined by art. 30 FCE.
67. While the first paragraph of the said article determines the exclusive competence of the FIFA Ethics Committee⁸, the second paragraph provides for a subsidiary competence of the said Committee in cases where the unethical conduct has not been investigated and judged and/or cannot be expected to be investigated and judged by the judicial bodies of the association or confederation concerned. In particular, should no proper proceedings be taken at national and/or confederation level within three months as from when the matter became known to the FIFA Ethics Committee, the latter shall be entitled to investigate and adjudicate the matter.
68. In view of the above, the Adjudicatory Chamber noted that on 15 June 2021, the Chairperson of the Investigatory Chamber had referred the present matter to CAF, as the FIFA Ethics Committee lacked exclusive competence to investigate the allegations levelled against Mr Zhoya.
69. However, the Adjudicatory Chamber observed that in February 2022, the FIFA Council decided to suspend ZIFA due to government interference in the activities of the said association. This suspension led the Chairperson of the Investigatory Chamber to conclude that no proper proceedings could take place at national level, so that ZIFA was informed on 28 February 2022 that the FIFA Ethics Committee was entitled to investigate and adjudicate the present case.
70. The Adjudicatory Chamber concurred with those conclusions and, by way of consequence, determined that, in accordance with art. 30 (2) FCE, it was competent to assess and adjudicate the present matter.

⁸ Exclusive competence of the Ethics Committee to adjudicate the conduct of all persons bound by the FCE, where such conduct:

- a) has been committed by an individual who was elected, appointed or assigned by FIFA to exercise a function;
- b) directly concerns their FIFA-related duties or responsibilities; or
- c) is related to the use of FIFA funds.

2. Applicable law

a. Applicability of the FCE *ratione materiae*

71. In continuation, and upon analysis of the conclusions contained in the Final Report, the Adjudicatory Chamber noted that there were several indications of potential immoral and unethical behaviour/conduct by Mr Zhoya.
72. As such, the FCE is applicable to the case at stake in line with art. 1 (1) FCE.

b. Applicability of the FCE *ratione personae*

73. The Adjudicatory Chamber subsequently recalled that art. 2 (1) FCE provides that said code shall *inter alia* apply to "officials".
74. To that end, reference shall be made to the FIFA Statutes which define an official as "*any board member (including the members of the Council), committee member, referee and assistant referee, coach, trainer and any other person responsible for technical, medical and administrative matters in FIFA, a confederation, a member association, a league or a club as well as all other persons obliged to comply with the FIFA Statutes (...)*".
75. Against such background, and referring to the football background of Mr Zhoya⁹, the Adjudicatory Chamber concluded that, at the time the relevant actions and events allegedly occurred, Mr Zhoya was a football official as per the above definition.
76. As a consequence, the FCE was applicable to Mr Zhoya pursuant to art. 2 (1) FCE.

c. Applicability of the FCE *ratione temporis*

77. As emphasised in the Final Report, the relevant facts described in the previous sections of this decision allegedly occurred in May 2019¹⁰, in October 2019¹¹ and in March 2020¹², *i.e.*, at a time when the 2018 and 2019 editions of the FIFA Code of Ethics were in force.¹³
78. In these circumstances, art. 3 FCE however establishes that the current edition of the FCE (*i.e.*, the 2020 edition) shall apply to conduct whenever it occurred, provided that the relevant conduct contravened the FCE applicable at the time it occurred. In such a situation, the Adjudicatory Chamber could not impose sanctions exceeding the maximum sanction available under the then-applicable code (principle of *lex mitior*).

⁹ Cf. paras. 1-3 *supra*.

¹⁰ First incident described by Ms Simango.

¹¹ Second incident described by Ms Simango.

¹² Incidents described by Ms Mpande and Ms Muchuchu.

¹³ The 2018 edition of the FCE entered into force on 10 June 2018 and the 2019 edition entered into force on 3 June 2019.

79. In the present case, the Adjudicatory Chamber deemed that the legal provisions of the respective article(s) are equivalent in the various editions of the FCE (*i.e.*, 2018, 2019 and 2020).
80. In particular, the Adjudicatory Chamber noted that the spirit and intent of the previous editions of the FCE were duly reflected in the current wording of arts. 13, 23 and 25 FCE. More specifically, said articles of the FCE (named *General duties (art. 13); Protection of physical and mental integrity (art. 23) and Abuse of position (art. 25)*) were already included, under the same provision numbers, in the 2018 and 2019 editions of the Code and were similar, if not identical.
81. In consideration of the above, the Adjudicatory Chamber concluded that the different editions of the FIFA Code of Ethics covered the same offenses, so that the 2020 edition of the FCE should apply to the procedural aspects and merits of this case pursuant to art. 3 FCE.
82. Notwithstanding the above, the Adjudicatory Chamber pointed out that while the allegations against Mr Zhoya, if proven, were included in the 2018, 2019 and 2020 editions of the Code, the specific sanctions provided for in the 2018 edition with regard to art. 23 FCE foresaw a ban on taking part in any football-related activity for a maximum of two years, and in serious cases and/or in the event of a repetition, a ban of up to five years. In comparison, the corresponding provisions in the 2019 and 2020 editions of the Code provide for more severe sanctions, as the ban on taking part in football-related activity should last for a minimum of two years, while in serious cases and/or in the case of repetition, a ban of at least ten years could be imposed.
83. Therefore, the Adjudicatory Chamber was aware that the possible sanctions related to the first incident denounced by Ms Simango, if proven, could not exceed the maximum sanction provided for by the then-applicable Code, *i.e.*, the 2018 edition. For the sake of clarity, the Chamber recalled that the other incidents mentioned in the Final Report should, if proven, be sanctioned in accordance with the 2020 edition of the FCE.

3. Burden and standard of proof

84. As a preliminary remark, reference shall be made to art. 49 FCE in accordance with which the burden of proof regarding breaches of provisions of the Code rests on the Ethics Committee (*in casu* on the Adjudicatory Chamber).
85. In continuation, the Adjudicatory Chamber pointed out that, in line with art. 48 FCE, its members shall judge and decide on the basis of their comfortable satisfaction.
86. According to CAS jurisprudence, "*in practical terms [this] means the "personal convictions" of the Panel, having in mind the seriousness of the offence committed and after evaluating all the evidence in the file*"¹⁴.
87. More specifically, "*the assessment of the evidence contributes significantly to the decision-making based on the "comfortable satisfaction" standard. The [deciding body] needs to have strong evidence*

¹⁴ CAS 2019/A/6439 Samson Siasia v. FIFA – See also CAS 2019/A/6665 Ricardo Terra Teixeira v. FIFA and TAS 2020/A/7592 Ahmad Ahmad c. FIFA.

that certain facts occurred in a given manner and also the evidence has to satisfy [said body] in the same sense. The relevant circumstances of the case assessed individually and/or combined, commonly known as the context are major elements to reach this conclusion (CAS 2013/3324 and 3369)”¹⁵.

88. In so far that the evidence is concerned, the Adjudicatory Chamber recalled that it shall have absolute discretion regarding proof (art. 47 FCE), keeping in mind that any proof that has been obtained by means or ways involving violations of human dignity or that obviously does not serve to establish relevant facts shall be rejected (art. 46 FCE).
89. Having clarified the foregoing, the Adjudicatory Chamber proceeded to consider the merits of the case.

B. Merits of the case

90. As a preliminary remark, the Chamber pointed out that the matter at stake related to various complaints lodged against Mr Zhoya for having allegedly (i) abused his position as General Secretary of the ZIFA Referees Committee (ii) to obtain sexual favours from female ZIFA referees. In particular, Mr Zhoya was accused to have sexually harassed at least three female referees.
91. Furthermore, the Chamber noted that the Investigatory Chamber concluded that Mr Zhoya had:
- failed to protect and respect the integrity and dignity of the female referees under his remit,
 - sexually harassed the female referees Ms Mpande, Ms Muchuchu and Ms Simango, and
 - promised advantages to Ms Muchuchu and Ms Simango.
92. More specifically, the Investigatory Chamber held that Mr Zhoya abused his position as General Secretary of ZRC since he took advantage of his position for private aims, *i.e.*, to obtain sexual favours from female referees.
93. In view of the above and taking into account that Mr Zhoya denied the allegations made against him, the Chamber considered that the potential violations mentioned in the Final Report, namely the violations of arts. 13, 23 and 25 FCE, should be analysed separately and particularly in light of the evidence on file. Therefore, the Chamber decided to first focus on the most serious allegations related to a potential violation of art. 23 FCE, before addressing Mr Zhoya's alleged abuse of position (cf. art. 25 FCE) and his possible breach of his duty to behave in a dignified and ethical manner (cf. art. 13 FCE).
94. This being established, the Chamber first focused on whether Mr Zhoya had sexually harassed Ms Mpande, Ms Muchuchu and Ms Simango.

¹⁵ CAS 2019/A/6439.

1. Did Mr Zhoya sexually harass three ZIFA female referees?

95. As a starting point, the Chamber stressed that the case at stake presented serious allegations against Mr Zhoya and that the potential consequences for the latter could be severe if the relevant charges would be established. By way of consequence, the Chamber concluded that it *"should have a high degree of confidence in the quality of the evidence"*¹⁶.
96. However, the Chamber also wished to point out that CAS jurisprudence does not ignore the difficulties of proving some specific infringements. In this respect, CAS awards have already clarified that *"Swiss law knows a number of tools in order to ease the – sometimes difficult – burden put on a party to prove certain facts. These tools range from a duty of the other party to cooperate in the process of fact finding, to a shifting of the burden of proof or to a reduction of the applicable standard of proof. The latter is the case, if – from an objective standpoint – a party has no access to direct evidence (but only to circumstantial evidence) in order to prove a specific fact (SFT 132 III 715, E. 3.1; BK-ZPO/ BRÖNNIMANN, 2012, Art. 157 no. 41; BSK-ZPO/GUYAN, 2nded. 2013, Art. 157 no. 11)."*¹⁷
97. While bearing in mind that the allegations against Mr Zhoya were serious and could lead to severe sanctions, if proven, the Chamber recalled that acts of sexual harassment are by their nature concealed and difficult to prove by direct evidence. Therefore, the Chamber concluded that, in the absence of direct evidence, it could rely on circumstantial/indirect evidence, provided that such evidence has a strong probative value.
98. In those circumstances and given that the Final Report considered that Mr Zhoya had sexually harassed Ms Mpande, Ms Muchuchu and Ms Simango, the Chamber wished first to define the notion of "sexual harassment", in order to assess whether or not such a behaviour could fall within the context of art. 23 FCE, as advanced by the Investigatory Chamber.

a. Notion of "sexual harassment"

99. To begin with, the Chamber recalled that art. 23 FCE relates to the protection of physical and mental integrity *inter alia* provides the following:

" 3.

Persons bound by this Code must refrain from all forms of physical or mental abuse, all forms of harassment, and all other hostile acts intended to isolate, ostracise or harm the dignity of a person.

4.

Threats, the promise of advantages, coercion and all forms of sexual abuse, harassment and exploitation are particularly prohibited."

100. Upon reading these paragraphs, the Chamber noted the absence of clear definition of the notion of sexual harassment. However, this notion was particularly well defined in the Final Report,

¹⁶ CAS 2018/A/5906.

¹⁷ CAS 2019/A/6669; CAS 2013/A/3256

notably by referring to the former edition of the FCE and through various methods of interpretation. In this regard, the Chamber observed that art. 24 (3) of the 2012 edition of the Code included the following description:

“Sexual harassment is defined as unwelcome sexual advances that are not solicited or invited. The assessment is based on whether a reasonable person would regard the conduct as undesirable or offensive. Threats, the promise of advantages and coercion are particularly prohibited.”

101. Moreover, the Chamber noted from the Final Report that the Merriam-Webster dictionary defines sexual harassment as an *“uninvited and unwelcome verbal or physical behavior of a sexual nature especially by a person in authority toward a subordinate”*¹⁸, while in a memo dated 2007, the International Olympic Committee defined sexual harassment as *“a behaviour towards an individual or group that involves sexualised verbal, non-verbal or physical behavior, whether intended or unintended, legal or illegal, that is based upon an abuse of power and trust and that is considered by the victim or a bystander to be unwanted or coerced.”*¹⁹
102. In view of the above, the Chamber could only endorse the conclusions of the Investigatory Chamber, which considered that *“sexual harassment can take the form of sexualised verbal, non-verbal or physical behavior, which is unsolicited, unwanted, undesirable and offensive”*²⁰ and that *“to finally assess whether an observed behavior is harmless flirtation, a budding relationship between colleagues or a case of sexual harassment, the decisive factor is not the intention of the harasser, but how their behavior is perceived by the person concerned, whether they perceive it as desirable or undesirable”*²¹.
103. As a result, the Chamber considered that since art. 23 FCE prohibits *“all forms of harassment”* (art. 23 (3) FCE) and *“all forms of sexual abuse, harassment and exploitation ”* (art. 23 (4) FCE), this provision definitely encompasses the offence of sexual harassment and therefore prohibits any person bound by the Code from sexually harassing another person.
104. Having clarified (i) the concept of sexual harassment and (ii) that it undoubtedly falls within the scope of art. 23 FCE, the Chamber then focused on the allegations of the three alleged victims to analyse whether Mr Zhoya had indeed sexually harassed them. The Chamber decided to conduct this analysis chronologically, starting with Ms Simango, whose allegations referred to incidents that were likely to have occurred in May and October 2019, and then moving on to the incidents of March 2020 reported by Ms Mpande and Ms Muchuchu respectively.

¹⁸ [Sexual harassment Definition & Meaning - Merriam-Webster.](#)

¹⁹ Cf. exhibit 27 of Final Report: IOC adopts consensus statement on “Sexual Harassment & Abuse in Sport”, dated 8 February 2007.

²⁰ Cf. para. 141 of the Final Report.

²¹ *ibidem*

b. Did Mr Zhoya sexually harass Ms Simango ?

i. Factual assessment

105. As starting point, the Chamber noted that Ms Simango reported two incidents:

- The phone calls of May 2019: Ms Simango reported that after moving to a new city, Mr Zhoya would call her recurrently to invite her to go out with him and to spend what he called *"quality time together"*. Despite her repeated rejections to his unwelcomed sexual advances, Mr Zhoya continued to call her three weeks long and insisted to go out together (**Incident 1**).
- The match in Harare in October 2019: Ms Simango also reported that after being appointed as referee to a match at Rufaro Stadium in Harare scheduled on 6 October 2019, Mr Zhoya called her to inform her that she would be travelling together with him and two other referees, Mr Yasini and Mr Masamban, in his car in order to reduce costs. However, when she arrived at the meeting point, the other referees were already in Harare, meaning that she would travel alone with Mr Zhoya. During this trip, Mr Zhoya proposed her to book a room for the two of them at the Jameson Hotel and to spend the night together. Again, even though she clearly rejected him and rebuked him for this conduct and for how it made her feel, Mr Zhoya did not stop his advances (**Incident 2**).

106. The Chamber further observed that the aforementioned incidents were contested by Mr Zhoya, who stated that he had never travelled alone with Ms Simango and that her assertions *"should be treated with caution since it's a question of her words against [his]"*.

107. Against this background, the Chamber first noted that Incident 1 was not substantiated nor corroborated with other evidence. In this respect, Ms Simango pointed out that *"[m]ost of his contact with [her] was through voice messages. There were no texts, WhatsApps because, by that time, [she] did not have a smartphone. [She] was using those small phones. [Her] smartphone had smashed. He used to call [her], no messages. Even text message on [her] mobile number, there were none, but it was mainly calls from him"*.

108. Although the Chamber found that the testimony of Mrs Simango with respect to Incident 1 seemed genuine, it nevertheless regretted that no additional evidence or material had been added to the file to fully discharge FIFA Ethics Committee's burden of proof. However, the Chamber observed that it was quite different with Incident 2 reported by Ms Simango.

109. Especially, the Chamber was comfortably satisfied that the circumstantial evidence established that Ms Simango officiated a match as second assistant referee on 6 October 2019 at Rufaro Stadium in Harare and that Mr Zhoya was the commissioner of the *Muschu vs CU* match played on 6 October 2019 in Bindura. Likewise, it was also proven that Mr Yasini and Mr Masamban were the referees for that match. In other words, the Chamber found that Ms Simango's statement was corroborated by additional evidence and materials collected by the Investigatory Chamber,

thus confirming the accuracy and content of the allegations levelled by Ms Simango against Mr Zhoya.

110. Accordingly, the Chamber was comfortably satisfied that Ms Simango's allegations were corroborated by the aforementioned indirect evidence and was therefore convinced that Mr Zhoya engaged in the conduct reported by Ms Simango, *i.e.*, invited her to spend one night together.

ii. Legal assessment

111. Having established that Incident 2 had occurred, the Chamber had to examine whether this conduct amounted to sexual harassment as reported in the Final Report.

112. In this regard, the Chamber observed that during the car trip to Harare, Mr Zhoya repeatedly invited Ms Simango to spend one night together at the Jameson Hotel in order "*to have a good time, an exciting time*", invitations that were clearly turned down by Ms Simango.

113. Bearing in mind that sexual harassment can take the form of unsolicited, unwanted, undesirable and offensive verbal, non-verbal or physical sexual behaviour and that the decisive factor is how the person concerned perceives it, in particular whether the person perceives it as desirable or undesirable, the Chamber considered the abovementioned behaviour to be an unwanted and unsolicited sexualised verbal proposition, amounting to sexual harassment in breach of art. 23 (3) and (4) FCE.

114. Indeed, Mr Zhoya clearly invited Ms Simango during the trip to spend one night together "*to have a good and exciting time*" - *i.e.*, to have sex together - despite the fact that she repeatedly rejected these offers. In particular, the Chamber found that there was no doubt that these sexualised verbal proposals were (i) unsolicited, (ii) unwanted and (iii) undesirable on the part of Ms Simango because, on the basis of her oral statement, she felt trapped and was led to lie in order to escape the sexual advances of a person she considered to be her superior.

115. In addition, the Chamber found that Mr Zhoya, by making unsolicited and unwanted sexual advances to Ms Simango, also violated the general obligation to protect, respect and safeguard Ms Simango's personal integrity and dignity pursuant to art. 23 (1) FCE.

iii. Conclusion

116. In light of the above reasoning, the Chamber considered that, by the conduct described above, Mr Zhoya failed to protect the physical and mental integrity of Ms Simango by sexually harassing her, and, as such, breached art. 23 FCE.

c. Did Mr Zhoya sexually harass Ms Mpande?

i. Factual assessment

117. With regard to Ms Mpande, the Chamber noted that she reported three incidents, but held that two of them, namely the WhatsApp conversation and the phone calls, could be considered together:

- The WhatsApp conversation and the phone calls of 4 and 5 March 2020 respectively: Ms Mpande described an incident of unwelcome sexual advances that occurred through the exchange of WhatsApp messages, in which Mr Zhoya asked her to come from Bulawayo and spend a night with him at the Jameson Hotel in Harare. Ms Mpande explained that this behaviour continued the following day via phone calls in which Mr Zhoya insisted that she comes to Harare.
- Ms Mpande also said that at the end of classes during referee courses, Mr Zhoya would invite her to his room to spend the night together. She also explained that during these courses, when she walked by, Mr Zhoya would look at her and make strange and unwelcome gestures and say "Mmm".

118. The Chamber further took note that Ms Mpande *"was surprised to hear an unwelcome message of sexual advancement which left me offended, humiliated, intimidated and degraded [...]"* and claimed that she had suffered Mr Zhoya's retaliation for rejecting his sexual advances since she was no longer appointed as a referee or invited to referee's courses.

119. On the other hand, the Chamber observed that the aforementioned incidents were contested by Mr Zhoya, who stated that he had never invited Ms Mpande to the Jameson Hotel, nor had he side-lined her from refereeing. He also emphasized that another person was responsible for the appointment of the referees, so that *"there was no way"* he could have side-lined her. In this respect, Mr Zhoya lastly argued that if Ms Mpande was not being appointed to matches, it was because of her physical condition as she failed the fitness tests, and as a result of these continued failures, she subsequently resigned of her own accord.

120. Bearing the above in mind, the Chamber turned to the evidence on file and noted that the allegations levelled against Mr Zhoya were corroborated by various means of evidence:

- A screenshot of a WhatsApp message from Mr Zhoya, writing to Ms Mpande that *"[he] will be booked at Jameson Hotel"*, to which she replied *"What about me ? If I get to Harare where will I be"*²².
- Recording of two phone conversations between Mr Zhoya and Ms Mpande:
 - On the first recording, Mr Zhoya can be heard saying *"But you child, let me ask. We were agreeing all along and then you asked me where I will go, and then I say to you... I'm in town (...) You come Saturday evening; I pick you [up]. We spend time*

²² Free translation from *Shona* into English.

together, then Sunday morning you go back... Now yesterday, you were asking me a lot of questions, like we're starting it all over. Why? Where did those questions come from? Yet we'd agreed", to which Ms Mpande replied that "No, I was following. And then I had to ask". Mr Zhoya then insisted and repeated the above with similar terms, but Ms Mpande cut off the conversation by indicating that there was "someone by my door" and she therefore proposed to Mr Zhoya to call back in 10 minutes.

- On the second recording, Mr Zhoya can again be heard saying " Yes, I was waiting for the response to the [what did you say]", but Ms Mpande declined the offer, explaining that "Apparently, I'm the preacher on Sunday, so I won't be able to travel." Following this refusal, Mr Zhoya ended the call apologizing for being pushy and stating that "I thought we'd agreed. I thought we'd agreed, initially. So, I was very optimistic" and informing her "We'll plan for next time When you have time let me know."
- Two witness statements:
 - Ms Sabelo Maphosa, ZIFA referee chief instructor, who confirmed the culture of abuse and intimidation in the ZIFA Referees Committee towards female referees under the promise of promotion. She also informed the Chief of the Investigation that Ms Mpande had made her aware of Mr Zhoya's harassment against her and admitted that Ms Mpande's career progression stopped after she rejected the unwelcome sexual advances.
 - Ms Claris Simango, ZIFA referee, who confirmed the events described by Ms Mpande.
- Circumstantial evidence: the exchange of communications between the Investigatory Chamber and ZIFA officials revealed that ZRC had organized a referee course, which took place at the Prince Edward High School in Harare from 6 to 8 March 2020. In the same line, the investigation carried out confirmed that Mr Zhoya was present at this course and had his accommodation at the Cresta Jameson Hotel paid by ZRC from 6 to 8 March 2020.

121. Having thoroughly examined this evidence, the Chamber was comfortably satisfied that Ms Mpande's allegations have been sufficiently corroborated by direct and indirect evidence and was therefore convinced that Mr Zhoya engaged in the conduct reported by Ms Mpande, *i.e.*, asked her to sleep with him on various occasions.

ii. Legal assessment

122. Having established that Mr Zhoya asked Ms Mpande on several occasions to sleep together, the Chamber had to examine whether this conduct amounted to sexual harassment as reported in the Final Report.

123. As already outlined, sexual harassment can take the form of unsolicited, unwanted, undesirable and offensive verbal, non-verbal or physical sexual behaviour and that the decisive factor is how the person concerned perceives it, in particular whether the person perceives it as desirable or undesirable. In this regard, the Chamber considered the abovementioned behaviour to be an unwanted and unsolicited sexualised verbal proposition, amounting to sexual harassment, in breach of art. 23 (3) and (4) FCE. Indeed, the Chamber held that Mr Zhoya clearly invited Ms Mpande on several occasions to spend one night together - *i.e.*, to have sex together - despite the fact that she repeatedly rejected these offers.
124. In particular, the Chamber found that there was no doubt that these sexualised verbal proposals were (i) unsolicited, (ii) unwanted and (iii) undesirable on the part of Ms Mpande, who *“was surprised to hear an unwelcome message of sexual advancement which left [her] offended, humiliated, intimidated and degraded”* even more as *“this person [was] [her] superior and [held] so much authority in as far as [her] refereeing career is concerned”*, making her feel cornered.
125. In addition, the Chamber found that Mr Zhoya, by making unsolicited and unwanted sexual advances to Ms Mpande, also violated the general obligation to protect, respect and safeguard Ms Mpande's personal integrity and dignity pursuant to art. 23 (1) FCE.

iii. Conclusion

126. In light of the above reasoning, the Chamber considered that, by the conduct described above, Mr Zhoya failed to protect the physical and mental integrity of Ms Mpande by sexually harassing her, and, as such, breached art. 23 FCE.

d. Did Mr Zhoya sexually harass Ms Muchuchu?

i. Factual assessment

127. With regard to Ms Muchuchu, the Chamber noted that she reported one incident that took place on 6 March 2020. In particular, she described how Mr Zhoya approached her and asked her to spend the night together at the Jameson Hotel. Ms Muchuchu further explained that Mr Zhoya would promote her if she would spend that night with him.
128. The Chamber also observed that Ms Muchuchu reported that these unwelcome sexual advances shocked her and made her feel angry and uncomfortable given that these proposals were very much unwelcome. Moreover, she claimed that since she rejected Mr Zhoya's advances, she was appointed for far fewer matches than before.
129. With regard to these allegations, Mr Zhoya merely rejected them, stating that the appointments for the Northern region were made by another person, Mr Marange. In other words, it was not possible for Mr Zhoya to appoint Ms Muchuchu to any match as it was not his competence.
130. Against this background, the Chamber then examined the evidence on file, all of which corroborating Ms Muchuchu's accusations:

- Two witness statements:
 - Ms Sabelo Maphosa, ZIFA referee chief instructor, who confirmed the culture of abuse and intimidation in ZRC towards female referees under the promise of promotion. She also stated that Ms Muchuchu had not been promoted with no motive, explaining that *“When [Ms Muchuchu] turned the advances down, she had been part of those who were meant to go for promotion but without any reason, her name was dropped [...]”*.
 - Ms Proggess Chatsawama, ZIFA referee, who confirmed the events described by Ms Muchuchu. Specifically, she stated that during a seminar they both attended, Ms Muchuchu told her in confidence about the unwelcome and inappropriate proposals made to her by Mr Zhoya.
- Circumstantial evidence: the exchange of communications between the Investigatory Chamber and ZIFA officials revealed that ZRC had organized a referee course, which took place at the Prince Edward High School in Harare from 6 to 8 March 2020. In the same line, the investigation carried out confirmed that Mr Zhoya was present at this course and had his accommodation at the Cresta Jameson Hotel paid by ZRC from 6 to 8 March 2020.

131. After careful consideration of this evidence, the Chamber was comfortably satisfied that Ms Muchuchu's allegations were sufficiently corroborated by indirect evidence. In particular, the circumstantial evidence allowed the Chamber to conclude that both Mr Zhoya and Ms Muchuchu attended a ZIFA referee course in Harare from 6 to 8 March 2020, and that it was during this course that Mr Zhoya asked Ms Muchuchu to spend a night together in exchange for a promotion, an allegation that was further confirmed by two witnesses.

ii. Legal assessment

132. Having established that Mr Zhoya asked Ms Muchuchu to spend a night together against a promotion, the Chamber had to examine whether this conduct amounted to sexual harassment as reported in the Final Report.

133. Taking the same definition of sexual harassment and the same criteria applied in the case of the two other victims of Mr Zhoya, the Chamber considered the abovementioned behaviour to be an unwanted and unsolicited sexualised verbal proposition, equivalent to sexual harassment in breach of art. 23 (3) and (4) FCE. Indeed, Mr Zhoya asked Ms Muchuchu to spend one night together, *i.e.*, to have sex together, in exchange for the promise of a promotion. In particular, it was clear to the Chamber that these sexualised verbal proposals were (i) unsolicited, (ii) unwanted and (iii) undesirable by Ms Muchuchu, who was shocked, angry and uncomfortable with these proposals, which were very unwelcome and immediately turned down.

134. In addition, the Chamber found that Mr Zhoya, by making unsolicited and unwanted sexual advances as well as by promising advantage to Ms Muchuchu, also violated the general obligation to protect, respect and safeguard Ms Muchuchu's personal integrity and dignity pursuant to art. 23 (1) FCE.

iii. Conclusion

135. In light of the above reasoning, the Chamber considered that, by the conduct described above, Mr Zhoya failed to protect the physical and mental integrity of Ms Muchuchu by sexually harassing her, and, as such, breached art. 23 FCE.

2. Did Mr Zhoya abuse his position towards three ZIFA female referees ?

a. Notion of "abuse of position"

136. In view of the conclusions of the Investigatory Chamber, namely that Mr Zhoya took full advantage of his position of General Secretary of ZRC to intimidate and sexually harass three ZIFA female referees while being their direct superior, the Chamber wished first to recall the content of art. 25 (1) FCE, which reads as follows:

" 1.

Persons bound by this Code shall not abuse their position in any way, especially to take advantage of their position for private aims or gains."

137. Upon reading this provision, the Chamber held that the main question was whether Mr Zhoya took advantage of his position as General Secretary of ZRC for private aims, *i.e.*, to make sexual advances to ZIFA female referees.

b. Factual assessment

138. To begin with, the Chamber noted that (i) the three victims, namely Ms Simango, Ms Mpande and Ms Muchuchu, were all ZIFA referees at the time Mr Zhoya sexually harassed them and (ii) he was already serving as General Secretary of ZRC at that time²³.

139. In this regard, the Chamber found that the sexual advances made by Mr Zhoya were closely linked to his activities as General Secretary. Indeed, the Chamber noted that:

- Ms Simango was sexually harassed in Mr Zhoya's car while they were both travelling to stadiums to either referee or commission a match. In addition, Ms Simango stated that it was Mr Zhoya who decided that she, and allegedly two other referees, should travel in his car to cut costs.
- Ms Mpande was sexually harassed by messages and phone calls from Mr Zhoya, who asked her to join him at the Jameson Hotel in Harare to spend the night together. It has already been clarified that the hotel room was covered by ZRC because Mr Zhoya was attending a ZIFA referee course in Harare.

²³ Cf. para 3 *supra*.

- Ms Muchuchu was sexually harassed during the abovementioned course, which she attended while Mr Zhoya was also present at the course at the expense of ZRC.

140. More importantly, the Chamber noted that Ms Simango and Ms Mpande, both referred to Mr Zhoya as their superior²⁴, while the fact that the latter promised Ms Muchuchu a promotion if she slept with him made it clear that Mr Zhoya was “hierarchically superior” to his three victims.

141. In addition, Mr Zhoya's particular authority over his victims was also evident in their reactions when they were sexually harassed: Ms Simango felt cornered and had to lie to find a way to escape his sexual advances, Ms Mpande was surprised, felt intimidated and degraded, while Ms Muchuchu was angry and felt uncomfortable.

142. Finally, the Chamber expressed concern that all three victims concordantly stated that after rejecting Mr Zhoya's sexual advances, they were no longer appointed as referee or for far fewer matches than before, which was even partially confirmed by the ZIFA chief referee instructor, Ms Maphosa, who confessed that (i) Ms Mpande's career progression had stopped after she rejected the unwelcome sexual advances and that (ii) Ms Muchuchu had not been promoted, without any grounds.

143. In view of the above, the Chamber concluded that the position of Mr Zhoya as General Secretary of ZRC obviously played a preponderant role on his victims when he made his sexual advances to them.

c. Legal assessment

144. On the basis of the above developments, the Chamber held that Mr Zhoya consciously used his position as General Secretary of ZRC to make sexual advances to three female ZIFA referees. Indeed, the Chamber found that Mr Zhoya approached his three victims in a context where he knew, or should have known, that he had a position of superiority over them. This, even if there would have been no direct hierarchical link between Mr Zhoya and his victims.

145. Furthermore, Mr Zhoya's behaviour shows that he did not fear reprisals from his victims as he made several sexual advances within a short period of time, *i.e.*, at least three approaches in less than six months, nor from ZIFA, as the case file suggests that his behaviour was known to other ZIFA officials, and nothing appears to have been undertaken by them. The three victims, on the other hand, all ended up suffering retaliation as they were no longer, or less, designated for matches or even not promoted. In particular, the Chamber observed that there was no suggestion in the case file that the three victims had been side-lined or prevented from being promoted for any rational reason. For the Chamber, this clearly underlined the fact that Mr Zhoya had sufficient authority and power to influence the careers of his victims.

²⁴ Ms Simango stated that “Mr Zhoya started calling me, which I wouldn't expect, a call, just a call from my superiors, without an intention to that call.”

Ms Mpande stated that “this person is my superior and holds so much authority in as far as my refereeing career is concerned.”

146. In other words, the Chamber found that Mr Zhoya used his position of power over his victims and the impact that his position could have on them, or on their respective careers, to obtain private benefits through sexual advances. In particular, the reactions of his victims to the sexual advances were very revealing in that Ms Mpande felt intimidated, Ms Muchuchu felt humiliated and degraded, while Ms Simange felt cornered. According to the Chamber, it cannot be denied that Mr Zhoya used his hierarchical advantage and his influence over the victims to increase his chances of being granted sexual favours, even going so far as to promise a promotion in exchange for sex. Indeed, after reviewing the evidence in the case file, the Chamber concluded that Mr Zhoya's victims knew, or at least believed, that he could influence their respective careers.²⁵

d. Conclusion

147. In light of the above reasoning, the Chamber considered that Mr Zhoya used his position as General Secretary of ZRC to try to obtain sexual favours, thereby abusing his position for private aims in clear breach of art. 25 FCE.

148. By breaching arts. 23 and 25 FCE, the Chamber found that Mr Zhoya failed to behave in a dignified and ethics manner, therefore failing to comply with art. 13 FCE – *General Duties*.

C. Summary

149. To summarise the above, the Chamber considered that the information and evidence contained in the Final Report indisputably demonstrated that Mr Zhoya had abused his position of General Secretary of the ZIFA Referees Committee to make sexual advances to three ZIFA female referees – and in doing so sexually harassed them – in breach of art. 23 and 25 FCE, and by extension art. 13 FCE considering that he failed to behave in a dignified and ethics manner.

150. In particular, the Chamber noted that Mr Zhoya limited himself to denying the accusations levelled against him, but did not provide any evidence, justification or relevant elements that could have call into question the probative value of the direct and indirect evidence collected by the Investigatory Chamber.

D. Determination of sanctions

151. The violation of the FCE by Mr Zhoya having been established, the Chamber subsequently considered the sanction(s) to be imposed.

152. According to art. 6 (1) FCE, the Chamber may pronounce the sanctions described in the FCE, the FIFA Disciplinary Code (**FDC**) and the FIFA Statutes.

153. For the sake of good order, the Chamber underlined that it was responsible to determine the scope and extent of any sanction and shall take into account all relevant factors of the case,

²⁵ Cf. para 140 *supra*.

including the nature of the offense, the offender's assistance and cooperation, the motive, the circumstances, the degree of the offender's guilt, the extent to which the offender accepts responsibility and whether the person mitigated his guilt by returning the advantage received (art. 9 FCE).

154. In particular, when evaluating the appropriate sanctions to be imposed, the Chamber should also take into consideration the seriousness of the violation, and the endangerment of the legal interest protected by the relevant provisions of the FCE.
155. Against this background, the Chamber pointed out that Mr Zhoya was found guilty of violating arts. 13, 23 and 25 FCE by having abused his position held in the ZIFA Referees Committee to make sexual advances to three ZIFA female referees.
156. In this regard, the Chamber found that his position as General Secretary of ZRC gave Mr Zhoya some power and authority, as he explained to the Chief of the Investigation. Indeed, the Chamber took note of the fact that Mr Zhoya claimed to have attended all ZRC meetings and that he was also able to provide input and participate in discussions at these meetings. This special status was also recognised by the three victims, all of whom considered Mr Zhoya to be their superior.
157. Therefore, the Chamber found that Mr Zhoya had a special responsibility and position of trust towards the ZIFA referee community, including towards the ZIFA female referees. However, as already mentioned, Mr Zhoya took advantage of his position to make sexual advances, in total violation of his obligation to protect, respect and safeguard the integrity and personal dignity of the individuals hierarchically below him. Indeed, the Chamber again emphasised that Mr Zhoya knew, or should have known, that he was in a position of superiority over them.
158. As a result, the Chamber was of the opinion that Mr Zhoya's behaviour was inexcusable and a disgrace for any football official. The pain and suffering caused to the victim, and possibly other victims of sexual harassment, cannot even be fully comprehended and represents a very dark stain on the image and reputation of football as a sport loved by so many, whose principal value and credo is "fair play."
159. FIFA, as the international governing body of football, has a direct interest in deterring similar conducts, which undermine the trust placed in the organization by football officials and third parties worldwide.
160. With regard to the circumstances of the case, the Chamber considered the infringements committed by Mr Zhoya as serious for the following reasons:
- As mentioned, Mr Zhoya held a position of trust within the ZIFA referee community as he was the General Secretary of ZRC and was considered a superior by his victims. As such, Mr Zhoya was supposed to be a mentor and role model, but instead he used his position and influence to sexually harass three female referees.

- This behaviour was repeated on at least three occasions, namely towards Ms Simango, Ms Mpande and Ms Muchuchu, to whom he made unwanted and unsolicited sexual advances.
- Despite the evidence against him, Mr Zhoya showed no remorse or admission of his conduct and did not apologise to his victims.

161. Notwithstanding the above, the Chamber found that Mr Zhoya's case, although serious, was not at the same level as some recent cases decided by this Chamber in which minor players have been sexually harassed, abused and even raped²⁶. In the present case, Mr Zhoya's behaviour consisted of sexual advances, and thus was not aggravated by other gestures and means to obtain sexual favours.

162. The Chamber insisted on the fact that the above findings were not intended to excuse Mr Zhoya's conduct in any way, but rather to precise the degree of seriousness of his conduct within the meaning of art. 23 (5) FCE. Indeed, this provision provides for a minimum ban of two years, but in cases of sexual exploitation or abuse, or in serious cases and/or in the case of recidivism, the ban to be imposed must be at least of ten years. In this regard, the Chamber considered that the conduct in the present case fell into the lower category of art. 23 (5) FCE, so that the minimum sanction to be imposed should be a ban of at least two years.

163. The above clarified, the Chamber found that, although the behaviour of Mr Zhoya was less serious than in other cases related to art. 23 FCE, his conduct could under no circumstances be tolerated and should be sanctioned accordingly.

164. Having carefully analysed Mr Zhoya's conduct, the Chamber considered that the minimum sanctions provided for in art. 23 (5) FCE were too lenient. Not only did Mr Zhoya sexually harass three female referees, but he did so by abusing the position of authority he had over them. In particular, the Chamber recalled that under art. 11 FCE, in case of concurrent violation of the Code, such as in the present case where Mr Zhoya was found in breach of arts. 13, 23 and 25 FCE, the sanction should be based on the most serious violation and may be increased depending on the specific circumstances of the case.

165. In this regard, the Chamber found that Mr Zhoya's behaviour was extremely perverse as the victims found themselves in a very difficult and delicate situation when Mr Zhoya made his sexual advances as they knew, or at least believed, that Mr Zhoya could influence their respective careers, so they either had to accede to his requests or potentially see their careers negatively impacted if they refused to sleep with him. From the evidence on file, it was clear to the Chamber that all three victims faced retaliation from Mr Zhoya, as they all reported that their refereeing careers had been severely affected since they were no longer, or less, appointed to referee matches or that they had been denied promotion for no apparent reason.

166. Therefore, having considered all the elements of the case, the Chamber found that a ban on participating in any football-related activity at national and international level for five (5) years

²⁶ Cf. Decision Adj. ref. no. 3/2020 sanctioning Mr Yves Jean-Bart; Decision Adj. ref. no. 12/2019 sanctioning Mr Keramuudin Karim confirmed by the Court of Arbitration for Sport in CAS 2019/A/6388.

was appropriate and proportionate to the offences committed. In particular, the Chamber considered that this sanction complied with those foreseen under arts. 23 and 25 FCE and would produce the necessary deterrent effect. For the sake of good order, the ban comes into force as soon as the terms of the decision are communicated in accordance with art. 42 (1) FCE.

167. Finally, the Chamber pointed out that all the provisions that Mr Zhoya violated provide for the imposition of a fine in addition to a ban. Therefore, pursuant to art. 13 (5), 23 (5) and 25 (2) FCE, the Chamber considered that the ban imposed on Mr Zhoya should be supplemented by a fine, a financial sanction which has a strictly punitive purpose in this case.

168. Bearing in mind that the amount of the fine may not be less than CHF 300 and not more than CHF 1,000,000 in view of art. 6 (2) FCE in conjunction with art. 6 (4) FDC, the Chamber - taking into account the various circumstances of the case - considered that a fine of CHF 20,000 was appropriate. Accordingly, Mr Zhoya was ordered to pay a fine of CHF 20,000.

III. DECISION OF THE ADJUDICATORY CHAMBER

1. Mr Obert Zohya is found responsible for having breached art. 23 (Protection of physical and mental integrity), art. 25 (Abuse of position) and by corollary art. 13 (General duties) of the FIFA Code of Ethics, in relation to acts of sexual harassment towards female referees of the Zimbabwe Football Association.
2. Mr Zhoya is hereby banned from taking part in any kind of football-related activity at national and international level (administrative, sports or any other) for a duration of five (5) years, as from the notification of the present decision.
3. Mr Zhoya is ordered to pay a fine to the amount of CHF 20,000.
4. The fine is to be paid within 30 days of notification of the present decision.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Vassilios Skouris

Chairperson of the adjudicatory chamber of the FIFA Ethics Committee

NOTE RELATED TO THE LEGAL ACTION:

According to art. 57 (1) of the FIFA Statutes reads together with art. 82 of the FCE, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to CAS directly within 21 days of receipt of notification of this decision. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with CAS.

NOTE RELATED TO THE FINANCIAL SANCTION:

The payment of the fine and costs of the proceedings can be made either in Swiss francs (CHF) to account no. 0230-325519.70J, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH85 0023 0230 3255 1970 J or in US dollars (USD) to account no. 0230-325519.71U, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH95 0023 0230 3255 1971 U, with reference to case no. "FED-263" in accordance with art. 7 (e) FCE.

NOTE RELATED TO THE PUBLICATION:

The public may be informed about the reasons for any decision taken by the Ethics Committee. In particular, the chairperson of the adjudicatory chamber may decide to publish the decision taken, partly or in full, provided that the names mentioned in the decision (other than the ones related to the party) and any other information deemed sensitive by the chairperson are duly anonymized (cf. art. 36 FCE).