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# Initial Human Rights Assessment (Final Draft)

Snezana Samardzic-Markovic

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## Executive summary

While studying the World Anti-Doping Code and International Standards, reading independent observers reports from the major international events, consulting with athletes and numerous other stakeholders, I have noted the quality (the scientific knowledge, professional competence and commitment of many individuals and organisations), as well as the quantity of significant human and financial resources invested in the highly developed and intricate anti-doping system which exists today. This leaves me with a sense that the entire system is indeed guided by the best intentions outlined in the values of the Code.

On the other hand, my mandate is to understand athletes' perceptions and try to examine from their perspective where - in the interaction between the anti-doping system and individual athletes - the risks for their human rights might occur. Many athletes I consulted understand that being an athlete, and in particular an elite, high-performance athlete, entails a corresponding "elite" public responsibility and a dedicated commitment to clean sport.

The Code firmly outlines that the rules and institutions are there for athletes, "to protect the Athletes' fundamental right to participate in doping-free sport"<sup>1</sup>. However, many of them often perceive the system not first and foremost as a service established to support and protect athletes and their rights, but rather as a means to monitor and catch them. They may trust WADA<sup>2</sup> and ADOs, and yet this makes them no less perceived as "policing" bodies.

This potential discrepancy between the considerable efforts which have been put into the system on the one hand and the athletes' perceptions and feelings about that system on the other, is a challenge. And it is a missed opportunity for greater enhancement of the common fight against doping.

Beyond that: if the athletes perceptions are of inequality of arms, disproportionality of sanctions, dangers of contamination, possible system errors, risk of a serious loss of income, isolation and mental health concerns; if they sometimes feel that they are being exposed to anarchy<sup>3</sup> where they are the object of demands without accountability on the other side, then - in spite of all the enormous efforts invested, is it surprising they doubt that the system is there for them?

In its Strategies WADA has recognised the importance of trust<sup>4</sup>, acknowledging that trust and credibility cannot be given as won or be taken for granted. I believe that more attention to the human rights of individual athletes can only contribute to this strategic goal. This means both the rights of clean athletes, but also those against whom an Anti-doping Rule Violation (ADRV) has been established, particularly because the all-important and ostensibly laser-sharp borderline between the two is established on the balance of probabilities.

This Initial Human Rights Impact Assessment (IHRIA) aims to help WADA's further understanding of how regulation, policies and programs may adversely impact human rights of athletes, to ascertain if improvements in practice could be made to better serve the athlete community, and to exhibit a commitment to addressing any weaknesses or deficiencies. It ensures an athlete-centred approach by examining not only norms and policy, but how anti-doping policy is being applied.

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<sup>1</sup> WADC 2021, Purpose, scope and organisation of the world anti-doping program and the Code.

<sup>2</sup> 2023 Strategic KPIs Survey by WADA, on Strategic Priority "Be Athlete Centred", indicator of athlete Engagement and Satisfaction: 74% of athletes believe WADA is concerned about their welfare, 61% of athletes have a positive perception of WADA (i.e. would speak positively of WADA).

<sup>3</sup> As expressed by Ryan Pini, the Chair of WADA's Athlete Council, at WADA Annual Symposium in Lausanne, 2024

<sup>4</sup> The WADA Strategic Plan 2020-2024, Priority *be visible*, activity 3. "Position and reinforce WADA as the leading voice in anti-doping, cementing trust and credibility of the global anti-doping system". Wada Strategic Plan 2024-2029 identifies among the areas to deliver impact: "enhancing public trust and confidence in sport".

The IHRIA was based on the World Anti-Doping Code 2021 version, its supporting International Standards, Guidelines, and other relevant documents. However, due to the unique timing of the Code update process taking place alongside, the findings and recommendations from the IHRIA were able to influence that process.

Encouraged both by invitation from the WADA Code Drafting Team and by CAHAMA, I participated in the Code update process. The draft version of the 2027 Code includes changes that, from a human rights perspective, represent clear improvements.

Once the Code update process is closer to its finalisation, at the end of this document an Annex will provide a non-exhaustive list of changes that were inspired by—or are related to—the IHRIA. Otherwise, the document in front of you comprises five distinct chapters.

The inaugural chapter delves into an analysis of WADA's existing human rights acquis, revealing numerous commendable achievements. For example, a comparison of various editions of the World Anti-Doping Code shows an obvious evolution over time toward greater acknowledgment of athletes' rights. These historical strides, as well as the existing standards, should instil confidence in WADA and its stakeholders that the human rights of individual athletes are not in disbalance with the rights of athletes to fair competition. This impact assessment and its recommendations will argue that a fortified dedication to the fundamental rights in the future would only enhance the strength of the anti-doping system in promoting fair play, not weaken it.

The second chapter briefly outlines the backdrop against which WADA decided to embrace the then Athletes Committee's initiative and to commission this Assessment. Both public authorities and sport movement have recently exhibited more interest for human rights in sport. Athletes have been actively testing and continue to test the anti-doping standards in tribunals and courts across the globe, including human rights courts, thereby subjecting these standards to a sort of rigorous ongoing contest and audit. Although the anti-doping standards withstood these tests, the complex and diverse global landscape, challenges, and crisis give no space for complacency, necessitating the continuing enhancement of human rights norms and practices.

The third chapter is trying to better understand WADA's genesis and role, and through these lenses to comprehend the reasons how certain concepts such as the principle of strict liability, or harmonization, or deterrence strategy, relate to human rights. Although a common pattern in the evolution of organisations and systems, WADA's mission, legal standards, and its methodologies are shaped as reactive, addressing issues as they arose. This Assessment, however, was not driven by a response to any immediate scandal. This will hopefully prove to be a compelling argument for human rights' appraisal to be seen as a proactive approach, one that goes beyond crisis management.

Consequently, the logic of a proactive approach strongly influenced the fourth, and most extensive, chapter of this report, which endeavours to pinpoint both perceived and genuine human rights risks. Certain significant topics are intentionally omitted as they have already been adjudicated by human rights courts. Risks are delineated through the narratives of athletes, highlighting potential adverse impacts on their human rights across the entire spectrum of the anti-doping process, from the sample collection to the result management. Additionally, it identifies groups that may be particularly vulnerable, such as minors or para-athletes, and specific areas that are susceptible, such as inadvertent doping, anti-doping education, and meaningful engagement of athletes. The identification of these risks does not automatically ascribe legal liability or primary responsibility to WADA in all cases. In many instances, responsibility may lie with other entities within the diverse anti-doping ecosystem, and could be attributed to implementation issues, to an omnipresent lack of resources, and/or to inadequate prioritization.

The fifth and last chapter contains 24 recommendations structured around immediate, mid-term and long-term actions. They attempt to respond to identified risks and like the rest of the report, are inspired by the UNGP on Business and Human Rights.

WADA has already made pioneering efforts to use its leverage in introducing the notion of human rights among its stakeholders. As a result, the anti-doping system steadily improved over time. However, more must be done for individual athletes who bear both the primary responsibility and direct sanctions. Enhancing respect for their rights offers the best chance to transform athletes from objects of doping control into proactive subjects in the global protection of clean sport. This is the main underlining idea of the Initial Human Rights Impact Assessment and its recommendations.

## Chapter I: WADA's Exiting Acquis

Many historical sources maintain that doping, in its different forms, existed even in Ancient Greece, where the Olympic games brought to the athletes both glory and considerable income.

On the other hand, the recognition of the connection between athletes' fundamental rights and doping is far more recent. For example, in 1967 the Committee of Ministers of the Council of Europe adopted Resolution (67) 12 on the Doping of Athletes, that acknowledged the detrimental effects of "certain practices known as 'doping', which (...) jeopardize the health and dignity of those who resort to it and offend against the spirit of fair play that is essential to all sports".

Furthermore, the Council of Europe Convention against doping, from 16 November 1989, includes provisions that emphasize the importance of respecting the fundamental rights of suspected athletes during disciplinary procedures<sup>5</sup>.

The UNESCO International Convention against Doping in Sport, which was adopted in 2005, does not explicitly mention human rights in its provisions. However, in its preamble there is a reference to "existing international instruments relating to human rights".

By acknowledging the impact of doping on athletes' health, dignity, and fair play, these resolutions and conventions lay the foundation for addressing the intersection of doping and human rights in the context of sports.

In 1999, a significant development occurred with the establishment of the World Anti-Doping Agency (WADA) through a collaboration between the Olympic movement and public authorities. The primary objective of WADA was to coordinate and harmonize the diverse rules and actions related to doping that existed within sports organisations and national legislations.

Over time, WADA also began incorporating the notion of human rights into its own documents and practices. In some instances, human rights are explicitly emphasized, while in others there is implicit recognition of their importance. An evolution can be noticed when comparing the different versions of the World Anti-Doping Code (WADC)<sup>6</sup>, as well as when cataloguing other important documents and practice in WADA.

### World Anti-Doping Code

The Code is the core document that sets out the anti-doping rules and principles, bringing consistency to the regulation and practices of the different international federations and States across the globe.

The original version of the Code, dating back to 2003, explicitly mentions human rights only once, in a comment related to Article 10.5.2, titled "No Significant Fault or Negligence". The comment explains that the option to reduce or eliminate a sanction (period of ineligibility) aligns with basic principles of human rights, aiming to strike a balance between Anti-Doping Organisations advocating for a much narrower exception or no exception at all, and those who propose reducing a two-year suspension when the athlete admits fault. While the inclusion of human rights in this early version is commendable, their invocation is primarily pragmatic -to strike a balance between different ADOs. They are mentioned only in a comment, and they are not explicitly referenced elsewhere in the text.

Surprisingly, the subsequent iteration of the Code, released in 2009, does not explicitly mention human rights at all. Still, in its substance, this version embraces human rights

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<sup>5</sup> Specifically, Article 7, para 2d of the convention highlights the need to conduct disciplinary procedures while "applying agreed international principles of natural justice and ensuring respect for the fundamental rights of suspected sportsmen and sportswomen".

<sup>6</sup> Further on, I will mainly refer to it as "the Code".

principles to a greater extent. It expands the grounds for sanction reduction, introduces more flexibility in determining the start of the ineligibility period, reiterates the fundamental rights to health and equality of athletes worldwide, just as the initial 2003 version did, and incorporates educational programs into the rationale of the World Anti-Doping Code. Nevertheless, the concept of human rights remains only implicitly inferred, awaiting better recognition in the next generation of the Code.

The 2015 version of the WADC stands out as the first iteration to explicitly acknowledge and prioritize human rights as a crucial principle conscientiously integrated throughout the document. Notably, in the introduction and overarching purpose of the Code, it states that: "The Code has been drafted giving consideration to the principles of proportionality and human rights". The emphasis on human rights is echoed when explaining how those bound by the Code should incorporate its standards into national legislation or sport rules. This could be seen as WADA's pioneering efforts to use its leverage and exercise its global leadership in introducing the notion of human rights among the stakeholders.

During the consultations for this version of the Code, WADA sought the expertise of late Judge Jean-Paul Costa, former President of the European Court of Human Rights, to assess the compatibility of various provisions in the draft revision with internationally accepted principles of law and human rights. Judge Costa provided a favourable opinion on most proposals and offered valuable suggestions on enhancing the protection of athletes' rights. Seeking expert input and incorporating suggestions to strengthen athlete safeguards was a significant step toward reinforcing the Code's legitimacy in relation to human rights, and a modest step on the course toward human rights due diligence procedure.

In addition to the explicit reference to principles of human rights, the amendments introduced in the 2015 version of the Code mark meaningful progress compared to its predecessor. These amendments provide greater flexibility in sanctioning, with longer periods of ineligibility for confirmed offenders while incorporating specific circumstances to accommodate those who can prove their innocence. The Code also places emphasis on concepts such as smart test distribution planning together with better targeting and enhances fairness in the anti-doping process.

Similarly to its predecessor<sup>7</sup>, the 2021 version of the WADC explicitly references human rights at the same significant junctures.

In addition, provisions are outlined to strengthen fair hearings and appeals processes for individuals accused of anti-doping rule violations, such as timely hearings; panels which are fair and impartial and operationally as well as institutionally independent; the right to legal representation; and the issuance of timely, written, reasoned decisions. Additionally, governments are encouraged to consider human and fundamental rights, along with relevant national legislation, while respecting arbitration as the preferred means of resolving doping-related disputes.

From WADC's inception, sensitivity towards minor athletes has been evident and different iterations of the Code have progressively enhanced their protection to some extent. However, it was not until the 2021 version that some para athletes and athletes with impairments were also acknowledged, alongside minors, as Protected Persons in the anti-doping framework. WADA's leadership in this regard deserves recognition within the broader context of human rights, but there is still a lot of potential for further enhancement, to which I will come back in the last two chapters of this report.

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<sup>7</sup> Judge Costa was asked again to answer several questions concerning the revised World Anti-Doping Code (the "2021 Code") regarding its compliance with human rights standards.



## International Standards (IS):

WADA has developed International Standards for different technical and operational areas within the anti-doping program, which are mandatory for compliance with the Code. They too reflect the evolving recognition of human rights, using in their introductory articles the identical text which confirms that each International Standard “has been drafted giving consideration to the principles of proportionality, human rights, and other applicable legal principles”.

Being one of the oldest ISs, and due to its strong potential exposure to adverse human rights impacts, the International Standard for Testing and Investigations (ISTI) may be an interesting example. In addition to declaring adherence to the principles of proportionality and human rights, ISTI attempted to reflect this spirit in more specific provisions, such as the need for testing plans and actions to be proportionate to the risk of doping, ensuring that measures taken in testing and investigations are reasonable and aligned with the level of risk involved; or emphasizing integrity, security, privacy, and dignity of athletes during the sample collection process.<sup>8</sup>

The Doping Control Officers (DCO) are responsible for ensuring that athletes are informed of their rights and responsibilities<sup>9</sup>, thus promoting transparency and fairness. The DCO must provide the athlete with an opportunity to document any concerns they may have about how the sample collection session was conducted<sup>10</sup> which enables athletes to give their feedback.

However, together with the Whereabouts system linked with out-of-competition testing, sample collection is perceived by athletes to be one of the most sensitive issues regarding their human rights. I will come back to these concerns later in the report.

Another example relates to one of the International Standards of the newer generation, namely the International Standard for the Protection of Privacy and Personal Information, which refers to different international data protection standards and to the case law of the European Court of Human Rights<sup>11</sup>. This is a modern IS, prepared through a series of consultations with stakeholders in a manner closest to the human rights due diligence procedure.

## Statutes and Governance Regulations

The inclusion of human rights principles in the WADA Statutes and Governance Rules is important in the overall picture.

For example, Article 4, point 6 of the WADA Statutes highlights the importance of establishing and promoting harmonized rules, disciplinary procedures, sanctions, and other means of combating doping while taking into account the rights of athletes. Further, Article 6, which pertains to the composition of the WADA Foundation Board, emphasizes regional and gender balance, as well as the requirement for members to demonstrate the highest standard of integrity.

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<sup>8</sup> The stated objective of conducting the Sample Collection Session, as outlined in ISTI Article 7.1.

<sup>9</sup> ISTI Article 7.3.2

<sup>10</sup> ISTI Article 7.4.4

<sup>11</sup> “A WADA expert reference group reviewed, discussed and prepared this document, and specifically took into account the Organization for Economic Cooperation and Development’s (OECD) 1980 Guidelines on the Protection of Privacy and Transborder Flows of Personal Data; the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS. No. 108); the APEC Privacy Framework; the Charter of Fundamental Rights of the European Union, EU Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data (General Data Protection Regulation), and other international and regional data privacy rules, standards and case law, such as the judgement of the European Court of Human Rights of 18 January 2018 (FNASS and others vs. France).”



Among the principles that candidates for the positions of President and Vice President should observe<sup>12</sup> important requirements are integrated, such as respecting human dignity, rejecting discrimination in any form, and prohibiting harassment, abuse, and any physical or mental injuries to others.

## Strategic Plan

The WADA Strategic Plan 2020-2024, titled "Leading Anti-Doping in a New Era", outlined WADA's guiding values, objectives, and priorities. While not explicitly quoted as human rights principles, some of these guiding values - such as diversity and inclusivity in ensuring equal opportunities for representation; or the development of policies, procedures, and practices that reflect justice, equity, and integrity; are clearly relevant.

The first priority of the strategic plan was to *lead by example* by taking bold steps to proactively address emerging issues. One of such leadership steps was to explore the intersection between human rights of athletes and anti-doping policies, which further feeds into another relevant priority, namely, to be *athlete centred*, to seek athletes' views and address their feedback. This will be explored in greater depth later in my report.

## Some Examples of Good Practice Regarding Human Rights:

### – Stakeholder Consultations:

The importance of stakeholders' consultations for WADA cannot be overstated, particularly keeping in mind that one of its main purposes is harmonisation. The Code itself emphasizes the significance of consultations (or "reasonable consultations") numerous times, in various contexts, in relation to International Standards, Technical Documents, methods of establishing facts and presumptions, the prohibited list, monitoring, testing, athletes' whereabouts information, and most notably, when making amendments to the Code.

This inclusive approach to gathering input from relevant stakeholders such as athletes, athlete representatives, national anti-doping organisations, sports organisations, and governments, enhances the legitimacy and effectiveness of the Code and helps ensure that the anti-doping policies and measures developed are informed, practical, and widely accepted.

However, it is still important to make a distinction between these consultations in legislative and standardization efforts, on the one side, and the human rights due diligence process suggested by the UNGPs on Business and Human Rights on the other. This distinction will be elaborated later in the last two chapters.

### – The Athletes' Anti-Doping Rights Act:

This essential document, included as an attachment to the 2021 Code, represents a significant contribution to stakeholder consultations, particularly involving the athletes. The Athlete's Rights Act outlines a set of rights to which athletes are entitled in the anti-doping context, such as the right to fair and equal treatment, the right to privacy, the right to a fair hearing, and the right to access education and support services.

### – Governance Reform:

The governance reform undertaken by WADA in recent years represents an important development towards recognizing the importance of human rights for athletes. The reform process, initiated in 2016 and concluded by the changes in the Statutes and Governance

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<sup>12</sup> WADA Governance Rules

Regulations approved by the Foundation Board in June 2023, aimed to improve diversity, independence and representation, particularly for athletes, within WADA's decision-making bodies.

Athletes' engagement played a vital role in a part of the governance reform process, particularly when it comes to improving athlete representation in WADA's governance. One of the key outcomes was the creation of the reformed WADA Athlete Council and its representatives assuming seats within WADA's governing bodies, including the Executive Committee (ExCo), Foundation Board, and Standing Committees.

Furthermore, athlete representatives are included in the Strategic Testing Expert Advisory Group, which advises WADA on testing strategies, and in WADA's Independent Observer teams, which ensures that athletes have a voice in the monitoring, evaluation and oversight of anti-doping measures.

– Ombuds Program:

In November 2021, WADA's Executive Committee (ExCo) endorsed a project for an Athletes' Anti-Doping Ombuds Program. This proposal was put forward by WADA's Athlete Committee because it was important to provide athletes with an independent, dedicated ombudsperson to address their concerns and give them timely legal advice free of charge. The project was launched at the WADA Annual Symposium in March 2023; it is a clear sign of commitment to the rights, including human rights, of athletes and it provides valuable insights and feedback to inform the potential expansion and implementation of such programs on a broader scale in the future.

During my consultations with the senior staff from the WADA Secretariat, I discovered a commendable practice of certain units and departments within WADA, such as Testing and Result Management or the Legal Department, to reach out to legal firms and independent experts to assess potential human rights concerns before introducing new activities and policies. This is a proactive approach to preventing adverse human right impacts. Although positive organisational culture, this practice should grow from sometimes a compartmentalised or spontaneous manner, towards a comprehensive organisational strategy.

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As illustrated, the awareness of human rights is present in WADA's documents, policies and practice. The next chapters will describe what more could be done, where challenges present opportunities to enhance and operationalise WADA's human rights commitment. Before that, though, it is relevant to portray the context in which my assessment took place as well as to correctly understand WADA's role in order to frame the level of ambition and expectations.

Through the very initiative to conduct an initial human rights impact assessment, WADA explicitly demonstrates two important points. One is a commitment to avoid causing or contributing to adverse human rights impacts, be it through its own activities or through the implementation of anti-doping measures by its partners. The other one is its readiness to take action, its ability to lead and inspire other stakeholders.

For me, however, there is one important implicit point. On its twentieth anniversary, the Code as well as the World Anti-Doping Program, have become an established and fully accepted norm within the sports community. How else could WADA take a step to the next level – further strengthening of human rights? In my view this tacit acceptance is a considerable acknowledgement to WADA, but also a chance to take a proactive stance about human rights of athletes in the protection of clean sport.

## Chapter II: Context

“Over the years, there has been an increasing convergence of human rights and sport. This is in part due to the UN Guiding Principles on Business and Human Rights, but also due to the world we now live in, what is happening in our communities, and what we expect from organisations and people in positions of power.”

These are the introductory words from Ben Sanford, the then WADA Athlete Committee Chair, in the letter to WADA President and Director General, in which he, on behalf of his committee, proposes an Initial Human Rights Impact Assessment.

On a global scale, public authorities approach the topic of human rights in vastly different ways, and individual actors within the sports movement, as well as the athletes themselves, exhibit varying levels of engagement. To establish realistic expectations from WADA, along with determining the appropriate scope of my report, it is crucial to look into the context in which WADA supported its Athlete Committee request for the Initial Human Rights Impact Assessment. This chapter endeavours to briefly summarise some of the already identified human rights issues in anti-doping as well as the developments that prompted a closer examination of human rights within the realm of sports.

### Already identified human rights issues in anti-doping

Undoubtedly, the battle against doping has faced criticism for its potential infringement on certain human rights, particularly concerning athletes' privacy and freedom of movement. A notable example is the collection of whereabouts information, perceived as cumbersome and intrusive. Athletes are required to furnish detailed location information for out-of-competition testing, subjecting them to doping control officers' visits at times and places that encroach upon their private lives. The dispute extends to the frequency of testing, as well as the early or late hours, with questions raised about the proportionality of these measures in comparison to the low percentage of positive tests<sup>13</sup>.

Furthermore, the methods used in anti-doping, such as urine and blood collection, are considered as very invasive. These procedures, which can be degrading or compromising to an individual's privacy, involve the collection of personal bodily samples. Numerous independent studies and reports have scrutinized various aspects of anti-doping processes, aiming to assess their effectiveness, transparency, and fairness. These evaluations are conducted by a range of contributors, including academic researchers, independent organisations, and governmental bodies. The focus of research studies extends, inter alia, to specific areas within anti-doping processes that are more relevant for human rights, such as the efficacy of testing procedures, the impact of strict liability and the burden of proof on athletes' rights, the role of education in preventing doping violations, and the fairness of disciplinary procedures.

In responding to such concerns, WADA often asserts that the fight against doping enjoys widespread recognition as a legitimate endeavour and that this is evidenced by several factors, including the establishment of WADA itself as a global anti-doping organisation and the ratification of the UNESCO Convention against Doping in Sport by numerous governments. The right to compete in fair competitions - argues WADA - and the right to be protected from the detrimental effects of doping, are considered essential rights of athletes. WADA moreover underlines that the adoption and subsequent revisions<sup>14</sup> of the World Anti-

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<sup>13</sup> In its report on 2023 Anti-Doping Testing Figures, WADA notes a slight increase in the already low total percentage of Adverse Analytical Finding (AAFs): from 0.77% in 2022 to 0.80% in 2023. [2023 anti doping testing figures en 0.pdf](#), See also [An Assessment of the Monitoring Practices of European National Anti-Doping Organizations \(NADOs\) \(euathletes.org\)](#).

<sup>14</sup> This iterative process to date has occurred every five to six years.

Doping Code by the anti-doping community regularly challenges the norms and improve them in response to evolving ethical, legal, and scientific considerations - thereby confirming on each occasion the legitimacy of the fight against doping.

It is true that the rules set out in the Code and World Anti-Doping Program (WADP) are regularly put to the test through the Code revision, but even more regularly before the courts of justice and arbitration bodies across the globe, be they national or international entities.

It was the athletes themselves who have challenged the rules and decisions of anti-doping organisations from the human rights angle. For instance, the European Court of Human Rights (ECtHR) has, on several occasions, been seized for judgment in this respect and its answer has so far been that the fight against doping, enshrined in the UNESCO Anti-Doping Convention and regulated by the World Anti-Doping Code, is a proportionate response to a legitimate need, namely to protect athletes right to participate in doping-free sport.

An important example is the judgement *FNASS and others vs. France* (January 2018), where the ECtHR has confirmed the principle of unannounced testing and the proportionality of the whereabouts system. The court took the view that collecting whereabouts is in the public interest, that the reduction or removal of whereabouts obligations on athletes would inevitably lead to an increase in doping and would go against the need for unannounced testing.

Another significant recent judgment from the ECtHR is the ruling issued on the *Mutu and Pechstein vs. Switzerland* case (October 2018), where the verdict confirmed that the Court of Arbitration for Sport (CAS) is an independent tribunal, whose procedures do not undermine the fundamental rights of athletes, providing that a possibility for a public hearing is offered to the athlete, as is now the case. This judgement inspired the Council of Europe to commit considerable institutional efforts to establishing general principles of fair procedure applicable to anti-doping proceedings in sport, developed in CM Recommendation CM/Rec(2022)14.

The judgement in the case of *Mokgadi Caster Semenya vs Switzerland* (July 2023), has found a lack of sufficient institutional and procedural safeguards in respect of discrimination against a professional athlete with differences of sex development, and the Grand Chamber found a violation of Article 6, the right to a fair hearing (July 2025). The increased level of testosterone has been found through the standard anti-doping testing, but the ECtHR was not asked to pronounce its views regarding human rights related to anti-doping. Still, this important case and its high public profile had shed light on the need to pay particular attention to a very sensitive situation for intersex and transgender athletes in the anti-doping context<sup>15</sup>. A comment in the Code<sup>16</sup> had opened the door for a specific interpretation of the use of anti-doping samples for eligibility purposes, as a method of sex testing. The ongoing process of the Code update lends itself as a perfect opportunity for the drafting teams to find a way to clarify this issue.

The rulings of the European Court of Human Rights are specific to the cases brought before it and may not comprehensively cover all aspects of anti-doping programs. These judgments directly impose obligations on states, not private actors such as International Federations, or WADA itself. Nevertheless, they signal pertinent concerns, discovered through the most authoritative legal scrutiny, they offer guidance, and establish precedents within the European context and beyond.

Lodged in February 2022, an interesting case regarding data protection before the European Court of Justice (ECJ) in Luxembourg involved the Austrian anti-doping authorities. The main substantive question raised before the Court is whether the practice of public disclosure is compatible with the EU General Data Protection Regulation.<sup>17</sup> The opinion of the Advocate

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<sup>15</sup> Through its Guidelines (for example, [tue\\_physician\\_guidelines\\_transgender\\_athletes - version 2.1 - october\\_2023.pdf \(wada-ama.org\)](#)) WADA demonstrates sensitivity towards these athletes.

<sup>16</sup> Comment to Article 23.2.2; (See [“They’re Chasing Us Away from Sport”: Human Rights Violations in Sex Testing of Elite Women Athletes | HRW](#)).

<sup>17</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1).

General, delivered in September 2023, upheld the standard of mandatory public disclosure stipulated by the Code (and converted into the Austrian national anti-doping legislation) as both adequate and necessary for deterring present and future athletes from committing a similar breach of rules as well as for preventing the circumvention of suspensions by athletes.<sup>18</sup> The ECJ has issued its judgment in the case (2024) but it did not rule on the substance of the data protection issues<sup>19</sup>.

I will not revisit topics that have already undergone the assessment by the European Court of Human Rights and other international courts. These rigorous legal examinations have not only led to court judgments but have also inspired further academic research—a process that should continue. My focus will be on those issues not already adjudicated by the courts, because for me the report's purpose is to assist WADA in preventing or mitigating unexplored potential adverse human rights impacts and avoiding causing or contributing to such impacts<sup>20</sup>.

## Multilateral initiatives by public authorities

Numerous UN documents have addressed the intersection of human rights and sport, including Article 15 of the International Covenant on Economic, Social and Cultural Rights, which emphasises the right to access sport within the broader right to equal and non-discriminatory participation in cultural life, or the UNESCO International Charter of Physical Education, Physical Activity, and Sport.

However, the explicit recognition of sport as an enabler of sustainable development, marked by the adoption of the Global Goals in 2015 stands out within the universal intergovernmental context. Even more important is the landmark endorsement of the United Nations Guiding Principles on Business and Human Rights (UNGP) by the UN Human Rights Council in June 2011. These principles underscore corporate responsibility to respect human rights, the role of states in protecting against human rights abuses by businesses, and the necessity for effective remedies for those adversely affected by business activities. Importantly, the UNGPs have found acceptance among some significant sport organisations<sup>21</sup>.

At the fourteenth Council of Europe Conference of Ministers responsible for sport, held in November 2016, the Ministers adopted Resolution No. 1.1 on the role of governments in addressing emerging challenges in the fight against doping in sport, while respecting the fundamental rights of the individuals subjected to the anti-doping regulations, particularly when it comes to data protection.

UNESCO, at its global ministerial conference in July 2017, also stated in its final document – the Kazan Action Plan – that “the fundamental human rights of everyone affected by or involved in the delivery of physical education, physical activity and sport must be protected, respected and fulfilled in accordance with the United Nations Guiding Principles on Business and Human Rights”.

In December 2018, the UN General Assembly welcomed the endorsement of the Kazan Action Plan while, in September 2019, as a follow up, the African Ministers of Sport adopted the Antananarivo Recommendations that stress inclusiveness, gender equality, youth participation and other important values.

These resolutions and statements reinforce the notion that anti-doping efforts should not infringe upon the fundamental rights of individuals, and that appropriate measures should be in place to protect and respect those rights.

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<sup>18</sup> [CURIA - Documents \(europa.eu\)](#)

<sup>19</sup> Under the pretext that the Austrian Independent Arbitration Committee (USK) — which referred the case — was not a “court or tribunal” under Article 267 of the Treaty on the Functioning of the European Union. That meant it lacked standing to request a preliminary ruling; [EUR-Lex - 62022CJ0115 - EN - EUR-Lex](#)

<sup>20</sup> As advised by the UNGPs on Business and Human Rights.

<sup>21</sup> And they serve as a benchmark for this report as well.



Born from a joint initiative from some public authorities and the sport movement, along with civil society, intergovernmental organisations, and private sector actors, the Centre for Sport and Human Rights was officially launched in 2018.

## Human Rights initiatives in the world of Sport

Important actors from the Sport movement also understood the opportunity provided by the adoption of the UNGP on Business and Human Rights as a new universally agreed benchmark. After the independent Report by late John Ruggie in 2016, FIFA (Fédération Internationale de Football Association) has made efforts to address human rights concerns associated with the organisation and hosting of major football tournaments, by introducing a Human Rights Policy and establishing an independent advisory board.

In July 2017, the World Players Association adopted the World Player Rights Policy which articulated how the UNGPs could be applied to sport. This was complemented by the Universal Declaration of Player Rights released in December 2017 which was the first athlete rights document to be grounded in international human rights standards with the overarching goal to ensure the fair treatment, well-being, and empowerment of athletes in the world of sports<sup>22</sup>. In the same year, UEFA (Union of European Football Associations) took steps to address human rights concerns in European football, by creating a dedicated Social Responsibility Division, which focuses on promoting diversity, inclusion, and human rights. Another example is the Commonwealth Games Federation Human Rights Policy Statement, which was approved in Colombo, Sri Lanka in October 2017.

In March 2020 the "Recommendations for an IOC Human Rights Strategy Independent Expert Report" by Prince Zeid Ra'ad Al Hussein and Rachel Davis were published and signified a milestone in recognizing the importance of human rights in the context of sports. The report, inter alia, referred to anti-doping in the context of WADA Athlete Committee's human rights initiatives and noted that "the IOC also (deliberately, through creating firewalls) does not have influence over the operational activities of bodies like WADA"<sup>23</sup>. The report was followed by a publication of an IOC Strategic Framework on Human Rights in September 2020<sup>24</sup>.

That same year the World Athletics Human Rights Working Group (HRWG), published a report summarising its work and findings.

The International Paralympic Committee (IPC) collaborated with the Office of the United Nations High Commissioner for Human Rights (OHCHR), covering initiatives aimed at sharing best practices, exchanging expertise regarding inclusion and accessibility for persons with disabilities in sports or advocacy efforts to raise awareness. IPC has policies in place to ensure equality, education and training programs for Paralympic athletes and it monitors and reports on human rights issues related to the Paralympic Movement.

The Association of Summer Olympic International Federations (ASOIF) supports its member federations in ensuring compliance with anti-doping regulations and promotes research and innovation in the field to develop new detection methods, improve testing procedures, and stay ahead of emerging doping trends<sup>25</sup>. Furthermore, ASOIF works to ensure that its member federations uphold principles of fairness, non-discrimination, or gender equality, and has recently included human rights as an important indicator of good governance<sup>26</sup>.

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<sup>22</sup> Additionally, the World Players Association, in a letter to the WADA President, dated 3 September 2021, called for an Athlete Rights Impact Assessment drawing attention to this important issue.

<sup>23</sup> [Expert Report IOC HumanRights Public Nov2020 Final with authors \(olympics.com\)](#)

<sup>24</sup> Referring to WADA within the IOC's third sphere of responsibility as Leader of the Olympic Movement.

<sup>25</sup> For example, through its periodical reports (in 2010, 2016, and the newest in 2023) about anti-doping trends among Summer Olympic International Federations.

<sup>26</sup> Consistent with the 2022 edition of the IOC's Basic Universal Principles of Good Governance (BUPGG), paragraphs 3.3, 3.7 and elsewhere.

## The Russian scandal

One of the most impactful cases in the anti-doping milieu after the establishment of WADA was the exposure of doping in Russian sports, notably in the lead-up to and during the 2014 Sochi Winter Olympics. WADA conducted investigations, and the McLaren Report from July 2016<sup>27</sup> brought to light a state-sponsored doping program that included the manipulation of urine samples to conceal positive drug tests. The report implicated key entities such as the Russian Ministry of Sport, the Russian Anti-Doping Agency (RUSADA), and the Russian security services, resulting in significant repercussions for Russian athletes and their anti-doping authorities.

The aftermath also triggered changes on the part of WADA and its stakeholders. Although anticipated within a larger context, new initiatives and reforms to enhance the independence and effectiveness of anti-doping organisations were accelerated and materialized in the wake of this high-profile scandal.

WADA embarked upon comprehensive governance reforms, which are described in the first chapter. In addition, strengthening WADA's independence included giving WADA more authority to conduct investigations, enforce compliance with anti-doping rules, and impose sanctions. Intelligence gathering and sharing between anti-doping organisations and law enforcement agencies started to uncover and prevent doping schemes.

Linked to that, there was a push to strengthen whistleblower protection mechanisms, providing technical means, legal safeguards and incentives for individuals to come forward with information about doping practices. Education and awareness programs for athletes, coaches, and support personnel about the dangers and consequences of doping finally received their own International Standard<sup>28</sup>.

To conclude, WADA operates within a complex and diverse global landscape that defies easy categorisation and is difficult to portray as homogeneous. The challenge lies in establishing standards that are robust enough to uphold athletes' rights to a fair competition while remaining flexible enough to accommodate the autonomy of sports organisations, the legal sovereignty of states, cultural variations, continental geography, political nuances, and the unique diversity each athlete brings.

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<sup>27</sup> led by Canadian lawyer Richard McLaren.

<sup>28</sup> which was first adopted in Katowice on 7 November 2019 and was effective as of 1 January 2021.



## Chapter III: Understanding WADA's role

### From a reactive approach to a proactive one: the role of human rights

To understand its role and its relationship to human rights it is important to remember that WADA's birth and its history have been marked by a series of reactions to doping scandals, from the Festina affair to the Russian storm and the Lance Armstrong case, for example. Its stakeholders and the public rightly demanded urgent and effective action in each of these situations. Although this is a common pattern in the evolution of organisations and systems – which often are reactive, addressing issues as they arise – this has strongly shaped WADA's mission, legal standards, and its methodologies.

It is thus very important to underline that the request for this report, the Initial Human Rights Impact Assessment, was not driven by a response to any immediate scandal but was a request from the then Athlete Committee. This will hopefully prove to be a compelling argument for a proactive approach, one that goes beyond crisis management. By shifting the spotlight towards the main players of the system – namely, the athletes and their human rights – WADA and its stakeholders demonstrate an important change from a reactive to a proactive approach.

### Harmonization vs nuances: the place of human rights

The origins of WADA also play a pivotal role in shaping its subsequent actions, with one of the central tenets being the harmonization of anti-doping regulations. However, this tenet has sparked debates and concerns regarding its potential to adversely impact human rights.

The critical argument posits that the push for harmonization implies a standardized approach across sports, regardless of their differences and the diversity of athletes involved, and that it sometimes disregards essential nuances vis-à-vis differences in legal systems worldwide, while mandatory "one-size-fits-all" sentencing often leads to injustices due to varying effects on individuals. At the same time - the critical argument continues - the sanctions regime which can put individual human rights at risk, is often justified by the harmonization itself.

WADA has sought to mitigate some of the concerns around the wide diversity and variety of sports by developing comprehensive technical documents tailored to each sport, designed to provide guidelines for testing procedures. On the other hand, sanctions remain harmonized, disregarding differences in legal systems, and a great many differences in the judicial status of anti-doping regulations across the globe. Is harmonization therefore a risk for individual human rights?

There could be several answers to this pertinent question:

- 1) Athletes, governments, the Olympic movement, professional leagues, and international federations all faced the challenge of combating doping separately, but none could effectively do so on their own. The creation of WADA was a joint effort to address this issue collectively and in an organized, as well as harmonized manner. Harmonization is therefore not only the *raison d'être* of WADA, but a cornerstone of the global multi-stakeholder efforts to combat doping in sport.
- 2) The objective of harmonization measures at both the national and international levels is to protect collective values, such as the intrinsic value often referred to as "the spirit of sport" and public health<sup>29</sup>. They also align with several key human rights principles,

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<sup>29</sup> ECtHR, FNASS and others v. France

including the promotion of individual athletes' health, as well as equal treatment of individuals by protecting the right to compete in fair competitions, and to prevent discrimination by ensuring a level playing field.

- 3) In cases where there is excessive discretion in the interpretation of the law, coupled with the possibility of tribunals of varying competence, drastically divergent decisions and sanctions may occur, and the athletes may face either perceived or real unequal treatment for the same anti-doping rule violation (ADRV).

However, even though they are substantial and undeniable, those are "collective" arguments and do not address the harms potentially experienced by individuals. In this report I will propose a few recommendations that will try to address these concerns and demonstrate that introducing a human rights perspective could in fact achieve the crucial balance between harmonization and concerns for individuals.

## Legitimacy and human rights

WADA's unique origin in the cooperation between the sport movement and public authorities is significant also for its access to two diverse sources of knowledge and legal practices. Through the ratification of the UNESCO Convention, and even more so due to an active participation from public authorities in its regular revisions, the Code is upheld collectively by national states and therefore, although still in the domain of private law, has a broader legitimacy than solely *lex sportiva*. This is important because unlike all other anti-doping stakeholders, the states have the internationally recognised obligations and instruments not only to respect, but to protect human rights. "States individually are the primary duty-bearers under international human rights law, and collectively they are the trustees of the international human rights regime."<sup>30</sup>

WADA therefore does not need to actively seek additional legitimacy of its Code or WADP. However, by embedding the fundamental human rights of athletes, what noticeably will accrue is not only legitimacy, but the authority of both WADA and the Code. This report and its recommendations will argue that putting human rights in both a legal and ethical perspective will help not only athletes but also WADA to avoid those ambiguities which stem from its origins as outlined above.

## Effectiveness and human rights

As mentioned, WADA's dawn was marked by the demand for effective action. Numerous instances within WADA's legal and policy documents, as well as its doctrine, underscore the paramount significance of effectiveness in safeguarding clean sport. This was, and still is the essence of its organisational philosophy and its actions.

As stated by its most important documents, WADA's primary aim is to effectively combat doping in sport. The UNESCO Convention, ratified by over 190 countries, quotes that prevention strategies need to be "most effective"; Article 16 "[r]ecogniz[es] that the fight against doping in sport can only be effective when athletes can be tested with no advance notice". Article 23 describes (*inter alia*) the aim of cooperation in education and training, and of the sharing of information, expertise and experience, as achieving effectiveness and "effective anti-doping programmes". Point 3 of Article 7 of the Council of Europe Convention, entitled *Co-operation with sports organisations on measures to be taken by them*, reads as

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<sup>30</sup> UNGP on Business and Human Rights, operational principle 4, pg. 7

follows: "Moreover, the Parties shall encourage their sports organisations: (a) to introduce, on an effective scale, doping controls..."

One of the declared purposes of the Code and the World Anti-Doping Program is "to ensure harmonized, coordinated and effective anti-doping programs". The first priority of WADA's Strategic Plan is "Lead" and among the actions to take to achieve this priority, effectiveness features prominently again: "Develop and deliver the Agency's anti-doping data and artificial intelligence strategy to gain internal efficiency and deliver insights to improve the effectiveness of the global anti-doping system"<sup>31</sup>.

The effectiveness is deeply ingrained in the WADP, and in the meticulously constructed national and international structures formed over two decades of collaboration among all stakeholders, including athletes. In principle, the athletes I consulted wholeheartedly support the notion of the effective fight against doping. However, the foundational principles of effectiveness and the logic of human rights, although not necessarily in contradiction with each other, do not always align seamlessly. When confronted with specific legal circumstances, a potential ADRV, or some of the risks listed in the fourth chapter of this report, the athletes better comprehend and appreciate the importance of their rights in comparison to effectiveness.

Addressing human rights concerns may at first sight appear to potentially impede the efficiency of WADA and its program (one of examples being the length of legal procedures sometimes caused by the extensive use of the right to be heard). However, this report will argue that the timely consideration of human rights during the formulation of legal provisions and policies not only helps to avoid infringement of the human rights of individual athletes, but also, by mitigating potential slowdowns in the long run, ultimately enhances the quality of implementation of anti-doping measures and thus contributes to their effectiveness.

## Deterrence as a strategy and human rights

Deterrence in anti-doping is closely linked with efficacy and is often positioned in connection with testing. Within the present debates about proportionality, the number of tests executed is usually justified by ADOs as the most quantifiable measure of their performance, as well as a strong deterrence mechanism. However, deterrence is also present through the threats, such as legal penalties and shame, to discourage potential wrongdoers from taking certain actions and to convince them that the costs or risks of such actions outweigh the benefits.

During my consultations, I have heard perceptions that global anti-doping is a "fear-based" system, where the threat of legal force can lead to distress, anxiety, and violations of human rights. In the cases of inadvertent doping, it has a particularly detrimental effect, to which I will come back later.

Protracted anxiety and fear, as I will show later, could pose significant threats to the well-being, in particular mental health, of athletes, as well as to their ability to fully exercise their existing rights. Admittedly, the substantial investment of effort, expertise, and funding is dedicated to the athletes' benefit, aiming to protect the integrity of sport and the right of athletes to fair competition. However, due to the underlying fear, many athletes have a perception of the anti-doping system as a somewhat alienated and untransparent order which appears to function not in their service, but rather as "against" them<sup>32</sup>.

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<sup>31</sup> Effectiveness as a notion and expression is used several times in subsequent WADA Strategic Plans, including the 2025-2029.

<sup>32</sup> This came out in my consultations; there are also international surveys showing that although athletes did not question the legitimacy of anti-doping policies, they doubted procedural fairness (Efverström, Ahmadi, Hoff, & Bäckström, 2016), or international studies (for example Barkoukis et al., 2022; or Huseynli, Lazuras, Petrou, Abasov and Bingham, 2024 on the perceived legitimacy and justice of anti-doping policies. [Full article: Procedural fairness and perceived legitimacy and justice of anti-doping proceedings: a mixed Methods International Study](#)

Nonetheless, a certain degree of deterrence has proven over time to be necessary to protect the level playing field. The relationship between deterrence and human rights is thus one of tension and negotiation, an ongoing challenge which requires careful consideration. While deterrence is a legitimate strategy, it must be executed within the bounds of international law and ethical principles to minimize harm to human rights.

## Strict liability, burden of proof and human rights

Ever since its inception WADA has assumed a unique role as both a regulator and a compliance monitoring agency, setting it apart from public authorities, sports organisations, event organisers, and international governmental or non-governmental organisations. Its exceptional international, multilateral, and multi-stakeholder structure facilitates a dynamic exchange of knowledge and experience, significantly enriching and enhancing its global reach. Beyond the pivotal role of harmonization in areas such as education, scientific and technical standards for sampling and laboratory accreditation, or the rules for disciplinary procedures, sanctions and appeals, an equally critical aspect of WADA's "power" lies in its compliance monitoring function.

However, despite wielding this international influence and impact, WADA lacks supranational prerogatives. It must respect the sovereignty of public authorities and the autonomy of the sport movement. Consequently, it is compelled to navigate its operational landscape, relying on other stakeholders to implement its standards, which imposes constraints on WADA's operational scope and overall impact, including the potential adverse human rights impact. This sophisticated interplay between what WADA can or cannot do, along with the complex relationships between and among its diverse stakeholders, has given rise to essential concepts within the World Anti-Doping Code which need to be understood from a human rights perspective.

One of these essential concepts is the principle of strict liability, in which the anti-doping system is fundamentally rooted. According to this principle, as stipulated in the Code, athletes are held accountable for the presence of prohibited substances or doping methods in their bodies, irrespective of intent. This means that even unintentional use may lead to sanctions, such as disqualification, loss of titles, or suspension.

According to the Code's Article 21.1 on the Roles and Responsibilities of Athletes, athletes are also expected "to be knowledgeable of and comply with all relevant anti-doping policies and rules adopted pursuant to the Code". They are required to be aware of substances used, ensuring they are free from banned elements, or to possess a therapeutic use exemption (TUE).

The significance of strict liability as a cornerstone in the anti-doping system has been consistently affirmed in all revisions of the Code, gaining endorsement also from courts of justice and arbitration bodies. Without this principle, the disciplinary system would be compromised, making it challenging, if not impossible, to sanction athletes for the presence of prohibited substances.

That athletes are not considered innocent until proven guilty might seem contrary to the principles enshrined in various international human rights instruments, such as the Universal Declaration of Human Rights (Article 11) and the International Covenant on Civil and Political Rights (Article 14). Therefore, it is important to understand why WADA, together with its stakeholders, opted for this concept and, moreover, to understand what guarantees the athletes have for the respect of their fundamental rights.

First, the athletes give their consent. Although shaped with the involvement of public authorities, the Anti-Doping Code operates within the framework of private law, constituting a set of rules integrated into the law of associations. By becoming members of a private law association, individuals automatically subject themselves to the association's statutes and

governing texts. Members implicitly or explicitly commit to adhering to prescribed standards of conduct, accepting potential sanctions for violations outlined in the statutes.

Athletes, upon joining a sports federation and participating in competitions governed by international sports federations' rules, voluntarily place themselves within this legal framework. In doing so, they acknowledge a specific responsibility towards their federation, committing to compliance with established standards, such as the principle of strict liability, and recognizing the potential consequences of any breaches.

Second, the anti-doping disciplinary process is civil, not criminal within the meaning of, for example, Article 6 of the European Convention on Human Rights. The presumption of innocence - Article 6 § 2 of the Convention - is a guarantee *par excellence* in criminal matters. As emphasized by Judge Jean-Paul Costa in his opinion on the 2021 Code, athletes retain the right to present evidence and explanations, asserting unintentional violations.

The presentation of evidence leads to another essential concept which is the other side of the coin of strict liability, namely the placement of the burden of proof.

In the context of anti-doping, the burden of proof refers to the responsibility of demonstrating that an ADRV has occurred. While the principle of strict liability places the responsibility on athletes to ensure they are clear of prohibited substances, the burden of proof lies with the anti-doping authorities to establish the violation.

To bring a case against an athlete, anti-doping organisations are required to provide sufficient evidence to demonstrate that the athlete has committed an anti-doping rule violation. For this purpose, an ADO typically relies on a blend of direct and indirect evidence such as : analytical evidence (results from doping tests); chain of custody documentation (which establishes proper identification, sealing, transportation, and storage, minimizing the risk of tampering or contamination); admissions or witness testimony (admitting involvement in doping or providing evidence against the athlete); documentary evidence (such as medical records, prescriptions, purchase receipts, or other documents shedding light on an athlete's use of prohibited substances or methods); or circumstantial evidence (such as associations with individuals known for doping, sudden performance improvements, unusual medical treatments, or other).

It is vital to recognize that the burden of proof in anti-doping cases is typically less stringent than the "beyond a reasonable doubt" standard in criminal cases. In anti-doping proceedings, the standard is often described as the "comfortable satisfaction" or the "balance of probabilities", signifying that it is more likely than not that the athlete committed a doping violation.

Third comes the importance of procedures. As laid out in the first chapter, the space for individual rights in the Code has gradually evolved in time. Although specific rules and procedures vary across anti-doping organisations and governing bodies, successful defences may result in reduced sanctions or withdrawal of cases against athletes. Throughout legal proceedings, athletes possess the right to challenge the evidence presented by offering their own evidence or arguments to refute the allegations. They can present their version of events, provide explanations for the presence of banned substances, question testing method reliability, or challenge sample integrity. Hearing panels or tribunals, responsible for adjudication, evaluate evidence from both sides before reaching a decision. Despite its civil nature, the process incorporates robust procedural guarantees, regularly reinforced via revisions of the Code and International Standards, to provide athletes or individuals with ample opportunities to defend themselves adequately.

Later in the report I will return to these guarantees for athletes, as well as to the measures by which they can be reinforced, with the aim of trying to find the space for WADA and its stakeholders to address adverse human rights impacts.

In summary, it is important to understand that WADA was not established to be a human rights watchdog, its primary concern was, and still is, to protect the integrity of sport from doping. It would have been ideal if human rights had been embedded from the very

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beginning when defining policies and standards; however, due to the pressure arising from high-profile doping scandals, and due to the high expectations for immediate results and effective policies, the consideration and integration of a human rights perspective was, and still is, happening only gradually.



## Chapter IV: Challenges

This chapter of the report focuses on both perceived and real human rights risks that WADA may cause or contribute to through its standards, policies and practices. Identifying these risks does not imply that WADA bears legal liability or primary responsibility in all cases. In many instances, responsibility may lie with other parties within the diverse anti-doping ecosystem. Nonetheless, it is crucial for WADA to be aware of the areas where risks exist, in order to actively contribute to addressing them.

### Fear as a risk<sup>33</sup>

As already mentioned, the anti-doping system operates on a foundation of fear. The Code stipulates that athletes must cooperate, provide samples whenever demanded, and be accessible anywhere, anytime. Failure to comply means risking the loss of two, four or more years of one's identity, their way of life and their livelihood. The fear of the testing process itself, of potential subsequent positive test results, of shame, isolation and above all the sanctions that might follow is not a coincidence. It is a conscious choice motivated by the desire to leverage the deterrent effect to its maximum impact, and with the aim of maintaining the integrity of sport efficiently.

When speaking with many decent and committed professionals who work in the anti-doping system, I noted their genuine belief that the athletes who are clean have nothing to fear. There is a simple and sound logic behind: if you didn't take anything, why should you be afraid. Right?

#### Before testing

The whereabouts system, doping control procedure, and passing samples, in particular urine samples, cannot be described as a pleasurable experience either for the athletes or for the staff responsible for the controls. I will not re-examine in this report the proportionality or necessity of the Whereabout system since, as mentioned in the previous chapter, the athletes have challenged it at the European Court of Human Rights and the WADA standards have withstood this challenge. However, I have heard athletes who are anxious about making even small mistakes when filling in the forms, or who find procedures, for example the early testing hours, as highly intrusive. They understand the logic behind this, they comply, but the latent fear starts already in this phase.

#### Testing and sample collection

During a training session, a player was identified for testing and he requested to finish the training before providing a sample. Although he later did so, and the sample proved to be negative, the controller interpreted his actions as manipulation. He faced a one-year suspension for refusing an anti-doping test. Would the same procedure be regarded as (il)legitimate if the sample was positive? Ultimately, the suspension was lifted, highlighting issues around better education, communication, and fair treatment which should be further addressed in order to prevent negative consequences for players.

During a big international competition a swimmer was notified of an in-competition test to take place between two rounds of qualifications. In this case, the language barrier, procedural mistakes and arguments with the doping control officer caused lasting emotional distress and were felt to have affected the competition results. Another athlete was tested for the first time during the games, later facing three tests in close succession. During major

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<sup>33</sup> Human beings shall enjoy freedom of speech and belief and **freedom from fear**, Universal Declaration of Human Rights, Preamble (underlined by SSM).



continental games, the doping control officers and chaperones typically ensure that an athlete is not scheduled to be tested and to compete again on the same day. However, in some sports athletes were tested even when they had competitions later on the same day, based on the assessment that there was sufficient time between events. This practice has been met with dissatisfaction from athletes, where a poor performance was attributed to the doping control procedure disrupting the preparations<sup>34</sup>.

To respect athletes' rights by ensuring standardized and rigorous protocols in the notification of athletes, WADA, through the International Standard for Testing<sup>35</sup>, provides detailed instructions, running to several pages, regarding the notification of athletes for anti-doping testing, with specific requirements that must be met prior to and during the notification process, including when interpretation is needed. However, as the examples demonstrate, in the implementation of the process there are situations where the athletes' perception can indeed be characterised as being "confronted with anarchy"<sup>36</sup> rather than with an understandable and clear system designed to protect them. So even if they didn't take anything, athletes have reasons to fear, because it is them who bear consequences ranging from the impact on their results to potential sanctions.

### Waiting for the arrival of results

Once the athlete passes the sample for testing, it becomes the ownership of the Anti-Doping Organisation (ADO) with results management authority. At this point, athletes have no further involvement in the process and must await the outcome.

The deadlines for WADA accredited anti-doping labs to report the "A" sample results in ADAMS should be within twenty (20) days of receipt of the sample<sup>37</sup>. The deadlines for ADOs to notify athletes could differ based on specific anti-doping regulations and policies. Different sports organisations and countries may have their own timelines for this process.

WADA's guidelines emphasize that ADOs should aim to inform athletes of their test results promptly after the analysis has been completed. This should ensure a timely and efficient notification process to protect the rights and interests of athletes, allowing them the opportunity to provide additional information, request B-sample analysis, and prepare a defense if needed. This implicitly means informing them if the test is positive<sup>38</sup>.

Otherwise, the standard practice was that "no news is good news", and after a certain unspecified time, if not notified, the athlete would presume they can continue training and competing as normal. If indeed the sample tested negative, or there was no atypical finding, the ADOs may decide to take at least three different actions: 1) to use the sample for scientific purpose, in which case they need to inform the athlete by asking the consent (after which the sample becomes anonymised), 2) to destroy the sample or 3) to keep the sample for re-testing and store it for a maximum period of 10 years. In both later cases the ADO was not obliged to notify the athlete of its decision.

It may also be the case that the results of the test arrive with a significant delay. For example, at the recent Tokyo Olympics, an athlete was devastated to be notified one day before his competition of a positive test result from a sample taken much earlier. The consequences were immediate – he had to leave the Olympic village. The athlete, distraught and trying to contact family and coaches, faced media scrutiny and public judgment.

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<sup>34</sup> The examples are from my consultations and will remain anonymous. However, the last example in the paragraph is from the Report of the Independent Observers 2019 African Games, Rabat, Morocco, page 22.

<sup>35</sup> 2023 version of WADC and WADP's International Standard for Testing and Investigation has been transformed into two different International Standards in 2027 version, I refer here to the new International Standard for Testing.

<sup>36</sup> As expressed by Ryan Pini, the Chair of WADA's Athlete Council, at WADA Annual Symposium in Lausanne, 2024

<sup>37</sup> IS Laboratories Article 5.3.6.4 Reporting Test Results, c) Reporting Timelines, the language is flexible: "**should** occur in ADAMS within twenty (20) days of receipt of the Sample" (underlined by SSM).

<sup>38</sup> This means both Adverse Analytical Finding and Atypical Analytical Finding.

Although eventually cleared of any wrongdoing, he lost the opportunity to participate at the Olympic games, and the ordeal took a toll on his mental health.

Therefore: Yes, even if only 0,80%<sup>39</sup> of the tested samples turn out to be positive, athletes may be, and are still anxious while waiting for the results of the testing - not knowing with certainty for how long they will wait, and with what outcome – whether something or nothing would be found within six months, ten years, at the next games, or never. So even if they have not taken any banned substances, the athletes have reasons to fear.

### The arrival of a positive test

“One of the most interesting things that I have noted in my country is that the moment an athlete is tested positive or is facing an ADRV, the first thing that the national federations or the NOC do is drop this athlete with immediate effect, like a hot potato. They look at such athletes as a liability. It does not matter whether you are a rising star, whether you are an icon, the moment you find yourself in such a predicament, they wash their hands of you.”<sup>40</sup>

From an athlete's perspective, receiving notification from the Results Management Authority regarding an adverse analytical finding means a lot of information to process. WADA requests this comprehensive notification<sup>41</sup> to provide details about the finding, the potential consequences under Code Article 2.1 and/or Article 2.2, and inform of the athlete's rights moving forward – such as the possibility to request the analysis of the "B" Sample, to be present at its opening, and obtain copies of relevant documentation (for example request copies of the "A" Sample Laboratory Documentation Package).

The athlete also needs to provide an explanation, to understand the option to offer Substantial Assistance if applicable, to learn about Provisional Suspension and the scheduled "B" sample analysis. If the "B" Sample confirms the findings, the athlete will receive prompt notification, will be given an opportunity to provide further explanations and should decide whether to admit to the violation, since such admission could contribute to a potential reduction of the period of ineligibility.

When confronted with a notification of a positive test, for many athletes the challenge extends beyond providing an informed response. It encompasses emotional turmoil, isolation, anxieties, and other well-being or mental health concerns, all while navigating intricate legal proceedings, drawing on scientific expertise, and engaging in negotiations.

The deadline for an athlete to respond to a notification of an adverse analytical finding can vary depending on the specific rules and regulations of the governing body or organisation overseeing the doping control program. However, in many cases, athletes are typically given a short timeframe, often around 10 to 20 days, to respond to such notifications.

It is reassuring that WADA requires that the notification to athletes contain the information about athletes' rights. It is also good that throughout this initial process, the athlete has opportunities to provide explanations. The IS also assures that the ADO with result management authority conducts the initial review of the athlete's adverse analytical finding<sup>42</sup> before notifying them of the bad news. Through that practice the system has already been geared into the process and benefits from substantial experience<sup>43</sup> and resources.

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<sup>39</sup> [2023 anti doping testing figures en 0.pdf](#) The percentage of positive tests is not high because there is a lot of tests. However, even that small percentage generates a lot of presence cases between 2,500-3.000 cases roughly each year, of which 80-90% would be analytical (presence) cases.

<sup>40</sup> Bildad Rogoncho, Head of Legal Services at ADAK, Kenya.

<sup>41</sup> ISRM Article 5.1.2

<sup>42</sup> ISRM, art. 5.1.1 obliges ADOs to conduct an Initial Review. Upon receipt of an adverse analytical finding, the results management authority shall conduct a review (whether there was TUE previously approved, or there was a departure from ISTI, departure from ISL, ingestion through a permitted route, authorised route or apparent route).

<sup>43</sup> “WADA and NADOs are “repeat players”, whereas athletes are “one-shotters” and therefore inevitably have less experience in navigating the dispute resolution system” (Galanter (1974)).

On the other hand, the athletes are not really prepared, or coached, they might struggle to cover costs, to secure supporting scientists, to litigate and contest verdicts, which further creates an impression of significant unevenness of arms. The financial and other resource constraints during this phase can be overwhelming.

As consequence, athletes may feel themselves to be cornered and compelled to accept penalties. On the other hand, if they try to provide substantial assistance and thereby reduce the consequences for themselves, as the Code stipulated<sup>44</sup>, this conceptually required the athletes to admit everything about their own violation, which is very often a difficult door for an athlete to walk through. Athletes face fear of repercussions from those involved, the enduring stigma attached to doping, and the mandatory public disclosure, which discourages them from coming forward. Even if they go far enough through that door, the 2021 Code provisions lacked definitive assurances of protection<sup>45</sup>, support, and understanding for athletes who provide information, leaving them doubly at risk of exposure.

### Challenges in Result management

Negotiating the complex legal landscape during hearings further exacerbates the existing power imbalance. Athletes face significant consequences, including the loss of their livelihoods, while they perceive a noticeable lack of substantial sanctions for system stakeholders<sup>46</sup>, (for example, when an Anti-Doping Organisation makes a mistake or labs mishandle samples, it could reduce the athletes sanction, but there is no immediate four years or longer ban on individuals involved in anti-doping process<sup>47</sup>). This contributes to the perception that in the name of the right to a level playing field in competitions, an unequal playing field is created outside the sport arenas, and one which disadvantages athletes in their pursuit of justice.

One of the reasons for the lack of cooperation from certain athletes may be the fact that some may be without a proper basic education - or even be illiterate - and they struggle to understand anti-doping principles, leading them to flee when faced with a positive test result instead of engaging in the process and obtaining, for example, a case resolution agreement<sup>48</sup>. Others, despite being aware of anti-doping regulations, choose to remain silent, refusing to provide any assistance or disclose relevant information. This "code of silence" complicates efforts to manage doping cases effectively.

While the Code and the International Standard for Results Management (ISRM) establish minimum standards for fair procedural principles, it remains uncertain whether these are consistently upheld by Code signatories with results management responsibilities. Independent research on procedural fairness in anti-doping proceedings with regard to the real or perceived impartiality and operational independence of hearing panels is relatively limited<sup>49</sup>, and the access to justice remains a point of concern.

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<sup>44</sup> Code Article 10.7.1 Substantial Assistance in 2021 WADC version,

<sup>45</sup> Ibid. In 2021 version, Substantial Assistance should 1) result in ADRV of another Person; or 2) lead to the discovery of a criminal offense or professional rule breach by another party, and the provided information is shared with the responsible Anti-Doping Organisation; or 3) lead to WADA initiating proceedings against a Signatory, WADA-accredited laboratory, or Athlete passport management unit for non-compliance; or 4) if approved by WADA, lead to the discovery of a criminal offense or professional/sport rule breach related to sports integrity violations other than doping. All these hypothetical situations are not under athlete's control. This has been considerably improved in the draft 2027 version.

<sup>46</sup> A plenary session on the (lack of) accountability of public authorities was held at WADA Annual symposium 2023.

<sup>47</sup> "While it is not uncommon for WADA to revoke accreditation from testing laboratories for non-compliance with testing procedures and standards, there are often little or no consequences for national doping tribunals which fail to protect athletes' procedural rights" Star and Kelly 2022 [Examining procedural fairness in anti-doping disputes: a comparative empirical analysis | The International Sports Law Journal \(springer.com\)](#)

<sup>48</sup> Code 2027 Article 10.8 Case Resolution Agreement

<sup>49</sup> Star and Kelly (2022) conducted a comparative study of developed (e.g., New Zealand and Canada) and developing countries (e.g., India) concerning timeliness (e.g., resolving ADRV disputes promptly) and access to justice (e.g., ensuring accessible and affordable legal representation). Newer research by Huseynli, Lazuras,

A challenge in that context is the lack of access to or affordability of legal representation for athletes facing anti-doping violations. It is commendable that the ISRM stipulated in the Comment to Article 8.8 b) that “procedural fees, if any, shall be set at a level that does not prevent the accused Person from accessing the hearing... or the relevant hearing panel should consider establishing a legal aid mechanism in order to ensure such access”. This language surely allows for flexibility in implementation across different National Anti-Doping Organisations (NADOs) and International Federations, recognising their differences. But, does it give impression that the athletes are at the centre of the system? Also, it remains only a Comment on an article within an International Standard, which only supports the implementation of the Code. Coupled with the fact that athletes “shall” do many things, the language here implies that panels “should” consider. Might this be perceived by athletes as an implicit message of an uneven power dynamic?

While in some countries<sup>50</sup> lawyers offer pro bono services in this field, a formal framework or incentives to call upon such lawyers is not always present. Moreover, with some important exceptions, in many cases at the national level there are only a few lawyers with a comprehensive understanding of the intricacies of anti-doping jurisprudence. The primary hurdle appears to be economic. Many athletes facing anti-doping violation cases lack the financial means to secure legal representation. Consequently, lawyers may be hesitant to take on such cases due to the perceived lack of promised, sustained, and tangible economic returns.

During the Pan American Games in Lima a rower competed in a quad event and together with his team won a gold medal, his country’s first in 32 years at the Pan Am Games. After the competition, for the first time in his career he was subjected to an anti-doping test, which resulted in an adverse finding, leading to the loss of his medal. He felt the process was unfair, especially since he had previously disclosed the medication he had been using since childhood, but it was overlooked by his support personnel. He also believed that he had not been properly represented during his trial, with his pro-bono lawyer from a different field of sport making, in his view, only minimal effort.

Here too, due to a lack of support and legal certainty, whether they have taken anything or not, athletes do have a reason to fear. Protracted anxiety and accumulation of fear, as mentioned before, could pose significant threats to the well-being, in particular mental health, of athletes, thus affecting their human rights<sup>51</sup>, and on top of that potentially impeding them to fully enjoy their rights.

## Inadvertent doping

One of the main reasons for athletes to fear, and a source of risk for adverse human rights impact, is inadvertent doping.

During the COVID pandemic, an athlete mistakenly took a painkiller meant for his wife, similar in appearance, leading to an inadvertent ingestion of a prohibited substance. His continental federation and CAS acknowledged this as an unintentional error. However, he received a disproportionate 12-month ban (later reduced to 9 months) affecting all activities in his sport. Despite no intention to cheat, he missed crucial events, such as the continental

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Petrou, Abasov and Bingham mentioned above (fn. 34) represents an excellent example of fresh and interesting insights in this domain.

<sup>50</sup> Almost all the respondents (97.7%, n = 42) reported that athletes with alleged ADRVs had the unconditional right to request and be represented by a lawyer at the pre-hearing phase, but 62.8% (n = 27) said that no legal aid was offered. The majority of NADOs (88.4%, n = 38) also reported that athletes did not need to pay a procedural fee when they requested a hearing for their ADRV case (see also study by Huseynli, Lazuras, Petrou, Abasov and Bingham, 2024).

<sup>51</sup> Universal Declaration of Human Rights, Article 25; International Covenant on Economic, Social and Cultural Rights, Article 12 explicitly recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.

Cup, which affected his career, while the isolation from the team had severe mental health implications. The ban also posed a considerable contractual issue, as the club cited a decrease in the players “market value”, resulting in unpaid salary.

One athlete tested positive in a foreign country where he was competing and was immediately flown back to his native country. Despite extensive efforts and substantial expenses to trace the unusual substance from his sample over 2-3 months, it was impossible to establish where it came from, and the B sample later tested negative, leading to the case being dismissed. However, the athlete faced shame and questions upon returning to his country, impacting both himself personally and his family. Despite multiple requests, there was no clarification or apology, no explanation or investigation communicated to him by that foreign laboratory, or his own NADO or WADA.

A player tested positive for a prohibited stimulant due to a contaminated food supplement. Despite his thorough efforts to avoid prohibited substances, including researching before use the supplement and its legality, purchasing it at a certified pharmacy, for which he had proof (he had saved the payment slip), he received a three-month suspension. While considered a relatively short sanction, it significantly impacted his career and well-being, especially since he was only 22. The presence of prohibited substances could occur even through kissing and sexual intercourse, or through administering medicines to pets<sup>52</sup>.

These and other cases raise concerns about fairness and errors. They give reasons for athletes to constantly fear the system, even when they have taken all possible precautions.

Until recently, WADA’s approach to this sensitive question was only through education, with prudence, and for understandable reasons. Addressing inadvertent doping could add further complexity to an already intricate regulatory framework. Also, opening a larger public debate about this matter might implicitly expose gaps in the system, and it can considerably increase expectations for a quick resolution of the problem. Exposing potential gaps in turn might only help those cheating. Increasing expectations, the anti-doping community might face difficulties in rising up to them alone - without the necessary collaboration and commitment of other national and international regulators, and institutions, and without means of controlling or influencing processes such as the trade and standardization of supplements, or regulation and enforcement of meat production free from certain substances.

Nonetheless, inadvertent doping adversely affects the fundamental rights of individual people, their career, and their dignity.<sup>53</sup> This topic goes beyond the education aspects, as we have seen from the examples above. It is also an area where the risks to athletes as well as risks to WADA and its stakeholders strongly converge.<sup>54</sup>

Identifying, preventing, and addressing the adverse effects of inadvertent doping on individual athletes help the anti-doping stakeholders gain additional credibility and win the trust of athletes, while at the same time avoiding reputational risk and potential scandals. Taking a proactive, strategic approach, rather than reacting hastily in times of crisis, safeguards both the human rights of athletes as well as the integrity of the anti-doping system.

Connected to inadvertent doping the same doubly salient risk for the individual as well as for the system could be noted if the public disclosure of provisional sanctions is not strictly regulated.

On the one hand, this can adversely impact the right to livelihood (immediate consequences could be a loss of sponsorships, endorsement deals, and competitive opportunities even before the athlete has had a chance to present their case or defend themselves adequately), mental health and well-being (stress and stigma, public scrutiny, judgment, and

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<sup>52</sup> [Cyclist Kateřina Nash avoids four-year doping ban after dog medicine contamination | CNN](#)

<sup>53</sup> Of a total of 683\* ADRV (presence) cases between 2015 and 2022 listed in the Anti-Doping Knowledge Centre, in 166 contamination was argued as the cause of the AAF. This represents 24%. Not always the athlete was able to establish contamination as the source of the AAF but in 48 cases (7%) this argument was accepted by the panel [Overview of Literature & Sanctions \(Insights Reports\) \(inado.org\)](#)

<sup>54</sup> As clearly shown in the case of 23 Chinese swimmers which erupted before Paris 2024 Olympic Games.



condemnation can lead to anxiety, depression, and other psychological challenges, affecting not only their athletic performance but also their overall quality of life), even potentially the right to a fair trial (in some situations of high visibility a prejudicial atmosphere can be created, as potential adjudicators may already have formed biased opinions based on the disclosed information).

On the other hand, against the above list stand the arguments of transparency and prevention. Publicly accessible disclosure serves the purpose of preventing circumvention by informing various stakeholders about an athlete's suspension. This includes potential sponsors, event organisers, and employers in sports-related capacities. These arguments are convincing and necessary for clearly established violations, but for provisional sanctions, can there not be other means in the era of modern technologies?

Catching the cheats is an important part of effectively combating doping in sport, but it is not the only method to achieve this aim.

## Paralympic athletes

As mentioned in the first chapter, the 2021 Code recognized Protected Persons, a significant step forward in ensuring the rights of particular groups within anti-doping regulations. These provisions specifically address the rights of minors and individuals with intellectual impairments who lack legal capacity, allowing for the consideration of these types of impairments when assessing anti-doping violations.

Not all Paralympic athletes belong to the category of Protected Persons, but some of them do. In general, these provisions have proved beneficial in rising awareness, sensitivity and inclusivity when dealing with Paralympians not only from a legal perspective, but also in practice. For example, athletes with visual impairments may require additional assistance in assimilating product labels and ingredients. WADA continues to be attentive regarding Therapeutic Use Exemptions (TUEs) for para-athletes. These athletes often have medical conditions requiring exemptions for certain medications, leading to a higher volume of TUE applications compared to their Olympic colleagues.

However, challenges arise when medications commonly used by para-athletes are included in the prohibited list, without considering their specific needs. Due to a lack of representation from this community by someone with expertise in para sport, the Prohibited List Group may overlook the impact on para-athletes and their medical needs within anti-doping regulations.

Another area of concern is the accessibility of ADAMS (Anti-Doping Administration & Management System) for athletes with disabilities, particularly those with visual impairments. While efforts have been made by WADA to enhance accessibility, ADAMS serves as the primary platform for athletes to update their whereabouts, making it crucial for their participation in anti-doping measures.

As mentioned in the first chapter, involvement in human rights due diligence procedures is an area where WADA has certainly made some efforts, but somewhat sporadically and inconsistently. There have been positive instances of collaboration between WADA and Para sport organisations, leading to the development of clear guidelines for testing athletes with disabilities. The resulting document has provided practical guidance, including a list of frequently asked questions, and has addressed human rights-related aspects, demonstrating a proactive approach to inclusivity and fairness in anti-doping practices.

On the other hand, it is concerning to see disparities at the national level in testing between Paralympic and Olympic athletes. Some Paralympic athletes, even multi-medallists, go untested by their National Anti-Doping Organisations (NADOs) for years leading up to the Games. Apart from understandable reasons of resource constraints, there is a sense among these athletes that some NADOs are not adequately prioritizing Paralympic testing. This perception might be borne out by the test distribution plans. Some NADOs simply copy and

paste the plans from Olympic sports without considering the unique doping risks in Paralympic sports, thereby generating inappropriate or inadequate testing strategies.

To address this gap, there should be a more institutionalized participation of para-athletes or their representatives at the NADO level. By involving these athletes in the planning and decision-making processes and/or by employing staff members who possess knowledge and expertise in both Olympic and Paralympic sports, NADOs can ensure that testing strategies are tailored to the specific needs and challenges of Paralympic sports. Meaningful athletes' engagement would help to create a more equitable, inclusive and effective anti-doping system for all athletes, regardless of their athletic profile and abilities, and I will come back to this important topic later in this chapter.

The para sport world faces unique challenges when it comes to appealing cases to the CAS. There is no discernible difference in how para-athlete cases are treated compared to other cases, but they are certainly fewer brought to CAS, partly due to funding constraints. This limitation affects both athletes and international federations of para sport, making it crucial to choose appeals wisely. Additionally, the speed of decisions at CAS poses a challenge, with recent appeals taking over a year to resolve, leaving athletes and federations in a limbo during the process. This is how, without any deliberate intention, para-athletes might be at double risk - in the access to justice as well as the lack of opportunities to learn from this kind of jurisprudence.

Two more areas require an additional level of sensitivity for Paralympians in comparison to their Olympic colleagues. Those are, as mentioned, the questions of public hearings becoming mandatory and public disclosure of provisional suspensions.

Article 10 of the Universal Declaration of Human Rights clearly states that "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him"<sup>55</sup>. The charges against athletes in anti-doping proceedings are not criminal, but to meet this requirement, the current WADA standards provide for public hearing, it must be granted upon request from the athletes, but which is not mandatory. There are several reasons WADA made this choice: inter alia, because a very private medical condition for the athletes (TUE) or a delicate religious as well as cultural issue might be involved<sup>56</sup>, while the athletes cannot choose what might be picked up by the media and thus rendered public. In addition, one of the cornerstones of arbitration is the private nature of this process.

Mandatory public hearings could pose unique challenges in the cases involving para-athletes, especially when sensitive medical data or the athlete's disability is relevant. While transparency is important, there are concerns about protecting the athlete's personal information, particularly if they have not been found guilty of an anti-doping rule violation (ADRV). In a hypothetical case of public hearings becoming mandatory rule, the para-athletes would have to be given an option to request private hearings as exceptions. However, if such exceptions are requested on regular basis, this could raise suspicions or be seen as seeking special treatment.

Generally, while the right to a public hearing is technically available, in practice such cases are extremely rare and there is no available data to make a compelling case to impose a blanket obligation<sup>57</sup>. Even the Council of Europe's Committee of Ministers Recommendation

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<sup>55</sup> Also, the Council of Europe's *Recommendation CM/Rec(2022)14 of the Committee of Ministers to member States on general principles of fair procedure applicable to anti-doping proceedings in sport* introduces a principle (f) of the public nature of the hearings: "19. Panel proceedings should be conducted in public in recognition of the role played by public scrutiny as a means of protecting all parties from injustice and ensuring public confidence in the proceedings and their outcome." Relevant ECtHR case in this sense is *Mutu & Pechstein v. Switzerland*.

<sup>56</sup> Such as if an unmarried female athlete tested positive for a substance which may give impression that she is taking contraceptive pills. If made public, in some cultures this might be extremely detrimental.

<sup>57</sup> For example, among hundreds of cases before the CAS, there have been less than ten occasions of such a request. At the moment of writing, I have not found any reliable national statistic.



CM/Rec(2022)14, the highest existing standard on this issue, affirms that public hearings should be the default but stops short of prescribing them as *mandatory* in all cases.

The issue of public disclosure of provisional sanctions affects adversely the rights of one very important group of vulnerable athletes, with which some para-athletes share a level of higher protection under the Code, namely athletes who are minors.

## Minor athletes

A 14-year-old athlete faced a provisional suspension for doping, which received widespread media attention due to the athlete's fame. The athlete's suspension was publicly disclosed, despite the age, leading to significant psychological distress and damage to his reputation. The media invasion of privacy compounded the situation, with no consideration given to the child behind the athlete, and with no support or counselling provided to him. Eventually, it was revealed that there was an error in the reporting, with the athlete's B sample testing negative. However, the damage to the athlete's career and well-being was irreversible, highlighting the need for better protection and support for young athletes facing anti-doping allegations.

When, after appropriate legal proceedings, an ADRV has been clearly established, transparency requires that this is publicly disclosed. At the same time, 2021 Code Article 14.3.7 stated that mandatory public disclosure is not required for minors, protected persons, or recreational athletes but is optional. The Code stipulated that such optional disclosure must, in the case of minors, be proportionate to the case's facts and circumstances.

There is no reason to suspect any ADO's good faith nor to doubt their awareness of proportionality. Indeed, to ensure this, WADA provided guidance on the assessment process to conduct before deciding<sup>58</sup>. However, such a discretionary decision raises concerns, because it might in the end be driven by legitimate reasons, such as transparency or integrity, which are interests other than child's wellbeing.

There are good examples of the protection of children's rights in anti-doping, where the Code provided flexibility in evaluating the degree of fault involving minors (protected persons); they are exempted from the burden of explaining how the prohibited substance entered their system for cases where no significant fault or negligence is established. For violations other than presence, possession, or use of prohibited substances, the Code stipulated a variety of adaptable sanctions for protected persons, ranging from a reprimand to a maximum of two years of ineligibility, depending on the degree of fault established.

On the other hand, according to the Code, a minor is defined as a natural person under the age of eighteen years<sup>59</sup>, while a protected person encompasses individuals below sixteen years old or those lacking legal capacity under national legislation. Obviously, some minors were therefore sometimes protected (such as in the case of mandatory Public Disclosure, Article 14.3.7) and sometimes not protected, (for example in the case of Public Disclosure of Provisional Suspension), inter alia because they might be a part of a Registered Testing Pool or compete in an international event against adults.<sup>60</sup> This inconsistency with international human rights standards, that might appear to some as discrimination, is explained by the arguments that the minors aged 16 to 18 who compete in senior categories are responsible for adhering to the same rules of fair play and should be subject to anti-doping regulations similar to the adult athletes against whom they compete. This reasoning stems from the logic of the protection of sport integrity rather than from the logic of the protection of the well-being

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<sup>58</sup> [https://www.wada-ama.org/sites/default/files/2023-01/2023.01.18\\_-\\_results\\_management\\_guidelines\\_-\\_amended\\_version.pdf#page=94](https://www.wada-ama.org/sites/default/files/2023-01/2023.01.18_-_results_management_guidelines_-_amended_version.pdf#page=94)

<sup>59</sup> UN Convention on the Rights of the Child, Article 1, a child means every human being below the age of eighteen years.

<sup>60</sup> Code definition of Protected Person.

of minor athletes, however, there are several international legal standards allowing different treatment of children aged 16 to 18<sup>61</sup>.

Recently, through the work of its I&I department, and their excellent report called “Operation Refuge, Examination of Doping Among Minors”<sup>62</sup> WADA has recognised several issues regarding human rights of minors. The report noted that “From the firsthand accounts that were obtained, six key themes emerged: Trauma; Isolation; Impact; Pressure; Ignorance; and Abandonment.” Interestingly, gender reportedly played a significant role<sup>63</sup>, with female minors in some sports, undergoing more testing compared to males, especially between ages 13 to 17.

A troubling testimony from a female minor described the intense pressure female athletes faced from male coaches to maintain a low body weight, even to the extent of being expected to enhance their competitiveness by defying puberty's natural effects.

Throughout the evolution of the Code<sup>64</sup> WADA and its stakeholders have gradually recognized the need to protect minors. However, given the central role this group of athletes has for the future of clean sport, it is surprising that there was no strategic approach to prioritizing risks to children, not only because they are among the most vulnerable groups, but also because many athletes start their sport careers very early and because balancing the growing pursuit for talents and accompanying professionalisation with the protection of minors remains a challenge in many sports.

One of the most important outcomes of the Operation Refuge is the additional attention drawn to the importance of anti-doping education.

## Risks in Education

As underlined in the International Standard for Education, WADA promotes a commendable principle<sup>65</sup> that an athlete's first experience with anti-doping should be through education rather than through doping control. Anti-doping education features prominently in the UNESCO Convention on anti-doping, where it has its own chapter with several articles. The word “education” was mentioned 87 times in the 2021 Code<sup>66</sup>, and is a part of both its Fundamental Rationale and its Purpose.

The latest WADA's research shows that the most advanced knowledge among athletes is about the spirit of sport (66%), somewhere in the middle are anti-doping rules (46%), while the principle of strict liability belongs to the lower end of the athletes' perceived knowledge rate (36%)<sup>67</sup>.

As mentioned previously, according to the Code<sup>68</sup>, athletes have a responsibility “(...) to be knowledgeable of and comply with all applicable anti-doping policies and rules adopted pursuant to the Code “. This is coherent with the expectation that the athletes are accountable for what enters into their body. They are tested, judged and potentially sanctioned based on this expectation. So, it is at least proportionate, if not simply fair, that

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<sup>61</sup> UN Convention on the Rights of the Child (CRC) Article 40 allows states to tailor juvenile justice systems based on age and maturity, some countries apply adult sentencing to 16–17-year-olds for serious offenses; ECtHR jurisprudence recognizes that 16–17-year-olds may be held to higher standards of accountability than younger children, ILO Convention No. 138 (Minimum Age Convention) sets 15 years as the general minimum age for employment (14 in developing countries).

<sup>62</sup> Published 31 October 2023.

<sup>63</sup> Very important work of the Council of Europe (via CAHAMA and T-DO) on a potential recommendation or guide for the States parties about Gender Equality in anti-doping is in the pipeline.

<sup>64</sup> As mentioned in the first chapter of this report.

<sup>65</sup> This principle was articulated in the Strategic Plan 2020-2024, and is present in the introduction of Part Two, Education and Research of the draft 2027 Code.

<sup>66</sup> While the word “violation” and “anti-doping violation” was mentioned 413 times, and “testing” 133 times.

<sup>67</sup> [Descriptive Report - Athlete Vulnerabilities - 23-03-2022.pdf \(wada-ama.org\)](#).

<sup>68</sup> WADC art. 21.1 (and art. 21.2) Roles and Responsibilities of Athletes (and Roles and Responsibilities of Athlete Support Personnel).

their education has a strong legal dimension and that they are at the centre of anti-doping education.

As a regulator, WADA does not have an obligation to provide anti-doping education. It has however developed a very useful digital learning platform (ADEL); it organises regular global anti-doping education conferences; invests in its outreach programs and assists many of its stakeholders in this area through the Regional Anti-doping Organisations (RADOs)

Although, as requested by the Code, all signatories should feel concerned by the need to ensure good anti-doping education, the most affected by gaps in that education were the individual athletes. They face elaborated sanctions, they might lose their careers. It is therefore not surprising that, seen from athlete's perspective, education emerged among the priority topics in my consultations. And this area indeed presents important challenges and risks to them, for several reasons, some of which I will list below.

### Labyrinth of rules

Athletes operating within the system must grapple with a layered maze of rules. They must first understand the rules of their sport, followed by those of the specific competition, then the regulations within their country, the norms established by their National Olympic Committee (NOC), and the guidelines of the international federation governing their sport. Additionally, athletes must be well-versed in the intricate rules surrounding anti-doping measures, adding another layer of complexity.

### Ignorance, social circumstances, struggle for athletes' attention:

The access to the anti-doping learning process still remains a painfully distant goal for many athletes, especially in frequent cases where sport serves as a social elevator. For capable yet socially disadvantaged young individuals, sports often represent a legitimate pathway out of poverty for themselves and for their families. However, for some of them, access to proper elementary education and even literacy has been lacking in childhood and remains a significant hurdle. Additionally, there are athletes who find themselves in remote places or challenging situations where even basic amenities, such as internet access, appear as luxuries.

Moreover, even those who have not faced poverty and deprivation in their backgrounds might well see training and competition as much more attractive and worthy of their time than education as such, not to mention anti-doping education. Given the competing demands on their attention, a complex set of rules and regulations - even though certainly of critical importance for their present and future careers - could be regarded by athletes as a compulsory burden rather than something in their own interest.

There are also groups of athletes, paralympic athletes, whose particular nature of impairments might pose challenge in access to anti-doping education. For instance, some of the major continental Paralympic games highlight the disparities in anti-doping education. While efforts are underway to provide education through independent observer teams and dedicated education personnel for non-disabled sport events, there is a notable gap in resources and attention for para-athletes in this regard<sup>69</sup>. Although they might enjoy additional protection under the Code, they might be entitled to equal rights, but in practice they may well have less accessible opportunities for education in the field of anti-doping.

### From knowledge to understanding

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<sup>69</sup> WADA has published over 50 Independent Observer (IO) Reports covering a wide range of major sporting events, out of which at least four IO Reports specifically focused on Paralympic Games: Rio 2016 Summer Paralympics, Tokyo 2020 Summer Paralympics, Beijing 2022 Winter Paralympics, Paris 2024 Summer Paralympics (published July 2025)

Anti-doping education becomes particularly vital for fair treatment of athletes within a system that judges and sentences them under the principle of strict liability. In this context the clear expectation from athletes, as quoted before, is to comply with “all applicable anti-doping policies and rules.” At the same time, the Code defined anti-doping education as: “(...) the process of learning to instill values and develop behaviors that foster and protect the spirit of sport, and to prevent intentional and unintentional doping”, not making direct link with athletes’ legal liability. Being well-versed in and complying with rules entails not only learning, but knowing, and above all understanding. Real understanding involves the ability to grasp the legal and other expectations or implications for them as individual athletes, and then also the wider significance of their actions (or inactions) for clean sport as a whole.

A member of an Athlete Council (AC) was approached by a fellow athlete who revealed a concerning behavior by another competitor. The competitor had been pressuring a female acquaintance into doping, nonchalantly suggesting she should follow his example. The young woman, initially unaware of the seriousness of the situation, felt pressured and unsure how to proceed. She confided in a mutual friend, who then sought advice from the AC member on how to address the issue and initiate an investigation. However, possibly out of her lack of knowledge of procedures and whistleblower rights, and even more so her fear of repercussions, nothing was formally reported.

Once understanding is achieved, the next step for each athlete would be empowerment: which would entail making informed choices and taking action. Athletes who have knowledge and comprehension of their situations are better equipped to advocate for themselves, make decisions, and effect positive changes both in their own lives and in the general efforts to combat doping<sup>70</sup>. And this leads us to yet another challenge, namely meaningful participation and engagement of athletes.

## Meaningful engagement of Athletes

As mentioned previously, the creation of WADA was a joint effort which inherently involved a multitude of actors with diverse, sometimes conflicting, interests. In its operational pursuits, WADA must thus always consider the concerns of these actors through stakeholders’ consultations, with the aim of reaching a consensus and compromise on the highest possible level of standards. Compromises often arise not only across different continents, cultures, and methodologies but also amid contrasting perspectives within sport bodies, public authorities, and others.

WADA deserves praise for being a successful broker in identifying new trends and codifying best practices. However, the question remains: is a compromise, even of the highest standard, sufficient to ensure an adequate level of respect for human rights? Instead, the UNGP on Business and Human Rights recommends a human rights due diligence procedure before introducing any new policy and/or activity<sup>71</sup>. Unlike stakeholders’ consultations, the due diligence procedure - in terms of process - does not require all actors to be consulted, but only potentially affected groups; and in terms of the outcome, it does not seek compromise standards, but “to understand the specific impacts on specific people, given a specific context of operations<sup>72</sup>” so to identify, prevent and address potential human rights infringements.

Given that athletes are the proclaimed focal point of anti-doping efforts, it is crucial to examine the channels, provided for in regulation and practice, available to them for expressing their concerns and influencing decisions that directly impact them.

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<sup>70</sup> The need for improving athletes’ legal awareness about anti-doping proceedings and provision of legal aid mechanisms was emphasised in the conclusion of study Huseynli, Lazuras, Petrou, Abasov and Bingham, 2024.

<sup>71</sup> UNGP on Business and Human Rights, Principle 17.

<sup>72</sup> ibd

For example, when drafting or amending anti-doping rules and policies, anti-doping organisations are expected to engage in consultation processes that may include input from athletes and athlete representatives. A very good illustration comes from a resourceful NADO, from WADA's compliance Tier One, which has established a long tradition practice of consultation with athletes. In order to make it as easy as possible for the athletes to have a say, they translate the documents from English and distribute them across the country. They said to me: "How many comments have we received from the athletes in the first round of consultations? Two! So, that shows a challenge to try to get their opinion".

The other example is from an operational level, a day-to-day experience of a very senior NADO administrator. Athletes have the option to give feedback on the Doping Control Form (DCF) after a test, using a free-text box. Typically, comments are brief, ranging from none to phrases like "fine" or "nice DCO!" Sometimes, recognizing the potential discomfort an athlete may feel in providing negative feedback, especially related to the DCO present during the testing process, a separate link on the DCF allows athletes to share discomfort-free negative feedback, though this is in practice rarely used.

Although the levels of athletes' understanding of correct/incorrect processes are varying, it might be very useful for ADO and for the athletes themselves to question or challenge the unsatisfying aspects of the process. This would allow for clarification and explanation, helping to inform educational needs and providing context to the athletes.

Athlete Outreach Programs often involve direct engagement with athletes, however with the main expected outcome of providing them with information. Some anti-doping organisations conduct surveys to gather feedback from athletes on various aspects of the anti-doping program, including testing procedures, education initiatives, and support services. However, apart from human rights due diligence procedures, the most substantiated, most meaningful and impactful way of engagement is athletes' participation in the decision-making process.

There are good examples of athletes' involvement and representation through various athlete advisory groups, athletes' membership in ADOs Boards and above all through the establishment of athlete committees or independent organisations to represent athletes' interests. WADA itself first established an Athletes' Committee, and after the governance reforms (as mentioned in the first chapter) constituted a new and more representative Athlete Council (AC). At the same time, WADA faces some voices of criticism that this body still lacks independence and effectiveness. On the other hand, there are high expectations from the AC to engage with athletes on anti-doping issues worldwide and to produce a comprehensive input of equal magnitude, albeit with limited resources or institutional mechanisms at their disposal – which hardly could be seen to be their fault.

One challenge facing the WADA Athlete Council is the lack of clear pathways for the collection of information from the grassroots athlete community and the provision of any substantial feedback, with a guarantee of representativeness. This challenge is compounded by the limited establishment of athlete committees in National Anti-Doping Organisations (NADOs), with only 30%<sup>73</sup> having such committees. For this important process, the number of staff is more relevant for an ADO than the number of tests, as meaningful participation correlates with workload. Addressing the need for athlete engagement thus requires a corresponding allocation of resources.

With all these potential impacts on human rights of athletes in mind, in the next chapter I will propose some actions that could be taken by WADA and its stakeholders.

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<sup>73</sup> NADOs members of iNADO.



## Chapter V: Recommendations

Despite their extraordinary physical abilities and the unique demands placed upon them, athletes share the same “ordinary” fundamental rights as any other individual. They experience emotions, physical limitations, and have a strong need for well-being and fairness. In times of glory, they receive a lot of attention and recognition, but while in need or peril, they should not be left without support. The contribution athletes make, including revenues they generate, in their country, sport federation, or club, both on and off the field, should be valued. Therefore, their rights, well-being, and fair treatment should be protected by their governments and respected by their sport – and not only recognized but also prioritised in the fight for clean sport.

The following recommendations are divided into three categories representing different timeframes for implementation: Immediate - requiring prompt action; Mid-term - calling for attention within a limited timeframe; and Long-term - focusing on strategic goals for the future.

### Immediate

WADA could consider taking immediate actions aligned with the principles outlined in the UN Guiding Principles on Business and Human Rights. These actions include demonstrating - knowing and showing - a clear commitment to human rights as well as involving and understanding potentially affected stakeholders, particularly athletes. Additionally, WADA can embed more coherently human rights into its standards, policies, and practices.

#### Know and Show

As mentioned in the previous chapter, WADA is not legally liable or primarily responsible for human rights risks in all cases; neither does WADA have the means to enforce, nor sufficient resources to directly influence respect for human rights by all the entities it engages with. However, WADA can articulate its expectations and preferences. It needs to demonstrate understanding of human rights in its domain, how policies and programs may adversely influence them, and to show a clear commitment to addressing weaknesses or deficiencies. This approach can be summarized as “know and show”. Therefore, WADA may consider the following steps:

1. Articulate and publish a Public Policy Statement on Human Rights Commitments

This public policy statement should make it explicit that WADA is committed to upholding the principles of internationally recognized human rights, with a particular focus on addressing the most salient human rights issues in anti-doping.

This statement should be endorsed at the highest level of the organisation and should apply to WADA's leadership, staff, and its partners in all aspects of their work; it should be widely and clearly communicated.

2. Reinforce human rights in the Code and International Standards

WADA should ensure that its commitment to human rights is prominently reflected in the text of its foundational documents, starting with the Code and International Standards. While WADA has shown awareness of human rights in its policies and practices before, as noted at the beginning of this report, its commitment should be strategic, coherent, and robust.

### 3. Introduce human rights into the new Strategic Plan

Distinct from the Code and International Standards, which serve as benchmarks for external compliance, the Strategic plan represents WADA's internal framework for monitoring its own performance. Embedding human rights principles within the strategy is essential for ensuring coherence across WADA's operations.

### 4. Determine the administrative function that will deal with human rights within the WADA secretariat and develop interdisciplinary procedures

As the UNGP on Business and Human Rights<sup>74</sup> suggests, WADA should integrate the findings from the impact assessments across relevant internal functions and processes and take appropriate action. Effective integration requires that responsibility for addressing such impacts is assigned to the appropriate level and function within the organisation.

### 5. Create a Human Rights Roadmap

Appropriate action to address the findings should be structured, predictable to all stakeholders, clearly establishing roles and responsibilities, defining processes, outlining the timeframe, and instituting mechanisms for monitoring and evaluating the implementation. This could also present a possibility for fundraising, since several actions could be financed by extra-budgetary resources.

### Involve and Understand

### 6. Introduce Human rights due diligence for new policies and activities

As WADA embarks on important new initiatives such as strengthening intelligence and investigation capabilities, leveraging artificial intelligence, and defining the responsibilities of the Athletes' entourage in anti-doping efforts, it should prioritise human rights due diligence. Following the guidance of the UNGP, initiating human rights due diligence early in the development of any new activities or relationships is essential for effective risk management and the prevention of adverse impacts.

### 7. Increase meaningful athlete engagement in the Code update

Via the Athlete Council and other methods, WADA is already making an effort to involve athletes in decision making and the development of new standards. To leverage the ongoing process of the Code update for a more meaningful athlete participation, WADA could, for example, allocate a dedicated budget to hire an independent legal advisor working closely with the Athlete Council.<sup>75</sup> This advisor could thoroughly examine the proposed revised standards from an athlete's perspective and ensure legally-sound drafting proposals and suggestions.

### Embed

### 8. Start Human Rights mainstreaming within WADA

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<sup>74</sup> Principle 19.

<sup>75</sup> Among its staff members WADA has excellent lawyers who are available to the AC as well. However, a dedicated independent legal advisor would have another role.



To mainstream human rights within WADA means integrating these principles into all organisational levels, operations, policies, and decision-making processes. Immediate actions could include training sessions for staff, leadership, committee members, and stakeholders on human rights principles relevant for anti-doping, and declared in its Public Policy Statement, thereby ensuring clarity on responsibilities and the significance of incorporating human rights considerations into their roles.

#### 9. Continue involvement of the WADA Athlete Council in Human Rights initiatives

Building on the strong commitment to athletes' human rights expressed by its predecessor, the newly established Athlete Council has continued to prioritise this objective and has taken proactive steps by establishing a dedicated Athlete Advisory Group on Human Rights in Anti-Doping. The Advisory Group played a crucial role in informing and advising this Assessment. Moving forward, such engagement should continue and evolve, utilising WADA's platform and influence in promoting human rights, to champion positive change at local, national, and international levels.

### Mid-term

The mid-term measures should focus on three key avenues: avoiding infringement on human rights, addressing adverse human rights impacts, and proactively seeking to prevent or mitigate potential adverse human rights impacts. These measures should ideally be incorporated into WADA's Human Rights Roadmap.

#### Avoid infringing on human rights

#### 10. Strategic approach to anti-doping and minors

Given the central role this group of athletes has for the future of sport in general, and clean sport in particular, as well as recognizing that minors can be at heightened risk of becoming vulnerable<sup>76</sup>, WADA and its stakeholders should consider strengthening the protection of minors in a more strategic manner, namely by consistently applying the principle of the superior interests of child, both when it comes to the standards, policies and to assorted measures. This could include - but should not be limited to - the necessary changes in the Code.

- For example, Article 14.3.7 which concerns Optional Public Disclosure could be reinforced and rendered more precise. For example, the optional public disclosure in a case involving Minor should be exceptional and primarily in the interest of minor. Article 20.4 on roles and responsibilities of NOC<sup>77</sup> could include a reference to Protected Persons (as with Articles 20.3 and 20.5), and in particular Article 21.2 on roles and responsibilities of Athlete Support Personnel should be considerably more developed for those working with Minors. The ongoing process of updating of the Code could investigate similar opportunities to bring coherence.
- International Standards should reflect more closely, and in coherence with the Code, the above-mentioned strategic approach towards Minors. For example, IS Testing and

<sup>76</sup> UNGP on Business and Human Rights, GP nr. 3, GP nr. 12

<sup>77</sup> Unlike IFs, the NOCs do not serve as ADOs and therefore do not have the same instruments as NADOs or IFs, but they at least have to show awareness of the need to protect minor athletes.

Investigation offers due attention to sample collection and notification of Minors (Articles 5.3.2; 5.3.7; 6.3.1 and 6.3.3 as well as Annexes B and G). On the other hand, IS Education refers to Minors only twice (among Definitions and in Article 5.6)<sup>78</sup>, the same could be said for IS Result Management (among Definitions and in a comment to Article 8.8.e) regarding public hearing), while other IS do not contain any reference to Minors. This should be thoroughly scrutinized and rendered coherent.

- To go beyond the mere applicable legal requirements, WADA could develop its own Child Protection Policy and encourage its stakeholders to implement comprehensive education and awareness programs tailored specifically for minors<sup>79</sup>. The same tailored approach could be prepared for parents, coaches, and educators of minor athletes.
- WADA could encourage the ADOs and other stakeholders to offer access to psychological support services for minors who may be experiencing pressure, anxiety, or other mental health challenges related to doping.
- Inspired by the Operation Refuge, safe and confidential reporting mechanisms can be established where minors can report instances of doping or pressure to dope without fear of retaliation or stigma.
- There should be more investment in research initiatives to better understand the prevalence and patterns of doping among minors.

#### 11. Integration of Para Athletes' concerns in policy and practice

- To ensure that the impact on para-athletes and their medical needs within anti-doping regulations is not overlooked, the Prohibited List Group should ensure representation from this community, namely by including someone with experience and expertise in para sport.
- The accessibility of ADAMS (Anti-Doping Administration & Management System) for athletes with disabilities, particularly those with visual impairments, should be improved.
- To avoid inadequate testing strategies that fail to address the distinct characteristics and needs of Paralympic athletes at national levels, there should be more institutionalized participation of para-athletes or their representatives within National Antidoping Organisations.
- Education tools in WADA (such as ADEL) or at the level of ADOs should be adapted to the needs of para-athletes.
- To avoid adverse impact on their human rights, ample safeguards should be put in place for public disclosure of provisional suspensions for Protected Persons (this includes minors as mentioned above).

#### 12. Strategic approach to Inadvertent doping

A significant portion of inadvertent doping cases stem from food, medicine, and supplement contamination, with the latter being a major contributor. As mentioned, the presence of prohibited substances could occur even through kissing and sexual intercourse, or pet care.

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<sup>78</sup> Although the expression "Children and Youth" is mentioned 3 times as target groups, related to value-based education, also on the national level.

<sup>79</sup> For example, WADA's already quoted research on athlete vulnerability shows a far greater perceived risk of inadvertent doping than for (intentional) doping at Youth athlete level. The highest perceived risk is for international level athlete is 30%, while Youth athlete level is 26%. This clearly indicates a need for tailored education on inadvertent doping for Minors.

While athletes bear ultimate responsibility for what they consume, they are often unaware of contamination risks as WADA's own research has shown<sup>80</sup>.

- Establishing a comprehensive strategy to prevent healthy athletes from inadvertently using contaminated products is crucial. WADA could consider adopting a strategy which proactively addresses the inadvertent doping from multiple perspectives, including transparent communication, education, awareness rising, science, procedures to confirm inadvertent doping, result management, or international cooperation. For example, WADA could establish an informal, multi-professional<sup>81</sup> ad-hoc group dedicated to inadvertent doping tasked with proposing concrete measures.
- Considering that many athletes use supplements, it is imperative to provide them first with adequate education but also with tools to discern the safety of these products. WADA could encourage stakeholders to establish, where these do not yet exist, local and regional databases of low-risk supplements, or to expand certification programs<sup>82</sup> to more regions.
- Anti-doping science has advanced to such a remarkable degree that substances prohibited under the Code can be detected in athletes' samples at levels "so low they can be as low as a trillionth of a gram or a 'picogram'"<sup>83</sup>. To mitigate any adverse impacts on the human rights of athletes, WADA could, together with its accredited laboratories, try devise an "early warning" protocol for contamination; or it could establish minimum required limits (MRLs) for specific substances based on low-level findings prevalence, with laboratories reporting to ADOs results below these limits for informational use only.
- Additionally, innovative methods could be explored to improve contamination case analysis during result management; potentially, an additional step to exclude contamination could be introduced among other important steps and criteria listed in ISRM Art. 5.1.1 during the Initial Review.
- WADA already has a well-established cooperation with relevant international partners such as WHO, ILAC, IFPMA and others, to catch the dopers. Maybe these partnerships could be extended further to address the issue of inadvertent doping.

### 13. Introduce measures for meaningful athlete engagement

To increase meaningful athlete engagement WADA could consider:

- Incorporating athletes into the human rights due diligence procedures as a permanent feature, routinely and strategically integrating their perspectives, and allocate a dedicated budget for developing appropriate means for consultations of athletes and their representatives.
- Encouraging greater athlete participation among WADA stakeholders. There are possibilities at the Signatories' level, such as having an athlete on their board; organising regular meetings - at least one per year - with the athletes in the testing pool; engaging with the athletes of the NOC athlete committee; as well as engaging with the independent player associations for those nations and sports that have them.
- Exploring means by which the Athlete Council could engage with affected stakeholders (or their legitimate representatives) on a sustained and regular basis, for example by tasking RADOs with the organisation of regional seminars on human right of athletes

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<sup>80</sup> [\\*Descriptive Report - Athlete Vulnerabilities - 23-03-2022.pdf \(wada-ama.org\)](#) .

<sup>81</sup> Transparent communication procedures should be developed around the inadvertent doping cases, so even a communication expert could be included in the group.

<sup>82</sup> Such as *Informed for Sport*, [Sports Supplements Certification | Informed Sport \(wettestyoutrust.com\)](#) .

<sup>83</sup> WPA, *Best Practice Improvements to Anti-Doping Programs*.

whose outcomes could be presented at the WADA annual symposium, or at regional ministerial conferences of ministers of sport under the discussion on anti-doping.

- Facilitating athletes' regular feedback on doping control or education through technical platforms.

#### Address adverse human rights impacts

#### 14. Targeted investment in replacing urine testing

Urine testing has been a cornerstone of doping control for two decades. While effective, it has long been criticized for its intrusion on athletes' privacy. WADA should consider allocating additional earmarked and targeted financial resources towards research and development for less invasive methods to detect potential Article 2.1 and 2.2 Anti-doping rule violations. This alternative should lead to a more human rights-friendly approaches and should offer the possibility of replacing existing methods altogether.<sup>84</sup>

#### 15. Balance the fear

The resources dedicated to protecting the human rights of individual athletes — both those who have committed violations and those who have not — should be at least commensurate with the resources devoted to catching and sanctioning those who cheat. These measures should aim not only to uphold justice, but also to reduce the climate of fear in which athletes too often operate.

- WADA could use the ongoing World Anti-Doping Program update process to explore ways of increasing accountability among all stakeholders — not only athletes — while also introducing measures that incentivize athletes to take an active role in protecting clean sport, rather than focusing primarily on sanctions.
- To alleviate the anxiety of athletes between the sample collection process and the arrival of results, WADA could explore the implementation of innovative technologies allowing for regular status updates on their samples. This could include short notifications about sample arrival at the laboratory, negative test results, and whether the sample is retained for re-testing<sup>85</sup> or destroyed. Athletes should also be notified if their sample is destroyed, even after a significant period of time. Implementing such a system would not only demonstrate respect for athletes' rights but also enhance transparency and accountability within the anti-doping system, ultimately fostering greater trust. It's crucial to offer athletes the option to choose whether they wish to receive notifications, respecting their right to privacy and autonomy in the process.
- Thanks to the new technologies, the changes to fundamental matters such as the Prohibited List could be communicated by WADA directly to the athletes registered in ADAMS via dedicated smartphone application. ADOs can take over and trickle down the same approach for their registered athletes and athlete support personnel.

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<sup>84</sup> "We have also observed a surge in the collection of dried blood samples (DBS) led by CHINADA (782 samples), ADD Denmark (70), USADA (27) and Germany (5)." [Report iNADO 2021 WADA testing figures and Budgets 20230502.pdf \(mcusercontent.com\)](#) .

<sup>85</sup> Long-term sample retention poses dual risk concerning both data protection and procedural fairness. The extended duration increases the likelihood of potential data breaches and privacy violations. Additionally, there's a heightened risk of procedural unfairness, as delays in notifying athletes of adverse analytical findings may impede their ability to adequately contest or explain the source of any detected prohibited substances, therefore the athletes have to be informed.

- Upon receiving test results, it is crucial that athletes are treated with dignity and respect, and without judgment. WADA should encourage ADOs to offer comprehensive support services, including mental health resources, to prioritise the athlete's well-being.

#### 16. Increase legal and procedural security of athletes

While continuing its aim to harmonise legal standards, WADA can ensure greater respect for procedural security of athletes. This approach could entail legal, but also structural and policy changes at national level, peer reviews and capacity building, the use of technology, Ombuds Program implementation, and other measures. For instance:

- WADA should encourage wherever possible legal, but also structural as well as policy changes among Signatories to incentivize the efficiency of justice, in particular timeliness at the first level of dispute resolution. As an example: public authorities on national level can create sustainable (legal and financial) frameworks for legal aid to accused athletes, or to create pro bono legal counsel lists, or to create a list of human rights experts ready to engage with both athletes and panel arbitrators before or during the proceedings.
- WADA could encourage peer reviews among ADOs in different tiers especially focusing on the efficiency of and access to justice. These knowledge transfers can take place between compliance monitoring cycles and can enhance capacity-building programs. For example, peer reviews could focus on rigorous selection criteria for arbitrators and the development of legal procedures with timeliness as central objective. Capacity building could provide comprehensive training programs for arbitrators emphasizing case management aspects.
- WADA could encourage and promote the use of technology, including videoconferencing options, to enhance efficiency, particularly during proceedings. One way to do that could be the issuing of WADA Guidelines for electronic case management systems, promoting consistency and best practices across different jurisdictions.
- After successfully introducing an Athlete Anti-Doping Ombuds project, WADA could advocate for the establishment of regional or domestic ombuds function. In this, RADOs could be instrumental to start with. To avoid additional administrative cost and efforts, in cases where a general Ombuds office already exists at the national level, a dedicated anti-doping function could be attached to it.

#### Seek to prevent or mitigate adverse human rights impacts

#### 17. Increased priority to education

“Our job is not to catch dopers; our job is to get doping out of sport! One way you do that is by catching dopers. But the most effective way of getting doping out of sport is education without a shadow of a doubt”<sup>86</sup>

Both WADA and its stakeholders acknowledge the crucial role of education in promoting clean sport. This is evidenced by the - albeit belated - adoption of the International Standard Education. However, education remains primarily regarded as an obligation rather than a fundamental right<sup>87</sup> or even as an incentive for athletes. Anti-doping education also has a very important legal dimension. For one of the definitions of legal security refers to the knowledge and certainty that individuals have regarding what is allowed or prohibited by law.

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<sup>86</sup> Nick Paterson, Chief Executive, Drug Free Sport, New Zealand.

<sup>87</sup> Universal Declaration of Human Rights, Article 26.



This dimension is implicitly present in the Code and ISE<sup>88</sup>, but it should be more explicit and prominent.

- To achieve this transformation of perspective, WADA could consider affirming education as the best interest both of athletes and of clean sport in the language of the Code's Fundamental Rationale and Purpose, and/or introducing changes in Article 18 to put the athlete more in the centre<sup>89</sup>, without neglecting other important target groups.
- Navigating the labyrinth of rules and regulations across different jurisdictions and contexts poses a significant risk of the athletes. It is necessary to streamline information, to help athletes understand their obligations and their rights, including human rights.
- While WADA cannot directly address broader social issues like poverty, illiteracy, or ignorance, it can collaborate with stakeholders to mitigate their impact on athletes' anti-doping education. This could involve engaging athletes and their representatives more actively in awareness-raising and educational initiatives, incentivizing athletes to participate in educational programs, and leveraging artificial intelligence to create and disseminate educational content. WADA could also encourage diversification of funding sources for anti-doping education, through donations or sponsorship contracts<sup>90</sup>. Additionally, public authorities could expand educational responsibilities within the school system and negotiate with universities to introduce anti-doping courses, particularly in relevant fields like medicine, law, pharmacy, and physical education.
- Educating and licensing coaches in anti-doping could also be beneficial, as they serve as long-term influencers and multipliers within athletic structures.
- Ultimately, as much as it is essential for athletes' rights and for the sustainability of clean sport, the subtle shift in anti-doping education from knowledge to understanding is not easy. To achieve this, to overcome the challenge of "Recognition Programs", and the challenge of harmonised training of educators (which would, in return, enable greater engagement of former athletes in education delivery), WADA should consider introducing a global Framework of Reference for Anti-Doping Education. It could describe educational outcomes on a six-point scale, from A1 for beginners, up to C2 for those who have mastered anti-doping intricacies. This would make it easy for anyone involved in anti-doping teaching and testing, such as teachers or learners, to ascertain the level of different qualifications. It also means that Signatories can easily compare qualifications mutually, certify and recognise the level of anti-doping understanding and avoid overlap within their education pool.<sup>91</sup>

## 18. Continue Human rights mainstreaming

- As noted at the beginning, there is awareness of human rights principles among different organisational units and structures within WADA, but it is essential to continue integrating such principles strategically into the core values and culture of the entire organisation. This could be done via workshops and training sessions for staff, leadership, committee members, and other stakeholders on human rights in general and those relevant for anti-doping, particularly ones identified in the Public Policy Statement. It should moreover be a routine part of the induction courses for all newcomers.

<sup>88</sup> The principle of Strict Liability, anti-doping rule violations sanctions as consequences of doping, as well as athletes' rights and obligations as education programs' components were listed in 2021 Code Article 18.2 and are in ISE 2027 draft version, Article 8.1.1 Mandatory topics.

<sup>89</sup> in 2021 Code, education programs and the spirit of sport had the predominant attention, where language served the purpose of compliance monitoring, which is understandable as the Code primarily functions as a legal document. However, acknowledging that athlete's right to education is an effective way to support their right to compete on a doping free level playing field wouldn't harm or disable compliance monitoring.

<sup>90</sup> Incorporating anti-doping education clauses in sponsorship contracts could benefit the athletes and project the sponsors' image of commitment to clean sport.

<sup>91</sup> There are different existing examples of multi-stakeholder competencies frameworks, but a good inspiration can be drawn from *The Common European Framework of Reference for Languages* (CEFR).



- To reduce the risk of inadvertent negative impacts, human rights due diligence should be an iterative process, continuously reviewed and improved, and systematically and consistently integrated as a part of WADA's risk management procedures and decision-making process. For that purpose, a Human Rights Checklist for due diligence procedure could be developed – identifying who may be affected; cataloguing the relevant human rights standards and issues; and projecting how the proposed activity could have adverse human rights impacts on those identified.
- WADA could develop its own individual policies related to human rights, where these do not yet exist (such as a child protection policy, gender equality policy, non-discrimination policy).
- Recognising the modest size of its staff compared to the ambitious workload, it would be unrealistic to require supplier engagement and monitoring from WADA. However, nothing prevents it from expressing its expectations as regards the respect of human rights from its supply partners.
- Initiate structured discussions on human rights
- When hosting an annual gathering with relevant athletes, a dedicated part of conference could be on human rights. This can initially be a standalone event and later integrated into the regular annual symposium.
- Incorporate human rights considerations into the standard work reporting, ensuring it becomes a routine aspect of WADA's reporting process.

## Long-term

### 19. Professionalization

The evolving complexity of the World Anti-Doping Program poses challenges that can impact human rights, as athletes may face real or perceived violations. Addressing this complexity requires not only improved education for athletes and stakeholders but also the professionalization of anti-doping efforts<sup>92</sup>. Instead of many professions working together (or in silos), anti-doping can become a multi-disciplinary profession.

WADA could explore, together with its stakeholders, expanding cooperation with universities and also with International Federations regarding further possibilities for professional education, certification, and licensing for anti-doping professionals. In addition, there could be tailored post-graduate anti-doping education for future medical or legal practitioners.

### 20. The use of Artificial Intelligence

At the time of preparing my impact assessment and report, it is difficult to predict in which areas of its work WADA will apply machine-based systems commonly referred to as artificial intelligence, or what the scope and purpose of such use might be. However, WADA has already developed certain basic principles that can be considered at this stage. For example, in the future WADA could strengthen its respect for human rights by establishing a clear policy for the use of AI.

- When designing the deployment of artificial intelligence, WADA should ensure that activities related to the lifecycle of artificial intelligence systems respect equality, including gender equality, the prohibition of discrimination as well as privacy and personal data protection.

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<sup>92</sup> International Testing Agency (ITA) serves as an excellent example of professionalization.

- When piloting the application of artificial intelligence, WADA could require the recording, monitoring and proper documenting of due consideration given to potential adverse human rights impacts resulting from that application.
- WADA should also ensure through the human rights due diligence procedure that the human rights risk and impact assessment processes are carried out iteratively throughout the design, development, deployment and decommissioning of the artificial intelligence system. The guiding document to inform those processes should be WADA's own Public Policy Statement on Human Rights.
- Where an artificial intelligence system substantially informs decisions potentially impacting on the human rights of athletes, WADA should ensure that persons using the outcomes of (or interacting with) artificial intelligence involvement are notified of this fact.

## 21. Non-judicial, operational grievance mechanism

Non-judicial grievance mechanisms are mechanisms that aim to resolve disputes or grievances without resorting to formal legal proceedings. They are often preferred for their efficiency, accessibility, and flexibility. Establishing an effective operational-level grievance mechanism could enable WADA to address grievances early and mitigate potential adverse human rights impacts. This mechanism would provide an avenue for individuals who may be adversely affected by WADA's actions or those of its partners to voice their concerns and seek redress.

WADA could consider establishing a grievance reporting mechanism under the auspices of its Athlete Ombuds.

## 22. Regular reporting on Human Rights in anti-doping

As the UNGP on Business and Human Rights suggest, WADA could disclose relevant information about its human rights policies, practices, and performance, including any adverse impacts identified through due diligence processes. This can be done through regular reporting, such as the annual report with a distinct chapter, or periodical dedicated human rights disclosures.

## 23. Evaluation of Human Rights Roadmap

Following the endorsement and initial implementation of its Human Rights Roadmap, WADA should conduct a mid-progress evaluation to assess the effectiveness of its efforts, identify any challenges or shortcomings, and determine if adjustments to the strategy are necessary. This evaluation will provide valuable insights and lessons learned, enabling WADA to recalibrate its actions and drive ongoing improvement efforts.

**2023 – 2025.**