

---

# Human Rights and Anti-Doping Framework Proposal

---

August  
2022

## Table of Content

Background.....	3
Introduction .....	3
Current Situation .....	4
Proposed Next Steps .....	5
Proposed Terms of Reference .....	6
Proposed Timeline .....	7

---

## Background

In March 2021, WADA's Athlete Committee formally wrote to WADA's President and Director General requesting that WADA undertake an Initial Human Rights Assessment (IHRA). The request specifically called for a professional review to be undertaken which would evaluate the intersection between the World Anti-Doping Program, and the United Nations Guiding Principles on Business and Human Rights (UNGPs).

The UNGPs rest on three pillars: (1) the duty of states to protect human rights; (2) the responsibility of business enterprises to respect human rights; and (3) ensuring those whose human rights are violated can access an effective remedy (which applies to both states and businesses). The responsibility of business enterprises to respect human rights exists independently from compliance with laws and regulations and states' fulfilment of their human rights duties. Under the UNGPs, business enterprises are expected not to violate or be involved in the violation of internationally recognised human rights and address harms where they occur.

WADA as a regulator is not expressly an enterprise in a sports business sense, nor is WADA a public authority who may be directly subject to the United Nations Declaration of Human Rights (UDHR). However, given that the anti-doping movement relies on the partnership of these stakeholders to be an effective body, it makes perfect sense that WADA should lead by example in this important space.

Through the effective human rights assessment, and the actions that follow, the organisation needs to demonstrate understanding of what constitutes human rights, how policies and programs may adversely influence them, and to exhibit a commitment to addressing any weakness or deficiencies. This approach can be summarized as "know and show." However, one of the first questions that needs to be answered is precisely which benchmark should WADA be evaluated against given its hybrid sport/public authority composition.

## Introduction

During the two last editions of the World Anti-Doping Code (the Code), WADA has ensured that all provisions of the Code would be compatible with fundamental human right principles. This evaluation was done in total transparency by the former president of the European Court of Human Rights, Judge Costa, and his conclusions were published. The human rights approach has therefore been in the center of WADA's work for a long period of time. Coinciding with WADA's Athlete Committee requests, there have been several parallel discussions within WADA and with WADA partners concerning human rights. Discussions with Public Authorities, Athlete Advocacy Groups, as well as conversations in the context of the Code review have all contributed to a commitment to undertake the steps necessary to ensure WADA is a responsible leader in an area with significant risk and reward for athletes.

In addition to the discussions with stakeholders and partners, WADA has also had a series of exchanges with the Centre for Sport and Human Rights to ascertain possible ways forward in this area. It has become clear, that two elements are necessary for this exercise to be a credible and meaningful one. Firstly, the guidance and insight of a professional with experience in the human rights environment is important. Secondly, while such a professional should be retained with a certain amount of independence from WADA to conduct this work credibly, access to WADA and its people as well as its stakeholders and partners is also necessary to understand how current policies have been developed, and to evaluate their impact as practiced by the anti-doping community.

Evaluating and balancing the human rights of athletes with the rights of athletes to fair competition must also be considered carefully in this process.

## Current Situation

Two of WADA's strategic priorities are to "lead", and to be "athlete-centered". Both priorities can be manifested through a human rights impact assessment, and the process that would follow it. It is very important that WADA carries out such an assessment thoroughly and professionally and sets an example which could serve to ensure the anti-doping community follows with assessments and actions of their own, before any other party may claim to have conducted such an assessment themselves over which WADA has had no influence. The assessment also ensures an athlete-centered approach by examining not only policy, but how anti-doping policy is being applied to ascertain if improvements in practice could be made to better serve the athlete community.

To date, WADA has taken a legalistic approach to evaluating rights within the context of the Code. Via stakeholder consultation and assessment by human rights judiciary expert, already WADA has demonstrated that:

- The fight against doping is largely recognized as legitimate, as illustrated by:
  - the establishment of WADA;
  - the adoption and subsequent revisions of the Code by the anti-doping community;
  - the validation of the rules set out in the World Anti-Doping Program by courts of justice and arbitration bodies across the globe; and
  - the ratification speed and ratio of the UNESCO Convention against Doping in Sport by governments.
- The right to compete in fair competitions and the right to be protected are considered to be essential rights of athletes.
- Nevertheless, the fight against doping is often portrayed as fundamentally infringing upon human rights, mainly because of:
  - the toll it takes on athletes' privacy and freedom of movement (e.g. through whereabouts collecting);
  - the way its disciplinary processes are organized (the burden of proof resting on athletes); and
  - the invasive methods it relies on (urine and blood collection).
- Therefore, the mission conferred to the World Anti-Doping Program, led by WADA, is to protect athletes' right to participate in doping-free sport through efficient means while respecting every other fundamental right of athletes.
- The rules set out in the World Anti-Doping Program are regularly put to the test:
  - through the Code revision process, which has historically occurred every five to six years and involved the whole anti-doping community; or
  - even more regularly, in front of courts of justice and arbitration bodies across the globe, be they national or international entities.
- For instance, the European Court of Human Rights (ECHR) has, on several occasions, been asked whether the anti-doping program infringes upon human rights. Its answer has always been that the fight

against doping, enshrined in the UNESCO Anti-Doping Convention and regulated by the Code is a proportionate response to a legitimate need, to protect athletes right to participate in doping-free sport.

- The most recent example is a case in 2018 where the ECHR confirmed the principle of unannounced testing and the proportionality of the whereabouts system. In its judgement (18 January 2018, FNASS et autres vs. France), the ECHR took the view that:
  - collecting whereabouts is in the public interest; and
  - 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 important recent judgment from the ECHR is the ruling issued in October 2018 on the Mutu and Pechstein vs. France case, where the Court confirmed that:
  - the Court of Arbitration for Sport (CAS) is an independent tribunal
  - which procedures do not undermine the fundamental rights of athletes; and
  - providing that a possibility for a public hearing is offered to the athlete, which is now the case.

These legal assessments and precedents are important but are only one aspect of evaluating human rights in an anti-doping context. To ensure the legitimacy of the World Anti-Doping Program amongst athletes, looking at human rights from a more holistic perspective is also warranted. Such an approach should examine the human impact of anti-doping policy on those affected.

## Proposed Next Steps

Using the United Nations Guiding Principles on Business and Human Rights (UNGPs) as an initial benchmark (**see Annex A - UNGPs**), a thorough impact assessment of anti-doping policy and its implementation, relative to the anti-doping human rights of athletes should be conducted. Such a review should identify real and perceived conflicts from legal, policy and implementation perspectives. The review should also consider perceptions of athletes and other stakeholders so that future measures can both improve practice and inform and educate on how WADA and the anti-doping regulatory system have sought to address these concerns and take concrete actions to protect athlete rights. A by-product of this work may be to further increase the legitimacy of anti-doping and WADA amongst athletes.

A generally accepted approach to implementing a human rights strategy within sports organizations\* is as follows:

Commit and Embed: Make a public commitment to respect human rights and ensure this is embedded within organisational culture, standards and practices.

Identify Risks: Identify any actual and/or potential risks to human rights and prioritise for action those that are most salient (or severe).

Take Action: Take appropriate action to address risks to human rights and provide access to remedy when necessary.

Communicate: Report and communicate how the organisation is addressing risks to human rights.

*\*An example of another sport related approach to an impact assessment is provided in **Annex B – World Athletics Human Rights Working Group Report**.*

A key component to this approach is to see the impact assessment as a ‘journey’ rather than an outcome. The IHRA should be eventually followed by an ongoing assessment process that accounts for changes including changes to policy and turnover in WADA staff and governance who have a role in ensuring a human rights ‘culture’ is embedded in the organization.

Next steps in the process of evaluating impact and embedding human rights within the organization should include:

- An initial internal human rights assessment which includes:
  - consultation with athletes and the anti-doping community to ascertain their expectations and experience;
  - identification of possible organizational risks and challenges associated with WADA’s ability to carry out its core activities as a regulator in the face of human rights protection and promotion;
- Development of a Human Rights Policy Statement for Foundation Board approval;
- Development of a Human Rights Roadmap which includes evaluating the real and perceived impacts of anti-doping policy and practice on athletes; and
- A mid-term monitoring report to the Foundation Board.

Ultimately, the objective of this assessment would be to demonstrate that WADA is aware of the universally recognized human rights of athletes, and that WADA is taking a lead in protecting and respecting these rights. Given this work should be ongoing, an important first step is to make a public statement committing to this work demonstrating an understanding that WADA seeks to ‘know and show.’

An example of such a public declaration can be found in **Annex C – CGF Human Rights Policy Statement**.

## Proposed Terms of Reference

The World Anti-Doping Agency (WADA) seeks to conduct an Initial Human Rights Assessment and based on it develop a roadmap that will guide WADA on a credible and meaningful path towards fulfilling its responsibilities in human rights as the global leader in anti-doping. Following a commitment to this process by WADA management and in anticipation of approval being given to it by its governing bodies, WADA initiated and has progressed discussions with a Senior Expert who is well suited to lead and engage WADA in this process.

The Expert will be responsible for the development of such a roadmap which should include:

- An impact assessment which will identify, understand and address possible human rights impacts emanating from the World Anti-Doping Code (the Code) and the implementation of its associated International Standards in accordance with the United Nations Guiding Principles on Business and Human Rights;
- recommended short, medium and long-term mitigation measures to address potential real and perceived conflicts with human rights of athletes;
- measures and/or best practices to address possible adverse impacts that the Code may unintentionally or potentially cause;

- the development of concrete actions, like a procedure by which human rights due diligence becomes an ongoing process which is embedded in all activities and policies, or concrete steps in human rights mainstreaming, education and training; and
- recommendations on how athletes may seek remedy when they have or perceive to have had their rights denied within the anti-doping system.

## Proposed Timeline

### Internal Steps:

1. November 2022 - Senior Expert starts consultations and preparation of supporting documents with WADA staff, current Athlete Committee and other relevant stakeholders;
2. October 2023 - final IHRA draft presented to relevant WADA staff and leadership for validation; drafting of the Public Policy Statement, the preparation of the work and documents for the Human Rights (HR) Roadmap;
3. 2024 April - final draft of the HR Roadmap presented to WADA staff and leadership;
4. September 2025 - after a year and a half of Roadmap implementation, mid-term monitoring report prepared.
5. End of 2025 - decision on the future steps of the IHRA process, such as determination on follow up activities (ex. policy changes, further consultation, continuation of assessment).

### External Steps:

1. November 2022 - Foundation Board launches the IHRA by:
  - adopting the Terms of Reference;
  - approving the Senior Expert;
  - confirming the consultative process.
2. November 2023 - Foundation Board takes note of the IHRA report, adopts Public Policy Statement, launches the work on the HR Roadmap by adopting the Terms of Reference and the continued mandate of the Senior Expert;
3. May 2024 (timing in 2024 TBC in line with WADA meetings) - Foundation Board adopts the HR Roadmap and launches the implementation including any initial measures that need to be taken into account with respect the 2026 Code review;
4. May 2026 (timing in 2024 TBC in line with WADA meetings) - Foundation Board, depending on outcomes and reception, funds, terminates the process with positive conclusions, or orders a comprehensive assessment and follow up.