



World Players Association
#WorldPlayersUnited

Professor Ulrich Haas
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Members
Working Group on the Review of the WADA
Governance Reforms

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Nyon, Switzerland, Tuesday 10 August 2021
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The governance of WADA

Dear Professor Haas and members of the Working Group,

I refer to the meeting held 16 July 2021 between the Working Group and Paulina Tomczyk, Matthew Graham and I on behalf of the World Players Association, including our affiliate EU Athletes.

We welcome the Working Group's invitation to provide further detail regarding our proposal for the reformation of the governance of WADA, particularly on the question of athlete representation. That proposal – which is based on four key pillars – was introduced to WADA by our letter dated 17 July 2017 to Director General Olivier Niggli.

In our meeting, the Working Group made it clear that its views on the question of the reformation of WADA's governance remain open, and its 460-page interim report summarises the views expressed by stakeholders to date. The Working Group remains open to fully exploring the reformation of the governance of WADA – including athlete representation – even though the interim report is based on a questionnaire that did not mention the position of athletes who belong to or who may wish to join or establish a player or athlete association. As this letter makes clear, World Players believes that full exploration is both necessary and achievable and will result in a renewed and strengthened WADA and global anti-doping system.

Accordingly, this letter:

- I. addresses the matter of athlete representation to ensure that, in all aspects of WADA's affairs:
 - (A) athletes are entitled to, can access and continuously develop the most effective form of athlete representation; and

- (B) WADA, the public authorities¹ and the Olympic Movement² are meeting their international obligations; and
- II. further explains our governance reform proposal of 2017.

Before doing so, it is important to restate that the global anti-doping system is facing a crisis of confidence that threatens its legitimacy. That crisis exists because of:

- the ongoing inability to prevent, address and sanction those responsible for systemic doping, which rarely (if at all) starts with athletes;
- athletes continuing to be subjected to manifestly unjust processes and sanctions;
- a lack of confidence in the institutional integrity of the anti-doping system due to the widespread presence of conflicts of interest; and
- the lack of meaningful involvement of athletes in the system. Not only do athletes lack effective representation and means of engagement with WADA, the public authorities, and the Olympic Movement, the impact of the anti-doping system on the rights, health, and well-being of athletes is not a matter which is understood or even being meaningfully researched.

To prevent this crisis of confidence from becoming existential, it is essential that WADA is deeply committed to attaining the highest standards of governance as soon as possible. As this letter explains, that commitment will be reciprocated by the people most impacted by the system – the athletes themselves.

It is therefore incumbent upon the Working Group to demonstrate leadership through principled and meaningful recommendations rather than through further piecemeal reform that may only accentuate the current crisis.

I. Athlete representation

(A) Athlete representation is a matter for the athletes

WADA has a deep interest in ensuring that the athletes affected by the global anti-doping system are as effectively represented as possible. Athletes, after all, share the same goals of ensuring that sport is free of doping, conducted with integrity, safe, fair, and just. Athlete trust and confidence in the governance of the global anti-doping system is simply essential if the anti-doping effort is to be successful.

As a matter of principle, WADA should encourage and welcome dealing with the most accountable, highest quality, best resourced, and most expert athlete representatives available. Plainly, the global anti-doping system is complex, involves deeply personal and invasive regulation, and can have career-ending and even life-changing impacts on athletes.³ There is a severe inequality of arms in both the development and administration of the global anti-doping system. Even matters which may be straightforward for WADA and National Anti-Doping

¹ Art. 6 cl. 2 Constitutive Instrument of Foundation of the World Anti-Doping Agency, 12 April 2021; (In the following footnotes referred to as ‘WADA Statutes’); in the main, the public authorities are national governments.

² Art, 6 cl.1 WADA Statutes; however, it must be noted that the Olympic Movement does not represent all sports bodies and leagues, which are otherwise subjected to the WADA Code such as the Gaelic Athletic Association and the Australian Football League; see here https://aflq.com.au/wp-content/uploads/2015/03/AFL_Anti-Doping_Flyer_-_ASADA.pdf.

³ World Players’ submission to the 2021 WADA Code review process identified at least five systemic sources of injustice in the global anti-doping system: (1) the improper definition of doping which captures athletes who clearly have not taken substances to enhance their sporting performance; (2) the lack of transparent science and testing; (3) inflexibility, which undermines the protection of player and athlete health, safety and wellbeing, including mental health; (4) inadequate education, communication and duty of care standards and protections; and (5) unjust dispute resolution and disciplinary proceedings. The submission also highlighted case studies which demonstrated the grave impact of these injustices on athlete rights, careers, health and wellbeing.

Organizations (**NADOs**) require athletes to urgently access expert and costly legal and scientific representation and advice, which can often be beyond an athlete's means or support network.

The question of athlete representation is not, however, one for WADA to resolve: it is for the athletes themselves. WADA's duty and responsibility – alongside the public authorities and the Olympic Movement – is to enable the athletes to develop their own means of representation freely and not act in a manner that undermines those obligations or athlete rights. It is certainly not open to WADA to design its own preferred means of athlete representation and legally embed that within the global anti-doping system. This is not only inconsistent with respect for key principles of freedom of association, it is detrimental to the effective representation of athletes. This is especially by precluding them from access to high quality legal, scientific, corporate, political and other spheres that WADA, the public authorities and the Olympic Movement enjoy.

(B) Athlete representation: three key actions

In relation to the governance of WADA, the proper approach to athlete representation involves three key actions by WADA, the public authorities and the Olympic Movement:

1. **Commit** to uphold their international obligations, including to protect, respect and fulfil internationally recognised human rights, particularly the rights of athletes to freedom of association and to organise and collective bargaining;
2. **Recognise** the representatives of those athletes who have exercised their right to freedom of association and to organise and collective bargaining, starting with World Players, **and promote** respect for that right throughout the global anti-doping system; and
3. **Do no harm**: not act in a way that undermines or violates the rights of athletes to be represented in accordance with their internationally recognised human rights.

Subject to these requirements, it is open to WADA to develop additional consultative mechanisms with athletes.

(C) Action #1: Commit

1. Anti-doping and the human rights of athletes

The global anti-doping system is anchored in human rights. The preamble to UNESCO's *International Convention Against Doping in Sport* expressly refers 'to existing international instruments relating to human rights,' as do precursor documents from the Council of Europe.⁴

Accordingly, the rights of athletes sit at the heart of the anti-doping effort. In recent years, the IOC, the CGF, FIFA and UEFA have all made contractual and policy commitments in keeping with their corporate responsibility to respect internationally recognised human rights under the *United Nations Guiding Principles on Business and Human Rights (UNGPs)*.⁵ Consistent with this, the Kazan Action Plan crafted by UNESCO and unanimously adopted at MINEPS VI in July 2017 identifies the proactive safeguarding of athletes' rights as both a precondition and an essential policy outcome if the integrity of sport is to be protected. The Kazan Action Plan provides 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*

⁴ Council of Europe (CoE) 'Anti-Doping Convention' (16 November 1989) ETS 135.

⁵ UN Office of High Commissioner for Human Rights 'United Nations Guiding Principles on Business and Human Rights' (2011) HR/PUB/11/04, available at http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (In the following footnotes referred to as 'UNGPs').

(UNGP).⁶ The Kazan Action Plan has been reinforced by the Council of Europe's *Recommendation on Ensuring the Independence of Hearing Panels (Bodies) and Promoting Fair Trial in Anti-Doping Cases* (2017)⁷ and *Guidelines on Integrity in Sport* (2020).⁸ These initiatives have been complemented by various declarations and recommendations from intergovernmental organisations, including the International Labour Organization (**ILO**), the UN General Assembly, the UN Human Rights Council and several national governments.⁹

Unquestionably, the UNGPs provide the accepted global standard for embedding the rights of athletes in sport, including within WADA's governance framework.¹⁰

2. Athlete representation as a human right

As an agency of business and government, WADA, has a special responsibility to ensure respect for human rights in the development, promulgation, implementation and enforcement of the World Anti-Doping Code (**Code**) and all other areas of its activities.¹¹

Under the UNGPs, internationally recognised human rights include, at a minimum, those expressed in *The International Bill of Human Rights (consisting of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights)*, and the *International Labour Organization's Declaration on Fundamental Principles and Rights at Work and Its Follow-Up (ILO Declaration)*.¹²

The ILO Declaration relevantly includes core ILO Conventions 87 (*Freedom of Association and the Protection of the Right to Organise Convention, 1948*)¹³ and 98 (*Right to Organise and Collective Bargaining Convention, 1949*).¹⁴ These are binding on all ILO members by virtue of membership and apply to all public authorities on WADA's Foundation Board and all 187 of the ILO's member states that are also signatories to the WADA Code.

The key principles in ILO C87 and C98 provide that where athletes are workers (which almost universally includes all members represented by affiliates of World Players):

- (a) they have the right to form and join player and athlete associations;
- (b) they have the right to freely conduct those organisations subject to the rules of the organisation concerned. This means they can be represented by

⁶ UNESCO 'Kazan Action Plan' (July 2017) SHS/2017/PI/H/14 REV, main policy area III.

⁷ CoE Monitoring Group 'Recommendation on ensuring the independence of hearing panels (bodies) and promoting fair trial in anti-doping cases' (20 February 2017) T.Do/Rec (2017) 01.

⁸ CoE Enlarged Partial Agreement on Sport 'Guidelines on sport integrity – Action 3 of the Kazan Action Plan' (April 2020).

⁹ ILO 'Global Dialogue Forum on Decent Work in the World of Sport – Points of Consensus' (January 2020) GDFWS/2020/7; CoE '16th Council of Europe Conference of Ministers responsible for Sport, Strasbourg 11 February 2021 - Resolution 2 – Human Rights in Sport' MSL16(2020)10final; UNGA Res 73/24, (6 December 2018) UN Doc A/RES/73/24; HRC Res 37/18 (23 March 2018) UN Doc A/HRC/RES/37/18; HRC Res 43/18 (2 July 2020) UN Doc A/HRC/RES/43/18.

¹⁰ See Prince Zeid Ra'ad Al Hussein and Rachel Davis, 'Recommendations for an IOC Human Rights Strategy' (March 2020), available at https://stillmedab.olympic.org/media/Document%20Library/OlympicOrg/News/2020/12/Independent_Expert_Report_IOC_HumanRights.pdf, (In the following footnotes referred to as 'IOC Human Rights Report').

¹¹ See detailed II(E)(2) below.

¹² Depending on the specific circumstances additional standards, such as the UN Convention on the Rights of the Child need to be considered; UNGPs, Principle 12 – Commentary.

¹³ ILO 'C87 – Freedom of Association and Protection of the Right to Organise Convention' (1948).

¹⁴ ILO 'C98 – Right to Organise and Collective Bargaining Convention' (1949).

- representatives of their own choosing. It is not for WADA or any third party to prescribe requirements for who the athletes' representatives can be. For example, whether the chosen representatives are current or former athletes is a matter for the athletes to determine with reference to their best interests solely;
- (c) they and their representatives must be protected from discrimination or other adverse action inconsistent with respect for freedom of association, including third party interference; and
 - (d) they and the organisations they form and belong to have the freedom to join and affiliate with national, regional or international federations or confederations to advance their collective interests.

The right to form and join trade unions for the protection of one's interests is expressly recognised in the *Universal Declaration of Human Rights, 1948*,¹⁵ and the *International Covenant on Civil and Political Rights, 1966*,¹⁶ which expressly provides that any legislative limits on freedom of association for purposes such as public order cannot limit the protections provided for in ILO C87. The *International Covenant on Economic, Social and Cultural Rights, 1966* similarly protects ILO C87.¹⁷ It also expressly recognises the rights of trade unions 'to establish national federations or confederations and the right of the latter to form or join international trade-union organisations,' which is precisely what our affiliates have done with the establishment of World Players.¹⁸

World Players, as a global union federation, is structured in a manner not dissimilar to most of the sports bodies that are members of the Olympic Movement. Such a structure makes sense to the Olympic Movement and makes sense under international law because it enables effective and representative dialogue at the global level to take place on an equal footing. World Players is already recognised by the international community, including UNESCO,¹⁹ the ILO,²⁰ and the UN Office of High Commissioner for Human Rights, with World Players being a founding member of the Centre for Sport and Human Rights alongside key stakeholders, including the Swiss government.²¹

In the same way, World Players is the natural counterpart to WADA.

3. Giving effect to the commitment to respect the representational rights of athletes

The manner in which WADA, the public authorities and the Olympic Movement should give effect to the commitment to respect the representational rights of players and athletes is explained in section II(B)(2) below.

¹⁵ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR), Art. 23 (4).

¹⁶ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), Art. 22.

¹⁷ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 999 UNTS 3 (ICESCR), Art. 8 (3).

¹⁸ ICESCR Art. 8 (1) (b).

¹⁹ UNESCO 'Intergovernmental Committee for Physical Education and Sport (CIGEPS) – Consultative Members' available at <https://en.unesco.org/themes/sport-and-anti-doping/cigeps#members>.

²⁰ ILO 'Global Dialogue Forum on Decent Work in the World of Sport (Geneva, 20-22 January 2020)' (2020) available at https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/meetingdocument/wcms_754680.pdf.

²¹ Centre for Sport & Human Rights 'Centre for Sport and Human Rights Appoints New Directors, incorporates as an independent entity in Switzerland' (08 July 2021) available at <https://www.sporhumanrights.org/news/centre-for-sport-and-human-rights-appoints-new-directors/>.

(D) **Action #2: Recognise and promote**

1. Recognition of existing player and athlete associations, starting with World Players

The first step for WADA to take on the question of athlete representation is straightforward: to recognise and deal with the representatives that have already been chosen by the athletes and exist in accordance with international human rights and labour law. The starting point for this is World Players.

Despite the evident and longstanding opportunity WADA has had to embrace this step, the position of athletes in relation to the governance of the global anti-doping system can, at best, be described as marginal. In relation to the members of our affiliates, it is effectively non-existent because WADA's approach to the question of athlete representation has systemically excluded the trade unions athletes have formed. World Players represents approximately 85,000 players and athletes through more than 100 player and athlete associations based in over 60 countries. Some 80,000 of these players and athletes are compulsorily bound by the WADA Code – yet they have no say in its development, promulgation, implementation or enforcement. They include players and athletes in sports which are an integral part of the Olympic Movement, such as football, basketball, hockey, rugby, indoor and beach volleyball, handball, cycling, baseball, and, increasingly, individual sports. The remaining players belong to our affiliates in the professional team sports who have successfully developed effective anti-doping programs through collective bargaining. Anti-doping – as a health and safety and disciplinary matter – is an employment-related matter which is properly the subject of collective bargaining and, in some countries, even a mandatory subject.

2. Promote freedom of association throughout the global anti-doping system

The second step for WADA to take on the question of athlete representation is to promote respect for freedom of association throughout the global anti-doping system so that athletes who are presently not organised or represented can safely exercise their right to be.

In this way, major representative gaps that presently exist can be legitimately filled over time, as we are presently seeing with recent organising efforts in sports such as athletics, tennis and swimming. Such associations, once properly established, would be eligible to join World Players as the recognised global union federation.

Importantly, the existence of any representative gap does not entitle WADA to refuse to carry out its responsibility to respect freedom of association.

(E) **Action #3: Do no harm**

1. WADA's current approach is a risk and likely harmful to athletes

WADA and the Working Group appear to be approaching the question of athlete representation in a legal vacuum – that WADA and its constituents are free to design and chose how they are to engage with athletes and how the voice of athletes is to be heard.²²

There are also ongoing political and cultural barriers within WADA in relation to meaningfully working with player and athlete associations, which again have become apparent during this review. Those matters were canvassed in our letters dated 2 October 2020, 19 October 2020, 8 December 2020 and 29 March 2021 to WADA and

²² Working Group on the Review of WADA Governance Reforms 'Interim Report to the WADA Executive Committee' (April 2021), pp. 40, 41; (In the following footnotes WADA Governance WG Interim Report).

responded to by Mr Niggli in his letter dated 22 March 2021. If WADA is to resolve fundamental challenges in relation to athlete representation effectively, these barriers must be addressed.

2. The vulnerability of unrepresented or inadequately represented athletes

The increasing revelations of the abuse of athletes within the Olympic Movement are indicative of the enormous power imbalance that exists in global sport. It is, however, beyond the scope of this letter to detail what constitutes effective athlete representation, as the immediate concern is one of governance.

For present purposes, the Working Group should be aware that the affiliates of World Players are independent, fully professional, financially sustainable, knowledge-based, democratic and player-driven membership organisations with a long track record of collaboration with counterpart sports bodies, collective bargaining and the provision of representational and support services to players, before, during and after their careers. Several have negotiated and developed anti-doping programs and policies from scratch. All affiliates are staffed by highly qualified professionals ultimately accountable to their members (some of whom are former elite athletes and others of whom are not).

It is simply not possible to replicate this level of representation through service on a consultative or advisory committee, no matter how well-intended the committee members may be or how successful they may have been as athletes during their careers. The level of representation our affiliates have achieved has only been made possible because the players and athletes were able to secure respect for the enabling right of freedom of association.

Accordingly, if a representative gap exists, WADA should, as a matter of governance, have a default position of working with the existing player and athlete representatives and encouraging further unionisation.

In contrast, WADA's historical approach has been to exploit the representative gap as an opportunity to impose its own system of athlete representation. That approach places all athletes in a very vulnerable position, exposes them to irreparable harm,²³ and denies even unionised athletes effective representation in respect of WADA, serving only to undermine athlete trust and confidence in the global anti-doping system.

WADA should recognise that there is no substitute for active engagement and negotiations with player and athlete associations. Athlete committees can be a potentially useful tool where athletes are not represented. However, they do not provide the same level of protection and empowerment as the full realisation of trade union rights.

3. Addressing gaps in athlete representation

We acknowledge that World Players does not represent all athletes covered by the WADA Code, including in some traditional Olympic sports. Such gaps, however, do not provide any basis to exclude and infringe upon the rights of those athletes who have exercised their right to freedom of association and decided how they wish to be represented.²⁴ Indeed, failing to respect or promote freedom of association will only perpetuate such a representative gap and risk the rights of athletes.

²³ Refer footnote 3.

²⁴ 'Global Dialogue Forum on Decent Work in the World of Sport – Points of Consensus' (January 2020) GDFWS/2020/7, para 4.

Rather than perpetuating a model of athlete representation that is not rights compliant, the first step to addressing gaps in athlete representation should be for WADA to undertake a mapping exercise to ensure:

- (a) respect for the right to freedom of association for those athletes who have chosen to exercise it (namely, the affiliated player and athlete associations of World Players and World Players itself);
- (b) promote respect for the rights of athletes who wish to do so – for example, in sports such as athletics, swimming, and tennis; and
- (c) where gaps remain, in consultation with relevant athletes and the player and athlete associations, consider how they can be addressed.

Once this has been completed, it may be appropriate to develop a committee structure. However, unlike its present design and the three options developed for the consideration of the Working Group, this must not:

- (d) function as a substitute for player and athlete associations on matters relating to the development, promulgation, implementation and enforcement of the WADA Code; or
- (e) assume or undermine the role of player and athlete associations. This must include a clear understanding by committee members and WADA itself that it is not representative of player or athlete associations or the players and athletes they represent.

We also note the recent *Independent Expert Report* to the IOC that considered these issues. It found where there was a need for athletes to have access to independent professional representation and has recommended the existing athlete commission structures within the Olympic Movement be reviewed to ensure the ‘need for enhanced social dialogue’ – defined as being based on a set of enabling conditions including respect for freedom of association and collective bargaining.²⁵

II. World Players’ WADA governance reform proposal

(A) Guiding principles

Our WADA governance reform proposal of 17 July 2017 is anchored in four guiding principles:

1. Independence
2. Accountability
3. Partnership
4. Internationally recognised human rights.

These principles give rise to four recommendations based on the proper separation of powers between the legislative, executive, and judicial functions of the global anti-doping system. The recommendations also require the word ‘stakeholder’ to be understood to include the stakeholder group most impacted by the global anti-doping system – the athletes.

(B) Pillar #1: Establish a tripartite partnership in the Foundation Board

1. Recognise the athletes as equal stakeholders in the global anti-doping system

The *Constitutive Instrument of Foundation of WADA (WADA Statutes)* describes the Foundation Board to be ‘an equal partnership between the Olympic Movement and the public authorities.’²⁶ The WADA Statutes emphasise the importance of ‘parity’ between

²⁵ IOC Human Rights Report, p. 34.

²⁶ Art. 7 WADA Statutes.

'the stakeholders',²⁷ but such parity does not extend to or include the athletes. The Olympic Movement is obliged to ensure that, from among its number on the Foundation Board, at least four individuals are athletes. These individuals are nominated by the Olympic Movement, are commonly members of the Executive Board or other decision-making bodies of the IOC, form part of the IOC, as a condition of their position are required to observe the rules of the Olympic Movement, and are liable to be removed by the IOC President.²⁸ For these and the reasons explained above, such individuals cannot be considered to be the legitimate representatives of athletes.

The Foundation Board – as the body ultimately responsible for the promulgation of the global anti-doping system, including the WADA Code – serves a legislative function. WADA Code signatories, such as governments and sports bodies, must comply with the WADA Code but have the right to be represented in the legislature. Athletes become bound by the WADA Code in a very different manner. The WADA Code is imposed on athletes as a mandatory condition of their involvement in sport through the contractual pyramid developed by the Olympic Movement and commonly supported by national legislation. For almost all the 80,000 or so WADA Code bound athletes represented by World Players, the WADA Code is a compulsory condition of employment.

Unlike the Olympic Movement and the public authorities, athletes become bound by a pervasive law – the WADA Code – but have no representation in the making of that law, resulting in a democratic deficit and a lack of accountability which undermines the legitimacy of the WADA Code itself.

The solution to this lies in extending the bilateral partnership between the Olympic Movement and the public authorities to the athletes and creating a tripartite partnership in which all three stakeholders have equal representation on the Foundation Board.

2. Reconstituting the Foundation Board

Under the WADA Statutes, the Foundation Board must consist of no more than 40 members,²⁹ with a maximum of 18 members being 'appointed' by the Olympic Movement³⁰ and a further 18 'appointed' by the public authorities.³¹ Others may be appointed 'upon the joint proposal of the Olympic Movement and the public authorities.'³²

It follows that the athletes should also be given the power in the WADA Statutes to 'appoint' 18 members to the Foundation Board to ensure that the current level of representativeness of the Olympic Movement and the public authorities is maintained. Any additional appointees would require the joint approval of the Olympic Movement, the public authorities and the athletes, with the Foundation Board having a new maximum size of 60, a substantial number but one in keeping with the Foundation Board's essential legislative, electoral and accountability functions, with the Foundation Board effectively acting as WADA's general assembly or congress.

This would, of course, necessitate a modification of the Statutes. It would also be possible to enact a tripartite model within the existing confines of the Foundation Board, with the Olympic Movement, public authorities and athletes to each appoint a maximum of 13 representatives. This model could conceivably be introduced on an initial basis under the terms of a tripartite agreement without the need to modify the WADA Statutes.

²⁷ Art. 6 cl. 4 WADA Statutes.

²⁸ Refer, for example, to the 'IOC Athletes' Commission Regulations' (Bye-law 1 to Rule 21 of the 'Olympic Charter' (26 March 2019), including paragraphs 1.4, 3.2 and 4.1.

²⁹ Art. 6 WADA Statutes.

³⁰ Art. 6 cl. 1 WADA Statutes.

³¹ Art. 6 cl. 2 WADA Statutes.

³² Art. 6 cl. 3 WADA Statutes.

Under either scenario, the suggested mode of appointment of the athlete representatives would need to be resolved in accordance with the three key actions and stepped approach set out in Part I of this letter.

At its heart, this remodelled tripartite Foundation Board is designed to reflect the equal position of WADA's essential stakeholders. That is not to say there are no other stakeholders who are important to the global anti-doping effort, such as NADOs and laboratories. However, a tailored means of ongoing and continuous stakeholder engagement with such stakeholders is more appropriate than Foundation Board membership.

For example, NADOs have an essential role in the anti-doping system by being primarily responsible for implementing the anti-doping system at the national level, which is an executive function. We also believe that some of the key concerns that have prompted NADOs to seek representation on the WADA Foundation Board – such as the presence of conflicts of interest and the lack of independence in key respects – would be addressed through the holistic implementation of all four pillars of our reform proposal.

(C) **Pillar #2: Ensure the Executive Committee and leadership of WADA is fully independent**

1. Independence – with accountability – is a prerequisite to best practice governance

World Players is strongly of the view that WADA's Executive Committee and leadership must be fully independent. It is acknowledged by experts and stakeholders that WADA's governance structure is presently conflicted, which has undermined compliance with the WADA Code at critical junctures and, in turn, confidence in the global anti-doping system. WADA must also be accountable. Independence, without accountability, will mean that WADA is only accountable to itself, which is the antithesis of good governance.

We share the strong support expressed by many stakeholders for the application and adoption of the 'stricter standard of independence'. This is especially in relation to the Executive Committee. As the Australian Football League succinctly summarised in its submission: 'there is no possible way that independence can exist with any form of representation' on the Executive Committee.³³

2. Reconstituting the WADA Executive Committee

Our reform proposal recommends:

'WADA's Executive [Committee] should be selected to ensure it has the requisite skills, experiences and diversity to lead the world's anti-doping effort. It should be of a size that ensures it operates strategically and makes informed, knowledge-based and objective decisions without the suggestion of political influence or the existence of a conflict of interest. All members must be independent of sport, government and athletes.'

'The WADA Executive [Committee] should be responsible for the executive functions of WADA, including:

- (a) *the implementation and enforcement of the WADA Code (and the necessary executional functions such as testing, investigations, prosecution, education and training) in accordance with the regulations and policy promulgated by the WADA Foundation Board. Importantly, the executive leadership of WADA must have the power and capacity to act without fear or favour against all relevant*

³³ WADA Governance WG Interim Report, p. 127.

- wrongdoers (governments and sports and not only athletes) to ensure that systemic doping and corruption can be addressed and enforced at its source;
- (b) developing and executing the strategy for WADA in the pursuit of its mission;
 - (c) the administration of WADA; and
 - (d) the making of decisions not reserved by law or the constitution of WADA to the WADA Foundation Board.'

We reiterate this recommendation and share the view expressed by the United States government that 'members of the Executive Board should be appointed by the Foundation Board after careful recruitment and vetting by the Nominations Committee, and via an open, transparent process.' This process must ensure that all Executive Committee members possess the requisite skills, values, character, experience and diversity to pursue WADA's mission without fear or favour. Independence requires some definition. At a minimum, it would require that an Executive Committee member does not hold current office within the Olympic Movement, a public authority and as an athlete representative. A reasonable cooling-off period (such as two years) should apply.

(D) **Pillar #3: Establish a global anti-doping system of arbitration and justice**

1. The reformation of the Court of Arbitration for Sport (CAS)

It is incomplete to examine the governance of WADA without considering the global anti-doping system of arbitration and justice, including the CAS. As the United States government submitted:

*'Although it has not been the focus of this survey, the United States believes it critically important that WADA and its stakeholders proactively pursue a path to significant reform of the [CAS]. Decisions made by this institution that weakened or overturned WADA's recommendations with regard to appropriate sanctions for Russian Code non-compliance have damaged the entire anti-doping enterprise and the effort to promote clean sport. It is time to reform CAS to ensure that it is independent, transparent and fit for purpose so that serious offenses in the future will be met with appropriate sanctions. The United States would be pleased to work with WADA and other stakeholders on this important endeavor.'*³⁴

We note that the Working Group 'proposes not to incorporate the reform of the CAS in the governance review process, because this topic clearly falls outside the [Working Group's] mandate.'³⁵ Reformation of the governance of WADA requires the strict separation of powers between the legislative, executive and judicial functions of the global anti-doping system to maximise public and stakeholder confidence and ensure that critical decisions on compliance are not perceived as being political.

2. Embed the separation of powers between the legislative, executive and judicial functions of WADA and the anti-doping system to ensure an effective and fair system of justice.

The third pillar of our proposal goes beyond the reformation of CAS. It reads:

'The enhancement of the WADA Foundation and Executive Boards as recommended in this letter would allow for WADA to reform the consistency, effectiveness and fairness of its system of justice by creating a global and independent arbitral system to hear and determine anti-doping matters both at first instance and on appeal. That system could be executed globally, regionally and nationally to ensure the efficacy and proximity of the justice system to the relevant matter. The justice system must be accessible and affordable for all.'

³⁴ WADA Governance WG Interim Report p. 450.

³⁵ WADA Governance WG Interim Report, p. 37.

*'This would allow the judicial functions to be removed from the various sports and vested in a global anti-doping chamber. With a number of substantive and procedural reforms being made to ensure compliance with internationally recognised human rights standards, such a function could sit with the [CAS]. However, to carry out this function, the CAS would need to adopt measures to ensure its actual and perceived independence from the sporting bodies and its equal accountability to the parties to any matter before it.'*³⁶

'This essential reform would also allow for each anti-doping case to be independently looked at on its merits, a fundamental legal principle essential if justice is not only to be done but to be seen to be done.'

3. Sequencing the reform process

Subject to progress being made to meaningfully reform the governance of WADA starting with addressing the matters of the Foundation Board, the Executive Committee and athlete representation, World Players would, like the United States government, be willing to be a part of any meaningful process to establish an effective system of arbitration and justice to enhance the global anti-doping system.

(E) **Pillar #4: Embed the internationally recognised human rights of athletes into the governance, activities and relationships of WADA**

1. The Working Group and the question of human rights

Given that key stakeholders look to the Working Group to ensure the enhancement of WADA's governance, it would seem clear that guaranteeing that WADA and the global anti-doping system is governed in a way that protects and respects the human rights of those affected by the system – including athletes – is essential to the task of the Working Group. Plainly, an organisation that violates the human rights of the people it regulates and affects cannot be regarded as a well-governed organisation. This is also true if the same organisation does not even know its human rights risks and impacts and is unable to report on what measures it is taking to ensure that any adverse human rights risks and impacts are being prevented, addressed, and, if needed, remedied.

The Working Group received submissions on the impact of anti-doping on human rights but is unsure about how the question of human rights may affect the governance of WADA. The Working Group notes that it:

*'... was informed that the WADA [Athletes Committee (AC)] sent a letter to WADA Director-General to invite WADA to conduct a human rights impact assessment. Whether such assessment may have an impact on the internal governance structure of WADA remains to be seen. Thus, also for reasons of timing, the [Working Group] will not address the issues of Human Rights in its governance reform. The [Working Group] notes that WADA as a Swiss foundation operates within the clear legal framework and protections of Swiss law.'*³⁷

World Players has shared an 'Athlete Rights Impact Assessment' proposal with WADA and reiterate the need for it to be prioritised and aligned with the wider governance reform processes.

Through partnering with player and athlete associations, the 'Athlete Rights Impact Assessment' will help WADA identify and address key gaps in its governance, rules, processes and sanctions that adversely impact athlete rights. As we have noted, the

³⁶ John Ruggie 'For the Game. For the World. FIFA and Human Rights' (2016), Corporate Responsibility Initiative Report No. 68 pp. 26, 35; IOC Human Rights Report, p. 33, 39.

³⁷ WADA Governance WG Interim Report, p. 37.

impact of the anti-doping system on the rights, health and well-being of athletes is not a matter which is understood or meaningfully researched, and this is both a salient risk to and a key omission in ensuring the good governance of WADA.

2. WADA's human rights responsibilities and obligations

WADA is a multi-national enterprise whose key stakeholders presently include governments and sports bodies. Accordingly, under the UNGPs:

- WADA and the sports bodies have a joint and individual responsibility to respect the internationally recognised human rights of athletes; and
- the governments have a duty to protect the internationally recognised human rights of athletes.

At a minimum, this requires WADA to do four things:

- (a) ***embed respect for human rights into its governance, activities and relationships***. This would include amending the WADA Statutes to incorporate a statutory human rights commitment and the adoption – following meaningful engagement and dialogue with affected groups, including athletes and their legitimate representatives – of a binding WADA human rights policy. FIFA, for example, has made a statutory commitment to human rights and adopted a human rights policy.³⁸ WADA should follow suit and ensure that its activities do not adversely impinge on FIFA's efforts to meet its human rights responsibilities and obligations. The IOC has committed to developing a human rights strategy that involves similar commitments and ensures that its role in the governance of WADA is consistent with its own human rights responsibilities and obligations;
- (b) ***undertake ongoing human rights due diligence*** to identify adverse human rights risks and impacts, and take action to prevent, address and remedy any risks and impacts;
- (c) ***provide access to remedy*** where WADA has caused or contributed to an adverse human rights impact, and exercise the considerable leverage it has where it is associated with such an impact, either directly or systemically. WADA is well placed, for example, to help strengthen the 'remedy ecosystem in sports';³⁹ and
- (d) ***undertake ongoing and meaningful engagement with all stakeholders***, including athletes and their legitimate representatives, and monitor, report on and track WADA's human rights impacts and activities.

* * * * *

We understand the Working Group's activities are ongoing, with additional consultation contemplated between September and November 2021. World Players and our affiliates remain committed to achieving an optimal governance framework for WADA and are open to further discussions with the Working Group to deliver this. This endeavour necessitates, of course, that the rights of our members are respected, protected and upheld.

³⁸ FIFA 'FIFA Statutes' (May 2021), Art. 3 available at <https://digitalhub.fifa.com/m/7e791c0890282277/original/FIFA-Statutes-2021.pdf>; FIFA 'FIFA's Human Rights Policy' (May 2017), available at <https://digitalhub.fifa.com/m/1a876c66a3f0498d/original/kr05dqyhwr1uhqy2lh6r-pdf.pdf>.

³⁹ IOC Human Rights Report, p. 36 ff.

In the alternative, if WADA elects not to recognise the trade unions the players and athletes have formed and deal with them meaningfully, it must allow – and certainly not contest – any decision of World Players or any group of organised players or athletes to opt-out of the WADA Code.

Yours sincerely,



Brendan Schwab
Executive Director

cc. World Players Executive Committee
World Players Anti-Doping Working Group