



WORLD PLAYERS ASSOCIATION

ATHLETE RIGHTS IMPACT ASSESSMENT

**A KEY STEP FOR WADA AND THE GLOBAL ANTI-
DOPING SYSTEM TO 'KNOW AND SHOW' THEY
RESPECT ATHLETE RIGHTS**



#WorldPlayersUnited



Athlete Rights Impact Assessment

A key step for WADA and the global anti-doping system to ‘know and show’ they respect athlete rights

“Knowing and showing is necessary for companies to demonstrate they respect human rights. If they don’t know, and can’t show, their claim is just that – a claim, not a fact.”

– Professor John Ruggie

World Players Association

Friday 3 September 2021

Nyon, Switzerland

Athlete Rights Impact Assessment

Proposed Terms of Reference

‘THAT, in accordance with the United Nations Guiding Principles on Business and Human Rights (UNGPs):

- 1. The World Anti-Doping Agency (WADA) undertake a tailored impact assessment (**Impact Assessment**) to identify, understand and address any adverse impacts WADA’s regulations and processes (including the World Anti-Doping Code, International Standards, hearing procedures and sanctions) have had, are having and may have on the internationally recognised human rights of athletes;*
- 2. the Impact Assessment shall include any adverse impacts WADA’s regulations or processes may cause, contribute to, or be linked with, and the leverage which WADA has to prevent, mitigate or address such impacts; and*
- 3. for the purposes of the Impact Assessment, WADA shall consider the respective responsibilities and duties of WADA, the Olympic and sport movement, and the public authorities under the UNGPs.’*

The Common Interests of WADA and the Athletes

Both WADA and the player and athlete association movement share the goal of creating and shaping a global anti-doping system that is:

- truly athlete-centred;
- protecting clean athletes and clean sport; and
- thorough, scientific and fair.

Realising a genuinely athlete-centred anti-doping framework requires WADA and the global anti-doping system to take all steps to identify, assess and address adverse impacts on athletes who are bound by the World Anti-Doping Code (**WADC**) and deeply affected by the system.

“Far from being academic, the real-life consequences are devastating as set out in this proposal and must now be thoroughly researched and understood.”

These adverse impacts include an athlete’s right to work, physical and mental health and lasting reputational damage that taints professional and personal opportunities well beyond life after sport. Far from being academic, the real-life consequences are devastating as set out in this proposal and must now be thoroughly researched and understood.

Embracing its responsibilities under the United Nations Guiding Principles on Business and Human Rights (**UNGPs**)¹ will enable WADA to:

- protect, respect and guarantee the internationally recognised human rights of athletes;
- prioritise athletes’ health and wellbeing; and
- provide needed support pathways for athletes.

This will ultimately also help WADA to address the faced crisis of confidence threatening its very legitimacy.

“As a first critical step, to address its responsibility, WADA must undertake a tailored athlete rights impact assessment.”

As a first critical step, to address its responsibility, WADA must undertake a tailored athlete rights impact assessment (**Impact Assessment**) to identify, understand and address any adverse impacts WADA’s regulations, processes (including the WADC, International Standards, hearing procedures and sanctions) have had, are having and may have on the internationally recognised human rights of athletes.

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I. WADA's Special Responsibility to Respect Human Rights

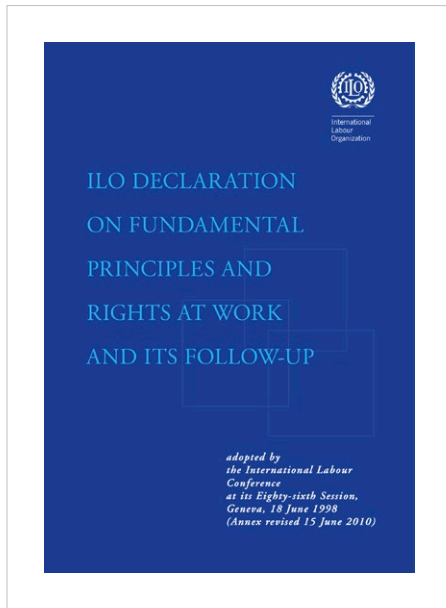
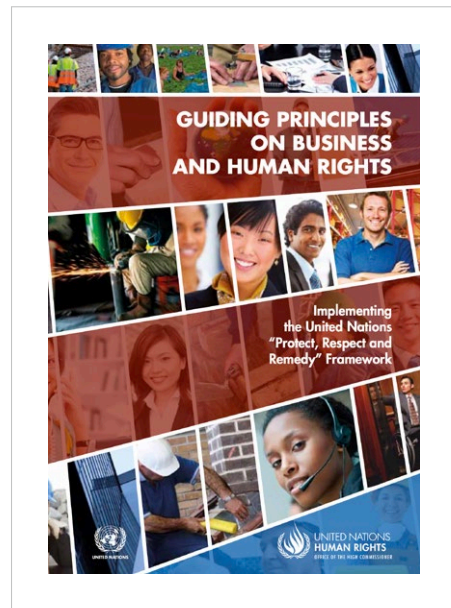
(A) Global sport and the responsibility to respect human rights

The responsibility to respect internationally recognised human rights expressed in the UNGPs² constitutes the expected global minimum standard of business conduct wherever they operate. 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 (including sports bodies, leagues, teams and employers) to respect human rights is anchored in a universally recognised social norm, which exists independently from compliance with laws and regulations and states' fulfilment of their human rights duties.³ 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.⁴ The failure to comply with the corporate responsibility to respect human rights will clearly call an entity's social license into question, as global sport's human rights crisis has demonstrated.

The responsibility to respect human rights is “broader and different to legal liability and jurisdiction” and is based on the “existence of a connection to the harm and the nature of that connection”

*- Rachel Davis and Prince Zeid Ra'ad Al Hussein - Independent Expert Report
'Recommendations for an IOC Human Rights Strategy'*

Internationally recognised human rights referred to by the UNGPs 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**).



Three Pillars:

- 'Protect'
- 'Respect'
- 'Remedy'

The UNGPs apply to all business enterprises, regardless of their size, sector, location, ownership and structure.⁵ It is therefore clear that the UNGPs apply to sport governing bodies (SGBs) and other sports bodies.⁶ Accordingly, the following SGBs have made contractual and policy commitments in keeping with their corporate responsibility to respect internationally recognised human rights under the UNGPs:

- Commonwealth Games Federation
- Fédération Internationale Football Association (FIFA)
- Union of European Football Associations (UEFA)
- International Olympic Committee (IOC)

- **SGBs must ensure 'respect' for internationally recognised human rights and 'access to remedy' in accordance with the UNGPs**
- At a minimum, this includes those human rights contained in the International Bill of Human Rights, and the ILO Declaration on Fundamental Principles and Rights at Work

(B) Anti-doping and the human rights of athletes



United Nations
Educational, Scientific and
Cultural Organization



“The genesis of the global anti-doping system did not happen in a vacuum but was anchored in the international human rights framework.”

The genesis of the global anti-doping system did not happen in a vacuum but was anchored in the international human rights framework. The preamble to UNESCO’s International Convention Against Doping in Sport⁷ expressly refers ‘to existing international instruments relating to human rights’, as do precursor documents from the Council of Europe⁸. Accordingly, the human rights of athletes sit at the heart of the anti-doping effort.

Intergovernmental organisations have increasingly recognised the responsibility of SGBs to embed the internationally recognised human rights of all affected by the delivery of sport in accordance with the UNGPs. Such expectations have been included in:

- the UNESCO Kazan Action Plan, unanimously adopted at MINEPS VI in July 2017⁹, which:
 - o identifies the proactive safeguarding of athletes’ rights as both a precondition and an essential policy outcome for the protection of sports’ integrity; and
 - o 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 [UNGP]s’*;
- the Council of Europe’s Recommendation on Ensuring the Independence of Hearing Panels (Bodies) and Promoting Fair Trial in Anti-Doping Cases (2017)¹⁰ and Guidelines on Integrity in Sport (2020)¹¹, which was developed with the involvement of WADA and reinforces the Kazan Action Plan; and
- declarations and recommendations from the ILO, the UN Human Rights Council and other intergovernmental organisations.¹²

(C) WADA's special responsibility

“WADA has a special responsibility to ensure that athletes’ fundamental rights are respected, protected and upheld”

WADA is legally constituted through the WADA Foundation Board as a partnership between the ‘Olympic Movement’ (i.e. SGBs) and ‘public authorities’ (i.e. governments).

Accordingly, WADA has a special responsibility to ensure that athletes’ fundamental rights are respected, protected and upheld in line with the UNGPs. The respective expectations articulated in the UNGPs apply jointly and separately to all involved SGBs and governments, as well as WADA itself.

In particular, all government signatories to the WADC (including 187 which are ILO members) must comply with their obligations under international human rights law, including ILO core 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.

(D) Respecting human rights in practice: essential requirements

Athletes are at the core of global sport and, with their labour, make sport possible.

The [World Player Rights Policy](#)¹⁵ outlines four essential steps to champion the responsibility to respect athletes rights under the UNGPs:

- 1) *embed respect for human rights into its governance, activities and relationships.***
For WADA, this involves:
 - 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; and
 - ensuring that WADA’s activities do not adversely impinge efforts of SGBs, who made respective human rights commitments, to meet their human rights responsibilities and obligations, such as FIFA, which has entered into an agreement with FIFPRO providing for the principle of ‘individual case management’ to apply to anti-doping matters;¹⁶
- 2) *undertake ongoing human rights due diligence (HRDD)*** to identify adverse human rights risks and impacts, and taking action to prevent, address and remedy any risks and impacts;
- 3) *provide access to remedy*** where WADA has caused or contributed to an adverse human rights impact and exercising 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’;¹⁷ and

- 4) **undertake ongoing and meaningful engagement with all stakeholders**, including athletes and their legitimate representatives, and monitoring, reporting and tracking WADA's human rights impacts and activities.

“Putting athletes at the centre of sport means recognising sports bodies' responsibility towards them”

- Rachel Davis and Prince Zeid Ra'ad Al Hussein - Independent Expert Report 'Recommendations for an IOC Human Rights Strategy'

★ ★ ★

WORLD PLAYER RIGHTS POLICY

Why? To embed player rights in world sport
How? By upholding international human rights law

1

BINDING PLAYER RIGHTS POLICY



2

IDENTIFY RISKS & ACT



3

ACCESS TO REMEDY



4

PLAYER ENGAGEMENT & COMMUNICATION



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II. Essential Knowledge Gaps: Adverse Athlete Rights Impacts

(A) The nexus between WADA and human rights

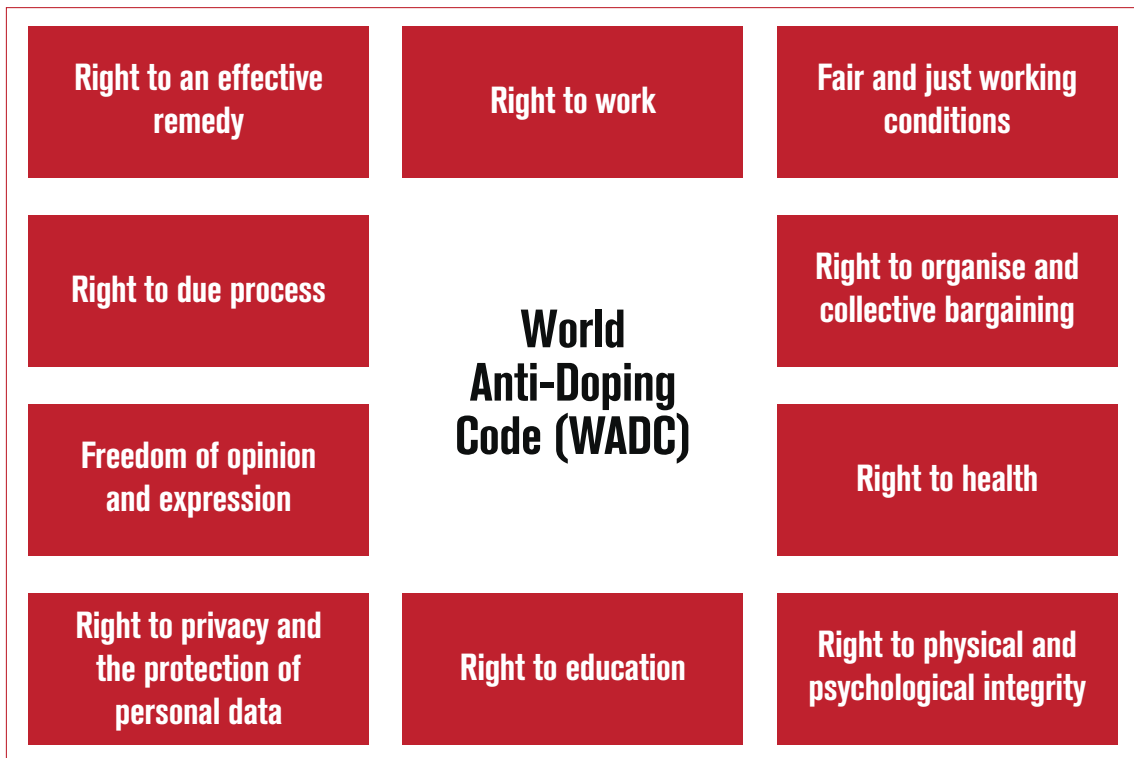
WADA and the global anti-doping system, including the WADC, raise many fundamental issues concerning athletes' internationally recognised human rights as articulated in the Universal Declaration of Player Rights (**UDPR**)¹⁸. The UDPR is the first comprehensive articulation of athletes' fundamental rights, which translates and tailors internationally recognised human rights to the salient risks of the sporting context. The rights expressed in the UDPR are categorised into four pillars:

- 1) access to sport;
- 2) labour rights;
- 3) personal rights; and
- 4) legal rights.

Involved human rights include the right to:

- work;
- fair and just working conditions;
- organise and collective bargaining;
- access an effective remedy;
- due process;
- privacy and the protection of personal data;
- physical and psychological integrity;
- education;
- freedom of opinion and expression; and
- health, including the promotion of physical and mental health and social wellbeing.

Mental health and wellbeing matters, as highlighted in the following case studies, are critical in relation to anti-doping, and the promotion of which are comprehensively articulated in the [World Player Development, Wellbeing, Transition and Retirement Standard](#)¹⁹.



(B) The impact on athletes

Nicklas Backstrom:



“ ”

I have absolutely nothing to hide. I have allergy problems. I was ready to play probably the biggest game of my career, and two and a half hours before the game I got pulled aside. It's sad. I felt empty inside. . . To be honest, I didn't think at all. I just stared at the wall. I couldn't do anything about it.

Steven Colvert:



“ ”

They are making the rules, playing by their own rules. . . People can say move on but it doesn't sit right with me. And CAS? There's costs involved in that. In the years after 2015 I went to a really dark place. I was quite social before all of this but most of my friends around then haven't heard from me since. . . My family worried sick. My mother was always concerned that I might do something harmful to myself.

Paolo Guerrero:



“ ”

Today I feel like my dreams, first of playing football and second of playing in a World Cup after 36 years, I feel like they're gone. This is a very dark hour, dark due to what I'm going through, but I want to reiterate to my country, to my people, that I have never taken any kind of drugs. To the people who've contributed to this shameful injustice (I say to them), you are stealing my World Cup and perhaps also my career. I hope you can sleep at night.

Jarrod Bannister:



“ ”

Australian javelin champion Jarrod Bannister has died suddenly in the Netherlands. Bannister, 33, had been living and training in Holland and there are no suspicious circumstances surrounding his death. Bannister was banned for 20 months for failing three whereabouts drug tests. He maintained drug testers arrived at the hotel where he was staying, but were told he had checked out the previous day. Bannister was actually in the hotel in a room shared with another Australian athlete – the accommodation had been paid for by Athletics Australia.

(C) Essential knowledge gaps

Despite the many implications the system has on athletes' rights, including their health and wellbeing, there is currently an absence of evidence-based research and, consequently, a number of essential knowledge gaps exist. In short, WADA and the global anti-doping system does not know and cannot show that they are protecting, respecting and fulfilling the internationally recognised human rights of athletes.

WADA's principal approach to human rights issues to date has involved asking a number of specific questions of eminent lawyers, including former Judge Jean-Paul Costa. However, the conducted analyses:

- are incomplete in a number of material respects and, consequently, arrive at conclusions which lack the requisite veracity;
- have not been based on the UNGP framework;
- were conducted in a factual vacuum, especially by failing to research, understand and consider the lived experiences of athletes regulated by the WADC; and
- could therefore also not fully consider the proportionality of the WADC provisions as that would require taking the actual effects on athletes into account.

The lack of understanding of the effects of the global anti-doping system on athletes results in profound, and sometimes even tragic, impacts on athletes' careers, livelihoods, health, and reputation. In so doing, athlete, stakeholder and public confidence in the global anti-doping system is undermined.

“In short, WADA and the global anti-doping system does not know and cannot show that they are protecting, respecting and fulfilling the internationally recognised human rights of athletes.”

(D) Sources of systemic injustice

The World Players Association (**World Players**) has identified at least five categories of systemic injustice, which relate to the:



III. Taking the First Step Towards Respecting Athlete Rights

(A) The essential first step – the impact assessment

“The first critical step for WADA to address its responsibility and better understand its impacts on athletes is to conduct a impact assessment.”

The first critical step for WADA to address its responsibility and better understand its impacts on athletes is to conduct the proposed Impact Assessment. This will enable WADA to identify and assess the potential and actual adverse impacts its governance, regulations and processes, including sanctions, have on athletes.

The proposed Terms of Reference for the Impact Assessment

Based on the experience of our affiliated player and athlete associations, which have supported athletes competing under the WADC, World Players proposes the following Terms of Reference for the Impact Assessment:

‘THAT, in accordance with the United Nations Guiding Principles on Business and Human Rights (UNGPs):

- 1. WADA undertake a tailored impact assessment (Impact Assessment) to identify, understand and address any adverse impacts WADA’s regulations and processes (including the World Anti-Doping Code, International Standards, hearing procedures and sanctions) have had, are having and may have on the internationally recognised human rights of athletes;*
- 2. the Impact Assessment shall include any adverse impacts WADA’s regulations or processes may cause, contribute to, or be linked with, and the leverage which WADA has to prevent, mitigate or address such impacts; and*
- 3. for the purposes of the Impact Assessment, WADA shall consider the respective responsibilities and duties of WADA, the Olympic and sport movement, and the public authorities under the UNGPs.’*

The requirements to ensure the effectiveness and meaningfulness of the Impact Assessment are summarised in the Annex.

The Impact Assessment should result in a series of recommendations to WADA, the Olympic and sport movement, and the public authorities to ensure that the internationally recognised human rights of athletes are protected, respected, and upheld in accordance with the UNGPs.

This should inform ongoing robust HRDD as set out in the following section.

(B) Human rights due diligence

HRDD lies at the heart of respecting internationally recognised human rights. It is

- “[...] a comprehensive, proactive attempt to uncover human rights risks, actual and potential, over the entire life cycle of a project or business activity[...]”;²⁰
- an ongoing process that enables entities to know and show how their activities and operations impact people’s human rights and how they prevented and addressed the identified risks;²¹
- necessarily informed by the meaningful engagement with affected groups and their legitimate representatives.²² For SGBs, this requires consultation with “[athlete] groups whose perspectives are not represented in existing bodies”, including “trade union representatives where athletes are unionised”.²³

“Sport bodies should conduct human rights due diligence when they make decisions that will affect athletes”

- Rachel Davis and Prince Zeid Ra'ad Al Hussein - Independent Expert Report 'Recommendations for an IOC Human Rights Strategy'

Critical characteristics for robust and effective HRDD are to:

- 1) cover actual or potential impacts;
- 2) address risks and impacts the entity is causing, contributing to, or which are directly linked to their operations, products or services by their business relationships;
- 3) adapt the scale and extent of HRDD on the entity’s size, the likelihood of severe impacts and the nature of their operations; and
- 4) design it as an ongoing process.

Procedural elements of HRDD²⁴ include

- 5) the identification and assessment of adverse human rights impacts;
- 6) the cessation, prevention or mitigation of the identified impacts;
- 7) monitoring the effectiveness of the adopted measures; and
- 8) communicating how the impacts have been addressed and engaging with affected stakeholders.

Players are humans first, and athletes second. Based on their inherent and inalienable dignity, they are entitled to the same fundamental human rights as any other person. Therefore, athlete rights are human rights, and vice versa. The UDPR provides the benchmark for sports bodies to conduct effective HRDD to comply with their responsibility to respect the fundamental rights of athletes.

IV. The Win-Win for WADA and Athletes

“Taking the first initial step to reconcile WADA and its operations with international human rights will also send a strong signal to global anti-doping stakeholders and help build and enhance support for the global anti-doping system.”

Conducting the Impact Assessment will help WADA to:

- gain and build athletes’ trust and confidence as a truly athlete-centred regulator;
- align with key developments in global sport, including the human rights commitments of and recommendations to the IOC;
- provide a basis for developing a comprehensive approach to human rights and develop the knowledge and capacity to do so on an ongoing basis;
- keep ahead of legislative initiatives, increasingly requiring mandatory HRDD;
- realise key aspects of WADA’s 2020-24 Strategic Plan; and
- most importantly, be able to know and show on an ongoing basis that the WADC and the surrounding standards, processes and sanctions are, as a matter of fact, human rights compliant.

Additionally, taking the first initial step to reconcile WADA and its operations with international human rights will also send a strong signal to global anti-doping stakeholders and help to regain their support for and confidence in the global anti-doping system.

V. Conclusion

World Players is committed to this process and would be pleased to work with WADA, the WADA Athlete Committee and all anti-doping stakeholders to advance the implementation of this proposal.

Annex: Requirements for a meaningful and effective impact assessment

In order to ensure the effectiveness and meaningfulness of the Impact Assessment, the following principles must shape the process:

Principles for a meaningful Impact Assessment	
Transparency	Accountability
Applicability of the internationally recognised human rights of athletes	Embedding human rights principles, incl. non-discrimination, participation and empowerment
Meaningful stakeholder engagement	Understanding the past

Transparency

- One of the fundamental pillars for the meaningfulness and the very legitimacy of the process.
- Enables public scrutiny and empowers stakeholders to evaluate the identification and evaluation of athlete rights' risks and the adequacy of taken actions to address the athlete rights risks.²⁵
- Thus, genuinely linked to meaningful stakeholder engagement.

Accountability

- Roles and corresponding responsibilities within the conducting assessment team need to be assigned.
- Sufficient resources must be allocated to enable the team to fulfil their tasks adequately.
- Potentially or actually affected athlete rights and the responsibilities and obligations of involved actors (i.e., SGBs, governments and other anti-doping stakeholders such as National Anti-Doping Organisations (**NADOs**)) must be mapped and articulated.

Application of the internationally recognised human rights of athletes

- Athletes internationally recognised human rights, as expressed in the UDPR, are used as the yardstick.
- Identification of adequate measures to prevent or mitigate the materialisation of risks is grounded in and guided by athlete rights.

Embedding human rights principles

- The process is designed not to cause harm or reinforces the marginalisation and vulnerability of certain groups.
- All process stages should be inclusive, gender-responsive and provide adequate safeguards for those at risk.

Meaningful stakeholder engagement

- Engagement with athletes and their legitimate representatives is a critical element of a meaningful Impact Assessment²⁶ and enables a full understanding of existing concerns about their operations and the actual or potential effects on athletes.
- Other groups of stakeholders to engage with include representatives of the relevant government branches, experts (legal, medical, scientific, human rights and athlete development and wellbeing), representatives of civil society organisations, and specialised intergovernmental organisations.

Understanding the past

- Understanding how regulations, processes and enforcement regimes have in the past affected athletes' enjoyment of their fundamental rights is a critical pillar to champion the responsibility to respect the internationally recognised human rights of athletes.
- Courageously engaging in the difficult conversations about historic harms caused by an organisation's operations enables the full comprehension of the athlete rights impacts connected to their activities and the taking of meaningful and effective measures to harness sports' potential as a social force for good.
- Player and athlete associations are essential partners to facilitate those conversations, which should ultimately lead to steps towards restorative justice.

Process stages

The Impact Assessment is comprised of several process stages:

- 1) Planning and scoping
- 2) Evidence gathering/data collection
- 3) Analysing impact, including prioritising most salient risks
- 4) Developing recommended actions to address identified impacts
- 5) Reporting
- 6) Evaluation.

1) Planning and scoping

- Selection of the Impact Assessment team members.
- Identification of relevant stakeholders, including particular efforts to identify potentially vulnerable or marginalised athletes and necessary steps to ensure their safe and empowering participation in the process.
- Analysing of the current level of athlete rights protection in regulatory frameworks and their effectiveness in practice.
- Developing an in-depth understanding of how frameworks and processes have impacted athletes in the past.

2) Evidence gathering/data collection

- Collection of baseline data based on the initially identified sphere of impacts, through:
 - o Direct engagement with athletes and their legitimate representatives and other relevant stakeholders
 - o Reviewing and analysing available sources, including existing statistics and reports
 - o Considering socio-economic, political, legal and other information which provide for the comparison between the athlete rights enshrined in international human rights instruments and the UDPR and the WADA's governance, regulations and processes.
- Development of athlete rights indicators, which are '*specific information on the state or condition of an object, event, activity or outcome that can be related to human rights norms and standards; that addresses and reflects human rights principles and concerns; and that can be used to assess and monitor the promotion and implementation of human rights*'.²⁷

3) Analysing impact, including prioritising most salient risks

- Assessment of collected data in relation to the severity of the impacts, considering scope, scale and irremediability of impacts.
- Requirement looking at the actual and potential effects through the eyes of athletes experiencing them.
- Assessment should include cumulative effects resulting from the interplay of WADA's regulations and processes with other actors' operations or behaviours, such as the NADOs implementing the WADC or the interplay with specific national laws.

4) Developing recommended actions to address identified impacts

- Identifying and designing a set of recommended measures to address the identified impacts, depending on the respective implications, severity, and connection to the impacts.
- Recommendations should clarify which actions must be prioritised to address the most salient risks.
- Recommendations should also assign responsibilities for the implementation.

5) Reporting

- Submission of the final report, which should detail the process, the identified impacts, their analysis regarding severity, and the proposed actions to address them.
- The report should subsequently be published or – at a minimum – made available to all involved stakeholders.

6) Evaluation

- The process should, in consultation with stakeholders, be evaluated.
- Particular attention should be given to the inclusiveness of the process and whether athletes and other involved stakeholders considered the process as empowering.

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