

## DECISION OF THE ATHLETICS INTEGRITY UNIT IN THE CASE OF MR PHILIP CHERUIYOT KANGOGO

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### Introduction

1. In April 2017, World Athletics (formerly the IAAF) established the Athletics Integrity Unit ("**AIU**") whose role is to protect the integrity of the sport of Athletics, including fulfilling the World Athletics' obligations as a Signatory to the World Anti-Doping Code. World Athletics has delegated implementation of the World Athletics Anti-Doping Rules ("**ADR**") to the AIU, including but not limited to the following activities in relation to International-Level Athletes: Testing, Investigations, Results Management, Hearings, Sanctions and Appeals.
2. Mr Philip Cheruiyot Kangogo is a 36-year old Kenyan long-distance runner who is an International-Level Athlete for the purposes of the ADR (the "**Athlete**").
3. This decision is issued by the AIU pursuant to Article 8.4.7 ADR which provides that:

*8.4.7 "[i]n the event that [...] the Athlete or Athlete Support Person admits the Anti-Doping Rule Violation(s) charged and accedes to the Consequences specified by the Integrity Unit [...], a hearing before the Disciplinary Tribunal shall not be required. In such a case, the Integrity Unit [...] shall promptly issue a decision confirming [...] the commission of the Anti-Doping Rule Violation(s) and the imposition of the Specified Consequences [...]"*

### The Athlete's commission of Anti-Doping Rule Violations

4. On 28 April 2019, the Athlete was subject to in-competition Testing at the 'PZU Cracovia Marathon' held in Krakow, Poland. The Athlete provided a urine sample numbered 525400 (the "**Sample**").
5. On 3 June 2019, the World Anti-Doping Agency ("**WADA**") accredited laboratory in Warsaw, Poland, reported an Adverse Analytical Finding (the "**AAF**") for the presence of Higenamine in the Sample.
6. Higenamine is a Prohibited Substance under the WADA 2019 Prohibited List (S3: Beta-2 Agonists). It is a Specified Substance prohibited at all times. The Athlete did not have a TUE permitting the use of Higenamine.
7. On 6 June 2019, the AIU notified the Athlete of the AAF ("the **Notice of Allegation**"). The Athlete was requested to provide an explanation for the presence of Higenamine in the Sample by no later than 13 June 2019 and was afforded the opportunity to request analysis of the B Sample.
8. On 8 June 2019, the Athlete wrote to the AIU stating that he accepted the presence of Higenamine in the Sample. The Athlete did not dispute the AAF and he did not request analysis of the B Sample. The Athlete stated that he did not dope intentionally and suspected that the origin of the Higenamine in the Sample might have been a contaminated supplement.
9. On 11, 12, 21 and 22 June and 3 July 2019, the Athlete provided additional details regarding the supplements that he had used prior to the 'PZU Cracovia Marathon'.

10. On 3, 4 and 8 July 2019, the Athlete also provided the AIU with details regarding herbs that he had consumed on his mother's advice prior to the 'PZU Cracovia Marathon'. As he was only aware of the names of the herbs in the Kalenjin dialect, on the request of the AIU, he provided photos of the herbs and later samples of the herbs to Athletics Kenya who had agreed to assist the Athlete to identify the herbs in order to determine whether or not they could be responsible for the presence of Higenamine in the Athlete's sample.
11. Between July 2019 and June 2020, Athletics Kenya sought to assist the Athlete to identify the herbs that the Athlete had provided, however, they were unable to do so. The Athlete did not compete in the period whilst the identification process, assisted by Athletics Kenya was ongoing.
12. Once the Athletics Kenya investigation had concluded without being able to identify the herbs in question, on 19 June 2020, the AIU issued the Athlete with a Notice of Charge for committing Anti-Doping Rule Violations pursuant to Article 2.1 ADR (Presence of a Prohibited Substance) and Article 2.2 ADR (Use of a Prohibited Substance) ("the **Charge**") and imposed a provisional suspension. The Athlete was offered the opportunity to either admit the Anti-Doping Rule Violations and accept a two (2) year period of ineligibility, or to request a hearing before the Disciplinary Tribunal ("the **Tribunal**"), by no later than 29 June 2020.
13. On 25 and 29 June 2020, the Athlete wrote to the AIU, but failed to address the substantive matters raised in the Charge.
14. On 30 June 2020, the Athlete was given a final opportunity to respond substantively to the Charge and advised that, if he did not do so by 3 July 2020, he would be deemed to have waived his right to a hearing before the Disciplinary Tribunal, to have admitted the Anti-Doping Rule Violations and to have accepted the Consequences specified in the Charge.
15. On 1 and 3 July 2020, the Athlete responded to the AIU, but his replies still failed to confirm precisely how he wished to proceed with the Charge issued against him.
16. In these circumstances on 6 July 2020, the AIU proposed that the Athlete seek advice via the pro-bono legal service offered by the Disciplinary Tribunal secretariat, Sport Resolutions, to ensure that the Athlete fully understood the nature of the Charge and was advised accordingly on how to proceed. On 8 July 2020, the Athlete agreed to that proposal and, on 20 July 2020, Sport Resolutions confirmed that the Athlete had been provided with independent pro-bono legal advice.
17. On 31 July 2020, the Athlete admitted committing the Anti-Doping Rule Violations and accepted the proposed Consequences set out in the Charge and, on 7 August 2020, the Athlete returned a signed Admission of Anti-Doping Rule Violations and Acceptance of Consequences Form via his appointed pro-bono lawyer confirming his admission.

## Consequences

18. Taken together, the Anti-Doping Rule Violations pursuant to Article 2.1 ADR and Article 2.2 ADR constitute the Athlete's first Anti-Doping Rule Violation under the ADR.
19. The Athlete (i) has never disputed the AAF or the presence of Higenamine in the Sample following notification of the Anti-Doping Rule Violations in the Notice of Allegation on 6 June 2019 and (ii) promptly admitted the Anti-Doping Rule Violations on 31 July 2020 following the appointment of pro-bono legal counsel on 20 July 2020 to advise him as to the Charge, which was issued to him on 19 June 2020.
20. The Athlete has therefore admitted to committing Anti-Doping Rule Violations under Article 2.1 ADR and Article 2.2 ADR and the AIU confirms by this decision the following Consequences for a first Anti-Doping Rule Violation:

- 20.1. a period of Ineligibility of two (2) years commencing on 31 July 2019 pursuant to Article 10.2.2 ADR and the application of Article 10.10.2(b) ADR; and
  - 20.2. disqualification of the Athlete's results since and including 28 April 2019, with all resulting consequences, including the forfeiture of any titles, awards, medals, points and prize and appearance money pursuant to Article 9 ADR and Article 10.8 ADR.
21. The Athlete has accepted the above Consequences for his Anti-Doping Rule Violations and has expressly waived his right to have those Consequences determined by the Disciplinary Tribunal at a hearing.

### **Publication**

22. In accordance with Article 8.4.7(b) ADR, the AIU shall publicly report this decision on the AIU's website.
23. This decision constitutes the final decision of the AIU pursuant to Article 8.4.7 ADR.

### **Rights of Appeal**

24. Further to Article 13.2.4 ADR, WADA and the Anti-Doping Agency of Kenya (“**ADAK**”) have a right of appeal against this decision to the Court of Arbitration for Sport in Lausanne, Switzerland, in accordance with the procedure set out at Article 13.7 ADR.
25. If an appeal is filed against this decision by WADA or ADAK, the Athlete will be entitled to exercise his right of cross-appeal in accordance with Article 13.9.3 ADR.

**Monaco, 28 August 2020**