

## DECISION OF THE ATHLETICS INTEGRITY UNIT IN THE CASE OF MS ESTHER BIRUNDU BORURA

### INTRODUCTION

1. World Athletics has established the Athletics Integrity Unit ("**AIU**") whose role is to protect the integrity of the sport of Athletics, including fulfilling World Athletics' obligations as a Signatory to the World Anti-Doping Code ("the "**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. Ms Esther Birundu Borura ("the **Athlete**") is a 23-year-old long-distance runner from Kenya<sup>1</sup>.
3. This decision is issued by the AIU pursuant to Rule 8.5.6 ADR, which provides as follows:

*"8.5.6 In the event that the Athlete or other Person either (i) admits the violation and accepts the proposed Consequences or (ii) is deemed to have admitted the violation and accepted the Consequences as per Rule 8.5.2(f), the Integrity Unit will promptly:*

- (a) issue a decision confirming the commission of the violation(s) and the imposition of the specified Consequences (including, if applicable, a justification for why the maximum potential sanction was not imposed);*
- (b) Publicly Report that decision in accordance with Rule 14;*
- (c) send a copy of the decision to the Athlete or other Person and to any other party that has a right, further to Rule 13, to appeal the decision (and any such party may, within 15 days of receipt, request a copy of the full case file pertaining to the decision)."*

### THE ATHLETE'S COMMISSION OF ANTI-DOPING RULE VIOLATIONS

4. Rule 2 ADR sets out that the following shall constitute an Anti-Doping Rule Violation:

*"2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample*

*[...]*

*2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method"*
5. On 30 June 2023, the Athlete provided a urine Sample, Out-of-Competition in Iten, Kenya, which was given code 7184933 (the "**Sample**").
6. On 22 August 2023, the World Anti-Doping Agency ("**WADA**") accredited laboratory in Doha, Qatar (the "**Laboratory**") reported an Adverse Analytical Finding in the Sample for the

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<sup>1</sup> <https://worldathletics.org/athletes/kenya/esther-borura-14798234>

- presence of 19-Norandrosterone<sup>2</sup> consistent with exogenous origin (the “**Adverse Analytical Finding**”).
7. The AIU reviewed the Adverse Analytical Finding in accordance with Article 5 of the International Standard for Results Management (“**ISRM**”) and determined that:
    - 7.1. the Athlete did not have a Therapeutic Use Exemption (“**TUE**”) that had been granted (or that would be granted) for the 19-Norandrosterone consistent with exogenous origin found in the Sample; and
    - 7.2. there was no apparent departure from the International Standard for Testing and Investigations (“**ISTI**”) or from the International Standard for Laboratories (“**ISL**”) that could reasonably have caused the Adverse Analytical Finding.
  8. Therefore, on 6 September 2023, the AIU notified the Athlete of the Adverse Analytical Finding in accordance with Article 5.1.2.1 of the ISRM, including that the Adverse Analytical Finding may result in Anti-Doping Rule Violations pursuant to Rule 2.1 ADR and/or Rule 2.2 ADR, and of the imposition of an immediate Provisional Suspension.
  9. The Athlete was informed of her rights, *inter alia*, to request the B Sample analysis, to request copies of the Laboratory Documentation Package supporting the Adverse Analytical Finding (“**LDP**”) and to admit the Anti-Doping Rule Violations and potentially benefit from a one-year reduction in the period of Ineligibility pursuant to Rule 10.8.1 ADR. The AIU also requested that the Athlete provide an explanation for the Adverse Analytical Finding.
  10. On 7 September 2023, the Athlete requested, through her Athletes’ Representative, to provide her explanation through an interview with the AIU.
  11. On 13 September 2023, the AIU asked the Athlete to provide a written summary of her explanation and the information that she wished to provide in the interview.
  12. On 15 September 2023, the Athletes’ Representative provided the AIU with the Athlete’s summary explanation, which set out that the Athlete:
    - 12.1. waived her rights to have the B Sample analysed and to request the LDP;
    - 12.2. admitted to having committed Anti-Doping Rule Violations;
    - 12.3. had purchased prohibited substances in April 2023, and been injected in May 2023; and
    - 12.4. averred that this was the only time that she had used prohibited substances.
  13. On 26 September 2023, the Athlete attended an interview with AIU representatives and provided additional information in relation to her explanation (as summarised above).

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<sup>2</sup> 19-Norandrosterone is a metabolite of Nandrolone (19-nortestosterone) or Nandrolone precursors. Nandrolone is a Prohibited Substance under the WADA 2023 Prohibited List under the category S1.1 Anabolic Androgenic Steroids.

14. Based on the Athlete's admission and following a review of the Athlete's written explanation for the Adverse Analytical Finding and the further information provided during the interview, the AIU remained satisfied that the Athlete had committed Anti-Doping Rule Violations as set out in the Rules.
15. Therefore, on 3 November 2023, the AIU issued the Athlete with a Notice of Charge in accordance with Rule 8.5.1 and Article 7.1 ISRM, and informed her, *inter alia*, that the AIU remained satisfied that she had committed Anti-Doping Rule Violations under Rule 2.1 ADR and Rule 2.2 ADR. The Athlete was informed that those Anti-Doping Rule Violations warranted a period of Ineligibility of four (4) years pursuant to Rule 10.2.1(a) ADR and the AIU invited her to respond to the Charge confirming how she wished to proceed by no later than 17 November 2023<sup>3</sup>.
16. On 17 November 2023, the Athlete returned an Admission of Anti-Doping Rule Violations and Acceptance of Consequences Form signed to confirm that she admitted the Anti-Doping Rule Violations and accepted the Consequences specified in the Notice of Charge.

## CONSEQUENCES

17. This is the Athlete's first Anti-Doping Rule Violation.
18. Rule 10.2 ADR specifies that the period of Ineligibility for an Anti-Doping Rule Violation under Rule 2.1 or Rule 2.2 ADR shall be as follows:  
  
*"10.2.1 Save where Rule 10.2.4 applies, the period of Ineligibility will be four years where:*
  - (a) *The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.*
  - (b) *The anti-doping rule violation involves a Specified Substance or a Specified Method and the Integrity Unit can establish that the anti-doping rule violation was intentional."*
19. 19-Norandrosterone is a Metabolite of Nandrolone (19-nortestosterone) (or Nandrolone precursors), which is a Prohibited Substance under the WADA 2023 Prohibited List under the category S1.1 Anabolic Androgenic Steroids (AAS). It is a Non-Specified Substance prohibited at all times.
20. The period of Ineligibility to be imposed is therefore a period of four (4) years, unless the Athlete demonstrates that the Anti-Doping Rule Violations were not intentional.

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<sup>3</sup> The AIU informed the Athlete that she had until 17 November 2023 (and in any event until no later than 23 November 2023) to sign and return an Admission of Anti-Doping Rule Violation and Acceptance of Consequences Form (enclosed with the Notice of Charge) to benefit from an automatic one (1)-year reduction in the four (4)-year period of Ineligibility pursuant to Rule 10.8.1 ADR and that, if she failed to respond to the Charge by the given date, she would be deemed to have admitted the Anti-Doping Rule Violations and accepted the Consequences set out in the Charge, and the AIU would then issue a final decision in his case.

21. The Athlete has failed to demonstrate that the Anti-Doping Rule Violations were not intentional. Therefore, the mandatory period of Ineligibility is a period of Ineligibility of four (4) years.
22. However, Rule 10.8.1 ADR provides that an athlete potentially subject to an asserted period of Ineligibility of four (4) years may benefit from a one (1)-year reduction in the period of Ineligibility based on an early admission and acceptance of sanction:

*“10.8.1 One year reduction for certain anti-doping rule violations based on early admission and acceptance of sanction.*

*Where the Integrity Unit notifies an Athlete or other Person of an anti-doping rule violation charge that carries an asserted period of Ineligibility of four (4) or more years (including any period of Ineligibility asserted under Rule 10.4), if the Athlete or other Person admits the violation and accepts the asserted period of Ineligibility no later than 20 days after receiving the Notice of Charge, the Athlete or other Person may receive a one (1) year reduction in the period of Ineligibility asserted by the Integrity Unit. Where the Athlete or other Person receives the one (1) year reduction in the asserted period of Ineligibility under this Rule 10.8.1, no further reduction in the asserted period of Ineligibility will be allowed under any other Rule.”*

23. The Charge was issued to the Athlete on 3 November 2023, and, on 17 November 2023, the AIU received an Admission of Anti-Doping Rule Violations and Acceptance of Consequences Form signed by the Athlete in which the Athlete admitted the Anti-Doping Rule Violations and accepted the asserted period of Ineligibility of four (4) years.
24. The Athlete shall therefore receive a one (1) year reduction in the asserted period of Ineligibility pursuant to Rule 10.8.1 based on an early admission and acceptance of sanction.
25. On the basis that the Athlete has admitted the Anti-Doping Rule Violations under Rule 2.1 ADR and Rule 2.2 ADR, in accordance with Rule 10.2.1 ADR and the application of Rule 10.8.1 ADR, the AIU confirms by this decision the following Consequences for a first Anti-Doping Rule Violation:
  - 25.1. a period of Ineligibility of three (3) years commencing on 6 September 2023 (the date of Provisional Suspension); and
  - 25.2. disqualification of the Athlete’s results on and since 30 June 2023, with all resulting Consequences, including the forfeiture of any titles, awards, medals, points, prizes and appearance money.
26. The Athlete has accepted the above Consequences for her Anti-Doping Rule Violations and has expressly waived her right to have those Consequences determined by the Disciplinary Tribunal at a hearing.

## PUBLICATION

27. In accordance with Rule 8.5.6(b) ADR, the AIU shall publicly report this decision on the AIU's website.

## RIGHTS OF APPEAL

28. This decision constitutes the final decision of the AIU pursuant to Rule 8.5.6 ADR.
29. Further to Rule 13.2.3 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 Rule 13.6.1 ADR.
30. 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 Rule 13.2.4 ADR.

Monaco, 23 November 2023