



**ISLAMIC UNIVERSITY  
IN  
UGANDA  
COMPARATIVE LAW JOURNAL  
(IUIUCLJ)**

*IUIUCLJ. VOL 7, ISSUE 1, 2022*

# DOPING IN SPORTS; DIPLOMACY OR DUPLICITY?

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## **Abstract:**

*The Rio Olympics (2016) ended with USA leading the medal table. against, realities on the loose position of the international community on the use and abuse of drugs by the athletes came to the front burner. Good enough one would say the near total ban on Russian athletes and the Paralympics of Russia was welcoming and strong indicator to other nations. However, beside the ban, what other punishment is placed on drug offenders in sport? Drug abuse is considered an unacceptable societal menace and virtually all countries have passed various legislations prescribing punishments for offenders and culprits alike. Yet the use or abuse of drugs by the sportsmen and women seems to provide unwritten exception to the rules. This paper hence seeks to examine the attitude of the world athletes' bodies and international community on the treatment of drug offenders whether locally or internationally. This paper shall consider the legal frame work (if any) in African jurisprudence in relation to doping and other sports related offences however inquisitorial and seeks to awaken the legal community's consciousness to the double standard position of the international community on the treatment of drug offenders. It recommends the domestication of these doping laws into our local legislations in order to have a standard legislation.*

**Key Words:** Doping, legality, abused drugs, unequal consequences

## **Introduction. What is drug?**

Why do many athletes risk their careers by taking performance-enhancing drugs? Do the highly competitive pressures of elite sports teach athletes to win at any cost? Many consider the genesis for the development of sophisticated modern anti -doping rules was the televised death of British cyclist, Tommy Simpson, in the 1967 Tour de France. It was in that year that the International Olympic Committee established its own anti-doping code.<sup>1</sup> Attempts to understand and control the spread of drug

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<sup>1</sup> Charles E. Yesalis and Michael S. Bahrke, History of Doping in Sport International Sports Studies ,vol. 24,no. 1, 2002 Narrated thus, Cycling plays a central role in the explosion of stimulant use in sport after World War Two. Ludwig Prokop (1970:46 ) describes cycling competitions of that era as 'special hot beds of doping.' Of 25 urine samples taken from riders in a 1955 race, five were positive for stimulants .In the 1960 Rome Olympic Games, KnudJensen, a 23-year old Danish cyclist, collapsed during competition and died Autopsy results revealed the presence of amphetamines Donohoe&Johnson,1986). During the thirteenth leg of the1967TourdeFrance, English cyclist Tom Simpson 29, collapsed and died. His autopsy showed high levels of methamphetamine, 'avial of which

problems in Nigeria have a relatively long history. Even before independence from the British in 1960, problems associated with drugs had attracted the attention of a few researchers.<sup>2</sup>

According to Wikipedia, a drug is any substance other than food, that when inhaled, injected, smoked, consumed, absorbed via a patch on the skin or dissolved under the tongue causes a physiological change in the body<sup>3</sup>. While Psychoactive drugs are said to be chemical substances that affect the function of the central nervous system, altering perception, mood or consciousness. They include alcohol, a depressant, and the stimulants nicotine and caffeine. These three are the most widely consumed psychoactive drugs worldwide and are also considered as recreational drugs since they are used for pleasure rather than medicinal purposes. Other recreational drugs include hallucinogens, opiates and amphetamines and some of these are also used in spiritual or religious settings. Some drugs can cause addiction and all drugs can have side effects. Excessive use of stimulants can promote stimulant psychosis. Many recreational drugs are illicit and international treaties such as the Single Convention on Narcotic Drugs exist for the purpose of their prohibition.<sup>4</sup>

Drugs include a range of substances, including prescribed medications, alcohol, tobacco and illicit substances. Some drugs are described as 'illicit' or 'unsanctioned'. 'Illicit' refers to drugs that the law makes illegal to use, possess, cultivate or traffic. 'Unsanctioned' refers to legal drugs that are illegal for young people to purchase in some circumstances, for example, alcohol. For the purpose of this document, where the word 'drug' is used, it refers to illicit drugs, unless otherwise stated.<sup>5</sup>

Vancouver Police Department Drug Policy, adopted in 2006, defined psychoactive substances as, "Psychoactive substances can be defined as all substances, legal and illegal, that cause behaviours that are harmful to the community at large. In the context of policing, members of the Vancouver Police Department (VPD) are primarily concerned and occupied with the negative behaviours that arise from

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had been found in his pocket at the time of his death' (Gilbert,1969b:37).The impact of Simpson's death was extensive, in part because' this was the first doping death to be televised' (Donohoe&Johnson,1986:8).His death substantially added to the mounting pressure on the IOC and member federations to establish doping control programs, which they did at the end of 1967 (Ferstle,2000). One year later another cyclist, Yves Mottin, died from 'excessive amphetamine use' two days after winning a race (Todd&Todd,2001:69)

<sup>2</sup> Isidore S. Obot, Assessing Nigeria's drug control policy, 1994–2000, Centre for Research and Information on Substance Abuse (CRISA), P.O. Box 10331, Jos, Nigeria 2003

<sup>3</sup> <https://en.wikipedia.org/wiki/Drug> assessed on 3rd September 2016

<sup>4</sup> Ibid

<sup>5</sup> Drugs and Schools: Legal Issues A Guide for Principals. Published by the Communications Division for Student Wellbeing Division Department of Education and Early Childhood Development Melbourne September 2009.

substance abuse and the impact on public safety and order. This is why the VPD has a public safety responsibility to address drug use and establish a drug policy".<sup>6</sup>

### **What are the substances abused?**

Doping is the use of any stimulant not normally employed to increase the power of action in athletic competition above the average. Any person knowingly acting or assisting as explained above shall be excluded from any place where these rules are in force or, if he is a competitor, be suspended for a time or otherwise from further participation in amateur athletics under the jurisdiction of this Federation."<sup>7</sup> Bamberger & Yaeger (1997:63) opined thus, 'three distinct classes of top level athletes have emerged in many Olympic sports. One is a small group of athletes who are not using any banned performance enhancers. The second is a large, burgeoning group whose drug use goes undetected; these athletes either take drugs that are not tested for, use tested-for drugs in amounts below the generous levels permitted by the IOC or take substances that mask the presence of the drugs in their system at testing time. The third group comprises the smattering of athletes who use banned performance enhancers and are actually caught.'<sup>8</sup>

The National Collegiate Athletic Association USA, (NCAA) recognizes that some banned substances are used for legitimate medical purposes. Accordingly, the NCAA allows exception to be made for those student-athletes with a documented medical history demonstrating the need for regular use of such a drug. Exceptions may be granted for substances included in the following classes of banned drugs: stimulants (including those used to treat ADHD), beta blockers, beta-2 agonists, diuretics, peptide hormones, anabolic agents and anti-estrogens<sup>9</sup>.

Today, the campaign against doping by the governing bodies is a systematic one. Rules cover testing both during competition and outside. Positive tests are tested again, in the presence of the competitor or representative. All national governing bodies provide a system of hearings and appeals. There are further appeals to the international governing body. If the case is proven against the competitor, there are penalties that can be imposed. These would normally allow some latitude for a first offence. The penalties and other regulations are contained in the rulebooks of governing bodies and are freely available.<sup>10</sup>

<sup>6</sup> Vancouver Police Department Drug Policy, 2006 assessed online on 3rd September 2016

<sup>7</sup> Handbook of International Sporting Federation, 1928

<sup>8</sup> Charles E. Yesalis and Michael S. Bahrke, History of Doping in Sport *International Sports Studies*, vol. 24, no. 1, 2002

<sup>9</sup> NCAA Drug Policy for Health and Safety, available at [www.NCAA.org/drugtesting](http://www.NCAA.org/drugtesting) National Collegiate Athletic Association assessed on 7<sup>th</sup> September 2016

<sup>10</sup> John O'Leary, Chapter 1, State of Play, in *History of Doping in Sport: Socio-Legal Perspectives* Published by Cavendish Publishing 2001, assessed online at [www.cavendishpublishing.com](http://www.cavendishpublishing.com)

Whilst the overwhelming majority of substances contained within the IOC list are considered to be absolutely prohibited, there remain categories of substances which are permitted, typically subject to the following qualifications:

- (a) genuine clinical need based upon medical prescription; and
- (b) regulation as to the means of ingestion (for example, whether administered orally or by absorption, etc).

Included within this category of substances are prescription medicines for conditions such as asthma, many of the medications for which fall within the categories of Beta 2 agonists, stimulants or corticosteroids under the IOC list. Whilst such substances may enhance the performance of an athlete not suffering from an asthma condition, their permitted use by sufferers is justified on the basis of enabling fair competition by reducing the adverse physical effects of a medical condition.

Rules may contain a further residual authority on a designated individual, typically, the federation medical adviser, to grant individual exemptions permitting the use of substances otherwise prohibited by the relevant governing body rules. Governing bodies must take care in this regard to ensure effective dovetailing with the relevant regulations administered by their world governing body. Again, both governing bodies and participants must be scrupulous in attention to detail with regard to arrangements for the use of restricted substances. In so far as permitted use is dependent upon proven clinical need, it is submitted that such need must be continually the subject of review:

“A person may request the medical officer of ASFGB (‘ASFGB Medical Officer’) to grant him an exemption allowing him to take a prohibited substance. An application for an exemption must contain a valid certificate from a qualified medical practitioner setting out the reasons why the administration of a prohibited substance is necessary. Such an exemption will only be granted where the ASFGB Medical Officer is satisfied that the exemption is medically justified and will not create a competitive advantage for such person. An exemption may be granted subject to such conditions as the ASFGB Medical Officer deems appropriate to ensure that no competitive advantage may be gained. The decision of the ASFGB Medical Officer in relation to the granting or withholding of any exemption, and as to any conditions imposed, shall be final.”<sup>11</sup>

The following are list of substances prohibited although not exhaustive: Cannabis, Heroine, Morphine, Methadone, Opium, Amphetamine, Ephedrine, Cocaine,

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<sup>11</sup> Andy Gray, *Doping Control: The National Governing Body Perspective*, (Chapter two) of *Drugs and Doping in Sport: Socio-Legal Perspectives* Cavendish Publishing Limited 2001, Edited by John O’Leary, LLB, M Phil

Phenobarbital, Caffeine, Anabolic steroids, Stanozolol, Dianabol, Nandrolone, Barbiturates, Decanoate.<sup>12</sup>

The NCAA bans the following classes of drugs:

- a. Stimulants
- b. Anabolic Agents
- c. Alcohol and Beta Blockers (banned for rifle only)
- d. Diuretics and Other Masking Agents
- e. Street Drugs
- f. Peptide Hormones and Analogues
- g. Anti-estrogens
- h. Beta-2 Agonists<sup>13</sup>

### **Legal Framework**

In 1999 the World Anti-Doping Agency (WADA) was established. Within countries, national Anti-Doping Agencies maintain their own standards and systems. In 2003 World Anti-Doping Code (WADC) was launched.<sup>14</sup> A new code came into effect in January 1<sup>st</sup> 2009. The code created a universal standard for doping issues, doping control, sanctions, laboratory testing and research. The final dispute resolution mechanism for all doping related matters is the Court of Arbitration in Sport (CAS) at Geneva.<sup>15</sup>

The distribution and—in certain cases—the use of various prohibited substances for non-medicinal purposes constitute criminal acts in some countries such as Italy and Canada. As the sale of these products is prohibited or subject to severe legal restrictions, athletes received or purchased doping products from colleagues, team managers, unfair physicians and black market over the past decades.<sup>16</sup> The WADA Code has provided the framework for harmonized policies, rules and regulations within sport organizations and among public authorities.<sup>17</sup>

For decades international narcotics control efforts have been prohibitionist in spirit, seeking the complete elimination of drugs for recreational use. The 1961 UN Single Convention on Narcotic

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<sup>12</sup> I. O. Akindutire, J. A. Olanipekun, and J. A. Adegboyega Doping Knowledge And Practice Among Elite Athletes In Tertiary Institutions In Nigeria, *European Scientific Journal* February edition vol. 8, No.4

<sup>13</sup> www.NCAA.org/drugtesting National Collegiate Athletic Association, *Ibid*

<sup>14</sup> Adrian O Colmain, (2010) *Drugs and Doping in Sport-Guidelines for General Practitioners*. Irish Sport Council/Irish College of General Practitioners.

<sup>15</sup> *Ibid*

<sup>16</sup> Lippi G, Guidi GC (2004) Gene manipulation and improvement of athletic performances: new strategies in blood doping. *Br J Sports Med*, 38, 641.

<sup>17</sup> Lippi G, Mattiuzzi C, Guidi G (2004) Prevention of doping in sports: epidemiological issues and ethical implications. *Epidemiol Prev*, 28, 178–183.

Drugs<sup>18</sup> consolidated all previous relevant treaties and established a mechanism for coordinated international control of narcotic drugs. It also established strict controls on the cultivation of opium poppy, coca bush (used to produce cocaine), and cannabis plant and their products. These were collectively described as “narcotic drugs”. Parties to the 1961 Convention undertook to limit the production, manufacture, export, import, distribution, trade and use and possession of these substances, except for medical and scientific uses, for which governments would estimate the quantities to be set aside.<sup>19</sup>

At the 44<sup>th</sup> IAAF Congress in Paris, August 2003, it was decided to accept the World Anti-Doping Code as a basis for the fight against doping and adapt the existing IAAF anti doping rules to the Code. The following is a brief outline of the IAAF Anti-Doping Rules.<sup>20</sup>

### **1) Anti-Doping Rules**

The Anti-Doping Rules must be incorporated into each Member Federation’s rules, and specify that all athletes and support personnel are bound by them. Members must guarantee that national-level testing complies with IAAF rules. IAAF Anti-Doping Organisation is overseen by the IAAF Council, which delegates authority to the Medical and Anti-Doping Commission, Doping Review Board, and the IAAF Anti-Doping Administrator.

The Commission meets once to twice a year to review its anti-doping activities. It publishes the Procedural Guidelines, which are fully compliant with the standards set by WADA. The Commission implements and monitors anti-doping programmes and education, publishes updated information on prohibited substances and methods, health consequences of doping, doping control procedures, and athletes’ rights and responsibilities. It also grants TUEs, and establishes guidelines for the selection of athletes to be tested. The Doping Review Board determines whether or not exceptional circumstances exist in the case of adverse analytical findings, decides on referral to the Court of Arbitration for Sports (CAS), and on acceptance of sanctions made by other sporting bodies.

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<sup>18</sup> UN Single Convention on Narcotic Drugs 1961 [http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg\\_no=VI-18&chapter=6&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=VI-18&chapter=6&lang=en) assessed on 04/10/2016

<sup>19</sup> Not Just In Transit, Drugs, the State and Society in West Africa, An Independent Report of the West Africa Commission on Drugs June 2014

<sup>20</sup> Note: The latest IAAF Rules are available on the IAAF website and these should be referred to when required, as changes may occur. [www.wada-ama.org](http://www.wada-ama.org)

The IAAF Anti-Doping Administrator is responsible for day-to-day management, implements the anti-doping programme, and conducts the results management process.

## **2) Testing and Sample Analysis.**

Testing is done both in-competition and out-of-competition, and any athlete may at any time be subject to testing. It is a condition of membership of the IAAF that each Member includes in its constitution the authority for them as well as for IAAF to conduct out-of-competition testing on its athletes and that the IAAF has the authority to test at all National Championships if required. In-competition testing is the responsibility of IAAF at certain International Competitions and selection is based on final position/random basis and may include target testing and athletes breaking an Area and/or World Records.

The IAAF concentrates its out-of-competition testing efforts on international level athletes who are required to provide their whereabouts information directly to the IAAF in order for this testing to occur. There are sanctions in place if athletes do not comply with this requirement. Analysis of samples shall be done at WADA-accredited laboratories to detect prohibited substances and methods and samples remain the property of the IAAF. When analysis indicates the presence of a prohibited substance or substances, the WADA laboratory informs the IAAF of this fact.

Results management in a case of an adverse analytical finding is first done by reviewing the case to determine if there is a Therapeutic Use Exemption (TUE) on file, or a departure from the required collection process has occurred. If this is not the case, the athlete must be informed of the adverse finding and can ask for analysis of the B sample at which they are entitled to have a representative present. If the B sample confirms the A sample the athlete must bear the costs of this analysis.

An Anti-doping rule violation, i.e. doping is defined as:

- (a) the presence of a banned substance or metabolite in an athlete's body;
- (b) the use or attempted use of prohibited substances or methods;
- (c) the refusal or failure to submit to doping control or undergo an anti-doping test;
- (d) 3 missed out-of-competition tests in a period of 5 years;
- (e) tampering or attempting to tamper with any part of the doping process;
- (f) possession of a prohibited substance or methods, without TUE;
- (g) trafficking in prohibited substance or method;



- (h) the administration of a prohibited substance or method or assisting in an anti-doping violation;
- (i) competing, or attempting to compete, whilst suspended or ineligible. Standards of proof of doping are the burden of the IAAF or other prosecuting authority, which must establish that an anti-doping rule violation has occurred. The proof is a positive sample analysis by a WADA-accredited laboratory.

### **3) Disciplinary Procedures, Hearings, and Appeals**

Disciplinary procedures if a doping violation has been committed involve:

- a. provisional suspension,
- b. hearing,
- c. sanction or exoneration.

Provisional suspension shall be imposed by the IAAF or Member if there is no adequate explanation for the cause of the adverse analytical finding, or this provisional suspension can be accepted voluntarily. In all doping cases the athlete has the right to a hearing of their case before the relevant disciplinary body or tribunal, however he or she must confirm in writing within 14 days of notification that they would like a hearing, otherwise it is assumed that the athlete accepts that a violation has occurred. The hearing before a tribunal must be held within 2 months from the date of notification to the athlete. The athlete has the right to legal counsel, to call witnesses, and to have an interpreter (at the athlete's expense). The decision of the tribunal will be sent to the IAAF. If the IAAF does not agree with the sanction the case will be reviewed by the IAAF Doping Review Board, which decides whether it appeals to CAS; if so, it may re-impose suspension. The athlete also has a right of appeal to CAS

Exceptional circumstances may occur but do not include:

- A. allegation that the substance was given to the athlete by another person without his or her knowledge;
- B. that the substance was taken by mistake;
- C. that it was contained in contaminated food supplements; or
- D. that it was prescribed by support personnel in ignorance.

If an athlete provides substantial evidence or assistance to IAAF or National Federation in other doping cases, this may be accepted as an exceptional circumstance and result in a reduced sanction.

If a National Tribunal decides in the case of an international athlete that exceptional circumstances exist, it shall be referred to the IAAF Doping Review Board. If the Doping Review Board determines that there are no exceptional circumstances, this

determination is binding on the relevant tribunal, which shall impose sanctions. The athlete has the right to appeal to CAS.

#### **4) Disqualification, Sanctions, and Return to Competition Requirements**

Disqualification of the athlete shall be automatic from the event when a violation occurs in connection with an in-competition test, with forfeiture of titles, awards, medals, points, and prize and appearance money. When the athlete is part of a relay team the team shall be automatically disqualified. All competitive results from the date the sample was provided shall be annulled with resulting consequences for the individual and the team (unless fairness requires).

Sanctions against individuals:

- a.** If prohibited substance is found or prohibited methods established the sanctions:
  - i. First violation, minimum 2 years;
  - ii. Second violation: ineligibility for life.
- b.** For refusal to submit to doping or tampering with doping control:
  - i. First violation: minimum 2 years ineligibility;
  - j. Second violation: ineligibility for life.
- c.** For 3 missed out-of-competition tests or other whereabouts violations:
  - i. First violation: one year ineligibility;
  - ii. Second and subsequent violations: two years ineligibility.
- d.** For trafficking or administration of prohibited substance or methods:
  - i. Ineligibility for life.

Elimination, reduction, or replacement of ineligibility period can be reduced to half of the minimum period and if life sanction to 8 years, where there are exceptional circumstances, such as no fault or provided substantial evidence or assistance.

Specified substances include a few medications, acknowledged to be susceptible to unintentional violation because of their general availability in medicinal products and not intended to enhance performance. For specified substances the following sanctions apply:

- a.** First violation: public warning and disqualification from the event to maximum 1 year;
- b.** Second violation: 2 years ineligibility;
- c.** Third violation: ineligibility for life.

Commencement of ineligibility period shall start on the date of the hearing decision, with the period of any provisional suspension credited against the total period.

Status during ineligibility is such that no athlete or support personnel may participate in competition or activity other than education programmes whilst ineligible. While ineligible, the athlete is not entitled to any payment by virtue of appearance and/or performance. If he or she receives any payment contrary to this rule the athlete shall not be entitled to return to competition until it has been repaid.

Requirements for return to competition are that after any period of 2 years ineligibility the athlete shall undergo 3 out-of-competition tests at his or her cost with at least 4 months between each test, and immediately prior to the end of the period must undergo testing for the full range of prohibited substances and methods.

If any of these tests reveal an adverse finding, it constitutes a separate violation leading to sanctions as appropriate. If the athlete has complied with these rules he or she shall automatically be re-eligible after the period has ended.

**5) Member Federation Reporting Obligations and Sanctions against Members**

- a. Members should report to the IAAF within 14 days any adverse finding and the name of the athlete associated with that finding.
- b. Members should report to the IAAF any TUE granted to their athletes.
- c. Members should report to the IAAF within the first 3 months of each year on the doping control conducted during the previous year.

Sanctions against members may be taken by the council against any Member in breach of the Anti-Doping Rules, such as:

- a. failure to guarantee athletes' eligibility;
- b. failure to hold a hearing within 2 months;
- c. failure to assist IAAF in whereabouts information;
- d. failure to report an adverse analytical finding.

If a Member is deemed to be in breach of its obligations the Council may, for instance:

- a. suspend or caution the member;
- b. issue fines;
- c. withhold grants; or
- d. exclude the Member's athletes from competitions.

There appears in nowhere from the entire rules of the IAAF any provision for further prosecution for drug offences at a regular court for criminal offence. This in my view enables continued violation of the regulations and the growth of the doping offences in several bounds.

In Nigeria, under the National Drug Law Enforcement Agency Act<sup>21</sup>, it is provided in section 20. Offences in relation to drug abuse and penalties:

- (I) Any person who, without lawful authority (the proof of which shall lie on him) commits any of the following offences, that is to say-
  - (a) engages in the production, manufacture, extraction, preparation, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transportation, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention and its Protocols, or the 1971 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1989;
  - (b) engages in the cultivation of opium, opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the 1961 Convention;
  - (c) has in his possession or engages or purchases any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in paragraph (a) of this subsection;
  - (d) engages in the acquisition, possession or use of property knowing at the time of acquisition, possession or use that such property was derived from any offence referred to in this section;
  - (e) .....
  - (f) .....
  - (g) engages in the conversion or transfer of property knowing that such property is derived from any offence under this subsection;
  - (h) engages in the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to or ownership of property knowing that such property is derived from any offence referred to in this section, shall be guilty of an offence under this Act and subject to the provisions of subsection (3) of this section, be liable on conviction to the penalties provided in subsection (2) of this section.
- (2) The penalties for offences under subsection (I) of this section shall-
  - (a) in respect of an offence under paragraphs (a), (b), (d), (e), (j) and (h), be imprisonment for life;
  - (b) in respect of offences under paragraphs (c), (g) and (i), be imprisonment for a term not less than fifteen years and not exceeding 25 years.

With these stern penalties, drug offenders have found a new avenue to use and abuse drug, which is through sports. Hence the arguments of those who feel drug users and abusers should not be treated as crime offenders but persons with health disabilities

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<sup>21</sup> NDLEA ACT

who need our help and not jail term. In Nigeria, rules, policies and procedures are framed or decided on, however, there are oftentimes not enforced. There is the reluctance to place obligation on people to obey them.

For instance, measures against crimes lack the consistency and rigorousness to prevent or check their occurrence. The government has lacked the courage or determination to change the prevailing attitudes and institutions that stood in the way of reforms and development. Various governments have failed to confront dissident groups, criminals including drug traffickers, nor the state officials who undermined state laws, or the abuse of the discretionary powers of the judges within the judicial system which has failed to decisively deal with drug offenders. This is obviously one of the reasons for its resurgence, and has caused severe impediment to the war on drug trafficking. One direct consequences of this weakness of the government has been the tremendous growth in criminal activities including drugs trafficking resulting to the gravest internal threat to human health and security in the country. Both the local population and foreigners sees Nigeria as major comparative advantage in the West **Africa** for the conduct of illegality, and the absence of severe punitive measures against offences is an incentive and certainly reinforce the various forms of crimes committed in society.

### **Cases of few punished offenders**

In the world of sport, most of the discussion concerning the use of drugs by participants focuses on their use for performance enhancement. However, the realization that professional sportsmen,<sup>22</sup> along with countless other members of their generation(s), from all walks of life, might use drugs for purely recreational purposes became part of the public domain in the summer of 1986. This was the year in which national hero Ian Botham was banned from test match cricket as a result of a conviction for the possession of cannabis. It is worth recording that Botham did return for the final test of the summer against New Zealand. He took the wicket of Bruce Edgar with his first ball, and then went on to overtake Dennis Lillee's record of 355 test wickets. Whether Ian Botham ever consumed cannabis after his conviction is unknown (and is no one else's business). However, the incident does suggest that the use of mind-altering drugs might not necessarily impair sporting performance at the highest level.

It is assumed that it is non-contentious that drugs, such as cannabis, LSD and ecstasy are used only for recreational purposes, and that hard drugs such as heroin and crack

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<sup>22</sup> Drugs And Doping In Sport: Socio-Legal Perspectives A Snort And A Puff: Recreational Drugs And Discipline In Professional Sport (Chapter Three) Roger Welch SUPRA

cocaine are not going to assist the sportsman on the field of play.<sup>23</sup> On the other hand, there would appear to be no purpose to steroid-based drugs other than performance enhancement.

Shockingly however, the international bodies on doping programs have other intentions for the operation of the agencies; Andy Gray revealed, ‘Although the existence of well-organised, nationwide sport doping programs has been rumoured for decades, solid evidence has now come to light to document their reality. National doping programs transcend the all-too-common informal collusion of elite athletes, coaches and rogue physicians and sport scientists to use performance-enhancing drugs. Rather they are constituted under the direction or strong support of government and sport federation officials, as well as with the active collaboration of mainstream physicians and scientists.

Thanks to the courage and persistence of Werner Franke and Brigitte Berendonk (1997:1262), we now have detailed information on the activities of the GDR sport doping system: Top-secret doctoral theses, scientific reports, progress reports of grants, proceedings of symposiums of experts, and reports of physicians and scientists who served as unofficial collaborators for the Ministry of State Security ('Stasi') reveal that from 1966 on, hundreds of physicians and scientists, including top-ranking professors, performed doping research and administered prescription drugs as well as unapproved experimental drug preparations. Several thousand athletes were treated with androgens every year, including minors of each sex. Special emphasis was placed on administering androgens to women and adolescent girls because the practice proved to be particularly effective for sport performance.

This state-sponsored program was not only a highly organized assault on the rules of sport; more importantly, it also violated scientific and medical ethics. Girls and boys fourteen years of age or younger were given anabolic steroids and other drugs and often neither they nor their parents were informed.<sup>24</sup>

Athletes occupy a world where drug use is embedded in community culture and practice. While large numbers of drugs are misused and produce significant social costs, they also provide the community with a better quality of life. A cursory look at mainstream drug use statistics shows that drug use is not an aberrant behavior confined to a problematic subculture of deviants and misfits.<sup>25</sup> While the social

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<sup>23</sup> *ibid*

<sup>24</sup> *ibid*

<sup>25</sup> Caulkins JP, Reuter P. Re-defining the goals of national drug policy: recommendation from a working group. *Am J Public Health.* 2005;85:1059–63.

burden of illicit drug use is undeniably severe, conflating the so-called war on drugs with a war on doping may risk ignoring the unique elite sporting context. Importing illicit drug policy into the sporting arena assumes that performance doping mirrors recreational and addictive drug behaviours, which doping undermines sport and morality in a similar way as criminal drug trafficking, and that doping decisions can be influenced by rational evaluations of the risk of severe penalties<sup>26</sup>. It might also be ambitious to expect elite athletes to eliminate their use of drugs when society as a whole relies on drugs to help its members cope with the pressures and tensions of daily living and to help them feel psychologically and physically better.<sup>27</sup>

Such mixed messages become compounded when we assume that using an over-the-counter drug with significant side effects is acceptable, but the use of an illicit drug with no greater side effect is not only taboo but also indicative of a moral failing. The message can be further confused when officials, journalists, and fans not only demand that athletes always perform at their best but also remind them that failure will be publically scrutinized. In analyzing a series of case studies, Carstairs exposed the complex and often contradictory responses to doping expressed through the popular media, message boards, and polls<sup>28</sup>.

## Conclusion

Since African societies are becoming more and more involved in sporting especially long-distance race in athletics, it is essential that drug related issues are taken seriously by African leaders and legislators. It is not also clear why African sporting federations are yet to constitute regulatory bodies for detection and control of doping in sport. We can identify a number of reasons why regulatory bodies might want to discipline players who have tested positive for drugs. One reason is cheating. It has been argued that players should be able to decide for themselves whether they wish to incur the risks to their health associated with the side effects of many performance enhancing drugs, and that it should be a matter of individual choice whether aids to performance are used or rejected. I am not unsympathetic to this perspective, it seems reasonable that, where rules prohibiting performance enhancing drugs are in place, regulatory bodies should be able to enforce them. Sports participants who knowingly break the rules are seeking an unfair advantage over their opponents and are thus, in a word, cheating. It is therefore my opinion that if stricter measures like prosecution

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<sup>26</sup> Gao J. Reflection on the present strategies of war on doping. 3<sup>rd</sup> International Conference on Management, Education, Information and Control (MEICI 2015):863-868; Coomber R. How social fear of drugs in the non-sporting world creates a framework for doping policy in the sporting world. *International Journal of Sport Policy and Politics*. 2014;6(2):171-93.

<sup>27</sup> Aaron C. T. Smith and Bob Stewart, 'Why war on drug will never be won'. *Smith and Stewart Harm Reduction Journal* (2015) 12:53

<sup>28</sup> Carstairs C. 'The wide world of doping: drug scandals, natural bodies, and the business of sports entertainment. *Addiction Res Theory*'. 2003;11(4):263-81.

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and subsequent imprisonment either at a rehab is included in the sanctions against dopers, the efforts of regulatory bodies will be successful at the end.

To this end, despite severe punishment meted out to simple drug offenders outside sport, the case with sportsmen drug offenders have been that of duplicity. Sports now appear to encourage the abuse of drug and deliberate disregard to the prohibition on the illicit use of drugs. For example, supplement users hold more permissive attitudes to banned doping in sports than those not using supplements, where supplement users are three and a half times more likely to practice banned doping than athletes not using supplements.<sup>29</sup>

**Recommendations:**

First, drug use is not just a sporting matter nor is it a criminal or legal matter. Instead, drug use in sport constitutes a serious social issue. Therefore, prosecuting unfair top-class athletes, to me is a pragmatic step however challenging and unaffordable it may pose. Society is undergoing profound changes and the speculation about the claimed legality and social acceptance of social drugs, such as cannabis, cocaine and marijuana, makes even harder for athletes to resist the pressure to use illicit aids. The ongoing media clamour surrounding doping cases in professional sports has raised public awareness of a problem that has been steadily developing over years. There is therefore the need for more awareness campaign to discourage up and coming athletes from seeing doping as a way to go.

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<sup>29</sup> Backhouse SH, Whitaker L, Petróczi A., 'Gateway to doping? Supplement use in the context of preferred competitive situations, doping attitude, beliefs, and norms'. *Scand J Med Sci Sports*. 2013;23:244–52.



