

## DECISION OF THE ATHLETICS INTEGRITY UNIT IN THE CASE OF MS AGNESS JERUTO BARSOSIO

### 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 Agness Jeruto Barsosio ("the **Athlete**") is a 41-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 AN ANTI-DOPING RULE VIOLATION

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

*"2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method"*

5. Between 10 July 2013 and 30 November 2022, twelve (12) valid blood samples were collected from the Athlete in the context of the World Athletics Athlete Biological Passport ("**ABP**") programme.
6. The ABP samples were analysed in each case by a World Anti-Doping Agency ("**WADA**") accredited laboratory and the values obtained for the haematological blood values were uploaded into the Anti-Doping Administration and Management System ("**ADAMS**") to constitute

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<sup>1</sup> <https://worldathletics.org/athletes/kenya/agnes-jeruto-kiprotich-14288779>

- a longitudinal profile of haematological values with the identification code BPL3795W24 (the “Passport”).
7. The Passport generated an Atypical Passport Finding in ADAMS which was submitted by the Athlete Passport Management Unit (“APMU”) for a two-step review on an anonymous basis, first by a single Expert and then for a further review by three Experts (an Expert Panel) in accordance with Article C.2.2 and Article C.3 of Annex C of the International Standard for Results Management (“ISRM”).
  8. Following the review of the Passport in accordance with Articles C.3 and C.4 of the ISRM, the Expert Panel identified abnormalities in the blood samples as features of blood manipulation in preparation for competition, in particular, variations in blood samples collected in May 2022 (shortly following the Athlete’s participation in a marathon in Nairobi, Kenya), August 2022, and late October and early November 2022 (within two weeks of a planned marathon competition). The Expert Panel confirmed their unanimous opinion of “*Likely Doping*” in the Athlete’s case in a Joint Expert Panel Opinion dated 23 April 2023 (the “First Joint Opinion”).
  9. In these circumstances, the APMU declared an Adverse Passport Finding against the Athlete in ADAMS (and notified the AIU) on 4 May 2023.
  10. Following review of the ABP Documentation Package and the First Joint Opinion in accordance with Article C.5.2 ISRM, on 16 May 2023, the AIU notified the Athlete of the Adverse Passport Finding and invited the Athlete to provide a detailed written explanation for the Adverse Passport Finding by no later than 26 May 2023.
  11. On 25 May 2023, the Athlete provided an explanation for the Adverse Passport Finding. In summary, the Athlete sought to explain the abnormalities in the Passport by altitude changes (within Kenya), irregular menstruation, irregular training and irregular diet (specifically in relation to iron-rich foods). The Athlete’s explanation was forwarded to the Expert Panel by the APMU in accordance with Article C.6.1 ISRM.
  12. Following a review of the Athlete’s explanations in accordance with Article C.6.1 ISRM, the Expert Panel rejected those explanations and reasserted its unanimous opinion of “*Likely doping*” that it had set out in the First Joint Opinion. All members of the Expert Panel remained of the opinion that the probability that the Passport was the result of the use of a prohibited substance or a prohibited method (blood doping) outweighed the probability that the Passport was the result of a normal physiological or pathological state (including those asserted by the Athlete).<sup>2</sup>
  13. On 10 August 2023, pursuant to Article 7 ISRM, the AIU issued the Athlete with a Notice of Charge confirming that she was being charged with an Anti-Doping Rule Violation under Rule 2.2 ADR (the “Charge”) and that the Consequences included (i) a period of Ineligibility of six (6) years<sup>3</sup> and (ii) disqualification of her results on and since 9 May 2022.

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<sup>2</sup> The position of the Expert Panel was confirmed in the second Joint Expert Panel Opinion dated 24 July 2023.

<sup>3</sup> By application of Rule 10.2.1(a) and based on the presence of Aggravating Circumstances as set out in Rule 10.4, in particular, that the Passport provides evidence that the Athlete Used a Prohibited Substance (an

14. The Athlete was also notified of a Provisional Suspension imposed upon her as of 10 August 2023 and given the opportunity to request a hearing before the Disciplinary Tribunal by no later than 24 August 2023, or, in accordance with Rule 10.8.1 ADR, to admit the Anti-Doping Rule Violation within 20 days of receipt of the Charge (i.e., by no later than on 30 August 2023) in order to obtain an automatic reduction of one (1) year of the period of Ineligibility.
15. On 20 August 2023, the Athlete returned a signed Admission of Anti-Doping Rule Violations and Acceptance of Consequences Form (the “**Admission Form**”) confirming that (i) she admitted the Anti-Doping Rule Violation and accepted the asserted period of Ineligibility and (ii) waived any further rights she had to contest, challenge, or dispute the Anti-Doping Rule Violation and/or the applicable Consequences.

## CONSEQUENCES

16. This is the Athlete’s first Anti-Doping Rule Violation.
17. Rule 10.2 ADR specifies that the period of Ineligibility for an Anti-Doping Rule Violation under 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.”*

18. The period of Ineligibility to be imposed is therefore a period of four (4) years, unless the Athlete demonstrates that the Anti-Doping Rule Violation was not intentional.
19. The Athlete has not demonstrated that the Anti-Doping Rule Violation was not intentional. Therefore, the mandatory period of Ineligibility is a period of Ineligibility of four (4) years.
20. However, Rule 10.4 ADR specifies that the period of Ineligibility for an Anti-Doping Rule Violation may be greater than the standard sanction when it is established that Aggravating Circumstances are present:

*“10.4 Aggravating Circumstances that may increase the period of Ineligibility*

*If the Integrity Unit or other prosecuting authority establishes in an individual case involving an anti-doping rule violation [...] that Aggravating Circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable will be increased by an additional period of Ineligibility of up to two (2) years depending on the seriousness of the violation and the nature of the Aggravating Circumstances, unless the Athlete or other Person can establish that they did not knowingly commit the anti-doping rule violation.”*

21. Aggravating Circumstances are defined in ADR as follows:

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erythropoiesis stimulating agent such as recombinant erythropoietin, EPO) or a Prohibited Method on multiple occasions.

**“Aggravating Circumstances:** Circumstances involving, or actions by, an Athlete or other Person which may justify the imposition of a period of Ineligibility greater than the standard sanction. Such circumstances and actions shall include, but are not limited to: the Athlete or other Person Used or Possessed multiple Prohibited Substances or Prohibited Methods, Used or Possessed a Prohibited Substance or Prohibited Method on multiple occasions or committed multiple other anti-doping rule violations; a normal individual would be likely to enjoy the performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or Person engaged in deceptive or obstructive conduct to avoid the detection or adjudication of an anti-doping rule violation; or the Athlete or other Person engaged in Tampering during Results Management. For the avoidance of doubt, the examples of circumstances and conduct described herein are not exclusive and other similar circumstances or conduct may also justify the imposition of a longer period of Ineligibility.”

22. The AIU considered that the Passport provided evidence of the Athlete’s Use of a Prohibited Substance (an erythropoiesis stimulating agent (ESA) such as recombinant erythropoietin (EPO)) or a Prohibited Method on multiple occasions, and that Aggravating Circumstances were therefore present that justified an increase in the otherwise applicable period of Ineligibility of four (4) years, by an additional period of two (2) years based on the seriousness of the violation and the nature of the Aggravating Circumstances.

23. The period of Ineligibility to be imposed is therefore a period of six (6) years.

24. However, Rule 10.8.1 ADR provides that an athlete potentially subject to an asserted period of Ineligibility of four (4) or more 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.”*

25. On 20 August 2023, the AIU received the Admission Form signed by the Athlete in which the Athlete admitted the Anti-Doping Rule Violation and accepted the asserted period of Ineligibility of six (6) years.

26. 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.

27. On the basis that the Athlete has admitted the Anti-Doping Rule Violation under Rule 2.2 ADR, in accordance with Rule 10.2.1(a) ADR, Rule 10.4 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:

- 27.1. a period of Ineligibility of five (5) years commencing on 6 September 2023 (the date of the decision)<sup>4</sup>; and
- 27.2. disqualification of the Athlete's results on and since 9 May 2022, with all resulting Consequences, including the forfeiture of any titles, awards, medals, points, prizes and appearance money.
28. The Athlete has accepted the above Consequences for her Anti-Doping Rule Violation and has expressly waived her right to have those Consequences determined by the Disciplinary Tribunal at a hearing.

## PUBLICATION

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

## RIGHTS OF APPEAL

30. This decision constitutes the final decision of the AIU pursuant to Rule 8.5.6 ADR.
31. 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.
32. If an appeal is filed against this decision by WADA or ADAK, the Athlete will be entitled to exercise her right of cross-appeal in accordance with Rule 13.2.4 ADR.

Monaco, 6 September 2023

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<sup>4</sup> The Athlete was notified of the Provisional Suspension imposed upon her in the Notice of Charge issued on 10 August 2023. However, on 14 August 2023, the Athlete participated in the Brazzaville international half-marathon in Brazzaville, Congo, in breach of the prohibition against participation during Provisional Suspension set out in Rule 10.14.1(a) ADR. The Athlete shall therefore not receive any credit for the period of Provisional Suspension against the period of Ineligibility imposed pursuant to Rule 10.13.2(a) ADR.