

Terms of Reference

Evaluation of UNESCO's International Convention against Doping in Sport

1. Introduction and Background

UNESCO has been working in the field of physical education and sport since the 1970s when ministers and senior officials first met under its auspices. The Organization's work in the field culminated with the adoption of the International Convention against Doping in Sport (hereafter the Convention) on 19 October 2015. Entering into force on 1 February 2007, the Convention became the most successful convention in the history of UNESCO in terms of rhythm of ratification after adoption. It is now the second most ratified of all UNESCO treaties.

The purpose of the Convention is to promote the prevention of and the fight against doping in sport, with a view to its elimination. It has been designed to coordinate and compel governmental action in specific areas beyond the domain of the sports movement. Whereas the World Anti-Doping Code (created in 2004) only applies to members of sports organizations, the reach by the Convention of governments aims for a more systematic approach to anti-doping involving a broad range of actors. (See Annex for a detailed description of the implementation modalities.)

The year 2017 marks the tenth anniversary since the Convention's entry into force. To date, however, UNESCO's work to support its implementation has never been evaluated.

2. Purpose, scope and areas of priority focus

2.1 Purpose

The purpose of this evaluation is three-fold:

- To examine the relevance of the Convention to States Parties legislation, policies and frameworks in the field of doping in sport, as well as its added value compared to other international legal instruments in the field;
- To examine the effectiveness of UNESCO's support to States Parties towards the implementation of the Convention; and,
- To assess the effectiveness and efficiency of the governance and management mechanisms established under the Convention, including its Secretariat.

The evaluation outcomes - in terms of findings and recommendations – are expected to contribute to strengthening the global anti-doping public policy framework. They are to be submitted to the 6th session of the Conference of Parties (25-26 September 2017, UNESCO Headquarters) with the aim of improving the implementation modalities of the Convention and strengthening its governance and management mechanisms.

2.2 Scope

The evaluation will assess the contribution of UNESCO's action, intended to support Member States with the ratification of the Convention and the integration of its provisions into national legislation, policies, and frameworks. The evaluation will cover activities within the framework of both regular and extrabudgetary programmes between 2005, the year of adoption of the Convention, and 2016.

2.3 Evaluation questions

Key evaluation questions will include the following:

Relevance

- To what extent does the Convention address a clear need for responding to evolving challenges to sport integrity and global sport governance among stakeholders?
- What are the primary differences between the Convention and other legal instruments in the field of doping, such as the Code etc.?
- To what extent does the Convention complement other legal instruments in the field of doping?

Effectiveness

- How has UNESCO been supporting States Parties in the implementation of the provisions of the Convention?
- To what extent have States Parties integrated the provisions of the Convention into national legislation, policies and frameworks?
- To what extent have States Parties set up institutional arrangements at the national level for the implementation of the Convention?
- To what extent has UNESCO been able to identify and address the key factors that enable or constrain the implementation of the Convention by States Parties?
- What are the key factors (conditions, incentives, resources, mechanisms etc.) that need to be in place to ensure success at the policy development level?
- How has UNESCO reflected its two global priorities (Africa and Gender Equality) into its work in supporting the implementation of the Convention?
- To what extent has UNESCO established effective partnerships (with governments, national anti-doping bodies, sports associations, World Anti-Doping Agency (WADA), International Olympic Committee (IOC), International Paralympic Committee (IPC), Council of Europe, the Intergovernmental Committee for Physical Education and Sport (CIGEPS), private sector and foundations, etc.) for the effective implementation of the Convention?

Efficiency

- Are working methods for administering, programming and governance of the Convention (by the Conference of Parties, the Bureau, the Secretariat, the Approval Committee for the Anti-doping Fund) clearly established, operating and achieving the expected results? How efficient are they?
- How does the Secretariat of the Convention communicate about the results achieved?

Sustainability

- To what extent are the governance and management mechanisms established by the Convention sustainable, given the current financial context of the Organization?
- Has UNESCO been successful in analysing and sharing the results of its work, thereby contributing to learning by Member States?
- What mechanisms are in place to monitor and evaluation progress towards the implementation of the Convention? How effective are these reporting mechanisms, including the ADLogic system?

3. Methodology

The evaluation will rely primarily on a **desk review** of documentation and on **semi-structured interviews** with key stakeholders. The methodology will include the following:

- Review of a representative sample of reports of States Parties within the ADLogic System¹
- Review of a sample of national legislations, anti-doping frameworks, policies etc.
- Review of other international instruments in the field of doping
- Review of documents pertaining to the governance and management of the Convention and its Fund
- Survey of States Parties
- Interviews with the Convention Secretariat, as well as other UNESCO staff
- Interviews with representatives of States Parties involved in the governance of the Convention
- Interviews with key partners and stakeholders working in the field of doping in sport (WADA, IOC, IPC, Council of Europe, etc.)

4. Roles and Responsibilities

The evaluation will be conducted by an independent, external evaluator. The evaluator is expected to contribute specific subject matter expertise and knowledge, particularly in the field of international legal instruments. The evaluator is expected to prepare three main deliverables: an inception report, draft and final report.

The IOS Evaluation Office (IOS-EO) is responsible for the overall management of the evaluation and quality assurance of the deliverables. A Reference Group comprising representatives of IOS, the Convention Secretariat and the SHS Executive Office will be established to provide guidance throughout the evaluation process.

5. Evaluator Qualifications

The external evaluator should possess the following mandatory qualifications and experience:

- 10 years of policy and programme evaluation experience on a global/international basis of relevance to policy making;
- Strong strategic policy and legal assessment/analysis skills;
- Strong oral and writing abilities in English;
- Sensitivity and adaptability to culture, gender, religion, nationality and age;
- Understanding and knowledge of the UN mandates in relation to Human Rights and Gender Equality issues;
- Strong interpersonal and communication skills, resourcefulness, initiative, political and diplomacy maturity of judgments, strategic, dialogue and negotiating skills, and the ability to resolve situations that may pose conflict;
- Advanced university degree in specialized fields of social science, law, public policy, international relations or related fields.

Verification of these qualifications will be based on the provided curriculum vitae. Moreover, references, web links or electronic copies of two recently completed evaluation reports may add a positive value to the technical proposal. Candidates are also encouraged to submit other references such as research papers or articles that demonstrate their familiarity with the subject under review.

The evaluation is budgeted for an average of 30 – 40 consultant person days. The evaluator is expected to undertake one mission to Paris for interviews with the UNESCO Secretariat and representatives of States Parties. The evaluator is further expected to undertake one to two

¹ ADLogic is a self-assessment system addressed to State Parties to help them comply with their obligations towards the Convention

missions to Lausanne and another location for interviews with representatives of WADA, the IOC and other stakeholders working in the field of doping in sport.

6. Deliverables and Schedule

The evaluation is expected to take place between May – August 2017. The indicative timetable is shown below.

Finalization of Terms of Reference	April 2017
Launch of evaluation and tendering	May 2017
Inception report	Early June 2017
Data collection (desk review, interviews, surveys)	June – July 2017
Stakeholder workshop	End July 2017
Draft Evaluation Report	31 July 2017
Comments on Draft Evaluation Report	August 2017
Final Evaluation Report	31 August 2017

The Draft and Final Evaluation reports should be written in English and comprise no more than 40 pages excluding annexes. They should be structured as follows:

1. Executive Summary;
2. Description of Convention and its mechanisms;
3. Evaluation purpose;
4. Evaluation methodology;
5. Findings;
6. Conclusions and Recommendations;
7. Annexes including TOR, interview list, data collection instruments, key documents consulted.

7. How to submit a proposal

Your electronic offer comprising a technical proposal and a financial proposal, attached in two separate files, shall be sent to the following email address no later than **Wednesday 17 May 2017**, 23:59 CET: ios@unesco.org.

For any requests for clarification, please contact Ms. Ekaterina Sediakina-Rivière (e.sediakina@unesco.org).

Annex

Background to UNESCO's work in Physical Education and Sport

1.1. From MINEPS to the revised International Charter of Physical Education and Sport (1976-2015)

1976, **1st MINEPS**: Created at UNESCO's initiative in 1976, the **International Conference of Ministers and Senior Officials Responsible for Physical Education and Sport (MINEPS)** is a guiding policy forum that facilitates intellectual and technical exchange in the field of physical education and sport. MINEPS also serves as an institutional mechanism for a coherent international strategy in this domain.

1978, **20th General Conference**: adoption of the **International Charter of Physical Education and Sport**: the Charter was perceived as innovative at the time - as it was the first rights-based international document to state that "the practice of physical education and sport is a fundamental right for all". Accordingly, the 20th General Conference established the Intergovernmental Committee for Physical Education and Sport (CIGEPS) to oversee the implementation of the Charter and ensure an advisory role to the Governing Boards of UNESCO as a subsidiary organ. It also contributes to MINEPS' initiatives and follow-up.

1998, **MINEPS II**: the international development of sport and its globalization invites Member States to become aware of the challenges and risks that such a dynamic process entails. Emphasis is set on physical education and sports as a vehicle for ethical, social and civic values, helping to counter harmful influences (commercialization, violence and doping) and to develop peaceful and enlightened societies.

1999, **MINEPS III: Declaration of Punta Del Este**, promotion of the preservation and development of traditional sports².

2003, At UNESCO's initiative, **Round Table of MINEPS**, proposes the implementation of an international normative instrument on doping in sports³;

2004, **MINEPS IV**: responds to the need to give practical expression to the priorities defined by MINEPS III and the 2003 Round Table around the promotion of universal and ethical values of sport, the development of PES in education systems, and the need for equity regarding women in sport. Preparatory works on an international Convention against doping in sport started.

2004, creation of the **World Anti-Doping Code**⁴: international instrument aiming at the harmonization of anti-doping efforts worldwide enters into force under WADA's monitoring.

² CIGEPS is responsible for implementing MINEPS III conclusions (creation of working and study groups for this purpose). Aimed to translate into action the principles of the International Charter of Physical Education and Sport, the Olympic Charter and other international instruments

³ . This Round Table was settled at UNESCO HQ, Paris, on 9-10 January 2003, under the initiative of UNESCO, following the recommendations done by MINEPS III

⁴ WADA was created in 1999 after the case of doping that shook the world of cycling in 1998. The International Olympic Committee (IOC) convened a World Conference on Doping held in Lausanne, Switzerland, in 1999. The Lausanne Declaration on Doping in Sport was issued during this first Conference. Pursuant to the terms of the Lausanne Declaration, the World Anti-Doping Agency was established in November, 10, 1999 in Lausanne.

The Code has been thought to help harmonize anti-doping measures. It only applies to Sport Organizations that are required to undertake measures once they have accepted the Code.

The project of a Convention was to establish a normative and intergovernmental framework aiming at harmonizing national anti-doping policies once the Convention has been ratified by a Member State.

Both are different instruments in their nature, their function, their length. Both WADA and UNESCO are combining their common efforts to fight against doping in sports. The Code is an appendix to the Convention. The Code is legally binding for governments through its link with the Convention, and once the Convention has been ratified. WADA has 2 instruments: WADA's List of

Although this instrument is a complementary tool to the Convention, its outreach is nonetheless limited regarding its nature, objectives and mechanisms mainly because it is addressed to sports organizations only and administrated by an organization under Swiss law.

2005, International Convention on Doping in Sport: adopted on 19 October 2005, the Convention is UNESCO's response to the calls from the international community. Where the 1978 Sport Charter is a set of principles and a rights-based document that guides and supports policy- and decision-making in sport, the Anti-Doping Convention is a legal instrument binding governments in their fight against doping in sport. It represents the first time that governments around the world have agreed to apply the force of international law to anti-doping in sport. The Convention – entered into force on 1st February 2007 and is the unique international instrument aiming at preventing doping in sports, fighting against doping in sport and providing anti-doping education and prevention programs notably through the Fund for the Elimination of Doping in Sports.

2015, Revised International Charter of Physical Education, Physical Activity and Sport: The revised Charter integrates the significant evolutions in the field of sport since 1978. It introduces universal principles such as gender equality, non-discrimination, social inclusion, quality physical education, safety in the selection, provision of facilities and equipment especially for children, women and girls and other vulnerable groups, protection of ethical moral values, role of social media and sport developments⁶.

1.2 Implementation of the Convention

The Conference of Parties (CoP) is the sovereign body of the Convention, where representatives of all States Parties to the Convention shall take part with their right to vote alongside observers such as leading organizations – WADA (World Anti-Doping Agency), IOC (International Olympic Committee), IPC (International Paralympic Committee), Council of Europe, CIGEPS. CoP ordinary sessions take place every two years and extraordinary sessions may be set up, provided that necessary resources are available.

The CoP operates with an elected Bureau at each of its session. This latter is composed of a Chairperson, a Vice-Chairperson, a Rapporteur and representatives of four States Parties. Its main role consists in coordinating the session and the work of the CoP in accordance with its agenda. The mandate of the Bureau of the CoP was recently consolidated and the rules of procedure were revised. Mr. Saleh Konbaz Mohammed – Kingdom of Saudi Arabia – and Mr. Graham Arthur – United Kingdom of Great Britain and Northern Ireland are the current Chairperson and Rapporteur of the CoP, while the Bureau comprise representatives of Romania, Colombia, the Republic of Korea and Kenya as Vice-Chairperson.

Prohibited Substances and The Therapeutic Use Exemptions Standards are annexed to the Convention. WADA is an observer to the meetings of the Approval to the Fund and is supporting the Secretariat to the promotion of the Fund.

⁵ As of today, 185 signatory States have already ratified the Convention accordingly respective constitutional procedures, making this Convention UNESCO's second most ratified legal instrument. Once ratified, signatory States shall promote the adoption of measures consistent with the principles of the Convention and its Annexes such as the Code. These obligations towards the Convention may include adapting legislations, regulations, policies and administrative practices as mentioned in the Convention itself. States Parties receive introduction to the work and working methods through conventional dispositions displayed in the core text of the Convention and its Annexes, resolutions and documents.

⁶ Indeed, the Declaration of Berlin, adopted by 121 Member States represented at MINEPS V (Berlin, 2013), invited the Director-General to consider a revision of the Charter. The (revised) International Charter for Physical Education, Physical Activity and Sport was approved by UNESCO's General Conference at its 38th session (November 2015). It also highlights the benefits of physical activity, the sustainability of sport, the inclusion of persons with disabilities and the protection of children and youth in sport. The Charter enshrines the relation between sport and development for peace, reconciliation, post-conflict and post disaster. All stakeholders' responsibilities, national and local authorities, individuals and communities in creating a common and strategic vision, priorities and policies is mentioned.

The Convention deals with anti-doping policies in sport and the Charter enshrines the universal principles and norms in sport in general including general guidance on sport integrity, which is a part of the substance of the Convention.

The Convention outlines clear obligations required of governments. States Parties shall adopt measures at both national and international levels consistent with the principles of the World Anti-Doping Code, encourage international cooperation protecting athletes and ethics in sport and foster cooperation between States Parties and with WADA in particular. However, it is a permissive instrument providing flexibility in the approach that governments can take to implement it, either by way of legislation, regulation, policies or administrative practices.⁷ The main objectives of the Convention are

- 1) To help the signatory States to implement effective anti-doping quality normative systems in order to promote, both nationally and globally, the ethics of sport through its practice, its governance and its economy.
- 2) To harmonize national anti-doping policies

The Bureau of the CoP ensures follow-up to the Resolutions adopted by the CoP, including promoting the purpose of the Convention and its implementation, discussing the relationship with WADA, examining reports submitted by States Parties and monitoring the compliance with the Convention. This mechanism is facilitated by the Anti-Doping Logic system (ADLogic) and its online Questionnaire, that enables the CoP to monitor national reports of States Parties on measures taken by them to comply with the provisions of the Convention.

Innovative initiatives undertaken by the Bureau of the CoP shall therefore reveal very fruitful and complementary to the Convention provisions. For instance, following a Resolution by CoP5 in 2015, a non-compliance letter issued by the Director-General was sent to States Parties that report compliance. With the help and guidance of the Secretariat of the Convention,(e.g. by using a Template) it is possible to strengthen the monitoring of the implementation of the Convention by States Parties and to improve their level of compliance by targeting gaps to be filled.

In addition, the implementation of the Convention is mainly nurtured by a close collaboration between UNESCO, the Bureau of the CoP, governments and sports federations. Indeed, different liability regimes imply that these close ties are preserved and fed in compliance with rules of transparency and ethics. Governments are obliged to respect their commitments to the Convention through the implementation of national anti-doping policies in accordance with the Convention's provisions and the Bureau's resolutions. Ministries of sport shall then control measures taken by sports federations in order to ensure they respect national and international engagement towards the Convention and UNESCO. Favouring the implementation of mechanisms encouraging federations to apply anti-doping measures under the Convention shall then become a priority.

Recent developments in the governance and in the economy of sport raise many challenges and require a potential adaptation of actual mechanisms in order to address them in the most relevant manner. Strengthening the collaboration of States Parties, promoting the ethics of sport, deepening transparent collaboration with entities under private law such as sports federations are challenges that potentially call for a rethinking of the role of the Convention in this environment.

1.3 A normative instrument

Conventional provisions are binding on signatory States Parties, which are supposed to be enforced by Ministries in charge of sports and sports movements, including sports federations⁸.

⁷ P. Marriott-Lloyd, International Convention against Doping in Sport, SHS/2010/PI/H/2

⁸ The Convention is directly addressed to States Parties. However a more flexible and a larger interpretation of the text may suggest it has indirect binding effects on sports organizations and federations via governmental actions:

The purpose of conventional obligations is thus to harmonize national legislations and practices of any person whether governed by public or private law and the reciprocal relations and obligations that they maintain. The Convention helps ensure coordination of testing and the development of education, training and research programmes.

Annexes and the appendix of the Convention: the Code – which is an Appendix to the Convention - the Prohibited List and the Therapeutic Use Exemptions Standards (TUE) – which are two Annexes of the Convention - strengthen the mandatory scope of the Convention. Indeed, the **Code** has been designed by the World Anti-doping Agency in 2004 as an international instrument introducing the concept of “non-analytical” rule violations – i.e. allowing sanctions to be taken by anti-doping organizations when a doping violation can be evidenced. Addressed to more than 660 sports organizations, this Code does not have any legal impact nor any binding effect on signatory States. Under the auspices of WADA, the annual **List of Prohibited Substances and Methods**, published by the World Anti-Doping Agency, identifies the substances and methods prohibited in- and out- of competition, and in particular, sports classified per categories. **TUE Standard** aims at harmonizing the process of granting TUEs worldwide. This triptych reinforces the Convention's capacity to ensure the implementation of ethical sports practices. The prohibited list and TUE Annexes I and II of the Convention are establishing a joint responsibility of UNESCO and WADA.

Resolutions of the Conference of Parties: resolutions are taken by the States parties during the CoP and recommendations are made by the Bureau to the Conference of parties. Draft resolutions may be proposed by the States Parties and shall be transmitted in writing to the Secretariat of the Conference that shall circulate copies to all participants in advance.

1.4 Capacity-building

The **Fund for the Elimination of Doping in Sport:** is the operational arm of the Convention, established in 2008 to assist States Parties meet their obligations. The Fund supports States Parties develop and implement anti-doping projects, through the provision of practical and technical support and small grants. The Fund has three priorities: education, policy advice and mentoring and capacity-building.

Thanks to voluntary contributions from States Parties, the Fund has invested more than USD 4 million in 208 projects carried out by 105 States Parties since its establishment. Composed of six States Party representatives, elected by the Conference of Parties on the basis of geographical representation, the Fund is governed by the Approval Committee which meets biannually to review new applications and agree upon strategic issues related to implementation and communication. To support States Parties in the application process, the Secretariat of the Fund has developed a Handbook of the Fund, a Good practice leaflet

“States Parties shall ensure the application of the present Convention, notably through domestic coordination. To meet their obligations under this Convention, States Parties may rely on anti-doping organizations as well as sports authorities and organizations.” Convention, Chapter II, article 7

“States Parties shall themselves take measures or encourage sports organizations and anti-doping organizations to adopt measures, including sanctions or penalties, aimed at athlete support personnel who commit an anti-doping rule violation or other offence connected with doping in sport.” Convention, Chapter II, Article 9

“States Parties shall, where appropriate:
(a) encourage and facilitate the implementation by sports organizations and anti-doping organizations within their jurisdiction of doping controls in a manner consistent with the Code, including no-advance notice, out-of-competition and in-competition testing;
(b) encourage and facilitate the negotiation by sports organizations and anti-doping organizations of agreements permitting their members to be tested by duly authorized doping control teams from other countries;
(c) undertake to assist the sports organizations and anti-doping organizations within their jurisdiction in gaining access to an accredited doping control laboratory for the purposes of doping control analysis.” Convention, Chapter II, Article 12

(editions 2013 and 2015), a Tips and tricks information sheet, and an Anti-doping infographic, as well as a customized map with basic information on all projects under the Fund.

An analytical and reflexive work led in 2016 by the Secretariat of the Fund – as per the final reports of the Approval Committee on 22 November 2016 and 29 April 2016, as well as documents ICDS/5AP/Doc.6 and ICDS/5AP/Doc.11 - highlighted the urgent need to rapidly put in place a fundraising strategy that is essential to its work for the coming biennia. A presentation of best practices and success stories also highlighted the relevance and the effectiveness of the activities supported by the Fund, as well as supporting the request for financial support from States Parties. Both inputs were submitted to the Approval Committee during the last session with a view to taking the necessary measures as soon as possible.