



## The Right to Participate in Sport

Outright International works with partners around the globe to strengthen the capacity of the lesbian, gay, bisexual, trans, intersex, and queer (LGBTIQ) human rights movement, document and expose human rights violations against LGBTIQ people, and advocate for inclusion and equality. Founded in 1990, with staff in over a dozen countries, Outright works with the United Nations, regional human rights monitoring bodies, and civil society partners. Outright holds consultative status at the United Nations, where it serves as the secretariat of the UN LGBTI Core Group.

This submission is a response to the call for inputs from the Special Rapporteur in the Field of Cultural Rights for the upcoming thematic report on the right to participate in sports. This submission will primarily focus on the rights of transgender and intersex women to participate in sports.

### **I. As a protected activity under the right to culture, all persons have a right to participate in sports without discrimination, including transgender and intersex women.**

In the resolution "Elimination of Discrimination against Women and Girls in Sport," the Human Rights Council recognized "the potential value of sport as a universal language that contributes to educating people on the values of respect, dignity, diversity, equality, tolerance and fairness and as a means to combat all forms of discrimination and to promote social inclusion for all."<sup>1</sup> Sports enable social development and cohesion, provide a way to enjoy health and well-being, and create shared values and meanings for communities.<sup>2</sup>

Within the human rights framework, the right to participate in cultural life encompasses the right to participate in sports.<sup>3</sup> As a protected activity under human rights law, sport must be available to all without discrimination, including women in all their diversity.<sup>4</sup> The rights to privacy, dignity, and bodily autonomy must be respected alongside the right to culture.<sup>5</sup>

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<sup>1</sup> HRC, Res. 40/5 *Elimination of discrimination against women and girls in sport*, A/HRC/RES/40/5 (2019).

<sup>2</sup> *Policy position by United Nations Special Procedures mandate holders in relation to the protection of human rights in sport without discrimination based on sexual orientation, gender identity, and sex characteristics* (31 Oct 2023) at 2. Available at:

<https://www.ohchr.org/sites/default/files/documents/issues/sexualorientation/iesogi/2023-10-31-stm-sogi-policy-en.pdf>

<sup>3</sup> Committee on Economic, Social and Cultural Rights, *Right of everyone to take part in cultural life* (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/21 (2009)

<sup>4</sup> International Covenant on Economic, Social and Cultural Rights (1966) at art. 2(2).

<sup>5</sup> HRC, Res. 40/5 *Elimination of discrimination against women and girls in sport*, A/HRC/RES/40/5 (2019)

## **A. Violence and discrimination against LGBTIQ persons in sports violate international human rights standards, including the right to culture.**

Violence, discrimination, harassment, and bullying can prevent persons from participating in sports in contravention of their rights, including the right to culture. While all women and girls are at risk of violence, women and girls belonging to marginalized groups are at a heightened risk for discrimination, harassment, and abuse. UN Women has found that LGBTIQ athletes at all levels report discrimination and abuse.<sup>6</sup> People who do not conform to gender norms report bullying in sports played in schools, sports clubs, and other communities.<sup>7</sup> Intersex and transgender persons, as well as lesbian, gay, bisexual, and non-binary individuals, face particular prejudice based on their sexual orientations, gender identities, and sex characteristics.<sup>8</sup>

Some examples of violence and discrimination against LGBTIQ people in sports include:

- In the 2018 OUT-SPORT Survey of 5500 LGBTI people in Europe, almost 90% of respondents considered homophobia and transphobia in sports a current problem. Of the respondents, 20% had experienced physical violence in sports as a result of their sexual orientation or gender identity. Eighty-two percent said they had witnessed homophobic or transphobic language in sports in the last 12 months. Twenty percent of respondents said they refrain from participating in a sport of interest due to their sexual orientation or gender identity, and 33% said they remain completely closeted in their sports context.<sup>9</sup>
- In the United States, researchers have found that “nonaccidental violence is a pervasive and protracted issue affecting athletes of all types and ages, though children, elite athletes and those from stigmatized groups (e.g., women, LGBTQ, gender non-conforming, and athletes with disabilities) are more vulnerable to non-accidental violence.”<sup>10</sup>
- In the 2018 FIFA World Cup, fans in Brazil, Peru, Chile, Mexico, and Argentina chanted anti-gay slurs during football matches.<sup>11</sup>

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<sup>6</sup> UN Women, Tackling Violence against Women and Girls in Sport, p. 46 at

[https://www.unwomen.org/sites/default/files/2023-07/3343\\_unwomen\\_unesco\\_vawg\\_handbook\\_6a\\_singlepage.pdf](https://www.unwomen.org/sites/default/files/2023-07/3343_unwomen_unesco_vawg_handbook_6a_singlepage.pdf)

<sup>7</sup> Policy position by United Nations Special Procedures mandate holders in relation to the protection of human rights in sport without discrimination based on sexual orientation, gender identity, and sex characteristics (31 Oct 2023) at 6. Available at:

<https://www.ohchr.org/sites/default/files/documents/issues/sexualorientation/iesogi/2023-10-31-stm-sogi-policy-en.pdf>

<sup>8</sup> UN Women, Tackling Violence against Women and Girls in Sport, p. 46 at

[https://www.unwomen.org/sites/default/files/2023-07/3343\\_unwomen\\_unesco\\_vawg\\_handbook\\_6a\\_singlepage.pdf](https://www.unwomen.org/sites/default/files/2023-07/3343_unwomen_unesco_vawg_handbook_6a_singlepage.pdf)

<sup>9</sup> Tobias Menzel, Birgit Braumüller & Ilse Hartmann-Tews, *The Relevance of Sexual Orientation and Gender Identity in Sport in Europe: Findings from the Outsport Survey* (2019). Available at:

<https://www.out-sport.eu/wp-content/uploads/2019/05/OUTSPORT-Report-Relevance-of-SOGI-in-Sport-in-Europe-3.pdf>.

<sup>10</sup> Roberts, V., Sojo, V., & Grant, F. (2019). *Organisational factors and non-accidental violence in sport: A systematic review*, Sport Management Review. <https://doi.org/10.1016/j.smr.2019.03.001>, as cited in Women’s Sports Foundation, *Chasing Equity: The Triumphs, Challenges, and Opportunities in Sports for Girls and Women*, January 2020, p. 25.

<sup>11</sup> Saba Aziz, *FIFA Urged to Step Up Fight Against Homophobia*, Al Jazeera (2017)

<https://www.aljazeera.com/sports/2017/11/9/fifa-urged-to-step-up-fight-against-homophobia>

- In the lead-up to the 2021 Olympic games in Japan, a fencer who came out to his coach as a transgender man was told that he had “just never had sex with a real man” and offered to do this himself.<sup>12</sup>
- The Nigerian Football Federation (NFF) removed players from its women’s national team because they were perceived as lesbian. The NFF vice president claimed that “lesbianism kills teams.”<sup>13</sup>
- For years, World Athletics—the governing body for the sport of track and field athletics, formerly known as The International Association of Athletics (IAAF)—has tried to prevent female athletes with various intersex traits from participating in its global competitions, including through the issuance of guidelines barring intersex women with higher testosterone levels from competing in the women’s category unless they undergo unnecessary medical procedures.<sup>14</sup>

Persistent violence and discrimination against LGBTIQ people in sports prevent them from fully enjoying their right to culture.

**B. Blanket exclusions and required medical procedures for transgender and intersex women as a condition to participate in sports violate international human rights standards.**

For years, World Athletics—the governing body for the sport of track and field athletics, formerly known as The International Association of Athletics (IAAF)—has tried to prevent female athletes with various intersex traits, also known as differences in sex development, from participating in its global competitions. Specifically, World Athletics has targeted women with hypergonadism, a natural variation that involves possessing higher than typical levels of androgens such as testosterone. World Athletics has accused them of having an unfair substantial advantage due to their natural sex variations. A series of revisions of World Athletics regulations have failed to end medical violence against female intersex athletes and have demonstrated the determination of World Athletics to exclude them.

The 2011 World Athletics regulations established ten nanomoles per liter of blood (10 nmol/L) “as a scientifically specious threshold for functional endogenous testosterone that they deemed confers a performance advantage” and barred intersex women with higher testosterone levels from competing in the women’s category. Under these regulations, World Athletics identified four women, aged 18 to 21, from “rural and mountainous regions of developing countries” and referred them to physicians at Nice and Montpellier University Hospitals in France, World

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<sup>12</sup> Motoko Rich & Hikari Hida, *Olympics Gave Hope to Japan’s L.G.B.T.Q. Activists. But Old Prejudices Die Hard*. N.Y. Times (June 2021) <https://www.nytimes.com/2021/06/05/world/asia/olympics-japan-lgbtq.html>.

<sup>13</sup> Oluwashina Okeleji, *In African women’s football, homophobia still poses a barrier*, Al Jazeera (2022) <https://www.aljazeera.com/features/2022/7/29/in-african-womens-football-homophobia-still-impedes-progress>.

<sup>14</sup> Karkazis, K., Carpenter, M. *Impossible “Choices”: The Inherent Harms of Regulating Women’s Testosterone in Sport*. *Bioethical Inquiry* 15, 579–587 (2018). <https://doi.org/10.1007/s11673-018-9876-3>

Athletics-approved specialist centers for sex testing.<sup>15</sup> There, French physicians recommended the women submit to medical violence in order to continue to compete:

... our 4 athletes wished to maintain their female identity and had many questions about menstruation, sexual activity, and child-bearing. Although leaving male gonads in SDRD5A2 patients carries no health risk, each athlete was informed that gonadectomy would most likely decrease their performance level but allow them to continue elite sport in the female category. We thus proposed a partial clitoridectomy with a bilateral gonadectomy, followed by a deferred feminizing vaginoplasty and estrogen replacement therapy.<sup>16</sup>

After the four young women underwent these medically unnecessary procedures, World Athletics allowed them to compete.

Other intersex women have challenged these abusive regulations rather than submitting to coercive medical interventions in order to compete. In the *Journal of the Philosophy of Sport* article “World Athletics Regulations Unfairly Affect Female Athletes with Differences in Sex Development,” the authors point out:

Reducing or suppressing testosterone involves risk... When this reduction in functioning is not even for the benefit of that specific individual, it becomes highly ethically suspect.<sup>17</sup>

While sporting bodies have claimed these interventions are voluntary, they cannot be seen as consensual because “they present a perverse choice for women to either compromise their health and their sense of self, identity, and integrity as women by accepting the interventions; or compromising their careers and indeed their livelihoods and socio-economic wellbeing by rejecting them.”<sup>18</sup> The Human Rights Council has expressed concern that regulations, rules, and practices that require women and girls with differences of sex development to reduce their testosterone levels may violate international human rights standards, including the rights to equality, non-discrimination, physical, mental, sexual and reproductive health,

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<sup>15</sup> Karkazis, K., Carpenter, M. Impossible “Choices”: The Inherent Harms of Regulating Women’s Testosterone in Sport. *Bioethical Inquiry* 15, 579–587 (2018). <https://doi.org/10.1007/s11673-018-9876-3>

<sup>16</sup> Patrick Fénichel, Françoise Paris, Pascal Philibert, Sylvie Hiéronimus, Laura Gaspari, Jean-Yves Kurzenne, Patrick Chevallier, Stéphane Bermon, Nicolas Chevalier, Charles Sultan, *Molecular Diagnosis of 5α-Reductase Deficiency in 4 Elite Young Female Athletes Through Hormonal Screening for Hyperandrogenism*, *The Journal of Clinical Endocrinology & Metabolism*, Volume 98, Issue 6, 1 June 2013, Pages E1055–E1059, <https://doi.org/10.1210/jc.2012-3893>

<sup>17</sup> Hilary Bowman-Smart, Julian Savulescu, Michele O’Connell & Andrew Sinclair, *World Athletics regulations unfairly affect female athletes with differences in sex development*, *Journal of the Philosophy of Sport* (5 March 2024).

<sup>18</sup> *Policy position by United Nations Special Procedures mandate holders in relation to the protection of human rights in sport without discrimination based on sexual orientation, gender identity, and sex characteristics* (31 Oct 2023) at ¶10. Available at:

<https://www.ohchr.org/sites/default/files/documents/issues/sexualorientation/iesogi/2023-10-31-stm-sogi-policy-en.pdf>.

work, privacy, freedom from torture or other cruel, inhuman or degrading treatment, and dignity, bodily integrity and autonomy of the person.<sup>19</sup>

Furthermore, the scrutiny of transgender and intersex women's bodies relies on pernicious stereotypes about how all women should look and perform. Sport governance bodies based in the Global North have historically targeted women perceived as "masculine" with scrutiny and demonstrate racial bias in their standards for "femininity."<sup>20</sup> All women suffer from the mapping of sexist stereotypes onto their bodies, and all will suffer violations of their human rights if compliance with these norms is a condition for their participation in sports.

## **II. Many factors influence sporting performance. Heightened scrutiny of and focus on the bodies of intersex and trans women athletes and women athletes who do not conform to stereotypical notions of “femininity” are overly simplistic and misleading.**

In a joint policy statement, five Special Procedures recognized that sport is:

a celebration of the abilities of the human body: each human body is unique, and differences exist because of factors as varied as nutrition, proximity to coaches and training, access to adequate sports facilities, belonging to families or communities with resources and commitment to sport excellence as well as genetic differences.<sup>21</sup>

As the Special Procedures observe, sporting performance is affected by many factors. A person's ability to play sports varies widely based on the other demands on their time, including home and family obligations, which are often unevenly distributed by gender, race, and ethnicity.<sup>22</sup> Diverse women's abilities to participate in sports are also impacted by inequality and violence against women athletes, the history of barring women from certain sports, racist narratives, and intrusive gender verification processes.<sup>23</sup>

At the same time, claims that the bodies of intersex and transgender women put them at an advantage over endosex and cisgender women in sports are both unsubstantiated and overstated. No evidence has established a causal relationship between elevated testosterone levels and performance in elite female

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<sup>19</sup> HRC, Elimination of discrimination against women and girls in sport, A/HRC/RES/40/5 (21 March 2019) ¶1.

<sup>20</sup> Human Rights Watch, “They’re Chasing Us Away from Sport”: Human Rights Violations in Sex Testing of Elite Women Athletes” (December 2020)

<https://www.hrw.org/report/2020/12/04/theyre-chasing-us-away-sport/human-rights-violations-sex-testing-elite-women>.

<sup>21</sup> *Policy position by United Nations Special Procedures mandate holders in relation to the protection of human rights in sport without discrimination based on sexual orientation, gender identity, and sex characteristics* (31 Oct 2023).. Available at:

<https://www.ohchr.org/sites/default/files/documents/issues/sexualorientation/iesogi/2023-10-31-stm-sogi-policy-en.pdf>.

<sup>22</sup> OHCHR, Intersection of race and gender discrimination in sport - Report of the United Nations High Commissioner for Human Rights, A/HRC/44/26 (2020) ¶13.

<sup>23</sup> E-Alliance, Transgender Athletes and Elite Sport: A Scientific Review (Executive Summary) p. 1

[https://www.cces.ca/sites/default/files/content/docs/pdf/transgenderwomenathletesandelitesport-ascientificreview-executivesummary-e\\_0.pdf](https://www.cces.ca/sites/default/files/content/docs/pdf/transgenderwomenathletesandelitesport-ascientificreview-executivesummary-e_0.pdf).

athletes.<sup>24</sup> Studies focused on biological data have been both limited and methodologically flawed - for example, there are almost no studies on the effects of testosterone suppression on transgender trained athletes, and most studies on the impact of testosterone on sports performance examine individuals who use performance-enhancing drugs, not natural levels of testosterone or its suppression.<sup>25</sup>

Despite the lack of biological evidence that intersex and transgender women have any advantage over their peers athletically, arguments for excluding these women from sports have almost entirely relied on biological arguments, without attention to the multiplicity of factors affecting athletic performance. While there is a discussion to be had on how biological factors may influence performance, it must be one part of a more extensive dialogue. Critically, these arguments must never be used to violate the human rights of intersex and transgender women.

### **III. The commercialization of sports and subsequent alignment of elite sporting events with educational and financial opportunities exacerbates concerns over “fairness” and derails essential discussions on the rights of all persons to participate in sports.**

The commercialization of sports has increasingly aligned elite levels of sporting achievement with educational and financial opportunities for that individual. This alignment exacerbates pre-existing inequities between persons and profoundly shifts understandings of sports. When playing sports is seen not as a right to play in itself, with various health, social cohesion and recreation benefits, but rather as a funded-gateway to acquiring education and income, claims that gender nonconforming people’s bodies create an “unfair” playing field inevitably take on a new fervor. Such conversations drown out all the benefits of sport that persons can experience when it is not extremely commercialised: personal development, social bonding, health, and leisure.

The global sports economy has been estimated at \$408.12 billion U.S dollars in 2023, with expected increases in 2024.<sup>26</sup> With so much money to be made, countries have joined with the private sector in looking to sports for revenue generation, making significant public investments into professional sports, often at the expense of local sporting activities and other social needs.<sup>27</sup> As Wolfram Manzenreiter points out in *The Business of Sports and the Manufacturing of Global Social Inequality*: “all over the world governments have taken steps to flatten the public sector and reduce social benefits; sport is no longer viewed as part of a welfare policy pursued by the state, with the aim to make sport for all a reality.”<sup>28</sup>

In the United States of America alone, over 1000 colleges and universities offer athletic scholarships.<sup>29</sup> As such, sports have become a pipeline to educational opportunity. Youth sports in the United States have

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Business Research Company, *Sports Global Market Report (2024)*

<https://www.thebusinessresearchcompany.com/report/sports-global-market-report>.

<sup>27</sup> Wolfram Manzenreiter, “The business of sports and the manufacturing of global social inequality,” *Esporte e Sociedade*, vol. 2, No. 6 (2007) at p. 10.

<sup>28</sup> *Id.* at p. 19.

<sup>29</sup> U.S. State Department, *Athletic Scholarships*,

<https://educationusa.state.gov/athletic-scholarships#:~:text=Over%20one%20thousand%20U.S.%20colleges.of%20paying%20for%20their%20education>.

become far more competitive, resource-intensive, and resource-dependent as parents and children from families who can afford it have sunk increasing costs into sports training. In 2022, youth sports in the United States were estimated to be a \$19.2 billion-a-year business.<sup>30</sup>

The commercialization of sports distracts from the many benefits of amateur sports to individuals, communities, and societies: health, social development, youth empowerment, reconciliation and peace, and the promotion of values such as fairness, equality, honesty, commitment, teamwork, respect, and solidarity.<sup>31</sup> All persons, of all sexual orientations, gender identities, and sex characteristics must be able to benefit from and contribute to these valuable outcomes.

#### **IV. Recommendations**

- States should address discrimination and violence in all cultural activities, including in sports, through legislation for and enforcement of equal treatment of all athletes, including women and girls in all their diversity and LGBTIQ persons.
- States should take steps to address misinformation and fear-based campaigns insinuating that intersex and transgender women and girls present a threat to endosex and/or cisgender women and girls in sports and should conduct evidence-based public education campaigns to promote inclusion.
- States and international sports governing bodies should ensure compliance with human rights standards in all sporting events, rules, and procedures, especially concerning women and girls in all their diversity and LGBTIQ persons.
- International sports governing bodies, including World Athletics, should rescind discriminatory regulations that force intersex women to undergo invasive and unnecessary medical interventions as a condition of participation in women's sports.
- States should engage in discussions with organizations advocating for the rights of LGBTIQ persons when designing laws, policies, and regulations to ensure all persons can participate in cultural activities.

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<sup>30</sup> Eric Flack & Ruth Morton, *Youth sports are creating an uneven playing field*, WUSA (2022) <https://www.wusa9.com/article/sports/youth-sports-19-billion-dollar-industry-spiraling-out-of-control-a-1-performance-training/65-e5106ee2-2ad3-4369-b7cc-b3919fbbd438>.

<sup>31</sup> UNESCO, *International Charter of Physical Education, Physical Activity and Sport* <https://www.unesco.org/en/sport-and-anti-doping/international-charter-sport>.