

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

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1. In advance of the [Sporting Chance Forum](#), part of the United Nations' yearlong [commemoration](#) of the 75th anniversary of the Universal Declaration on Human Rights (UDHR) United Nations Special Procedures mandate holders call on States, international sports associations, sportspersons, and other stakeholders to protect and respect international human rights law and standards in the field of sports, without discrimination of any kind. The call comes at a time when discrimination of all kinds persists in sports, and women, and girls in all of their diversity, as well as persons of diverse sexual orientations, gender identities and sex characteristics are experiencing the continuation of discriminatory practices and even more so, the exacerbation of existing obstacles in engaging in sports.

The practice of sports as a part of the right to take part in cultural life

2. Sport is an expression of life, an activity that is part of individuals' and communities' ways of interacting with one another, sharing values, and creating meaning. Hence, sports and games are at the core of cultural life and cultural rights. Within a human rights framework, pursuant to which all persons have the right to live with dignity, equality, and freedom, it is a laudable objective of humanity that the benefits of sport be made available to all, without discrimination.
3. The practice of sport without discrimination of any kind is therefore conceived as a human right under Article 27 of the Universal Declaration of Human Rights and Article 15 of the International Covenant on Economic, Social and Cultural Rights,¹ combined with the principle of non-discrimination recognized in Article 2 of the twin International Covenants, on Civil and Political Rights and on Economic, Social and Cultural Rights. It is further reflected in the substantive work of the United Nations Human Rights machinery, including the work of the Committee on the Elimination of Discrimination against Women (CEDAW Committee), and in the United Nations Guiding Principles on Business and Human Rights. It is also a cornerstone of the foundational documents of many bodies, including the World Athletics (WA) Constitution and the Olympic Charter. The International Olympic Committee (IOC) has recognized that sporting bodies have human rights responsibilities, and it is therefore fundamental that they consider any form of discrimination as incompatible with the sports movement. States also have a corresponding obligation to regulate the protection of human rights in sport, and to provide access to efficient and effective legal remedies for cases of discrimination or other human rights abuses by sporting bodies or private actors.
4. As a part of one's way of life, sport can fulfil various functions. It can be an enabler for social development, as well as an enjoyable way for persons to improve their health and well-being. Sports can also be a source of opportunity and social mobility: they can provide livelihood at the professional and semi-professional levels, and in certain countries it may also enable access to education. 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

¹ See also the recently published policy position of the Special Rapporteur in the field of cultural rights and the Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity on the right of LGBT persons to fully take part in cultural life: www.ohchr.org/sites/default/files/documents/issues/culturalrights/activities/2023-10-25-cultural-life-sogi.pdf.

training, access to adequate sports facilities, belonging to families or communities with resources and commitment to sport excellence as well as genetic differences.²

5. The notion of fairness is inextricable from the practice of sport, and the recognition of differences between human bodies may be relevant to protect and promote fairness in each discipline. Historically, a near-universal division of athletes into binary female-male categories has been in effect, as well as placement in different categories along lines of age, weight, or experience. Categories for different sports are always under scrutiny, as evidence leads to new understandings of what factors have significant impact in the understanding of fairness. Non-discrimination considerations demand that sports organizations remain committed to the fairness of competition by considering all relevant factors that may impact participation of persons on the basis of categories protected under international human rights law, including sex characteristics, sexual orientation and/or gender identity.
6. And yet inequality continues to be pervasive in the sporting world. Access to facilities, training, competition, remuneration and prize money often operate in a discriminatory manner. Across the board, there is a system of unequal pay and prize money and inferior conditions for women and girl athletes compared to their male counterparts. Threats to women's sports include lack of resources, unequal pay, abusive coaches and doctors, and limited media coverage. Gender and body stereotypes are played out, sometimes through celebration of stereotypical masculinity and pernicious second-class placement of women. Exclusion from sport is also facilitated by other practices, including bullying and harassment of those who do not conform to gender norms in settings that include schools, sports clubs, and community settings where sports are played or watched. Harassment may also take place at the more general level: homophobic and racist chanting or roaring comments, oftentimes taking place in sports stadiums and online, examples that have been witnessed by most. The targets of these types of exclusion often are persons who are lesbian, gay, bisexual, trans, and gender diverse (LGBT) or intersex, and those who are perceived to belong to these identities or communities. The exclusion extends to individuals who are perceived not to conform to gender stereotypes, including androgynous persons. Offensive speech frequently compounds prejudice against these identities with others including race, national origin, and/or religion.

Distinctions based on sex, gender, or sex characteristics

7. It is well documented that women and girls have historically been rendered invisible and discriminated against in sport as in most fields of life. Having a women's sports category and promoting equality in the resources available to it has proven to be a powerful tool to promote access of this majority of the world's population to the benefits of sport. We therefore applaud States that have made international commitments and taken action to ensure equal opportunities for all women and girls in recreational and sports activities, as well as in participation in athletics and physical activities at the national, regional, and international levels.
8. In 2021, the IOC, after consulting with athletes, international federations and other sports organizations – as well as human rights, legal and medical experts – released a new Framework on Fairness, Inclusion and Non-Discrimination on the Basis of Gender Identity and Sex

² See, Court of Arbitration for Sport, decision of 30 April 2019: [www.tas-cas.org/fileadmin/user_upload/CAS_Award - redacted - Semenya_ASA_IAAF.pdf](http://www.tas-cas.org/fileadmin/user_upload/CAS_Award_-_redacted_-_Semenya_ASA_IAAF.pdf).

Variations.³ The Framework emphasizes among its fundamental principles, *inter alia*, that there should be no presumption of advantage based on sex variations, physical appearance, and/or transgender status.⁴ Other key principles emphasized by the framework are inclusion, prevention of harm, non-discrimination, fairness, evidence-based approach, primacy of health and bodily autonomy, stakeholder-centered approach, and the right to privacy. The IOC called on sporting bodies, including international federations, to implement this framework and ensure that rules and regulations are consistent with these principles, considering the specificities of each sport.

9. We note with concern, however, attempts to use the male-female categorization to argue for the exclusion of trans women and women with intersex variations (or persons perceived as such) from female categories. While this discussion is not new, and mirrors decades-old gender stereotyping and policing of gender norms in sport, the recent intensification of the debate has led to the development of restrictive legislative measures and policies, by State institutions, sporting bodies and business enterprises alike, establishing categoric or blanket exclusions and arbitrary restrictions of trans and intersex women and girls from women's sports. We are deeply troubled by the accompanying, oftentimes offensive and even hateful targeting of trans and intersex persons, particularly women, in the social media and the public discourse against them, especially as it links to their sense of self and bodily autonomy, and as those actions impact their physical and mental integrity.
10. Legal recognition of gender identity is enshrined under a human rights framework stemming from the right to recognition everywhere as a person before the law and the right to equal protection of the law enshrined in Articles 6 and 7 of the Universal Declaration of Human Rights. Any limitations to the right of any woman, including trans and intersex women, to take part in sports as a part of her right to take part in cultural life, should therefore be determined by law, comply with the strict criteria of necessity and proportionality, and should represent the least restrictive measure to reach a legitimate aim. This is the human-rights based test that must be met in order to consider the exclusion of any person from participation in sports and is also the approach that has been adopted by the IOC in its framework.
11. The categoric or blanket exclusion of trans and intersex women from sport (including their segregation to trans or intersex-only categories) is a *prima facie* violation of their human right to live free from discrimination; it is also a *prima facie* violation of their right to privacy. In particular, we note that it focuses only on assumed muscular strength, ignores the wider range of other factors that enable some athletes to perform better than others,⁵ and appears to rely on stereotypical notions of a woman athlete's performance and body type. We draw attention to the sexist scrutiny and suspicion that this type of measures will exact on all women athletes, and we remind States and other stakeholders that States have obligations under international human rights law to combat gender stereotypes and prevent women athletes, including those with variations in their sex characteristics, from being subjected to medical examinations and

³ IOC releases Framework on Fairness, Inclusion and Non-discrimination on the basis of gender identity and sex variations 16 Nov 2021: <https://olympics.com/ioc/news/ioc-releases-framework-on-fairness-inclusion-and-non-discrimination-on-the-basis-of-gender-identity-and-sex-variations>.

⁴ IOC Framework on Fairness, Inclusion and Non-discrimination on the basis of gender identity and sex variations, Principle 5.1; at <https://stillmed.olympics.com/media/Documents/Beyond-the-Games/Human-Rights/IOC-Framework-Fairness-Inclusion-Non-discrimination-2021.pdf>, p. 4.

⁵ See, Court of Arbitration for Sport, decision of 30 April 2019: https://www.tas-cas.org/fileadmin/user_upload/CAS_Award_-_redacted_-_Semenya_ASA_IAAF.pdf. See also, Special Procedures submission in case of Caster Semenya: www.ohchr.org/sites/default/files/documents/issues/health/AC-Caster-Semenya-vs-Switzerland.pdf.

interventions that violate the principles of human dignity, equality, autonomy, and physical and psychological integrity of a person.

12. In addition, interventions intended to alter the targeted women's naturally occurring and healthy hormonal levels simply for the reason of altering their performance in sport, with serious consequences to their health, are wholly impermissible. Further, 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. As we have noted previously, they are further based on discriminatory power relations as well as on gender and racial stereotypes about who is a woman, and in particular who is a woman athlete. These stereotypes are narrow and essentialist and historically have disproportionately impacted Black women athletes and women athletes of Asian descent, predominantly from the Global South. Lastly, such interventions cannot be justified on grounds such as ensuring fairness in sport given their debilitating impact on the lives of women athletes targeted under such regulations.⁶

Mega-sporting events

13. States have undertaken the obligation to protect human rights of all persons under their jurisdiction; international sporting bodies must respect human rights as well. All countries have historical, cultural, and religious contexts, but these may never be used as an excuse to violate these rights.⁷ For this reason, any country that criminalizes and/or discriminates against any person on the basis of their sexual orientation, gender identity and/or sex characteristics is in violation of international human rights obligations. In the world of sports as in any other, human rights due diligence processes must be a substantive part of the selection process for the location and development of mega-sporting events, as well as all related decision-making processes.
14. This obligation to protect human rights is tested every time an international sporting event is held with people from many countries and contexts coming to play, work, admire and celebrate the capacities of the human body. We therefore call on countries hosting international sporting events to use the international exposure and attention to demonstrate their commitment to international human rights law as they have been invited to do by the UN High Commissioner for Human Rights as part of the [Human Rights 75 Pledges Initiative](#). We also encourage international sporting bodies that accept bids for sports events to ensure that human rights due diligence, including protection from violence and discrimination based on sexual orientation, gender identity, and sex characteristics is included as an integral part of their evaluation. We remain available to States who are planning to hold such events to help advise them on practical measures.

⁶ Special Procedures submission in case of Caster Semenya: www.ohchr.org/sites/default/files/documents/issues/health/AC-Caster-Semenya-vs-Switzerland.pdf. See also, "UN experts welcome European Court ruling upholding rights of women athletes in Semenya v. Switzerland" (17 July 2023): www.ohchr.org/en/press-releases/2023/07/un-experts-welcome-european-court-ruling-upholding-rights-women-athletes.

⁷ Vienna Declaration and Program of Action, 1993, article 5; UNESCO International Declaration on cultural diversity, 2001, article 4.

Recommendations

15. We call on States to tackle discrimination in all cultural activities, including sports and games, through legislation for and enforcement of equal treatment of all athletes, especially women and girls in all their diversity, as well as lesbian, gay, bisexual, trans and gender diverse persons, and intersex persons, in the field of sports;
16. We call on States and international sporting federations to review intersex- and trans-related rules in relation to the female category and women's sports to ensure compliance with human rights norms and standards;
17. We call on all stakeholders to:
 - a. engage in discussions with organizations advocating for the rights of trans and intersex persons, as well as with trans and intersex athletes themselves, regarding their inclusion in female-male sports categories, and evaluate the consequences of these decisions, not just for trans and intersex athletes, but also for the broader community;
 - b. cease targeting trans and intersex women under the guise of protecting women's sports, and work together for solutions that are in conformity with international human rights law and standards; and
 - c. ensure that human rights due diligence, including in relation to the human rights of LGBT and intersex persons, and as stated in the United Nations Guiding Principles on Business and Human Rights, is clearly incorporated into any bid process for sports events.
18. We also urge sporting bodies at the elite level to consider the implications of their decisions not only for LGBT and intersex athletes but, equally importantly, the impact that those decisions will have on all LGBT and intersex persons, as well as general social perceptions, and on the ideal of inclusive sport. Sport must not be misused to reinforce stigma and discrimination.
19. We recall that the United Nations Human Rights Council has emphasized that sport has the remarkable potential to bring people together in all their diversity and, at its best, it can be promoted as “a universal language that contributes to educating people on the values of respect, diversity, tolerance and fairness and as a means to combat all forms of discrimination and promote social inclusion for all.”⁸ Indeed, we are convinced that sports and games have the power to change perceptions, prejudices and behaviours, and we are certain that the ideal of sport that is inclusive of women and girls in all of their diversity, LGBT and intersex persons, will significantly support this laudable aim.

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⁸ Human Rights Council Resolution on “Promoting human rights through sport and the Olympic ideal” A/HRC/24/L.1

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