The **Count Me In! Consortium** (CMI!) presents this submission as input to the UN Special Rapporteur on violence against women’s thematic report on "violence against women and girls in sport.”

The CMI! Consortium eight feminist organizations[[1]](#footnote-1) working globally towards achieving gender justice, human rights and equality, centering structurally excluded women and girls in our work. For CMI! “Women and girls” refers to women and girls and anyone who faces sex or gender discrimination sus as non-binary, gender non-conforming, trans and intersex people.

Our submission reaffirms the importance of all UN human rights mechanisms protecting the bodily autonomy and integrity[[2]](#footnote-2) of all women and girl athletes, including intersex and transgender women and girls athletes and in doing so adopting an inclu­sive and non-binary approach to gen­der and gen­der-based vio­lence.In our submission we are primarily responding to questions: 1,2,5,11.

In her invitation to provide inputs for the upcoming report,[[3]](#footnote-3) the Special Rapporteur referred to the participation of trans women athletes as follows: *“Furthermore, in some jurisdictions, sports traditionally reserved for female athletes, are now open to male athletes based on their gender identity and who identify as women and girls. This has had significant human rights implications for all women and girls, including their right to equality and non-discrimination. It also raised questions regarding fairness, in sports as well as the full participation in education, culture, and sports as well as society as a whole.”* The framing posed by the Special Rapporteur within the call perpetuates harmful stereotypes portraying trans women and girls as a threat to cis women’s rights and safety rather than recognizing them as women, and as a marginalized group facing human rights violations in sports. This language also perpetuates stereotypes that have and continue to harm intersex women and girls due to their innate physical sex characteristics. The harm this causes is evident from cases where intersex women and girls have been shamed and disengaged from team sports or disqualified from individual sports because of their intersex variations. Furthermore, this framing reinforces a fixed and binary understanding of gender despite evidence that gender is a socio-cultural construct that is a spectrum. [[4]](#footnote-4) Fairness and inclusion are not at odds with one another; sports can be safe and fair while including trans and/or intersex women and girls.

Transgender and intersex women and girls are underrepresented in sports at all levels. The Special Rapporteur on Health in her report on “Sport and healthy lifestyles as contributing factors to the right to health” (A/HRC/32/33) has indicated that participation in professional sport is often deliberately or effectively denied to transgender people, and people of non-binary gender. Trans women and girls drop out of sports at a rate that is significantly higher than their cisgender peers. A 2019 survey about transgender and gender diverse people in sport in Europe, found that over half of the trans respondents felt excluded from particular sports or have at one point stopped participating in a particular sport as a result of their gender identity.[[5]](#footnote-5) This study also found that trans women were the highest percentage of individuals reporting negative experiences in sport, ranging from verbal threats, physical violence, cyberbullying, and discrimination on the basis of their gender identity. [[6]](#footnote-6) Rhetoric and misinformation about transgender women and girls has real-life consequences.

Attacks on the rights of trans persons have intensified in the world of sports. We note with concern 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. This mirrors decades-old gender stereotyping and policing of gender norms in sport. However, the recent intensification of this 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.[[7]](#footnote-7) In the United States, as of December 2023, 24 states had laws banning transgender students from participating in school sports consistent with their gender identity. In March of 2023, World Athletics, the governing body for track and field announced that it would prohibit athletes who have gone through what it called “male puberty” from participating in women’s world rankings competitions citing a "need to protect the female category".[[8]](#footnote-8) Such regulations are incompatible with creating a fair, inclusive, and supportive environment for athletes, especially women and girls. Exclusionary policies related to gender identity exploit preconceptions, stigma and prejudice and contribute to the risk of perpetuating violence and discrimination.

As stated by the Special Rapporteur on health, sex segregation policies have led to multiple rights violations in sport.[[9]](#footnote-9) Sex segregation has historically been justified on the basis of safety and fairness, rooted in assumptions of male physical superiority. Various legal decisions have noted that this is a generalization and have granted individual girls and women the right to compete in male sporting competitions — although not vice versa. [[10]](#footnote-10) It is important to ensure spaces for girls and women to confidently participate in sport. However, this does not need to, nor should it, result in exclusion of others, such as transgender people.

As stated in the joint policy position made by 5 special procedures mandate holders[[11]](#footnote-11) in relation to the protection of human rights in sport without discrimination based on sexual orientation, gender identity, and sex characteristics: “*conceptual, legal and political systems put in place to protect women from violence and discrimination must be available to all women, including trans and intersex women. 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.”* [[12]](#footnote-12) The practice of sport without discrimination of any kind is 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,[[13]](#footnote-13) 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.

As noted in the resolution A/HRC/RES/40/5: “*sports regulations and practices that discriminate against women and girls on the basis of race, gender or any other ground of discrimination can lead to the exclusion of women and girls from competing as such on the basis of their physical and biological traits, reinforce harmful gender stereotypes, racism, sexism and stigma, and infringe upon the dignity, privacy, bodily integrity and bodily autonomy of women and girls.*” [[14]](#footnote-14) Furthermore, “*regulations, rules and practices that require women and girl athletes with differences of sex development, androgen sensitivity and levels of testosterone to medically reduce their blood testosterone levels may contravene international human rights norms and standards, including the right to equality and nondiscrimination, the right to the highest attainable standard of physical and mental health, the right to sexual and reproductive health, the right to work and to the enjoyment of just and favourable conditions of work, the right to privacy, the right to freedom from torture or other cruel, inhuman or degrading treatment or punishment, and full respect for the dignity, bodily integrity and bodily autonomy of the person*”. [[15]](#footnote-15)

The bodily integrity of all women and girls engaging in sports needs to be safeguarded. *“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. These interventions 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.*” [[16]](#footnote-16)The experience of the intersex athlete Annet Negesa is an example of this. The Ugandan middle-distance runner underwent an irreversible surgery because of naturally elevated testosterone levels upon advice received from sports officials. After this intervention, she wasn't able to return to her career and has suffered from depression and joint pain since the operation.[[17]](#footnote-17)

Natural body diversity is an inherent part of sports, policing girls’ and women’s bodies leads to more stereotyping and discrimination. Interventions targeting trans, intersex and gender diverse women and girls athletes are based and reinforce discriminatory power relations as well as gender and racial stereotypes about who is a woman, and in particular who is a woman athlete[[18]](#footnote-18). These stereotypes are narrow and essentialist[[19]](#footnote-19) and historically have disproportionately impacted Black women athletes and women athletes of Asian descent, predominantly from the Global South, ​​such as the cases of Indian Sprinter, Dutee Chand[[20]](#footnote-20), South African Track Star Caster Semenya[[21]](#footnote-21), the women represented in the film Category Woman [[22]](#footnote-22)and the Algerian female boxer, Imane Kelif who was disqualified from the World Championships in 2023. [[23]](#footnote-23)

These regulations cannot be justified on the grounds of fairness in sport given their taxing impact on the lives of women athletes targeted under these instruments. The International Olympic Committee (OIC) has recognized that while the overriding sporting objective is to ensure fair play, “to require surgical anatomical changes as a precondition to participation is not necessary to preserve fair competition and may be inconsistent with developing legislation and notions of human rights”.

All women are harmed by the scrutinization of their bodies and intimidating procedures to eliminate their participation in sports. Discriminating against transgender and intersex girls and women threatens equal opportunities for all girls and women. We call the attention of Special rapporteur and other stakeholders to the fact 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 interventions that violate the principles of human dignity, equality, autonomy, and physical and psychological integrity of a person. [[24]](#footnote-24) Sport must not be misused to reinforce stigma and discrimination on the basis of gender.

As highlighted in the report “The law of inclusion” - prepared by the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity - gender is a concept enshrined in international human rights law, gender identity and gender expression are protected thereunder. [[25]](#footnote-25) We urge the Special Rapporteur to integrate a non-binary approach to gender and gender-based violence along with intersectionality into her analysis of the violence faced by women and girls in sports. These frameworks enable the analysis of multiple asymmetries of power that derive from the way in which sex is understood within society, including those that fuel violence and discrimination against women in all their diversity.[[26]](#footnote-26)

As affirmed by the Special Rapporteur on the Right to Health in regards to violence: *“to achieve a com­pre­hen­sive health response to vio­lence, it is nec­es­sary to adopt an inclu­sive and non-binary approach to gen­der and gen­der-based vio­lence, and must ensure that all laws, poli­cies, pro­grammes and ser­vices address­ing gen­der-based vio­lence are inclu­sive of all per­sons, with or with­out dis­abil­i­ties, chil­dren and adults, and should include cis­gen­der, trans­gen­der, non-binary, queer and inter­sex peo­ple.” [[27]](#footnote-27)*

We call on all stakeholders to:

1. protect the physical integrity, autonomy and dignity of all athletes, including intersex and transgender women athletes, and immediately remove any laws, policies and programmes that restrict their participation or otherwise discriminate or require them to undergo intrusive, unnecessary medical examinations, testing and/or procedures in order to participate in sport;
2. 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; [[28]](#footnote-28)
3. 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;
4. remove, and refrain from introducing, policies that force, coerce or otherwise pressure women athletes into undergoing unnecessary and harmful medical examinations, testing and/or procedures in order to participate as women athletes.

1. Association of Women’s Rights in Development (AWID), Mama Cash, CREA, JASS, Urgent Action Fund for Feminist Activism and Urgent Action Fund-Africa, and strategic partners Red Umbrella Fund (RUF) and Dutch gender platform WO=MEN. [↑](#footnote-ref-1)
2. Bod­ily integrity and auton­omy is the human right that all indi­vid­u­als have to deter­mine their own fate with­out undue polic­ing or patron­iz­ing con­trol over their own bod­ies. While bod­ily integrity and self-deter­mi­na­tion is itself a human right, it is also cen­tral to the enjoy­ment of other human rights prin­ci­ples such as gen­der equal­ity and human dig­nity. [↑](#footnote-ref-2)
3. <https://www.ohchr.org/en/calls-for-input/2024/call-input-report-special-rapporteur-violence-against-women-and-girls-un> [↑](#footnote-ref-3)
4. Anne Fausto Sterling [https://www.nytimes.com/2018/10/25/opinion/sex-biology-binary.html](https://www.nytimes.com/2018/10/25/opinion/sex-biology-binary.html%5C) [↑](#footnote-ref-4)
5. Menzel, T., Braumüler, B. & Hartmann-Tews, I. (2019). The relevance of sexual orientation and gender identity in sport in Europe. Findings from the Outsport survey. Cologne: German Sport University Cologne, Institute of Sociology and Gender Studies. [↑](#footnote-ref-5)
6. Ibid [↑](#footnote-ref-6)
7. <https://www.ohchr.org/sites/default/files/documents/issues/sexualorientation/iesogi/2023-10-31-stm-sogi-policy-en.pdf> [↑](#footnote-ref-7)
8. <https://www.theguardian.com/sport/2023/mar/23/world-athletics-council-excludes-transgender-women-from-female-events> [↑](#footnote-ref-8)
9. <https://documents.un.org/doc/undoc/gen/g16/067/39/pdf/g1606739.pdf?token=aJAMva3oyWgPUukHvm&fe=true> [↑](#footnote-ref-9)
10. Erin Buzuvis, “Transgender student-athletes and sex-segregated sport: developing policies of inclusion for intercollegiate and interscholastic athletics”, Seton Hall Journal of Sports and Entertainment Law, vol. 21, No. 1 (2011). [↑](#footnote-ref-10)
11. Special Rapporteur in the field of cultural rights, Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Working Group on discrimination against women and girls, Special rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,Working Group on the issue of human rights and transnational corporations and other business enterprises [↑](#footnote-ref-11)
12. <https://www.ohchr.org/sites/default/files/documents/issues/sexualorientation/iesogi/2023-10-31-stm-sogi-policy-en.pdf> [↑](#footnote-ref-12)
13. 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](http://www.ohchr.org/sites/default/files/documents/issues/culturalrights/activities/2023-10-25-cultural-life-sogi.pdf). [↑](#footnote-ref-13)
14. <https://documents.un.org/doc/undoc/gen/g19/098/67/pdf/g1909867.pdf?token=Xv12YVyrpRVUWddEnW&fe=true> [↑](#footnote-ref-14)
15. Ibid [↑](#footnote-ref-15)
16. Ibid [↑](#footnote-ref-16)
17. See: <https://www.nytimes.com/2019/12/16/sports/intersex-runner-surgery-track-and-field.html> [↑](#footnote-ref-17)
18. <https://www.ohchr.org/sites/default/files/documents/issues/sexualorientation/iesogi/2023-10-31-stm-sogi-policy-en.pdf> [↑](#footnote-ref-18)
19. Gender essentialism posits men and women are fundamentally different due to their biology. Gender essentialism is often used to excuse gender-based biases in society such as stereotypes about men and women. [↑](#footnote-ref-19)
20. Indian sprinter Dutee Chand was suspended by the International Association of Athletics Federations in 2014 due to hyperandrogenism and missed the Commonwealth Games and Asian Games. [↑](#footnote-ref-20)
21. The middle-distance runner from South Africa hasn't been allowed to compete in distances from 400 metres to one mile (1,609 metres) since 2019, when governing body World Athletics instituted a policy that requires women like Semenya, who have high levels of testosterone, to take medication that suppresses the hormone if they want to race. [↑](#footnote-ref-21)
22. See: <https://ff.hrw.org/film/category-woman> [↑](#footnote-ref-22)
23. See: <https://www.reuters.com/lifestyle/sports/two-disqualified-failing-meet-eligibility-criteria-world-champs-2023-03-26/> [↑](#footnote-ref-23)
24. <https://www.ohchr.org/sites/default/files/documents/issues/sexualorientation/iesogi/2023-10-31-stm-sogi-policy-en.pdf> [↑](#footnote-ref-24)
25. <https://cfnhri.org/wp-content/uploads/2021/10/A_76_152_E.pdf#:~:text=The%20main%20findings%20of%20%E2%80%9CThe%20law%20of%20inclusion%E2%80%9D,on%20sexual%20orientation%2C%20gender%20identity%20and%20gender%20expression>. [↑](#footnote-ref-25)
26. Ibid [↑](#footnote-ref-26)
27. <https://documents.un.org/doc/undoc/gen/g22/310/91/pdf/g2231091.pdf?token=VXxVbgSvphaSTtPkVb&fe=true> [↑](#footnote-ref-27)
28. <https://www.ohchr.org/sites/default/files/documents/issues/sexualorientation/iesogi/2023-10-31-stm-sogi-policy-en.pdf> [↑](#footnote-ref-28)