

To: Reem Alsalem, Special Rapporteur on violence against women and girls, OHCHR

Date: 6 April 2024

INTRODUCTION

This submission is from Lavendar Patch, a lesbian feminist organization that for 15 years held women-born-women music festivals and supports the protection and proliferation of women's music and culture.

Lavendar Patch will discuss violence against women and girls in the context of allowing male athletes to interact in women's sports and the issues of safety, health, fairness as well as international human rights. This discussion is premised on our personal experience since the mid-1980s fighting to preserve and protect women's space and safety.

WHAT HUMAN RIGHTS ARE VIOLATED?

The human rights violations to women range from physical violence and sexual assault to invasion of privacy and other dignity crimes as well as the loss of freedom of assembly and speech. The vast majority, nearly 90%, of public sexual assault in the UK takes place in unisex changing rooms. Giving men access to women's space is physically harmful to women who are then more vulnerable to assaults. <https://www.independent.co.uk/life-style/women/sexual-assault-unisex-changing-rooms-sunday-times-women-risk-a8519086.html>; <https://www.thetimes.co.uk/article/unisex-changing-rooms-put-women-in-danger-8lwbp8kkgk>; <https://fairplayforwomen.com/unisex-changing-rooms-put-women-in-danger/>

The "Advocacy for Girls and Women in Sports; Women's Sports Policy Working Group" submitted comments to the U.S. President Biden's administration regarding Title IX on May 15, 2023. They stated that in particular, the presence of naked or near-naked men in locker rooms and bathrooms can feel threatening and traumatic to women, especially those who have already been harassed or sexually assaulted. Twenty-six percent of college-age women report having been sexually assaulted while attending college. Most trans-identified males do not undergo surgery to remove their penis and testicles. According to three recent studies, only between four and sixteen percent of men claiming to be women undergo genital surgery. (Annys Sinn, 6 key takeaways from the Post-KFF survey of transgender Americans, Washington)

Several world religions prohibit women from being in the same room with males. Enabling trans-identified males into these spaces locks these women out. Excluding trans-identified males from women's locker rooms does not imply that these transgender athletes are inherently violent. But in fact, a longitudinal, quantitative study by Swedish researchers found that post-operative trans-identified males had criminal-conviction rates that were comparable to male controls. In other words, sex reassignment did not decrease men's risk for criminal convictions. Trans-identified males are not dangerous to females because of their gender identity; they are dangerous because they are male.

Christen Price in her article outlines the impact of attempting to redefine discrimination to exclude women – even to the point of prohibiting the use of the word girl or woman. By allowing men in women’s bathrooms, women lose their right to sanitation and are vulnerable to violence in what should be a safe place. If women have no bathroom to go to in the public sphere, they cannot go into the public sphere thus erasing women as surely as the Taliban in Afghanistan has done.

Price also outlines the harms to services specifically created to deal with the centuries of abuse by men toward women. A battered women’s shelter in Canada was forced to hire men or close down. A counseling center in the U.K. had a group for men, a group for those who called themselves trans, and a group for women that included those who called themselves trans. When a victim there for counseling objected to being in a group with a large, obviously male person, she was asked to leave. A group for women was not allowed. That’s discrimination. Lesbians have been ejected from Pride parades for saying they do not want those who identify as trans in their groups. Lesbians have also been kicked off dating sites when they say they will not date a person who identifies as trans with or without intact genitalia.

In March 2024, a group of 16 elite American athletes sued the NCAA and several colleges in the state of Georgia for their transgender policy regarding college sports. (*Gaines et al v. NCAA, University of Georgia et al.*) Their two main legal claims were that the policy violated Title IX that was specifically passed to improve opportunities for women in sports, and the NCAA rule that an athletic may not criticize the policy is a violation of the First Amendment freedom of speech. The 158-page complaint lays out in detail the flaws in the science and procedure by which the rule was determined and is implemented.

They examined in detail the false statement that testosterone suppression means that men can equally, fairly, and lawfully compete in women’s sports. In 19 of 25 NCAA women’s sports, the testosterone threshold for males who want to compete as women is 10 nanomoles per liter (nmol/L) which is five times (5x) greater than the highest level of testosterone any woman produces without doping. In six NCAA women’s sports the threshold is lower than 10 nmol/L. However, in every single NCAA women’s sport the NCAA’s testosterone threshold applicable to males who seek to compete against women is higher than the highest testosterone level women can produce without doping. This science is based on peer-reviewed research. So men are allowed to do what women are prohibited from doing – doping to influence performance levels. Women are tested randomly to ensure they are not using performance enhancing drugs. But men are not monitored to ensure they are taking testosterone suppression drugs. That’s discrimination.

Allowing men to play in women’s sports is also discrimination by law. CEDAW like Title IX was specifically created to increase women’s opportunities because of the historical fact of discrimination against women. To allow men to benefit from their own history of discrimination is not only a violation of the Convention and unlawful, but a disgraceful slap in the face to women.

In this case, to allow fully grown males with full male genitalia to use the same locker room as women caused emotional distress to women, many of whom are victims of violence by men. Three hundred female student-athletes were deprived of their bodily privacy so one man could

compete in women's sports. The women, who did not know he was going to be there, were shocked, humiliated, and embarrassed in violation of their dignity right to bodily privacy.

The suit listed many studies of the female-male sport performance gap in paragraphs 181–227. The gap is from 10-50% depending on the sport; testosterone suppression does not eliminate that gap. Nineteen peer-reviewed studies show that testosterone suppression has minimal impact compared to the initial biological differences between typical males and typical females which begins in utero when testosterone is first circulated in the male fetus and the impact shows up by age 6. Paragraph 521 *et seq* illustrates that for Thomas particularly, the testosterone suppression did not slow his responses to allow a fair or equal competition with women illustrating how profoundly unfair it is. Sophomore and Plaintiff Kate Pearson said, “[o]ur school was prioritizing one individual swimmer over 17 women whose only request was fairness.” (para. 533)

The lawsuit gives examples of other rules e.g. the World Aquatics' rules do not permit a male athlete to compete in the women's category in World Aquatics events, regardless of gender identity, unless the athlete has undertaken gender transition and hormone suppression starting at the developmental stage known as Tanner Stage 2 (which starts for most people as age 12.) (para. 264)

The lawsuit also describes the increased safety risk to girls and women when males are allowed to compete against them. One major safety risk is concussions (para. 293-298). Starting at paragraph 318, the suit outlines the actual harm experienced by women in various sporting events and contests caused by the policy. The suit focuses on the Lia Thomas swimming scandal, but as collected by SheWon, there are many others. One policy is that no coach, employee, or athlete may criticize the rules for fear of losing their job or scholarship. So women are silenced and lost their freedom of speech and opinion. No men are disadvantaged by the NCAA's Transgender Eligibility Policies; only women are.

As one of the plaintiffs noted, “men don't have to go through this” (changing in the toilet or storage closet, para. 393). She and others detailed how the issue upset the women's concentration and their preparation for the competition. (para 393-411) The women lost the usual camaraderie in the locker room (para. 415) and wondered why women don't get the respect men do (para 416). Another pointed out in paragraph 526 that “[w]e were emotionally blackmailed and asked to carry the responsibility of other people's mental health and wellbeing at the expense of our own.” That is the epitome of stereotyping women and discrimination against them by requiring them to do the emotional work for men.

A laundry list of international documents speak about the commitment to the equal rights and inherent human dignity of women. (See preamble to Declaration on Women's Sex Based Rights) States should ensure that women have the right to “hold opinions without interference.”(ICCPR, Article 19 (1)). This should include the right to hold and express opinions about ‘gender identity’ without being subject to harassment, prosecution or punishment.

States should uphold women's right to freedom of expression, including the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media.” (ICCPR, Article 19 (2)). This

should include the freedom to communicate ideas about ‘gender identity’ without being subject to harassment, prosecution, or punishment.

States should uphold women’s rights to peaceful assembly and freedom of association with others. (ICCPR, Articles 21 and 22). This should include the right of women and girls to assemble and associate as women or girls based upon their sex, and the rights of lesbians to assemble and associate based on their common sexual orientation, without including men who claim to have female ‘gender identities.’

DUTY OF THE STATE

The Convention on the Elimination of All Forms of Women is clear that the state is responsible under *Article 1*: For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

What the state must do about it is in *Article 2*: States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women...

The Committee on the Elimination of Discrimination Against Women, General recommendation No. 33 (2015) on women’s access to justice (CEDAW/C/GC/33) states that:

Discrimination may be directed against women on the basis of their sex and gender; “gender” refers to socially constructed identities, attributes and roles for women and men and the cultural meaning imposed by society on to biological differences, which are consistently reflected within the justice system and its institutions (para. 7).

The U.N. knows the difference between sex and gender and should not be conflating the two. We should not be reifying “gender” which is in fact discrimination.

CONCLUSION

International law has made it clear that women and men are to be treated equally but with an understanding that historically and today women have not been so treated. Women-only sports is one step forward to equalize the playing field. To allow men with their physical advantages into women’s sport is to destroy women’s sport. Unfortunately, that is the goal of some of the attackers. They cannot be allowed.