



## **Violence Against Women and Girls in Sports**

### **30 April 2024**

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 on Violence Against Women and Girls for the upcoming thematic report on violence against women and girls in sports. This submission specifically focuses on the **violence in sports suffered by women born with intersex variations**: those with innate variations of sex characteristics that don't align with typical notions of either a female or male body.

Outright also recognizes that lesbian, bisexual, queer, and transgender women have been subjected to violence in sports based on sexual orientation and gender identity. All persons have the human right to participate in sports with dignity and without discrimination or harm, and Outright calls for inclusive approaches to sports in which no one faces violence or discrimination on the basis of their sexual orientation or gender identity.

Outright further recognizes that violence against *all* women and girls is pervasive in sports. The many well-documented forms of violence against women in sports include sexual violence from cisgender male coaches, trainers, sponsors, and others. In this regard, Outright notes with concern that the Special Rapporteur's call for submissions raises the specter of transgender women participating in women's sports, spuriously linking it to violence. It is Outright's position that this does an injustice to survivors of sexual violence in sports: to create distractions from these very real forms of violence by presenting trans women as a violent threat. Further, the characterization of trans women as "male athletes... who identify as women and girls" itself perpetuates stereotypes that create a very real risk of violence against transgender, gender non-conforming, and intersex women and girls both within and outside of sports.

#### **I. Intersex women in sports are subjected to coercive sex testing and medical interventions that amount to violence.**

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 Athletics-approved specialist centers for sex testing.<sup>1</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>2</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 2014, Indian officials ordered 18-year-old sprinter Dutee Chand to “undergo invasive exams without her informed consent” and then barred her from the Commonwealth Games when she refused to submit to medical interventions to

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<sup>1</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>2</sup> Patrick Fénel, Françoise Paris, Pascal Philibert, Sylvie Hiéronimus, Laura Gaspari, Jean-Yves Kurzenne, Patrick Chevallier, Stéphane Bermon, Nicolas Chevalier, Charles Sultan, Molecular Diagnosis of 5 $\alpha$ -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>

lower her testosterone.<sup>3</sup> Chand filed a legal challenge at the Court of Arbitration for Sport. Its ruling in Chand's favor prompted World Athletics to release new regulations in 2018. Yet the regulations continued to prohibit intersex women from competing in some athletics events.<sup>4</sup> Caster Semenya, a two-time 800-meter Olympic champion who was barred from continuing to compete under World Athletics' 2018 regulations, initially lost a case challenging these regulations at the CAS, but in 2023, the European Court of Human Rights ruled in her favor, finding “credible claims of discrimination.”<sup>5</sup>

The coercive alteration of women's naturally occurring hormone levels to alter their performance as a precondition for participation in sports is a form of medical violence. 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>6</sup>

While sporting bodies have claimed these interventions are voluntary, their coercive nature is evident in that “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>7</sup> The UN 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, work, privacy,

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<sup>3</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>, p. 28.

<sup>4</sup> According to Human Rights Watch, “women would be ineligible to compete in the women’s category in international races ranging in length between 400m and one mile if they received any of seven DSD diagnoses, had testosterone levels above 5 nmol/L, had sufficient sensitivity to testosterone such that their testosterone levels were thought to have an ‘androgenising effect, and refused to take medical steps to reduce and maintain their testosterone below 5 nmol/L.” Human Rights Watch 2020, p. 28.

<sup>5</sup> Graeme Reid and Minky Worden, “Caster Semenya Won Her Case, But Not the Right to Compete,” Human Rights Watch, July 18, 2023, <https://www.hrw.org/news/2023/07/18/caster-semenya-won-her-case-not-right-compete>

<sup>6</sup> Hilary Bowman-Smart, “World Athletics Regulations Unfairly Affect Female Athletes with Differences in Sex Development,” [full cite]

<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, <https://www.ohchr.org/sites/default/files/documents/issues/sexualorientation/iesogi/2023-10-31-stm-sogi-policy-en.pdf>, 31 October 2023, para 12.

freedom from torture or other cruel, inhuman or degrading treatment, and dignity, bodily integrity and autonomy of the person.<sup>8</sup>

## **II. Violence and discrimination against lesbian, bisexual, gay, transgender, intersex, and non-binary persons in sports violates international human rights standards.**

Violence, discrimination, harassment, and bullying can prevent persons from participating in sports in contravention of their rights. 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>9</sup> People who do not conform to gender norms report bullying in sports played in schools, sports clubs, and other communities. 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>10</sup>

In the 2018 OUT-SPORT Survey of 5500 LGBTI people in Europe, almost 90% of respondents considered homophobia and transphobia in sport a current problem. Of the respondents, 20% had experienced physical violence in sports as a result of their sexual orientation or gender identity. 82% said they had witnessed homophobic or transphobic language in sport 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>11</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>12</sup> In Japan, in the lead-up to the 2021 Olympic games in Japan, a fencer who came out to his coach as a transgender man was threatened with so-called corrective rape: the coach told him that he had “just never had sex with a real man” and offered to do this himself.<sup>13</sup>

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<sup>8</sup> UN Human Rights Council, Elimination of discrimination against women and girls in sport, A/HRC/RES/40/5 (21 March 2019) para 1.

<sup>9</sup> UN Women, Tackling Violence against Women and Girls in Sport, [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), p. 46

<sup>10</sup> Ibid; Policy position by United Nations Special Procedures.

<sup>11</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) <https://www.out-sport.eu/wp-content/uploads/2019/05/OUTSPORT-Report-Relevance-of-SOGI-in-Sport-in-Europe-3.pdf>.

<sup>12</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>13</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>.

### **III. 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>14</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>15</sup>

Within the human rights framework, the right to sport is protected by the right to participate in cultural life, the right to rest and leisure, the enjoyment of physical and mental health, and the right of the child to engage in play.<sup>16</sup> As a protected activity under human rights law, sport must be available to all without discrimination, including women in all their diversity.<sup>17</sup> The rights to privacy, dignity, and bodily autonomy must be respected alongside the above human rights considerations.<sup>18</sup> Limitations to any person's right to participate in sports must comply with international law by being strictly necessary and proportionate to reach a legitimate aim.<sup>19</sup>

#### **Recommendations**

- States should address discrimination and violence in all facets of society, including in sports, through legislation for and enforcement of equal treatment of all athletes, including women and girls in all their diversity and lesbian, bisexual, transgender, and intersex persons.
- States should take steps to address misinformation and fear-based campaigns insinuating that intersex and trans 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 should investigate national athletics federations for possible human rights violations that they have encouraged or allowed in implementing World Athletics' sex testing regulations.

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<sup>14</sup> Human Rights Council, Elimination of discrimination against women and girls in sport, A/HRC/RES/40/5 (21 March 2019).

<sup>15</sup> UN General Assembly, Sport as a means to promote education, health, development and peace : resolution / adopted by the General Assembly, 2014, A\_RES\_69\_6-AR, <https://digitallibrary.un.org/record/783553?ln=en&v=pdf>.

<sup>16</sup> UN Convention on the Rights of the Child, article 31.

<sup>17</sup> Policy position by United Nations Special Procedures.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

- States, through their national health ministries, should clarify to physicians that any regulations that require medically unnecessary exams and interventions violate medical ethics and, where relevant, national laws.
- States and international sport governing bodies should ensure compliance with human rights standards in all sporting events, rules, and procedures, especially with regard to women and girls in all their diversity and lesbian, bisexual, transgender, and intersex persons.
- International sport 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.
- International sport governing bodies, including World Athletics, should discontinue any regulations that violate women's rights to non-discrimination, privacy, and integrity.
- The International Olympic Committee should require training for all coaches, National Olympic Committee (NOC) officials, and sport federation leaders regarding non-discrimination based on athlete's sex characteristics, gender presentation, gender identity, gender role, or sexuality.