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**Annual report of the United Nations High Commissioner  
for Human Rights and reports of the Office of the  
High Commissioner and the Secretary-General**

**Promotion and protection of all human rights,  
civil, political, economic, social and cultural rights,  
including the right to development**

## **Intersection of race and gender discrimination in sport**

### **Report of the United Nations High Commissioner for Human Rights\***

#### *Summary*

The present report is submitted pursuant to Human Rights Council resolution 40/5 on the elimination of discrimination against women and girls in sport. In her report, the United Nations High Commissioner for Human Rights elaborates on relevant international human rights norms and standards and the corresponding obligations of States and the responsibilities of sporting bodies towards women and girl athletes, identifies possible gaps in the protection of the human rights of women and girls in sports and provides conclusions and recommendations aimed at enhancing such protection.

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\* The present report was submitted after the deadline so as to include the most recent information.



## I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 40/5, in which the Council requested the United Nations High Commissioner for Human Rights to prepare a report on the intersection of race and gender discrimination in sport, including in policies, regulations and practices of sporting bodies, and elaborating on relevant international human rights norms and standards, and to present the report to the Council at its forty-fourth session.
2. A call for submissions for the present report was issued in November 2019. Twenty-one submissions were received from Member States,<sup>1</sup> civil society organizations<sup>2</sup> and others.<sup>3</sup> The report draws on these submissions and on recent findings of United Nations agencies and human rights bodies, regional organizations, non-governmental organizations and academic research institutes.
3. Chapter II of the report provides background on the intersection of race and gender discrimination in sport. Chapter III gives an overview of relevant international human rights norms and standards, and the corresponding obligations of States and responsibilities of sporting bodies towards women and girl athletes. Chapter IV focuses on the impact of female eligibility regulations on the enjoyment of human rights. Chapter V identifies possible gaps in the protection of the human rights of women and girls in sport. Chapter VI presents conclusions and recommendations aimed at enhancing such protection.
4. Taking into account the concerns raised in Human Rights Council resolution 40/5, the present report provides an analysis of the human rights impact of sports regulations and practices that require women and girl athletes with so-called differences in sex development – meaning variations in sex characteristics<sup>4</sup> – whose bodies produce specified (higher-than-typical) levels of endogenous testosterone and are sensitive to androgens, to medically reduce their testosterone levels.

## II. Intersection of race and gender discrimination in sport

5. There is strong evidence of the benefits of sport for health and well-being, and also for building leadership, teamwork, perseverance and other essential skills. Globally, however, the level of participation of women and girls in sport remains lower than that of men and boys.
6. Numerous studies point to the factors linked to the lower participation rates of women and girls in both amateur and professional sport. Those factors can be both external to sport, such as discriminatory social norms or obstacles to reconciling the burdens of care, work and sport, and internal to sport, including the lack of programmes to create a gender-sensitive and safe sporting environment or to address harassment and other forms of gender-based violence in sport, including sexual exploitation and abuse.<sup>5</sup>
7. As noted in some submissions, discrimination faced by women and girls in competitive and non-competitive sport cannot be divorced from the discrimination they face

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<sup>1</sup> Azerbaijan, Canada, Cyprus, Ecuador, El Salvador, Georgia, Italy, Mexico, Qatar and the Syrian Arab Republic.

<sup>2</sup> Amnesty International, Athlete Ally and International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA World), Human Rights Watch, International Committee of Jurists, Intersex Human Rights Australia, Iranian Lesbian and Transgender Network (6Rang), Physicians for Human Rights, Sexual Rights Initiative and Stop.IGM.org.

<sup>3</sup> The Commission for Gender Equality (South Africa) and the South Africa Women and Sport Foundation.

<sup>4</sup> Variations in sex characteristics, or “intersex”, is an umbrella term used to describe a wide range of innate bodily variations in sex characteristics. Intersex people are born with sex characteristics that do not fit typical definitions for male or female bodies, including sexual anatomy, reproductive organs and hormonal and/or chromosome patterns.

<sup>5</sup> See, for example, European Commission, *Gender Equality in Sport: Proposal for Strategic Actions 2014–2020*, February 2014.

in society more broadly.<sup>6</sup> For instance, broader sociocultural norms and more direct discriminatory actions, such as prohibitions on certain attire worn by women, have hindered women and girls from participating in sport and public life.<sup>7</sup> Women and girls who do participate in sport, particularly those who do not conform to community-based gender norms related to style of hair or dress, sexual orientation or participation in particular sports, may be subjected to harassment and exclusion by their families or communities.<sup>8</sup>

8. Retention of women and girls in sport is also a prevalent issue. Recent studies in North America have revealed increased dropout rates and persistent barriers to the continued participation of women and girls in sport and physical activity.<sup>9</sup> These barriers include lack of access to opportunities, safety and transportation issues, social stigma, expense and lack of positive role models, as well as myths around menstruation and sexuality.<sup>10</sup> Migrant and refugee girls and women athletes face additional barriers, including racism and xenophobia.<sup>11</sup>

9. Global awareness of and attention to sexual harassment and abuse in sports have recently intensified.<sup>12</sup> Yet, as survivors' testimony makes clear, informed, comprehensive, effective and rights-based responses to abuse, both preventative and remedial, are not yet in place at any level.<sup>13</sup> The Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, has specifically called for attention to be paid to the sexual exploitation of children in sports, characterized as rife, pervasive and widespread, and unchecked.<sup>14</sup> Research on the role that race, socioeconomic status and geopolitical location play in risk and access to remedy and prevention is also needed.

10. The intersection between discrimination based on race and on gender lead to even greater obstacles for specific groups of women and girls, including racial and ethnic minorities. Available data on women's and girls' participation in sport mostly focus on developed countries or elite athletes. The existing data do not show much about the intersection between gender and race discrimination in sport, global and local resource inequities and exclusionary community practices.<sup>15</sup> However, some scholarship is beginning to address these issues.<sup>16</sup>

11. Some studies indicate that contemporary gender- and race-based discrimination in sport can be traced back to the late nineteenth and early twentieth centuries, when the structure of modern international sport emerged through the founding of sporting associations around the globe and then their organization into an international system. This period witnessed the organization of sport to further a racialized masculine ideal in contrast to a racialized feminine ideal.<sup>17</sup>

<sup>6</sup> See, for example, submission of Sexual Rights Initiative. See also CEDAW/C/FSM/CO/1-3, para. 38.

<sup>7</sup> See, for example, Office of the United Nations High Commissioner for Human Rights (OHCHR), "Human rights of women wearing the veil in Western Europe", research paper.

<sup>8</sup> Submission of Italy. See also submission of 6Rang and Human Rights Watch, "No choice but to deny who I am': violence and discrimination against LGBT people in Ghana" (8 January 2018).

<sup>9</sup> Submission of Canada. See also [www.womenssportsfoundation.org/do-you-know-the-factors-influencing-girls-participation-in-sports](http://www.womenssportsfoundation.org/do-you-know-the-factors-influencing-girls-participation-in-sports).

<sup>10</sup> Submission of Sexual Rights Initiative.

<sup>11</sup> Submission of Cyprus.

<sup>12</sup> Margo Mountjoy and others, "International Olympic Committee consensus statement: harassment and abuse (non-accidental violence) in sport", *British Journal of Sports Medicine*, vol. 50, No. 17 (April 2016).

<sup>13</sup> Centre for Sport and Human Rights, "The 2018 Sporting Chance Forum", meeting report (June 2019).

<sup>14</sup> See, for example, OHCHR, "When sport becomes a dangerous playing field for children".

<sup>15</sup> United Nations, Department of Economic and Social Affairs, "Women 2000 and beyond: women, gender equality and sport", December 2007.

<sup>16</sup> Jimoh Shehu, ed., *Gender, Sport and Development in Africa: Cross-Cultural Perspectives on Patterns of Representations and Marginalization* (Dakar, Council for the Development of Social Science Research in Africa, 2010). See also Cora Burnett, "Engaging sport-for-development for social impact in the South African context", *Sport in Society*, vol. 12, No. 9 (November 2009).

<sup>17</sup> Niko Besnier, Susan Brownell and Thomas F. Carter, *The Anthropology of Sport: Bodies, Borders, Biopolitics* (Oakland, California, University of California Press, 2017), chap. 2.

12. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has identified race as a gatekeeper for elite sport.<sup>18</sup> While women's participation rates in the Olympics in some sports approach those of men,<sup>19</sup> available data do not parse differences across race, ethnicity and other characteristics, within and across nations.<sup>20</sup> Opportunities to participate in sport at the local level, which vary in large part based on access to resources, greatly influence women's participation in elite or professional sport.<sup>21</sup>

13. Access is also uneven across different sports, some of which require costly facilities.<sup>22</sup> Women and girls from low-income households therefore face particular barriers in accessing the necessary facilities and equipment, as well as barriers arising from the uneven distribution of home and family obligations.<sup>23</sup> These burdens fall disproportionately on women and girls belonging to marginalized groups, including those living in poverty, women from racial and ethnic minority groups, and migrant women.

14. Discrimination against women and girls in sport extends to unequal pay<sup>24</sup> and underrepresentation in leadership positions in sport.<sup>25</sup> The impact of the commercialization of sports on gender equality has begun to be examined, but much more work is needed to understand the discriminatory effects of financial and marketing practices across race and gender, in light of the changing nature of both the athletes and the audiences.<sup>26</sup>

15. The media play a vital role in drawing attention to and increasing support for the participation of women and girls in sport, yet a study by the United Nations Educational, Scientific and Cultural Organization (UNESCO) found that only 4 per cent of sports media content is dedicated to women's sport.<sup>27</sup> Media representations frequently propagate gender and racial stereotypes that denigrate ethnic and racial minority women in particular.<sup>28</sup> Reporting often references women's physical appearance, age and personal lives, rather than their athletic abilities.<sup>29</sup>

16. Researchers have also documented the implicit bias and stereotypes operating in the coverage of women athletes in the media, and some evidence shows bias has increased in the

<sup>18</sup> A/69/340, para. 21.

<sup>19</sup> The International Olympic Committee projected a 48.8 per cent participation rate in the Tokyo 2020 Summer Olympics. See International Olympic Committee, "Promotion of women in sport through time".

<sup>20</sup> Emily J. Houghton, Lindsay Pieper and Maureen Smith, *Women in the Olympic and Paralympic Games: An Analysis of Participation, Leadership, and Media Coverage* (East Meadow, New York, Women's Sports Foundation, 2017).

<sup>21</sup> Submissions of Ecuador and the Commission for Gender Equality.

<sup>22</sup> A/69/340, para. 21.

<sup>23</sup> See, for example, CEDAW/C/CHL/CO/7, para. 40. See also submission of Italy and Megan Chawansky and Payoshni Mitra, "Family matters: studying the role of the family through the eyes of girls in an SfD programme in Delhi", *Sport in Society*, vol. 18, No. 8 (January 2015).

<sup>24</sup> See, for example, Anne Peterson, "FIFA partners with the UN to promote gender equity", Public Broadcasting Service (PBS) News, 7 June 2019. See also Anne Peterson, "Women's national soccer team players sue for equal pay." PBS News, 8 March 2019.

<sup>25</sup> See, for example, International Working Group on Women and Sport, "Women and sport: from Brighton to Windhoek – facing the challenge", progress report, 1998. Available from <https://iwgwomenandsport.org/programmes/insight-hub/>.

<sup>26</sup> Wolfram Manzenreiter, "The business of sports and the manufacturing of global social inequality", *Esporte e Sociedade*, vol. 2, No. 6 (2007).

<sup>27</sup> "UNESCO calls for fairer media coverage of sportswomen", 8 February 2018.

<sup>28</sup> Manuel R. Zenquis and Munene F. Mwaniki, "The intersection of race, gender, and nationality in sport: media representation of the Ogwumike sisters", *Journal of Sport and Social Issues*, vol. 43, No. 1 (2019), and Kara Allen and Cynthia M. Frisby, "A content analysis of microaggressions in news stories about female athletes participating in the 2012 and 2016 Summer Olympics", *Journal of Mass Communication and Journalism*, vol. 7, No. 3 (June 2017). See also submission of Sexual Rights Initiative.

<sup>29</sup> University of Cambridge, "Aesthetics over athletics when it comes to women in sport", 12 August 2016, and Ivana Katsarova, "Gender equality in sport: getting closer every day", briefing, European Parliamentary Research Service, March 2019.

past decade.<sup>30</sup> Coverage of women’s participation in sports considered to be more “masculine” – such as basketball, weightlifting and boxing – is more likely to be accompanied with examples of interconnected racist and gendered commentary.<sup>31</sup>

### III. International human rights framework

17. International human rights norms and standards place obligations on States to prevent and provide redress for discrimination. These include specific treaty provisions regarding State obligations of non-discrimination on the basis of sex, race and gender, in particular those enshrined in the International Covenant on Economic, Social and Cultural Rights,<sup>32</sup> the International Covenant on Civil and Political Rights,<sup>33</sup> the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women, and in the jurisprudence emanating from the related treaty bodies. The Convention on the Rights of the Child also guarantees the right to equal participation of girls in sport and the protection of the rights of athletes under the age of 18.

18. The Convention on the Elimination of All Forms of Discrimination against Women requires States to ensure that women have the same opportunities to participate actively in sports and to take all appropriate measures to this end.<sup>34</sup> The Committee on the Elimination of Discrimination against Women has also raised concerns that women and girls, in particular those with disabilities, do not fully participate in sports, owing to discriminatory stereotypes and prejudices.<sup>35</sup> The Committee on the Rights of Persons with Disabilities has also expressed concerns about the limited participation of women and girls with disabilities in physical education in schools, and in national tournaments and sports leagues.<sup>36</sup> States have also committed, in the Beijing Declaration and Platform for Action, to supporting the advancement of women in all areas of athletics, including coaching, training and administration, and as participants at the national, regional and international levels.<sup>37</sup> In 2018, the General Assembly, in its resolution 73/24 on sport as an enabler of sustainable development, called for attention to gender equality and the promotion of human rights in sport.

19. Fulfilling these legal obligations requires an understanding of how race and gender discrimination intersect in sport and in society more broadly. As noted by the United Nations High Commissioner for Human Rights in a 2017 report, several international instruments and human rights mechanisms explicitly recognize the impact of intersecting forms of discrimination on the enjoyment of human rights by women and girls, including intersections with race, ethnicity, religion, nationality and migration status.<sup>38</sup> In that report, the High Commissioner also explained that the concept of intersectionality captures the consequences of two or more combined systems of discrimination, and addresses the manner in which they contribute to create layers of inequality.<sup>39</sup>

20. The Committee on the Elimination of Discrimination against Women has identified intersectional analysis as essential to understanding the scope of the general obligations of States parties, and has called upon them to legally recognize such intersecting forms of

<sup>30</sup> Kara Allen and Cynthia M. Frisby, “A content analysis of microaggressions in news stories about female athletes”.

<sup>31</sup> *Ibid.*

<sup>32</sup> Arts. 2 (2) and 3. See also Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, paras. 20 and 32.

<sup>33</sup> Arts. 2 (1), 3 and 26. See also Human Rights Committee, general comments No. 18 (1989) on non-discrimination and No. 28 (2000) on the equality of rights between men and women; and *Genero v. Italy* (CCPR/C/128/D/2979/2017), para. 7.6.

<sup>34</sup> Art. 10 (g).

<sup>35</sup> See CEDAW/C/PSE/CO/1, para. 40 (b); CEDAW/C/KAZ/CO/5, para. 41 (e); CEDAW/C/BWA/CO/4, para. 39; CEDAW/C/ITA/CO/7, para. 43; and CEDAW/C/FRA/CO/7-8, para. 38 (b).

<sup>36</sup> See CRPD/C/SAU/CO/1, para. 53. See also CRPD/C/BOL/CO/1, para. 67 (a).

<sup>37</sup> Para. 83 (m).

<sup>38</sup> A/HRC/35/10, para. 4.

<sup>39</sup> *Ibid.*, para. 7.

discrimination and to adopt and pursue policies and programmes to eliminate them, including, where appropriate, temporary special measures, and to provide adequate measures of prevention and redress.<sup>40</sup> The Committee on the Elimination of Racial Discrimination has also elaborated on the gender-related dimensions of racial discrimination and focused on the intersectionality of race and gender in its work, noting that racial discrimination will often escape detection if there is no explicit recognition or acknowledgement of the different life experiences of women and men, in areas of both public and private life.<sup>41</sup> The United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) has provided guidance on collecting data on intersectional discrimination to monitor equality in, among other things, sports.<sup>42</sup>

21. The Convention on the Elimination of All Forms of Discrimination against Women also requires States to modify sociocultural patterns and practices based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.<sup>43</sup> “Gender stereotyping” refers to the practice of ascribing to an individual specific attributes, characteristics or roles by sole reason of membership in the social group of women or men.<sup>44</sup> Applying the concept of intersectionality to gender stereotyping implies analysing the ways that beliefs about race and gender together exacerbate harm in all aspects of public and private life, and erect barriers to rights protection.<sup>45</sup> It is therefore imperative to address social norms that restrict the participation of women and girls in sport based on both race and gender stereotypes to ensure their equal participation.

22. In the Durban Declaration and Programme of Action,<sup>46</sup> the intersectionality of discrimination, including in sports, and the role of sports in addressing such discrimination is emphasized. States are called upon to combat the negative influence of racist ideologies, especially on young people, through formal and informal education, the media and sports. In particular, States are urged, in cooperation with intergovernmental organizations, the International Olympic Committee (IOC) and international and regional sports federations, to intensify the fight against racism in sport by, among other things, educating the youth of the world through sport practised without discrimination of any kind.

23. Other relevant analyses of rights focus on norms protecting specific populations of athletes, such as persons under 18,<sup>47</sup> athletes with disabilities<sup>48</sup> and athletes with variations in sex characteristics.<sup>49</sup>

#### **IV. Impact of female eligibility regulations on the enjoyment of human rights**

24. Women began participating in elite sport in the early twentieth century, but their inclusion was hindered by cultural ideologies about women’s bodies, including concerns

<sup>40</sup> General recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, para. 18.

<sup>41</sup> General recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, para. 1.

<sup>42</sup> *Turning Promises into Action: Gender Equality in the 2030 Agenda for Sustainable Development* (2018).

<sup>43</sup> Art. 5 (a).

<sup>44</sup> OHCHR-commissioned report, “Gender stereotyping as a human rights violation”, October 2013, available from [www.ohchr.org/EN/Issues/Women/WRGS/Pages/Documentation.aspx](http://www.ohchr.org/EN/Issues/Women/WRGS/Pages/Documentation.aspx). See also the Convention on the Elimination of All Forms of Discrimination against Women, art. 5.

<sup>45</sup> See A/HRC/35/10.

<sup>46</sup> A/CONF.189/12 and Corr.1, chap. I.

<sup>47</sup> *Getting into the Game: Understanding the Evidence for Child-focused Sport for Development*, provisional full report (March 2019).

<sup>48</sup> See the annual reports of the International Paralympic Committee. Available from [www.paralympic.org/ipc-publications](http://www.paralympic.org/ipc-publications).

<sup>49</sup> See communication of 18 September 2018 submitted by special procedures of the Human Rights Council to the International Association of Athletics Federations (IAAF) on regulations regarding eligibility for the female classification (athletes with differences of sex development) (OL OTH 62/2018). See also OHCHR, background note on human rights violations against intersex people and A/HRC/29/23.

about the public exhibition of the female body, and exposure to physical exertion and risk.<sup>50</sup> Because women's participation in sports was managed according to a strict two-sex categorical division, concern for who belonged in the women's category arose almost immediately, giving rise to female eligibility criteria, which remain in place.

25. So-called sex testing (also called femininity testing or gender verification) began in the 1930s as ad hoc, suspicion-driven testing of women athletes based on their physical appearance. In the 1960s, this practice evolved into mandatory universal certification of all women athletes seeking to compete in international competitions governed by the International Association of Athletics Federations (IAAF)<sup>51</sup> and/or IOC.

26. The processes, methods and criteria for determining sex have shifted over time, from physical inspections to biological sampling, at first for chromosomal karyotype and specific genes and more recently for endogenous testosterone levels.<sup>52</sup> While most individuals have innate sex characteristics that fit typical expectations for female or male bodies, this is not true of everyone and no single marker is determinative of male or female sex.<sup>53</sup>

27. In the 1990s, under pressure from its own policymakers, medical professional organizations and athletes, IAAF and then IOC stopped the practice of mandatory sex testing of all women and reverted to suspicion-driven testing that targeted women whose bodies were perceived as "masculine".<sup>54</sup>

28. In 2011, IAAF (in consultation with IOC) released new regulations governing the eligibility of women with "hyperandrogenism" to compete internationally. These regulations restricted the permissible amount of naturally occurring testosterone in female athletes and required them to undergo interventions to lower their testosterone to specified levels in order to compete.<sup>55</sup> IOC has issued its own version of such regulations.<sup>56</sup>

29. These regulations have come under scrutiny for their impact on athletes' rights to non-discrimination, as well as the continued use of a single biological marker for determining sex. Questions have also been raised regarding the selective use of scientific evidence, as the underlying claim that higher natural testosterone provides some women with a competitive advantage over other women, and the magnitude of any performance difference, remains unsettled in the scientific literature.<sup>57</sup>

30. In 2015, the Court of Arbitration for Sport suspended the IAAF hyperandrogenism regulations on the basis that they were unjustifiably discriminatory: the evidence did not establish that "hyperandrogenic" females enjoy a performance advantage over their peers sufficient to justify their exclusion from the female category of competition.<sup>58</sup> The Court granted IAAF two years to provide additional evidence, failing which the regulations would become void.

31. In 2018, IAAF issued new eligibility regulations for the female classification, which apply only to women with particular variations in sex characteristics.<sup>59</sup> These regulations set eligibility criteria which, inter alia, require women athletes with variations in sex

<sup>50</sup> Susan K. Cahn, *Coming on Strong: Gender and Sexuality in Twentieth-Century Women's Sport*. (Cambridge, Harvard University Press, 1995).

<sup>51</sup> Renamed World Athletics in October 2019.

<sup>52</sup> Vanessa Heggie, "Testing sex and gender in sports: reinventing, reimagining and reconstructing histories", *Endeavour*, vol. 34, No. 4 (2010), pp. 157–163.

<sup>53</sup> OHCHR, "Background note on human rights violations against intersex people".

<sup>54</sup> Vanessa Heggie, "Testing sex and gender in sports".

<sup>55</sup> "IAAF regulations governing eligibility of females with hyperandrogenism to compete in women's competition" (2011).

<sup>56</sup> "IOC regulations on female hyperandrogenism" (2012).

<sup>57</sup> Katrina Karkazis and Morgan Carpenter, "Impossible 'choices': the inherent harms of regulating women's testosterone in sport", *Journal of Bioethical Inquiry*, vol. 15 (2018), pp. 579–587.

<sup>58</sup> Court of Arbitration for Sport, *Dutee Chand v. the Athletics Federation of India and the International Association of Athletics Federations*, Case No. CAS 2014/A/3759, interim arbitral award, 24 July 2015.

<sup>59</sup> IAAF, "Eligibility regulations for the female classification (athletes with differences of sex development)" (2018).

characteristics to reduce their blood testosterone to a specified level so as to maintain eligibility to compete in the female category.

32. Various athletes from around the world have been affected by these sex testing regulations, including María José Martínez-Patiño (Spain) and Ewa Klobukowska (Poland).<sup>60</sup> The most well-known women affected in the last decade, however, have been from sub-Saharan Africa and South Asia, including Santhi Soundarajan and Dutee Chand (India), Caster Semenya (South Africa), Annet Negesa (Uganda), Margaret Wambui (Kenya) and Francine Niyonsaba (Burundi). Reports of these and other athletes from the same regions undergoing investigations and/or medically unnecessary and potentially harmful procedures are being published and investigated, as well as challenged by the women themselves.<sup>61</sup>

33. In a letter to IAAF regarding the 2018 regulations, three United Nations human rights experts raised concerns that the regulations effectively legitimize the surveillance of all women athletes based on stereotypes of femininity, adding that the regulations would in effect single out a group of women athletes, putting them at risk of repercussions far beyond the inability to compete while also subjecting them to shame, ridicule and intrusion upon their personal and private lives. Additional harms stemmed from the implication that the women need to be “fixed” through medically unnecessary interventions with negative health impacts.<sup>62</sup> As Caster Semenya has stated, “I have been subjected to unwarranted and invasive scrutiny of the most intimate and private details of my being”.<sup>63</sup>

34. The implementation of female eligibility regulations denies athletes with variations in sex characteristics an equal right to participate in sports and violates the right to non-discrimination more broadly. Current approaches to regulating female eligibility may have a negative impact on athletes’ enjoyment of their human rights and may amount to violations of the following rights:

(a) The right to freedom from torture and other cruel, inhuman or degrading treatment or punishment. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, alongside other mandate holders, has emphasized that while the 2018 IAAF regulations do not force athletes to undergo any assessment or treatment, they leave athletes with a difficult choice: to undergo intrusive medically unnecessary assessments and/or interventions that have a negative impact on their health and well-being or to be banned from sport. Such treatments also entail the risk of harm to physical and bodily integrity that may amount to violations of the right to be free from cruel, inhuman or degrading treatment or punishment and even torture;<sup>64</sup>

(b) The right to work and to the enjoyment of just and favourable conditions of work. Female eligibility regulations may be contrary to the right to work since, in practice, they may constitute a barrier limiting disproportionately equal access to work for athletes with variations in sex characteristics. Furthermore, they may require unnecessary physical alterations of one’s body as a precondition to working as an athlete and continuous invasive monitoring as an ongoing condition of work;<sup>65</sup>

(c) The right to the highest attainable standard of physical and mental health. The enjoyment of this right may be put at risk when athletes are pressured into making critical

<sup>60</sup> Vanessa Heggie, “Testing sex and gender in sports”.

<sup>61</sup> See, for example, P. Fénelon and others, “Molecular diagnosis of 5 alpha-reductase deficiency in 4 elite young female athletes through hormonal screening for hyperandrogenism”, *Journal of Clinical Endocrinology and Metabolism*, vol. 98, No. 6, (2013), pp. E1055–E1059; Z.K. Goh, Evelyn Watta and Ed Knowles, “DSD athletes: what does it mean to be DSD and how gender and sex are the big issues in athletics”, 25 September 2019 (available from [www.olympicchannel.com/en/stories/news/detail/semeyna-niyonsaba-wambui-what-is-dsd-iaaf-regulations](http://www.olympicchannel.com/en/stories/news/detail/semeyna-niyonsaba-wambui-what-is-dsd-iaaf-regulations)); Ruth Padawer, “The humiliating practice of sex-testing female athletes”, *The New York Times*, 28 June 2016; and Geneva Abdul, “This intersex runner had surgery to compete. It has not gone well”, *The New York Times*, 16 December 2019.

<sup>62</sup> See [www.ohchr.org/Documents/Issues/Women/WG/Communications/OL-OTH-62-2018.pdf](http://www.ohchr.org/Documents/Issues/Women/WG/Communications/OL-OTH-62-2018.pdf).

<sup>63</sup> “Caster Semenya’s comeback statement in full”, *The Guardian*, 30 March 2010.

<sup>64</sup> Vanessa Heggie, “Testing sex and gender in sports”.

<sup>65</sup> Committee on Economic, Social and Cultural Rights, general comments No. 18 (2005) on the right to work, paras. 12 (b), 23 and 31, and No. 23 (2016) on the right to just and favourable conditions of work.

decisions based on concerns of sport eligibility rather than health and well-being. Female eligibility regulations may push some athletes to undergo investigations, tests and interventions, for example to lower testosterone levels, which may have negative physical and mental health impacts. The panel of the Court of Arbitration for Sport reviewing Ms. Semenya's case agreed that the requirement to undergo intimate examinations to determine the extent of her "virilization" was "highly intrusive and could result in psychological harm".<sup>66</sup> The regulations also create the risk of unethical medical practice, particularly when the informed consent of the person concerned is not required, and violations of the general prohibition on medically unnecessary procedures.<sup>67</sup> The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has stressed that informed consent to any medical intervention goes beyond mere acceptance and must be voluntary and sufficiently informed in order to protect human dignity and autonomy. Particular care is required where there are power imbalances resulting from inequalities in knowledge, experience and trust between health-care providers and individuals, particularly those from vulnerable groups.<sup>68</sup> In sport, such power imbalances are compounded by athletes' dependency on the sports federations requiring such medical interventions and the frequent absence of adequate and holistic support during the decision-making process;

(d) The right to sexual and reproductive health. This right may be put particularly at risk by unnecessary medical interventions that affect hormones and reproductive anatomy and capacity;<sup>69</sup>

(e) The right of everyone to be free from arbitrary interference with their privacy. This right is at risk of being violated when women's names and personal details are made public and/or are shared in the media. History demonstrates that, because these regulations are applied in hundreds of countries, among many actors, it is impossible to guarantee privacy. The panel of the Court of Arbitration for Sport has acknowledged that foreseeable circumstances (such as the absence of certain athletes in restricted events in international competitions for which they have qualified in national championships) "would be likely to render confidentiality meaningless in some cases";<sup>70</sup>

(f) The right to respect for the dignity, bodily integrity and bodily autonomy of the person. This right includes the ability to make fundamental decisions about one's life and health. Meaningful decision-making relies not just on formal legal capacity but on the material conditions, social support and freedom from harm or coercion.<sup>71</sup> Female eligibility regulations may therefore take away the ability of athletes to control their bodies and the trajectory of their sporting and post-sporting life.<sup>72</sup>

35. States' human rights obligations include the application of the principle of due diligence enshrined in multiple human rights treaties, pursuant to which they must prevent, investigate and redress human rights abuses committed by others.<sup>73</sup>

<sup>66</sup> Court of Arbitration for Sport, *Mokgadi Caster Semenya v. International Association of Athletics Federations*, Case No. CAS 2018/O/5794, arbitral award, 30 April 2019; and *Athletics South Africa v. International Association of Athletics Federations*, Case No. CAS 2018/O/5798, arbitral award, 30 April 2019.

<sup>67</sup> World Medical Association, "Physician leaders reaffirm opposition to IAAF rules" (15 May 2019).

<sup>68</sup> A/64/272, para. 26.

<sup>69</sup> See communication of 18 September 2018 submitted by special procedures of the Human Rights Council to IAAF on regulations regarding eligibility for the female classification (athletes with differences of sex development) (OL OTH 62/2018).

<sup>70</sup> *Mokgadi Caster Semenya v. International Association of Athletics Federations* and *Athletics South Africa v. International Association of Athletics Federations*.

<sup>71</sup> UN Millennium Project 2005, *Who's Got the Power? Transforming Health Systems for Women and Children*, (London, Earthscan, 2005). Walter Kälin and Jörg Künzli, *The Law of International Human Rights Protection* (Oxford, Oxford University Press, 2009).

<sup>72</sup> Submission of Sexual Rights Initiative.

<sup>73</sup> See Committee on the Elimination of Discrimination against Women, general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19. See also A/74/137, the Guiding Principles on Business and Human Rights, the Declaration on Fundamental Principles and Rights at Work and its Follow-up of the International Labour Organization (ILO), the ILO Discrimination (Employment and Occupation) Convention, 1958 (No.

36. The Guiding Principles on Business and Human Rights are a key framework for understanding the nature and scope of State obligations and non-State actor responsibilities with respect to human rights, including in sport. Endorsed by the Human Rights Council in its resolution 17/4, in 2011, the Guiding Principles aim to promote the implementation of the United Nations “Protect, Respect and Remedy” Framework, according to which States have a duty to protect human rights (through policies, regulation, legislation and effective enforcement; enterprises have a responsibility to respect human rights, which means that they should take steps to avoid infringing on the rights of others through their activities or business relationships; and, where rights are harmed, both States and enterprises have a role to play in enabling access to and effective remedy through court systems or other appropriate non-judicial or administrative means. Fulfilling these responsibilities requires enterprises to take specific steps to publicly incorporate this commitment and put in place due diligence monitoring capacity (“know and show” duties).

37. Some sporting bodies, including FIFA, have begun to engage with human rights norms. Article 3 of the FIFA Statutes reflects the Federation’s commitment to implementing the Guiding Principles on Business and Human Rights and to respecting all internationally recognized human rights. Furthermore, in its Human Rights Policy, FIFA states that it places particular emphasis on identifying and addressing differential impacts based on gender and on promoting gender equality and preventing all forms of harassment, including sexual harassment.<sup>74</sup> Nevertheless, the evolution and application of other voluntary norms for sports to non-State actors is still a work in progress.<sup>75</sup> While the United Nations granted IOC observer status in 2009, recognizing the importance of the autonomy of sports and the role of IOC in leading the Olympic movement,<sup>76</sup> the General Assembly has subsequently encouraged relevant entities delivering mega sport events to respect applicable laws and international principles, including the Guiding Principles on Business and Human Rights.<sup>77</sup> In the Kazan Action Plan, adopted at the Sixth International Conference of Ministers and Senior Officials Responsible for Physical Education and Sport, UNESCO too stated that the human rights of everyone involved in sport must be protected, respected and fulfilled in accordance with the Guiding Principles.

38. IOC and many other sport governing bodies are signatories to the Brighton plus Helsinki 2014 Declaration on Women and Sport, in which it is stated that Governments and sport organizations should provide equal opportunities for women to reach their sports performance potential.<sup>78</sup> Moreover, those supporting elite and/or professional athletes should ensure that competition opportunities, rewards, incentives, recognition, sponsorship, promotion and other forms of support are provided fairly and equitably for both women and men.<sup>79</sup> There is global consensus that non-State actors must exercise due diligence with respect to decisions about sport, along with explicit commitments to integrating human rights-based approaches into the operations of sport governing bodies.<sup>80</sup>

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111), and the work of Shift ([www.shiftproject.org](http://www.shiftproject.org)) and the Centre for Sport and Human Rights ([www.sporhumanrights.org](http://www.sporhumanrights.org)).

<sup>74</sup> FIFA, “Human Rights Policy”, May 2017. Available from <https://img.fifa.com/image/upload/kr05dqyhwr1uhqy2lh6r.pdf>.

<sup>75</sup> Examples of voluntary commitments to human rights promotion include the IOC Charter, which states that “The practice of sport is a human right.” Further, the Charter guarantees the enjoyment of the rights and freedoms set forth “without discrimination of any kind, such as race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status”. The International Olympic Committee, Olympic Charter <https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf>.

<sup>76</sup> See [www.olympic.org/news/ioc-becomes-un-observer](http://www.olympic.org/news/ioc-becomes-un-observer).

<sup>77</sup> General Assembly resolution 73/24, para. 15. See also [www.olympic.org/news/ioc-continues-working-on-human-rights-and-takes-first-steps-on-a-strategy](http://www.olympic.org/news/ioc-continues-working-on-human-rights-and-takes-first-steps-on-a-strategy).

<sup>78</sup> See <https://iwgwomenandsport.org/wp-content/uploads/2019/03/Brighton-plus-Helsinki-2014-Declaration-on-Women-and-Sport.pdf>.

<sup>79</sup> *Ibid.*

<sup>80</sup> See, for example, the Centre for Sport and Human Rights.

## V. Gaps in the protection of human rights in professional sport: accountability and access to justice

39. States are obliged to ensure not only the prevention of violations and the protection and promotion of human rights, but also access to appropriate and effective remedies when rights have been breached. There is currently no global consensus on a consistent and comprehensive approach to the remediation of human rights abuses in sport, neither in general nor in terms of the equal rights of women and girl athletes specifically. Many athletes face obstacles in accessing effective remedies and obtaining full redress for violations of their human rights in sport, since most disputes related to professional sport are adjudicated by private dispute resolution mechanisms that are not designed to fully address human rights complaints.

40. The globalization of sport has shifted regulatory control increasingly towards private, non-profit and transnational sport governing bodies.<sup>81</sup> Through a series of contractual relationships, the rules and regulations developed by these bodies are implemented worldwide. For instance, pursuant to the Olympic Charter, IOC exercises “supreme authority” over international federations, national Olympic committees and organizing committees of the Olympic Games. Likewise, the statute of each international federation makes the rules and regulations binding on national federations. Failure by a national federation or a national Olympic committee to comply with and enforce domestically the rules of the relevant international federation or IOC jeopardizes its participation in international competitions.

41. Given their interest in having their athletes compete on the international stage, States largely acquiesce to the regulatory “autonomy of sport”,<sup>82</sup> which has been acquired after decades of uninterrupted and consistent operation as the leaders of world sport.<sup>83</sup> In some States, such acquiescence is evidenced by the absence of legislation governing national federations, while in others it is evidenced by the adoption of legislation that explicitly recognizes the authority of international sport governing bodies to govern national federations and national Olympic committees, which in some case trumps existing legal provisions.<sup>84</sup>

42. While athletes may sometimes be able to make human rights-related claims against sport governing bodies before domestic courts, these courts generally only have jurisdiction over their respective national federations and national Olympic committees, not over international federations and IOC, where many decisions that may negatively impact or violate human rights originate.<sup>85</sup> Domestic courts may provide domestic remedies, such as prohibiting the application of discriminatory international rules at national competitions, but this can put national sport in “an untenable position between two seemingly intractable forces”, in other words the order of a domestic court and the directive of an international federation,<sup>86</sup> and jeopardize the ability of athletes to compete internationally.

43. International sport governing bodies seek to avoid this dilemma by excluding the jurisdiction of national courts over sporting disputes. The Olympic Charter and the statutes

<sup>81</sup> Hilary A. Findlay, “Accountability in the global regulation of sport: what does the future hold?”, in *Ethics and Governance in Sport: the Future of Sport Imagined*, Yves Vanden Auweele et al., eds. (Routledge, 2016), pp. 69–74; Ken Foster, “Is there a global sports law?”, *Entertainment and Sports Law Journal*, vol. 2, No. 1 (2003).

<sup>82</sup> Jean-Loup Chappelet, *Autonomy of Sport in Europe* (Strasbourg, Council of Europe Publishing, 2010).

<sup>83</sup> Efthalia Chatzigianni, “Global sport governance: globalizing the globalized”, *Sport in Society*, vol. 21, No. 9 (2018), pp. 1454–1482.

<sup>84</sup> Marcus Mazzucco and Hilary A. Findlay, “The supervisory role of the Court of Arbitration for Sport in regulating the international sport system”, *International Journal of Sport and Society*, vol. 131 (2010).

<sup>85</sup> See, for example, Canada, Supreme Court, *Anette Sagen et al. v. Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games*, Case No. 33439, 2009. Moreover, even when national federations or national Olympic committees are able to sanction abuse (e.g., racism), the sanctions are not enforced.

<sup>86</sup> Mazzucco and Findlay, “The supervisory role of the Court of Arbitration for Sport in regulating the international sport system”. See, for example, Canada, Ontario Superior Court, *Nagra v. Canadian Amateur Boxing Association*, Case No. 850, 2000.

of most international federations provide for the internal resolution of disputes, with appeals permitted exclusively to the Court of Arbitration for Sport. Therefore, if national federations and their athletes, among others, wish to be recognized participants in their respective sport, they must generally agree to forego recourse to national courts in favour of private arbitration before that Court. Such mandatory arbitration shields the global sports system from regulation by national legal systems, which is where human rights are typically protected.<sup>87</sup>

44. Instead, the primary default rules applied in appeals to the Court of Arbitration for Sport are the relevant sport regulations.<sup>88</sup> Neither these regulations nor the statutes of sport governing bodies include human rights norms and standards as binding sources of law for adjudication. While the Olympic Charter and the statutes of many international federations contain a commitment to non-discrimination,<sup>89</sup> most do not contain a broader commitment to respecting the full range of human rights of athletes.<sup>90</sup>

45. As a result, consideration of human rights norms and standards in the resolution of sport disputes is limited. In Caster Semenya's case, the panel of the Court of Arbitration for Sport acknowledged that the regulations violated domestic and international human rights laws. It also noted the *amicus curiae* submission from United Nations Special Rapporteurs to that effect, as well as expert opinion evidence indicating the likelihood that the regulations would be found to breach the national laws of several specific jurisdictions. The panel accepted that there were important rights to equality and freedom from discrimination, including in sport, and that those rights found reflection in an array of domestic and international human rights instruments. The expert opinions could not, however, help to resolve what it viewed as a case of "conflicting rights" (between female athletes with and without certain variations in sex characteristics), which required "careful analysis of questions of necessity, reasonableness and proportionality". The panel noted the regulations could be unenforceable in or contrary to the domestic law of different national jurisdictions, but considered it would be ultimately for the courts in those jurisdictions to make such determinations.

46. Nonetheless, IAAF asserts that the Court of Arbitration for Sport "is competent to rule on all legal claims, including human rights claims", and that therefore its decision in the Semenya case "should be respected and enforced by the national courts".<sup>91</sup> For this reason, IAAF maintains that it "would defend any claim that was made in any national or international forum ... (including if necessary on jurisdictional grounds)".<sup>92</sup> This type of position, combined with the limited and inconsistent application of international human rights norms and standards to disputes before the Court of Arbitration for Sport and the fact that most Court arbitrators lack human rights expertise,<sup>93</sup> poses a serious challenge to access to effective remedies for athletes whose human rights are alleged to have been violated.

47. Decisions of the Court of Arbitration for Sport may be appealed only to the Swiss Federal Tribunal. The only substantive ground for setting aside an arbitral award before the Tribunal is a breach of Swiss public policy, meaning the award "disregards the essential and broadly acknowledged values which, according to prevailing views in Switzerland, should constitute the basis of any legal order".<sup>94</sup> The prohibition of discriminatory measures is one substantive policy recognized by the Tribunal.<sup>95</sup> Other national courts may also refuse to recognize and enforce an arbitral award if doing so would be contrary to the public policy of that State,<sup>96</sup> which may include certain fundamental human rights. Such a decision, however,

<sup>87</sup> Findlay, "Accountability in the global regulation of sport", p. 69.

<sup>88</sup> Court of Arbitration for Sport, Code of Sports-related Arbitration, rule 48; see also rule 45.

<sup>89</sup> See, for example, fundamental principles 4 and 6 of the Olympic Charter.

<sup>90</sup> IAAF has explicitly denied that it is bound by international human rights instruments because it is "not a public authority exercising state powers, but rather a private body exercising private (contractual) powers" ([www.worldathletics.org/news/press-release/iaaf-letter-iwg-wsi-iapesgw](http://www.worldathletics.org/news/press-release/iaaf-letter-iwg-wsi-iapesgw)).

<sup>91</sup> See [www.worldathletics.org/news/press-release/questions-answers-iaaf-female-eligibility-reg](http://www.worldathletics.org/news/press-release/questions-answers-iaaf-female-eligibility-reg).

<sup>92</sup> *Ibid.*

<sup>93</sup> John G. Ruggie, "'For the game. For the world.' FIFA and human rights" (Cambridge, Massachusetts, Harvard Kennedy School, 2016).

<sup>94</sup> Switzerland, *A. v. Z., FIFA and X.*, Case No. 4A\_304/2013, judgment of 3 March 2014, sect. 5.1.

<sup>95</sup> *Ibid.*

<sup>96</sup> Convention on the Recognition and Enforcement of Foreign Arbitral Awards, article V (2) (b).

would be jurisdictionally limited, as it would not be capable of suspending the regulations of a sport governing body worldwide.

48. Athletes may also bring human rights claims to regional courts. The European Court of Human Rights for example, recently applied the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) to the arbitral proceedings of the Court of Arbitration for Sport. In doing so, the European Court found that Court of Arbitration for Sport arbitration was not necessarily consensual, particularly when athletes had no choice but to accept the mandatory arbitration clause stipulated by their international federation if they wished to continue to pursue a professional career in their sport.<sup>97</sup> While in that case the majority of the European Court held that the procedures followed by the Court of Arbitration for Sport – except for the refusal to hold a public hearing – complied with the athletes’ right to a fair hearing, two judges dissented on the basis that the Court of Arbitration for Sport was not sufficiently independent from sport governing bodies to guarantee that right. The European Court’s jurisprudence includes a number of other decisions arising in the context of sport,<sup>98</sup> but none have involved alleged human rights violations against athletes by national or international sport governing bodies. Whether, and under what conditions, the European Court could exercise jurisdiction in such cases thus remains largely untested.

49. Additionally, the proceedings before the European Court of Human Rights often take a long time, during which an athlete’s relatively short career may come to an end, and the global sport system extends far beyond Europe, which again points to the risk of inconsistencies among jurisdictions in terms of protection and remediation for human rights violations in sport.

50. The foregoing gaps in human rights protection and remedy in sport have led to calls for global oversight in various forms, in other words for a “world sports governance agency” capable of monitoring good governance within the Olympic system and the world of professional and amateur sport<sup>99</sup> or for an “international anti-discrimination in sport unit” to harmonize sport rules concerning inclusion and exclusion in order to combat discrimination in sport and to enforce sanctions for non-compliance.<sup>100</sup> Action 4 in the Kazan Action Plan mentions the possibility of establishing a global observatory for women, sport, physical education and physical activity that would, among other things, promote investment in women’s and girls’ participation in sport, establish measures to address gender-based violence in sport and monitor and evaluate progress made on achieving Sustainable Development Goal 5 as it relates to sport. These suggestions all point to States’ obligations to ensure the protection of human rights in sport generally and the rights of women and girl athletes belonging to racial minorities in particular.

## VI. Conclusions and recommendations

51. **While sport is often an instrument for promoting peace, development, solidarity and human rights,<sup>101</sup> United Nations human rights experts and activists have also noted that sport is often characterized by inequality and discrimination within and across national borders.<sup>102</sup>**

52. **Despite the fact that some actions have been taken by international bodies, States and sporting bodies to respond to discrimination and to promote equal rights, the overall picture remains one of continuing, pervasive inequalities in women’s and girls’ access to sporting resources and activities at the local, national and transnational levels.**

<sup>97</sup> European Court of Human Rights, *Mutu and Pechstein v. Switzerland*, judgment of 4 February 2019, paras. 109–115.

<sup>98</sup> See [www.echr.coe.int/Documents/FS\\_Sport\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Sport_ENG.pdf).

<sup>99</sup> Sandro Arcioni, “The creation of an independent body for the control of governance in sport worldwide”, in *Ethics and Governance in Sport*, pp. 75–83.

<sup>100</sup> Seema Patel, *Inclusion and Exclusion in Competitive Sport: Socio-legal and Regulatory Perspectives* (Routledge, 2015), p. 173.

<sup>101</sup> See, for example, General Assembly resolution 70/1 and Human Rights Council resolution 24/1.

<sup>102</sup> John G. Ruggie, “‘For the game. For the world.’”.

53. In addition, regulations regarding female eligibility to compete in sport raise concerns about the ability of all athletes to enjoy their rights. Private sports bodies and their rules and regulations dominate the current global and corporatized structure of sport governance. Concerns have been raised in this context indicating that women and girl athletes may face serious obstacles to accessing effective remedies and seeking full redress for violations of their human rights. In accordance with their obligations under international human rights law, States should ensure that non-State actors, including sport governing bodies, respect human rights in their own regulatory regimes and are accountable for breaches.

54. States have obligations to remove obstacles for women and girls in accessing sport, including social, cultural and economic barriers. To this end, they should address discrimination in sport on the basis of gender, race and other grounds by:

(a) Collecting data and providing analyses on the structural barriers to access to sport for diverse women and girls;

(b) Ensuring that their national anti-discrimination law is adequate to address discrimination on the basis of gender, as well as compounded discrimination on the basis of gender and race or other prohibited grounds, including discrimination on the basis of particular intersex variations or on the basis of sex characteristics. Such domestic law, in conformity with international human rights obligations, needs to be applicable to and in practice be applied to sport governing bodies;

(c) Reviewing laws, policies and programmes with a view to addressing barriers to equal access to sport for women and girls;

(d) Ensuring access to adequate and effective remedies that can provide full redress for discrimination in sport;

(e) Establishing national standards on non-discrimination in sport and providing comprehensive, age-appropriate support for undertaking sporting activities at the local level;

(f) Integrating in national plans of action analyses of discrimination and other human rights abuses in sport based on gender, race and innate variations in sex characteristics, thereby ensuring coordination and adequate resourcing of related activities – including awareness-raising and capacity-building of relevant actors, accountability for harm caused and redress for victims;

(g) Collecting and publishing data on the number and types of discrimination and abuse, specifically data disaggregated by race, gender and with attention to marginalized communities, while providing for the security of those reporting.

55. States should prohibit the enforcement of regulations that pressure athletes to undergo unnecessary medical interventions as a precondition for participating in sport and should review and investigate the alleged enforcement of such regulations.

56. States should ensure that athletes know their rights. They should also ensure that athletes have access to legal remedy and have the legal capacity and social support to act, collectively as well as individually, to protect their rights and seek and receive all the information they need to make decisions at every level of their engagement in sport.

57. States should consider taking collective action on behalf of athletes, including with the involvement of sporting bodies, to address the gaps in accountability arising from the practices and policies of sporting bodies.

58. States and sporting bodies should establish a process to review rules, regulations, contracts and agreements to ensure their compliance with international human rights norms and standards, paying particular attention to the need to protect from discrimination and to provide adequate remedies, including in respect of arbitration clauses, so that they do not violate the rights of athletes.

59. In light of their distinct obligations and responsibilities, States and sporting bodies should work together to promote the inclusion of women and girls in sporting activities, paying particular attention to women and girls marginalized on account of their race, nationality, immigration or refugee status, ethnicity, religion, HIV or other

health status, disability, maternity/parental status or gender/gender identity or sexual orientation, and create equality-affirming programmes and policies by:

(a) Ensuring the inclusion of and cooperation with organizations led by intersex persons in efforts to include more and a greater diversity of women and girls' sport;

(b) Carrying out, in conjunction with athletes and their associations, public education campaigns to counter gender-stereotyped and racist attitudes and using all appropriate measures to address negative and stereotypical portrayals of women and girl athletes in the media, paying particular attention to pervasive attitudes to appropriate norms of femininity.

60. States and sporting bodies should ensure that women and girls, and their representative organizations, including athletes' associations and commissions, are consulted on laws and policies, particularly those that have an impact on their rights.

61. Sporting bodies should commit themselves to protecting and respecting internationally recognized human rights. They should meet their responsibilities to protect rights and minimize harms to rights by adopting human rights policies that apply to athletes, events and competitions (from bidding processes to game time), fans, journalists and others. They should also commit themselves to reviewing and revising their policies, including eligibility regulations. This includes:

(a) Putting in place transparent monitoring processes to assess negative impacts on rights as a step towards meeting their responsibilities;

(b) Establishing practices of due diligence in tracking and responding to reports of discrimination and abuse;

(c) Ensuring that athletes have access to all relevant information on their rights and on the steps that can be taken to ensure their rights, expose abuse and hold those responsible to account.

62. Sport governing bodies should protect athletes' right to remedy by not restricting their access to justice mechanisms. Moreover, they should act to ensure effective forms of redress that conform with international human rights law and that are equally accessible to all athletes regardless of resources and geographic location.

63. Sport governing bodies should ensure that the heightened protections for athletes under the age of 18 provided by the international framework for child rights are in place in sport governing bodies policies, rules and regulations.

64. Sport governing bodies should review, revise and revoke eligibility rules and regulations that have negative effects on athletes' rights, including those addressing athletes with intersex variations.

65. The Human Rights Council should consider remaining apprised of these issues, and, in particular, consider a review of the interactions between private and public law in sports, with due regard for the independence of sporting bodies and the pre-eminent duty of States to respect, protect and fulfil rights.