

**Submission to the Office of the High Commissioner for Human Rights
Sexual Rights Initiative
November 2019**

1. This submission is made by the Sexual Rights Initiative (SRI).¹ SRI is a coalition of national and regional organizations based in Canada, Poland, India, Argentina and South Africa, that work together to advance human rights related to sexuality, gender and bodily autonomy at the United Nations.

Introduction

2. UN Human Rights Council resolution A/HRC/RES/40/5 mandating the report which this submission aims to inform, deals with discrimination against women and girls in sport and in particular with regulations by the International Association of Athletics Federation (**IAAF**). The impetus for the tabling of this resolution by South Africa was the 2018 IAAF regulation² requiring Caster Semenya, an elite athlete from South Africa, to undergo unnecessary, humiliating medical interventions to compete and which was challenged by her³.
3. These kinds of coercive and discriminatory practices by sport associations against women and girls are not isolated incidents nor is the treatment of Semenya an isolated case. It is an illustrative example of systemic discrimination against women and girls from the Global South and women of colour from the Global North. Previous to the challenge filed by Caster Semenya against the IAAF, Dutee Chand from India was banned from competition in 2014 under a previous regulation of the IAAF.⁴ She successfully challenged it, arguing that the regulation, requiring her to undergo medically unnecessary interventions, was both unfair and coercive. After the court of arbitration sided with Dutee Chand admitting that there was no established correlation between higher testosterone levels and her performance, and therefore excluding athletes with elevated testosterone is not "necessary and proportionate". They then suspended the regulation and gave the IAAF two years to come up with better evidence to justify their position or the regulations would be struck down.
4. The new IAAF regulations not only fail to uphold dignity, privacy, and fairness for all women athletes, they violate human rights and fundamental freedoms. The regulation, based on flawed science, make sweeping assumptions and coerce elite athletes to undergo interventions which are medically unnecessary and have long

¹ <http://www.sexualrightsinitiative.com/>

² <https://www.iaaf.org/download/download?filename=0c7ef23c-10e1-4025-bd0c-e9f3b8f9b158.pdf&urlslug=IAAF%20Eligibility%20Regulations%20for%20the%20Female%20Classification%20%5BAthletes%20with%20Differences%20of%20Sex%20Development%5D%20in%20force%20as%20from%201st%20November%202018>

³ <http://www.dirco.gov.za/docs/2019/unhrc0322a.htm>

⁴ <https://www.theguardian.com/commentisfree/2018/apr/26/testosterone-ruling-women-athletes-caster-semanya-global-south>

term health impact on the bodies of these women and girls. These regulations also enable sporting associations at international, national, regional and local levels to question, monitor and track the bodies of women and girls based on nothing but conjecture. These harms are not incidental to the regulations; they are inherent to them.⁵ These regulations disproportionately affect and target women from the Global South in particular black and brown women from the Global South. Elite women athletes are coerced into procedures to compete or quit the sport which is their livelihood.

5. To be an elite athlete is not easy and almost all the women and girls from the Global South would have overcome various obstacles (physical, social, financial) to compete. Elite sport is at the top tier of sport activities and can be achieved by a few and required not only talent and skill but years of hard work starting at the level of school, amateur levels and professional sports. Only the most famous athletes who have resources and/or the backing and support of their governments to challenge these rules or decisions come to the attention of the public but the impact of such regulations is not only at the elite levels and many women who aspire to be elite athletes probably are forced to quit the sport or endure humiliating treatment without anyone knowing. One study has revealed that four women aged 18–21 from “rural and mountainous regions of developing countries,”⁶ were forced to undergo medically unnecessary procedures. Resolution 40/5 and the report arising from it is and should be about “women who do not conform to culturally constructed notions of womanhood [and] are particularly at risk of discrimination, violence, and criminalization. By singling out a certain group of athletes and denying them membership in the “female” category, the IAAF puts these women at risk of repercussions far beyond the inability to compete, as well as subjecting them to shame, ridicule, and intrusion upon their personal and private life.”⁷
6. This submission locates discrimination in sports based on race and gender in the colonial, racist and patriarchal histories of northern states which continue in this neo-liberal, post-colonial world. Specifically, this submission makes the case that current contemporary sporting decisions and regulations cannot be read in isolation. More specifically it makes the case that international, regional and national sporting associations continue to enforce and coerce ‘conformity’ and ‘normalcy’ on bodies that they perceive to have deviated from the norm. The idea of ‘normalcy’ is almost always based on a patriarchal, racist, classist and ableist paradigm benefitting the ones in power. This submission argues that oppressions which are entrenched in competitive sport with its roots in imperialism, colonialism and patriarchy should be unpacked and suitably addressed to fulfil the objective of the resolution.⁸ This submission also aims to locate the resolution in the geo-political history of nation

⁵ Karkazis, K. & Carpenter, M. *Bioethical Inquiry* (2018) 15: 579. <https://doi.org/10.1007/s11673-018-9876-3>

⁶ Karkazis, K. & Carpenter, M. *Bioethical Inquiry* (2018) 15: 579. <https://doi.org/10.1007/s11673-018-9876-3>

⁷ The communication sent by special procedures to the IAAF on the regulations.

⁸ Human Rights Council Resolution 40/5: Elimination of discrimination against women and girls in sport.

[A/HRC/RES/40/5](https://www.unhcr.org/refugees/40/5),

states and the use of sport by state and non-state actors⁹ to further existing racist and sexist ideologies.

Sport as 'civilising' tool of colonial powers

7. Resolution A/HRC/RES/40/5 specifically highlights "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."¹⁰ However, this ambition while laudable cannot be achieved without countering the false and inaccurate perception that competitive sport is neutral and apolitical. On the contrary, sports industrial complex fuels nationalism, fosters class, racial and gender stereotypes. The state investment in hosting large sporting events are often fuelled for political reasons, and there is an entire industry of private corporations including owners of the 'competition' whose purpose is to make profit and are exploitative and extractive in achieving their objective, mirroring and furthering the origins of competitive sport which is rooted in exploitation during colonialism.
8. Competitive sport, as understood in the contemporary world universally was created during colonialism.¹¹ It was one of many tools of imperialism and cultural control used by the colonising state. One of its purposes was to create an idea of 'the nation' of colonial masters and subjects, all of whom participate in the nation but are never equal, and as a form of cultural and social imperialism.¹² Modern sport flows from this idea perpetuating 'white supremacy' and the ideology of the so-called civilised white man as opposed to the 'uncivilised' and 'uncultured' colonial subjects. "Sport, then, must be reckoned a most pervasive and enduring theme in the history of British imperialism. The central feature of its power is the subconscious influence it has exerted in both colonial and postcolonial conditions, frequently softening the strength of social and political changes experienced in other areas of its specific cultural context."¹³ Cricket and Rugby¹⁴ are the some of the best examples of the ways in which sport, the rules surrounding the sport, 'the competition' was used to perpetuate this myth of civilised man. This idea of "civilised white man" was then upheld as the aspiration for all to achieve, consciously furthering, reiterating and

⁹ FIFA, Olympic Associations, IAAF to name a few

¹⁰ Michael A. Messner; Sports and Male Domination: The Female Athlete as Contested Ideological Terrain; *Sociology of Sport Journal*, 1988, 5, 197-211

¹¹ Dr. Delia D. Douglas; Race, Gender and Sport: Female Athletes' Experiences of Gendered Racism; Paper Presented: to the Ad Hoc Committee on the Elaboration of Complementary Standards, 7th session

¹² Stoddart, Brian; Sport, Cultural Imperialism, and Colonial Response in the British Empire; *Comparative Studies in Society and History*; Vol. 30, No. 4 (Oct., 1988), pp. 649-673; Cambridge University Press, <https://www.jstor.org/stable/178928>

¹³ Stoddart, Brian; Sport, Cultural Imperialism, and Colonial Response in the British Empire; *Comparative Studies in Society and History*; Vol. 30, No. 4 (Oct., 1988), pp. 649-673; Cambridge University Press, <https://www.jstor.org/stable/178928>

¹⁴ The Middle Class, Colonialism and Making of Sport, *Sport in Society*, 12:1, 69-84, <https://doi.org/10.1080/17430430802472319>

reinforcing white supremacy.¹⁵ This included appropriating sporting activities of colonised, establishing rules which uphold the idea of the civilised man and exclude the colonised peoples. The game of Polo is a perfect example to illustrate the manifestation of this idea.¹⁶

9. In post-colonial and neoliberal societies, where large elite sports are a highly corporatized and multimillion-dollar industry rife with human rights violations including mass "clean-ups" of the poor and homeless¹⁷ during major sporting events. In this context, it has become even more incumbent to maintain the myth and masquerade that sport is apolitical, egalitarian and neutral. It is within this backdrop that this submission aims to locate discrimination on the basis of race and gender in contemporary society. The search for substantive equality, as mandated by different human rights treaties like Convention on Elimination of All forms of Discrimination Against Women, Convention on the Elimination of Racial Discrimination and Convention on the Rights of Persons with Disabilities, requires assessing the impact of law and policy on the actual enjoyment of rights. The assessment must recognize the structures shaping social arrangements that determine the assignment of power and resources and must understand where people are placed in those arrangements. It is imperative that the idea of neutrality and fairness be de-mystified and de-bunked.

10. Another feature of sport is that historically it was seen as a field of men and male dominion¹⁸, the Olympics (symbol of world peace) had sporting events for women only in 1900,¹⁹ but only for very specific events and not all events. "Because of the patriarchal and heterocentric attitudes and structures that govern sport, all female athletes continue to navigate the belief that athletic competence masculinizes girls and women. The conflation of dominant cultural expectations of gender and sexuality has meant that for girls and women, participation in sport stands in opposition to dominant notions of gender appropriate female behaviour, and thus raises concerns about their heterosexuality."²⁰ Women and girls participating in sport are forced to emphasise their femininity and heterosexuality including by

¹⁵ For more details please refer to Stoddart, Brian; Sport, Cultural Imperialism, and Colonial Response in the British Empire; Comparative Studies in Society and History; Vol. 30, No. 4 (Oct., 1988), pp. 649-673; Cambridge University Press, <https://www.jstor.org/stable/178928>

¹⁶ Dr. Delia D. Douglas; Race, Gender and Sport: Female Athletes' Experiences of Gendered Racism; Paper Presented: to the Ad Hoc Committee on the Elaboration of Complementary Standards, 7th session

¹⁶ Stoddart, Brian; Sport, Cultural Imperialism, and Colonial Response in the British Empire; Comparative Studies in Society and History; Vol. 30, No. 4 (Oct., 1988), pp. 649-673; Cambridge University Press, <https://www.jstor.org/stable/178928>

¹⁷ Some examples of this include city wide clean ups etc during sporting events including during Olympics, FIFA, World Cup etc.

¹⁸ Michael A Messner, Sports and Male Domination, The Female Athlete as a Contested Ideological Terrain, Sociology of Sport Journal, 1998, 5, 197 – 211.

¹⁹ <https://www.olympic.org/women-in-sport/background/key-dates>

²⁰ Delia D. Douglas; Race, Gender and Sport: Female Athletes' Experiences of Gendered Racism; Paper Presented to the 7th session of the Ad Hoc Committee on the Elaboration of Complementary Standards (July 2015); <https://www.ohchr.org/Documents/Issues/Elaborationstandards/Session7/DeliaDouglas.pdf>, p.3

“wearing their hair long, dress frilly and preferably sporting a husband”.²¹ At the same time, men are expected to adhere to dominant stereotypes of masculinities, maintain the appearance well-muscled, strong, unemotional and extremely oriented to a win-at-all-costs code of athletics. Hormonal and chromosomal femininity tests for female (but no masculinity tests for male) athletes are a logical result of these ideological assumptions about male-female biology²² which feeds into the stereotype of protecting the weaker and meeker women and their ‘activities’. However, the dominant construction of femininity and stereotypes of women was and continues to be that of a white, western, not too muscular, not too strong, feminine-presenting body among others. This is then constructed as the ‘normal’ automatically ensuring that black and brown bodies will always been seen either as the deviant, abnormal or in some cases the exceptional. This narrative ensured that in either case, the acknowledgment of excellence, of achievement, or the enforcement of discriminatory norms can always be classified as an isolated event. In both these narratives, it is white supremacy and patriarchy that are protected and racism and misogyny continue to be perpetuated and (re) calibrated.

Erasure of race in gender and gender in race

11. One of the first black women to compete in Wimbledon was an African American athlete, Althea Gibson, who was allowed to participate in the U.S. national championship only after she took a chromosome test to confirm she was female.²³ This pattern of requiring black women to prove their gender has continued through history and by different sporting bodies and takes various forms. The names have changed, ostensibly the content of the tests has changed but at their essence they are and continue to be the same – an invasion and monitoring of black and brown bodies. “Whiteness has always shaped and reshaped the myth of the Black body to maintain white supremacy. That the bodies of Black female athletes have historically been depicted both as “hypersexual and muscular with manly strength” is in line with the dichotomous nature of stereotypes in general.”²⁴ This is neither a new phenomenon nor is it hidden. “Sport authorities, through public talks, publications, and interviews, have consistently indicated that the women investigated for high levels of naturally occurring testosterone are exclusively from the Global South, and all indications are that they are black and brown women.”²⁵ This is because most questions/allegations of “women being men” have also been on black and brown women.²⁶ These women have been subject to humiliating treatment, their

²¹ Robert E Washington and David Karen; Sport and Society, Annual Review of Sociology, Vol 27 (2001), pp 187 - 212

²² Michael A Messner, Sports and Male Domination, The Female Athlete as a Contested Ideological Terrain, Sociology of Sport Journal, 1998, 5, 197 – 211.

²³ Delia D. Douglas; Venus, Serena and Inconspicuous Consumption of Blackness: A Commentary on Surveillance, Race Talk and New Racism(s), Journal of Black Studies, Vol 43, No 2 (March 2012), pp. 127 - 145

²⁴ 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, 2019, Vol. 43(1) 23–43

²⁵ Katrina Karkazis and Rebecca M. Jordan-Young; The Powers of Testosterone: Obscuring Race and Regional Bias in the Regulation of Women Athletes; <https://www.researchgate.net/publication/320022246>

²⁶ Some of the most prominent cases are of Caster Semanya, Duttee Chand, Shanti Soundarajan

livelihoods put in jeopardy, their health and lives put in perilous circumstances because they do not fit the image of the normal i.e. “the White ideal body type” and so they are rendered suspicious and criminalised.²⁷ This is not restricted to the area of sport, historically “eurocentric conceptions of science underpins the social construction of black femininity”²⁸ and situated in colonialism and racism viewed black femininity are inferior and primitive and denigrated black women and subjected them to humiliating treatment. One of the most illustrative examples of the (re)creation of scientific myths to perpetuate this form of racism, the story of Sarah Baartman and the ways in which science was used to justify racist conception of black bodies. This scientific racism continues to be used today in various forms and black women and bodies are monitored and discussed in public and their bodies repeatedly questioned.

12. The lack of acknowledgement and reparation of colonial history and damage by the Global North has ensured that the colonial myths about the black and brown bodies endure and are reproduced after the formation of independent nation states. It has been repeatedly argued that in contemporary European discourse, race is a tabooed subject and is viewed as problems of the past.²⁹ This is not just a convenient denial but the negation and erasure of history which has created institutions and structures built upon the foundations of the racist and sexist ideologies including modern international institutions. This erasure, or convenient denial has ensured that black and brown bodies continue to be seen as aberrations and discourse around these bodies reiterate white supremacy. They often recasting violent colonial interventions as civilising ‘pathological cultures’ and in contemporary times “saving” women from their own (violent and misogynist) communities.”³⁰
13. Former colonial powers continue using sport as a ‘civilising’ tool and restricting access to sport and public spaces through racist and sexist discrimination and stereotypes. The discrimination faced by women and girls in competitive sport cannot be divorced from the discrimination they face in non-competitive sport and in society more broadly, especially at the hands of former colonial powers, including under the racist pretext of “civilizing.” A recent example of this is the attempt by sport retailer Decathlon to introduce a running hijab in its French stores, before deciding against it after controversy, protestation, insults and threats in the press, social media and by politicians. The Collective against Islamophobia in France characterized this instance of discrimination against Muslim women in sport as

²⁷ 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*, 2019, Vol. 43(1) 23–43

²⁸ Katherine Mckittrick, Science Quarrels Sculpture: The Politics of Reading Sarah Baartman, *Mosaic: An Interdisciplinary Critical Journal*, Vol 43, No 2, pp 113 -130

²⁹ This could also be seen during the negotiation of the Resolution A/HRC/RES/40/5 where European States wanted to reduce the mention of race and gender as a combination. South Africa, who was the lead sponsor of this resolution particularly highlighted this need for the complexity of race and gender and the often obscuring of race and gender.

³⁰ Katrina Karkazis and Rebecca M. Jordan-Young; The Powers of Testosterone: Obscuring Race and Regional Bias in the Regulation of Women Athletes; <https://www.researchgate.net/publication/320022246>

“islamophobia, a gendered form of racism.”³¹ A parallel can be drawn with French burkini bans restricting Muslim women’s access to swimming and public spaces, which the Office of the High Commissioner for Human Rights recognized as “disproportionately affect[ing] women and girls, undermining their autonomy by denying them the ability to make independent decisions about how to dress, and clearly discriminat[ing] against them. In addition, as has been widely noted, the manner in which the anti-burkini decrees have been implemented in some French resorts has been humiliating and degrading.”³² UN treaty bodies and special procedures have also found such restrictions and bans to be discriminatory.³³ Again, this must be examined as a continuation of the colonial practice of “unveiling” Muslim women under the pretext of so-called “civilization.”³⁴

14. Simultaneously, inherent misogyny within post-colonial nation states and communities use these women’s and girls’ bodies to assert their independence. In this complex arena, the women and girls’ bodies and lives are opportunistically instrumentalized to assert “the nation” on the one side. And on the other side, these bodies are monitored and dismissed. The women and girls, their consent, and decisions are rendered meaningless in the process.

Intersectionality is key

15. By centering gender and race in the resolution, the UNHRC resolution laid the groundwork for applying the intersectionality principle. Intersectionality as theory, a principle of political analysis and organising and a basis for the design of law and policy is imperative to address this form of discrimination. The resolution, by acknowledging “multiple and intersecting forms of discrimination”³⁵ and recognising the complex nature of race and gender and the violation of rights of women of colour in sport seeks to name and address this discrimination and in the process not fragment the lives and experiences of women of colour in sport. Consequently, it strives to ensure that the ‘multiple’ refers not only to several, simultaneous

³¹ Affaire Décathlon - Communiqué du Collectif contre l’Islamophobie en France. 28 February 2019, available at <https://www.ujfp.org/spip.php?article6980&lang=fr>

³² Spokesperson for the UN High Commissioner for Human Rights, Rupert Colville: Press briefing notes on France and Bolivia. Office of the UN High Commissioner for Human Rights, 30 August 2016. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20430&LangID=E>

³³ See e.g.: End of Mission Statement of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance at the Conclusion of Her Mission to the Kingdom of the Netherlands, The Hague (7 October 2019), para. 16. Available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25100&LangID=E>; and the Views adopted by the Human Rights Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2747/2016, CCPR/C/123/D/2747/2016, 7 December 2018, in which the Human Rights Committee found the French ban of the full-face veil to constitute “a form of intersectional discrimination based on gender and religion.” (para. 8.17)

³⁴ Jeanne Kay; The Deep Colonial Roots of France’s Unveiling of Muslim Women. Foreign Policy in Focus, 24 August 2016, <https://fpif.org/deep-colonial-roots-frances-unveiling-muslim-women/>

³⁵ Human Rights Council Resolution 40/5: Elimination of discrimination against women and girls in sport. [A/HRC/RES/40/5](https://www.ohchr.org/EN/HRBodies/HRC/Resolutions/Pages/Display.aspx?LangID=E&ResID=405), para 8

oppressions but the multiplicative relationships among them as well.³⁶ Thus intersectionality can help in analysing the multiple oppressions that operate and affect women and girls' bodies and lives and understand that one cannot use an additive approach.

16. It is often the case that laws, policies, judicial and quasi-judicial bodies fail to recognise the essentialist discourse that prioritises one aspect of identities and lives over others underpinning their content and implementation. The result is an additive towards oppression ignoring the relationship between the multiple oppressions that are in operation. "The source of gender and racial essentialism (and all other essentialisms, for the list of categories could be infinitely multiplied) is the second voice, the voice that claims to speak for all. The result of essentialism is to reduce the lives of people who experience multiple forms of oppression to additional problems: 'racism + sexism = straight black women's experience,' or 'racism + sexism + homophobia = black lesbian experience'. Thus, in an essential world, black women's experience will always be forcibly fragmented before being subjected to analysis, as those who are only interested in race' and those who are 'only interested in gender' take their slices of our lives."³⁷
17. It is necessary to use intersectionality as a constant reminder that the relationship between the oppressions creates the conditions for human rights violations. The regulations passed by IAAF requiring women and girls to undergo medically unnecessary interventions, their revival in various forms reveal 'international' to mean white and global north. The IAAF regulations, and those modelled on them, prescribe particular cultural constructions of womanhood, where white, feminine-presenting, heterosexual womanhood serves as the standard and any deviation from this standard is seen as abnormal, deviant, wrong and requiring of "fixing".
18. Intersectionality ensures that women and girls' lives and bodies are not essentialised in an inaccurate and inadequate attempt to quantify discrimination and violence. Such an approach often privileges single aspects of identity over intersectionality and obscures and devalues the experiences of people whose identities consist of multiple attributes, each of which can lead to discrimination on its own but which together form the whole of a person's experience that is bigger than the sum of the individual parts. Because identities are assemblages³⁸ of different attributes, not a patchwork, an issues-based approach to discrimination and violence that can recognise the multiple attributes that come together in people's lives and not privilege one over all others is necessary. This means recognising, for example, that the experience of race is a gendered one, or that experience of sexual orientation is

³⁶ Deborah K King, *Multiple Jeopardy, Multiple Consciousness: The Context of a Black Feminist Ideology*, *Signs*, Vol 14, No. 1 (Autumn, 1989) pp 42 - 72

³⁷ Angela P Harris, *Race and Essentialism in Feminist legal theory*, *Stanford Law Review*, Vol 42, No 3 (Feb 1990), pp 581 - 616

³⁸ The term has been adapted from the Jasbir Puar's work on *Terrorist Assemblages; Homonationalism in Queer times*.

a racialised one, and not assuming that sexual orientation is unaffected by race, gender, ability, and so on.

Right to Bodily Autonomy

19. The concept of bodily autonomy is linked to self-determination over not only bodies, but also lives, and is composed of the right of everyone to make decisions over their own bodies and lives without discrimination. It is a fundamental aspect of the right to life, right to the enjoyment of highest attainable standard of physical and mental health, rights to privacy and the right to be free from all forms of discrimination and violence and freedom from torture and cruel and inhuman treatment. It obligates States to ensure that these rights are respected, protected and fulfilled, so that every person can exercise their right to decide for themselves over their body and life without interference from the State, family, society and other external elements. While people's individual circumstances may differ, their oppressions share a commonality in restrictions to bodily autonomy grounded in patriarchal gender norms and stereotypes that seek to subordinate women, girls' and gender non-conforming persons' decisions about their own bodies to the State, through laws, policies or their implementation. Most often, these practices, laws and policies are driven through institutions – State or non-state, that have a vested interest in maintaining these stereotypes – hence maintaining the status quo. Compounded by discrimination on the basis of disability, race, sexual orientation, gender identity, geography, ethnicity, faith and any other status, violations of bodily autonomy create stark protection gaps within the international human rights framework that must be addressed.
20. Bodily autonomy includes the right to decide autonomously and goes beyond an individual exercise of choice. It includes having the information and means to make and carry out meaningful, informed decisions about one's body. The right to bodily autonomy includes the obligation upon States to create conditions that respect, protect and fulfil these rights in all aspects of life for all persons without discrimination. The State is obligated to eliminate policies and laws that create barriers to the achievement of this set of rights and to enact policies that further the rights of women and girls and in particular to further the rights of marginalized groups.
21. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has similarly called on States to “prohibit unnecessary medical or surgical treatment during infancy or early childhood in order to guarantee the bodily integrity, autonomy and self-determination of the children concerned.”³⁹ In its 2016 report on the instrumentalization of women's bodies and the negation of women's bodily autonomy, the Working Group on the issue of discrimination against women in law

³⁹ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, with a focus on early childhood. [A/70/213](#), 30 July 2015, para. 86.

and in practice stressed that “the discriminatory use of criminal law, punitive sanctions and legal restrictions to regulate women’s control over their own bodies is a severe and unjustified form of State control. This can include punitive provisions in criminal, civil and administrative laws and regulations governing extramarital consensual sex, same-sex consensual adult relations, gender non-conforming expressions, provision of reproductive and sexual education and information, termination of pregnancy and prostitution/sex work. The enforcement of such provisions generates stigma and discrimination and violates women’s human rights. It infringes upon women’s dignity and bodily integrity by restricting their autonomy to make decisions about their own lives and health.”⁴⁰

22. UNHRC resolution 40/5 adopted by consensus recognised the rights to bodily autonomy and integrity⁴¹ for the first time. The respect, protection and fulfilment of these rights should necessarily go beyond a narrow framing of non-interference. As discussed in the sections above it means that women and girls’ bodies, in particular bodies of women of colour, are not watched, monitored, prodded and judged. Elite sport and athletics are the dominion of few, the very nature of the competition involves pushing bodies to limits that is not possible for everyone. These women and girls who have pushed their own bodies to achieve excellence, yet their effort, work and life is demeaned, humiliated and often ridiculed. It is necessary to discuss this because the racism and sexism is always de-humanising⁴² and these women are written about without their consent, their privacy, confidentiality repeatedly violated. This is accompanied by the tropes that black and brown bodies do not feel harm because they are not the ‘normal’ and is also seen in the ways the sexual and reproductive health and rights of these bodies are routinely violated including in the form of population control measure and/or denying essential services.
23. Sport, including competitive sport has also provided an opportunity for many women to break those very same gender and sexual stereotypes that define notion of femininity. By providing a livelihood opportunity, sport can be effective in providing aspirational, physical and social mobility which can often break race, class and caste barriers. In the United States, the success and excellence of Serena and Venus Williams in tennis, a typically white upper-class women’s sport, broke all barriers of class and race.⁴³ That their success was constantly looked upon with suspicion, that the media, in particular western media, and other athletes decided to monitor every aspect of their life on and off the court⁴⁴ highlights the very particular

⁴⁰ Report of the Working Group on the issue of discrimination against women in law and in practice. 8 April 2016. [A/HRC/32/44](#), para. 76.

⁴¹ Human Rights Council Resolution 40/5: Elimination of discrimination against women and girls in sport. [A/HRC/RES/40/5](#), para. 3.

⁴² For more on this please refer to Jaime Schultz (2011) Caster Semanya and the “Question of Too”: Sex Testing in Elite Women’s Sport and the Issue of Advantage, *Quest*, 63:2, 228-243, <https://doi.org/10.1080/00336297.2011.10483678>

⁴³ Delia D. Douglas; Venus, Serena and Inconspicuous Consumption of Blackness: A Commentary on Surveillance, Race Talk and New Racism(s), *Journal of Black Studies*, Vol 43, No 2 (March 2012), pp. 127 - 145

⁴⁴ Delia D. Douglas; Venus, Serena and Inconspicuous Consumption of Blackness: A Commentary on Surveillance, Race Talk and New Racism(s), *Journal of Black Studies*, Vol 43, No 2 (March 2012), pp. 127 - 145

racism and violation of bodily autonomy perpetuated by all the agencies that make sport a successful enterprise. The right to bodily autonomy of women and girls, then is not only about making choices and decisions about their bodies and having access to implement those choices and decisions. It is also about states and institutions interrogating whose bodies and what bodies are deemed “worthy” and whose “unworthy.” It is about unpacking the ways in which structural and systemic oppressions like patriarchy and white supremacy are translated into laws, policies and norms that impact individual bodies which do not conform to stereotypes and therefore threaten the existing social order. The right to bodily autonomy subsequently obligates states to respect, protect and fulfil the rights of those individuals, simultaneously dismantling the structures and systems that enforce these oppressive laws and policies.

Sport as an entry point to broader enjoyment of human rights

24. Elite athletes and professional competitive sport has many manifestations and dimensions and challenging the oppressions that operate in creating barriers for women and girls is necessary for the enjoyment of human rights. However, access to the same at the community levels has the capacity and has succeeded in not only providing livelihood options but also in changing gender stereotypes in different contexts. Since sport has always been seen as a male dominion, the very presence of women and girls in these ‘typically male’ sport can change perceptions on gender roles, specifically in tackling in misconceptions on women and girls - their so called biological role and preserve. It can be and is a tool to talk to adolescent girls about their bodies in contexts where there is stigma and silence on women and girl’s bodies and sexuality. Many feminist organisations have programming on sport and gender and design their programmes to not only look at sport as a skill but also to discuss gender stereotyping, dispel myths around menstruation, discuss sexuality and also the use very physical activity to de-link women and girls’ bodies from stigma and shame. Consequently, either as a direct result or as an indirect benefit, there is a higher level of self-assuredness and confidence for many women and girls. Further since most sport programming includes working team and groups it also creates a peer support network for many women and girls.

25. Sport which is not professional activity also can make available to women and girls spaces which are otherwise denied. In all contexts access to public spaces which ostensibly for everyone, is restricted by gender, race, class, caste, (dis)ability among others. It is often the case that public spaces are sites of violence, stigma, exclusion discrimination. Sport and the use of spaces for sport provides access to these spaces because it provides a ‘purpose’ which is very necessary for women and girls. At the same time the peer structures and networks that sport provide is also a form of association. Then sport at the level of community is a way of exercising freedoms - freedom to run, to play, to have leisure activity, to assemble, to associate, to participate among many others. It is important to assert and reiterate this very

important aspect, because almost always women and girls are 'supposed to' have their time occupied. While most of the time this is because gender roles ensure that women and girls work harder, this idea of sport as a 'non-productive' activity is important to claim in the neo-liberal, racist, patriarchal societies.

Accountability

26. Sport, its production and consumption are dependent upon various factors, institutions and organisations. This is particularly true when "powerful actors involved in sports production enact scripts that increasingly lead to the costs of sports being socialised (e.g., through the state's use of taxes in funding new stadiums) while the benefits remain privatized."⁴⁵ Each of these institutions is culpable in furthering discrimination or can be responsible for upholding rights. This begins with schools, and how sporting activities are framed within the school system. It is important to interrogate who has access to the resources, space, training and skills. And to begin this analysis at the level of schools and moving higher within the educational institutions as often the racist and sexist stereotypes are experimented and practiced in school. It can be the first step to correct those perceptions and misconceptions. Educational institutions are also the area where the politics of 'sporting hero' play out. The larger and more toxic version of this can be seen when nation states compete. It is where the initial process of imagining and believing that an athlete's body and effort are made for consumption and that monitoring those bodies is subsumed within the idea of pride – of the institution, nation, region and so on. Subsequently, all racist, sexist and xenophobic speech, actions and behaviour is in pursuit of this ostensibly apolitical, neutral and educational activity.
27. Media continues to have tremendous power and influence on the ways in which sport is consumed the world over. It is also responsible for the amount of money involved in large sporting events including broadcasting rights, advertising, sponsorships and other ancillary activities surrounding the hosting and broadcasting large sporting events. There have been many "studies that regard the media as a source of negative racial stereotypes of black athletes that stress their physical rather than intellectual abilities. Also, it has been suggested that the media disproportionately emphasise black athletes' social deviance."⁴⁶ The media is a vast machine comprising of various actors and different levels and it is necessary to interrogate who controls the media and for whom. One element that is certain is that most of the media is not made by or for women of colour whose bodies it judges and dissects, fuelling stigma and discrimination. As an industry that is making money of these women and girls, their achievement and effort, media should be held accountable.

⁴⁵ Robert E Washington and David Karen; *Sport and Society*, Annual Review of Sociology, Vol 27 (2001), pp 187 - 212

⁴⁶ Robert E Washington and David Karen; *Sport and Society*, Annual Review of Sociology, Vol 27 (2001), pp 187 - 212

28. States and its institutions are responsible to respect, protect and fulfil human rights, including the right to the enjoyment of highest attainable standard of physical and mental health, right to life, freedom from discrimination and violence, freedom from torture, right to bodily autonomy and integrity among other. It is imperative that all states uphold these human rights and fundamental freedoms. A state cannot absolve its human rights obligations and it definitely cannot stand by and watch private corporations and arbitration panels violate human rights. The accountability lies with the state and they cannot hold human rights hostage to the whims of profit-making bodies. Intergovernmental mechanisms and multilateral systems, including the United Nations, would be rendered obsolete if states do not hold sporting authorities accountable for violation of human rights.

Conclusions and Recommendations

State Obligations

- States should be accountable for their human rights obligations. They cannot abdicate their responsibility to private corporations. Human rights should be the standard and quasi-judicial bodies/arbitration panels should adhere to human rights and States have the responsibility to ensure women and girl's enjoy their rights to bodily autonomy.
- Media and educational institutions and their influence in perpetuating racist and sexist stereotypes should be addressed without criminalising speech and expression.
- Transnational corporations and their complicity and their role in violation women and girl's human rights, in particular their role in perpetuating racist and sexist stereotypes and violations should be interrogated and they should be held accountable beginning with the IAAF and its regulations and other sporting bodies.
- Intersectionality should form the basis for international human rights norms and every aspect of human rights normative development should be evaluated from race and gender perspective and addressed accordingly.
- Reparations for colonial exploitation should be prioritised.

For the UN Human Rights Council

- Intersections of race and gender should be incorporated and integrated in all of the Council's work particularly by the special procedures.
- A panel discussion based on this report to highlight the need for intersectionality vis-a-vis race and gender.
- It is important for the Council to continue its work interrogating the ways in which race and gender impact all areas of aspects of life.

For organisations and institutions using sport as tool to further human rights

- It is necessary to interrogate if the use of sport by institutions replicates the larger oppressions, consequently defeating the purpose of using sport as tool to further

these rights. Programming should look into who is included and excluded and work actively towards subverting the existing oppressions.

- Intersectionality in programming and policy is essential to ensure that women and girls use sport as a goal in itself for livelihood if needed or as a tool to which aids in the enjoyment of other human rights.