

**Mandate of the Special Rapporteur on violence against women and girls, its causes and consequences**

Ref.: AL USA 30/2023

(Please use this reference in your reply)

21 December 2023

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on violence against women and girls, its causes and consequences, pursuant to Human Rights Council resolution 50/7.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received regarding the **proposed rule changes to the federal civil rights law that was enacted as part of the Education Amendments of 1972, commonly known as Title IX, and the potential negative impact that such revisions could have on the participation of most women and girls in sports.**

According to the information received:

In 1972, the U.S. Congress passed landmark legislation, known as title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a), to eradicate sex discrimination against women in education and ensure that girls could enjoy the same educational opportunities as their male counterparts. The legislation notes that *“no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...”*.

Shortly after its passage, the U.S. Congress gave its stamp of approval to regulations promulgated by the precursor to the Department of Education that permit and sometimes require sex-separated sports.<sup>1</sup> By specifically prohibiting sex discrimination at educational institutions that receive federal funding, it provided an impetus to schools and universities to offer the same level of programming and scholarships to both women and men, which was understood to correspond to adult females and adult males. As a result of the new regulations, women's sports programs began to flourish<sup>2</sup> with the Department of Education noting that Title IX had helped focus attention on meeting the needs of women interested in athletics resulting in increased involvement of girls and women in sports at all levels.<sup>3</sup>

In June 2021, the U.S. Department of Education and the U.S. Equal Employment Opportunity Commission issued a notice of interpretation “explaining that it will enforce Title IX's prohibition on discrimination on the basis of sex to include: (1) discrimination based on sexual orientation; and

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<sup>1</sup> See 34 C.F.R. 106.41(b).

<sup>2</sup> When Title IX passed in 1972, there were approximately 250,000 girls playing in high school sports in the US. By 2011 the number increased to more than 3.25 million. In college, women's numbers have grown sharply from 30,000 to more than 288,000 in 2017-2018 (Doriane Lambelet Coleman et al., Re-Affirming the Value of Sports Exception to Title IX's General Non-Discrimination Rule, 27 Duke J. Gender L & Pol'y 69, 81-82 (2020).

<sup>3</sup> <https://www2.ed.gov/about/offices/list/ocr/docs/interath.html>.

(2) discrimination based on gender identity”<sup>4</sup> that extended federal sex discrimination protections to transgender people in schools and government employment.

In June 2022, the U.S. Department of Education released proposed changes to Title IX Regulations for public comment. The proposed amendments were cited as restoring crucial protection for students and ensuring that all students receive appropriate support as needed to access equal educational opportunities, and that school procedures for investigating and resolving complaints of sex discrimination, including sex-based harassment and sexual violence are guaranteed. The proposed regulations stated aim is to advance educational equity and opportunity for women and girls across the U.S.

On 6 April 2023, the U.S. Department of Education issued separate Proposed Changes to its Title IX Regulations on Students’ Eligibility for Athletic Teams,<sup>5</sup> noting that the aim of the proposed change is to “*provide schools with a framework for developing eligibility criteria that protects students from being denied equal athletic opportunity, while giving schools the flexibility to develop their own participation policies.*”

The proposed amendment would renumber section 106.41(b) as § 106.41(b)(1) and create a new paragraph numbered § 106.41(b)(2). The new subsection would clarify that sex-based criteria determining athletic eligibility for each sport, level of competition and grade or education level, must: 1) be substantially related to the achievement of an important educational objective, and 2) minimize harm to students whose opportunity to participate on a male or female team consistent with their gender identity would be limited or denied.

According to the current Title IX, “sex-based criteria” would include any requirements that students submit to physical or medical examination or provide documentation of their sex “assigned” at birth, such as a birth certificate, passport, or driver’s license. Schools would need to demonstrate that they would be implementing the “sex-based criteria” to achieve an “important educational objective.” The proposed rule affirms that schools can offer separate mens and boys' and women's and girls' sports teams in certain circumstances and notes that schools would have to assess the ages of students and the level of the competition, as well as the nature of the sport itself.

*Potential negative consequences for the ability of women and girls to enjoy their rights free from discrimination based on sex*

Over the years, Title IX had allowed women and men to celebrate their independent and incomparable physical limits in equality. According to the information received, there is serious concern by women sports associations, women athletes, and those representing them that if passed, the proposed amendment to Title IX would negatively impact on the participation of biological women and girls in sports, including by denying them the

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<sup>4</sup> <https://www.ed.gov/news/press-releases/us-department-education-confirms-title-ix-protects-students-discrimination-based-sexual-orientation-and-gender-identity>

<sup>5</sup> <https://www.ed.gov/news/press-releases/fact-sheet-us-department-educations-proposed-change-its-title-ix-regulations-students-eligibility-athletic-teams>

opportunity to compete fairly,<sup>6</sup> exposing them to increased risk of injury and resulting in them losing athletic opportunities, public recognition, and scholarship opportunities. If introduced, the foreseen changes to Title IX would also undermine the access of women and girls in sports to equal opportunity. Biological women and girls, i.e., women and girls born female, constitute the overwhelming majority of women and girls in sports, and include women and girls born female who have innate variations in their physical sex characteristics. They have also indicated that the proposed changes would potentially upend decades of advances in athletic opportunities for women and girls by opening women's sports teams to males with intrinsic biological advantages.<sup>7</sup>

Barring a few exceptions, sport has globally been separated into male and female categories because of male performance advantage<sup>8</sup>. Sports has functioned on the universally recognized principle that separate category for females is needed for them to have fair<sup>9</sup> and safe opportunities in sports. It is argued that the differentiation in treatment based on sex is deemed reasonable and therefore legitimate within the international human rights framework that the US is bound by.

Whilst it is most apparent after puberty, multiple studies have documented that athletes born male have proven performance advantages in sport throughout their life cycle.<sup>10</sup> Historically, the sex differences in athletic performance are larger than what can be accounted for by physiological and anatomical factors, particularly among lower-ranked athletes. The physiological advantages inherent to males are not undone by testosterone suppression.<sup>11</sup> This is also due to women having less opportunity and inequitable access to sports, facilities and training than men, and higher dropout rates of female athletes than men.

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- <sup>6</sup> In 1975, Dr. Bernice Sandler, stated when testifying in 1975 in support of regulations implementing Title IX that ignoring differences in male and female physiology would for many sports effectively eliminate opportunities for women to participate in organized competitive athletics and that for these reasons, such arrangements would not be in line with the principle of equal opportunity. (Review of Regulations to Implement Title IX of Public Law; Hearings before the Subcommittee on Postsecondary Education of the Committee on Education and Labor, 9<sup>th</sup> Cong. 343 (1975), <https://babel.hathitrust.org/cgi/pt?id=pur1.32754076276330&view=1up&seq=3&skin=2021>.
- <sup>7</sup> See for example, Fair Play for Women, Biological sex differences: bones and muscles, 7 July 2017, <https://fairplayforwomen.com/biological-sex-differences/>.
- <sup>8</sup> Emma Hilton and Tommy Lundberg, *Transgender Women in the Female Category of Sport: Perspectives on Testosterone Suppression and Performance Advantage* (Feb. 2021), <https://pubmed.ncbi.nlm.nih.gov/33289906/>.
- <sup>9</sup> See Expert Witness Declaration of Tommy Lundberg (Lundberg Decl.) filed in A.M. v. Indianapolis Public Schools, 1:22-cv-1076 (ECF No. 36-7).
- <sup>10</sup> When male and female bodies diverge strongly, it is females result in an estimated 10-30% sex difference in athletic performance, although the magnitude depends on the demands of the event/sport and which biological systems are most involved. (Hunter, Sandra & Angadi, Siddhartha & Bhargava, Aditi & Harper, Joanna & Hirschberg, Angelica & Levine, Benjamin & Moreau, Kerrie & Nokoff, Natalie & Stachenfeld, Nina & Bermon, Stéphane. (2023). The Biological Basis of Sex Differences in Athletic Performance: Consensus Statement for the American College of Sports Medicine. *Medicine & Science in Sports & Exercise*. 55). For further info see Doriane Lambelet Coleman and Wickliffe Shreve, Center for Sports and Policy, Duke University, Comparing Athletic Performances: The Best Elite Women to Boys and Men which cites a number of studies on the level of testosterone in sex differentiation. Regarding impact of puberty, see study by Tønnessen E, Svendsen IS, Olsen IC, Guttormsen A, Haugen T (2015) Performance Development in Adolescent Track and Field Athletes According to Age, Sex and Sport Discipline. *PLoS ONE* 10(6): e0129014. It concludes that male and female athletes perform almost equally in running and jumping events up to the age of 12. Beyond this age, males outperform females.
- <sup>11</sup> See Joanna Harper, et al., *How does Hormone Transition in Transgender Women Change Body Composition, Muscle Strength and Haemoglobin? Systematic Review with a Focus on Implications for Sport Participation*, Br. J. Sports Med. (2021), doi: 10.1136/bjsports-2020-103106 (published online ahead of print). Also, Fiona Mc Anna, *The flawed science of transinclusion in women's sports*, The Critic, 7 April 2022, <https://thecritic.co.uk/the-flawed-science-of-trans-inclusion-in-womens-sport/>.

Denial of the opportunity to compete fairly causes extreme psychological distress to women who know they do not have a chance to compete and may lose well-deserved scholarships and other educational and economic opportunities.<sup>12</sup> The connection between sports- particularly competitive sports – and educational opportunities is evident in the US, where athletic performance can provide talented students with pathways to higher education through scholarships<sup>13</sup> and potential recruitment by prestigious institutions.

The proposed change would also lead to the removal of intimate spaces such as, separate shower facilities and locker rooms for males and females, noting that young women and girls who have been forced to share restrooms, locker rooms, and other intimate spaces with males, experience loss of dignity, anxiety, stress, humiliation, embarrassment, apprehension, and distress. This is especially true of biological young women and girl athletes, as they attend to menstruation and feminine hygiene needs. They also point to the fact that the current Title IX regulations themselves recognize the importance of sex-separated private facilities in exempting toilet, locker room, shower facilities, and overnight accommodations from general prohibition on sex discrimination.<sup>14</sup>

#### *The Right to safety and dignity for women and girls involved in sports*

According to the information received, there is a grave concern that the amendments to Title IX would institute shared spaces in sports locker rooms and restrooms that seriously undermines the right to dignity, privacy, and a sense of safety. Such risks would be especially serious for - although not limited to - women and girls who are menstruating. In particular, compelling women and girls to share restrooms, locker rooms and intimate spaces with males, would very likely lead to feelings of anxiety, stress, humiliation, and embarrassment, resulting in women and girls choosing to avoid these facilities altogether. It would also increase the risk of sexual harassment, voyeurism, and physical and sexual attacks in unisex locker rooms.

Furthermore, the amendments to Title IX would increase the risk of female athletes sustaining injuries as a result of competing with athletes born male.<sup>15</sup> The fear of this kind of physical injury can, and does, lead to self-exclusion by

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<sup>12</sup> There are numerous statements depicting the frustration and psychological distress felt by women athletes that lost to transgender women. See for example Declaration of Chelsea Mitchell filed in B.P.J. v. West Virginia State Board of Education 2:21 cv-00316 (ECF No. 2861-1 and Declaration of Darcy Aschoff filed in B.P.J v. West State Virginia State Board of Education, 2:21-cv---316 (ECF No. 286-1) and Declaration of Madison Kenyon (Kenyon Decl.) filed in B.P.J. v. West Virginia State Board of Education, 2:21-cv-00316 (ECF No. 286-1), Declaration of Cynthia Monteleone (Monteleone Decl.) filed in B.P.J. v. West Virginia State Board of Education, 2:21-cv-00316 (ECF No. 286-1) and Melissa Tanji, Complaint filed over transgender MIL track athlete, the Maui News (Feb. 29, 2020).

<sup>13</sup> Despite the increase in the access of scholarships to female athletes as a result of Title IX, women and girls still lag behind men and boys in being able to access athletic scholarships (Champion Women: Schools are increasing the gap between women's sports opportunities, 17 July 2023, <https://titleixschools.com/2023/07/17/gender-gap/>)

<sup>14</sup> See for example: Women's Sports Foundation, Issues Related to Girls and Boys Competing With and Against Each Other in Sports and Physical Activity Setting (2016)

<sup>15</sup> There are many examples of females in sports sustaining serious injuries in mixed sex sports. See North Carolina volleyball player urges transgender ban for female sports teams in schools, 23 April 2023, <https://nypost.com/2023/04/21/nc-volleyball-player-urges-transgender-ban-for-schools-female-sports/>, Alan Murphy, *Exclusive: Fallon Fox's latest opponent opens up to #WHOATV* (September 17, 2014), <http://whoatv.com/exclusive-fallon-foxs-latest-opponent-opens-up-to-whoatv/>.

women and girls.<sup>16</sup> Moreover, allowing athletes born male to, for example, box, wrestle, pin, shove, or strike at female athletes on a playing field, regardless of the power differences based on sex, is likely to lead to the toleration of such behaviour off the pitch.

*Potential negative consequences on the right of women and girls to participate fully and equally in society*

According to information received, there is concern that the amendments to Title IX would further undermine the full and equal participation of women and girls in society, including cultural, and educational life. Globally, the regular participation of women and girls in physical activities and in many athletic events, remains lower than that of men. The reasons for the low participation of women are multifactorial and some include socialization, lower incentives and limited access to training facilities and resources at the elite, sub-elite and recreational levels in schools, colleges and professional leagues. Other reasons include social and cultural prohibitions on female sporting participation; less provision of suitable facilities for women and girls; the greater likelihood of caring responsibilities as an obstacle to personal pursuits for adult women; the challenge of managing the menstrual cycle<sup>17</sup>. Furthermore, financial rewards are much less, and career opportunities are fewer.

*Protecting the rights of transgender women and girls*

It is asserted that maintaining separate-sex sports as well as single sex locker rooms and restrooms would be a proportional action that corresponds to a legitimate aim and would not automatically result in the exclusion of transgender students from sports or require invasive means to verify the sex of the student. These include the creation of open categories for transgender students who do not wish to compete in categories of the sex that was observed at their birth.<sup>18</sup> In addition, it is pointed out that schools would be able to apply means of verifying the sex of students that are dignified, respect their privacy and are not invasive or showing a birth certificate. When combined with other measures, such as open categories, the imperative of preserving fairness in sports, irrespective of their gender identity, can be ensured, in line with the course of action applied by several professional sports associations.

Without prejudging the accuracy of the information received I would like to express my serious concern that if introduced, the proposed amendments to Title IX Regulations on Students' Eligibility for Athletic Teams would result in the unfair

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<sup>16</sup> Women in Sports, *Safety and Fair Sports Matters to Women at Every Level*, <https://womeninsport.org/creating-change/policy-positions/transgender-inclusion-sport/safe-and-fair-sport-for-women-and-girls/>

<sup>17</sup> Even in the most liberal cultures, the challenge of managing the menstrual cycle may rule females out of sport for up to a week every month. Embarrassment and awkwardness about their developing bodies is an issue for teenage girls, who drop out of sport at three times the rate of teenage boys (Evans, Bethan. (2006). 'I'd Feel Ashamed': Girls' Bodies and Sports Participation. *Gender, Place & Culture*. 13).

<sup>18</sup> Such approaches have already been applied by several professional sports associations, such as the British Triathlon, Rugby Football Union, Rugby Football League, the World Swimming Coaches Association, and the Rugby Football League. In 2023, World Aquatics, British Cycling Federation and British Rowing also announced an open category. See also, Devine, C. (2022). Female Olympians' voices: Female sports categories and International Olympic Committee Transgender guidelines. *International Review for the Sociology of Sport*, 57(3), 335-361).

treatment and unlawful and extreme forms of discrimination against most women and girls on the basis of female sex. If introduced, the foreseen changes to Title IX could also undermine the access of women and girls in sports to equal opportunity as well as undermine their overall participation in society and public life.

I am concerned that the amendments to Title IX would also be contrary to the obligations of the US Government with regards to equality and non-discrimination against women and girls under international human rights law. Given that schools are threatened with the potential cutting of federal funding unless schools prioritize differences based on gender identity rather than biological sex, they would be participating in the discrimination against women and girls born female in sport, and in exposing them to a heightened risk of violence.

In addition, I am concerned that by enacting these changes, women and girls in sports may be at an increased risk of more physical violence as it may lead to the heightened exposure of those born female to physical injuries as well as increased risk of sexual harassment, voyeurism, and physical and sexual attacks in unisex locker rooms. Allowing any male to access women's locker rooms irrespective of their gender identity could not only violate the privacy rights of women and girls born female but could also be potentially abused by sexual predators. As I have noted elsewhere, "the insistence on safeguarding or risk management protocols does not arise from the belief that transgender people represent a safeguarding threat. Rather it is on empirical evidence that demonstrates that the majority of sex offenders are male and that persistent sex offenders will go to great lengths to gain access to those they wish to abuse. One way they can do this is by potentially abusing the process to access single-sex spaces or take up roles which are normally reserved for women for safeguarding reasons".<sup>19</sup>

I am also concerned that the amendment, if enacted, may also increase exposure to psychological distress amounting to psychological violence caused by the lack of fair opportunity in sports, well-deserved scholarships, and other educational and economic opportunities,<sup>20</sup> as well as persistent and accumulated feelings of distress, embarrassment, and lack of privacy in unisex locker rooms.

With regards to transgender persons, including transwomen and girls, I believe that maintaining Title IX as is would not undermine their full participation in sports. Transgender persons, including transwomen and girls have a right to live a life free from discrimination, harassment and to have their human rights safeguarded. My mandate has long recognized that women experience discrimination and violence differently and on intersecting grounds. It is therefore important that any sports-related policy ensure that transgender persons, including transwomen and trans girls,

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<sup>19</sup> See my communication to the UK regarding the Gender Recognition Reform, OL GBR 14/2022, 18 November 2022, OHCHR, Q&A on the participation of Russian and Belarusian athletes in international sports competitions (3 May 2023).  
<https://www.ohchr.org/sites/default/files/documents/issues/culturalrights/activities/SR- CulturalRights- QA-4May2023-en.pdf>.

<sup>20</sup> There are numerous statements depicting the frustration and psychological distress felt by women athletes that lost to transgender women. See for example Declaration of Chelsea Mitchell filed in B.P.J. v. West Virginia State Board of Education 2:21 cv-00316 (ECF No. 2861-1 and Declaration of Darcy Aschoff filed in B.P.J v. West State Virginia State Board of Education, 2:21-cv---316 (ECF No. 286-1) and Declaration of Madison Kenyon (Kenyon Decl.) filed in B.P.J. v. West Virginia State Board of Education, 2:21-cv-00316 (ECF No. 286-1), Declaration of Cynthia Monteleone (Monteleone Decl.) filed in B.P.J. v. West Virginia State Board of Education, 2:21-cv-00316 (ECF No. 286-1) and Melissa Tanji, Complaint filed over transgender MIL track athlete, the Maui News (Feb. 29, 2020).



are able to fully participate in sports.

In this specific situation, maintaining separate sports, combined with other measures, such as open categories, non-invasive means to verify the sex of the student would guarantee the rights of all persons to engage in sports, including transgender persons, while fully guaranteeing fairness and safety for women and girls born female. Such an approach would follow the course of action already adopted by several professional sports associations.

Upholding female protected categories in sports is a necessary and proportionate action achieving a legitimate objective in accordance with human rights principles.<sup>21</sup> According to international human rights law, differential treatment on prohibited grounds, including on the grounds of sex and gender identity, may not be discriminatory if such differential treatment is based on reasonable and objective criteria, pursues a legitimate aim, and if its effects are appropriate and proportional to the legitimate aim pursued, being the least intrusive option among those that might achieve the desired result.<sup>22</sup> Besides the points mentioned previously regarding sex-based differential treatment, the proportionality and legitimacy of the continued maintenance of sex-separated sports and of single-sex intimate spaces are also justified by the fact that it does not automatically result in the exclusion of transgender students from sports or require invasive means to verify the sex of the student.

While human rights are indivisible, interrelated, and interdependent, State parties must address and resolve the tension between competing rights and interests and manage risks in an effective manner. It is possible to adopt arrangements that will guarantee the right of all persons to engage in sports, irrespective of factors such as gender identity, without this coming at the expense of women and girls born female.

Finally, and in view of the many submissions that the US Department of Education has received in response to the invitation for Public Comment in June 2023, I stress the importance of ensuring that the views and input of all are taken into consideration by the US Government before making a final decision, and that a complete and thorough assessment of the consequences are taken into consideration for all those that may be affected by this amendment, including sportswomen and their associations.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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<sup>21</sup> In 2021, the UK Sports Councils performed a comprehensive assessment of male athletes in women's sport. After extensive consultation with experts and athletes, the Council concluded that "[c]ategorization within the sex binary is and remains the most useful and functional division relative to sporting performance." *The UK's Sports Councils Guidance for Transgender Inclusion in Domestic Sport*, 7 <https://equalityinsport.org/docs/300921/Guidance%20for%20Transgender%20Inclusion%20in%20Domestic%20Sport%202021.pdf>.

<sup>22</sup> See e.g., CCPR General Comment No. 18: "Non-discrimination" (1989), and CESCR General Comment No. 20: "Non-discrimination in economic, social and cultural rights" E/C.12/GC/20 (2009).

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have about any consideration being given to reviewing the current legislation to ensure that the human rights of women and girls are protected.
2. Please indicate the steps being taken at the federal level to ensure that the human rights of most women and girls, namely those born female, can exercise their right to freely partake in sport and cultural life, as well as their rights to privacy, equality and non-discrimination, are duly protected in compliance with U.S. constitutional safeguards and international standards.
3. Please indicate how you have ensured that consultations on the intended change in the legislation are inclusive of the diverse voices of women and girls in sports and the organizations that they represent.

I would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

I may publicly express my concern in the near future, as in my view, the information upon which the press release be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned information. The press release will indicate that I have been in contact with your Excellency's Government to clarify the issue in question.

Please accept, Excellency, the assurances of my highest consideration  
Reem Alsalem

Special Rapporteur on violence against women and girls, its causes and consequences



## Annex

### Reference to international human rights law

In connection with the above alleged facts and concerns, I would like to recall that Article 1 of the Universal Declaration of Human Rights provides that "all human beings are born free and equal in dignity and rights...." Article 2 of the Universal Declaration on Human Rights states that "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind...", including distinction based on sex. While the UDHR does not make an explicit reference to sports, sports-related activities are generally understood within the broader framework of cultural participation and education<sup>23</sup>. In this regard, Article 27 of the UDHR recognizes the right of everyone to, *inter alia*, "freely participate in the cultural life of the community", while Article 26 also protects the right to education.

State parties have an obligation to guarantee non-discrimination in the enjoyment of human rights, including on the basis of sex. Articles 2 and 3 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the United States in 1992, mandate States parties to take all steps necessary, including the prohibition of discrimination on the ground of sex, to put an end to discriminatory actions, both in the public and the private sector, which impair the equal enjoyment of rights by women. In particular, Article 2, paragraph 1 establishes a general obligation to respect and ensure that all persons within their territory and subject to their jurisdiction the rights recognized therein without distinction of any kind, including on the basis of sex. Additionally, Article 3 requires States parties to ensure the equal right of men and women to the enjoyment of all civil and political rights provided for in the Covenant.

Women and girls also have a right to privacy under international law. Article 17 of the ICCPR 1966 stipulates that "(i) no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation" and that "(ii) everyone has the right to the protection of the law against such interference or attacks".

Furthermore, Article 26 of the ICCPR not only enshrines a general right to equality before the law and, without discrimination, to equal protection of the law, but also directly prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination, including sex-based discrimination. As noted by the Human Rights Committee, "[t]he right to equality before the law and freedom from discrimination, protected by article 26, requires States parties to act against discrimination by public and private agencies in all fields." The Committee has further stressed that "not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant."

While not a State party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), nor to the Convention on the Elimination of All Forms of

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<sup>23</sup> According to the UN Special Rapporteur on the field of cultural rights, "[s]ports are one of the many cultural practices through which people develop an express themselves, learn from others and belong to a community".

Discrimination against Women (CEDAW), the United States, as signatory to both instruments since 1977 and 1980 respectively, is bound to ensure that nothing is done which would defeat the object and purpose of either treaty, pending a decision on ratification. Both treaties are relevant to this matter, given that they oblige States parties to eliminate discrimination against women and girls (CEDAW art. 2) and to realize the right of women and girls to the enjoyment of all economic social and cultural rights (ICESCR Article 3). According to the Committee on Economic, Social and Cultural Rights, respect for this right requires refraining from discriminatory actions that directly or indirectly result in the denial of the equal right of men and women to their enjoyment of economic, social and cultural rights.

In article 3 of CEDAW, States Parties were asked to “take in all fields, in particular the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men”. Article 10 of CEDAW specifically calls on States to eliminate discrimination against women and ensure to them equal rights with men in the field of education, including the same opportunities to benefit from scholarships and other study grants.

Furthermore, CEDAW foresaw in its article 13 the need and possibility of States parties to “take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure on a basis of equality of men and women” including “g) The same opportunities to participate actively in sports and physical education”. In General Recommendation 25, the CEDAW committee clarified that “the obligation of States parties under the Convention to improve the position of women to one of de facto or substantive equality with men exists irrespective of any proof of past discrimination.”

With specific reference to discrimination on the basis of sex, the Declaration on the Elimination of Discrimination Against Women (DEDAW), proclaimed by the UN General Assembly in 1967 and regarded as an important precursor to CEDAW, considers that “discrimination against women is incompatible with human dignity ... prevents their participation, on equal terms with men, in the political, social, economic and cultural life of their countries and is an obstacle to the full development of the potentialities of women in the service of their countries and of humanity.” It provides inter alia that “[a]ll appropriate measures shall be taken to ensure to girls and women ... equal rights with men in education at all levels” as well as, more generally, in the field of economic and social life. Article 3 of DEDAW also stresses that women are entitled to equal enjoyment and protection of all human rights and fundamental freedoms including *inter alia* the right to be free from all forms of discrimination, the right to the highest standards attainable of physical and mental health, and the right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.” According to Article 4 of DEDAW, States must also “pursue by all appropriate means and without delay a policy of eliminating violence against women.”

The link between sports, education, and women’s and girls’ empowerment is also recognized in high-level political documents adopted under the auspices of the United Nations, such as the 1995 Beijing Declaration and Platform for Action (BDPA), adopted at the outcome of the Fourth World Conference on Women. Among

other things, the BDPA commits States parties to support the advancement of women in all areas of athletics and physical activity, including coaching, training and administration, and as participants at the national, regional and international levels, and to promote the full and equal participation of girls in extracurricular activities, such as sports, drama and cultural activities, as part of broader efforts to promote the education and training of women and to eliminate discrimination against girls in education, skills development and training, respectively. Under paragraph 83 of the BDPA specifically governments, educational authorities, and other educational and academic institutions shall undertake to provide accessible recreational and sports facilities and establish and strengthen gender-sensitive programmes for girls and women of all ages in education and community institutions and support the advancement of women in all areas of athletics and physical activity.

Furthermore, paragraph 280 commits Governments and international organizations to promote the full and equal participation of girls in extracurricular activities, such as sports.