



## LGBTI people's right to participate in sports

*Submission to the Special Rapporteur in the field of cultural rights*

10 May 2024

**Joint submission by:**

International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA World)<sup>1</sup>

**With the support of:**

Global Action for Trans Equality (GATE)<sup>2</sup>

Office against Discrimination, Racism and Intolerance (ODRI)<sup>3</sup>

Sport and Rights Alliance<sup>4</sup>

Transgender Europe (TGEU)<sup>5</sup>

6Rang<sup>6</sup>

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<sup>1</sup> ILGA World (International Lesbian, Gay, Bisexual, Trans and Intersex Association), <https://ilga.org>, established in 1978, is a federation of more than 1,700 organisations from over 160 countries and territories campaigning for lesbian, gay, bisexual, trans and intersex (LGBTI) human rights. ILGA World enjoys the ECOSOC status, consistently engaging with UN human rights bodies, and conducts legal and socio-economic research on the situation of LGBTI persons. ILGA World supports local LGBTI civil society groups engaging with United Nations treaty bodies, special procedures and the Human Rights Council. It also produces research publications on social and legal situation of LGBTI persons. This includes Annual Treaty Bodies Reports, Treaty Bodies Strategic Litigation Toolkit, Special Procedures Factsheets and ILGA World Database.

<sup>2</sup> GATE is a global trans-led advocacy organization dedicated to advancing gender equality for all.

<sup>3</sup> The Office against Discrimination, Racism and Intolerance (ODRI) is a LGBTI, anti-racist, apolitical NGO established in 2017. Among its principal goals is the introduction of intersectional approaches in human rights mechanisms, and the contribution to environmental, social, and racial justice. Furthermore, ODRI is also responsible for coordinating the strategic participation of human rights activists and networks to empower their significant roles to play in the promotion and the global protection of human rights.

<sup>4</sup> The Sport & Rights Alliance is an unprecedented global coalition of leading NGOs and trade unions working together to embed human rights and anti-corruption across world sport. Founded in early 2015, we exist to promote the rights and well-being of those most affected by the negative impacts of sport. We use our collective influence to pressure global sports bodies to ensure their decision-making and operations respect international standards for human rights, labour rights, and anti-corruption, in accordance with the UN Guiding Principles on Business and Human Rights.

<sup>5</sup> TGEU is a membership-based organisation working to strengthen the rights and wellbeing of trans people in Europe and Central Asia.

<sup>6</sup> 6Rang (Iranian Lesbian and Transgender Network) is a UK registered not-for-profit organization which was established following the first Iranian lesbian and transgender gathering held in 2010. 6Rang's mission is to raise awareness on sexual rights, and

## Executive Summary

Lesbian, gay, bisexual, transgender and intersex (LGBTI) people face specific barriers, including discriminatory rhetoric, exclusionary policies and harassment, that prevent them from fully enjoying their right to participate in sports.

This joint submission explores these challenges, with a particular focus on transgender women and girls, and gender non-conforming and intersex persons, and sheds light on how these barriers, which are increasingly taking the form of legal and policy restrictions and outright violence, harm their health and well-being and those of other populations, and violate the principles of fairness, inclusion and non-discrimination.

It ends with recommendations to sport bodies, governments, and the Special Rapporteur on ensuring that the right to participate in sports, from the school and community level to elite and professional sports, can be enjoyed by all, regardless of their sexual orientation, gender identity, expression and sex characteristics (SOGIESC).

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eradicate homophobia, transphobia, and violence against lesbian and transgender people in particular, as well as the LGBTI community in general. 6Rang has made submissions to UN bodies and published reports that, among other issues, have focused on documenting human rights abuses against lesbian, gay and transgender persons in Iran.

## Introduction

Everyone has a right to participate in sports in the spirit of fairness, inclusion, and non-discrimination regardless of one's SOGIESC. From the school and community level to elite and professional sports, LGBTI people must be able to play sports without abuse, violence, and discrimination of any kind.

LGBTI people are disproportionately subjected to various forms of SOGIESC-based discrimination and harassment, preventing them from fully enjoying their right to participate in sports, as part of broader attempts to further exclude them from cultural life. It is worrying that even in countries with relatively progressive legal frameworks on LGBTI rights, discrimination against LGBTI people in sports persists.<sup>7</sup>

The situation is particularly worse for transgender,<sup>8</sup> gender non-conforming and intersex<sup>9</sup> athletes and persons who wish to play sports<sup>10</sup> as the principles of fairness and safety have been weaponized to keep them out of sports. They are simultaneously subjected to harassment and violence and falsely portrayed as a threat to the safety of other people, especially women and girls in sports.

Discriminatory efforts to restrict the participation of trans women and girls and intersex people in sports harm cisgender<sup>11</sup> and endosex<sup>12</sup> women and girls. For example, so-called sex testing, which involves invasive, humiliating, and unscientific physical examinations to supposedly “verify” that someone is a woman based on their genitalia, chromosomes, or testosterone level, has been found by the United Nations High Commissioner for Human Rights to cause severe physical harm that may amount

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<sup>7</sup> In Spain, two laws, the Trans Law (Law 4/2023, of February 28) and the new Sports Law (Law 39/2022, of December 30), were passed in 2023, expanding the rights of LGBTI people in sports. Nevertheless, sports federations with trans-exclusionary measures still exist, including the Athletics, Swimming, Rugby, Archery and Chess Federations. For example, there have been several cases of transphobia on the part of the State Basketball Federation, which has forbidden the Basketball Federations of Catalonia and Castilla La Mancha to let transgender athlete Kendall Martín and transgender minors Lola and Aura to compete. Agrupación Deportiva Ibérica (ADI) LGBTBI+ also recorded seven cases of discrimination against transgender people in sports in 2023, which is higher than that against other LGBTI subgroups. For more information, see: OBSERVATORIO CONTRA LA LGTBIFOBIA EN EL DEPORTE (2023).

<sup>8</sup> Transgender people are “people whose gender identity and/or gender expression differ from the sex/gender they were assigned at birth.” Definition taken from the ILGA Europe Glossary.

<sup>9</sup> Intersex individuals are “born with sex characteristics (sexual anatomy, reproductive organs, hormonal structure and/or levels and/or chromosomal patterns) that do not fit the typical definition of male or female.” Definition taken from the ILGA Europe Glossary.

<sup>10</sup> UNESCO and UN Women noted that there is a tension between the gender-segregated nature of sports and the inclusion of transgender, intersex, and non-binary athletes. For more information, see: UNESCO and UN Women, 'Tackling Violence Against Women and Girls in Sport' (2023), p.48, available at [https://www.unwomen.org/sites/default/files/2023-07/3343\\_unwomen\\_unesco\\_vawg\\_handbook\\_6a\\_singlepage.pdf](https://www.unwomen.org/sites/default/files/2023-07/3343_unwomen_unesco_vawg_handbook_6a_singlepage.pdf) (accessed 20 March 2024); The UN High Commissioner on Human Rights' concerns on the impact of female eligibility regulations on the enjoyment of human rights can also be extended to transgender women who are subjected to unnecessary and intrusive medical procedures. For more information, see: Human Rights Council Resolution 40/50, 'The Elimination of Discrimination Against Women and Girls in Sport', available at <https://www.ohchr.org/en/sexual-orientation-and-gender-identity/elimination-discrimination-against-women-and-girls-sport-resolution-405> (accessed 20 March 2024).

<sup>11</sup> Cisgender people are those whose gender identity is the same with the gender they were assigned at birth.

<sup>12</sup> Endosex refers to people whose sex characteristics meet medical and social norms for typically 'male' or 'female' bodies.

to torture.<sup>13</sup> It harms all women and girls, especially those who are trans, gender non-conforming, intersex or racialized, as it scrutinizes bodies that do not conform to traditional notions of femininity, which are based on racial and ableist assumptions,<sup>14</sup> and intimidates individuals to prevent their full participation in sports.

## Underrepresentation and exclusion

LGBTI people are underrepresented in and have never dominated the world of sports. This starts early in schools. A study by the Human Rights Campaign on high schools in the United States reveals that while 68% of high school students participated in sports, only 29% of LGBQ girls and 12% of transgender girls did.<sup>15</sup> This continues to be the case in semi-professional, professional, and elite sports. For example, even though a select few trans women and girls have been highlighted in the global media, no transgender or gender non-conforming person has ever won an Olympic medal or even made it to the podium.<sup>16</sup> In fact, since the first trans inclusion policy was introduced by the International Olympic Committee (IOC) in 2003, over 50,000 athletes have competed in the Olympics,<sup>17</sup> but only one openly trans person has competed since then,<sup>18</sup> amounting to .002%.

Due to discrimination and harassment, LGBTI people often self-exclude from sports. The 2019 OutSport Survey, which sought to understand the extent of the discrimination faced by LGBTI people in sports, confirms this – 90% of survey respondents considered homophobia and particularly transphobia to be a problem in sports, and 82% witnessed the use of such prejudicial language. 16% reported at least one negative personal experience based on their sexual orientation or gender identity, including verbal insults (82%) and physical violence (20%). Out of this, trans people faced the highest proportion of negative experiences (45%).

Another survey conducted in 2023 by the Equality Within Sport Committee of the European Non-Governmental Sport Organisation with 487 women from Europe, found that 46% of trans women respondents reported having experienced different forms of

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<sup>13</sup> A/HRC/44/26: Intersection of race and gender discrimination in sport - Report of the United Nations High Commissioner for Human Rights.

<https://www.ohchr.org/en/documents/thematic-reports/ahrc4426-intersection-race-and-gender-discrimination-sport-report-unted>

<sup>14</sup> For more information, see: UN High Commissioner for Human Rights, 'Intersection of race and gender discrimination in sport', A/HRC/44/26 (2020), paras. 7, 10, 11, 18, 23, and 59.

<sup>15</sup> Human Rights Campaign. (2017). Play to Win.

<sup>16</sup> Canadian Centre for Ethics in Sport (CCES) and E\*Alliance. (2022). Transgender Women Athletes and Elite Sport: A Scientific Review, pp. 30 & 37. Available online at:

<https://www.cces.ca/sites/default/files/content/docs/pdf/transgenderwomenathletesandelitesport-scientificreview-e-final.pdf>

<sup>17</sup> *Number of men and women athletes participating at the Summer Olympics from 1896 to 2020*. Accessed February 10, 2023, from <https://www.statista.com/statistics/1090581/olympics-number-athletes-by-gender-since-1896/>.

<sup>18</sup> Axon, R. (2021, August 2). *New Zealand's Laurel Hubbard makes history as first transgender woman to compete at Olympics*. USA Today.

<https://www.usatoday.com/story/sports/olympics/2021/08/02/laurel-hubbard-becomes-openly-first-trans-woman-compete-olympics/5451329001/>

discrimination or harassment (including verbal, physical, psychological, and sexual) in sports. When all respondents were asked about the basis for the harassment or discrimination, 40% said it was due to gender identity or expression. Only 24% of the trans respondents reportedly felt safe in sporting environments.<sup>19</sup> Trans men who wish to compete in the men's category can also have a challenging time being accepted in the team, which also leads to dropping out.<sup>20</sup> While it might be easy to dismiss these figures on the basis that only a few trans women participated in the survey, the results of the question – 'Do you think there is a problem with transphobia in sport?' – are telling. An overwhelming 66% of all respondents answered that there is definitely a problem, while 22% answered that sometimes there is a problem.

All of these factors force many trans and gender non-conforming people to choose between playing sports and their well-being.<sup>21</sup> From the same OutSport survey, 20% of the respondents stated that they chose not to participate in certain sports because of their sexual orientation or gender identity. When this is disaggregated based on gender identity, the numbers are alarming – more than half of the trans respondents (54%) felt excluded or stopped participating. The percentages are similar for trans men, trans women, and gender non-conforming people, signaling a serious structural problem in relation to the participation of trans and gender non-conforming people in sports in a safe and equal manner.

Even outside elite sports, LGBTI children, youth, and adults cannot simply participate in local and community sports and are denied their right to participate in sports. There is an undeniable ripple effect of anti-trans rhetoric on the participation of young trans and gender non-conforming people in sports at the school and local levels. Organizations that work with young LGBTI people have observed the impact of

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<sup>19</sup> Angélica Sáenz-Macana. Women's Participation in Sport Across Europe. (Equality Within Sport Committee. 2023). Available at: <https://www.engso-education.eu/wp-content/uploads/2023/11/WOMENS-PARTICIPATION-IN-SPORT-ACROSS-EUROPE-2023-EWS-research-november.pdf>.

<sup>20</sup> Jörg Strohschein. Germany: Grassroots football working towards trans inclusion. DW. (2023). Available at: <https://www.dw.com/en/germany-grassroots-football-working-toward-trans-inclusion/a-67328671>.

<sup>21</sup> TGEU et al. LGBTI Women in Sport: Violence, Discrimination, and Lived Experiences. (2021), p. 19. Available at: <https://www.ilga-europe.org/report/lbti-women-in-sport-violence-discrimination-and-lived-experiences/>.

decisions made by professional sporting bodies<sup>22</sup> based on harmful language and stereotypes.<sup>23</sup>

## Discrimination and restrictions to participation

Efforts to ban or restrict the participation of LGBTI people, especially trans and intersex people, in sports are arbitrary, discriminatory, or not entirely based on methodologically rigorous research.

Some of these efforts are simply based on homophobia. For example, in 2013, the president of a women's football club in **Nigeria** stated, "Any female player who has a homosexual relationship will not be eligible to participate. We call on the presidents to control the players. Any female players who have such sexual preferences will not play in the national team."<sup>24</sup>

In 2014, the **Iranian** Football Federation officials dismissed seven women football players, citing 'gender ambiguity.'<sup>25</sup> "Very short hair, men's clothing, and sportswear style are prohibited in the training camps of Iran's women's national football team. Displaying any of these traits almost certainly leads to a sex verification test."<sup>26</sup> Furthermore, if authorities find out a player is lesbian or bisexual, they are sent to the disciplinary committee, which may lead to expulsion from sporting events. It is often the case that team management or coaches dictate the players' attire and hairstyles, specifically banning short haircuts under the guise of preventing 'masculine' dressing.<sup>27</sup> Sport authorities also exclude players from competitions if they discover an athlete is trans and has not undergone gender-reaffirming surgery.<sup>28</sup>

Proposals for blanket bans on transgender women and girls in sports are not rooted in evidence. An in-depth review of scientific and gray literature published between 2011 and 2021 on trans women athletes' participation in elite sports discovered a range of methodological flaws and misleading information in several studies often cited to

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<sup>22</sup> Mermaids. Ask the UK's four national sporting bodies to take a stand for trans-inclusion. Available at: <https://mermaidsuk.org.uk/news/ask-the-uks-four-national-sporting-bodies-to-take-a-stand-for-trans-inclusion/>; TGEU et al. LGBTI Women in Sport: Violence, Discrimination, and Lived Experiences. (2021), p. 19. Available at: <https://www.ilga-europe.org/report/lbti-women-in-sport-violence-discrimination-and-lived-experiences/>.

<sup>23</sup> See for example, UK Department for Education's 2023 draft non-statutory guidance for schools and colleges in England on 'Gender Questioning Children'#, states without exception, "[f]or all sports where physical differences between the sexes threaten the safety of children, schools and colleges should adopt clear rules which mandate separate-sex participation". It assumes that the safety, comfort, and privacy of others, especially cisgender girls, will be at risk if there are trans-inclusive gendered facilities. Civil society organisations noted with concern that this rationale will discourage trans pupils from 'coming out' and could lead to them being forcibly 'outed' to parents and teachers, a huge safeguarding risk. See the Consortium for stronger LGBT+ communities. Supportive Schools Campaign. Available at: <https://www.consortium.lgbt/supportiveschoolscampaign/>.

<sup>24</sup> [https://www.neakriti.gr/athlitismos/podosfairo/1016077\\_parenebi-i-fifa-gia-tis-omofylofiles-athlitries](https://www.neakriti.gr/athlitismos/podosfairo/1016077_parenebi-i-fifa-gia-tis-omofylofiles-athlitries)

<sup>25</sup> This led to significant abuse and mockery of the players and their gender identity across traditional and social media.

<sup>26</sup> Statement from Shirin, a women's futsal team member, in an interview with 6Rang Iran.

<sup>27</sup> The personal style choices of non-binary people and trans women, particularly regarding makeup, hair, and clothing, are frequently rejected. A senior lesbian futsal player also shared that their coach mandates women with short hairstyles to cover up with a hat or scarf, or alternatively, to abstain from attending practice.

<sup>28</sup> Information shared by 6Rang Iran.

support these bans.<sup>29</sup> Other scholars have also come forward debunking the methodology and findings of several studies.<sup>30</sup>

These bans ignore the reality that human bodies are complex systems. No single biomarker allows easy comparison of athletes' bodies in terms of performance, as athletes are the "sum of all of their advantages and disadvantages that result in performance."<sup>31</sup> While there are some biological differences between persons assigned male at birth and those assigned female at birth, trans women and girls do not have inherent physical advantages in sports just because they are trans.

A recent study funded by the International Olympic Committee (IOC) even found physically active transgender women participants to perform worse as a group in specific cardiovascular and lower-body strength tests than cisgender women participants. It also found no significant difference between the groups' hemoglobin profiles and bone density, which are related to athletic performance. The researchers concluded that these results "should caution against precautionary bans and sport eligibility exclusions that are not based on sport-specific (or sport-relevant) research."<sup>32</sup>

While access to financial and material resources can result in advantages in sports, only specific biomedical factors are "policed under a mandate of 'fairness' in elite sport."<sup>33</sup> This is also linked to sexism as many insist, despite strong evidence to the contrary, that bodies are dimorphic, testosterone is the be-all and end-all of competitive advantage, and no matter what, women athletes are inherently weaker than male athletes.<sup>34</sup>

**There is a growing consensus among experts that a case-by-case approach is more appropriate when considering trans women's participation in different sports than blanket bans or restrictions.<sup>35</sup>**

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<sup>29</sup> Canadian Centre for Ethics in Sport (CCES) and E\*Alliance. (2022). Transgender Women Athletes and Elite Sport: A Scientific Review, pp. 30 & 37. Available online at:

<https://www.cces.ca/sites/default/files/content/docs/pdf/transgenderwomenathletesandelitesport-scientificreview-e-final.pdf>.

<sup>30</sup> Hamilton, B., Guppy, F., & Pitsiladis, Y. (2023). Comment on: "Transgender women in the female category of sport: Perspectives on testosterone suppression and performance advantage." *Sports Medicine*, 54(1), 237–242.

<https://doi.org/10.1007/s40279-023-01928-8>

<sup>31</sup> Canadian Centre for Ethics in Sport (CCES) and E\*Alliance. (2022). Transgender Women Athletes and Elite Sport: A Scientific Review, pp. 23. Available online at:

<https://www.cces.ca/sites/default/files/content/docs/pdf/transgenderwomenathletesandelitesport-scientificreview-e-final.pdf>

<sup>32</sup>For more info, see: Hamilton, B., Brown, A., Montagner-Moraes, S., Comeras-Chueca, C., Bush, P. G., Guppy, F. M., & Pitsiladis, Y. P. (2024). Strength, power and aerobic capacity of transgender athletes: a cross-sectional study. *British Journal of Sports Medicine*.

<sup>33</sup> This includes infrastructure, equipment, nutrition, time to train, and higher salaries. *Ibid*, p. 6.

<sup>34</sup> Erikainen, 2020; Karkazis and Jordan-Young, 2018; Pieper, 2016; Sanchez et al., 2013; Sullivan, 2011; CCES Literature Review, p. 35.

<sup>35</sup> McLarnn et al, A Scoping Review of Transgender Policies in the 15 Most Commonly Played UK Professional Sports. (2023).

Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9964021/>; NYC Public Schools. Guidelines to Support Transgender and Gender Expansive Students. Available at:

<https://www.schools.nyc.gov/school-life/school-environment/guidelines-on-gender/guidelines-to-support-transgender-and-gender-expansive-students>. International Olympic Committee. Framework on fairness, inclusion, and non-discrimination. (2021).

United Nations human rights experts have also recognised that all people should be able to participate in sports in line with their gender identity and that the preservation of spaces for women and girls in sports should not result in the exclusion of trans and gender non-conforming people.<sup>36</sup> They have noted the growing unwarranted and unfair restrictions on or denials of trans and gender non-conforming people's participation in professional sports based on claims of uncertainty due to the stage of transition.<sup>37</sup> Rather, experts have noted that inclusive policies that allow trans and gender non-conforming people to participate in sports at the school level as per self-identified gender resulted in overall unchanged or higher levels of participation among girls.<sup>38</sup> This once again demonstrates that it is not possible to speak about trans and gender non-conforming people's participation in sports in a blanket manner.

**Blanket bans and invasive sex-testing procedures affect not only trans women and girls but also other women and girls and persons of diverse sex characteristics, especially those who are racialized.**

So-called sex testing is a harmful and unscientific practice in sports dating from the 1960s that subjects elite women athletes to humiliating and traumatic procedures, including mandatory genital exams and invasive medical testing, to verify each athlete's "biological femaleness."<sup>39</sup>

Racist tropes that undermine the "femininity" of racialized women and girls mean that women from the Global South have been disproportionately affected.<sup>40</sup> Intersex women athletes, including those who had no previous awareness of their intersex status, have been traumatized and unjustly disqualified due to invasive "sex testing." These harmful procedures, which are based on and uphold binary and inaccurate understandings of sex, exclude intersex people who identify as women and girls just because of their naturally high testosterone levels.

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<sup>36</sup> Policy position by United Nations Special Procedures mandate holders in relation to the protection of human rights in sport without discrimination based on sexual orientation, gender identity and sex characteristics. (2023). Available at: <https://www.ohchr.org/sites/default/files/documents/issues/sexualorientation/iesogi/2023-10-31-stm-sogi-policy-en.pdf>; Special Rapporteur on the right to privacy, Security and surveillance, health data, and business enterprises use of personal data. A/HRC/43/52; Special Rapporteur on the right to the best attainable standard of physical and mental health. Sport and healthy lifestyles as contributing factors to the right to health. A/HRC/32/33.

<sup>37</sup> Ibid.

<sup>38</sup> UN Independent expert on sexual orientation and gender identity. Practices of exclusion. A/76/152.

<sup>39</sup> See for example Sean Ingle, Sweden players had to show their genitalia at 2011 Women's World Cup, says Nilla Fischer. Available online at: <https://www.theguardian.com/football/2023/jun/12/sweden-players-had-to-show-their-genitalia-at-2011-womens-world-cup-says-nilla-fischer>

<sup>40</sup> See, for example, the cases of Indian Sprinter, Dutee Chand, South African Track Star Caster Semenya, and the women represented in the film *Category Woman*. More on the film here: <https://ff.hrw.org/film/category-woman>; See also the Algerian female boxer, Imane Kelif, who was recently disqualified from World Championships. More here: <https://www.reuters.com/lifestyle/sports/two-disqualified-failing-meet-eligibility-criteria-world-champs-2023-03-26/>



Some individual examples of women in all diversities excluded from sports and that have not been as publicized include:

- [Ednanci Silva](#), an intersex former judo athlete, World Champion medalist, and two-time Pan American champion, challenged stereotypes and faced significant prejudice throughout her career. In 1995, she was banned from competing after competitors signed a letter requesting her exclusion. To compete in the 1996 Olympic Games, she was forced to remove her testicle and uterus.<sup>41</sup>
- [Imane Khelif](#), a cisgender Algerian boxing athlete, was often bullied for her appearance and excluded just before the final match of the 2023 International Boxing Association (IBA) Women's World Boxing Championships for failing to meet eligibility rules or due to high levels of testosterone.<sup>42</sup>
- [Tiffany Abreu](#), the first trans woman to play in Brazil's National League, started her gender transition in 2012. She previously played in the men's league until the age of 29. Despite following International Volleyball Federation rules, Tiffany has received backlash from the press, other volleyball players, and even famous coach Bernardinho, who referred to her as a man after his team lost a match. Tiffany, falsely accused of having an unfair advantage, continues playing in the women's league.
- [Erika Coimbra](#), a cisgender former volleyball player, was excluded from competing at the Sydney Olympic Games in 2000 upon discovering that she was born with Morris syndrome, a rare genetic disorder characterized by androgen resistance. Erika says the International Olympic Committee was disrespectful in disclosing her case to the press and not giving her control over the situation or time to provide a full diagnosis.

At the same time, discriminatory practices against trans women and girls in sports have been found to decrease the participation of all women and girls in school sports.<sup>43</sup> In the United States, "state policies that prevent transgender high school students from playing are correlated with lower participation by all high school girls," and at the same time, "participation by all girls remained unchanged in states with policies allowing transgender students to play."<sup>44</sup> Beyond restricting the participation of trans women

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<sup>41</sup> In addition to all of the challenges and numerous doping and sex tests, she competed in four Olympic games and assisted blind athletes in their preparation for the Paralympic Games in Tokyo in 2021.

<sup>42</sup> Khelif shared on social media: "I was often bullied because of my appearance, and I resisted and continued to struggle despite everything. Today, their plot succeeded, and frankly, I am experiencing a great shock."

<sup>43</sup> More information: Ctr. for American Progress, Fair Play: The Importance of Sports Participation for Transgender Youth 14-17 (2021), <https://www.americanprogress.org/article/fair-play/>

<sup>44</sup> National Women's Law Center National Women's Law's written testimony to the U.S. House Committee on Oversight and Accountability Subcommittee on Health Care and Financial Services.

and girls in sports, discriminatory practices and rhetoric affect their health, safety and well-being.<sup>45</sup>

It is important to highlight that some proposed “solutions”, for example, adding a third category<sup>46</sup> to supposedly open the space for trans and intersex women in sports, **may not respect their right to play in teams and categories that affirm their gender identities and risk being discriminatory.** A third category may perpetuate harm by othering and segregating them against their wishes and depriving them of the same opportunities that their cisgender peers enjoy, including “the best part of sport – learning from and growing with a diverse group of teammates.”<sup>47</sup>

**We must center facts and debunk myths in our discussions on trans women and girls and intersex people in sports.**

The idea that cis women need to be “protected” from transgender women or women with intersex variations is rooted in misplaced fear and diminishes the actual challenges women and girls face in sports.<sup>48</sup> In fact, trans and gender non-conforming people in sports, and especially trans women, face many of the challenges that cisgender women and girls face, i.e., poor investment in women’s sports, pay inequity, and a serious lack of opportunities.

Rhetoric and misinformation about transgender women and girls are violent and have real-life consequences, as they can result in them being systematically – and often violently – excluded from sports.

For fact-based information on the reality of trans and intersex people in sports, see **Annex.**

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<sup>45</sup> In the context of the rise of broader anti-trans legislation in the United States, trans, nonbinary, and intersex youth “expressed concerns of being a burden to their families and reported increased thoughts of suicide, and both TGD [trans and gender diverse] youth and caregivers have reported increased anxiety and hypervigilance.” When asked if they had considered or attempted suicide in the past year, trans boys/men (59% considered, 22% attempted), trans girls/women (48%, 12%), nonbinary/genderqueer individuals (53%, 19%), and individuals questioning their gender identity (48%, 14%) all reported much higher rates of suicidal ideation and intent than their cisgender peers. These rates are further exacerbated for trans and nonbinary youth of color. More information: Trevor News. (2022). New Study Examines Why Transgender Girls Participate in High School Sports, as Wave of Sports Bans are Implemented Across the U.S.. The Trevor Project. Available online at: <https://www.thetrevorproject.org/blog/new-study-examines-why-transgender-girls-participate-in-high-school-sports-as-wave-of-sports-bans-are-implemented-across-the-u-s/>. Also see: Kuper, L.E., Cooper, M.B., Mooney, M.A. (2022). Supporting and Advocating for Transgender and Gender Diverse Youth and Their Families Within the Sociopolitical Context of Widespread Discriminatory Legislation and Policies. *Clinical Practice in Pediatric Psychology*, 10(3), 336-345.

<sup>46</sup> For examples, see: British Cycling and World Aquatics.

<sup>47</sup> For more information, see: Athlete Ally Responds to USAPL’s Harmful “Third Category.”

<sup>48</sup> This misplaced attention shifts the focus away from the real issues that women and girls face in sports, including high rates of sexual harassment and assault, often by their coaches, lack of investment in and opportunities for women and girls’ sports, lack of pay equity, and more. CCES Literature Review p.41-42; Staurowsky, E. J. et al Watanabe, N., Cooper, J., Cooky, C., Lough, N., Paule-Koba, A., Pharr, J., Williams, S., Cummings, S., Issokson-Silver, K., & Snyder, M. (2020). Chasing Equity: The Triumphs, Challenges, and Opportunities in Sports for Girls and Women. New York, NY: Women’s Sports Foundation; Staurowsky, E. J., C.L., Flowers, E. Busuvis, L. Darvin, & Welch, N. (2022). “50 Years of Title IX: We’re Not Done Yet,” New York, NY: Women’s Sports Foundation.

## Recommendations

**To sports bodies:** The responsibilities of sports bodies extend beyond the private sphere, especially when they receive government funding or are overseen by public regulatory bodies. As per the UN Guiding Principles on Business and Human Rights,<sup>49</sup> they have the responsibility to respect the right of LGBTI people to participate in sports and both prevent and address all forms of discrimination, harassment, and violence.

As a first step, national sporting bodies must institute guidelines that facilitate the participation of trans and intersex people in sports, in line with the above-mentioned recommendations of the UN Special Procedures, the International Olympic Committee's Framework on Fairness, Inclusion and Non-discrimination on the basis of gender identity and sex variations released in 2021, and the applicable international human rights standards and national laws on equality and non-discrimination. All efforts must be made to ensure that the guidelines do not result in the forced coming out of trans people who participate in sports. In addition, they must ensure that:

- Inclusive infrastructure and physical spaces in which sport takes place, including gender-inclusive bathrooms, changing rooms, and toilets, are available, adequate and accessible.
- Private aspects of an athlete's life should not be grounds for exclusion, and any attempt to uncover such information is unlawful, arbitrary, and disproportionate.
- Athletes who choose to share their SOGIESC publicly or have been outed without their consent should not face punishment or retaliation.
- Individuals and groups who maliciously out people with diverse SOGIESC without consent should face appropriate disciplinary measures.
- Decisions regarding their career progression, selection, development, social security, and health benefits must not be influenced by their SOGIESC.
- Discrimination must be addressed, with the burden of proof placed on sports associations and governments rather than the victims. Mechanisms for redress for harassment and discrimination must be accessible to LGBTI people.
- Forced medicalization, including the obligation of hormone treatment for intersex athletes, and invasive, harmful, and unscientific "sex testing" that examines genitalia, chromosomes, and hormone levels to "prove" or "verify" the sex of athletes, violate the rights to bodily integrity, health, non-discrimination and to be free from torture and other cruel, inhuman or degrading treatment or punishment, and should therefore be eliminated.

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<sup>49</sup> These Guiding Principles have been recognized by the IOC, FIFA, and other global sport governing bodies,

- There must be no blanket bans on the participation of trans women and girls in sports, as they are discriminatory. Efforts should be directed to encourage their participation in the spirit of fairness, inclusion, and non-discrimination.

Efforts should be made to ensure the trickle-down of the guidelines and principles to all levels of sports, including amateur, school and recreational sports, to ensure that trans and gender non-conforming people can participate based on their gender identity without harassment, bullying, and violence. Specific measures to train authorities involved in sports and the organisation of sporting competitions, like athletes, coaches, officials, and other support staff, must be undertaken to prevent discrimination, bullying, harassment, and physical and gender-based violence.<sup>50</sup>

Under the Universal Declaration of Human Rights and Article 15, paragraph 1 (c), of the International Covenant on Economic, Social and Cultural Rights, **governments** play a crucial role in enforcing these principles, mainly when providing public funding or oversight to private sports entities and ensuring the protection of the right to participate in sports.

- Include LGBTI people and SOGIESC and intersectional considerations in national sport strategy and plans and develop targets and key indicators to monitor and evaluate their full participation in sports.
- Detect, investigate, and sanction discrimination and harassment against athletes based on their SOGIESC. Ensure access to remedy and redress for discrimination and violence based on SOGIESC in sports.
- Prohibit invasive, harmful and unscientific “sex testing” and blanket bans on the participation of trans women and girls at all levels of sports.
- Release guidelines and develop strategies on facilitating the full participation of LGBTI people, especially trans women and girls and intersex people, in sports, based on fairness, inclusion, and non-discrimination, and in line with international human rights standards, and strengthen the capacity of schools, local governments, and sport bodies to implement them.

**To the Special Rapporteur:** We encourage you to use language that recognizes and affirms gender identity when referring to transgender, gender non-conforming and intersex people in line with international human rights standards. For example, terms such as “biological males” are sometimes used. We do not recommend using these terms as supporters of restrictions to the participation of trans women in sports use this kind of dehumanizing language to advance the case that they should be banned

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<sup>50</sup> Committee on Equality and Non-discrimination. The fight for a level playing field – ending discrimination against women in the world of sport. As/EGA (2021) 36. <https://assembly.coe.int/LifeRay/EGA/Pdf/TextesProvisoires/2022/20220916-DiscriminationWomenSport-EN.pdf>.

from women's sports. In addition, pathologizing language such as "hermaphrodite" referring to intersex people should also be avoided.

## Annex

### **Best practices**

Sports can be safe and fair while including trans and intersex women and girls. A truly safe, fair, and inclusive sports environment means protecting the health, safety, privacy, and bodily autonomy of all women and girls who wish to participate in sport. Several sport organizations have developed and implemented policies and guidelines to ensure the participation of LGBTI people in sports.

- The 2021 IOC Framework on Fairness, Inclusion and Non-Discrimination on the Basis of Gender Identity and Sex Variations specifically outlines that transgender or intersex status does not automatically mean that athletes have a competitive advantage.
- Canada Rugby both allows transgender women to play rugby and has also released ethical guidelines to prevent and mitigate violence that transgender women may face in rugby.<sup>51</sup>
- The Canadian Centre for Ethics in Sport recommends that sports bodies and organizations enact inclusion-first policies and has released guidelines on how to develop these.<sup>52</sup>
- Sport New Zealand Ihi Aotearoa (Sport NZ) has released its Guiding Principles for the Inclusion of Transgender People in Community Sport, which emphasize the importance of listening, responding, and consultation.<sup>53</sup>
- The largest German sports federation, the German Football Association (DFB), has a regulation ensuring the right to play of trans, intersex, and gender non-conforming people in the category that affirms their gender.<sup>54</sup>
- Women's Sports Foundation has made comprehensive recommendations to policymakers, education administrators, sport governing bodies, and coaches, as well as students, athletes, and parents, on ensuring a "transgender-affirming sports environment."<sup>55</sup>

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<sup>51</sup> Rugby Canada Trans Inclusion Policy 2019, available at:

[https://rugby.ca/uploads/Documents/TransInclusionPolicyEN\\_DEV\\_POL\\_20190101\\_FINAL.pdf](https://rugby.ca/uploads/Documents/TransInclusionPolicyEN_DEV_POL_20190101_FINAL.pdf)

<sup>52</sup> "Instead of focusing only on eligibility criteria, which can sometimes have a tone of keeping people out of sport, inclusive policies and enlightened best practices have the potential to affirm and encourage individuals to participate in sport rather than feeling marginalized or unwelcome. These policies and practices should address issues that affect trans participants, but not be exclusive to them." For more information, see: Canadian Centre for Ethics in Sports. (2016). Creating Inclusive Environments for Trans Participants in Canadian Sport - Guidance for Sport Organizations. Available at:

<https://cces.ca/sites/default/files/content/docs/pdf/cces-transinclusionpolicyguidance-e.pdf/>

<sup>53</sup> Sport New Zealand Ihi Aotearoa. (2022). Guiding Principles for the Inclusion of Transgender People in Community Sport.

Available at: [https://sportnz.org.nz/media/z1rbu0gp/spnz015\\_gps-for-the-inclusion-of-tg-in-comm-sport-1\\_3\\_v3.pdf](https://sportnz.org.nz/media/z1rbu0gp/spnz015_gps-for-the-inclusion-of-tg-in-comm-sport-1_3_v3.pdf)

<sup>54</sup> "The regulation sets out that players with the gender status of 'diverse' or 'not specified,' or players who have had their gender reassigned, can decide for themselves in the future whether they should be granted the right to play for a women's or men's team. This also applies to transgender players, who can now switch teams at their own discretion, or remain in the team in which they currently play for."

<https://www.dfb.de/en/news/detail/new-regulation-on-the-playing-rights-of-transgender-intersex-and-non-binary-persons-241412/?>

<sup>55</sup> For more information, see: Women's Sports Foundation (2022). 50 Years of Title IX: We're Not Done Yet.

- The Swedish Skating Association’s gender policy highlights that: everyone, including trans women, trans men, and gender non-conforming participants, must be included in roller derby, regardless of their gender identity or expression; a welcoming and inclusive climate will be promoted; no hostile or discriminatory acts on the grounds of GIE are tolerated..<sup>56</sup>
- The Dutch sports organisation NOC\*NSF adopted guidelines in 2021 aiming for the full inclusion of trans and intersex people in sports..<sup>57</sup>

Other good practices and examples are available in the “LBTI Women in Sport: Violence, Discrimination, and Lived Experiences” report and publicly available information..<sup>58</sup>

- Sweden’s gymnastics federation, Svenska Gymnastikförbundet, introduced a policy in 2020 allowing young athletes to train and compete in the category of their choice, according to their self-determined gender identity, until they turn 18 years..<sup>59</sup>
- The German football association (Deutscher Fußball-Bund or DFB) introduced a policy in 2022-23 across the amateur and youth games, allowing trans and nonbinary players to choose which team they will play based on their self-determined gender identity without any need to reduce testosterone levels. The policy was developed after careful consideration of many factors, such as fairness, equality, and inclusion and has been well-received. Similar initiatives have been taken by the Berlin Football Association..<sup>60</sup>

### **Additional cases in Iran**

In Iran, LBTI women in sports face discrimination and violence rooted in both their perceived or actual sexual orientation, gender identity, and expression. According to interviews conducted by óRang, LBTI women expressed the belief that queer individuals endure more discrimination and violence in sports than other women. The

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<sup>56</sup> See also RFSL. More sports organisations ready to include trans people. (2021). Available at: <https://www.rfsl.se/en/organisation/idrott-for-alla-kroppar/allt-fler-idrottsforbund-redo-att-inkludera-transpersoner/>.

<sup>57</sup> NOC-NSF. Guidance on gender and sex diverse individuals for sports federations, clubs and athletes with the aim of ensuring an inclusive sports environment. (2021). Available at: <https://nocnsf.nl/media/4876/guidance-on-gender-and-sex-diverse-individuals.pdf>.

<sup>58</sup> See for example, Fairplay education. Introducing the national good practices. Available at: <https://edu.fairplay.or.at/lessons/introducing-the-national-good-practices/>.

<sup>59</sup> Richard Orange. Swedish gymnastics to allow teenagers to decide for themselves which gender category to compete in. The Telegraph. (2020). Available at: <https://www.telegraph.co.uk/news/2020/11/30/swedish-gymnastics-allow-teenagers-decide-gender-category-compete/#:~:text=Sweden's%20gymnastics%20federation%20has%20ruled,as%20until%20they%20turn%2018.>

<sup>60</sup> Sarah Dawkins. How amateur football in Germany is approaching transgender inclusion. BBC. Available at: <https://www.bbc.com/sport/football/65085345>; Deutscher Fussball-Bund. FAQ: Spielrecht trans\*, inter\*, und nicht-binärer personen. Available at: <https://www.dfb.de/news/detail/faq-spielrecht-trans-inter-und-nicht-binaerer-personen-241344/>. Jörg Strohschein. Germany: Grassroots football working towards trans inclusion. DW. (2023). Available at: <https://www.dw.com/en/germany-grassroots-football-working-toward-trans-inclusion/a-67328671>.

criminalization of same-sex relationships means that any indication of a relationship between women draws suspicion from the authorities and can lead to consequences.<sup>61</sup> Sana, a kickboxing athlete, notes the need for extreme caution, avoiding any display of affection or behaviour that could be interpreted as homosexual by the authorities.<sup>62</sup>

Sports authorities have also consistently expressed concern over what they call the ['do-jenseh' crisis](#) in women's leagues and national teams. 'Do-jenseh,' a term that translates to 'hermaphrodite' and carries extreme derogatory connotations in Persian, is used to describe individuals whose gender identity or expression deviates from the state-endorsed definitions of femininity and masculinity. As a result, such athletes [face](#) disciplinary measures and even expulsion. Fatemeh, a footballer, shared in an interview with 6Rang that a mandatory requirement for joining women's leagues or national teams is undergoing a sex verification test at a state-approved sports medicine centre.<sup>63</sup>

### **Transgender and Nonbinary Inclusion in Sport Resources (compiled by [Athlete Ally](#))**

- [2023 is a record year for anti-trans legislation across the country, and it's only April](#) – Rachel Crumpler, North Carolina Health News, 2023

*As the right to participate in sport and access to gender-affirming care are debated by North Carolina legislators, this article discusses the impacts on trans kids and their families. The state of youth sports in North Carolina is discussed within this context.*

- [Trans Girls Belong on Girls' Sports Teams](#) - Dr. Jack Turban, Scientific American, 2021

*Science does not support banning trans girls from girls' sports teams, bringing into question the ethics surrounding current and proposed policies.*

- [The Future of Women's Sports Includes Transgender Women and Girls](#) - Dr. Anna Baeth, Anne Lieberman, Dr. Libby Sharrow, Dr. Lindsay Pieper, & Dr. Jaime Schultz, Athlete Ally, 2021

*Signed by over 90 scholars in relevant fields, this document utilizes a close reading of peer-reviewed, credible sources to better understand trans athletes, to dispel misinformation about trans athletes that has spread in recent media and political debates, to outline critical legal and policy discussions about trans athletes, and to highlight why access to sport matters for everyone.*

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<sup>61</sup>The Iranian Islamic Penal Code criminalizes same-sex conducts, with punishments that vary from flogging to the death penalty. Restrictions on gender identity expression are stringent; individuals must be diagnosed with a 'gender identity disorder' and undergo medical interventions to express their gender identity legally. Deviations from gender norms, including non-adherence to the mandatory Islamic hijab rules, are penalized. Lesbian, trans, and non-binary individuals, by expressing their identity through appearance or behaviour deemed unconventional, risk facing imprisonment, fines, or corporal punishment.

<sup>62</sup> Information provided by 6Rang.

<sup>63</sup> This process includes hormone testing and physical examinations, despite the athletes' gender on their identification documents. Matin, a futsal player, further confirmed that participation in events organized by the Iran Football Federation is restricted to those who possess medical documentation confirming their sex. Information shared by 6Rang Iran.



- [States are still trying to ban trans youths from sports. Here's what you need to know.](#) - Elizabeth Sharrow, Jaime Schultz, Lindsay Parks Pieper, Anna Baeth and Anne Lieberman, Washington Post, 2021

*In 2021, lawmakers in 36 states have filed over 75 bills that would ban transgender youths from school-sponsored sports consistent with their gender identities. In nine states, these bills have become law. This piece explains what is at stake.*

- [Four Myths About Trans Athletes Debunked](#) - Chase Strangio & Gabriel Arkles, American Civil Liberties Union (ACLU), 2020

*Experts, including doctors, academics, and sports psychologists, provide evidence that 1) inclusion of trans athletes benefits everyone, 2) trans athletes do not have an unfair advantage in sports, 3) trans girls are girls, and 4) trans-student-athletes belong on the same teams as other student-athletes.*

- [The Truth About Trans Athletes and Performance](#) - Annie Hayes, Men's Health, 2019

*Trans athletes and doctors dissect myths and explain scientific facts about hormones, physiology, and athletic performance.*

**United Nations bodies and mechanisms have issued several recommendations that can guide governments, schools, sport bodies, federations and other stakeholders in addressing violence against and exclusion of LGBTI people in sports.**

- Several UN Special Procedures mandate holders called on States to ensure that “any limitations to the right of any woman, including trans and intersex women, to take part in sports as a part of her right to take part in cultural life, should therefore be determined by law, comply with the strict criteria of necessity and proportionality, and should represent the least restrictive measure to reach a legitimate aim.”<sup>64</sup>
- The Special Rapporteur on the right to health recommends that States “protect the physical integrity and dignity of all athletes, including intersex and transgender women athletes, and immediately remove any laws, policies and programmes that restrict their participation or otherwise discriminate or require them to undergo intrusive, unnecessary medical examinations, testing and/or procedures in order to participate in sport.”
- The Special Rapporteur on privacy recommended that States and non-state actors make sure that sports organizations integrate the Yogyakarta Principles and all relevant human rights norms and standards into their policies and practices, in particular by “ensuring that all individuals can participate in sport in line with the gender with which they identify, subject only to reasonable,

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<sup>64</sup> Policy position by United Nations Special Procedures mandate holders in relation to the protection of human rights in sport without discrimination based on sexual orientation, gender identity, and sex characteristics (31 October 2023), available at <https://www.ohchr.org/sites/default/files/documents/issues/sexualorientation/iesogi/2023-10-31-stm-sogi-policy-en.pdf>

proportionate and non-arbitrary requirements and without gender-based discrimination” and “removing, and refraining from introducing, policies that force, coerce or otherwise pressure women athletes into undergoing unnecessary and harmful medical examinations, testing and/or procedures in order to participate as women athletes.”

- The Human Rights Council has recently recognized and affirmed the human rights of intersex people, including their rights to non-discrimination and freedom from violence,<sup>65</sup> which extends to all areas, including sports.

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<sup>65</sup> UN Human Rights Council (2024). Combating discrimination, violence and harmful practices against intersex persons, A/HRC/55/L.9.