

Call for inputs for the preparation of the Report of the High Commissioner for Human Rights pursuant to the Human Rights Council Resolution A/HRC/RES/55/14 on “Combating discrimination, violence and harmful practices against intersex persons”

20 December 2024

Executive Summary

The LGBTI community faces numerous, often unique challenges when it comes to their right to participate in sport. Discriminatory narratives, exclusionary policies, and pervasive online harassment are just a few of the significant obstacles that hinder their ability to engage and enjoy in sports at all levels. These barriers are a clear violation of their fundamental rights to inclusion and equal participation.

This submission aims to explore the distinct challenges that intersex individuals face within the sporting context. By exploring these issues through a human rights lens, the submission highlights the urgent need to address these escalating challenges. The goal is to shed light on how sports from grassroots and recreational to elite levels can evolve to be more inclusive and affirming for intersex athletes.

The report concludes by offering recommendations to sports governing bodies and government entities outlining urgent measures these institutions should adopt to protect the rights of intersex individuals to participate in sports at all levels.

Introduction

The [Sport & Rights Alliance \(SRA\)](#) is a global coalition of leading NGOs and trade unions working together to embed human rights and anti-corruption across world sport and to promote the rights and well-being of those most affected by human rights risks associated with the delivery of sport. The SRA was founded in early 2015 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 (UNGPs).

Our partners include Amnesty International, The Army of Survivors, Committee to Protect Journalists, Football Supporters Europe, Human Rights Watch, ILGA World, the International Trade Union Confederation, Transparency International and World Players Association, UNI Global Union.

Aligned with our mission to advocate for those most impacted by the negative aspects of sport, the SRA is actively working to counter the anti-rights movement and its misuse of sport as a tool for spreading misinformation and causing harm to intersex individuals.

Discrimination and violence against intersex athletes

Intersex people are individuals born with physical sex characteristics such as chromosomes, gonads, hormone levels, or genitalia that do not fit binary definitions of male or female bodies. These variations might be present at birth or become more apparent during puberty. This is often a complex topic for society in general that raises questions due to lack of understanding about intersex variations especially in areas like sports where a binary construct of sex (male versus female) predominates.

For clarification, it is essential to emphasize that intersex variations are distinct from gender identity or sexual orientation. Yet it is important to note that in the context of sport, prevalence studies have shown that the LGBTI community (the I of which includes intersex variations) face increased risk of experiencing various forms of interpersonal violence, including psychological, physical and sexual abuse.¹²³

Representation for LGBTI people, especially intersex people, is very low in the world of sports. The principle of fairness in sports is often raised as primary concern to exclude intersex athletes. This perspective fails to acknowledge the natural diversity in human biology beyond the binary view of sex. Like any individual, intersex athletes have a unique set of genetic and physical attributes that are part of the natural spectrum of human variation.

Outstanding athletes have always delivered exceptional performances across elite sports. U.S. swimmer Michael Phelps, for instance, has earned 28 Olympic medals, making him the most successful and decorated Olympian in history. Over decades, Phelps has dominated a variety of different sprint and middle distance events, ranging from the 4x100 freestyle relay to the 400 individual medley, achieving results unmatched by any other swimmer. His extraordinary physical traits, including a naturally expansive wingspan, double-jointed ankles that enhance his kick efficiency, and a low lactic acid production that delays fatigue, have played a pivotal role in his success.

These natural biological attributes, combined with his hard work ethic and economic incentives, allowed Phelps to reach the pinnacle of his sport. Yet, his genetic attributes have never been questioned or regarded as an advantage that would damage the level playing field. On the contrary, he has been celebrated as a phenomenal inspiring athlete.

Variations in muscle fiber composition, superior capacity for oxygen utilization, different bone density, finely tuned neuromuscular system and/or unique metabolic characteristics are all natural attributes that do not disrupt the level playing field. These are part of natural diversity that makes

¹ Pankowiak, A., Woessner, M. N., Parent, S., Vertommen, T., Eime, R., Spaaij, R., ... & Parker, A. G. (2023).

Psychological, physical, and sexual violence against children in Australian community sport: frequency, perpetrator, and victim characteristics. *Journal of interpersonal violence*, 38(3-4), 4338-4365.

²Parent, S., & Vaillancourt-Morel, M. P. (2021). Magnitude and risk factors for interpersonal violence experienced by Canadian teenagers in the sport context. *Journal of sport and social issues*, 45(6), 528-544..

³ Vertommen, T., Decuyper, M., Parent, S., Pankowiak, A., & Woessner, M. N. (2022). Interpersonal violence in Belgian sport today: Young athletes report. *International journal of environmental research and public health*, 19(18), 11745.

sports competition even more dynamic, engaging and should be celebrated. The right to participate in sports should not be analyzed solely through genetic characteristics, and competitive results ought to be seen as a result of skills, preparation and strategy. This lack of holistic perspective hinders healthy discussion and contributes to a pattern of abuse and violence not just in sports competitions but also in online spaces.

Individual Cases

Imane Khelif, a cisgender woman and Olympic boxer from Algeria, was severely bullied for her appearance and excluded just before the final match of the 2023 International Boxing Association (IBA) for failing to meet eligibility criteria due to high levels of testosterone. Despite the fact that the IBA had been in suspended in 2019 and later stripped of its Olympic credentials in 2023, Khelif was thrust into controversy over the IBA eligibility question during the Paris 2024 Olympic Games – facing significant online abuse during her participation in the boxing tournament. Social media and public figures spread misinformation and transphobic, misogynistic rhetoric about Khelif, including questioning her gender identity, despite her own self identification and eligibility which was confirmed by the International Olympic Committee (IOC). The abuses escalated and led to a legal file complaint in France on cyberbullying abuse. Most recently Khelif has taken another legal action over spread media reports allegations leaking her medical records claiming she has XY chromosomes.⁴ The cases are still ongoing.

Other cases such as Ednanci Silva, an intersex former Brazilian judo athlete, World Champion medalist and two-time Pan-American Games had also challenged stereotypes and faced significant prejudice through her career. Back in 1995, Ednanci was banned from competing after athletes signed a letter requesting her exclusion. In order to be eligible to compete at the 1996 Olympic Games in Atlanta, she was forced to remove her testicles and uterus. After suffering in silence for many years, Ednanci has finally spoken about the maltreatment and abuse she has endured and questioning whether she really deserved to go through all of this. “After what I was forced to endure in 1995 and 1996, I’ve closed myself up, to protect myself and heal from so many harm these people caused me. I kept on doing judo, competed at four Olympic Games, won two medals at world championships, but I’ve kept filled with anger towards journalists and lived in constant fear being exposed.”⁵

Another Brazilian athlete, Erika Coimbra, a cisgender former volleyball player, was excluded from competing at the Sydney Olympic Games in 2000 upon discovery that she was born with Morris syndrome, a rare genetic disorder characterized by androgen resistance. Erika says the IOC was disrespectful in disclosing her case to the press and not giving her any control whatsoever over the situation or time to provide a full diagnosis. “I am a woman, I was born a woman and all of a sudden this is taken from me, I was exposed. People might eventually forget this episode, but I will carry this pain with me forever.”⁶

⁴ <https://www.theguardian.com/sport/2024/nov/06/olympic-boxer-imane-khelif-takes-legal-action-over-male-chromosomes-claims>

⁵ <https://www.uol.com.br/esporte/reportagens-especiais/edinanci-aceita-contar-sua-historia-sofri-com-haters-na-rua-todo-dia/#page5>

⁶ <https://www.uol.com.br/esporte/volei/ultimas-noticias/2021/01/31/erika-coimbra-testes-de-genero.htm>

Caster Semenya, a South African Olympic champion, has been fighting for her right to compete since 2019 when World Athletics enforced a regulation that required female athletes with differences in sex development (DSD) to either lower these levels through medical intervention or be disqualified. Even after arguing against these regulations, stating the infringement on her rights and bodily autonomy, she has not competed ever since. In July 2023, the European Court of Human Rights (ECtHR) ruled in favor of Semenya stating that her rights under the Human Rights Convention have been violated. The court expressed that Switzerland failed to ensure appropriate safeguarding procedures when reviewing her case. Despite a legal victory at ECtHR, World Athletics has not recognized their decision arguing that the current regulations are fundamental to maintaining a level playing field among competitors.⁷

Other intersex athletes beyond the elite and Olympic levels also face abuse when participating in sports. Sam Sharpe, a former 2014 NCAA Division 3 swimmer has shared her story about navigating collegiate swimming as an intersex person in the U.S. Since young age, she has been teased and bullied for looking different. After seeing multiple doctors, she finally understood she had an endocrine condition that results in sex hormones that do not match either male or female ranges. Although swimming and the support from her teammates⁸ has had a significant positive impact in her life, Sam points out that, if she was an athlete now in 2023, she would have been banned from participating in sports. While many policies in the U.S. have been enforced to exclude transgender student athletes, they have had a profound impact on intersex athletes like herself.

These cases highlight the extremely complex intersections of sports regulations, sex characteristics and human rights. Many sports governing bodies disregard international human rights norms and endorse this transphobic, misogynistic rhetoric under the false pretense of “protecting women’s sports”. This narrative is harmful, as it distracts from the actual risks and challenges that women and girls face in the sports world. A recent report from UNESCO⁹ highlights the real risks women and girls face in sports – abuse and violence by cisgender individuals – and the inadequacy of current prevention and response mechanisms. According to the report, 21% of female athletes reported experiencing some form of sexual abuse as minors, almost double the rate compared to male athletes. Due to fear of retaliation, exclusion, or stigmatization, only 7% of these women came forward to disclose their experiences. Systemic abuse and harassment, unequal access to training facilities and resources, lack of female representation in position of power are the real threat to women and girls in sports and require our collective focus and attention instead of the promotion of hysteria over less than 1% of participants with genetic different characteristics.

Recommendations

The way forward requires embracing a human rights and trauma-informed approach to prioritize the inclusion of intersex people in sports. It is essential that sports governing bodies not only acknowledge but actively uphold their responsibilities under the UN Guiding Principles on Business and Human Rights (UNGPs)¹⁰ by recognizing the rights of LGBTI people to participate in a safe and

⁷ <https://www.hrw.org/news/2023/07/18/caster-semenya-won-her-case-not-right-compete>

⁸ <https://interactadvocates.org/trans-sports-bans/>

⁹ <https://unesdoc.unesco.org/ark:/48223/pf0000389408>

¹⁰ chrome-

extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

inclusive sports environment. This includes proactive measures to prevent, address, and respond effectively to all forms of abuse, violence and discrimination targeted toward this community.

In addition to the UNGPs, sports governing bodies must rely on the International Olympic Committee's Framework on Fairness, Inclusion and Non-Discrimination on the Basis of Gender Identity and Sex Variations.¹¹ Published in 2021 and applicable to any sport institution, the framework emphasizes seven key principles:

1. **Inclusion:** All athletes, regardless of gender identity or sex variations, should have the opportunity to participate in sports without discrimination.
2. **Non-Discrimination:** Existing policies should not exclude or unfairly target athletes based on their gender identity or sex characteristics.
3. **Evidence-Based Approach:** Any eligibility criteria that excludes athletes based on gender identity or sex variations must be based on robust, peer-reviewed evidence that demonstrates a disproportionate advantage and/or an unpreventable risk to the physical safety of other athletes linked to those specific gender identities or sex variations.
4. **Fairness:** While promoting inclusion, the framework also emphasizes the importance of fairness in competition. It encourages sports organizations to balance inclusion with measures that ensure fair play.
5. **No Presumption of Advantage:** No assumption of competitive advantage should be made based solely on an athlete's gender identity, physical appearance or sex characteristics, encouraging sports bodies to make eligibility decisions on an individual basis.
6. **Respect for Privacy:** All athletes' personal and health-related information should be protected, promoting a respectful and private approach to eligibility assessments.
7. **Collaboration:** Sports organizations are encouraged to work with athletes, health experts, and other stakeholders to shape inclusive and fair policies.

By embedding these principles into their policies and procedures, sport governing bodies at global and local level can play a critical role in fostering a sporting culture that promotes and respects diversity and prioritizes the well being of all participants.

¹¹ <https://olympics.com/ioc/news/ioc-releases-framework-on-fairness-inclusion-and-non-discrimination-on-the-basis-of-gender-identity-and-sex-variations>