

Forum: The United Nations Educational, Scientific and Cultural Organisation (UNESCO)

Issue: Considering sport participation of transgender people in their respective categories, ensuring equality at the Olympics

Officer: Marc Martínez

Table of Contents

Introduction	2
Term Definitions	4
Transgender	4
Non-binary	4
Human Rights	5
Cisgender	6
Sex segregation	6
Fairness	6
Testosterone	7
Background Information	8
Organisations Involved	9
Olympic Committee	9
Timeline of Events	10
Relevant UN Treaties/Resolutions	12
Previous Attempts to Solve Issue	14
Possible Solutions	15
Bibliography	16
Annex	17

Introduction

The modern Olympic Games or Olympics are leading international sporting events ranging from summer to winter sports competitions in which thousands of athletes from countries around the world participate in a variety of competitions regarding their sport by a separation of genders. Usually, the main purpose of the segregated-sex sport rules are to account for physiological sex differences between players. The participation of transgender people in competitive sports is a controversial issue, specifically when transgender women athletes who went through male puberty are successful in women's sports and/or injure cisgender women when competing against them.

Most athletic competitions separate girls from boys and women from men. And while this may foster a more even playing field for girls and women in some sports and encourage their participation, it leaves little opportunity for those who transgress binary gender norms to compete. Those with non-binary identities may not feel affirmed in their identity by being forced to choose between the male or female team. As a recent study revealed that almost 3% of teens identified as transgender or non-binary, a potentially sizable population experiences exclusion from sport at youth levels. Failing to include these children and adolescents is discriminatory and contrary to the principles of universality and non-discrimination in the field of human rights. But when these rights clash with the legitimacy of winning solely because of having gone through male puberty. A study about differences in male and women strength showed that as males have a larger heart size, which gives their heart the ability to pump more blood with each beat, and their lung volume and capacity are greater, in addition to a red blood cell count that's 10% higher than a woman's (more red blood cells mean more hemoglobin to deliver oxygen to tissues), which gives men an advantage in sports where more effort in less time of excessive is required. Similarly, women have a slight advantage with ultra-endurance activities. For one, women are better at using stored fat as energy during endurance events. They can tap into fat more effectively, meaning that they conserve muscle and liver glycogen better than

men. Women are better able to hold on to their energy reserves than men, and they are also better at releasing heat during long periods of exercise than men. These differences could be of great importance when a gold medal is at stake, and a woman who has gone through male puberty or vice versa imposes a doubt in the legitimacy of the competition.

The fair inclusion of female athletes at elite and Olympic levels is secured in most sports by way of female categories because of the extensively documented biological and performance-related differences between the sexes. International policy for transgender inclusion is framed by the definitive International Olympic Committee transgender guidelines in which the International Olympic Committee confirms the 'overriding sporting objective is and remains the guarantee of fair competition' and transwomen can be excluded from female categories if, in the interests of fairness, this is necessary and proportionate.

Term Definitions

Transgender

Transgender or Transexuality is an umbrella term for anyone whose internal experience of gender does not match the sex they were assigned at birth (normally based on first and secondary sex characteristics). Transgender people may experience discomfort or distress due to their gender not aligning with their sex, and therefore wish to transition to being the gender they identify with.

Some transgender people feel this way from a very young age, while others go through a period of questioning before realizing they are transgender. Transgender people can be men, women or non-binary. They can have any sexual orientation, express their gender through their appearance in any way, and may or may not fit into society's views of gender.

People whose sex corresponds to their gender identity are referred to as cisgender.¹

Non-binary

Non-binary (also called enby or at times shortened down to NB) describes any gender identity which does not fit the male and female binary spectrum. Those with non-binary genders can:

- Have an androgynous (both masculine and feminine) gender identity, such as androgyne.
- Have an identity between male and female, such as intergender.
- Have a neutral or unrecognized gender identity, such as agender, neutrois, or most xenogenders.
- Have multiple gender identities, such as bigender or pangender.
- Have a gender identity which varies over time, known as genderfluid or Genderflux.
- Have a weak or partial connection to a gender identity, known as demigender.

¹ <https://gender.fandom.com/wiki/Transgender?so=search>

- Are intersex and identify as intersex, known as amalgagender
- Have a Galactian Alignment identity, created to describe genders without using binary terms.
- Have a culturally specific gender identity which exists only within their or their ancestor's culture.
- Identify as a thirdgender that doesn't exactly exist only within a specific culture such as Proxvir, Juxera, or Maverique.²

Human Rights

What are human rights? Human rights are rights inherent to all human beings. We are all equally entitled to our human rights without discrimination, whatever our nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status, such as age, disability, health status, sexual orientation or gender identity. These rights, whether they are civil and political rights (such as the right to life, equality before the law and freedom of expression) or economic, social and cultural rights (such as the rights to work, social security and education) are indivisible, universal, interrelated and interdependent. Human rights were developed and articulated in the Universal Declaration of Human Rights (1948) as a response to the atrocities of World War II. Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups. By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States

² <https://gender.fandom.com/wiki/Non-binary>

to protect individuals and groups against human rights abuses by third parties. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights.

Cisgender

Cisgender (often shorted to cis) is a term that refers to anyone whose gender identity aligns with their sex assigned at birth. This term applies to those who fully or more closely identify as their assigned sex while simultaneously rejecting the term transgender. The term cisgender is the opposite of the word transgender.

Cisgender may sometimes be referred to as cissexual (opposite of transsexual, not to be confused with a sexual orientation).³

Sex segregation

Sex segregation is the physical, legal, and cultural separation of people according to their biological sex. This is distinct from gender segregation, which is the separation of people according to social constructions of what it means to be male versus female. For a more detailed distinction on the division between the two, see sex and gender distinction. This article focuses specifically on sex segregation. In certain circumstances, sex segregation is controversial. Some critics contend that it is a violation of capabilities and human rights and can create economic inefficiencies, while some supporters argue that it is central to certain religious laws and social and cultural histories and traditions.

Fairness

Impartial and just treatment or behaviour without favouritism or discrimination.

³ <https://gender.fandom.com/wiki/Cisgender>

Testosterone

A steroid hormone that stimulates the development of male secondary sexual characteristics, produced mainly in the testes, but also in the ovaries and adrenal cortex.

Background Information

From ancient times, the competitive sport has been divided primarily by the traditional concepts of male/female identity, and in some sports subdivided by weight or other factors, such as age, affiliation, amateur or professional status, or level of competition. The overall goal is to promote perceived equitable competition. Furthermore, as societal values have changed, increasing numbers of women of all ages have been competing in virtually all events. For example, women's participation in the summer Olympic Games has increased substantially from 277 athletes (9.6%) in 1928 when track and field events for women were included, to 4,676 athletes (44.2%) in 2012 in London. One recent illustration: the 2016 US Olympic Team had more women (294) than men (264). In part as a result of Title IX, which requires equal opportunity for participation in sport, women's participation in US collegiate sports has increased considerably in the past few decades.

In much the same way as clinicians and politicians have struggled with how to integrate transgender individuals, so has competitive sport, especially transwomen athletes. In this respect, the International Olympic Committee (IOC) was a groundbreaker when it convened an expert panel in which I participated. The panel met in Stockholm in October 2003 and developed recommendations — "The Stockholm Consensus" — that were adopted by the IOC's Executive Board in May 2004. These recommendations called for inclusion of male-female (M-F) and female-male athletes so long as they met explicit criteria, including gonadectomy and completion of anatomic changes consistent with their professed gender followed by a 2-yr period during which they received hormonal therapy "appropriate for assigned sex" and "in a verifiable manner." In addition, these athletes would have to demonstrate that legal recognition of their reassigned gender/sex identity had been received in the appropriate jurisdiction.

Organisations Involved

Olympic Committee

The International Olympic Committee is the guardian of the Olympic Games and the leader of the Olympic Movement.

A truly global organisation, it acts as a catalyst for collaboration between all Olympic stakeholders, including the athletes, the National Olympic Committees, the International Federations, Organising Committees for the Olympic Games, the Worldwide Olympic Partners and Olympic broadcast partners. It also collaborates with public and private authorities including the United Nations and other international organisations.

The vision of the International Olympic Committee is to Build a Better World through Sport.⁴

⁴ <https://olympics.com/ioc/overview>

Timeline of Events

- 2003** In 2003, a committee convened by the International Olympic Committee (IOC) Medical Commission drew up new guidelines for participation of athletes who had undergone gender reassignment. The report listed three conditions for participation. First, athletes must have undergone sex reassignment surgery, including changes in the external genitalia and gonadectomy. Second, athletes must show legal recognition of their gender. Third, athletes must have undergone hormone therapy for an appropriate time before participation, with two years being the suggested time.
- 2004** It was not until 2004 that the IOC allowed transgender athletes to participate in the Olympic Games
- 2015** In 2015, the IOC modified these guidelines in recognition that legal recognition of gender could be difficult in countries where gender transition is not legal, and that requiring surgery in otherwise healthy individuals "may be inconsistent with developing legislation and notions of human rights". The new guidelines require only that trans woman athletes declare their gender and not change that assertion for four years, as well as demonstrate a testosterone level of less than 10 nanomoles per liter for at least one year prior to competition and throughout the period of eligibility. Athletes who transitioned from female to male were allowed to compete without restriction. These

guidelines were in effect for the 2016 Rio Olympics, although no openly transgender athletes competed.

Tokyo 2020 (Aug 2021) The 2020 Olympic Games have been - to use a well-worn term - unprecedented for many reasons. In addition to the crowd-less stadiums, sweltering heat, and cardboard beds, the 2020 Olympic Games also hosted another first - the first outwardly transgender athletes to compete. New Zealand weightlifter Laurel Hubbard and USA's Chelsea Wolfe, a reserve on the BMX Freestyler team, were the first trans women to represent their countries at the Olympic Games. They were joined by the USA skateboarder Alana Smith and Canada soccer player Quinn - the first openly transgender non-binary athletes.

November 2021 To cement the change even further, Quinn took home gold in the first Olympic win for Canada's women's soccer team. The International Olympic Committee (IOC) released a much anticipated policy document aimed at making the Olympics more inclusive for transgender athletes and athletes with sex variations. The new framework builds on more than two years of consultation with diverse athletes, advocates, and stakeholders.

Relevant UN Treaties/Resolutions

Currently, there are nine core international human rights treaties, but none of them explicitly mentions sexual orientation, gender identity and expression, or sex characteristics (SOGIESC) or the rights of gay, lesbian, bisexual, transgender and intersex (LGBTI) people.

Of course, most of the treaties were adopted long ago when the LGBTI human rights discourse was yet to be developed. But it is also true that so long as 70 UN Member States still criminalize consensual same-sex sexual acts, it would be difficult to amend the treaties.

At the same time, the interpretation and application of these nine international treaties by the Treaty Bodies has taken into account that social relations and legislative and political practices are changing at the local and regional level. Although the treaties don't mention SOGIESC or LGBTI, each of the Committees has referred to these terms in their documents.

Over the last five years, the number of references to SOGIESC/LGBTI by all Treaty Bodies in their concluding observations (recommendations they make to states when considering state reports) has increased two and a half times from 54 references in 2014, to 138 in 2018. In 2016–2018, such references were included in half of the concluding observations, and the UN Human Rights Committee considered LGBTI issues in its reviews of every state in 2017 and 2018.

Further, the references to trans people have more than doubled (from 48 in 2014 to 104 in 2018), and the stand-alone references to specific problems of trans people (e.g. legal gender recognition or access to hormone therapy) have more than tripled (from 7 in 2014 to 24 in 2018).⁵

⁵ <https://ilga.org/treaty-bodies-advance-LGBTI-rights>

Attached on the annex you will find the press release published on the 17th of June 2011, date on which the first UN resolution ever to bring specific focus to human rights violations based on gender identity was published.

It affirms the universality of human rights, and notes concern about acts of violence and discrimination based on sexual orientation and gender identity. This commitment of the Human Rights Council sends an important signal of support to human rights defenders working on these issues, and recognizes the legitimacy of their work.

Previous Attempts to Solve Issue

The International Olympic Committee announced a new framework for transgender and intersex athletes November 17th, 2021, dropping controversial policies that required competing athletes to undergo "medically unnecessary" procedures or treatment. In the six-page document by the IOC it said it will no longer require athletes to undergo hormone level modifications to compete.

Resistance to trans women competing in women's sports generally focuses on physiological attributes such as height and weight, or performance metrics such as speed and strength, arguing that testosterone suppression and oestrogen does not adequately reduce advantages gained in male puberty within a given women's sport. Access regulations requiring that trans athletes compete against athletes of the same assigned sex at birth and requiring sex verification testing have been used. Proponents of such regulations regard them as necessary to ensure fair competition, while opponents regard them as unfounded and discriminatory.

Possible Solutions

The controversy surrounding this specific topic makes solutions rather difficult to be agreed by all nation-states as the protection of human rights and the legitimacy of the issue clash with each other when solutions must be proposed. These solutions, though in opposition of each other, could range from the proposal of reimposing the cut framework which imposed hormonal treatment before the Olympics to the importance of human rights over the athletic competitiveness. If the sanctions that were made in 2021 to delete all guidelines and add 10 guidelines upholding the importance of human rights was diminished and the necessity for transgender people competing in the olympics, or any competitive sport for that matter, to undergo hormonal testing and treatment in order to make the competition more equal for all athletes was done, there would be an outburst from some more democratic and liberal nations claiming that it is unethical as it clashes with the rights of transgender to compete. Whereas if the decision to prioritize the rights to compete of transgender people and to not have to undergo these treatments was proposed, not only there would be controversy by some nations, but the legitimacy of the Olympics would be at stake. Some solutions to considering sport participation of transgender people in their respective categories, ensuring equality at the Olympics can range from deciding the sports with less difference in strength needed from men and women and segregate transgender people in their respective categories in such sports, to control hormonal levels of transgender people competing with cisgender people once again, to not allowing the participation of transgender people in the Olympics unless they undergo special tests and close monitoring.

Bibliography

1. Kirichenko K. UN Treaty Bodies advance LGBTI rights [Internet]. ILGA. 2022 [cited 23 October 2019]. Available from: <https://ilga.org/treaty-bodies-advance-LGBTI-rights>
2. ROBICHON F. A win for transgender athletes and athletes with sex variations: the Olympics shifts away from testosterone tests and toward human rights [Internet]. The Conversation. 2022 [cited 1 March 2022]. Available from: <https://theconversation.com/a-win-for-transgender-athletes-and-athletes-with-sex-variations-the-olympics-shifts-away-from-testosterone-tests-and-toward-human-rights-172045>
3. Laviertes M. International Olympic Committee issues new guidelines on transgender athletes [Internet]. NBC News. 2022 [cited 1 March 2022]. Available from: <https://www.nbcnews.com/nbc-out/out-news/international-olympic-committee-issues-new-guidelines-transgender-athl-rcna5775>
6. January/February 2017 - Volume 16 - Issue 1 : Current Sports Medicine Reports [Internet]. Journals.lww.com. 2022 [cited 1 March 2022]. Available from: https://journals.lww.com/acsm-csmr/fulltext/2017/01000/transgender_athletes__how_can_they_be
4. Website O. [Internet]. 2022 [cited 1 March 2022]. Available from: <https://olympics.com/ioc/overview>
5. "Sex Segregation in Sport: A Denial of Rights and Opportunities for Health." 2019. Health and Human Rights Journal. Available from: <https://www.hhrjournal.org/2019/06/sex-segregation-in-sport-a-denial-of-rights-and-opportunities-for-health/>
6. [Internet]. 2022 [cited 1 March 2022]. Available from: <https://gender.fandom.com/wiki>
7. Brito, Janet. 2017. "Cisgender: What Is It?" Healthline. Available from: <https://www.healthline.com/health/transgender/what-is-cis>
8. "Gender & Athletic Ability: Are Men Really Better Athletes Than Women?" n.d. Cathe Friedrich. Accessed February 21, 2022. Available from: <https://cathe.com/gender-athletic-ability-men-really-better-athletes-women/>

9. Migdon, Brooke. 2021. "Controversial Olympics guidelines on trans women suddenly reversed." Available from: <https://thehill.com/changing-america/respect/equality/581969-controversial-olympics-guidelines-on-trans-women-suddenly>

10. "The Olympics' shameful transgender cop out-athletes." n.d. Harry Benjamin Ressorssenter. Accessed February 28, 2022. Available from: <https://www.hbrs.no/the-olympics-shameful-transgender-cop-out/>

Annex

Historic Decision at the United Nations: Human Rights Council Passes First-Ever Resolution on Sexual Orientation and Gender Identity⁶

(Geneva, June 17, 2011) In a groundbreaking achievement for upholding the principles of the Universal Declaration of Human Rights (UDHR), the United Nations Human Rights Council has passed a resolution on human rights violations based on sexual orientation and gender identity (L.9/Rev.1).

The resolution, presented by South Africa along with Brasil and 39 additional co-sponsors from all regions of the world, was passed by a vote of 23 in favour, 19 against, and 3 abstentions. A list of how States voted is attached. In its presentation to Council, South Africa recalled the UDHR noting that “everyone is entitled to all rights and freedoms without distinction of any kind” and Brasil called on the Council to “open the long closed doors of dialogue”.

Today’s resolution is the first UN resolution ever to bring specific focus to human rights violations based on sexual orientation and gender identity, and follows a joint statement on these issues delivered at the March session of the council. It affirms the universality of human rights, and notes concern about acts of violence and discrimination based on sexual orientation and gender identity. This commitment of the Human Rights Council sends an important signal of support to human rights defenders working on these issues, and recognizes the legitimacy of their work.

“The South African government has now offered progressive leadership, after years of troubling and inconsistent positions on the issue of sexual orientation and gender identity. Simultaneously, the government has set a standard for themselves in international spaces. We look forward to contributing to and supporting sustained progressive leadership by this government and seeing the end of the violations we face daily”. (Dawn Cavanagh, Coalition of African Lesbians)

⁶ <https://tgeu.org/historic-un-human-rights-resolution-covers-transgender-people/>

The resolution requests the High Commissioner for Human Rights to prepare a study on violence and discrimination on the basis of sexual orientation and gender identity, and calls for a panel discussion to be held at the Human Rights Council to discuss the findings of the study in a constructive and transparent manner, and to consider appropriate follow-up.

“That we are celebrating the passage of a UN resolution about human rights violations on the basis of sexual orientation is remarkable, however the fact that gender identity is explicitly named truly makes this pivotal moment one to rejoice in,” added Justus Eisfeld, Co-Director of GATE. “The Human Rights Council has taken a step forward in history by acknowledging that both sexual and gender non-conformity make lesbian, gay, trans and bi people among those most vulnerable and indicated decisively that states have an obligation to protect us from violence.”*

“As treaty bodies, UN special procedures, and national courts have repeatedly recognized, international human rights law prohibits discrimination on the grounds of sexual orientation and gender identity.” (Alli Jernow, International Commission of Jurists)

The resolution is consistent with other regional and national jurisprudence, and just this week, the 2011 United Nations Political Declaration on HIV and AIDS recognised the need to address the human rights of men who have sex with men, and the Organization of American States adopted by consensus a resolution condemning violence and discrimination on the basis of sexual orientation and gender identity.

Earlier in this 17th session of the Human Rights Council, the UN Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, reported to the Council that:

“[C]ontributory factors for risk of violence include individual aspects of women’s bodily attributes such as race, skin colour, intellectual and physical abilities, age, language skills and fluency, ethnic identity and sexual orientation.”

The report also detailed a number of violations committed against lesbian, bisexual and trans women, including cases of rape, attacks and murders. It is therefore regrettable that a reference to

“women who face sexuality-related violence” was removed from the final version of another resolution focused on the elimination of violence against women during the same session.

“Despite this inconsistency, we trust the UN resolution on sexual orientation and gender identity will facilitate the integration of the full range of sexual rights throughout the work of the UN.” (Meghan Doherty, Sexual Rights Initiative)

A powerful civil society statement was delivered at the end of the session, welcoming the resolution and affirming civil society’s commitment to continuing to engage with the United Nations with a view to ensuring that all persons are treated as free and equal in dignity and rights, including on the grounds of sexual orientation and gender identity.

“Now, our work is just beginning”, said Kim Vance of ARC International. “We look forward to the High Commissioner’s report and the plenary panel next March, as well as to further dialogue with, and support from, those States which did not yet feel able to support the resolution, but which share the concern of the international community at these systemic human rights abuses.”