

Violence against women and girls in sport – the significance of exclusively female categories¹

While the input request from the Honorable Rapporteur covers a wide range of issues regarding violations of women's and girls' rights in sports, this submission will specifically address the forms of violence, invisibility, and discrimination stemming from the inclusion of biologically male individuals in female categories in sports, particularly within the Latin American context.

Additionally, the Honorable Rapporteur may benefit from three annexes accompanying this submission: (i) a compiled table of news reports detailing cases where male individuals have participated in female categories; (ii) a comparative legislation outlining Latin American laws on recognizing transgender populations and their participation in various social spheres, including sports; and (iii) a comprehensive review of international legal instruments (with a particular focus on those applicable in Latin America) emphasizing the importance of single-sex spaces and recognizing sports as an integral part of cultural rights.

1) The invisibility of women in sports in Latin America through the acceptance of male individuals in female categories

While the primary debates on the inclusion of male individuals in female categories in sports have occurred in Europe and the United States, Latin America has not been immune to this reality. Some male individuals who self-identify as women have already requested to enter or have indeed entered female categories in sports such as soccer², hockey³, motorsports⁴, tennis⁵, volleyball⁶, and athletics⁷, among others.

Normatively, the participation of individuals who identify as transgender has two fundamental characteristics that make their regulation unique in Latin America. The first of these is that for the most part, sports leagues and competitions are private activities that are not part of the state

¹ This input was provided by professors Ana María Idárraga and Juana I. Acosta-López. The elaboration involved the participation of students Veronica Hernández, Diana Salcedo Muñoz, Renato Sebastiani Leon Mazza, Lorena Argentina Sánchez Maradiaga, Luis Alejandro Aguilar, Mateo Arana Brando, and Marcia Nallely Zúñiga Velásquez. **Please note that this input does not represent the institutional position but is presented on behalf of the authors.**

²https://verne.elpais.com/verne/2020/01/11/mexico/1578704701_942131.html;
<https://www.infobae.com/deportes/2020/12/30/mara-gomez-la-futbolista-trans-que-hizo-historia-en-el-deporte-argentino-la-discriminacion-a-las-personas-lgbt-es-un-asesinato-sin-armas/>;
https://mexico.as.com/mexico/2020/06/22/futbol/1592826162_266887.html

³https://www.lainformacion.com/deporte/Rechazan-fichaje-jugadora-transexual-Argentina_0_949106320.html
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<https://www.nmas.com.mx/foro-tv/programas/hora-21/videos/ella-es-ana-sofia-villasenor-pilota-trans-que-quiere-llegar-la-formula-1/>

⁵ <https://www.homosensual.com/lgbt/trans/conoce-a-mia-fedra-superestrella-trans-del-tenis-femenil/>

⁶ <https://www.nytimes.com/es/2018/03/22/espanol/tiffany-abreu-voleibol-transexual-olimpiada.html>

⁷<https://www.elcolombiano.com/deportes/otros-deportes/en-su-segunda-vida-yanelle-persigue-un-hito-AE3633417>;

HYPERLINK

"<https://every.lgbt/ignacia-livingstone-primera-atleta-trans-federada-chile/>"
<https://every.lgbt/ignacia-livingstone-primera-atleta-trans-federada-chile/>;

<https://every.lgbt/ignacia-livingstone-primera-atleta-trans-federada-chile/>

structure. Secondly, this characteristic of private activities, as well as the multitude of disciplines that can be presented and the millions of championships, means that for each tournament, in each category of a discipline, there is a particular regulation that responds to the specific needs of the sport. Thus, the regulation of a children's golf tournament will be completely different from the regulation of a female mixed martial arts tournament.

With this in mind, the regulations regarding the participation of individuals who identify as transgender in Latin America are still in their early stages, but they generally follow this pattern:

- They begin with the official recognition of gender (or sex) change in the state's official records: Since 2012, there has been a trend in Latin America to allow gender (or even sex) change in official documents. Countries such as Argentina⁸, Uruguay⁹, Costa Rica¹⁰, Colombia¹¹, Bolivia¹², Chile¹³, and Mexico¹⁴ have enshrined this in their legislation. In other countries, the possibility of modifying gender or sex has been granted through judicial decisions, as seen in Ecuador¹⁵.
- From this recognition, cases of athletes who self-identify as transgender women seeking to participate in female categories have emerged. These cases have led to varied regulations¹⁶:
 - Some leagues and federations have adopted the regulations of the International Olympic Committee (IOC) at different stages and continue to be governed by the IOC's guidelines. These include allowing participation with certain restrictions regarding the timing of therapies and the completion of reassignment surgeries in the first stage, eliminating the requirement for reassignment surgery and measuring testosterone levels in the second stage, and assessing participation in each discipline in the third stage.
 - Some leagues and federations have clarified in their regulations that "female" refers to individuals borned female, thereby excluding any participation of biologically male individuals from female competitions.
 - Some leagues and federations have no regulations at all: the majority of Latin American leagues and federations lack regulations on this issue.
- In cases where there is a lack of regulation or regulation that prevents the participation of male individuals, recourse has been made to courts or state bodies. A notable case in this regard is that of Miranda Salman, a biologically male individual who sought to participate in the Professional Women's Soccer League in Mexico. After being initially prevented from

⁸ Law 26.743 de 2012.

⁹ Law 19.684 de 2018.

¹⁰ Executive Decree No. 41,173 allows for the change of name and a marginal note regarding gender. In Costa Rica, it was decided to remove the criterion of sex from the identity document.

¹¹ Decree 1227 of 2015.

¹² Law 807 de 2016.

¹³ Law 21.120.

¹⁴ In most states, see: Alicia Cárdenas Córdón, THE LEGAL RECOGNITION OF GENDER IDENTITY IN LATIN AMERICA: REFLECTIONS AND LESSONS FOR THE SPANISH LEGAL DEBATE.

¹⁵ Judgment N.º 133-17-SEP-CC.

¹⁶ Schedule 2. National Regulation.

doing so, Salman filed an administrative action for discrimination, which was ruled in his favor, resulting in his inclusion in the Soccer League.

- Some states, such as Mexico, Costa Rica, and Ecuador, have adopted policies aimed at promoting the participation of individuals identified as transgender in various spheres of society, including sports¹⁷. However, there is no data available on the effectiveness of these policies.

Although the trend in Latin America is moving towards increased inclusion of individuals who identify as transgender in female sports categories, this has not been without controversy. In fact, it has presented significant challenges to the protection of women's rights. As mentioned earlier, states lack reliable data on the societal impact of this phenomenon, and the public policies that have been enacted often lack a basis in data or scientific studies. Therefore, the information included here is based on emblematic cases reported in the media, and the extent of the problem, especially in non-professional championships and tournaments, remains unclear.

Given these considerations, four issues seriously jeopardize the rights of women in sports with the participation of athletes who self-identify as transgender women in female categories¹⁸:

- **Justice and equity in sports:** The primary source of controversy has arisen regarding justice in sports. One case in Latin America that has been heavily debated is that of Tiffany Abreu in Brazil. Tiffany, biologically male, entered Brazil's professional volleyball league and in just one month, broke the scoring record of the country's top female player. This is one of the main discussions worldwide on this matter. A few months ago, the case of Paralympic athlete Melani Bergés being eliminated from qualifying for the Paris 2024 Paralympics by Valentina Petrillo, who is biologically male, came to light. One of the main figures in European Paralympic athletics, Susana Rodríguez, commented on this controversy: "One thing is inclusion and respect for all people without discrimination, and another, which we face, is losing direction and accepting that sport is unfair from the starting line." (non authorized translation)¹⁹
- **Censorship, stigmatization, and self-censorship of women athletes:** Another issue that has drawn attention in this controversy is the censorship, self-censorship, and stigmatization of women athletes who have expressed their concerns about equity in sports. These women are called transphobic and, in many cases, are silenced by the withdrawal of funding or legal actions against them. In the case of Tiffany Abreu, the previous record holder in the volleyball league pointed out Abreu's physiological advantages, and for that reason, she was labeled as transphobic in various forums.
- **Invisibility of the stance even in judicial settings:** In addition to censorship and self-censorship in public spaces, in events where cases have been presented to judicial authorities, the voices of women who raise concerns about the participation of self-identified transgender individuals in female categories are completely ignored. In the

¹⁷ Schedule 2. National Regulation

¹⁸ Schedule 3. Cases in Latin America.

¹⁹

https://www.elconfidencial.com/deportes/atletismo/2023-07-26/atleta-paralimpica-susana-rodriguez-arremet-e-deportista-trans-quito-plaza_3708135/

case of Miranda Salman, who is biologically male. Many female athletes in the soccer league complained about Salman's participation in the matches. This was the situation that led the league to reject Salman's participation in the matches. However, in the judicial-administrative process that followed for alleged discrimination against Salman, the only ones not called to participate were these women. Thus, the case involved: two male doctors, the league director, and Salman. The voices of women, a fundamental part of the controversy, were completely omitted.

- **Risks to personal integrity, sexual integrity, and privacy of women athletes:** Although there are no cases in Latin America, around the world, one of the issues that has caused controversy is the presence of biologically male individuals in changing rooms, dormitories, and other private spaces that were reserved for women. None of the regulations found, nor the public policies of Latin America on the issue, include safeguards to prevent women athletes from being victims of violence due to the inclusion of male individuals in spaces that are traditionally single-sex spaces and were designed precisely to prevent violence and guarantee privacy.

These challenges undoubtedly jeopardize the rights of women athletes in Latin America, as will be explained next.

2) The impact of including biological men in female sports categories

Below, the reasons why this matter should be addressed by the Honorable Rapporteur as one of violence or potential violence against women, which hinders their development on equal terms in society, will be briefly expressed.

There are three normative premises of international human rights law (IHRL) that should inform the analysis to be undertaken by the Honorable Rapporteur:

- 1) **Sport as a facet of cultural rights:** While IHRL does not explicitly enumerate a right to sport, the ESCR Committee has underscored that access to sporting facilities constitutes an integral aspect of individuals' cultural development and has called for promoting female participation in these spaces²⁰. Additionally, sport has been recognized as a protected category under IHRL in numerous instances, as it serves as a gateway to other rights²¹.
- 2) **The principle of equality and non-discrimination requires the adoption of positive measures to prevent discrimination based on sex:** All IHRL instruments include a clause on equality, which seeks to prevent discriminatory treatment against human beings based on their sex, status, and religion, among others. CEDAW expressed in its Article 1 that "discrimination against women shall mean any distinction, exclusion or restriction made **on the basis of sex**". The Honorable Rapporteur has reaffirmed that IHRL requires the elimination of discrimination against women based on sex²². IHRL has reiterated that this

²⁰ CEDAW. (2004) General Observation No. 25. Párr. 38.

²¹ CEDAW. (2004) General Observation No. 25. Párr. 38.

²²

equality guarantee requires the inclusion of positive measures to equalize access to opportunities for men and women. In practice, this has involved establishing measures to promote access to work, education, and politics by women and girls²³.

- 3) **The obligation to prevent violence against women has led to the creation of single-sex spaces:** Especially in the case of persons deprived of liberty, there has been a consistent inclusion of an international obligation to separate individuals by sex, to protect women and girls from traditional forms of violence against them.²⁴

With these normative premises in mind, the Honorable Rapporteur is proposed to conduct an analysis of the inclusion of biologically male individuals in female sports categories as a potential form of discrimination against women, which poses serious risks to the right to live free from all forms of violence. This is because female categories were created as an affirmative action to promote women's access to sports. Just to give an example, the Olympic Games as we know them today were off-limits to women, and it was not until 1928 that women officially participated in the Amsterdam Games with only a 10% participation rate²⁵. In sports that are not traditionally "feminine," the struggle for women to participate has been monumental, so the inclusion of female categories that allow women to participate on equal terms is a great achievement for the promotion of women's and girls' access in various spheres of life, including sports²⁶.

Therefore, diluting female categories with the possibility of including biologically male individuals compromises the effectiveness of this important measure. As previously mentioned, in Latin American cases alone, significant doubts have been raised about the fairness of competitions, censorship, and the invisibility of athletes with critical stances. This constitutes a significant disincentive for women and girls to practice sports professionally. If women and girls realize that winning is impossible because there is a significant physiological advantage, or that their voice will be systematically silenced, their participation in sports can be severely compromised.

Finally, although the existence of single-sex spaces in international law was not designed for sports contexts, its teleology is to prevent situations of violence in spaces that require the utmost privacy such as bathrooms and changing rooms. Due to the intrinsic relationship of these spaces with sports, eliminating exclusively female spaces can imply serious risks to the sexual, physical integrity, and privacy of women. This is an issue for which safeguards have not been provided in the public policies of States.

3) Requests

Participation in women's categories by individuals who identify as transgender women has sparked extensive debate and led to a diverse range of regulations in sports. These regulations vary from

²³ Schedule 1. IHRL regulation.

²⁴ Schedule 1. IHRL regulation; Input submitted to the Special Rapporteur on Torture. "Single-Sex spaces in Prisons: Womens Rights and the prohibition of Cruel, Inhuman or Degrading Treatment". Signed by: Juana Inés Acosta-López, Ana María Idárraga Martínez, María Carmelina Londoño, Pilar Zambrano, Úrsula Basset, Ignacio de Casas, Gabriela García, David Armando Urtecho, Andrés Felipe López, Carlos Andrés Chinchilla, Cristian Felipe Rojas.

²⁵ Rosa López de D'Amico. Visibilizando la Mujer en el Deporte en Latinoamérica.

²⁶ Rosa López de D'Amico. Visibilizando la Mujer en el Deporte en Latinoamérica.

outright prohibition, as announced by the World Athletics Council in March 2023, to permission with restrictions on factors such as muscle mass and testosterone, as originally stipulated by the IOC in 2016 (a regulation that has since been revised). This issue has significant implications for millions of girls and women, impacting not only elite athletes but also females of all ages who participate in sports. Women have faced formidable challenges in gaining access to all sectors of society, including sports. From the 19th-century ban on female participation in the Olympics to the present day, there has been a relentless struggle by brave women in the realm of sports, a legacy that should not be overlooked.

Therefore, we request the Honorable Rapporteur to:

- 1) Recognize in her report that women's categories represent an affirmative measure ensuring gender equality in sports.
- 2) Highlight the potential risks associated with allowing male individuals to compete in women's sports categories, even when mechanisms are in place to monitor hormonal levels or muscle mass. This may lead to the assessment of women based on their "femininity" determined by hormonal levels or physical characteristics, perpetuating stereotypical views of women in sports.
- 3) Advocate for the establishment of safeguards by States to prevent instances of violence against women if they choose to permit male participation in women's categories.
- 4) Ensure that forms of censorship and stereotyping of women expressing critical perspectives on male participation in women's sports categories are avoided in all circumstances. This measure includes the obligation for women to have their voices heard in judicial or administrative proceedings addressing these issues.