

**Diversity Conference 2021**  
**Protecting and promoting the human rights of intersex and transgender athletes in sport competitions**

20 September 2021

**Recommendations and closing session**  
**Stanislas Frossard, Executive Secretary of EPAS**  
**12.15pm-12.45pm**

**Conclusions**

I would like to begin by thanking all those who have spoken during this morning's diversity conference.

As well as all of you who have followed the conference from around the world. We've had viewings from Africa, to the Middle East to the United States, proving that this topic is of interest to a global audience.

We have heard from high-level representatives at the start of the conference, including the French Minister responsible for Sport, Roxana Maracineanu, and the Council of Europe's Director General of Democracy, Snežana Samardžić-Marković, both of whom have stressed commitment to safeguarding the human rights of intersex and transgender athletes and promoting inclusion and diversity in sport.

In the first Roundtable we learnt about the historical context, the shortcomings of biological definitions, the sport regulations currently in force and the need to recognise gender identity in all its complexity in sport.

And in Roundtable two we heard from international sports bodies, including the IOC and FIFA, the World Players Association, WomenSport International and Human Rights Watch. The focus in that Roundtable was on the balance between ensuring a level playing field and protecting the human rights of athletes, in particular so they are not subjected to invasive medical examinations or worse.

And we have now just heard a number of good practice initiatives from around the world. These are inspiring and I'll come back to some of them later.

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The discussions on human rights and human dignity in sport have recently gained momentum due to high-profile cases involving the exclusion of transgender and intersex athletes from sports competitions. Today we heard from Annet Negesa and the life-changing surgery that she endured in order to continue to compete in women's competitions. Natalie Washington and Chris Mosier have shared with us the perspective of transgender athletes and some of the barriers they have faced but also how they have overcome these and Payoshni Mitra has provided us with an overview of the situation of intersex athletes from Asia and African countries. At the European Court of Human Rights the *Caster Semenya v Switzerland* case is currently being studied and we will of course be paying close attention to the outcome of this case.

I want to just make a quick reference to terminological choices at this juncture. EPAS commissioned a study on the rights of intersex and transgender athletes, prepared in collaboration with Sonja Erikainen and Payoshni Mitra, as well as Hugh Torrance and Louise Englefield from the European Gay and Lesbian Sport Federation (EGLSF) and in consultation with the Council of Europe's SOGI unit. This study will be published in the coming weeks and will be made available on our EPAS conference webpage. Within this study there will be a more detailed reference to terminology. For today's purposes, which were primarily to bring the subject matter to a wider audience and raise awareness, we chose to use the expressions "intersex" and "transgender" throughout, but the study will provide greater contextualisation in terms of choice of vocabulary and definitions. I have noted today how sensitive the

terminology can be and that it is of utmost importance to avoid language that dehumanises the athletes concerned. The study will also provide an overview of recent regulations and guidelines and the impact they have had on these athletes.

Indeed, regulations from sporting bodies are under increased scrutiny, and the need to strike the right balance between the relevant human rights, ethical, medical, scientific and legal concerns is vital. For this reason, we welcome the feedback from the IOC and FIFA that they are revising guidelines and planning new developments to ensure that human rights and fair competition are balanced carefully. We look forward to seeing the publication of the new guidelines and regulations from both of those organisations in due course.

The most pertinent overarching human rights protections pertaining to transgender athletes and intersex athletes in relation to eligibility policies in sports are the right to respect for private life, and prohibition of torture, inhuman or degrading treatment proscribed by the United Nations Universal Declaration of Human Rights (UDHR) and the European Convention on Human Rights (ECHR). The Council of Europe and affiliated governing bodies have adopted additional recommendations designed to combat human rights violations concerning gender identity and variations of sex characteristics, which extend these protections.

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Against this background, and in light of the study I would like to present the follow-up that will be given to this conference and to outline some recommendations that will be further discussed as possible avenues to guarantee the right for sport to all, a key principle enshrined in the European Sports Charter, which is currently under revision.

### **Where do we go from here?**

First of all, the “diversity report” will be shared with the **EPAS bodies** which will be invited to:

- Release the EPAS-commissioned study on “Human rights of transgender and intersex athletes in sport” and ensure its dissemination.

- Explore and identify an appropriate mechanism to keep a focus on this area and to carry on discussions about transgender and intersex athletes post conference in a sustained way.

This follow-up should be achieved with enhanced inter-agency work and networking within European institutions and with other stakeholders (as we did in today's conference):

- projects working in this area;
  - ILGA-Europe (European region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association), OII (Organization Intersex International), TGEU (Transgender Europe), the SOGI Unit and EGLSF (The European Gay and Lesbian Sport Federation) to explore ways of benchmarking member states' performance and progress in relation to LGBTI / SOGIEISC issues in sport to specifically include transgender and intersex athletes;
  - transgender and intersex athletes within sport. This includes but is not limited to the diversity within boards, wider governance structures and decision-making structures within sport;
- Encourage, promote and support the development of guidance or good practice in centring the voices and experiences of transgender and intersex athletes within the development of sports policy;
  - Make recommendation as to how states, sports federations and agencies might promote the inclusion of transgender and intersex people in sporting activities, paying particular attention to those further marginalised as a result of their race, ethnicity or other minority characteristics.

Among these recommendations, those to **public authorities** could include:

- Acknowledging that human rights are universal, inalienable, and indivisible – also in the field of sport. Public authorities must commit themselves to implementing internationally recognised human rights norms and standards regardless of the person's gender or sex characteristics.

- Ensuring the protection of athletes' rights to freedom from discrimination, harassment, and inhuman and degrading treatment, and the right to private life and physical integrity encompassing freedom from violence and abuse.
- Ensuring that national sports federations and agencies within their jurisdiction are held accountable for any and all breaches of human rights, and that transgender and intersex athletes have access to full legal support and protection.
- Monitoring the proportionality and the rationale behind sex category eligibility regulations, as they clearly discriminate against individuals on the grounds of gender identity and sex characteristics by imposing restrictive and harmful eligibility conditions, or by altogether excluding individuals, due to their gender identity or sex characteristics.
- Outlawing the enforcement of regulations that compel or pressure athletes into undergoing unnecessary medical interventions as a precondition for participating in sport and ensure that no state or non-state body under their jurisdiction allows or encourages this.
- Ensuring that national sports federations and agencies are held accountable for any and all breaches of human rights, and that transgender and intersex athletes have access to full legal support and protection.
- Understanding performance pathways for transgender and intersex athletes to progress seamlessly from national to international competitions and encourage national sports federations to ensure the education and adequate preparation of athletes in this regard.

Recommendations to **International sports federations** could include that they:

- Adopt a duty of care towards all athletes, including transgender and intersex athletes competing in their sport. This duty of care should prioritise minimising the harm of athletes in their respective sports.
- Ensure that medical interventions only take place for medical purposes, which are freely consented to, and that medical investigations are not initiated on the basis of mere suspicion or undertaken without free and informed consent.

- Provide ongoing support and aftercare for transgender and intersex athletes and commit to reviewing the provisions currently in place in this respect.
- Reverse the burden of proof of “any unfair advantage” as a reason for exclusion in sport, which has historically been the case for some transgender and intersex athletes. This burden, including financial support, should be on the relevant international federation rather than on the athlete, and internal processes should be revised to reflect this.
- Ensure that every person is not only able to access the world of sporting competitions, be they elite or grassroots, but also be adequately represented within this space. (Diverse voices in governance, decision-making and sporting structures is a key enabler for this).
- Offer training and education throughout their respective sports to ensure that athletes know their rights, and clearly understand the eligibility policies and their implications. Education should be delivered right across the sport as athletes, volunteers and officials are also future policy makers and decision makers. Education will also clarify the sport’s understanding of key concepts such as discrimination and fairness.
- Recognise the impact that eligibility regulations and the way they are implemented can have for athletes as well as for culture, ideas and norms within a sport, and particularly how this can give rise to discrimination. IFs are encouraged to establish action plans to build a culture of trust rather than a culture of suspicion and ensure that processes and actions take culture into account.
- Review their policy-making procedures and commit to adopting procedures in an as democratic and transparent way as possible, including a consultation process involving:
  - impacted athletes and groups;
  - groups who represent transgender and intersex athletes’ interests;
  - civil society groups and non-governmental organisations led by and for transgender and intersex people.

Understanding how athletes and groups are impacted is an ongoing process that should continue through policy implementation.

- Take into account the different, limited levels of human rights provisions in the countries around the globe. Athletes reaching international competition via states with lower levels of human rights provisions may have less support to meet the criteria within eligibility policies and frameworks. International federations should provide support for athletes in those circumstances.

We will also invite the **European Gay and Lesbian Sports Federation**, which was extremely committed to the research and preparation of this conference, to

- Establish a formal European network to provide opportunities for transgender and intersex athletes to come together at a pan-European level;
- Extend its education and awareness-raising activities to ensure that LGBTI community members have a greater knowledge and understanding of the experiences of transgender and intersex athletes.

Last but not least, we will keep in touch with **the IOC** to follow-up on this question. The IOC has been instrumental over the last few years in promoting gender equality, good governance, the fight against harassment and abuse and upholding human rights in international sport. The IOC should be encouraged to:

- Take a further human-rights focus in any future guidance with regard to transgender and intersex athletes, ensuring clear principles of protecting rights, minimising harm, and ensuring coherence with international human rights standards;
- With a high-level guidance, clarify examples of actions that international federations and sports bodies could take in the short, medium and long term to support the participation of transgender and intersex athletes in sporting competitions;
- Take responsibility for educating athletes about their rights, and for educating National Olympic Committee policy implementers on all aspects of the participation of transgender and intersex athletes in sports competitions;
- Collaborate with LGBTI organisations to ensure that LGBTI people are aware of sport-related issues concerning transgender and intersex athletes;
- Further promote existing recommendations on combating harassment and abuse, which include addressing homophobia and transphobia, gender harassment, sexual

abuse, hazing and by standing. The International Olympic Committee should be encouraged to expand this work to include protecting transgender and intersex athletes who face harassment and abuse sanctioned by sport policies that lead to scrutiny and humiliation.

These proposals stemming from today's conference will be published on the EPAS conference webpage in the near future, alongside the presentations we have seen and a recording of the day's conference as well as the diversity study I referred to earlier.

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### **Closing remarks**

I would like to take this opportunity to thank all of those who have been involved in the planning and organisation of this conference, from the EPAS Governing Board, which first suggested we hold a conference on this topic, to the Consultative Committee, which has provided strong support, and also experts.

I'd like to warmly thank the technical staff and interpreters who have worked so hard today for their attentive support.

I'd also like to thank all of the experts who have provided vital guidance, in particular Hugh Torrance (EGLSF and a member of our EPAS Consultative Committee), Payoshni Mitra, who has really helped with the planning and choice of speakers as well as these final recommendations, Sonja Erikainen and Louise Englefield, who were all involved in the drafting of the soon to be released study on this subject, and the SOGI Unit, in particular Eleni Tsetsekou and Emma Smith.

And finally the EPAS team for their hard work in bringing this diversity conference together.

This is not the end of the discussions but rather the start of new work in this vital area.

Have a nice afternoon.