



**LUND**  
UNIVERSITY

# Rethinking Human Rights for Transgender Athletes

*A Policy Analysis of Transgender Eligibility  
Regulations in Competitive Sport*

Lina von Petersdorff

Division of Human Rights Studies

Department of History

Course Code: MRSM15

Semester: Spring 2024

Supervisor: Lena Halldenius

Words: 21.776



# Abstract

The number of openly outed trans individuals in society and in sport is increasing and can be expected to keep growing. The sporting domain is singled out as special in terms of trans rights, as it is solely based on physical characteristics. Trans people in sport have become a subject of heated debates. However, the field of human rights has so far neglected the topic.

Analysing 16 transgender eligibility policies of different international sports federations, this project makes the case for a human rights-based approach towards participation in competitive sports in accordance with a person's gender identity. It does so by focussing on specific human rights and utilising feminist theories. The analysis identifies that the policies frame transgender athletes as a "problem". The use of language and, in particular concepts, play a crucial role in the policies and in this project. Therefore, the argument is made for redefining the concepts of sex and gender in sport. Overall, the project finds the right to non-discrimination, the right to work and the right to sport to be relevant in this area. It argues for a rethinking of human rights to change the strict binary categorisation in sport based on sex.

**Keywords:** Transgender athletes, sports policies, policy analysis, human rights, trans rights, feminist theory, international federations, eligibility regulations.

# Acknowledgements

I would like to thank my supervisor, Lena Halldenius. Without her guidance and knowledge of the human rights field, this project would not have been possible. This thesis benefited greatly from the discussions with Lena and my good friend and study partner Nina Peier, whom I want to thank for working so closely with me and listening to all my thoughts. I would also like to acknowledge my internship supervisor at Aarhus University, Jörg Krieger, to whom I owe my interest in International Sports Federations in the first place. I want to thank my family and friends who supported me throughout this thesis and the master's degree, especially Berit, Leo and Christiaan for their valuable feedback, discussions, and general guidance. Lastly, I would like to acknowledge my grandmother, without whom I would not have made it to writing a thesis in the first place.

# Terms and Abbreviations

CAS: Court of Arbitration for Sport

CEDAW: Convention on the Elimination of All Forms of Discrimination against Women

Cisgender: A person whose gender assigned at birth aligns with their gender identity.

ECHR: European Convention on Human Rights

ECtHR: European Court of Human Rights

FIVB: Fédération Internationale de Volleyball

ICCPR: International Covenant on Civil and Political Rights

ICESCR: International Covenant on Economic, Social and Cultural Rights

IF: International Federation

IFSC: International Federation of Sport Climbing

IHRL: International Human Rights Law

IIHF: International Ice Hockey Federation

ILO: International Labour Organization

IOC: International Olympic Committee

IPC: International Paralympic Committee

ISA: International Surfing Association

ISSF: International Shooting Sport Federation

ISU: International Skating Union

ITF: International Tennis Federation

IWF: International Weightlifting Federation

LGBTQIA+: Lesbian, Gay, Bisexual, Trans, Queer, Intersexual, Asexual and everyone who belongs to the queer community but does not identify with any of these terms.

SGB: Sports Governing Body

Transgender: A person whose gender identity does not align with their gender assigned at birth (e.g. transwoman, transman, non-binary person).

UCI: Union Cycliste International

UDHR: Universal Declaration of Human Rights

UN: United Nations

UNESCO: United Nations Educational, Scientific and Cultural Organization

UNGPs: United Nations Guiding Principles on Business and Human Rights

UNHRC: United Nations Human Rights Council

UWW: United World Wrestling

WPR: What's the problem represented to be?

# Content

1	Introduction .....	1
2	Context .....	3
2.1	Terms and Concepts.....	3
2.2	Gender in Sport.....	4
2.2.1	Gender Categorisation .....	5
2.2.2	Eligibility Regulations.....	6
2.2.3	The History of Sex Testing and Gender Verification.....	7
2.3	Trans People in Sport.....	8
3	Literature Review .....	9
3.1	Gender Eligibility Policies in Sport .....	9
3.2	Human Rights and Sport.....	10
3.3	Arguments Against Transwomen Athletes Competing in the Women’s Category.....	12
4	Feminist Perspectives: Sex and Gender as a Social Construction .....	15
5	Human Rights Framework .....	18
5.1	Gender and Non-Discrimination Rights .....	19
5.2	The Right to Work and Business Responsibilities .....	21
5.3	The Applicability of Human Rights Obligations in Sport.....	22
6	Method.....	25
6.1	Data.....	25
6.2	Conceptual Framework.....	27
6.3	The WPR Approach .....	28
6.4	Research Design .....	31
6.5	Ethical Concerns and Limitations.....	32
7	Analysis.....	33
7.1	Context of the Policies .....	33
7.2	What’s the “Problem” Represented to be?.....	34
7.3	Presuppositions and Assumptions.....	35
7.4	Origin of the Problem Representation .....	39
7.5	Silences and Alternatives .....	41
7.6	Effects of the Problem Representation.....	44
7.6.1	Discursive Effects.....	44
7.6.2	Subjectification Effects.....	45
7.6.3	Lived Effects .....	46
7.7	Production and Replacing of the Problem Representation .....	47

7.8	Comparison and Results .....	49
8	Discussion: A Human Rights-Based Approach to Gender Eligibility in Sport .....	50
9	Conclusion.....	55
10	References .....	57

# 1 Introduction

In her work on transgender equality rights, Catharine MacKinnon writes: ‘Over the last 50 years, humans have changed the weather without even trying, while male dominance, despite massive effort, has barely budged.’<sup>1</sup> Male supremacy is the reason for the hierarchical binary gender system in sport today. This affects trans people, people not fitting Western binary gender stereotypes and women wanting to compete and participate in sport. Women are mainly affected by being framed as weaker and in need of protection, as well as by receiving less funding<sup>2</sup>, while trans and other people not fitting the system, face even more discrimination. They are scrutinised under the public eye and prompted a vast amount of media coverage and discussions in the last years.<sup>3</sup>

This study is motivated by the fact that the number of trans individuals in society and in sport is increasing and can be expected to keep growing. The sporting domain is singled out as special in terms of trans rights because it is based on physical characteristics. Trans people in sport are a highly contested topic, which is discussed by scholars from various disciplines like sports science, sociology and philosophy.<sup>4</sup> Nevertheless, I identified a lack of human rights perspectives on this topic. Additionally, numerous new transgender eligibility regulations were adopted in the last six years. Their content, particularly regarding language and concepts, has not been part of the debate so far. The purpose of this thesis is to argue for a human rights-based approach to gender eligibility in sport. It does so by utilising feminist theories to analyse 16 transgender eligibility policies by International Sport Federations and discussing concepts and their effects. I use a human rights framework, which I developed from relevant internationally recognised rights, to show how human rights could be interpreted as violated in these eligibility regulations. It must be

---

<sup>1</sup> C. A. MacKinnon, 'A Feminist Defense of Transgender Sex Equality Rights', *Yale Journal of Law and Feminism*, vol. 34, no. 2, 2023, pp. 90-91.

<sup>2</sup> K. Heckemeyer, *Leistungsklassen und Geschlechtertests: Die heteronormative Logik des Sports*, Bielefeld, Germany, transcript Verlag, 2018, pp. 97-99.

<sup>3</sup> See f. e. discussions and reports on the cases of Caster Semenya, Lia Thomas and Laurel Hubbard.

<sup>4</sup> See f. e. A. V. Christiansen, 'The Negligence of Biological Reality', *Journal of Olympic Studies*, vol. 4, no. 2, 2023; A. D. Greey and H. J. Lenskyj, *Justice for Trans Athletes: Challenges and Struggles*, Bingley, UK, Emerald Publishing, 2022; A. Bianchi, 'Transgender women in sport', *Journal of the Philosophy of Sport*, vol. 44, no. 2, 2017; P. R. Sailors, 'Transgender and Intersex Athletes and the Women's Category in Sport', *Sport, Ethics and Philosophy*, vol. 14, no. 4, 2020.



noted that the legal interpretation of international human rights law (IHRL) is contested and that rights are often not enforced. However, this thesis aims to encourage rethinking and expanding human rights to an area they were not initially created for.

Additionally, I am aware of the critiques by scholars publishing in this field when so-called “biological realities” – and by that I mean scientific studies on performances - are disregarded. However, the purpose of this thesis is not to refute or prove studies on sporting performances, but to make the case for a human rights-based approach towards participation in sport competitions in accordance with a person’s gender identity.

The following questions motivate this work:

1. What are the main arguments against transwomen athletes’ participation in the women’s category<sup>5</sup> and how can they be countered?
2. What are key characteristics, differences and similarities in transgender eligibility policies of different International Sports Federations? What role does language play?
3. (How) are human rights violated in transgender eligibility policies of different International Sports Federations and what are strategies to protect them? Are there other effects?

To answer these research questions, I first introduce the context of this topic and then discuss existing literature about gender eligibility policies and human rights in sport. Furthermore, I explain the main eight arguments opposing transwomen’s eligibility in the women’s category I identified in the literature. In the fourth chapter, I consider feminist theories on sex and gender. Then, I introduce the human rights framework I created. In chapter six, I explain the data and methods I use for my analysis and outline the research design. The analysis, which follows the structure provided by the method, is of sociological nature and mainly focuses on the concepts of sex and gender, as I identified them to be a key aspect. In the discussion, I connect the previous chapters by showing how human

---

<sup>5</sup> I use the terms women’s/men’s category to refer to the binary classification in the sporting system. Although I do not believe that these terms include every athlete, this is how the categories are best described, as they are structured specifically for those genders, while others are having problems fitting in. I believe that these terms still fit better than female/male category, which are the terms used by many of the IFs policies’ in my analysis and in some of the literature. Whenever I describe/analyse their content, I will use the original terms from the policies/literature.

rights can be interpreted as being violated within the policies and arguing for a human rights-based approach to gender eligibility regulations.

It must be noted that the whole thesis focuses on competitive sport because my data only applies to international competitions. Nevertheless, I argue that competitive sport sets an important example for practices in recreational and school sports and famous athletes serve as role-models for children and adults. Additionally, some national associations already adopted the practices that IFs established. If a trans youth sees how trans adults are treated within the sport system, they might be hesitant to join a sport themselves. The huge impact sport and role-models have, should not be underestimated.

## 2 Context

In the following chapter, I introduce important terms and give an overview of the relevant context. I present the role of gender in sport generally, describe categorisation and briefly outline historical and current regulations. I explain how these were/are enforced through sex testing/gender verification and finally discuss how trans participation is debated.

### 2.1 Terms and Concepts

Using sensitive language that takes vulnerabilities into account poses a challenge to my work, as the use of terms such as sex and gender varies in academic work and in the policies I analyse. I therefore decided to use these terms the way they are employed in the literature I refer to in each chapter. I use older concepts to illustrate what they historically intended to mean, but I highlight these cases and move on to current terminology in later parts. During the analysis, I give a descriptive in-depth account of how the terms and concepts are utilised in the policies. In the last part of my thesis, I use a normative approach to define how the concepts should be used to be most beneficial for trans athletes' rights. For that, I employ Haslanger's method of a descriptive analysis of concepts followed by her analytical approach.<sup>6</sup> I elaborate on this in the methods chapter.

---

<sup>6</sup> S. Haslanger, 'Gender and Race: (What) Are They? (What) Do We Want Them To Be?', *NOÛS*, vol. 34, no. 1, 2000.

## 2.2 Gender in Sport

Gender always played a major role in sport. Women had different roles within sporting competitions starting in the Ancient Olympics. Especially the founder of the modern Olympics, Pierre de Coubertin, saw women as accessories to men's sport with the task of crowning the winners but nothing else.<sup>7</sup> Throughout the 19<sup>th</sup> and beginning of the 20<sup>th</sup> century, women were excluded from many sports by arguing that they were physically incapable and would harm their reproductive capabilities. This exclusion still hampers gender equality within sports today.<sup>8</sup> Whenever women wanted to participate in an event, they had to prove their physical competence. Therefore, some sports only added a women's category to the Olympic programme in the last 20 years or not at all (e.g. Nordic Combined).<sup>9</sup> Sport remains a masculine domain, which leads to 'an ambivalent relationship between sport and femininity or sport and womanhood. Where men affirm gender affiliation, women transgress gender boundaries.'<sup>10</sup><sup>11</sup> When women in sport are not labelled as too masculine, they are often subjected to sexual objectification.<sup>12</sup> The gender pay gap in sport is even bigger than in other areas, which is justified with men's sport being more popular.<sup>13</sup> Women are underrepresented in sports leadership positions, as coaches and in sports research. Furthermore, it has been argued that studying women's bodies is more difficult because of their menstrual cycle leading to a medical gender bias.<sup>14</sup> These remarks indicate that women's sport is still seen as inferior to men's, which may influence how the women's category is discussed.

---

<sup>7</sup> L. Parks Pieper and J. Krieger, *Women in the Olympics*, Champaign, IL, Common Ground Research Networks, 2023, p. 1.

<sup>8</sup> L. Parks Pieper and J. Krieger, *Women in the Olympics*, p. 6.

<sup>9</sup> L. Parks Pieper and J. Krieger, *Women in the Olympics*, p. 107; For a detailed history of women's sport see L. Parks Pieper and J. Krieger, *Women in the Olympics*.

<sup>10</sup> K. Heckemeyer, *Leistungsklassen und Geschlechtertests*, p. 16.

<sup>11</sup> All quotes from this source were translated from German by the author.

<sup>12</sup> C. R. Torres, F. J. Lopez Frias and M. J. M. Patiño, 'Beyond Physiology: Embodied Experience, Embodied Advantage, and the Inclusion of Transgender Athletes in Competitive Sport', *Sport, Ethics and Philosophy*, vol. 16, no. 1, 2022, p. 38.

<sup>13</sup> K. Heckemeyer, *Leistungsklassen und Geschlechtertests*, p. 98.

<sup>14</sup> E. Anderson, 'Patriarchy and Its Discontents', in G. Molnár and R. Bullingham (eds.), *The Routledge Handbook of Gender Politics in Sport and Physical Activity*, Abingdon, UK & New York, Routledge, 2022, pp. 89-90.

## 2.2.1 Gender Categorisation

Alongside age, gender is the central performance category in competitive and recreational sport. It is a presumptive category, as the separation is not based on the performance of individual athletes, but on normalised assumptions about the gendered body.<sup>15</sup> Gender categorisation significantly structures the sporting system, which is why the characteristics and reasons for its establishment are introduced here. The sport system relies on a high degree of formalisation to create equality between competitors to end up with comparable results.<sup>16</sup> As a result, different performance categories (e.g. age, weight, gender) for different sports exist. It is mostly undisputed that gender segregation in sport is necessary to ensure female participation and success.<sup>17</sup> However, there are various problems with binary gender categories, as Martínková describes:

It is important to emphasize that having categories always creates problems. The first set of problems arises from the fact that given the richness and multi-faceted nature of our empirical world, once there are established categories, there will always be borderline cases that do not fit easily.<sup>18</sup>

Categorising by gender automatically suggests that there is a direct link between the gender ascribed to a person and their physical performance. A binary conception of gender – that has long been proven inaccurate – is represented as the norm and everything else is perceived as an “exception”.<sup>19</sup> People considered not fitting either category or those wanting to change categories/compete in the women’s category face many hurdles or possibly exclusion, as I will show in the analysis. Participants in the women’s category still have to fear public scrutiny and negative media coverage regarding their appearance if they do not match the Western ideal of a female athlete.<sup>20</sup> The binary gender categorisation in sport reproduces heterosexual ideals and racist views of Black women’s bodies and the

---

<sup>15</sup> M. Werkmann, 'Geschlecht als Differenzierungskategorie (in Führungspositionen) des Sports', in A. Knaut and J. Heidler (eds.), *Spitzenfrauen: Zur Relevanz von Geschlecht in Politik, Wirtschaft, Wissenschaft und Sport*, Wiesbaden, Germany, Springer Fachmedien, 2017, p. 68.

<sup>16</sup> K. Heckemeyer, *Leistungsklassen und Geschlechtertests*, p. 62.

<sup>17</sup> P. R. Sailors and C. Weaving, 'Sex Verification and Protected Categories in Sport: Binary or Bust?', in G. Molnár and R. Bullingham (eds.), *The Routledge Handbook of Gender Politics in Sport and Physical Activity*, Abingdon, UK & New York, Routledge, 2022, p. 31.

<sup>18</sup> I. Martínková, 'Open Categories in Sport: One Way to Decrease Discrimination', *Sport, Ethics and Philosophy*, vol. 14, no. 4, 2020, p. 471.

<sup>19</sup> K. Heckemeyer, *Leistungsklassen und Geschlechtertests*, pp. 71-72.

<sup>20</sup> K. Heckemeyer, *Leistungsklassen und Geschlechtertests*, p. 88.

idea of binary genders “by nature”. This idea has existed within society for a long time but is slowly being abandoned. In sport, however, this concept is still way more prevalent due to its physical nature.<sup>21</sup> Sport is a place where traditional gender stereotypes are reproduced because attention constantly focuses on gender-specific differences. The binary gender system in sport thereby reproduces hierarchies between the two categories, as well as people who fit the existing system and those who do not. This is manifested in the different requirements sports are setting (e.g. throwing weights, decathlon vs heptathlon, softball vs baseball) for the categories.<sup>22</sup>

The binary categorisation in sport has been both criticised and defended in the recent past and some people have come up with alternatives (e.g. smaller or open categories, allowing genetic enhancement)<sup>23</sup>, but it seems unlikely that the system will change soon. The fact that many IFs recently developed (new) eligibility regulations for participation of transgender athletes and athletes with “Differences of Sex Development” (DSD)<sup>24</sup> proves this hypothesis.

### 2.2.2 Eligibility Regulations

The first regulations for trans athletes were introduced by the International Olympic Committee (IOC) in 2003. The Stockholm Consensus required trans athletes who transitioned after puberty to fulfil the following criteria to receive eligibility: undergo surgical anatomical changes; obtain legal recognition of the assigned sex and administer hormonal therapy.<sup>25</sup> According to Parks Pieper and Krieger, ‘the IOC claimed it sought to be inclusive’ but ‘the Stockholm Consensus essentially barred trans athletes. No out trans person competed at the Olympic under the guidelines.’<sup>26</sup> In 2015, the IOC adopted a new policy, the IOC Consensus Meeting on Sex Reassignment and Hyperandrogenism. This regulation recognised that surgical anatomical changes are not necessary for participation and

---

<sup>21</sup> P. R. Sailors and C. Weaving, 'Sex Verification and Protected Categories', p. 32.

<sup>22</sup> K. Heckemeyer, *Leistungsklassen und Geschlechtertests*, pp. 98-100.

<sup>23</sup> S. Camporesi and M. Hämmäläinen, 'The construction of categories in sport: Unfair advantages, equality of opportunity and strict attainability', *European journal of sport science*, vol. 21, no. 11, 2021, p. 1496.

<sup>24</sup> The term “Differences of Sex Development” is an umbrella term to describe different anatomical conditions that deviate from what has been established as the norm. For lack of alternatives and because this term is used in the official regulations, I am using it too.

<sup>25</sup> International Olympic Committee, *Statement of the Stockholm consensus on sex reassignment in sports*, 12 November 2003.

<sup>26</sup> L. Parks Pieper and J. Krieger, *Women in the Olympics*, p. 125.

focused on self-declaration of gender identity and a testosterone level ‘below 10 nmol/L for at least 12 months prior to her first competition’<sup>27</sup> for the women’s category.

The current IOC framework was released in 2021 and supposedly focuses on inclusion, fairness and non-discrimination. The IOC claims it is not their position to issue regulations that define eligibility criteria for all sports due to the different aspects relevant in each sport. It therefore transferred the responsibility for setting rules to IFs but mentions their framework offering an approach.<sup>28</sup> My analysis shows that most federations do not follow this framework when it comes to inclusion and non-discrimination and rather enforce more restrictive practices (see chapter 7.8 in this thesis). After the new framework was introduced, many IFs came up with their own rules, which is why 12 of the 16 policies I analyse are from 2022 or 2023.

### 2.2.3 The History of Sex Testing and Gender Verification

The practice of sex testing<sup>29</sup> was first introduced in the 1930s and 1940s by World Athletics<sup>30</sup> which sporadically checked women who were singled out as “suspicious”.<sup>31</sup> Starting in 1946, World Athletics required a “certificate of femininity” from everyone who wanted to compete in the women’s category.<sup>32</sup> At the European Athletic Championships in 1966, mandatory tests were introduced for all women: ‘Before competitions, female participants had to strip down in front of a group of physicians.’<sup>33</sup> This practice - termed “nude parade” by athletes - was replaced by the Barr body test in 1967 due to allegations of discrimination. The new test determined sex by the chromosomal make-up of a person and assumed that people split neatly into XX and XY chromosome categories, which lead

---

<sup>27</sup> International Olympic Committee, *IOC Consensus Meeting on Sex Reassignment and Hyperandrogenism*, November 2015, p. 2.

<sup>28</sup> International Olympic Committee, *IOC Framework on Fairness, Inclusion and Non-Discrimination on the Basis of Gender Identity and Sex Variations*, 16 November 2021, p. 1.

<sup>29</sup> The term “sex testing” is used deliberately in the historical context since testing the sex of a person is what international sports federations claimed to do. Personally, I believe that sex cannot be tested since its criteria (like specific testosterone thresholds) are a social construction and not an objective truth. I elaborate on this in the theory chapter. Otherwise, I am using the term “gender verification”, which is used to describe these procedures today.

<sup>30</sup> Until 2019 the international track and field federation was called ‘International Association of Athletics Federations’ (IAAF).

<sup>31</sup> L. Parks Pieper and J. Krieger, *Women in the Olympics*, p. 84

<sup>32</sup> M. Müller, ‘Constructing Gender Incommensurability in Competitive Sport: Sex/Gender Testing and the New Regulations on Female Hyperandrogenism’, *Human Studies*, vol. 39, no. 3, 2016, p. 416.

<sup>33</sup> M. Müller, ‘Constructing Gender Incommensurability’, p. 417.

to bans of several athletes over time. The IOC implemented this testing method in 1968.<sup>34</sup> The original intention of these tests was never fulfilled, as no man who had deliberately cheated by disguising as a woman was exposed. Instead, people who had a chromosomal make-up deviating from the norm were pathologized, discriminated against and criminalised.<sup>35</sup> In 1991, the IOC replaced the Barr body test with a polymerase test.<sup>36</sup> In 1999, the IOC abolished sex tests completely<sup>37</sup>, which World Athletics had already done in 1992 due to protests from the medical community.<sup>38</sup> For a long period, these sports organisations attributed the failure of sex determination procedures to the lack of expertise in medicine and biology rather than facing the fact that sex and gender cannot be pressed into two categories.<sup>39</sup>

As of today, World Athletics, which has always been the IF pushing for testing and strict regulations, limits gender verification<sup>40</sup> procedures to “Relevant Athletes”. As specified in their two regulations for the female classification, “Relevant Athletes” are transgender athletes<sup>41</sup> or “Athletes with Differences of Sex Development”<sup>42</sup>. They fall under a testing regime if they either identify as relevant themselves, are singled out by their member federation or are detected through doping tests.<sup>43</sup> With these regulations, World Athletics continues the tradition of gender verification that has existed since the 1930s. Other IFs adopted this approach more recently, which I will show in my analysis.

## 2.3 Trans People in Sport

As indicated in the previous chapters, transgender athletes present a perceived threat to the current binary categorisation in sport. This applies to trans people identifying as non-

---

<sup>34</sup> L. Parks Pieper and J. Krieger, *Women in the Olympics*, pp. 84-85.

<sup>35</sup> D. Krämer, *Intersexualität im Sport: Mediale und medizinische Körperpolitiken*, Bielefeld, Germany, transcript Verlag, 2020, p. 202.

<sup>36</sup> K. Henne, 'The “Science” of Fair Play in Sport: Gender and the Politics of Testing', *Signs: Journal of Women in Culture and Society*, vol. 39, no. 3, 2014, pp. 800-802.

<sup>37</sup> K. Heckemeyer, *Leistungsklassen und Geschlechtertests*, p. 70.

<sup>38</sup> L. P. Pieper, 'Sex Testing and the Maintenance of Western Femininity in International Sport', *The International Journal of the History of Sport*, vol. 31, no. 13, 2014, p. 1558.

<sup>39</sup> K. Heckemeyer, *Leistungsklassen und Geschlechtertests*, pp. 70-71.

<sup>40</sup> “Gender verification” is the term that is used now as it is more accurate to what is being done than “sex testing” and sports bodies realised that “sex” cannot be tested.

<sup>41</sup> World Athletics, *Eligibility Regulations for Transgender Athletes*, 31 March 2023.

<sup>42</sup> World Athletics, *Eligibility Regulations for the Female Classification (Athletes with Differences of Sex Development)*, 31 March 2023.

<sup>43</sup> World Athletics, *Eligibility Regulations (DSD)*, p. 8.

binary, but also those categorising themselves as women or men. Although all these groups face challenges, the challenges are of different nature. If transmen want to compete in the men's category, they usually have no problems to participate in the first place. Nevertheless, they can face discrimination, stigmatisation, problems in changing rooms, exclusion in team sports and physical inferiority compared to their cis counterparts. Transwomen have to overcome higher hurdles if they want to compete in the women's category, as they are often assumed to have a physical advantage due to their previous exposure to testosterone and bone structure.<sup>44</sup> As I show later, eligibility rules differ greatly. Non-binary people are often left out of the equation completely, since they are expected to compete in the category of their gender assigned at birth. There are various examples of athletes doing that (e.g. Nikki Hiltz), but an increasing number of people who underwent a hormonal transition and identify as non-binary (e.g. Cal Calamia) are demanding inclusion in a different category than the two existing ones. Concludingly, any transperson wanting to participate in sports is in danger of encountering eligibility problems, stigmatisation and discrimination on and off the field.

## 3 Literature Review

The purpose of this chapter is to provide a short overview of existing literature on gender eligibility policies in sport and human rights and sport. Furthermore, I present the most common arguments against transwomen's participation in the women's category to counter them after my analysis.

### 3.1 Gender Eligibility Policies in Sport

The literature on gender eligibility policies in sport is minimal. This is probably because the topic only recently started being of concern, with most policies being adopted between 2018 and 2023. Joanna Harper analyses and compares policies of three Sports Governing Bodies (SGBs): the IOC, World Athletics and World Rugby.<sup>45</sup> She establishes that the

---

<sup>44</sup> A. V. Christiansen, 'The Negligence of Biological Reality', pp. 25-26.

<sup>45</sup> J. Harper, 'Transgender Athletes and International Sports Policy', *Law and Contemporary Problems*, vol. 85, no. 1, 2022.



IOC Framework (2021) can be categorised as inclusive, World Rugby’s policy (2021) as exclusive and World Athletics’ policy (2019) as inclusive but restrictive. According to her, this difference might seem surprising, but is not when one looks at the ‘divisiveness of the topic, the lack of definitive data, the differing nature of the sports involved, and the motivations of the decision-makers in each sport’.<sup>46</sup> She only analyses one of the policies I have in my sample, since I am analysing the recent World Athletics’ policy (2023), which is even more restrictive. Jones et al. review 31 different policies, but most of them are national policies from the UK, USA and Australia. They focus on the participation of transgender people in competitive sports and identify these policies as a primary barrier.<sup>47</sup> There is more literature regarding the three IOC Guidelines (2003, 2015 and 2021), as they used to govern gender eligibility issues in sport. Posbergh critically examines and compares all three of them to find that they ‘are increasingly prioritizing sociocultural elements, namely around values of inclusion, recognition of gender diversity, and human rights.’<sup>48</sup> Martowicz et al. focus on analysing the 2021 Framework and conclude that ‘IFs should strive for policies that value and advance inclusion’ and ‘are fair to all athletes by recognising their diversity and not relying on biased assumptions’.<sup>49</sup> It becomes clear that there is a gap in (recent) literature on IFs transgender eligibility policies. I attempt to reduce this gap by analysing a comparably great number of current policies.

## 3.2 Human Rights and Sport

There are numerous publications on human rights and sport as a topic of increasing interest in recent years. Scholars published on issues related to hosting major sports events, questions on banning states that violate human rights, discussions about certain countries hosting events and human rights violations within sport. Kidd and Donnelly research the development of human rights in sport (e.g. women’s rights) and note that scholars ‘committed to advancing opportunities for humane sport and physical activity ought to resort

---

<sup>46</sup> J. Harper, 'Transgender Athletes and International Sports Policy', pp. 161-163.

<sup>47</sup> B. A. Jones et al., 'Sport and Transgender People: A Systematic Review of the Literature Relating to Sport Participation and Competitive Sport Policies', *Sports medicine*, vol. 47, no. 4, 2017.

<sup>48</sup> A. Posbergh, *Fairness for whom? A critical examination into the gendered governance of international sporting policy*, University of Maryland, Final report for The IOC Olympic Studies Centre, 2022, p. 32.

<sup>49</sup> M. Martowicz et al., 'Position statement: IOC framework on fairness, inclusion and non-discrimination on the basis of gender identity and sex variations', *British journal of sports medicine*, vol. 57, no. 1, 2023, p. 31.

more systematically to the strategy of establishing, publicizing and drawing upon the charters, declarations and covenants'<sup>50</sup>, which is what I do in my thesis.

Another strand of literature focuses on international institutions' role around sport related human rights concerns. Gonzalez addresses the question of UN monitoring bodies' involvement in the sporting domain by establishing a right to sport as part of the right to education and the right to health. Additionally, 'a wide range of human rights treaties address the question in relation to non-discrimination of certain vulnerable groups.'<sup>51</sup> She gives examples of cases in which UN institutions agreed 'that World Athletics regulations are not compatible with international human rights norms and standards'<sup>52</sup>, but points out that 'sport governing bodies (SGB's) have traditionally called both for independence and normative and organizational autonomy'<sup>53</sup>. While this makes it complicated for treaty bodies to get involved, Gonzalez proposes ideas on how human rights violations could be addressed, specifically discussing the principle of due diligence and state's responsibilities.<sup>54</sup> Other scholars thematise the role of the European Court of Human Rights (ECtHR) in the field of sport and the applicability of the ECHR before the Court of Arbitration for Sport (CAS). Establishing provisions of the ECHR relevant for the sporting domain, Rietiker finds that 'regulations on eligibility of trans-gender athletes have so far not yet been brought before the Court, but nothing prevents such athletes or players from challenging these rules in court.'<sup>55</sup> He also highlights the responsibility of states hosting IFs.<sup>56</sup> Duval raises the question whether the CAS has the legitimacy to deal with human rights issues and to what extent SGBs decisions can be subject to a review based on the ECHR. By establishing that they are 'functionally equivalent to public authorities' he justifies the need for them to comply with the ECHR and suggests how the CAS could utilise this.<sup>57</sup>

---

<sup>50</sup> B. Kidd and P. Donnelly, 'Human Rights in Sports', *International Review for the Sociology of Sport*, vol. 35, no. 2, 2000, p. 135.

<sup>51</sup> C. P. González, 'The effective application of international human rights law standards to the sporting domain: Should UN monitoring bodies take central stage?', *The International Sports Law Journal*, vol. 22, no. 2, 2022, p. 153.

<sup>52</sup> C. P. González, 'The effective application', p. 157.

<sup>53</sup> C. P. González, 'The effective application', p. 154.

<sup>54</sup> C. P. González, 'The effective application', pp. 160-163.

<sup>55</sup> D. Rietiker, *Defending Athletes, Players, Clubs and Fans: A manual for human rights education and litigation in sport, in particular before the European Court of Human Rights*, Strasbourg, France, Council of Europe Publishing, 2022, p. 159.

<sup>56</sup> D. Rietiker, *Defending Athletes, Players, Clubs and Fans*, p. 49.

<sup>57</sup> A. Duval, 'Lost in translation? The European Convention on Human Rights at the Court of Arbitration for Sport', *The International Sports Law Journal*, vol. 22, no. 2, 2022, pp. 144-148.

### 3.3 Arguments Against Transwomen Athletes Competing in the Women's Category

As a relatively recent topic, the amount of literature on transgender athletes is modest, with most of it having been published within the last ten years. The majority of the work takes a clear stand either for or against the participation of transwomen in the women's category. Discussions on this topic are shaped by two disciplines: natural sciences – specifically biology, medicine and sports sciences – and social sciences. While the majority of scholars from a natural science background deal with physical studies on performance and argue for a ban of transwomen from the women's category, social scientists tend to take a different approach by emphasising the importance of equal participation. I identified eight common arguments against transwomen competing in the women's category within the literature: the physiological argument, the fairness argument, the sex/gender argument, the category argument, the discrimination argument, the safety argument, the human rights argument and the burden of proof argument. I answer part of my first research question by presenting these arguments. I will counter them in chapter 8.

#### **The Physiological Argument**

Different studies<sup>58</sup> have shown that transwomen who went through male puberty have competitive advantages (e.g. being stronger) compared to cis women even after 12 months of testosterone suppression due to being exposed to pre-transition endogenous testosterone.<sup>59</sup> 'Some parts are downregulated completely (hemoglobin), while others are not affected at all (skeletal morphology).'<sup>60</sup> This is used to argue against transwomen's participation in the women's category. The fact that any person can have a competitive advantage because of physical features is disregarded by emphasising that sport is categorised by sex, not by anything else like height or wingspan.<sup>61</sup> Sailors establishes that this

---

<sup>58</sup> These studies can be criticized for different reasons (e.g. small sample, no trans people as comparison group, studies on non-athletic transgender people, only measuring very specific things) and there is a lack of research in this field generally.

<sup>59</sup> T. A. Roberts, J. Smalley and D. Ahrendt, 'Effect of gender affirming hormones on athletic performance in transwomen and transmen: implications for sporting organisations and legislators', *British journal of sports medicine*, 2020, p. 580.; A. Wiik et al., 'Muscle Strength, Size, and Composition Following 12 Months of Gender-affirming Treatment in Transgender Individuals', *The Journal of clinical endocrinology and metabolism*, vol. 105, no. 3, 2020, p. 811.

<sup>60</sup> A. V. Christiansen, 'The Negligence of Biological Reality', p. 25.

<sup>61</sup> P. R. Sailors, 'Transgender and Intersex Athletes', p. 424.

is justifiable because characteristics such as ‘[large feet, long torso, produces low amount of lactic acid] are acceptable’ as they are only an advantage in certain sports, while ‘the advantages from testosterone’s androgenization enjoyed by trans and intersex athletes are unacceptable because they are all-purpose benefits extending beyond any one sport.’<sup>62</sup>

### **The Fairness Argument**

The fairness argument rests on the physiological argument. The physiological differences I described are used to claim that admitting transwomen in the women’s category ‘would be unfair because they carry a category advantage (i.e., being male-bodied)’.<sup>63</sup> The fairness argument only works if it is assumed that trans people cannot change their sex category due to having specific biological features.

### **The Sex/Gender Argument**

I identified the sex/gender argument as being a central one within sport that highlights the difference between sport and other social areas. It is claimed that trans people can change their gender, but not their sex, and since sport operates on sex-based categories, these must be upheld. Imbrišević argues:

The law cannot transform your body (this matters in sport); it can only provide you with new documents (this matters in all other areas of life). In other legal systems, where there are no exemptions for sport, people easily get confused and believe that the legal recognition applies to all areas of life, including sport. But when the state recognises someone’s (trans-) gender identity, it creates a legal fiction (*fictio legis*). The state will treat the individual *as if* they were of the other sex. In sport it would be a mistake to do so, and to believe that trans women are literally ‘women’.<sup>64</sup>

Following that line of argumentation, sport as an area relying on physiological criteria is labelled “special” and therefore needs to be handled differently.

### **The Category Argument**

The category argument weighs cis women’s rights against transwomen’s rights. Christensen claims that ‘exclusion from categories is fundamental to uphold them, make them

---

<sup>62</sup> P. R. Sailors, 'Transgender and Intersex Athletes', p. 424.

<sup>63</sup> M. Imbrišević, 'UN Experts Don't Understand Sport (Nor Human Rights)', *Idrottsforum*, 6 November 2023, <https://idrottsforum.org/feature-imbrisevic231106/>, (accessed 22.03.2024).

<sup>64</sup> M. Imbrišević, 'UN Experts Don't Understand Sport'.

meaningful, and to secure inclusion.<sup>65</sup> Including transwomen in the women's category 'threatens the integrity of women's sport'<sup>66</sup> and what matters, therefore, is not the number of transwomen 'but rather the effects of their participation on women's sport as a whole.'<sup>67</sup> There is an overarching consensus in the literature that the women's category is protected and must stay that way to secure female participation. Some scholars argue that allowing transwomen in the women's category 'will have the same effect as male inclusion' which is unfair if even one athlete is deprived of her success.<sup>68</sup> The category argument is based on the widespread perception that women are weaker than men and need to be protected from "biological males". Interestingly, the scholars I found to be using this argument are predominantly men.

### **The Discrimination Argument**

The discrimination argument is intertwined with the category argument. Christiansen states that 'when categories discriminate, they do so in a logical way that distinguishes X from Y, and not in a normative way that favors X over Y.' Likewise, Imbrišević argues that discrimination in sport is acceptable because a relevant difference is recognised and the female category needs to be protected. If male-bodied athletes were allowed into the female category, women would lose out which in turn justifies discrimination.<sup>69</sup>

### **The Safety Argument**

Another argument that comes up frequently is the concern for the safety of cisgender women in collision sports when they compete against trans athletes. It is argued that transwomen who experienced male puberty are stronger than biological females, even if they suppressed their testosterone for twelve months.<sup>70</sup> Therefore, they present a possible source of injuries since they can execute more force and compromise safety.<sup>71</sup>

---

<sup>65</sup> A. V. Christiansen, 'The Negligence of Biological Reality', p. 23.

<sup>66</sup> C. Devine et al., 'When Ideology Trumps Science: A Response to the Canadian Centre for Ethics in Sport's Review on Transwomen Athletes in the Female Category', *Idrottsforum*, 29 November 2022, <https://idrottsforum.org/devineetal221129/>, (accessed 25.01.2024), p. 2.

<sup>67</sup> P. R. Sailors, 'Transgender and Intersex Athletes', p. 426.

<sup>68</sup> P. R. Sailors, 'Transgender and Intersex Athletes', p. 426.

<sup>69</sup> M. Imbrišević, 'UN Experts Don't Understand Sport'.

<sup>70</sup> A. V. Christiansen, 'The Negligence of Biological Reality', p. 21.

<sup>71</sup> C. Devine et al., 'When Ideology Trumps Science', p. 16.

### **The Human Rights Argument**

This argument is no line of reasoning itself, but a counterargument towards human rights claims made by other scholars and UN experts. The main point is that no human right to sport exists and that sport categories are not protected under IHRL. Instead, characteristics like sex, sexual orientation and gender identity are protected under domestic law, which is claimed to have no impact on eligibility in sport.<sup>72</sup> Additionally, Sailors argues that the human rights argument cannot be used to only permit some athletes to compete in the category of their choice, while others do not have this freedom (e.g. the category of age).<sup>73</sup> Christiansen follows a different line of reasoning by establishing a right to sport only to argue that ‘to be excluded from a category one is not eligible for is not a denial of one’s human right to participate in sport.’<sup>74</sup> He also states that the right to fair and safe competition is as much a human right as the right to freedom of choice.<sup>75</sup>

### **The Burden of Proof Argument**

Lastly, some authors claim the burden of proof ‘lies not with those who say this advantage exists, but with those who claim they have no advantage or that testosterone suppression causes the removal of the advantage.’<sup>76</sup> As long as there is a lack of conclusive evidence and a change of policy could lead to bad outcomes – which they argue is the case here - more evidence needs to be provided before a policy should be implemented.<sup>77</sup> As a result, the burden of proof is shifted to transwomen athletes or their allies.

## **4 Feminist Perspectives: Sex and Gender as a Social Construction**

In this chapter, I introduce those feminist perspectives on sex and gender I utilise for my work. These stand in contrast to most of the arguments I discussed in the last chapter.

Judith Butler has shaped the field of social constructionism and gender significantly. It is necessary to briefly introduce her theoretical considerations to understand the pre-

---

<sup>72</sup> M. Imbrišević, 'UN Experts Don't Understand Sport'.

<sup>73</sup> P. R. Sailors, 'Transgender and Intersex Athletes', pp. 426-427.

<sup>74</sup> A. V. Christiansen, 'The Negligence of Biological Reality', p. 28.

<sup>75</sup> A. V. Christiansen, 'The Negligence of Biological Reality', pp. 27-28.

<sup>76</sup> A. V. Christiansen, 'The Negligence of Biological Reality', p. 26.

<sup>77</sup> C. Devine et al., 'When Ideology Trumps Science', p. 7.

theoretical commitments this thesis is based on. Butler's central thesis in "Gender Trouble: Feminism and the Subversion of Identity" is that the assumption that a person's social gender is based on their biological sex is not tenable, as both gender and sex are culturally constructed and therefore inseparable.<sup>78</sup> Society's perception of bodies determines a person's gender identity. Individuals are not existent before having a gender label, which makes the body itself a construction. According to Butler, one could say that gender identity is the meaning a body takes on. The binary gender construction is represented as set and necessary in dominant discourses and produces a hierarchy placing men over women.<sup>79</sup> Butler argues that the heterosexual fixation of desire in society necessitates clear boundaries between women and men and produces them at the same time. This excludes identities whose gender does not coincide with their sex from cultural participation.<sup>80</sup> She thus sees the system of compulsory heterosexuality as the origin and consequence of gender binarity. As soon as a causal relationship between sex and gender is not given, an existence of a person within the cultural and social sphere is impossible.<sup>81</sup> This is reflected in the sporting system.

Butler argues that biomedical studies claiming to determine a person's anatomical sex also refer to the culturally produced interpretations of gender, as there are no real physical determinants. The scientific discipline of biology thus contributes to the (re)production of discourses and relies on them.<sup>82</sup>

This discursively constructed incentive of unambiguous determination of gender and the hierarchy it entails also plays a central role in the discrimination against trans people, as Catharine MacKinnon shows. She establishes that 'discrimination against trans people is discrimination on the basis of sex, that is gender, the social meaning of sex.' Recognizing this 'does not, contrary to allegations of anti-trans self-identified feminists, endanger women or feminism, including what some in this group call "women's sex-based rights."' <sup>83</sup> In her eyes, 'women's oppression is enforced through gender, specifically

---

<sup>78</sup> J. Butler, *Das Unbehagen der Geschlechter*, 20st edn., Frankfurt a.M., Germany, Suhrkamp, 2019, pp. 22-24

<sup>79</sup> J. Butler, *Das Unbehagen der Geschlechter*, pp. 25-28.

<sup>80</sup> J. Butler, *Das Unbehagen der Geschlechter*, pp. 38-39.

<sup>81</sup> J. Butler, *Das Unbehagen der Geschlechter*, p. 46.

<sup>82</sup> J. Butler, *Das Unbehagen der Geschlechter*, p. 163.

<sup>83</sup> C. A. MacKinnon, 'A Feminist Defense', p. 88.

gender hierarchy, a social and political, not biological, arrangement.’<sup>84</sup> Although gender is socially constructed, it has effects in the real world.<sup>85</sup> She suggests that ‘sex can be a sufficient condition for being a woman but has never been a necessary one.’<sup>86</sup> Therefore, transwomen are women, too.

MacKinnon introduces a substantive approach to legally theorize trans rights as sex equality rights by arguing that ‘seeing anti-trans treatment as sex discriminatory substantively focuses on what makes men considered socially superior to women and women inferior to men’.<sup>87</sup> Following feminist arguments, she establishes that in a patriarchal society, transwomen lose social status, and transmen gain it when transitioning. That way, transwomen are then discriminated against as trans and women while transmen improve their social standing but might still be seen as “lesser men”. MacKinnon concludes that adopting her approach to trans rights does not harm non-trans women but could instead benefit all women.<sup>88</sup> Recognizing it has ‘challenged biological determinism as the most basic premise of male supremacy’, she urges the feminist movement to change ‘society’s (and apparently many feminists’) fixation with nature as the basis for gender hierarchy.’<sup>89</sup>

Additionally, Sally Haslanger proposes different ideas on how to understand sex and gender. Her theoretical approach clarifies the presuppositions and the used concepts within the policies. In her earlier work, she establishes the social construction of gender: ‘It would appear that gender is both an idea-construction and an object-construction’.<sup>90</sup> It is an idea-construction in the sense that gender classifications as they exist now are a result of historical events, practices and institutions. Classifying a person in this scheme has a material effect on their self-understanding and social position. In a way, people only acquire a social position through classification and thereby gender turns into an object-construction.<sup>91</sup> To make her point of gender as a social construction, Haslanger admits that ‘one might want to draw a distinction between sex and gender’ with sex as ‘an anatomical distinction based on locally salient sexual/reproductive differences, and gender being a

---

<sup>84</sup> C. A. MacKinnon, 'A Feminist Defense', p. 90.

<sup>85</sup> C. A. MacKinnon, 'A Feminist Defense', p. 91.

<sup>86</sup> C. A. MacKinnon, 'A Feminist Defense', p. 92.

<sup>87</sup> C. A. MacKinnon, 'A Feminist Defense', p. 94.

<sup>88</sup> C. A. MacKinnon, 'A Feminist Defense', p. 94.

<sup>89</sup> C. A. MacKinnon, 'A Feminist Defense', p. 96.

<sup>90</sup> S. Haslanger, 'Gender and Social Construction: Who? Where? What? How?', in E. Hackett and S. Haslanger (eds.), *Theorizing Feminisms*, Oxford University Press, 2006, p. 19.

<sup>91</sup> S. Haslanger, 'Gender and Social Construction', p. 19.



distinction between the social/political positions of those with bodies marked as different sexes'.<sup>92</sup> To be clear on the interaction between these categories, they must be differentiated. She proposes using the terms “male”/”female” for what she calls ‘the current familiar sex distinction’ and “man”/ ”woman” to distinguish gender. By following that approach, some females can be categorised as men and some males as women.<sup>93</sup>

In more recent work, Haslanger argues that the fact that nature does not dictate binary sexes is crucial to understanding our concept of sex as socially constructed. Having ‘to surgically create a binary is some evidence that the difference is not “purely natural”’.<sup>94</sup> She goes one step further here by arguing that the category of sex is also a social construction. Concerning gender, she explains that some ideas about gender are fictional, but this does not have an influence on their significance in creating and reinforcing gender reality.<sup>95</sup> Haslanger also mentions how these existing concepts can be changed: ‘One feminist hope is that we can become, through the construction of new and different practices, gendered differently and potentially new sorts of beings altogether.’<sup>96</sup> The aim of my thesis is to contribute to this re-construction by providing a framework to consider these concepts from a human rights perspective.

## 5 Human Rights Framework

The interpretation of IHRL is a contested area. Certainly, human rights were not initially intended to protect individuals’ claims to inclusion in a gender category in sport. However, in this thesis I am presenting arguments to rethink and expand human rights in a way that is appropriate to current developments. The international human rights regime does not include a specific right to sport or to participation in competitions, but I argue that the right to compete in a category aligning with one’s gender could be derived from it. The purpose of this chapter is to give an overview of the human rights treaties and

---

<sup>92</sup> S. Haslanger, 'Gender and Social Construction', p. 20.

<sup>93</sup> S. Haslanger, 'Gender and Social Construction', p. 20.

<sup>94</sup> S. Haslanger, 'The Sex/Gender Distinction and the Social Construction of Reality', in A. Garry, S. J. Khader and A. Stone (eds.), *The Routledge Companion to Feminist Philosophy*, New York, Routledge, 2017, p. 160.

<sup>95</sup> S. Haslanger, 'The Sex/Gender Distinction', p. 166.

<sup>96</sup> S. Haslanger, 'The Sex/Gender Distinction', p. 166.

specific rights relevant for my work. Thereby, I am creating a human rights framework to make my argument. The following countries matter in my analysis because the IFs are located there: Switzerland (11 IFs), Monaco (1 IF), USA (1 IF), South Korea (1 IF), Ireland (1 IF), United Kingdom (1 IF). In international law, states are the main actors having to comply, but since many of the treaties are ratified by the countries the IFs are based in, the IFs, as ‘international non-governmental organisations governing one or several sports at the world level’<sup>97</sup>, must comply with those rights too.<sup>98</sup>

## 5.1 Gender and Non-Discrimination Rights

Gender and non-discrimination rights are important for my analysis because the people affected by the policies – trans people and women – are part of vulnerable groups who are regularly discriminated against. Specific rights that should apply are enshrined in the following legally binding human rights documents: the International Covenant on Civil and Political Rights (ICCPR)<sup>99</sup>, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>100</sup> and the European Convention on Human Rights (ECHR)<sup>101</sup>. Additionally, the non-binding Universal Declaration of Human Rights (UDHR)<sup>102</sup> plays a major role in the international human rights regime and establishes the right to non-discrimination:

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.<sup>103</sup>

This is especially important regarding its provision on the right to work, which I introduce later. All countries hosting IFs that are part of my sample have adopted the UDHR. The

---

<sup>97</sup> International Olympic Committee, *Olympic Charter*, 15 October 2023, p. 56.

<sup>98</sup> A. von Arnould, *Völkerrecht*, 3. edn., Heidelberg, Germany, C. F. Müller, 2016, pp. 22-24.

<sup>99</sup> United Nations, *International Covenant on Civil and Political Rights*, 16 December 1966.

<sup>100</sup> United Nations, *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979.

<sup>101</sup> Council of Europe, *European Convention on Human Rights*, 4 November 1950.

<sup>102</sup> United Nations, *Universal Declaration of Human Rights*, 10 December 1948.

<sup>103</sup> UN, *UDHR*, Art. 7.

ECHR is applicable for most of my data as, only two (Surfing: US and Taekwondo: South Korea) of the 16 IFs are not located in member states of the Council of Europe. It states:

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.<sup>104</sup>

The provision on the right to non-discrimination in the ICCPR is similar to the formulation in the UDHR. It has been ratified by all six countries in my sample. Additionally, CEDAW establishes specific women's rights. Important for my analysis is state parties agreeing 'to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise'<sup>105</sup>, to ensure 'the same Opportunities to participate actively in sports and physical education'<sup>106</sup> and 'the right to participate in recreational activities, sports and all aspects of cultural life.'<sup>107</sup> Out of the six countries, only the US has not ratified CEDAW.<sup>108</sup>

The Yogyakarta Principles<sup>109</sup> and their addition - The Yogyakarta Principles plus 10<sup>110</sup> - define principles and state obligations on the application of IHRL in relation to sexual orientation, gender identity and sex characteristics. They are not binding, but they were the first document that systematically established a list of specific rights for the LGBTQIA+ community and therefore play a role in the international context. The Yogyakarta Principles plus 10 include a provision stating that states shall 'ensure that all individuals can participate in sport without discrimination on the grounds of sexual orientation, gender identity, gender expression or sex characteristics.'<sup>111</sup>

---

<sup>104</sup> Council of Europe, *ECHR*, Prot. 12, Art. 1.

<sup>105</sup> UN, *CEDAW*, Art. 2 (e).

<sup>106</sup> UN, *CEDAW*, Art. 10 (g).

<sup>107</sup> UN, *CEDAW*, Art. 13 (c).

<sup>108</sup> United Nations Human Rights Office of the High Commissioner, 'Ratification Status for CEDAW', *UN Treaty Body Database*, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CEDAW&Lang=en](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CEDAW&Lang=en), (accessed 13.05.2024).

<sup>109</sup> *The Yogyakarta Principles*, 23 March 2007.

<sup>110</sup> *The Yogyakarta Principles plus 10*, 10 November 2017.

<sup>111</sup> *The Yogyakarta Principles plus 10*, Additional State Obligations relating to the Rights to Equality and Non-Discrimination (Principle 2), J.

## 5.2 The Right to Work and Business Responsibilities

I identified the right to work as relevant in professional competitive sport. In many sports, people need to have another profession, scholarship or study to finance themselves, but this does not justify disregarding the protection of their human rights in their job as an athlete. Whether the payment in smaller sports and of women in sports is fair, is another discussion. However, the fact that some athletes earn enough money to make a living and others competing against them invest the same amount of time and energy should suffice to recognise sport as a job. Additionally, business responsibilities regarding human rights are relevant because IFs can be considered as non-governmental actors, which are not businesses, but have a similar status in the human rights regime.<sup>112</sup>

Regarding the right to work, the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>113</sup>, the ICCPR, CEDAW and the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work and its Follow-Up<sup>114</sup> are relevant. Additionally, the UDHR includes ‘the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.’<sup>115</sup> The ICESCR recognises the right to free choice of work<sup>116</sup>, while the ILO Declaration specifically introduces ‘the elimination of discrimination in respect of employment and occupation.’<sup>117</sup> More generally, the ICCPR mentions the right of every person to freely pursue their economic development.<sup>118</sup> CEDAW specifies the right to work in relation to women who have a right ‘to the same employment opportunities’, ‘to free choice of profession and employment’, ‘to equal remuneration, including benefits, and to equal treatment in respect of work of equal value’ and ‘to protection of health and to safety in working conditions.’<sup>119</sup>

---

<sup>112</sup> C. P. González, 'The effective application', p. 161.

<sup>113</sup> United Nations, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966.

<sup>114</sup> International Labour Organization, *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up*, 18 June 1998.

<sup>115</sup> UN, *UDHR*, Art. 23 (1).

<sup>116</sup> UN, *ICESCR*, Art. 6 (1).

<sup>117</sup> ILO, *ILO Declaration*, Art. 2 (d).

<sup>118</sup> UN, *ICCPR*, Art. 1 (1).

<sup>119</sup> UN, *CEDAW*, Art. 11 (b-f).

The non-binding United Nations Guiding Principles on Business and Human Rights (UNGPs)<sup>120</sup> establish human rights duties of businesses:

Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.<sup>121</sup>

States are the main responsibility bearers of ensuring compliance and ‘must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises.’<sup>122</sup> If a human rights violation is committed, they have to take appropriate steps to investigate, punish and redress it.<sup>123</sup> Gonzalez explains in her work that the due diligence principle in IHRL ‘imposes upon states the obligation of protecting all individuals under their jurisdiction from human rights violations committed by non-state actors.’<sup>124</sup> Although the state is liable, it is the businesses responsibility to respect internationally recognised human rights and especially to ‘respect the human rights of individuals belonging to specific groups or populations that require particular attention.’<sup>125</sup> She establishes that this includes corporations and also sport organisations.<sup>126</sup> Although the ILO Declaration and the Guiding Principles are not binding, both documents are connected to the UN and therefore internationally recognised.<sup>127</sup> All of my relevant countries ratified the ICESCR while only Monaco is not part of the ILO.<sup>128</sup> The Guiding Principles apply to all UN Member States.

### 5.3 The Applicability of Human Rights Obligations in Sport

As previously mentioned, there is no internationally recognised human right to sport, but charters, resolutions and declarations concerning sport exist. None of them are legally

---

<sup>120</sup> United Nations, *Guiding Principles on Business and Human Rights*, 16 June 2011.

<sup>121</sup> UN, *UNGPs*, Art. 11.

<sup>122</sup> UN, *UNGPs*, Art. 1.

<sup>123</sup> UN, *UNGPs*, Art. 1.

<sup>124</sup> C. P. González, 'The effective application', p. 161.

<sup>125</sup> UN, *UNGPs*, Art. 12 Commentary.

<sup>126</sup> C. P. González, 'The effective application', p. 161.

<sup>127</sup> UN, *UNGPs*, pp. 1-2; International Labour Organization, 'Mission and impact of the ILO', *ILO*, <https://www.ilo.org/about-ilo/mission-and-impact-ilo>, (accessed 13.05.2024).

<sup>128</sup> International Labour Organization, 'Member States', *ILO*, <https://www.ilo.org/about-ilo/how-ilo-works/member-states>, (accessed 13.05.2024).

binding. However, they have an effect in terms of international standards and governments have acted on their recommendations to some degree.<sup>129</sup> The United Nations Educational, Scientific and Cultural Organization (UNESCO) Charter of Physical Education, Physical Activity and Sport<sup>130</sup> explains standards for access to sport and human rights in sport. It specifically states that ‘every human being has a fundamental right to physical education, physical activity and sport without discrimination.’<sup>131</sup> Moreover, ‘every human being must have the opportunity to attain a level of achievement through physical education, physical activity and sport which corresponds to their capabilities and interest’<sup>132</sup>, which I interpret to include competitive/professional sports. Another important provision for my argument is that ‘policy decisions must be based on sound factual evidence’, meaning ‘high quality information gathered from a range of sources, including scientific research, expert knowledge, the media, stakeholder consultation, as well as evaluation and monitoring of previous policies and programmes.’<sup>133</sup> The UNESCO Charter is similar to a UN document in its applicability, as only the UN member Israel is not part of the UNESCO.<sup>134</sup>

The European Sports Charter<sup>135</sup> by the Council of Europe has similar provisions concerning the opportunity to improve one’s standard of performance and the protection of internationally recognised rights. In addition, it establishes the responsibility of all stakeholders to promote and respect human rights within sports, specifically regarding gender equality.<sup>136</sup> Furthermore, it mentions the right to non-discrimination in relation to sport and considers access to sport for all to be a fundamental right.<sup>137</sup> The European Sports Charter applies to all member states of the European Council, which I listed previously.

The Olympic Charter is ‘the codification of the Fundamental Principles of Olympism, Rules and Bye-laws adopted by the International Olympic Committee (IOC)’ and

---

<sup>129</sup> B. Kidd and P. Donnelly, 'Human Rights in Sports', p. 144.

<sup>130</sup> United Nations Educational, Scientific and Cultural Organization, *International Charter of Physical Education, Physical Activity and Sport*, 18 November 2015.

<sup>131</sup> UNESCO, *Charter of Physical Education*, Art 1.1.

<sup>132</sup> UNESCO, *Charter of Physical Education*, Art. 1.6.

<sup>133</sup> UNESCO, *Charter of Physical Education*, Art. 6.1.

<sup>134</sup> UNESCO, 'Member States', *UNESCO*, <https://www.unesco.org/en/countries>, (accessed 13.05.2023).

<sup>135</sup> Council of Europe, *Recommendation CM/Rec(2021)5 of the Committee of Ministers to member States on the Revised European Sports Charter*, 13 October 2021.

<sup>136</sup> Council of Europe, *Recommendation CM/Rec(2021)5*, Art. 6.

<sup>137</sup> Council of Europe, *Recommendation CM/Rec(2021)5*, Art. 10 (1).

‘governs the organisation, action and operation of the Olympic Movement.’<sup>138</sup> It includes the ‘respect for internationally recognised human rights’ and establishes that ‘the practice of sport is a human right’.<sup>139</sup> This is relevant insofar that its fundamental principles determine the Olympic Games and carry weight within the sporting world. Since the IFs in my analysis all oversee the organisation of Olympic sports, they must abide by the charter.<sup>140</sup> This should suffice to establish sport as a human right and the necessity for IFs to follow internationally recognised human rights.

There are other UN documents which demonstrate this topic being of concern. The Report of the UN High Commissioner for Human Rights on the intersection on race and gender discrimination in sport discusses sex and gender discrimination in sport as part of the right to non-discrimination in society more broadly.<sup>141</sup> The Policy Position of the UN special procedures mandate holders on human rights in sport establishes sport as a part of the right to take part in cultural life.<sup>142</sup>

The fact that the UDHR is not legally binding does not mean it is not internationally recognised and respected. Many of its provisions are considered customary international law today and are also reflected in national law.<sup>143</sup> In the case of Switzerland, for example, which is hosting most IFs, the right to non-discrimination<sup>144</sup> and the right to work under reasonable conditions are included in the constitution.<sup>145</sup> The introduced human rights are relevant for my work, as I will analyse whether these can be interpreted as being violated in transgender eligibility policies of different International Sports Federations and what conclusions can be drawn from that.

---

<sup>138</sup> IOC, *Olympic Charter*, p. 6.

<sup>139</sup> IOC, *Olympic Charter*, p. 8.

<sup>140</sup> IOC, *Olympic Charter*, pp. 56-57.

<sup>141</sup> United Nations Human Rights Council, *Intersection of race and gender discrimination in sport: Report of the United Nations High Commissioner for Human Rights*, 15 June 2020.

<sup>142</sup> United Nations Special Procedures mandate holders, *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.

<sup>143</sup> A. von Arnould, *Völkerrecht*, p. 132.

<sup>144</sup> *Bundesverfassung der Schweizerischen Eidgenossenschaft*, 1999, Art. 8 (2)

<sup>145</sup> *Bundesverfassung der Schweizerischen Eidgenossenschaft*, Art. 41 (1d).

## 6 Method

In this chapter, I discuss my methodological approach. First, I describe my data choice and collection process. Then, I explain Sally Haslanger's framework on concepts<sup>146</sup> and introduce the “‘What's the problem represented to be?’ approach” by Carol Bacchi<sup>147</sup>. I connect both methods. While Haslanger serves as an overarching approach for the structure of my work, I utilise Bacchi's method for the analysis of my data. Finally, I outline my research design and reflect on possible ethical concerns and limitations of my study.

### 6.1 Data

My data consists of 16 international sports federations' policies on transgender eligibility. The following IFs are included in the sample: Fédération Internationale de Volleyball (FIVB), International Federation of Sport Climbing (IFSC), International Ice Hockey Federation (IHF), International Skating Union (ISU), International Surfing Association (ISA), International Tennis Federation (ITF), Union Cycliste International (UCI), United World Wrestling (UWW), World Aquatics, World Archery, World Athletics, World Rowing, World Rugby, World Skate, World Taekwondo and World Triathlon. The policies from these federations were chosen for multiple reasons. I started the data collection process by reviewing all Olympic sports in the IOC database.<sup>148</sup> I added other sports coming to mind and noticed that some federations, like World Aquatics, represent many different sports. I ended up with 48 IFs. In some sports, competing federations exist. If this was the case, I chose the federation that represents the sport on the Olympic level. First, I researched whether a federation has a transgender policy or not. Of the 48 IFs, 24 have no policy, 22 have a publicly available policy and two are special cases. The International Shooting Sport Federation (ISSF) conducts a case-by-case approach and the International Weightlifting Federation (IWF) claims to have a policy which could not be found. I decided to only include the 22 clear and publicly available policies in my data set.

---

<sup>146</sup> S. Haslanger, 'Gender and Race'.

<sup>147</sup> C. Bacchi, *Analysing Policy: What's the problem represented to be?*, Melbourne, VIC, Pearson, 2009.

<sup>148</sup> International Olympic Committee, 'Sports', *Olympics*, <https://olympics.com/en/sports/>, (accessed 31.01.2024).



I then categorised my data by “Olympic”/“Non-Olympic” federations. Some sports have been “Olympic” previously or will be in the future because every host country can choose up to five sports that will be included in their respective edition. Therefore, I only categorised federations as “Olympic” if the sport was included in the last (Tokyo 2020/21; Beijing 2022) and will be in the coming (Paris 2024; Milano Cortina 2026) Olympics. Being “Olympic” is a good indicator of the importance of the sport/federation and its weight in setting the agenda for future decisions. As explained above, the IOC does not have overarching regulations on transgender participation. However, this has been different in the past and could possibly change again given the fact that the IOC adjusted its framework several times since the early 2000s. Additionally, the Olympic Games tend to be watched by millions and can therefore influence adults and children’s perception of normality. Olympic sports and the Games itself are so popular that they have the power to set norms for other areas and have an influence on amateur and school sports. This kind of attention is only reached by few “Non-Olympic” sports (e.g. American Football). Restricting my sample to Olympic sports, I ended up with 16 policies for my analysis.

Most existing para-sports are part of the respective IFs, and the others are governed under the umbrella of the International Paralympic Committee (IPC) (in my case athletics, ice hockey and swimming), for which no policy could be found. World Para Athletics, for example, only mentions to follow IOC guidelines.<sup>149</sup> That is why para-sports were only included in my analysis insofar as they fall under the jurisdiction of the IFs and therefore the eligibility regulations (archery, cycling, rowing, taekwondo, triathlon, tennis). Para Volleyball and Wheelchair Rugby have its own federations which do not have a transgender policy. The remaining five sports (sport climbing, ice-skating, surfing, skating, wrestling) in my sample are not paralympic.

The reason for choosing to conduct my analysis on IFs’ policies is that they usually set the agenda in their respective sport(s) for all international and national competitions. Sometimes, a national federation has its own policy, but in the cases I found, it was only for sports where the IF does not have a policy. IFs have the decision-making power when it comes to eligibility in competitive sports and their rules are often reflected in non-competitive or school sport as well. Especially bigger federations like World Athletics

---

<sup>149</sup> World Para Athletics, *World Para Athletics Rules and Regulations*, June 2022.

have the power to influence the sport world greatly. World Taekwondo, for example, mentions in their Anti-Discrimination Policy that their eligibility regulations for transgender athletes are modelled after the regulations of World Athletics.<sup>150</sup> The fact that all policies I found were adopted between 2018 and 2023 – and the majority in 2023 – shows that a snowball effect has set in in international sports which is likely to continue. Several IFs announced that they are planning on adopting a policy soon or are in the process of research (e.g. World Sailing, Fédération Internationale de Ski). The cut-off date for gathering my data was the 31<sup>st</sup> of January 2024. If an IF published or updated a policy after that, it is not included in my analysis.

## 6.2 Conceptual Framework

In this chapter, I introduce Haslanger’s conceptual framework, which serves to structure my analysis. According to Olsthoorn ‘normative arguments, and moral judgements generally, need conceptual guidance.’<sup>151</sup> He also emphasises that the way in which concepts of race and gender, democracy and freedom are understood has socio-political consequences.<sup>152</sup> I agree with both these arguments and am therefore using Haslanger’s approach of different ways to define concepts such as gender and race. Being widely contested terms, it is important for any kind of work focusing on these to specify how they are and should be used.

Haslanger distinguishes three approaches to concepts with different priorities: conceptual, descriptive and analytical.<sup>153</sup> In this study, I am using the descriptive and analytical approach. The descriptive approach is usually reflected in empirical projects – which is the case in my thesis – and aims to consider how concepts are actually used in the material.<sup>154</sup> It adopts an externalist view by determining how a concept structures our activities. The goal is to ‘develop potentially more accurate concepts through careful consideration of the phenomena’<sup>155</sup> In my policies, the concept of gender is used differently and therefore

---

<sup>150</sup> World Taekwondo, *4(h) Anti-Discrimination Policy Update*, 18 August 2023.

<sup>151</sup> J. Olsthoorn, 'Conceptual Analysis', in A. Blau (ed.), *Methods in Analytical Political Theory*, Cambridge University Press, 2017, p. 179.

<sup>152</sup> J. Olsthoorn, 'Conceptual Analysis', p. 178.

<sup>153</sup> S. Haslanger, 'Gender and Race', p. 33.

<sup>154</sup> S. Haslanger, 'What Are We Talking About? The Semantics and Politics of Social Kinds', *Hypatia*, vol. 20, no. 4, 2005, p. 19.

<sup>155</sup> S. Haslanger, 'What Are We Talking About?', p. 12.

it is necessary to map out the different ways in which it is defined. The analytical approach questions the actual use of these concepts by asking questions like:

What is the point of having these concepts? What cognitive or practical task do they (or should they) enable us to accomplish? Are they effective tools to accomplish our (legitimate) purposes; if not, what concepts would serve these purposes better?<sup>156</sup>

Haslanger specifically refers to concepts used in policies by highlighting that if a concept can be changed easily depends on whether ‘the term has been long and strongly associated with a particular policy’ or not.<sup>157</sup> She points out that the decision to be made here is political and especially sensitive when it comes to categories of social identity like “race” and “gender”.<sup>158</sup> With this approach, it is necessary to consider what we want from these concepts and why we need them in the first place. In Haslanger’s words: ‘The responsibility is ours to define them for our purposes.’<sup>159</sup> I use these approaches as a two-stage process by connecting them to Bacchi’s method, which I introduce in the next chapter. After having used the descriptive approach during my analysis to describe the way the concepts of sex and gender are used in the policies, I – following the analytical approach – propose how these concepts should be used to be most beneficial for trans athlete’s rights. This part is explicitly normative since it discusses what kind of political work we want these concepts to do.

### 6.3 The WPR Approach

The “‘What’s the problem represented to be?’ approach” (WPR approach) is a form of policy analysis established by Carol Bacchi. For this thesis, I utilise the methodological guidelines she developed in her book “Analysing Policy: What’s the problem represented to be?”<sup>160</sup>, where she gives a detailed overview and instruction manual on how to use the method. Bacchi’s approach leans on discourse analysis in some regards and differs from traditional policy analyses: ‘looking beyond the state to understand how governing occurs

---

<sup>156</sup> S. Haslanger, 'Gender and Race', p. 33.

<sup>157</sup> S. Haslanger, 'What Are We Talking About?', p. 22.

<sup>158</sup> S. Haslanger, 'Gender and Race', pp. 34-35.

<sup>159</sup> S. Haslanger, 'Gender and Race', p. 34.

<sup>160</sup> C. Bacchi, *Analysing Policy*.

in this broad sense makes a WPR approach significantly different from most forms of policy analysis.<sup>161</sup> It focuses not on measuring the outcomes of a policy, but rather on the assumptions and “problems”<sup>162</sup> represented within it. Therefore, it provides the tools to analyse policies from a different perspective as ‘it directs attention to the ways in which particular representations of ‘problems’ play a central role in how we are governed’<sup>163</sup>. It assumes we are governed by problematisations – meaning what is commonly viewed as a problem – and to understand how we are governed, the problem representations within policies must be analysed.<sup>164</sup> Policy makers play a productive role in shaping particular understandings of “problems” because ‘if you look at a specific policy, you can see that it understands the ‘problem’ to be a particular sort of ‘problem’”<sup>165</sup>. By implying change, policy proposals influence how a “problem” is perceived. The aim of this approach ‘is to understand policy better than policy makers by probing the unexamined assumptions and deep-seated conceptual logics within implicit problem representations.’<sup>166</sup>

Bacchi’s WPR approach consists of six questions:

1. What’s the ‘problem’ (e.g. of ‘problem gamblers’, ‘drug use/abuse’, domestic violence, global warming, health inequalities, terrorism, etc.) represented to be in a specific policy?
2. What presuppositions or assumptions underlie this representation of the ‘problem’?
3. How has this representation of the ‘problem’ come about?
4. What is left unproblematic in this problem representation? Where are the silences? Can the ‘problem’ be thought about differently?
5. What effects are produced by this representation of the ‘problem’?
6. How/where has this representation of the ‘problem’ been produced, disseminated and defended? How could it be questioned, disrupted and replaced?<sup>167</sup>

---

<sup>161</sup> C. Bacchi, *Analysing Policy*, p. 26.

<sup>162</sup> Bacchi uses the word “problem” in quotations in her approach to illustrate that problem in this sense is not used like the common term (something that is difficult to deal with or a challenge that needs to be solved) but rather refers to the kind of change implied in a particular policy proposal.

<sup>163</sup> C. Bacchi, *Analysing Policy*, p. xi.

<sup>164</sup> C. Bacchi, *Analysing Policy*, p. xiii.

<sup>165</sup> C. Bacchi, *Analysing Policy*, p. 1.

<sup>166</sup> C. Bacchi, 'Introducing the ‘What's the Problem Represented to be?’ approach', in A. Bletsas and C. Beasley (eds.), *Engaging with Carol Bacchi*, University of Adelaide Press, 2013, p. 22.

<sup>167</sup> C. Bacchi, *Analysing Policy*, p. xii.

These questions have to be applied to a particular problem representation to make the “problems” that are implicit in a policy explicit.<sup>168</sup> The first question entails working backwards to pinpoint what is represented to be the “problem” in a specific policy. Bacchi claims that ‘looking at what is proposed as a policy intervention will reveal how the issue is being thought about’<sup>169</sup>, which leads to the second question. The task here is to identify the presuppositions and assumptions that underlie a problem representation: ‘What is assumed? What is taken-for-granted? What is not questioned?’<sup>170</sup> This part includes a search for deep-seated cultural values and adopts features of a discourse analysis. Categories and binaries, which often imply a hierarchy, play a role in governing and organising behaviour and therefore affect how people think about others and themselves, which makes it crucial to identify and analyse them.<sup>171</sup>

The third question intends to locate the origin of a problem representation. It has two objectives: ‘to reflect on the specific developments and decisions (the non-discursive practices) that contribute to the formation of the identified problem representation’ and ‘to recognise that competing problem representations exist both over time and across space, and hence that things could have developed quite differently.’<sup>172</sup> Key decisions must be pinpointed and power relations have to be taken into account to recognise why this particular problem representation assumed dominance.<sup>173</sup>

Question four considers the silences in and alternatives of this problem representation since ‘specific policies are constrained by the ways in which they represent the ‘problem’<sup>174</sup>. Simplifications and limitations that happen through focusing on binaries and categories – which have been identified in question two – must be indicated.<sup>175</sup>

The fifth question focuses on the effects of a problem representation. Bacchi mentions three interconnected effects: discursive, subjectification and lived effects. Discursive effects follow from the limits that are imposed on what can be thought and said by representing a “problem” in a specific way. Subjectification effects describe the way in which subjects are constituted within discourses. By setting groups of people in opposition to

---

<sup>168</sup> C. Bacchi, *Analysing Policy*, p. x.

<sup>169</sup> C. Bacchi, *Analysing Policy*, p. 3.

<sup>170</sup> C. Bacchi, *Analysing Policy*, p. 5.

<sup>171</sup> C. Bacchi, *Analysing Policy*, pp. 7-9.

<sup>172</sup> C. Bacchi, *Analysing Policy*, p. 10.

<sup>173</sup> C. Bacchi, *Analysing Policy*, pp. 10-11.

<sup>174</sup> C. Bacchi, *Analysing Policy*, p. 13.

<sup>175</sup> C. Bacchi, *Analysing Policy*, p. 13.

each other, public policies indicate desired behaviour and make specific subject positions available while closing off or not opening up others. Lived effects describe the material and social implications of a problem representation like access to resources.<sup>176</sup> The goal of this question ‘is to identify the effects of specific problem representations so that they can be critically assessed.’<sup>177</sup>

Question six is meant to identify the means through which a problem representation becomes legitimate and dominant but also to consider the possibility of challenging a problem representation if it is harmful. Here, discourses can be used for re-problematisation since they are plural and complex.<sup>178</sup>

There are a few aspects to pay attention to when using this method. Like with other methods, self-reflexivity is necessary throughout the working process because who we are shapes our analysis and our idea of a problem representation. Additionally, the context and history of a policy must be considered.<sup>179</sup> The goal of the described approach is ‘to understand policies *better than* policy makers’<sup>180</sup> to open up the possibility to think about how we could be governed differently.<sup>181</sup> Bacchi’s method also has theoretical implications, as it comes with certain implied ideas on how language and discourses work, which will be reflected in my analysis.

## 6.4 Research Design

The WPR approach gives a clear structure for conducting a policy analysis. Using this structure, I first read my material carefully and categorise the policies according to enforcement dates, length and specific testosterone thresholds. I expect the specific testosterone thresholds and the comprehensiveness of the policies to be a decisive factor in my analysis. Secondly, I consider the context of the policy by researching its history and background and examining related texts. As far as context is concerned, the availability of information depends on media sources or the IF itself reporting about policies coming into force, which in turn depends on the size of the IF and public interest. Thirdly, I

---

<sup>176</sup> C. Bacchi, *Analysing Policy*, pp. 15-17.

<sup>177</sup> C. Bacchi, *Analysing Policy*, p. 15.

<sup>178</sup> C. Bacchi, *Analysing Policy*, p. 19.

<sup>179</sup> C. Bacchi, *Analysing Policy*, pp. 19-21.

<sup>180</sup> C. Bacchi, *Analysing Policy*, p. xix.

<sup>181</sup> C. Bacchi, *Analysing Policy*, p. 46.

highlight key parts within my material that I identify as relevant. Formulations and concepts are especially important for the identification of problem representations. I then go through these key parts in each policy, while answering the six questions I introduced in the methods section. This is the core part of my analysis from which I derive my results. Bacchi's method can be connected to Haslanger's conceptual framework here. The questions one, two, three and five follow Haslanger's descriptive approach by identifying how concepts are actually used in the material while questions four and six consider alternatives and silences and therefore follow her analytical approach.

Bacchi points out that 'a WPR approach has an explicitly normative agenda. It presumes that some problem representations benefit the members of some group at the expense of others.'<sup>182</sup> The approach takes the side of the harmed group by intervening to 'challenge problem representations that have these deleterious effects, and to suggest that issues could be thought about in ways that might avoid at least some of these effects.'<sup>183</sup> Therefore, I compare the policies in the next step to identify similarities, differences and key aspects that are used to represent the "problem" in a certain way. Here, the focus is specifically on assessing presuppositions and assumptions operating within the policies and the "lived effects" they have.<sup>184</sup> This step is important to understand the meaning given to the problem representation and its implications. It is also necessary to challenge the problem representation by highlighting tensions and contradictions within them or considering discourses as resources for re-problematization. For example, 'appeals to 'rights' can be raised in response to a specific practice and thus can be directed at suspending or even altering relations of power'.<sup>185</sup> What Bacchi proposes here is exactly what I do by appealing to the international human rights framework I presented in chapter five.

## 6.5 Ethical Concerns and Limitations

The chosen policies are publicly available. Ethical concerns with this topic are therefore limited to language choices, which I outlined in the beginning of this thesis. Although I

---

<sup>182</sup> C. Bacchi, *Analysing Policy*, p. 44.

<sup>183</sup> C. Bacchi, *Analysing Policy*, p. 44.

<sup>184</sup> C. Bacchi, *Analysing Policy*, pp. 40-43.

<sup>185</sup> C. Bacchi, *Analysing Policy*, p. 45.

am aware I could have analysed all 22 policies, I believe that limiting my sample did not diminish my findings. Rather, it could have been interesting to analyse more policies of IFs that do not have one. Especially team sports or sports considered to be more “feminine”, such as dancing and equestrian sports, could have enriched my analysis insofar, as equestrian sports are not gender segregated and dances are often performed in pairs.

## 7 Analysis

In this chapter, I present the findings of my analysis. The data was analysed using the WPR approach. I structured my thesis according to the six questions in Bacchi’s manual to conducting a WPR approach. Additionally, I introduce the context of the policies in the beginning and compare my results in the end. Thus, I answer my second research question regarding differences, similarities and the role of language within the policies.

### 7.1 Context of the Policies

Even though I introduced the policies I analyse in my chapter on data, it is necessary to briefly consider their context. As mentioned before, all policies in my sample were adopted between 2018 and 2023. Few of the IFs had policies that preceded those I analyse, but none existed specifically for transgender athletes before 2018. This can be attributed to the fact that the IOC’s 2003 and of 2015 regulations were in effect and that the number of openly outed transgender athletes was lower than today. Since the IOC introduced its new framework in 2021, many new policies have been adopted by IFs. Previous policies were (and some still are) largely based on the 2015 Consensus Meeting, which can be seen in their formulation. Although not mentioned in the policies themselves, my research shows that some policies were likely developed in response to a trans athlete participating in the women’s category, as in the case of World Aquatics, where Lia Thomas, a transwoman, competed in the women’s category in the NCAA.<sup>186</sup>

---

<sup>186</sup> D. Close and E. Tucker, 'Transgender swimmer Lia Thomas begins legal case against swimming’s world governing body', *CNN*, 26 January 2024, <https://edition.cnn.com/2024/01/26/us/lia-thomas-world-aquatics-transgender-athletes-swimming/index.html>, (accessed 09.04.2024).



Some of the policies discuss the process of their development, mentioning things such as who was responsible for drafting specific provisions, what evidence they are based on and how cases are assessed. Ten policies mention at least some of these aspects, while six do not touch upon it at all. For one policy, I found an explanation on how it was developed online. For the remaining five, I have no information. The detail and length of the policies vary greatly in other aspects as well. Generally speaking, and with the exception of two policies, I observed that the bigger the federation, the more detailed the policy. This makes sense, recognising that convening a working group and writing a lengthy policy takes considerable time and resources.

As I explain in more detail later, the policies are informed by each other with World Athletics' policy being the most influential one. Many also use the same studies as sources. All IFs fall under the jurisdiction of the CAS, which would be in charge of resolving any dispute between the IF and an athlete/the member federation. In addition, the IFs must comply with the national law of the country they are based in.

## 7.2 What's the "Problem" Represented to be?

The first question in Bacchi's manual, 'What's the 'problem' represented to be in a specific policy?'<sup>187</sup>, is the basis for this thesis' analysis. The task is not to identify a real problem here but what is perceived to be one by policy makers.<sup>188</sup> The represented "problem" in the policies analysed can be broadly summarised as transgender athletes who want to compete in a category aligning with their gender identity. There are small differences in how the "problem" is presented and whether transgender athletes in general are perceived as the "problem" or just those who want to compete in the women's category. Transmen are generally represented as a smaller "problem" than transwomen. The policies by the ISA<sup>189</sup> and World Rowing<sup>190</sup> do not mention transmen at all, while every other IF at least requires a signed declaration of an athlete's gender identity to compete in the men's category. In these two policies, the represented "problem" are therefore only

---

<sup>187</sup> C. Bacchi, *Analysing Policy*, p. xii.

<sup>188</sup> C. Bacchi, *Analysing Policy*, p. 32.

<sup>189</sup> International Surfing Association, *International Surfing Association (ISA) Transgender Policy Rule*, 07 March 2023.

<sup>190</sup> World Rowing, *Appendix R1 Bye-Law to Rule 13 – Men's and Women's Events in World Rowing Rule Book*, February 2023 (Change of By-Law).

transwomen. The policy by the IFSC distinguishes between transgender (‘a person whose Gender Identity is different from their physical sex at birth’) and transsexual (‘a person who has changed, or is in the process of changing, their physical sex to conform to their Gender Identity’) athletes in their language but then does not differentiate in their regulations.<sup>191</sup> Hence, both groups are represented as the “problem”. None of the other policies use the term transsexual.

Transgender athletes are represented as a “problem” in need of a solution, which is why the policies exist in the first place. Although many of the policies mention that they want ‘to be as inclusive as possible’ and ‘impose only necessary and proportionate restrictions on eligibility’<sup>192</sup>, they portray transgender athletes as deviating from the binary norm within the sporting world. World Archery, for example, ‘recognises that transgender athletes may wish to compete in archery in accordance with their gender identity’ but they have to impose conditions ‘to deliver on the promise of fair and meaningful competition offered by the division of the sport into male and female categories of competition.’<sup>193</sup> This wording clearly shows that the strict binary classification is seen as the norm and transgender athletes have to fulfil certain criteria to fit in.

### 7.3 Presuppositions and Assumptions

The aim of question two is ‘to identify the assumptions and/or presuppositions that lodge within problem representations’, meaning what is assumed and how the world is perceived by policy makers.<sup>194</sup> Binaries and categories implied in the policies play a central role in this part of the analysis, which contains features of a discourse analysis.<sup>195</sup> The main assumption underlying all policies is that testosterone is the key indicator of physical performance and that higher levels of testosterone equate to a performance advantage. For this reason, all policies – except for the one by the FIVB – determine a specific testosterone threshold for trans athletes wanting to compete in the women’s category. The

---

<sup>191</sup> International Federation of Sport Climbing, *Policy Statement: Gender Identity & Transsexuality*, 27 November 2018.

<sup>192</sup> World Taekwondo, *Eligibility Regulations for Transgender Athletes*, April 2021, p. 1.

<sup>193</sup> World Archery, *Eligibility rules for transgender athletes*, 1 October 2023, p. 2.

<sup>194</sup> C. Bacchi, *Analysing Policy*, p. 5.

<sup>195</sup> C. Bacchi, *Analysing Policy*, pp. 7-9.

underlying presupposition here is that due to the performance advantage by males ‘it is necessary to have separate competition categories for males and females in order to preserve the safety, fairness and integrity of the sport’.<sup>196</sup>

According to Haslanger’s descriptive approach, it is necessary to consider how concepts are used. My analysis focuses on the concepts of sex and gender because they are central in the policies. In the policies, it is assumed that sport is best organised in binary categories because of the belief in only two biological sexes, which is the determining factor in sport. World Aquatics even manifests this by mentioning ‘both biological sexes’<sup>197</sup> and everyone having ‘a place in World Aquatics’ competition categories based on their sex.’<sup>198</sup> The other policies do not explicitly speak of two sexes, but always of two categories and categories organised by sex. The only federation mentioning a non-binary possibility of sex is the IFSC, which includes ‘indeterminate sex’<sup>199</sup> but then does not consider it in their regulations. Few policies avoid the term sex entirely. Most policies do not provide a definition of their concept of sex. Those that do, however, define it as ‘an individual person’s biological and physical characteristics, associated with being male or female’<sup>200</sup> and ‘natural biological differences between females and males, including chromosomes, sex organs, and endogenous hormonal profiles.’<sup>201</sup> The women’s category is presented as weaker and in need of protection from trans athletes through specific provisions in all policies. The men’s category, on the other hand, is not presumed to require such regulations, as several policies do not even mention transmen at all and the ones that do either request a ‘written and signed declaration’<sup>202</sup> or at most a Therapeutic Use Exemption (TUE) in case they are taking testosterone.<sup>203</sup>

Some policies additionally assume that the onset of puberty is a determining factor in “fixing” an athlete’s belonging to the men’s category, as they do not permit transwomen who transitioned after puberty in the women’s category at all. A quarter of the federations in my sample have this rule (Aquatics, Athletics, Cycling, Rugby). Nevertheless, as all

---

<sup>196</sup> World Archery, *Eligibility rules*, p. 3.

<sup>197</sup> World Aquatics, *Policy on the Eligibility for the Men's and Women's Competition Categories*, 24 March 2023, p. 2.

<sup>198</sup> World Aquatics, *Policy on the Eligibility*, p. 9.

<sup>199</sup> IFSC, *Policy Statement*, p. 2.

<sup>200</sup> World Rugby, *Transgender Guidelines*, May 2021.

<sup>201</sup> World Aquatics, *Policy on the Eligibility*, p. 5.

<sup>202</sup> International Tennis Federation, *ITF Transgender Policy*, 10 August 2023, p. 2.

<sup>203</sup> World Triathlon, *Eligibility Regulations for Transgender Athletes*, 22 November 2022, p. 6.

policies allow trans athletes under specific conditions, they consider them to be “female enough” or to have an insignificant advantage when fulfilling these criteria. Generally, all policies differentiate between sex and gender, some actually discuss it, whereas others simply treat it as a predetermined fact. Most of them give a similar definition for transgender:

The term “Transgender” is used in this Policy to refer to individuals whose gender identity (i.e., how they identify themselves) is different from the sex assigned to them at birth (whether they are pre- or post-puberty, and whether or not they have undergone any form of medical intervention).<sup>204</sup>

From that definition, it becomes clear that the IFs assume a person can change their gender, whereas sex is somewhat fixed. World Aquatics goes even further stating that ‘the term “transgender” refers to individuals whose gender identity and/or expression differs from what is typically associated with their sex.’<sup>205</sup> The phrase “typically associated” is interesting here, as it initiates a whole new discussion on what typical sex traits are. World Aquatics most likely refers to stereotypical ideas of what men and women have to look like. World Rugby uses similar terms in describing differences as ‘males are typically significantly heavier, faster, stronger, and more powerful than typical females’.<sup>206</sup> Transgender persons are consequently represented as “untypical”.

Fairness and equal opportunities to excel are one of the overarching objectives within the policies, which entails assumptions. The protection of the category is considered most important, so exclusion is assumed appropriate: ‘This Policy is in place for the protection of women in sport and the promotion of the principles of fair competition.’<sup>207</sup> Thereby, cis women’s rights are represented as worthier than transwomen’s rights. Furthermore, it is presumed appropriate to test and investigate trans athletes whenever deemed necessary and for them to provide whereabouts and other information. Athletes wanting to compete on this level are likely subjected to a strict doping regime already, but this is an additional burden and invasion of privacy that specifically affects transwomen. World Archery, for

---

<sup>204</sup> International Skating Union, *Communication No. 2595: ISU Transgender Policy*, 11 October 2023, p. 1.

<sup>205</sup> World Aquatics, *Policy on the Eligibility*, p. 6.

<sup>206</sup> World Rugby, *Transgender Guidelines*.

<sup>207</sup> ISU, *ISU Transgender Policy*, p. 4.

example, requires trans athletes wanting to compete in the female category to provide a minimum number of 10 tests at minimum six weeks apart to prove their testosterone level.<sup>208</sup> Here, and in other policies, it is assumed unproblematic to provide blood sample results from up to 24 months ago. Additionally, the costs for testing have to be borne by the athlete themselves in almost all federations. This is already an excluding factor. Some policies specify who can prompt an investigation, which is mostly restricted to the IFs medical manager and the national federation. In the case of Rugby, ‘in the event that a player or Union has a genuine concern about safety or fairness in relation to another player’, they can refer this to higher authorities and possibly spark an investigation.<sup>209</sup> This rule confers to stereotypical assumptions about heteronormative bodies. Some policies also specify what could happen if an athlete does not comply with the regulations/fails to prove they are fulfilling the testosterone criteria: ‘the disqualification of individual results’, ‘a specified period of ineligibility’, a fine or a ‘warning as to future conduct’.<sup>210</sup> That said, it seems appropriate to the IFs to punish trans athletes similar to doping offenders. Additionally, in many cases, the athletes have to provide a full medical history including details of any reassignment surgeries and other treatments.<sup>211</sup> Thereby, they are treated unequally compared to cis athletes as they have to disclose private medical information.

Finally, some IFs presuppose specific aspects which are worth mentioning. The ISA considers sex variations as similar enough to being trans to only have one policy:

The following Rule is intended to guide the Medical Commission in determining the eligibility of transgender athletes and/or athletes with sex variations to compete in a women’s or men’s event at the ISA level.<sup>212</sup>

Volleyball, which is one of the few team sports in my analysis, regards transgender athletes as so “different” that ‘only one (1) player having previously played for another gender can be a part of a team for a given event unless otherwise decided by the FIVB.’<sup>213</sup>

---

<sup>208</sup> World Archery, *Eligibility rules*, p. 9.

<sup>209</sup> World Rugby, *Transgender Guidelines*.

<sup>210</sup> Union Cycliste International, *Eligibility Regulations for Transgender Athletes in UCI Cycling Regulations Part 13 Medical Rules*, 17 July 2023, p. 10.

<sup>211</sup> UCI, *Eligibility Regulations UCI*, p. 6.

<sup>212</sup> ISA, *ISA Transgender Policy Rule*, p. 1.

<sup>213</sup> Fédération Internationale de Volleyball, *Sports Regulations: Volleyball*, 23 June 2023, p. 4.

For both categories, a trans player must be “balanced out” by other members of the team weighing ‘the identification of an individual player’ against ‘the competitive balance of the competition category taking into account the interests of the other athletes competing in that category.’<sup>214</sup> The determining factor here is the players birth certificate ‘reflecting the player’s gender assignment at birth’.<sup>215</sup> It is noteworthy that they speak of gender assignment at birth, which is something no other federation does. Apparently, the FIVB either does not presuppose sex to be a decisive factor or is using the term gender when actually meaning sex. The policy also does not mention any specific sexes/genders and rather speaks of “change of gender”. It is the only federation that does not require any kind of testosterone threshold for the women’s category.<sup>216</sup>

## 7.4 Origin of the Problem Representation

Question three asks how this representation of the “problem” has come about.<sup>217</sup> This question can be answered similarly for all policies, since the identified problem representation is broadly the same and therefore has the same origin within society. As policies usually do not thematise these aspects, I retrace how this problem representation emerged and assumed dominance. Firstly, for a long time there were only two recognized genders represented and visible in society. This is mirrored in the binary categorisation in sport. Even women’s inclusion took a long time as I showed previously. The history of sports shaped the system as we know it now. Coubertin’s and other decisionmakers’ vision of the Olympics in the late 19<sup>th</sup>/early 20<sup>th</sup> century as a male-dominated space, sex testing procedures between 1940-2000, decolonialization and the involvement of African athletes, the rivalry between the East and West during the Cold War and the Western ideal of femininity, which has prevailed, are all key points in sporting history that influenced perceptions of women in sport. More recently, specific cases of athletes like Caster Semenya and Dutee Chand – two women athletes with DSD - sparked debates and triggered investigations and legal negotiations before the CAS. Interestingly, in debates on trans athletes, these two athletes are always named as examples who challenged the binary classification

---

<sup>214</sup> FIVB, *Sports Regulations: Volleyball*, p. 3.

<sup>215</sup> FIVB, *Sports Regulations: Volleyball*, p. 3.

<sup>216</sup> FIVB, *Sports Regulations: Volleyball*.

<sup>217</sup> C. Bacchi, *Analysing Policy*, p. xii.

system in sport, although they are not trans. Nevertheless, World Athletics, for example, developed their stricter DSD regulations in reaction to Semenya and her legal appeals, while at the same time pushing similarly strict trans regulations.

The problem representation is produced through the overarching perception in society of women being the weaker gender compared to men. Power relations play a significant role, as sport is an area where men continue to dominate the disciplines themselves, as well as key decision-making and coaching positions. This phenomenon is evident in any sport, but specifically in those that rely on body mass, such as Rugby, Wrestling and Ice Hockey and those associated with strength, endurance and perseverance, such as Cycling, Triathlon and Athletics. Objective results like times and distances seem to prove this time and time again, while societal factors like funding, socialisation and gender roles are neglected in public debates. The discourse focuses almost exclusively on physical factors. Additionally, men's achievements in sport often generate way more (media) attention, they get the bigger events (e.g. Tour de France vs Tour de France Femmes), the gender pay gap is huge, research on women's sport is minimal, athletes who get pregnant still face challenges in their career and women are sexualized in the sporting domain. All this contributes to women's sport and their achievements being perceived as less relevant than men's. This is accompanied by the stereotypical notion that women must be "protected" in general and specifically from "biological males", in this case meaning transgender women.

Even though trans people are becoming more accepted in many societies, sport is seen as separate from this development. Being so physical, it holds a special position. As I showed in the previous chapter, it is claimed that sex is biological and remains fixed, while gender is social and can change. Therefore, in sport, a person can only be either male or female, otherwise they are not eligible in the sporting sphere.

Again, some sports have specific characteristics. World Rugby emphasises that due to its physical nature and high risk of injuries, 'it is a sport that faces unique and specific challenges with respect to the participation of transgender players.'<sup>218</sup> The emphasis on traditionally masculine 'physiological attributes such as size, stature, strength and power'<sup>219</sup>

---

<sup>218</sup> World Rugby, *Transgender Guidelines*.

<sup>219</sup> World Rugby, *Transgender Guidelines*.

perpetuates gender stereotypes and the notion that transwomen are “biological males”. Ice-Dancing, which is included in the ISU, is a sport reinforcing heteronormative ideals, as it only allows heterosexually representing couples in ‘pair Skating (one Woman and one Man)’<sup>220</sup>, where the woman must dance the woman’s part and the man must dance the man’s part.

## 7.5 Silences and Alternatives

Question four considers what is left unproblematic or silenced in a problem representation. At the same time, it asks whether the “problem” can be thought about differently.<sup>221</sup> Some silences can be identified in (almost) all policies, while others are quite specific. Half of the policies invoke scientific studies/evidence to justify their regulations. However, none of them provide reasons for choosing a specific testosterone threshold, despite the fact that they differ from 2,5-10nmol/L. Interestingly, all the policies justify their threshold with the same sources. Thus, it does not become clear why a policy needs to give this threshold and not any other. The same applies to the timeframe for proving lower serum testosterone levels, which is either 12 or 24 months for eligibility to compete in the first place. Furthermore, all policies reduce transgender athletes – and consequently every other athlete – to their physical components rather than focusing partially or exclusively on gender identity and/or societal factors. Non-binary people are only mentioned in World Rugby’s policy but do not have a place in any other. By focusing on the fairness argument in structuring categories, the policies silence fairness for all people who do not fit either of the binary categories. None of the policies address the issue of how the women’s category can be better supported, given that it is still perceived as inferior to men’s.

The policies that exclude transwomen transitioned after puberty from the women’s category do not provide an explanation as to how these transwomen can compete. It can be assumed that they might be eligible in the men’s category, but this is not stated. World Rugby, for example, only mentions that ‘transgender women can play mixed-gender non-contact rugby.’<sup>222</sup> From this, it could even be presumed that they cannot play in either the

---

<sup>220</sup> International Skating Union, *SPECIAL REGULATIONS & TECHNICAL RULES SINGLE & PAIR SKATING and ICE DANCE 2022*, 2022, p. 9.

<sup>221</sup> C. Bacchi, *Analysing Policy*, p. xii.

<sup>222</sup> World Rugby, *Transgender Guidelines*.



women's or the men's category. Additionally, World Aquatics, World Athletics and the UCI require transwomen transitioned before puberty to 'have since continuously maintained their testosterone levels in serum (or plasma) below 2.5 nmol/L.'<sup>223</sup>, but do not give instructions on how to prove this. This could possibly exclude even more people. They also do not discuss the fact that in most countries transitions are either permitted from the age of 16/18 or not permitted at all. One criterion in these policies is therefore almost impossible to fulfil. Generally, the policies have a very privileged view of trans people, as it is assumed that they can afford to pay for extra testing – in addition to paying for their transition – and have the necessary infrastructure close by. Numerous policies determine that 'the costs of any medical assessment, examination, treatment, monitoring, reporting, and any other costs involved in complying with the Regulations will be borne by the relevant athlete.'<sup>224</sup> The ones without this provision do not specify who is covering the costs. The same goes for proving one's testosterone level in the first place. The more detailed policies give clear instructions on the whole eligibility process while the shorter one's do not include this. Furthermore, some policies determine something similar to the rules by World Triathlon:

the Medical Manager may investigate, at any time:

5.2.1. Whether an athlete who has not filed a declaration under these Regulations is a Transgender athlete who needs to establish his/her eligibility to compete in a particular competition category in accordance with these Regulations.<sup>225</sup>

It is not specified how an athlete falls under suspicion to not comply with the policy and whether this has anything to do with physical appearances.

Most of the policies give a definition of the term transgender but do not explain how the terms "sex", "gender", "women/men" and "female/male" are used. In the scientific literature, the concepts of female/male are often used to describe a person's sex and women/men (and others) for gender.<sup>226</sup> The IFs seem to use this categorisation. Although most of the policies speak of the female/male category, which is in alignment with their idea of sex being the determining factor, the terms are often mixed and not defined properly.

---

<sup>223</sup> World Aquatics, *Policy on the Eligibility*, p. 8.

<sup>224</sup> World Taekwondo, *Eligibility Regulations*, p. 14.

<sup>225</sup> World Triathlon, *Eligibility Regulations*, p. 10.

<sup>226</sup> S. Haslanger, 'Gender and Social Construction', p. 20.

UWW, for example, speaks of ‘female-to-male Transgender wrestler’.<sup>227</sup> Similarly, World Triathlon uses ‘Transgender female’ and ‘Transgender women’ interchangeably<sup>228</sup> and the ISU throws around all possible terms, apparently having no idea what their policies’ idea is based on. It defines transgender persons as having a gender identity differing from their sex assigned at birth, but then speaks of female/male as a person’s gender identity and ‘the other gender category’, while using both female and women’s category.<sup>229</sup> The policies either presuppose that a person can only change their gender – as proven by their use of “transgender” – or just use this term because it is politically correct. However, they should be consistent when using such decisive terms. The only policy giving a definition of these terms is the one by World Rugby, which defines biological female as ‘a person who does not produce male levels of testosterone at puberty and adolescence, and thus does not experience the resultant androgenizing effects thereof.’<sup>230</sup> This is helpful in understanding their policy, but females are only defined in relation to males, which is proof of the hierarchy I mentioned.

More unique silences are the ISU not mentioning whether a transperson dancing either of the two parts has an effect and the FIVB not giving any specifics on how a person can change their gender/prove their transition in the first place. World Skate requires an athlete to “declare” their gender<sup>231</sup>, which is similar in other policies. The difference is that most policies give instructions on how to do this, while World Skate does not. Two policies (Rowing, Surfing) leave out transmen in their regulations completely. The ISA also includes athletes with sex variations in their policy but does not specify what happens if such an athlete was assigned female at birth and identifies accordingly. According to the policy, there should then be no “problem”. One could ask why they are included in the first place. The policy mixes people in different situations and thereby makes itself contestable. World Taekwondo determines that if an athlete has been proven to have violated the regulations, the federation ‘may in its absolute discretion disqualify the individual results obtained by the athlete at that competition, with all resulting consequence.’<sup>232</sup> There may be concerns about how discrete a disqualification can be if, for example,

---

<sup>227</sup> United World Wrestling, *UWW Transgender Policy*, 4 June 2018, p. 2.

<sup>228</sup> World Triathlon, *Eligibility Regulations*.

<sup>229</sup> ISU, *ISU Transgender Policy*, p. 2.

<sup>230</sup> World Rugby, *Transgender Guidelines*.

<sup>231</sup> World Skate, *Competition Guidelines for Transgender Athletes*, 2019, p. 2.

<sup>232</sup> World Taekwondo, *Eligibility Regulations*, p. 11.

someone else is awarded the disqualified athlete's medal. In such cases, trans athletes might be subjected to the same public condemnation as doping offenders.

## 7.6 Effects of the Problem Representation

The fifth question aims to identify the effects a policy has. Bacchi introduces three inter-related effects: discursive, subjectification and lived, which I will consider in this chapter. Thereby, I answer the part of my third research question regarding other effects than human rights violations.

### 7.6.1 Discursive Effects

Discursive effects follow from the limits imposed on what can be thought and said by representing a “problem” in a specific way.<sup>233</sup> Since transgender athletes need special regulations to compete or cannot compete at all, they are framed as outside the norm. Cisgender athletes, on the other hand, represent the norm. Phrases like ‘typically associated with their sex’<sup>234</sup> and the one-player rule in Volleyball prove this. That leads to the discursive belief of transgender athletes not fully belonging in sport, which in turn effects representation. Little or no representation of trans athletes could result in few trans athletes in the future because trans kids do not go into sports if they feel they do not belong, or athletes do not transition if lack the perspective of staying in their sport. A quarter of the policies differentiate between transwomen who have undergone transition before and after puberty. The ones that transitioned after are represented as “not female enough” to compete in the women's category. This affects views on trans people, as the ones transitioned before puberty are likely to be seen as “better” or “worthier”. Additionally, the discourse can have a possible effect (and already had in some countries) on recreational and school sport, negatively impacting trans kids and adults. Overarchingly, the women's category is represented as requiring protection, which portrays female athletes as physically inferior to male athletes. This has effects not just in sport, but in society generally, as it reproduces stereotypical ideas of not just sex but also gender.

---

<sup>233</sup> C. Bacchi, *Analysing Policy*, p. 16.

<sup>234</sup> World Aquatics, *Policy on the Eligibility*, p. 6.

Another discursive effect is that some groups of people do not exist in the sporting world. Non-binary people are completely left out of the policies, which suggests that they have no place in sport unless they assign themselves in the category of their sex assigned at birth. This only works if they have not taken any steps to change their hormonal features. Sports like skateboarding, which has been known to be inclusive towards non-binary people, aim to fit into the binary sporting system to become Olympic and therefore exclude these groups. Transmen also do not exist in some policies, which frames athletes classified as “biologically female” as inferior again. Only the FIVB perceives a change of gender to be the same for transwomen and transmen, which could have a discursive effect on how being trans is seen in that specific sport. Apart from discursive effects on trans people, the objective of fairness is framed as more important than participation of everyone. Applying ‘conditions that go only so far as is necessary’<sup>235</sup>, is presented as appropriate affecting the discourse on this discussion.

### 7.6.2 Subjectification Effects

Subjectification effects describe how subjects are constituted within discourses. Problem representations in policies often set groups of people in opposition to each other<sup>236</sup>, which is the case here, too. Subjectification effects are strongly interrelated with discursive effects. Trans athletes are targeted as a specific group in opposition to cisgender athletes. They are not perceived as “fully female” or “fully male”, as they must fulfil certain criteria to be eligible to compete in the existing categories and are subjected to a strict testing regime. Oppositely, cisgender athletes as a group occupy the subject position of “the normal”. The trans athletes themselves are framed as responsible for their faith and having to deal with it by taking care of an application, applying for a TUE and organising and paying for testing. This affects how trans athletes as individuals, but also as a group, see themselves and which position in sport they occupy. They must first fulfil certain criteria to occupy a position that others can have simply by being born a certain way.

The policies highlight seemingly opposed groups and their differences. A predetermined distinction is made between the women’s and men’s category, and it becomes clear that it

---

<sup>235</sup> International Ice Hockey Federation, *IIHF Transgender Policy*, 01 June 2022, p. 3.

<sup>236</sup> C. Bacchi, *Analysing Policy*, p. 16.

is assumed males and transwomen have an advantage ‘because of the significant advantages in size, strength and power enjoyed (on average) by men over women from puberty onwards’.<sup>237</sup> As previously mentioned, the groups of transwomen and transmen are also represented as differing in relevant aspects. In most policies, transmen need to satisfy specific criteria, but the focus is more on transwomen as a group representing a “problem”. Some of the policies group trans people who transitioned before puberty against those who transitioned after and punish the second group. They are framed as “not knowing early enough” to compete in the women’s category.

The case of Volleyball is special again as only one person per team can be trans, which might become a problem if trans people have to compete against each other for that spot. Teammates could become rivals, although they might need each others support as they belong to the same discriminated group. If one person gets the spot and the other does not, this could lead to a harmful self-image of taking up too much space. Furthermore, they are singled out, marked as different and put into the spotlight, since their status likely becomes public knowledge. That way, they are separated from the other players even more and are represented as a “problem” having to be balanced out by the rest of the team.

### 7.6.3 Lived Effects

Lived effects describe the material and social impacts a problem representation has on people’s life.<sup>238</sup> One aspect is the possible exclusion, bullying, stigmatisation and negative media attention trans athletes are facing within their chosen category. In particular, places like bathrooms and changing rooms can become sites of harmful encounters. The identity and/or physical make-up of a person can become a topic of public debate, particularly in sports where athletes wear revealing uniforms. Additionally, trans athletes might face disadvantages compared to cis athletes in terms of positive media attention and sponsoring, which affects their material living situation. This is in addition to the extensive costs they have for treatment, testing and obtaining a TUE for transmen. There are other effects, as ‘random or targeted testing’<sup>239</sup> influences how a person can live their life, while providing

---

<sup>237</sup> World Taekwondo, *Eligibility Regulations*, p. 1.

<sup>238</sup> C. Bacchi, *Analysing Policy*, p. 17.

<sup>239</sup> UCI, *Eligibility Regulations UCI*, p. 7.

‘a comprehensive medical history’<sup>240</sup> is an invasion of a person’s privacy. Obtaining medical records from previous physicians can also be a time-consuming and costly endeavour.

A number of trans people can likely not participate in the sport at all or in the category that aligns with their gender identity, which can have a number of adverse effects like unhappiness, mental and physical health issues and a lack of social contacts. This influences representation and possibly the lives of other trans people and especially children if they do not participate in recreational or school sports due to missing representation and stigmatisation. In the case of ice-dancing, a transperson might be discriminated or disadvantaged when finding a dancing partner. For the team sports of Volleyball and Rowing, a lived effect could be the possible exclusion or non-nomination. Waiting 24 months to compete if one cannot prove their testosterone level is a problem in professional sports. None of the policies specify what happens to trans people who are already competing and whether they have to wait for two years before competing again. Furthermore, in the case of Rugby, if someone can draw higher authorities’ attention to an athlete<sup>241</sup>, this can have implications for any athlete competing in the female category, even if they are not trans, as they could still be investigated.

## 7.7 Production and Replacing of the Problem Representation

Question six considers how a problem representation is produced and defended, but also how it can be questioned or replaced.<sup>242</sup> The problem representation of transgender athletes derives from the fact that males have an advantage in sport, which can be proven by objective results (times, distances etc.). Social factors that affect sporting performance, such as funding, socialisation, gender roles and school sport, are often completely neglected as the discourse focuses only on physical components. The focus on sex- and gender-related questions in sport in the form of sex-testing and gender verification procedures has existed for a long time. The problem representation was also produced through that. Some sports like ice-dancing take heteronormative ideals as a basis and

---

<sup>240</sup> IIHF, *IHF Transgender Policy*, p. 7.

<sup>241</sup> World Rugby, *Transgender Guidelines*.

<sup>242</sup> C. Bacchi, *Analysing Policy*, p. 2.

therefore reproduce the discourse on heteronormativity. Additionally, scholars and other people claim that the main objective of sport is fairness and not inclusivity, which justifies the problem representation.

The problem representation recently achieved dominance through the many new policies by IFs and the growing number of publications on this topic, especially from the field of sports science. As discussed, the IFs are taking each other and mostly the policies by World Athletics as a source. This is especially interesting in the cases of Sport Climbing and Skateboarding which are both “newer” sports and copied the regulations from more established sports. Skateboarding, as a sport from the streets, did not start out with this strict separation. Social media is a factor in producing and reproducing this problem representation. Especially sports like Rugby, Ice Hockey, Wrestling and Rowing are affected by this, as they are very strength and endurance based and do not correspond with stereotypical ideals of femininity. They are very physical and prone to injuries and frame transwomen as potentially harmful to other competitors. Therefore, they are the basis for polarised discussions online, as are specific cases of trans athletes competing in their sport like CeCé Telfer (Athletics) and Lia Thomas (Swimming).

The problem representation can be challenged/replaced by more studies that also research trans people who are actually involved in sports and by valuing women’s sport more and not representing them as “inferior”. This could be done by increasing funding, supporting pregnant athletes and emphasising women’s sporting achievements. If one compares, for example, the development of the World Record in the marathon, the women’s World Record is now where the men’s was in the 1960s and the times have gotten closer.<sup>243244</sup> This suggests that societal factors also play somewhat of a role and that real gender equality in sport should be enforced for the gender performance gap to shrink. Furthermore, the use of language poses a problem, as sports are usually named “soccer” vs “women’s soccer” or “Tour de France” vs “Tour de France Femmes”. Women always need an additional

---

<sup>243</sup> World Athletics, 'Marathon Women', *World Athletics*, <https://worldathletics.org/records/all-time-top-lists/road-running/marathon/all/women/senior?regionType=world&page=1&bestResultsOnly=true&first-Day=1900-01-01&lastDay=2024-04-25&maxResultsByCountry=all&eventId=10229534&ageCategory=senior>, (accessed 25.04.2024).

<sup>244</sup> World Athletics, 'Marathon Men', *World Athletics*, <https://worldathletics.org/records/all-time-top-lists/road-running/marathon/all/men/senior?regionType=world&page=1&bestResultsOnly=true&first-Day=1900-01-01&lastDay=2024-04-25&maxResultsByCountry=all&eventId=10229634&ageCategory=senior>, (accessed 25.04.2024).

word, since sport is immediately associated with men. Language has a power in reconstructing discourses that is often underestimated. Changing language would be a step towards more gender equality.

Another option is to find other solutions than two binary categories to not represent trans athletes as a “problem”. World Aquatics, being the first IF, actually introduced an open category at their Swimming World Cup 2023 but received no entries.<sup>245</sup> This shows that there is potential in changing the binary sporting system. An option for doing this would be to focus on gender as the decisive factor in categorisation, rather than sex, while finding a solution for, or at least starting to discuss, non-binary people. The heteronormative framework of sports like ice-dancing could also be challenged. Finally, the general perception of trans people in society needs to change to create better conditions for them in sport but also in any other area. Visibility is necessary for this to happen. Sport could be helpful in creating this visibility.

## 7.8 Comparison and Results

The policies are already compared within the analysis. Nevertheless, I briefly summarise key results and comparisons in this chapter. The policies differ in length, detail and used language. For the short policies that give no details on how to deal with transgender athletes, it does not seem clear whether they expect to have a case at all. Although some policies establish stricter regulations than others, 15 policies focus on testosterone levels and/or time of transition as the decisive factor in determining eligibility for the women’s category. None give reasons for choosing a specific testosterone threshold. It is self-explanatory that testosterone does not play the same role in all sports (e.g. Archery vs Athletics). However, the role of testosterone in the specific sports is never discussed.

The concepts of sex and gender are mostly applied similarly, but the definitions and the choice of words vary. The inclusiveness of the language also differs and the use of terms such as female/male and women/men is not consistent throughout the policies, but also within them. The policies of the UCI, World Athletics, World Taekwondo, World

---

<sup>245</sup> World Aquatics, 'Update on the Open Category competitions at the World Aquatics Swimming World Cup – Berlin 2023', *World Aquatics*, 3 October 2023, <https://www.worldaquatics.com/news/3715191/update-on-the-open-category-competitions-at-the-world-aquatics-swimming-world-cup-berlin-2023>, (accessed 25.04.2024).



Triathlon and partly the ITF and World Archery are strikingly similar in their formulation and their used references. Other policies also show similarities, as they have probably taken the IOC Consensus, or World Athletics' policies of 2011, 2019 and 2023 as a basis. Some policies have a provision where they claim 'to be as inclusive as possible'<sup>246</sup> only to turn out comparably restrictive. Most policies have an article stating: 'No stigmatization or improper discrimination on grounds of gender identity will be tolerated.'<sup>247</sup>, but then stigmatise people themselves.

Presuppositions and assumptions in the policies are mostly similar because they originate in a patriarchal society and only differ on specific aspects in some sports. The silences on the other hand are very different because the shorter policies miss a lot of details. Produced effects are the same since the policies have matching definitions of transgender athletes and regulations. The main difference is the puberty criterium. The production of the "problem" is alike again as are the possibilities of replacing it. The sample includes four team sports, which makes a difference in the effect of a policy and the possible reaction of other athletes to a trans athlete.

## 8 Discussion: A Human Rights-Based Approach to Gender Eligibility in Sport

The WPR approach explicitly 'takes the side of those who are harmed' with the goal 'to intervene to challenge problem representations' by highlighting contradictions in policies and considering discourses as sources of re-problematisations through, for example, raising appeals to rights.<sup>248</sup> This connects to the third research question. In this chapter, I discuss how the introduced rights could be connected to the problem representation to be most beneficial for trans athletes. I am taking a human rights friendly approach, assuming that they are universal<sup>249</sup> and can be adapted to protect the field of sport. I also address the opposing arguments I identified in the literature from chapter 3.3., answering the

---

<sup>246</sup> World Athletics, *Eligibility Regulations for Transgender Athletes*, p. 3.

<sup>247</sup> UWW, *UWW Transgender Policy*, p. 4.

<sup>248</sup> C. Bacchi, *Analysing Policy*, pp. 44-45.

<sup>249</sup> M. Freeman, *Human Rights*, 3rd edn., Cambridge, UK, Polity Press, 2017, p. 120.

second part of my first research question. Additionally, I give ideas on how to redefine the concepts of sex and gender with Haslanger's analytical approach.

I argue with the introduced theoretical framework that the existing understandings of sex and gender in society are socially constructed. I do not deny physical factors playing a role in sport, but the way the sporting system is constructed is a result of heteronormative ideas of binary sexes and genders. I showed that these ideas underlie the examined policies as well. Arguing with Butler, the existence of a person in the cultural and social sphere presupposes a causal relationship between sex and gender.<sup>250</sup> The fact that people exist who do not fit this system and therefore do not exist within it, or only as outliers, proves this. It is no solution to construct them as a "problem" or "untypical". Following MacKinnon's legal anti-discrimination approach, trans rights are sex equality rights<sup>251</sup> as much as women's rights are.

I established that the right to non-discrimination, gender equality rights, the right to work and the right to sport are relevant in this field. On the reasonable assumption that human rights are universal, trans people should have exactly the same rights to compete in sports and to protection of their work as everyone else. The category and discrimination argument I identified in the literature weigh transwomen's rights against cis women's rights. The argument is that transwomen's right to participation does not entail them do so in a category of their choice, as this would harm cis women's rights. Therefore, discrimination in sport is seen as acceptable. It should not be acceptable to place cis women's rights over transwomen's rights. By excluding transwomen from the women's category, they are de facto excluded completely, although some might argue they can compete in the men's category. Apart from this not being possible in all federations, it is unrealistic due to physical and social aspects. Balancing the human rights of one person against the human rights of another is a common dilemma. I argue that the chance to compete and work in the first place should be seen as more important than a cis woman who might have won or qualified for the final had it not been for a transperson. The right to free choice of work, as enshrined in the ICESCR<sup>252</sup>, can be interpreted in a way that any person should at least

---

<sup>250</sup> J. Butler, *Das Unbehagen der Geschlechter*, p. 46.

<sup>251</sup> I prefer gender equality rights, but this is the term MacKinnon uses.

<sup>252</sup> UN, *ICESCR*, Art. 6 (1).

get the chance at pursuing a career in competitive sport and excel at it. This line of reasoning counters the category and discrimination argument.

The physiological argument cannot be countered in this thesis, as it does not address these aspects, but I want to highlight again that more studies researching trans athletes in sport are necessary. Other advantages exist in sport as well. Looking at the disciplines of long-distance running and high-jumping, one can observe that African and tall athletes dominate these sports. This obviously does not call for further categorization as it would be discriminatory. More studies would also support or contradict the safety argument, which would entail a separate evaluation for collision sports. I outlined that some scholars argue that the burden of proof lies with trans athletes and their allies because they request participation. I, however, argue that in the area of human rights, the burden of proof should not lie with the oppressed group, as they do not have the means to prove anything.

I already countered the human rights argument within my human rights framework, but I want to emphasise that comparing the category of age to gender is a weak argument. Every person goes through the same stages of growing old, while gender is very different. Being a woman means being discriminated against for a lifetime, even if a person changes their gender, because they are then discriminated against as trans. Additionally, there is no ‘right to fair and safe competition’<sup>253</sup>, which Christiansen claims to be as much a human right as the right to freedom of choice.

By connecting Bacchi and Haslanger’s analytical approach, I challenge the problem representation of transgender athletes and propose the redefinition of the concepts sex/gender in sport to be most beneficial for trans athlete’s rights. Haslanger emphasises:

If the term has been long and strongly associated with a particular policy (or type), then it may take substantial work to change what we do with it; other terms are quite malleable in their operations.<sup>254</sup>

The term “sex reassignment policy”, which was used by the IOC before 2021 and World Athletics before 2019, is a good example for this, as it was easy to redefine. No policy in my sample uses this term. The concepts of sex as biologically fixed and gender as socially

---

<sup>253</sup> A. V. Christiansen, 'The Negligence of Biological Reality', p. 27.

<sup>254</sup> S. Haslanger, 'What Are We Talking About?', p. 22.

constructed are much more stable, since they are not just used in sport and provide a comprehensible framework for understanding how societies work. Feminist theories challenge this separation. Framing perceptions of both sex and gender as socially constructed serves as a basis to redefine the use of these concepts. Nature not dictating ‘a sex binary – we could identify more than two sexes, or allow someone to be without sex – is crucial to the claim that our concept of sex is socially constructed.’<sup>255</sup> This is also reflected in the policies, as they always speak of transgender and someone being unable to change their sex, while using “male to female transgender”.

One option is to eradicate the concept of sex completely and solely focus on gender. I am convinced that this would miss the point of this thesis and I also do not deny biological realities of, for example, some people having higher testosterone levels than others or being able to bear children. Physical characteristics are not constructed and play a decisive role in sport, which separates it from other societal areas. Denying this would mean to deny existing advantages in sport and real sources of discrimination. However, I argue that the existing gender hierarchy, and with it the discrimination of women and trans people, is purely a social construction. The same goes for the binary categorisation of sex and the categorisation in sport. Athletes not fitting the binary system prove this. Decisive factors in sport like testosterone, height etc. are a continuum. Therefore, I propose to use sex in a way that acknowledges this, as Haslanger and Butler do. The term sex can be used in sport to describe the social construction of physical characteristics (e.g the idea of strength and muscle mass being associated with masculinity). It is still relevant in sport but the recognition of it being socially constructed is vital for reconstructing transgender eligibility regulations. Instead of the term sex and its binary assumptions, focusing on specific physical characteristics, but not associating them with sex, could be helpful in reframing gender equality and trans people in sport. Gender needs to be defined in itself and not in relation to sex anymore (as the social aspects of sex). I propose to use gender for the social identity that is ascribed to a person by society or themselves on the basis of discourses. Both concepts are fluid because ideas and perceptions in societies can change over time, and it is possible to not identify with any sex or gender or change them. Nevertheless, it is still necessary to keep these concepts to highlight existing inequalities. Redefining

---

<sup>255</sup> S. Haslanger, 'The Sex/Gender Distinction', p. 160.

these concepts weakens the sex/gender argument from the literature, since it rests on the assumption that people can only change their gender, not their sex. If we acknowledge the concept of sex as a social construction, this does not hold. The same goes for the fairness argument.

It can be said that the argumentation entails a protection of “elite” rights, for which human rights were not originally intended. However, human rights already fulfil different purposes than a hundred years ago. Their scope has been widened tremendously. Protecting human rights in an elite field does not make them elite rights but is as important as protecting them anywhere else. Not everyone making it into professional sports should not be an excuse for disregarding human rights. Otherwise, the same argument could be used for any area, this would make the human rights regime pointless. I believe that the regime’s strength is that it can be adapted to new circumstances. MacKinnon establishes that law ‘can change reality because of the meaning with which people invest in it, including those whom it has not represented.’<sup>256</sup> The policies I analysed are not law, but they have a similar kind of power as they set the agenda in their respective sport(s). Their use of language and construction of trans athletes as a “problem” carries weight in and possibly outside the sporting world. This makes it essential for them to be consistent in their use of concepts like sex and gender.

Lastly, I want to highlight that the policies include further problematic aspects, which have not been the focus of this thesis. The policies prohibiting participation of transwomen transitioned after puberty use age and the Tanner Scale to define whether a person has transitioned before or after puberty. The Tanner Scale is based on Western European standards of physical characteristics and ‘does not take into account racial distinctions and the fact that the medical categorization of puberty is highly racialized.’<sup>257</sup> Similarly, the policies do not consider that athletes have different opportunities when it comes to transitioning. National legislation and the consequences they face in their home countries if they meet the eligibility criteria are not regarded in the policies. In most countries in the European Union, for example, it is impossible to get legal access to transgender

---

<sup>256</sup> C. A. MacKinnon, *Butterfly Politics: Changing the World for Women*, 2nd edn., Cambridge, MA, Harvard University Press, 2019, p. 326.

<sup>257</sup> H. Jakubowska, 'Who counts as a woman? A critical discourse analysis of petitions against the participation of transgender athletes in women's sport', *International Review for the Sociology of Sport*, vol. 59, no. 2, 2024, p. 15.

hormone therapy before the age of 16 or 18<sup>258</sup>, which means that transitions before puberty are comparably rare. IFs should take this into account. As of now, they have a requirement that is almost impossible to fulfil and de facto excludes most transwomen from the women's category, even though they highlight their inclusive intent. Interestingly, this has not really been part of the discussion in existing literature. These aspects open up the possibility for further research.

Following my human rights-based argument, a change of the binary categorisation in sport is necessary. I do not have an ideal solution, so I am not proposing one here, but I want to advocate for rethinking the existing categories. In sports like Archery, testosterone might not be as important as in others, while some sports might have a lot of non-binary athletes. It is interesting that, for example, equestrian sports already have a different system because physical differences are not seen as crucial there. This proves that the binary system is not a given without the possibility to change it. It is of paramount importance to challenge the taken for granted assumptions about what women and trans people can and should do if we are to make the sporting system a safer, fairer, and more inclusive space. Rethinking categories would not just serve transwomen – as some scholars claim – but also cis women as cis women now occupy a disadvantaged position.

## 9 Conclusion

The purpose of my thesis was to argue for a human rights-based approach to gender eligibility in sport and to discuss existing regulations, concepts and their effects by analysing 16 transgender eligibility policies from different IFs. Additionally, I identified eight central arguments against the inclusion of trans people in a category aligning with their gender identity and countered most of them, answering my first research question. I used Haslanger's approach to concepts and Bacchi's WPR approach to analyse the policies. Overall, trans athletes and especially transwomen are represented as a "problem" in the policies. I focused on the right to non-discrimination, the right to work and the right to sport and utilised feminist theories. Referring to the third research question, by taking a

---

<sup>258</sup> European Union Agency for Fundamental Rights, 'Access to transgender hormone therapy', *FRA*, <https://fra.europa.eu/en/publication/2017/mapping-minimum-age-requirements-concerning-rights-child-eu/access-transgender-hormone-therapy>, (accessed 29.04.2024).

human rights friendly perspective the mentioned rights can be interpreted as being violated to some degree in the policies. The right to non-discrimination can be seen as violated when a difference is made between transwomen and cis women, for example, through targeted testing based on stereotypical assumptions. This could also affect cis women who do not adhere to feminine ideals. Additionally, I have shown that the use of language is discriminatory in some policies. The right to work and the right to sport can be interpreted as violated when a trans athlete is kept from competing. Especially the puberty criterion, but also other obstacles like costs for testing, may present barriers for transpersons. Consequently, it is likely that not every transperson wanting to compete in a category aligning with their gender identity, is able to do so or to compete at all. This can have detrimental effects on all trans people's lives when role models in sport are rare.

Picking up on my second research question, I identified language and concepts to play a decisive role in the policies. It seems like some of the IFs have not invested a great amount of time into dealing with the definitions of sex and gender and just copied other policies' formulations or used the concepts in a non-consistent way. I therefore proposed to redefine these concepts in the sporting world and focus on physical characteristics – as they are a decisive factor in performance – but not associate them with a specific sex. I also argued that it is necessary to take social factors influencing sporting performance into account and to support women's and girls sport more.

Finally, I am aware that this thesis and my proposition for redefining sex and gender is not a solution to the problem of gender categorisation and discrimination in sport. If anything, it makes it even more complicated, as it argues against the current system. However, it is important to consider this topic from a human rights perspective and not just from a physiological one, and that is what I have done. It is time for a redefinition of the current binary categorisation based on sex in sport since it disadvantages trans people, women and anyone not fitting either of the two constructed categories. Human rights need to be taken into account. In this thesis, I proposed how this could be done. By adopting even more exclusive regulations (e.g. World Athletics in 2023) and holding on to outdated assumptions about gender, IFs unfortunately seem to move in the opposite direction.

# 10 References

- Anderson, E., 'Patriarchy and Its Discontents', in G. Molnár and R. Bullingham (eds.), *The Routledge Handbook of Gender Politics in Sport and Physical Activity*, Abingdon, UK & New York, Routledge, 2022, pp. 83–93.
- Arnould, A. von, *Völkerrecht*, 3. edn., Heidelberg, Germany, C. F. Müller, 2016.
- Bacchi, C., *Analysing Policy: What's the problem represented to be?*, Melbourne, VIC, Pearson, 2009.
- Bacchi, C., 'Introducing the 'What's the Problem Represented to be?' approach', in A. Bletsas and C. Beasley (eds.), *Engaging with Carol Bacchi*, University of Adelaide Press, 2013, pp. 21–24.
- Bianchi, A., 'Transgender women in sport', *Journal of the Philosophy of Sport*, vol. 44, no. 2, 2017, pp. 229–242.
- Bundesverfassung der Schweizerischen Eidgenossenschaft*, 1999.
- Butler, J., *Das Unbehagen der Geschlechter*, 20st edn., Frankfurt a.M., Germany, Suhrkamp, 2019.
- Camporesi, S. and Hämäläinen, M., 'The construction of categories in sport: Unfair advantages, equality of opportunity and strict attainability', *European journal of sport science*, vol. 21, no. 11, 2021, pp. 1492–1499.
- Christiansen, A. V., 'The Negligence of Biological Reality', *Journal of Olympic Studies*, vol. 4, no. 2, 2023, pp. 20–30.
- Close, D. and Tucker, E., 'Transgender swimmer Lia Thomas begins legal case against swimming's world governing body', *CNN*, 26 January 2024, <https://edition.cnn.com/2024/01/26/us/lia-thomas-world-aquatics-transgender-athletes-swimming/index.html>, (accessed 09.04.2024).
- Council of Europe, *European Convention on Human Rights*, 4 November 1950.
- Council of Europe, *Recommendation CM/Rec(2021)5 of the Committee of Ministers to member States on the Revised European Sports Charter*, 13 October 2021.
- Devine, C. et al., 'When Ideology Trumps Science: A Response to the Canadian Centre for Ethics in Sport's Review on Transwomen Athletes in the Female Category', *Idrottsforum*, 29 November 2022, <https://idrottsforum.org/devineetal221129/>, (accessed 25.01.2024).



Duval, A., 'Lost in translation? The European Convention on Human Rights at the Court of Arbitration for Sport', *The International Sports Law Journal*, vol. 22, no. 2, 2022, pp. 132–151.

European Union Agency for Fundamental Rights, 'Access to transgender hormone therapy', *FRA*, <https://fra.europa.eu/en/publication/2017/mapping-minimum-age-requirements-concerning-rights-child-eu/access-transgender-hormone-therapy>, (accessed 29.04.2024).

Fédération Internationale de Volleyball, *Sports Regulations: Volleyball*, 23 June 2023.

Freeman, M., *Human Rights*, 3rd edn., Cambridge, UK, Polity Press, 2017.

González, C. P., 'The effective application of international human rights law standards to the sporting domain: Should UN monitoring bodies take central stage?', *The International Sports Law Journal*, vol. 22, no. 2, 2022, pp. 152–164.

Greay, A. D. and Lenskyj, H. J., *Justice for Trans Athletes: Challenges and Struggles*, Bingley, UK, Emerald Publishing, 2022.

Harper, J., 'Transgender Athletes and International Sports Policy', *Law and Contemporary Problems*, vol. 85, no. 1, 2022, pp. 151–165.

Haslanger, S., 'Gender and Race: (What) Are They? (What) Do We Want Them To Be?', *NOÛS*, vol. 34, no. 1, 2000, pp. 31–55.

Haslanger, S., 'What Are We Talking About? The Semantics and Politics of Social Kinds', *Hypatia*, vol. 20, no. 4, 2005, pp. 10–26.

Haslanger, S., 'Gender and Social Construction: Who? Where? What? How?', in E. Hackett and S. Haslanger (eds.), *Theorizing Feminisms*, Oxford University Press, 2006, pp. 16–23.

Haslanger, S., 'The Sex/Gender Distinction and the Social Construction of Reality', in A. Garry, S. J. Khader and A. Stone (eds.), *The Routledge Companion to Feminist Philosophy*, New York, Routledge, 2017, pp. 157–167.

Heckemeyer, K., *Leistungsklassen und Geschlechtertests: Die heteronormative Logik des Sports*, Bielefeld, Germany, transcript Verlag, 2018.

Henne, K., 'The “Science” of Fair Play in Sport: Gender and the Politics of Testing', *Signs: Journal of Women in Culture and Society*, vol. 39, no. 3, 2014, pp. 787–812.

Imbrišević, M., 'UN Experts Don't Understand Sport (Nor Human Rights)', *Idrottsforum*, 6 November 2023, <https://idrottsforum.org/feature-imbrisevic231106/>, (accessed 22.03.2024).

International Federation of Sport Climbing, *Policy Statement: Gender Identity & Transsexuality*, 27 November 2018.

International Ice Hockey Federation, *IIHF Transgender Policy*, 01 June 2022.

International Labour Organization, 'Member States', *ILO*, <https://www.ilo.org/about-ilo/how-ilo-works/member-states>, (accessed 13.05.2024).

International Labour Organization, 'Mission and impact of the ILO', *ILO*, <https://www.ilo.org/about-ilo/mission-and-impact-ilo>, (accessed 13.05.2024).

International Labour Organization, *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up*, 18 June 1998.

International Olympic Committee, 'Sports', *Olympics*, <https://olympics.com/en/sports/>, (accessed 31.01.2024).

International Olympic Committee, *Statement of the Stockholm consensus on sex reassignment in sports*, 12 November 2003.

International Olympic Committee, *IOC Consensus Meeting on Sex Reassignment and Hyperandrogenism*, November 2015.

International Olympic Committee, *IOC Framework on Fairness, Inclusion and Non-Discrimination on the Basis of Gender Identity and Sex Variations*, 16 November 2021.

International Olympic Committee, *Olympic Charter*, 15 October 2023.

International Skating Union, *SPECIAL REGULATIONS & TECHNICAL RULES SINGLE & PAIR SKATING and ICE DANCE 2022*, 2022.

International Skating Union, *Communication No. 2595: ISU Transgender Policy*, 11 October 2023.

International Surfing Association, *International Surfing Association (ISA) Transgender Policy Rule*, 07 March 2023.

International Tennis Federation, *ITF Transgender Policy*, 10 August 2023.

Jakubowska, H., 'Who counts as a woman? A critical discourse analysis of petitions against the participation of transgender athletes in women's sport', *International Review for the Sociology of Sport*, vol. 59, no. 2, 2024, pp. 203–221.

- Jones, B. A. et al., 'Sport and Transgender People: A Systematic Review of the Literature Relating to Sport Participation and Competitive Sport Policies', *Sports medicine*, vol. 47, no. 4, 2017, pp. 701–716.
- Kidd, B. and Donnelly, P., 'Human Rights in Sports', *International Review for the Sociology of Sport*, vol. 35, no. 2, 2000, pp. 131–148.
- Krämer, D., *Intersexualität im Sport: Mediale und medizinische Körperpolitiken*, Bielefeld, Germany, transcript Verlag, 2020.
- MacKinnon, C. A., *Butterfly Politics: Changing the World for Women*, 2nd edn., Cambridge, MA, Harvard University Press, 2019.
- MacKinnon, C. A., 'A Feminist Defense of Transgender Sex Equality Rights', *Yale Journal of Law and Feminism*, vol. 34, no. 2, 2023, pp. 88–96.
- Martínková, I., 'Open Categories in Sport: One Way to Decrease Discrimination', *Sport, Ethics and Philosophy*, vol. 14, no. 4, 2020, pp. 461–477.
- Martowicz, M. et al., 'Position statement: IOC framework on fairness, inclusion and non-discrimination on the basis of gender identity and sex variations', *British journal of sports medicine*, vol. 57, no. 1, 2023, pp. 26–32.
- Müller, M., 'Constructing Gender Incommensurability in Competitive Sport: Sex/Gender Testing and the New Regulations on Female Hyperandrogenism', *Human Studies*, vol. 39, no. 3, 2016, pp. 405–431.
- Olsthoorn, J., 'Conceptual Analysis', in A. Blau (ed.), *Methods in Analytical Political Theory*, Cambridge University Press, 2017, pp. 153–191.
- Parks Pieper, L. and Krieger, J., *Women in the Olympics*, Champaign, IL, Common Ground Research Networks, 2023.
- Pieper, L. P., 'Sex Testing and the Maintenance of Western Femininity in International Sport', *The International Journal of the History of Sport*, vol. 31, no. 13, 2014, pp. 1557–1576.
- Posbergh, A., *Fairness for whom? A critical examination into the gendered governance of international sporting policy*, University of Maryland, Final report for The IOC Olympic Studies Centre, 2022.
- Rietiker, D., *Defending Athletes, Players, Clubs and Fans: A manual for human rights education and litigation in sport, in particular before the European Court of Human Rights*, Strasbourg, France, Council of Europe Publishing, 2022.

Roberts, T. A., Smalley, J. and Ahrendt, D., 'Effect of gender affirming hormones on athletic performance in transwomen and transmen: implications for sporting organisations and legislators', *British journal of sports medicine*, 2020, pp. 577–583.

Sailors, P. R., 'Transgender and Intersex Athletes and the Women's Category in Sport', *Sport, Ethics and Philosophy*, vol. 14, no. 4, 2020, pp. 419–431.

Sailors, P. R. and Weaving, C., 'Sex Verification and Protected Categories in Sport: Binary or Bust?', in G. Molnár and R. Bullingham (eds.), *The Routledge Handbook of Gender Politics in Sport and Physical Activity*, Abingdon, UK & New York, Routledge, 2022, pp. 29–37.

*The Yogyakarta Principles*, 23 March 2007.

*The Yogyakarta Principles plus 10*, 10 November 2017.

Torres, C. R., Lopez Frias, F. J. and Patiño, M. J. M., 'Beyond Physiology: Embodied Experience, Embodied Advantage, and the Inclusion of Transgender Athletes in Competitive Sport', *Sport, Ethics and Philosophy*, vol. 16, no. 1, 2022, pp. 33–49.

UNESCO, 'Member States', *UNESCO*, <https://www.unesco.org/en/countries>, (accessed 13.05.2023).

Union Cycliste International, *Eligibility Regulations for Transgender Athletes in UCI Cycling Regulations Part 13 Medical Rules*, 17 July 2023.

United Nations, *Universal Declaration of Human Rights*, 10 December 1948.

United Nations, *International Covenant on Civil and Political Rights*, 16 December 1966.

United Nations, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966.

United Nations, *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979.

United Nations, *Guiding Principles on Business and Human Rights*, 16 June 2011.

United Nations Educational, Scientific and Cultural Organization, *International Charter of Physical Education, Physical Activity and Sport*, 18 November 2015.

United Nations Human Rights Council, *Intersection of race and gender discrimination in sport: Report of the United Nations High Commissioner for Human Rights*, 15 June 2020.

United Nations Human Rights Office of the High Commissioner, 'Ratification Status for CEDAW', *UN Treaty Body Database*, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CEDAW&Lang=en](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CEDAW&Lang=en), (accessed 13.05.2024).

United Nations Special Procedures mandate holders, *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.

United World Wrestling, *UWW Transgender Policy*, 4 June 2018.

Werkmann, M., 'Geschlecht als Differenzierungskategorie (in Führungspositionen) des Sports', in A. Knaut and J. Heidler (eds.), *Spitzenfrauen: Zur Relevanz von Geschlecht in Politik, Wirtschaft, Wissenschaft und Sport*, Wiesbaden, Germany, Springer Fachmedien, 2017, pp. 65–85.

Wiik, A. et al., 'Muscle Strength, Size, and Composition Following 12 Months of Gender-affirming Treatment in Transgender Individuals', *The Journal of clinical endocrinology and metabolism*, vol. 105, no. 3, 2020, pp. 805–813.

World Aquatics, *Policy on the Eligibility for the Men's and Women's Competition Categories*, 24 March 2023.

World Aquatics, 'Update on the Open Category competitions at the World Aquatics Swimming World Cup – Berlin 2023', *World Aquatics*, 3 October 2023, <https://www.worldaquatics.com/news/3715191/update-on-the-open-category-competitions-at-the-world-aquatics-swimming-world-cup-berlin-2023>, (accessed 25.04.2024).

World Archery, *Eligibility rules for transgender athletes*, 1 October 2023.

World Athletics, 'Marathon Men', *World Athletics*, <https://worldathletics.org/records/all-time-toplists/road-running/marathon/all/men/senior?regionType=world&page=1&bestResultsOnly=true&firstDay=1900-01-01&lastDay=2024-04-25&maxResultsByCountry=all&eventId=10229634&ageCategory=senior>, (accessed 25.04.2024).

World Athletics, 'Marathon Women', *World Athletics*, <https://worldathletics.org/records/all-time-toplists/road-running/marathon/all/women/senior?regionType=world&page=1&bestResultsOnly=true&firstDay=1900-01-01&lastDay=2024-04-25&maxResultsByCountry=all&eventId=10229534&ageCategory=senior>, (accessed 25.04.2024).

World Athletics, *Eligibility Regulations for the Female Classification (Athletes with Differences of Sex Development)*, 31 March 2023.

World Athletics, *Eligibility Regulations for Transgender Athletes*, 31 March 2023.

World Para Athletics, *World Para Athletics Rules and Regulations*, June 2022.

World Rowing, *Appendix R1 Bye-Law to Rule 13 – Men's and Women's Events in World Rowing Rule Book*, February 2023 (Change of By-Law).

World Rugby, *Transgender Guidelines*, May 2021.

World Skate, *Competition Guidelines for Transgender Athletes*, 2019.

World Taekwondo, *Eligibility Regulations for Transgender Athletes*, April 2021.

World Taekwondo, *4(h) Anti-Discrimination Policy Update*, 18 August 2023.

World Triathlon, *Eligibility Regulations for Transgender Athletes*, 22 November 2022.