

Joint Statement from Legal Experts on Genetic Sex Testing in Sport

We, the undersigned legal experts in human rights and sports, issue this statement out of urgent concern about the regressive move toward genetic testing as a precondition of participation in women's sport. Such eligibility rules, which have already been adopted by several major International Federations—including World Athletics, World Boxing, World Aquatics, and the International Ski and Snowboard Federation—not only conflict with the IOC's existing guidelines on the matter, but also violate domestic and international laws that protect human rights and regulate the use of genetic testing and genetic information.

Violations of the IOC Framework

The IOC's [Framework on fairness, inclusion and non-discrimination on the basis of gender identity and sex variations](#) outlines fundamental principles to be followed within the Olympic Movement when defining eligibility criteria for the men's and women's categories of competition. According to the Framework, any such eligibility criteria should be aimed at ensuring that no athlete has an unfair and disproportionate competitive advantage or at preventing a risk to the physical safety of other athletes. Under the Framework, such an advantage or risk cannot be presumed based on an athlete's sex variations, physical appearance, or transgender status. It must instead be established based on evidence in the form of robust and peer reviewed research.

In particular, such evidence should be "based on data collected from a demographic group that is consistent in gender and athletic engagement with the group that the eligibility criteria aim to regulate" and must demonstrate "disproportionate competitive advantage and/or unpreventable risk exists for the specific sport, discipline and event that the eligibility criteria aim to regulate." Contrary to this evidence-based approach, exclusion based on the presence of the SRY gene constitutes a categorical ban based on a single biological marker, rather than on peer-reviewed research demonstrating that transgender athletes and/or athletes with sex variations have a disproportionate competitive advantage or pose an unpreventable safety risk in specific sporting disciplines.

Moreover, the IOC Framework advises International Federations to prioritize athletes' health, wellbeing, bodily autonomy, and privacy. Current genetic sex testing rules fail to do so, in violation of numerous domestic and international laws, which we urgently draw attention to below.

Violations of national, regional, and international human rights laws

As several [Special Procedures of the UN Human Rights Council](#) have observed, genetic sex testing as a condition of eligibility for women's sport infringes on athletes' internationally recognized rights to equality, bodily and psychological integrity, and privacy.

Further, the IOC, along with the many International Federations based in Europe, must comply with the [European Convention on Human Rights](#). Indeed, [the European Court of Human Rights has recognized](#) that the failure of a sport governing body to respect human rights may engage the responsibility of Switzerland under the Convention and, further, that the Swiss Federal Supreme Court must subject female eligibility rules in sport to particularly rigorous review given

the seriousness of the personal rights at issue, including privacy, bodily and psychological integrity, economic freedom, and human dignity.

We consider that mandatory genetic sex testing, and the exclusion of women athletes on this basis, violates Articles 8 (right to respect for private life) and 14 (prohibition of discrimination) of the European Convention. Such violations can only be justified if the eligibility rules are reasonable, necessary, and proportionate, which International Federations bear the burden of proving and which they are currently unable to do. As [the European Court of Human Rights recently recognized](#), the harms of sex testing include the inevitable disclosure of certain athletes' private and confidential medical information, the potential loss of their livelihoods, and a range of other serious harms. In our view, these consequences—and particularly the social exclusion, psychological distress, physical harm, and material loss that accompany them—cannot be considered reasonable and proportionate to the aim pursued. This is particularly so given the absence of conclusive scientific evidence demonstrating that transgender women athletes or athletes with sex variations have a systematic advantage over other women athletes.

The exclusion of athletes on the basis of genetic sex testing likewise violates domestic laws, as [a Belgian court recently concluded](#), finding that international cycling regulations barring transgender women were discriminatory, lacking a sound scientific basis, and disproportionate.

Violations of laws regulating genetic testing and genetic data

Genetic sex testing as a condition of participation in sport also violates numerous national, regional, and international laws, which strictly circumscribe the use of genetic testing and genetic data.

First, the [Convention on Human Rights and Biomedicine](#), along with the domestic laws of many jurisdictions, prohibit genetic testing unless it serves a health-related purpose, which sex testing rules clearly do not. Some domestic laws place additional restrictions on the range of permissible medical purposes when it comes to minors, however International Federations apply genetic sex testing rules indiscriminately to athletes of all ages. Because of such domestic legal restrictions, [athletes in some countries have been pushed to access genetic testing abroad](#), in less protective jurisdictions.

Second, across jurisdictions, free and informed consent is a fundamental precondition for genetic testing. Not only do individuals below a certain age lack the legal capacity to consent, the consent of an athlete of any age cannot be freely given when it is a condition of sports eligibility. Illustrating this legal principle, the [International Declaration on Human Genetic Data](#) specifies that consent to genetic testing is only valid if it is not induced by financial or other personal gain, yet sports eligibility rules do exactly that. While many jurisdictions require the provision of non-directive genetic counselling prior to any testing, this safeguard is nullified by the directive nature of sports eligibility rules.

Third, domestic and international laws prohibit discrimination based on genetic characteristics, as well as the use of genetic data in ways that stigmatize individuals or groups. Yet genetic sex testing rules do so, first, by targeting only women athletes for testing, and second, by excluding those with a particular genetic trait, resulting in the further stigmatization and marginalization of transgender and intersex people, not only in sport but in society at large.

Fourth, in order to prevent such discrimination, certain jurisdictions specifically prohibit making genetic testing or disclosure of test results a condition of a contract and prohibit anyone other than medical practitioners or researchers, and particularly employers, from requesting or using genetic information. International Federations cannot circumvent these legal restrictions by outsourcing genetic testing to authorities at the national level.

Finally, privacy and data protection laws around the world, including the [General Data Protection Regulation](#) (GDPR) afford heightened protection to genetic information. The GDPR prohibits the processing of genetic data, except in very narrow circumstances, such as where the data subject gives explicit, voluntary and informed consent, or where the processing is necessary for and proportionate to reasons of substantial public interest set out in EU or member state law. Such voluntary and informed consent does not exist for genetic sex testing as athletes are forced to grant consent under the threat of exclusion from sport, and often in circumstances where they are not knowledgeable about the risks of harm that might result from the data processing. There is also no EU or member state law that describes the purported aim of sex testing in sport as a substantial public interest and, even if there was, the data processing in pursuit of that aim would not be necessary and proportionate due to the absence of scientific evidence that women with the SRY gene have a competitive advantage over other women athletes and the significant harms to athletes that can result from genetic sex testing.

The processing of genetic data for sex testing may violate other data protection laws that have been recognized as providing an adequate level of protection similar to the GDPR, such as the data protection laws in Brazil, Canada, Japan, Switzerland and the United Kingdom.

Our Call

We call on the IOC, as it finalises the work to find [a “consensus” to “protect the female category”](#), to reject mandatory genetic testing as a condition of eligibility. We call on International Federations that have already adopted such eligibility rules to withdraw them immediately. And we call on all sport governing bodies to recommit—in practice, not only in policy—to the principles of inclusion and non-discrimination that they have already affirmed.

If international sport governing bodies fail to do so, we call on National Federations to refuse to apply and implement international eligibility rules that violate their respective domestic laws and international legal obligations. Simultaneously, we call on states to urgently review the legality of mandatory genetic sex testing policies that are being applied to athletes and/or at competitions within their jurisdictions.

We also call on athletes to challenge the national or regional implementation of mandatory genetic sex testing, demanded by the IOC or International Federations, before domestic courts, by invoking national or regional laws protecting human rights, prohibiting anti-discrimination, and regulating the use of genetic testing and genetic data.

At the same time, we call on courts, particularly the Court of Arbitration for Sport, the Swiss Federal Supreme Court, and ultimately the European Court of Human Rights and the Court of Justice of the European Union, to uphold their duty to ensure a particularly rigorous review of the rules and decisions of the IOC and International Federations, which is compliant with European human rights law and public policy.

Mandatory genetic sex testing is a stigmatizing and exclusionary policy that lacks democratic legitimacy, scientific grounding, and proportionality between its harms and its aims. It simply has no place in international sport if sport is to be respectful of the values of human dignity, inclusion, fairness, and non-discrimination.

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