

## CASTER SEMENYA: WHAT ARE THE REAL ISSUES?

At the World Championships in Beijing in 2009, Caster Semenya Mokgapo won the 800 metre event at the tender age of 19. Her explosion into the scene where she not only dominated the race but beat her personal best time by seven seconds posed some questions. These questions were mostly linked to her muscular body and deep body which was said to have accorded her unfair advantage over her competitors. This then caused the International Association of Athletics Federation (IAAF) to request her to acquiesce to a medically supervised sex verification procedure. Partial test results, leaked to the media indicated that Semenya possesses both male and female sex characteristics, as well as testosterone levels in a range higher than average for women.

After what the IAAF termed as a lengthy and comprehensive consultation exercise with the International Olympic Committee (IOC), it in 2011 released a new policy, terms as the *Hyperandrogenism Regulations*, which limit the amount of functional androgens (mainly testosterone) a female athlete can have in her body and requiring some women to take hormone-suppressing drugs to compete.

These regulations were challenged by Dutee Chand, an Indian sprinter in 2015 and the Court of Arbitration for Sport (CAS) suspended the rules for two years, allowing her to compete while expressing its concerns not only over the validity of the guidelines, but also over a lack of evidence proving the precise degree of competitive advantage that a hyperandrogenic athlete would possess. The Court also gave the IAAF time to study the science and revisit the matter. The rules would be scrapped if the IAAF could not provide new evidence.

In April 2018 the IAAF announced it was reinstating a ceiling on permissible testosterone levels for certain events 400, 800- and 1,500-meter races, the same distances in which Semenya regularly competes. The proposed rule would require women classified as having Differences of Sex Development (DSD) to reduce their testosterone level to below 5 nmol/L for six months before they can compete and must maintain that continuously. That rule was supposed to go into effect in November of last year but was delayed pending the CAS ruling after Semenya challenged the rule claiming that it was discriminatory, irrational and unjustifiable.

In May 2019, the Court ruled that Semenya will be forced to medicate to suppress her testosterone levels. By a 2-1 vote, the judges ruled that “on the basis of the evidence submitted by the parties, such discrimination is a necessary, reasonable and proportionate means of achieving the IAAF’s aim of preserving the integrity of female athletics in the Restricted Events.” But the court said the IAAF should not yet apply the rules to the 1,500. Semenya immediately appealed the decision to the Swiss Supreme Federal Court with the support of the Athletics Federation of South Africa.

***Backlash!***

This outcome aroused mixed feelings from all corners. The World Medical Association called on its members not to administer drugs which lower the level of testosterone in female athletes with DSD, arguing that the science is flawed, with the regulations ethically dubious and the potential medical side-effects of lowering testosterone levels unknown.

Others argued that there was no scientific evidence and as such her competitors and officials focused on her appearance which set her aside from the traditional beauty ideals of Europe; alluding to undertones that in women's sport the athletes should look like European, Caucasian and North American women which standard does not apply to men and is a symptom of racism.

Further, the argument that the regulations were intended to create fairness and create a level playing field were rubbished by others who claimed that the opportunities she was exposed to while growing up in a rural Sub-Saharan country gave her little chance of success as compared to her counterparts in Western countries. As such the rules were at most, contradictory.

### ***Conclusion***

The Swiss Federal Court on 3<sup>rd</sup> June gave Semenya temporary relief by ordering the rules to be suspended forthwith until 25<sup>th</sup> June 2019. However, for now it applies only Semenya and not other athletes with (DSD), leaving out athletes such as Maximilla Imali and Evangeline Makena who were dropped from the country's relay team as a result of the first loss of Semenya's challenge before CAS against the rules.

This discourse is certainly not conclusive and opens up room for discussions into the place of transgender, transsexual and intersex persons in sport while revisiting issues of discrimination in sports against women and further, sportswomen from developing countries. With the IAAF seeking a swift reversal of the Swiss Federal Court super provisional order, what remains to be seen is how the Federal Court will tackle this matter once and for all.