

“Just” Discrimination?¹

Caster Semenya, a 28-year-old female Olympic gold medal runner from South Africa, is facing a new hurdle, testosterone regulation. She, along with a handful of other female athletes have intersex characteristics due to a medical condition called hyperandrogenism. This condition has many characteristics, but one is of particular interest: high levels of hormones such as testosterone. Testosterone occurs naturally in both men and women and is associated with neuromuscular function and “explosive power” such as that needed for some athletic endeavors. As a result of Semenya’s high testosterone level, the International Association of Athletics Federations (IAAF) has passed a regulation requiring female athletes to reduce these levels to a range closer to that typically seen in females and maintain those levels for at least six months prior to certain international competitions. Semenya and Athletics South Africa each filed a request for arbitration with the Court of Arbitration for Sport (CAS), however the CAS, in a press release dated May 1, 2019, announced that it has dismissed these requests, albeit with some reservations that leave the matter open for future action.

It’s not surprising to see Olympic-class athletes with extraordinary physical abilities—after all, that is what athletic competitions are about—so it may seem odd to say that someone is naturally too physically able. In the past, questions have been raised regarding transgender athletes and whether they should compete according to the sex they were assigned at birth or according to the sex with which they identify, but hyperandrogenism is different. Semenya is not a transgender person; she is trying to compete according to the sex she was assigned at birth: female. Additionally, Semenya has been competing against world class female athletes for many years, and though she may be one of the world’s best runners, she is not undefeated.

Semenya is now the center of a worldwide legal and ethical debate, which raises the question: Is it fair for her to compete as a woman? Many say this debate is discriminatory and sexist. Others ask what is the point of world-class athletes competing if those who are among the “best” must be subjected to criticism for being an extraordinary athlete. One argument focuses on the importance of preserving a fair and equitable competition for women by supporting efforts to regulate her testosterone levels. But Semenya herself believes this whole investigative and legal process is discriminatory and abusive as she is now “destroyed” both “physically and mentally.”

In its press release, the CAS said the regulations “are discriminatory but the majority of the Panel found 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.”

STUDY QUESTIONS

1. Is it permissible for the IAAF to ask Semenya to alter her body chemistry in order to compete? Is it fair? Why or why not?
2. Does it matter, morally, that Semenya’s increased testosterone levels are the product of a naturally occurring condition (as opposed to, for example, artificial hormone treatments)? Why or why not?

¹ An earlier version of this case originally appeared in the 2020 APPE Intercollegiate Ethics Bowl Nationals Case Set. Many thanks to the Association for Practical and Professional Ethics (APPE) and IEB for allowing us to use it! For more information, please visit: <http://appe-ethics.org/ethics-bowl/>

