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Reexamining Rationales of “Fairness”: An Athlete and Insider’s Perspective on the New Policies on Hyperandrogenism in Elite Female Athletes

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The International Association of Athletics Federation (IAAF) and the International Olympics Committee (IOC) propose that their new policies for women with high levels of testosterone, known as hyperandrogenism, are implemented to ensure fairness “for all female athletes,” yet fairness to the women they will directly impact is not considered. None of the female athletes disqualified by prior policies were invited to attend the meetings that were held to formulate the new policies. In addition, psychological experts were not invited to elucidate the impact of such policies.

At the IOC’s Lausanne meeting, testosterone was proposed as the factor most *likely* to confer competitive advantage, due to its typically high distinction between males and females. However, medical and scientific experts present were unable to demonstrate that hyperandrogenism results in athletic superiority. Rather, a presentation analyzing a recent study (Healy 2005) revealed that there is a substantial overlap between serum testosterone levels in male and female athletes.

In addition, participants agreed that the case of athletes with Complete Androgen Insensitivity Syndrome (CAIS) is evidence that testosterone levels do *not* induce athletic ability. Women with CAIS have XY chromosomes and internal testes, but appear typically female because they are unable to process the testosterone they produce. Yet, despite having *no* functional testosterone, numerous athletes with CAIS have risen to Olympic stature as the era of chromosome testing revealed. This would not be possible if testosterone confers athletic ability, given their *disadvantage* to typical women, who all possess various levels of functional testosterone.

One presentation at the IOC meeting documented medical conditions proven to bestow athletic advantages, and the fact that athletes who possess them are not forced to

remove these advantages in order to be eligible. IOC and IAAF representatives responded that those advantages are not related to the division in sport between males and females. Thus, the new policies implement their notion that women with hyperandrogenism have crossed the line in the male/female divide in sports competition, although top scientific experts were unable to confirm this.

The new policies are informed not by scientific evidence, but by age-old cultural assertions that those who do not conform to social gender roles are not “real” women or men. As a representative for people with intersex traits (which can include hyperandrogenism), I (H. Viloría) argued that the proposed policies were discriminatory, as they target only masculine looking women, despite the lack of evidence of their advantage. Some agreed, while some countered that Semenya had been targeted due to her speed, not her physical appearance. However, discussion that followed included that an athlete who is currently faster than Semenya had not been accused (Viloría 2011). An Internet search revealing that she has long hair and presents as typically female confirmed my assertion that physical appearance compels testing.

One might suspect that physical appearance would not be cause for sanctions, and that given the lack of evidence that hyperandrogenism confers advantages, the IAAF and IOC representatives would abandon their proposed policies. However, the athletes at Lausanne subjected them to tremendous pressure. They insisted that if something were not done, female athletes would go on strike. It is under this pressure that the IAAF and IOC resolved to use the testosterone theory as the basis for their new policies.

I argued that while I oppose sanctions against women with hyperandrogenism, if the committees insisted on

implementing them, mandatory uniform testing was necessary in order to avoid prejudicially targeting women based on their appearance. It was discussed that in the absence of uniform testing, "suspicion" would be informed by visual cues, creating the same discrimination that Semenya was subjected to, and inciting women to look as feminine as possible in order to escape testing.

This type of individual targeting contradicts ethics of fair play. According to the United Nations Educational, Scientific and Cultural Organization (UNESCO):

Sports and sports related organizations have the following responsibilities in setting a proper context for fair play: to publish clear guidelines on what is considered to be ethical or unethical behaviour and ensure that, in all levels of participation and involvement, consistent and appropriate incentives and/or sanctions are applied. (UNESCO 1992)

In direct opposition to the standards just outlined, "consistency" is impossible under the IAAF's new policies because athletes will be individually targeted for testing and evaluated by different medical specialists. In addition, the role that physical appearance plays in testing is "inappropriate" and obfuscated by the unsubstantiated assertion that hyperandrogenism confers unfair advantages. The IOC has suggested its new policies will mirror those of the IAAF.

In addition to the aforementioned issues, in order for the new policies to be ethical, their impact would need to be evaluated. Yet, despite knowledge of Semenya's time on suicide watch, neither experts in psychology nor directly impacted athletes were invited to Lausanne. I argued on their behalf, asking participants to imagine the impact of being deemed ineligible to compete as the sex they had been all their lives, and of having to undergo invasive medical testing and ingesting hormones that they had not previously wanted or needed, which would induce physical, and possibly psychological, changes.

However, these psychological repercussions were discounted in order to appease the athletes in Lausanne. Yet what authority did those athletes have to extol which women should be ineligible to compete as female? Had the voices of *all* athletes been represented, the impact of the policies on those subject to them could not have been easily overlooked. Indeed, it is easy to make decisions that do not impact one's own life when not addressing those who *are* affected by them.

Only those who have lived through having their eligibility and gender identity contested can attest to its egregious impact. The psychological consequences of this experience are excruciating. As the suicides of several female athletes subjected to this practice attest, not all can survive the experience.

While the testing of South African runner Caster Semenya prompted public awareness of the issue, the emotional impact on Semenya herself is irreversible. Although she was ultimately allowed to compete, she will never be looked at the same way. Unlike peers who can bask in the glory of their athletic achievements in the many years following their competitive careers, for Semenya and others in

her position, only significant subsequent accomplishments can override the discrediting legacy of their testing, and its damaging psychological impact (Martínez-Patino 2010: 314–316.)

The new policies implement the same, and *additional*, damages. While they now, by abandoning the label "gender verification testing," portend not to dispute athletes' status as women, how can one be female but not eligible to compete as one? The implicit message to the women subjected to these policies is that they are not "female enough."

In addition, by providing an escape from disqualification via medical means, the new policies encourage athletes to alter the natural state of their bodies. This is antithetical to both the nature of athletic competition and the medical ethics to "do no harm," for it is commonly understood that ingestion of extraneous hormones can pose health risks. For example, studies have shown that estrogen therapy increases the risk of breast cancer (Chlebowski 2010), in addition to other risks. While these studies were performed on postmenopausal women, who often undergo estrogen therapy to replace their diminishing levels, it has not been proven that younger women are invulnerable to the same health risks.

However, elite athletes possess an enormous aptitude for overcoming obstacles, and they know that the window of opportunity for achieving Olympic success is short. Thus, despite the dangerous, lifelong consequences that unnecessary hormone treatments may induce, athletes will undoubtedly consider undergoing these procedures in order to realize their immediate career goals.

It is evident that the new policies do not ensure or address fairness for all. Rather, they were devised to ease social discomfort and appease prejudicial complaints against the women they target. The fact that the IAAF and IOC prioritized these complaints over human rights was enabled by the fact that legal experts in Lausanne confirmed that women with hyperandrogenism lack legal protections.

Legalities notwithstanding, it is unethical to allow prejudice to inform policymaking. Prior policies produced irrevocable psychological harm, and efforts to determine who is "female enough" are discriminatory and scientifically unsound. In addition, there is no evidence that the treatments athletes who are deemed ineligible will be required to undergo in order to compete will not be harmful to their health. We thus recommend that such policies be abandoned before more female athletes are harmed, and that all athletes who have grown up and continue to live as female be eligible to compete as such without having sanctions imposed against them. ■

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Gender Transports: Privileging the “Natural” in Gender Testing Debates for Intersex and Transgender Athletes

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In 1977, a transwoman named Dr. Renée Richards (formerly Richard Raskind) filed a civil lawsuit against the Women’s Tennis Association (WTA) arguing that, against the backdrop of inherent, dramatic biological differences of all forms in competitive athletes, her exclusion from competitive tennis based on her transgenderism amounted to the prioritization of the normative values of elite sports organizations over legitimate medical treatment. Richards won her case and went on to make the quarter-finals of the 1978 U.S. Open, and then to coach tennis champion Martina Navratilova (Richards 1983). The Richards episode—like those of athletes such as Stella Walsh in the 1932 Olympics and Ewa Klobukowska in the 1964 Summer Games, the first female athletes to be barred from Olympic competition based on gender testing—speaks to an enduring preoccupation with scientific and legal gender-authentication policies in competitive sports. But the Richards case also reveals another enduring phenomenon related to gender authentication that is highlighted by the Caster Semenya case, the focus of the argument by Karkazis and colleagues (2012): namely, the reluctance to compare the gender-testing concerns in elite sports for transgender *and* intersex athletes in tandem.

The debates surrounding the 2009 case of tennis player Sarah Gronert make this reluctance explicit. Gronert was born with an intersex condition and underwent surgery in order to qualify for the women’s professional tennis circuit. The commentaries written at the time about her case argued that comparisons between transgender and intersex cases were incommensurate. Wrote one commentator, “Comparisons should certainly not be made with the most famous gender story in tennis history, that of Richard Raskind, an

American man, who underwent a sex-change operation to become a woman, Renée Richards. . . . Gronert’s situation is clearly different from what happened to Richards, tennis’s first transsexual. Gronert was born female, has remained a female, and has been legally certified as a female” (Hodgkinson 2009). This same hesitancy—sometimes subtle, sometimes overt—is mirrored in the arguments made by Karkazis and colleagues (2012) at the potential peril of transgender athletes.

Karkazis and colleagues provide a thorough, well-argued case in the service of elite female athletes with intersex conditions or disorders of sexual development (DSD), bearing in mind recent revisions to the International Olympic Committee (IOC) policy on gender testing of female athletes. They persuasively demonstrate that higher levels of testosterone do not correlate to better athletic performance, effectively undermining any claims that female athletes with intersex conditions have an unfair advantage. For example, citing compelling scientific studies, they argue that women with *complete androgen insensitivity syndrome* (CAIS: high androgen levels, but no testosterone receptors at all) are “overrepresented among elite athletes” (Tucker and Collins 2010), while women with congenital adrenal hyperplasia (CAH: who have very high androgen levels) don’t tend to be elite athletes and are “disproportionally affected by short stature, obesity, dysregulation of mood hormones and unpredictable, salt-losing crises” (Eugster et al. 2001). Karkazis and colleagues also effectively argue that there is no known optimal level of testosterone that ensures a high-level athletic performance. The authors also succeed in raising awareness of the strict heteronormative behavioral and aesthetic standards that undergird the debate

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