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Gender Testing in Sport. Ethics, cases and controversies. Introduction

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Introduction

Sandy Montañaola & Aurélie Olivesi¹

[1] On the 19th of August 2009, the South African athlete Caster Semenya won the gold medal for the 800m race at the World Championships in Berlin (she broke the 2009 world record with a time of 1:55: 45). This date was also the start of a well publicized controversy over Caster Semenya's gender. The controversy was made public when the IAAF (International Association of Athletics Federation) requested gender tests, without giving any details on the test protocols. While Caster Semenya's sexual identity was questioned, the underlying reasons were not explicitly communicated. Depending on the sources, we could see that her physical appearance, her clothes and her behaviour didn't appear to comply with the standard norms of femininity. She was considered too muscular, too flat chested and too hairy. Her Adam's apple was too bulky, her pelvis too narrow. Her outfit was unfeminine since, unlike the other athletes, she had chosen to wear shorts. When she celebrated her victory, her behaviour was described as being masculine. Her sporting performance was also called into question: she had finished the race well ahead of her competitors, her performance had improved too quickly and she was unknown to the general public.

The hidden implication consisted in saying that, since she had failed to comply with standards of femininity, she was necessarily a man and had therefore cheated, with the implicit assumption that men are physically superior to women. Either Caster Semenya had benefitted from an easy victory as a man in a woman's race, or she was an Intersex.

Intersex (known as "Disorders of Sex Developpement", or DSD, in the medical terminology) is a generic term used to describe a variety of conditions present in sexual characteristics (such as chromosomes, gonads or genitals) that prevent individuals from being distinctly identified as 'male' or 'female' according to the typical definitions. While people with DSD were historically reassigned a sex by physicians, key associations and many researchers have more recently supported the right to self-determination and even indeterminacy. This position challenges the role of physicians, as well as the norms that medical decisions are based upon (Karkazis, 2008). Traditional representations base themselves on the commonly perceived differences between sexes and on their complementarity, going as far as having an impact on our [2] scientific knowledge. Our aim is to highlight the difficulty of defining what a woman is and, consequently, defining what a man is – encompassing the biological, sociological, cultural, medical and sporting aspects of those definitions. In this book, we choose to use the more recent term "intersexuation" (chosen by the OII, the Organisation Intersex International, rather than the more common "intersexuality") to approach sexuation – known as a set of biological and symbolical phenomena leading a person to recognize him/herself as belonging to one sex or the other – and not sexuality (see Chapter 2 by Bohuon and Rodriguez). Intersexuation challenges the strict binary differentiation between sexes and the relationship between sex and gender. Gender is understood here as a social construct that produces various social criteria, such as

representation and self-representation. More widely, it opens up the question of fixed standards and the links between medicine and society.

Caster Semenya was finally allowed to keep her medal on the 19th of November 2009, and to compete against women on the 6th of July 2010, after having gone through 11 months of medical tests –which have remained confidential – and legal and judicial procedures within the sporting sphere² (see the chronology below). Caster Semenya is not the first athlete whose gender was questioned. Several similar cases in various sports across a number of countries have raised similar controversies. These sportswomen were accused of cheating, were deprived of their medals and barred from competitions. In some cases, their departures went unnoticed and weren't publicized when they were preceded by a maternity leave, an injury or early retirement. Caster Semenya's case falls within the scope of controversies concerning the "genuine" identity of female athletes. However, her case is a milestone within this history. Firstly, it lasted several months, when sport instances usually deal with such cases very quickly. Secondly, Caster Semenya herself has always claimed to be a "genuine" woman. Third, she was finally authorized to run with female athletes. Fourth, the case was highly publicized. Fifth, Caster Semenya raises the question of race, youth and postcolonialism. Finally, the case ended without asserting a real purpose or declaration. This volume aims to enhance the conversation by bringing these various points together.

By providing an analysis of what came to be called "the Caster Semenya Case" we are determined to consider the harshness of Semenya's experience and to avoid stigmatizing her in any way by complying with her desire to communicate very little, if not at all, and by taking into account the discrimination she suffered³ (see Chapter 8 by Salo). All contributors of this book agree in saying that the controversy following her victory and the case's outcome surpassed her personal circumstances. This event acted as an indicator of the tensions of her time, and served as a link between science, society and gender. We offer an analysis of the discursive rationale present in the public sphere in order to identify implied ethical questions. Our goal is to capture what made sense at the turn of 2010, to understand and analyze the positions of the various protagonists through their discourses, the latter shedding light on social, political, economic, legal and, especially, symbolic values. It seems seminal [3] to us that Academia should take into account the political dimensions of these questions. As a matter of fact, this book is not about intersexuation in itself and isn't meant to replace the voice of intersex people.⁴ Instead, it explores the social and political phenomena that surround sex determination questions. This book focuses mostly on social representations. It intends on addressing all of the themes as they appeared in the discourses of the various protagonists, but it steers clear from making any form of conjecture concerning Caster Semenya's medical reports. The results of these reports, whatever they are, are finally of no importance.

Several scientific challenges emerged when we jointly studied such a worldwide "occurrence" (understood here as something that happens without reaching the status of an event, Delforce 1999). The first challenge was to bring together researchers in human and social sciences from the most varied cultural backgrounds. Some of the co-authors are from Europe, France and Italy; others are from the United States, Canada and South Africa. This variety of backgrounds has allowed us to access a wide variety of sources as well as different academic traditions. The second challenge was to address these ethical interrogations while focusing on the social representations that led Caster Semenya to become, as noted by Fabien Rose, "an object of discourse". Social representations are understood here as a set of naive knowledge that is socially shared and that can provide the necessary framework to understand and interpret reality and the relationship between those social representations to serve as a guideline in future actions.⁵ The third challenge was to shed light on the same subject from the perspective of different academic disciplines, thus allowing for feedback between the disciplines, while also embracing the complexity of the case as it manifested itself in the discourse (medical discourse, the evolution of gender tests and their place, legal perspectives, authorized speakers in the public space,

relationships between Northern and Southern Countries, sporting rules and socio-cultural context ...), from a synchronic and diachronic perspective. The fourth and final challenge was to address the diversity of the values expressed by the different protagonists who were sometimes insiders, sometimes outsiders in groups such as associations, sports institutions and political organizations. Arguments would revolve around the definition of femininity standards, sports, nationality, and the legitimacy to voice an opinion within the constraints of the media. In order to reconstruct the complexity of the subject, the authors of this book have conducted a cross study of different viewpoints based on common events, using such material as the statements of the athlete Elisa Cusma Piccione, the release of *You* magazine or the Dutee Chand case.

While it did not have a clearcut outcome, Caster Semenya's case represents a special episode in the historical tensions between sport, medicine, and gender. This became especially obvious in August 2015, when the CAS sent a media release declaring they suspended the 2010 IAAF hyperandrogenism regulations⁶ after being seized by the Indian sprinter Dutee Chand in 2014. The CAS's decision is significant of the [4] issues around the use of categories (of sport and of sex), of the links between culture, representations and body... Moreover, it reveals the importance of each of those moments in the history of gender, sports and ethics.

Following a conference and the publishing of a collective work based on the notion of gender assignment in the media (Damian-Gaillard *et al.*, 2014), we wanted to initiate interdisciplinary work on social and media representations of gender. Because we were motivated by the challenge of conducting cumulative scientific research, we identified researchers from different disciplines and different countries and interacted with them on the topic of social norms and the human body (issues related to gender, and sport or gender tests). We organized two work days in Lyon, France, on the 11th and 12th of April 2013. We wished to focus our work on social representations and how they were linked to the various protagonists who came from scientific, sports, political, academic and activist backgrounds. The study was to combine the capital questions of sports, economy, cultural differences and physical norms. This collective work is the result of discussions that occurred on this occasion.

The "Semenya's case" occurrence leads to more general questioning about gender, sports and ethics. It reflects an explicit social evolution, brings to light tensions that had remained implicit and it leaves a number of questions unanswered. It therefore seemed particularly worthwhile to study a present discourse in the public sphere at a specific time, and to see how it operated (questions surrounding genders and the relationship between Africa and Europe). This occurrence is at the crossroads of a number of questions that are typically considered separately and therefore do not usually clash. We were fortunate to develop this collective work over a long period of time (2011 to 2015). It is organised around the two parts of social representations⁷. In the first part (Chapters 1-4), we question how the bodily norms are built and defined by sport institutions, law and by medicine. In the second part (Chapters 5-9), we question how those norms are mediated. This leads us to examine issues linked to intersectionality and post-colonial ethical tensions.

Building Sex, Gender and Values inSport

The first part of this book analyzes the impact of standards in sports. Caster Semenya's case highlights more widely the ideology that is present in the values of sports and competition. A fair competition is indeed based on ensuring that the competitors are in the same class so as to compare comparable performances. Thus, sporting fairness is based on a distinction between different physical categories, gender being the first one (Foddy & Savulescu, 2011).

The IAAF established gender tests to examine whether women corresponded to its criteria of gender, which is defined as a regulatory sports category. Those tests evolved from initial anatomical visual control tests to swab tests and chromosome tests (Bohuon, 2012). They disappeared, as they were deemed humiliating and scientifically unreliable. This raises the [5]

question of the role of sporting institutions and of their own regulations in the definition of the sexual identity of individuals. The very notion of legitimacy must be examined, as tests were demanded and rulings given over what defines men and women, going as far as using biological arguments. This also raises the issue of doping (McNamee & Møller, 2011). Philippe Liotard, a sociologist who specializes in the representation of the human body in sport, shows how categories such as gender, age, sexuality and “race” are organized to ensure that a competition is sufficiently fair to award a medal to the best athlete around the notion of “economy of bodily differences” (Chapter 1). The following two chapters are two ways of challenging the IAAF’s legitimating discourse. Anaïs Bohuon and Eva Rodriguez, a sociologist and a sport historian, question the evolution of gender verification in athletics in relation to sporting values and the fight against doping, through examples like Maria Patiño’s. This chapter focuses on the ways in which tests were historically used as a means to legitimize fairness as a sporting value (raising notions of what is natural, of what is artificial, but also what are the real effects of testosterone) (Chapter 2).

Silvia Camporesi and Paolo Maugeri, bioethicists, wonder how these standards, with the progress of bioethics, influence the scientific criteria put forward by the IAAF. Authors ask themselves whether the definitions surrounding Caster Semenya’s case should be based on medical standards or on ethics. They tackle the regulation rules around hyperandrogenism and draw parallels with other genetic variations that aren’t regulated by the IAAF and with the fact that elite athletes are endowed with exceptional physical characteristics (Chapter 3).

Muriel Salle, a historian, and Laurence Brunet, a jurist, show that the perception of the intersex has evolved amongst doctors and jurists. They demonstrate that the two outlooks do not go together, raising once more the question of the IAAF’s legitimacy in questioning the sexual identity of an athlete. Meanwhile, the influence of these sporting standards goes beyond the sporting field or the medical and legal communities. The emphasis on the self-perception of individuals with regards to the official determination of their sexual identity in 2009 appears in a context in which the law has started to consider self-determination (e.g. Argentina and Australia), following several centuries of unchallenged medical assignments (Foucault 1987), where those whose sex was difficult to determine were seen as monsters (Chapter 4).

The Balance of Power between Protagonists through Mediatized Social Representations

The Caster Semenya case can be seen as a key moment, as it made public the evocation of doubt over sexual identity, standards of femininity / manliness and intersexuation, be it real or perceived. The case, although not front page material, brought to light a theme that was generally unknown to the general public. Caster Semenya hardly ever expressed herself (see Salo’s chapter), [6] and the medical tests remained confidential. Access to information about this controversy was therefore essentially done through the media and institutional channels. These various sources quoted each other abundantly.

The second part of the book is devoted to studying discourses in the media and seeing the representations the media contributed to shape in a context of social change, namely the evolution of the relationship between genders. Caster Semenya was either described as a transvestite, or as intersex with a terminology that was widely inaccurate : “hermaphrodite”, “not 100% female”. The issue of intersectionality⁸ and postcolonial ethical tensions are also essential. Caster Semenya, 18 on the day of her victory, is black, from the African continent and from one of the poorest regions in South Africa. Caster Semenya won the World Championships in Berlin, a European city, while she was virtually unknown internationally. Reactions on the African continent show that these representations have a postcolonial bias. Africans have sought to promote an alternative vision of femininity and masculinity (Swarr, 2012; Nyeck & Epprecht, 2013; Lewis & Marshall, 2012). Some African media compared her fate to that of Saartjie (or

Sarah) Baartman, also known as the “Hottentot Venus”. How are Caster Semenya’s African identity, youth and skin colour meaningful in the way that she was viewed? The discourse in the media is by essence *polyphonic* (Krieg, 2000). Its diversity reflects the complexity of the original question, the judicial battles and the different reactions during the media hype. Examples range from the reaction of the sport institutions, of law experts, of politicians or of Caster Semenya herself, her family, her competitors and even the spectators. Chapters cover the case’s media coverage (Canadian, Australian, African, American and European corpus). Fabien Rose, researcher in communication studies, describes how the Canadian media implicitly adopted the Intersex hypothesis without ever questioning it, thus revealing the links between sex, gender, biology and social norms and their consequences. From there, Rose interprets “the Intersex hypothesis” as a solution to “normalise the challenge posed by Caster Semenya’s gender” and to respect naturalization (Chapter 5). Aurélie Olivesi, researcher in media studies, analyzes this case as a “discursive moment” that shows that the case has left a trace in the collective memory. This point in time opposed axiological regimes that usually converge and, in so doing, raised new interrogations for the public at large such as questions on intersex, fair competition and post-colonial representations – without providing any stable answer however (Chapter 6). Through the discourses of the different protagonists, Sandy Montañola, researcher in media studies, explores the existence of a transnational media discourse that surrounds the construction of this public issue and that generates conflicts about norms, values and the legitimacy of people to voice opinions. She raises the question of how the media operate, how they relate to their sources, how much they value communication and science (and of course truth and objectivity as the underlying values) (Chapter 7). Elaine Salo, researcher in gender studies, suggests different key ideas to understand a post-colonial context in which, [7] rather than being a victim, Caster Semenya became the essence of Africans. She therefore observes Caster Semenya through the representations of her silence and the strategies surrounding it. She also takes into account the domestic tensions between cities and villages and between the local politicians in power and the opposition (Chapter 8). John Sloop, researcher in communication studies, enhances the silence that surrounded Caster Semenya’s victory and her return, (her own silence and the silence of the IAAF), to examine the discursive effects of an unexplained legal decision. As a cultural critic, he wonders if Caster Semenya’s case isn’t an opportunity to introduce the general public to the idea of the construction of gender (Chapter 9). By providing an overall perspective on the ethical and cultural issues at stake from Caster Semenya’s victory in August, 2009 to the CAS’ media release in August, 2015, Silvia Camporesi’s afterword let us think how Caster Semenya’s case is a milestone in a long history of regulations on women’s bodies in sport competition.

This book’s specificity lies in the fact that it provides an opportunity for the various disciplines involved to collaborate on a very specific case, thus bringing the different narratives of the case to come together. Because Caster Semenya’s case is so complex, the different academic disciplines were decompartmentalized in order to feed into each other. By focusing on socio-cultural and media representations, we could integrate the expertise of each field of study, using all of the variables that had been identified in our previous works. By unifying the different disciplinary approaches under the aegis of socio-cultural and media representations of gender, we aim to highlight how Caster Semenya’s own story is an epitome of the ideology that lies behind discourses on sports, fairness and gender. We make the assumption that, beyond Caster Semenya’s own private experience, this “case”, and its further developments, are a genuine epitome of gender construction. This book offers a reflexion on gender relations in sports, in medicine, and, beyond that, in society.

Chronology (2008-2010)

We wanted to provide the reader with a chronology to facilitate the reading of certain chapters. The aim of this chronology isn’t to present a “reality” but rather stems from the analysis of the

articles surrounding the case and published in mainstream international media. We started the chronology in 2008, since this year's results were used several times to compare Semenya's running times.

2008:

July: Caster Semenya participated in the 2008 World Junior Championships (Bydgoszcz, Poland)

October: She won the gold medal in the 800-metre race, at the 2008 Commonwealth Youth Games (Pune, India) with a time of 2'04"23.

[8]

2009:

July, 31st: Caster Semenya won the African Junior Championships (Bambous, Mauritius) with a time of 1'56"72.

August 7th: The first tests were carried out by the ASA in Pretoria

August 16th: Following the selection races at the World Athletics Championships in Berlin, the IAAF required some tests. Partial results should have been communicated on August 19th, the day of the final. Rumours began to spread then.

August 19th: Caster Semenya won the gold medal in the 800 metres with a time of 1'55"45, the world best performance of the year. She did not attend the press conference. Pierre Weiss, the secretary general of the IAAF explained:

I am replacing the winner here tonight... We know you want to talk to her, but she is young, she is inexperienced and she is not able to reply properly to all your questions. "I will answer for her. The decision not to put her up was taken by the IAAF and the South African federation... A double investigation is being conducted – one in South Africa, one in Berlin... I am not a doctor, but all the doctors who conducted investigations tell me this sort of thing takes weeks or months... If at the end of the investigation we find out she is not a woman, we will withdraw the medal and redistribute it. But there is nothing which would have stopped her from running today."⁹

August 25th: Caster Semenya returned to South Africa. The media reported that she was greeted as a heroine by thousands of people at the Johannesburg airport and was received by President Jacob Zuma, who denounced the "humiliation" she was subjected to by the IAAF. This meeting has been criticized by his political opponents as artificial.

September 8th: South African media reported that Wilfred Daniels – the coach of the national athletics team – had resigned. He told *The Star* newspaper: "We have not acted appropriately towards Caster. The treatment of this case was atrocious. Caster was put in the unenviable position where she had to endure what she endured because we have not sufficiently informed her, we did not explain (...) what was to be expected in Berlin".

September 9th: Caster Semenya was interviewed, made over, by *You*, a South African glossy magazine.

September 11th, 2009: The *Sydney Daily Telegraph* stated that “tests conducted during the world athletics championships [...] revealed evidence that she is a [9] hermaphrodite, someone with both male and female sexual characteristics”. This was then relayed by the media all over the world.

September 19th: The ASA ordered its president, Leonard Chuene to resume his seat on the board of the IAAF, when he had resigned the previous week in protest against the femininity tests to which the IAAF had subjected Caster Semenya.

Noluthando Mayende-Sibiya, the South-African Minister for Women, Children and People with Disabilities, filed a complaint with the New York-based UN division for the advancement of women: “There has been the blatant disregard for Miss Semenya’s human dignity... The questioning of her gender is based on a stereotypic view of the physical features and abilities attributable to women”, she said. She added that “such stereotypes demonstrate the extent of patriarchy within the world’s sporting community”.

October 9th: The South African Olympic Committee began hearings on the Semenya case. Pierre Weiss believed that the decision regarding the future of the athlete should be taken in late November at the IAAF Council in Monaco.

October 24th: Lamine Diack, president of the IAAF, postponed his visit to South Africa where he was to discuss the case of Caster Semenya. Meanwhile, Makhenkesi Stofile, the South African ministry of sports still demanded an apology.

October 29th: The IAAF officially announced that an investigation was underway.

October 31st: The ANC (African National Congress) demanded that the gender tests carried out by the IAAF on Caster Semenya be invalidated.

November 5th: Leonard Chuene and his team were suspended by the Sports Confederation and Olympic Committee of South Africa (SASCOC). Submitted to a disciplinary investigation “pending further action”, the “individuals suspended... will have to answer charges of discrediting ASA, athletics, the SASCOC and sport in general”.

November 19th: The IAAF held council in Monaco. The South African department of sport announced that the IAAF had accepted that the South African athlete Caster Semenya should keep her title of world champion in the 800-metre race.

December 11th: Michael Seme, Caster Semenya’s coach announced that she had resumed training, although it was not yet known whether she would be allowed to compete.

2010:

January: the International Olympic Committee held a symposium in Miami to offer policy recommendations to define gender – without any reference to Caster Semenya.

[10]

January 14th: Michael Seme announced that Caster Semenya was free to compete internationally. This announcement was followed by several months of negotiations, mediated by Caster

Semenya's lawyers: Caster Semenya and Michael Seme banked on a quick return to competition, while sports bodies were still awaiting the outcome of the tests.

March 31st: A spokesman for the ASA stated that they would not receive the test results before the month of June.

April 21st: Caster Semenya inaugurated a sports academy that bears her name in Pretoria.

July 5th: The IAAF announced that it was allowing her to reenter competition as a woman.

Further developpements mentionned in this book (2010-2015)

2011

April 5th: The medical commission of the International Olympic Committee (IOC) announced measures on hyperandrogenism (in the wake of the Caster Semenya case) to be effective in 2012 (Olympic Games).

2012

August 11th : Olympic Games (London, UK) : Caster Semenya won silver medal in 800 metres with a time of 1'57"23.

2014 :

Summer: The Indian sprinter Dutee Chand has been denied the right to participate because of hyperandrogenism. She seized the Court of Arbitration for Sport (CAS). A support committee has been founded.

2015

May 19th : Ben Smith interviewed Caster Semenya for the BBC.

July 28th : CAS suspended the IAAF hyperandrogenism regulations. Female sprinters with naturally high testosterone level have been allowed to compete.

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¹ Translated from French by Sylvie Vert and Anne Losq.

² She then won the Silver Medal at the London Olympic Games in 2012. This Medal was interpreted in two ways. Some commentators analyzed it as being due to the effects of the hormones, and others thought that she wanted to escape the media spotlight by not finishing first (See Chapter 9 by John Sloop). In November 2015, an independent commission headed by Dick Pound, the former president of the World Anti-Doping Agency, aroused suspicion that the Russian winner could have been doped.

³At the time of this book's publication, Caster Semenya's latest interview was with Ben Smith for the BBC on May 19th, 2015 (<http://www.bbc.com/sport/0/athletics/32809982>). Ben Smith says that « It is difficult to link the engaging 24-year-old who has granted the BBC a rare interview with the haunted athlete whose gender was questioned in front of the world ». (<http://www.bbc.com/sport/0/athletics/32805695>). We both tried to join her or Jean Verster, her coach, without success.

⁴ See Koyama, Emi, Intersex Initiative « Conseils à l'endroit des personnes non-intersexes écrivant au sujet de l'intersexualité et des personnes intersexes », Inspired by Hale Jacob, « Suggested Rules for Non-Transsexuals Writing about Transsexuals, Transsexuality, Transsexualism, or Trans », <https://sandystone.com/hale.rules.html> (first edition of Hale, 1997)

⁵ Moscovici 1961; Jodelet 1989.

⁶ http://www.tas-cas.org/fileadmin/user_upload/Media_Release_3759_FINAL.pdf

⁷ These issues can be organised using three paradigms: “I”, “you” and “he” (or, in the case at hand, “she”) which form, according to Paul Ricœur, “the triangular basis of ethics” (Ricœur 1990).

⁸ Intersectionality studies the intersections between different forms or systems of oppression, domination or discrimination. This theory was coined by Kimberlé Crenshaw (1991).

⁹ Transcription from the press conference quoted in several newspapers.