



[JOINT STATEMENT]

SWISS COURT UPHOLDS DISCRIMINATORY PRACTICES AGAINST CASTER SEMENYA

9 September 2020

It is with deep sadness and anger that Iranti and Intersex South Africa (ISSA) note the decision by the Federal Court Tribunal in Switzerland to [uphold a policy of discrimination](#) against South African athlete, Caster Semenya.

Last year, the Court of Arbitration in Sport (CAS) ruled in favour of the international athletics federation, IAAF, which had barred Semenya and other athletes from competing in the women's 800m track and field event due to naturally heightened levels of testosterone. Semenya and other female athletes with natural Differences in Sex Development (DSD) were forced to choose between quitting their profession, or taking testosterone-suppressing medication which would come with a new set of challenges and health risks. The CAS acknowledged last year that the IAAF ruling was discriminatory, but claimed that this discrimination was "necessary, reasonable and proportionate".

Yesterday on 8 September 2020, the Federal Court backed this ruling, stating that "fairness in sport is a legitimate concern and forms a central principle of sporting competition. It is one of the pillars on which competition is based."

We condemn this ruling in the strongest possible terms as indecent, indefensible and inhumane. How any body can rule that fairness in sport can be upheld under a system which unfairly targets black African women for their innate physiology quite simply beggars belief. Human diversity cannot simply be erased in order to make the sporting world fair, and such an endeavour as has targeted Semenya which does not also target athletes who happen to be taller, who happen to retain more oxygen in their blood, or who happen to have a certain shoe-size, reveals itself for what it is – a prejudicial decision that goes against the 2019 United Nations Human Rights Council (UNHRC) resolution on the [Elimination of Discrimination Against Women and Girls in Sport](#).

"As per the recent UN High Commissioner for Human Rights report on the Intersection of race and gender discrimination in sports, such policies and regulations have a negative impact on athletes' enjoyment of their rights, including the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment; the right to be free from arbitrary interference with their privacy; the right to earn a living and the right to respect for the dignity, bodily integrity and bodily autonomy of the person, amongst others," notes Nthabiseng Mokoena of ISSA, adding that "it is unfortunate that the Federal Court Tribunal has chosen to uphold a policy that legitimises discrimination against women with diverse sex characteristics, thus being complicit in the ongoing human rights violations

that use questionable scientific arguments to promote and justify institutional and systemic injustice and exclusion against persons with diverse sex characteristics."

For her part, Semenya has shown incredible strength and determination in the face of these adverse circumstances, having in recent months tried her hand at both women's soccer (football) and the 200m track and field event for which she may still be eligible. Her 200m times, however, have thus far fallen short of automatic Olympic qualifying times, putting lie to the belief that she has any kind of unfair advantage over other athletes purely because of her biology. Further, Semenya has been unequivocal that she will not bow to the pressure of the IAAF and the courts, and that she will not allow herself to be forced into taking medication which could severely impact her mental and physical health.

The fight for human rights and dignity are not a sprint, but rather a marathon, and we applaud those who continue to run it. We believe that history will vindicate Caster Semenya, and stand with her and her legal team unequivocally.

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