

# Track Org Should Rescind New Rules For Intersex Athletes

By **Ronald Katz** (May 7, 2018)

It is normal, appropriate and ethical for athletic organizations to prohibit the ingestion of testosterone in order to prevent artificial performance enhancement. The opposite, however — limiting naturally produced testosterone by requiring the ingestion of drugs as a prerequisite for competing with athletes of the sex in which one has been brought up — is abnormal, inappropriate and unethical. The latter is exactly what the International Association of Athletics Federations, which governs international track and field, did when it announced on April 26 new regulations, effective Nov. 1, 2018, regarding intersex athletes who have been brought up female competing against females. Because, as described below, the new regulations are discriminatory, invasive, unscientific and unethical, the IAAF should rescind them immediately.



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Although not widely discussed, it is estimated that one out of 2,000 people are born intersex, i.e., with an indeterminate sex that is neither male nor female. Oftentimes these individuals are not aware of being intersex because that condition is not always visible, such as in the case of internal testes. Often intersex individuals are not told by their parents or doctors their true condition, which is frequently altered by surgery, without their consent, to make them approximate one sex or the other very early in their lives, regardless of what sex they think they are when they become mature enough to be aware of such things. The new regulations of the IAAF — which have replaced regulations that resulted in a ban of intersex athletes from competing against females — would require intersex athletes to take drugs that lower their testosterone if they want to compete against females. The old rules resulting in the ban of intersex athletes had been provisionally disallowed by the Court of Arbitration for Sport, on the ground that they were arbitrary, in a case involving Indian sprinter, Dutee Chand.

Indeed, the new regulations are a very unsubtle attempt to get around the provisional ruling of the CAS in the Chand case. Chand was from a poverty-stricken background in India, and was brought up as a female. She started competing in races successfully, which caused her opponents to complain. As with many intersex athletes, she was treated in a humiliating, degrading and invasive way, including gynecological examinations.

Chand was subsequently banned from competition by the IAAF, whom she brought before CAS. In a 161-page opinion issued in 2015, the CAS provisionally ruled in her favor, stating clearly that there is no scientific evidence that hyperandrogenic female athletes, i.e., those that naturally produce more testosterone than the average female, have an advantage that makes a difference in athletic competition, because results from athletic competition come from a multitude of factors, including height, weight, length of stride, lung capacity, diet, coaching, training regimens, coordination, adrenaline production, and many other factors and conditions. The CAS was “unable to conclude ... that ... hyperandrogenic female athletes enjoy such a substantial performance advantage over non-hyperandrogenic female athletes that excluding them from competing in the female category ... is a necessary and proportionate means of preserving fairness in athletics competition.”

The result of the above reasoning was that CAS lifted the ban on Dutee Chand provisionally, giving the IAAF two years to come up with scientific evidence supporting its position. The CAS did submit a new study to the CAS, which was considering it when the IAAF changed its policy. The new IAAF study was deeply flawed, so it is not surprising that the IAAF is mooting the opportunity for the CAS to opine on it.

Perhaps the main flaw in the new study by the IAAF is that it merely compared athletic results of individuals with different levels of testosterone without, as the scientific method requires, holding equal other factors contributing to athletic success. For example, if an athlete who beats another in a race has more testosterone, that does not show that testosterone was determinative because the winning athlete may also have a longer stride, bigger lungs, better training, better diet, or any one of a multitude of other factors that affect athletic performance. No one has suggested providing handicaps for these natural athletic advantages, and it would be absurd to do so.

Against the background described above, the shortcomings of the IAAF April 26 press release attempting to justify the new IAAF regulations become clear. For example, IAAF President Lord Sebastian Coe states, "As the International Federation for our sport we have a responsibility to ensure a level playing for athletes." First, if by that statement he means that all athletes must be physically equal, it is absurd. As noted above, athletes, and human beings in general, come in all sizes, shapes and conditions, some of which confer an athletic advantage. The same is true for naturally produced testosterone, which is just one factor out of many affecting athletic performance. Also, if Coe wants to ensure a "level playing field for athletes," that goal should include all, including intersex, athletes. Intersex athletes have committed no wrongdoing except to be born in a certain way.

Then Coe states, "Like many sports, we choose to have two classifications for our competition — men's events and women's events." Nothing in this statement, however, gives the IAAF or Coe or anyone the right to tell another human being that he or she is not the sex in which that person has been brought up and which she believes is her sexual identity. Furthermore, there is no justification for choosing two categories that discriminate against one out of 2000 human beings, just as the IAAF could not choose to classify its competitions for only two ethnic groups, leaving out all the others. Intersex people, like all people, have the right to identify as a certain sex, especially because there is no scientific test that unerringly can classify intersex people as one of the two binary sexes.

Coe goes on to say, "Our evidence and data show that testosterone, either naturally produced or artificially inserted into the body, provides significant performance advantages in female athletes." First, it is intellectually dishonest to compare artificial and natural testosterone — one of which is cheating and the other of which comes about through no effort on the part of the athlete. Second, as noted above, the evidence and data on this subject up to the recent IAAF study were rejected by the CAS, and the new IAAF study is junk science, which is likely why the IAAF changed its policy before having the new study examined by the CAS.

Coe then states that high levels of naturally produced testosterone "can significantly enhance ... sporting performance." The fact of the matter is that it can, but also that it may not, enhance performance. The number of world-class athletes who are intersex is significantly less than the number of world-class athletes who are considered fully male or female. There is absolutely no evidence that on average intersex human beings are better athletes than non-intersex athletes.

Later in the press release, someone from the IAAF Medical and Science Department, Dr. Stephane Bermon, is quoted. First, one might wonder why the statements of someone whose paycheck is signed by the IAAF would be a more reliable source on this subject than the independent CAS judges.

Second, what he says is startling at the least: "The treatment to reduce testosterone levels is a hormone supplement similar to the contraceptive pill taken by millions of women around the world." Even if what he says is true, it cannot be ignored that these millions of women take this pill, which is a controlled substance, voluntarily. Forcing someone to take a birth control pill is not something that can be done within the legal norms of any civilized country.

He then states that "[n]o athlete will be forced to undergo surgery," as if this is a magnanimous act by the IAAF. On the contrary, it is shocking that he even mentions such a thing.

The press release concludes by saying that the new regulations are in no way intended "as any kind of judgment on or questioning of the sex or the gender identity of any athlete. To the contrary, the IAAF regards it as essential to respect and preserve the dignity and privacy of athletes." This statement is false on its face — the whole purpose of the new regulations is to question the sex of an athlete. As for the dignity and privacy of the athletes, the best way to preserve that dignity and privacy would be for the IAAF to rescind these discriminatory regulations and to get out of the business of determining an individual's sexual identity against her will.

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