

091104 report

Gender and Sexual Deviates in Sport

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What to acknowledge

Gender is not an immutable notion but rather a social construct that is inveighed with contrasts and contradictions. As opposed to sex, gender is also the way an individual expresses their sense of identity within a society and how that resonates with socially constructed roles and find socio-cultural relevance and validity. It is also an emotional process relating to how one feels.

The Mogadi Caster Semenya debacle can also provide lessons, more especially to buttress the fact that standards of evaluation are not suzerain. It is not enough to say that Mogadi Caster has internal testes and / or does not have ovaries. What is important is how Mogadi Caster has expressed her sense of identity since she was born. That is what gender is all about irrespective of what laboratory test and medical evaluations. A trans-sexual and transgender individuals like me Lindiwe Ringane , have to contend within a society that has little or no understanding of the psychological trauma it visits upon those it considers to be "strange"

The purposes of this document are:

1. To provide some clarifying information about basic gender terminology
2. To summarize legal and medical information related to transgender ,intersex and other related condition participation in sport
3. To make some recommendations for policy related to the inclusion of transgender and intersex athletes and other in school-based sport programs
4. To identify resources on transgender and intersex participation for sports administrators, coaches, and parents

Clarification of Gender Terminology

Before we can explore policy recommendations and education related to transgender and intersex participation in sport, it is important to provide some clarifying information about gender terminology and to address some common misconception about transgender identity. To that end, we offer the following definitions:

Birth/Assigned Sex refers to sex assigned at birth based on the anatomical, physiological, and chromosomal characteristics associated with males, females, or intersex people.

Intersex refers to people with a Disorder of sex development who are born with both male and female anatomical, physiological, or chromosomal characteristics.

Gender Identity refers to a person's internal, deeply felt sense of being a man or a woman. A person's gender identity can be different from their gender assigned at birth.

Gender Expression refers to socially constructed sets of behaviours, appearance, mannerisms, speech patterns, and dress associated with men (masculine), women (feminine) or a mixture of masculine and feminine (often called androgynous), or any other less traditional expressions.

Transgender is an umbrella term that describes people whose gender identity or expression does not conform to prevailing social expectations and can be used to describe people whose gender identity or expression is different from their gender assigned at birth.

Transsexual is a term commonly used to refer to someone who transitions from one gender to another. It includes people who were identified as male at birth but whose gender identity is woman or girl (MTF) and people who were identified as female at birth, but whose gender identity is man or boy (FTM), and people whose gender identity is neither man nor woman. Transition often consists of a change in gender expression, name, and pronoun preference. Transition often also includes hormone therapy, counselling, and surgery.

Transitioned is a descriptor preferred by some people who have completed their gender transition and no longer want to be referred to as either transgender or transsexual. Instead, they want to be referred as the new gender to which they have transitioned (woman or man, without the qualifiers, "transgender", or "transsexual").

Gender Non-Conforming or Gender Variant refers to people who are perceived to have gender characteristics or gender expression that do not conform to traditional social expectations. Gender Variant or gender non-conforming people may or may not identify as transgender.

Sexual Orientation refers to a person's emotional and sexual attraction to other people based on the gender of the other person. A person may identify their sexual orientation as heterosexual, lesbian, gay, bisexual, or queer. Sexual orientation and gender identity are two different aspects of a person's identity. Not all lesbian, gay, bisexual people are gender non-conforming and not all transgender people identify as lesbian, gay or bisexual.

Assumptions about the relationship among a person's sex assigned at birth, gender identity and expression, and sexual orientation are often made. Misunderstanding the differences among these terms can lead to misconceptions about people. For example, transgender/transitioned people

or people who display gender variant behaviour or appearance are often assumed lesbian, gay, or bisexual. However, a person's gender identity or expression is unrelated to their sexual orientation. We each have a sexual orientation and a gender identity. Knowing a person's gender identity provides little information about that person's sexual orientation and vice versa.

Summary of Legal and Legislative Information

Though no state legislation explicitly prohibits discrimination based on gender identity or expression, the South African Constitution's equal protection clause, may be interpreted to address discrimination against transgender people and intersex people. Moreover, the Alteration of the Sex Description and Sex Status Act acknowledges and guides treatment about gender and sexual deviates.

ALTERATION OF SEX DESCRIPTION AND
SEX STATUS ACT, 2003

GENERAL EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)

(Assented to 9 March 2004.)

ACT

To provide for the alteration of the sex description of certain individuals in certain circumstances; and to amend the Births and Deaths Registration Act, 1992, as a consequence; and to provide for matters incidental thereto.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Definitions

1. In this Act, unless the context indicates otherwise-

“gender characteristics” means the ways in which a person expresses his or her social identity as a member of a particular sex by using style of dressing, the means; other or prostheses wearing of 5

“gender reassignment” means a process which is undertaken for the purpose of reassigning a person’s sex by changing physiological or other sexual characteristics, and includes any part of such a process;

“intersexed”, with reference to a person, means a person whose congenital sexual development; the ver to atypical, is differentiation 10

“medical practitioner” means a person providing health services in terms of any law, including in terms of the-

(a) Allied Health Professions Act, 1982 (Act No. 63 of 1982);

(b) Health Professions Act, 1974 (Act No. 56 of 1974);

(c) Nursing Act, 1978 (Act No. 50 of 1978);

(d) Pharmacy Act, 1974 (Act No. 53 of 1974);

(e) Dental Technicians Act, 1979 (Act No. 19 of 1979); and

(f) Mental Health Care Act, 2002 (Act No. 17 of 2002);

“primary sexual characteristics” means the form of the genitalia at birth;

“secondary sexual characteristics” means those which develop throughout life and 20 which are dependant upon the hormonal base of the individual person;

“sexual characteristics” means primary or secondary sexual characteristics or gender characteristics.

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Application for alteration of sex description

2. (1) Any person whose sexual characteristics have been altered by surgical or medical treatment or by evolution through natural development resulting in gender reassignment, or any person who is intersexed may apply to the Director-General of the National Department of Home Affairs for the alteration of the sex description on his or her birth register.

(2) An application contemplated in subsection (1) must - 30

(a) be accompanied by the birth certificate of the applicant;

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Art No. 4Y, 2003 ALTERATION OF SEX DESCRIPTION AND

SEX STATUS ACT, 2003

(b) in the case of a person whose sexual characteristics have been altered by surgical or medical treatment resulting in gender reassignment, be accompanied by reports stating the nature and results of any procedures carried out and any treatment applied prepared by the medical practitioners who carried out the procedures and applied the treatment or by a medical practitioner with experience in the carrying out of such procedures and the application of such treatment;

(c) in every case in which sexual characteristics have been altered resulting in gender reassignment, be accompanied by a report, prepared by a medical practitioner other than the one contemplated in paragraph (b) who has medically examined the applicant in order to establish his or her sexual characteristics; and

(i) a report prepared by a medical practitioner corroborating that the applicant is intersexed; and

(ii) a report prepared by a qualified psychologist or social worker corroborating that the applicant is living and has lived stably and satisfactorily.

for an unbroken period of at least two years, in the gender role corresponding to the sex description under which he or she seeks to be registered.

(3) If the Director-General refuses the application contemplated in subsection (1), he or she must furnish the applicant with written reasons for the decision.

(4) If an application contemplated in subsection (1) is refused, the applicant may appeal to the Minister of Home Affairs against the decision taken by the Director-General.

(5) An application contemplated in subsection (1) must be lodged with the Minister within 14 days after the decision of the Director-General was made known and must be accompanied by the documents referred to in subsection (2) and the reasons for the Director-General's refusal.

(6) If an appeal in terms of subsection (4) is refused, the applicant may apply to the magistrate of the district in which he or she resides for an order directing the change of his or her sex description.

(7) An application contemplated in subsection (6) must be accompanied by the documents referred to in subsection (2) and the reasons for the Minister's refusal.

(8) On the date and at the time determined by the magistrate the applicant must appear before the magistrate in chambers and must at the request of the magistrate furnish such additional information and proof as the magistrate may require.

(9) If the application is granted the magistrate must issue an order directing the Director-General to alter the sex description in the birth register of the person named in the order.

(10) An applicant may, on his or her appearance before the magistrate, be assisted by a legal representative.

(d) in the case of a person who is intersexed, be accompanied by -

Order for alteration of sex description

3. (1) If the Director-General grants an application contemplated in section 2(1) or receives an order from a magistrate in terms of section 2(9), the Director-General must proceed in terms of section 27A of the Births and Deaths Registration Act, 1997 (Act No. 51 of 1997).

(7) A person whose sex description has been altered, is deemed for all purposes to be a person of the sex description so altered as from the date of the recording of such

alteration.

(3) Rights and obligations that have been acquired by or accrued to such a person before the alteration of his or her sex description are not adversely affected by the alteration.

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Act No. 49,2003 ALTERATION OF SEX DESCRIPTION AND
SEX STATUS ACT. 2003

Insertion of section 27A in Act 51 of 1992

4. The following sectionis hereby inserted in the Births and Deaths Registration Act, 1992, after section 27:

“Alteration of sex description
amended birth certificate.”.

Short title

5. This Act is called the Alteration of Sex Description and Sex Status Act, 2003.

Legal protection from discrimination based on gender identity or expression is currently available in the country.

Regardless of whether there are explicit legal protections for students/ learners based on gender identity in the country, discrimination against transgender and gender-variant athletes/ other may still result in liability for coaches or schools.

The most prominent legal case to date involving a transsexual athlete in the United States was Renee Richards v. United States Tennis Association. Richards, a male to female transsexual, sued to participate in the U.S. Open's Women's Division in 1977 without submitting to a sex verification test. The New York court ruled that the USTA was in violation of the state Human Rights Law and was discriminating against Richards. She played in the U.S. Open that year where she lost her first round singles match, but reached the finals in doubles before losing. Athletes identifying as transsexual, transgender or transitioned currently compete in many women's sports including mountain biking, ice hockey, track and field and golf.

Addressing Competitive Athletic Performance Concerns

ensuring that intersex and transgender/transitioned athletes are treated fairly in sport presents a unique challenge because, for the most part, competitive athletics is a sex-segregated activity. Most athletic teams are separated into those for boys and men and those for girls and women. Men and women compete against or with each other in far fewer sports (archery, equestrian, shooting, for example). Moreover, there are well-documented physical and physiological differences between males and females that lead to the conventional wisdom that most sports are best conducted as sex segregated activities in order to ensure that women and men have equitable opportunities to compete against others of similar physical and physiological capabilities. The actual overlap in male and female athletic performance, however, is quite large, rather than clearly separated into two distinct groups. The range of physiological characteristics and athletic performance within each of the categories of female and male is also quite wide. Nonetheless, transgender athletes, particularly transsexual or transitioned athletes, challenge accepted boundaries of eligibility and raise concerns about fair competition in sex segregated sport.

A broad spectrum of identities is included under the umbrella of transgender identity. Transsexual or transitioned athletes may pose the greatest challenge to equity in sex segregated sport competition. Athletes who have completed a transition from male to female are most likely to be seen as having an unfair competitive advantage in contests against women who are female at birth. *Athletes who have completed a transition from female to male also pose challenges if they are taking testosterone as part of their hormone therapy because of concerns about athletes' use of performance enhancing drugs.*

Other transgender athletes; whose gender identity does not match their birth sex, but do not undergo surgery or take hormones; pose less of a competitive

equity challenge. Instead, they present a challenge to traditional gender expectations and might be subjected to discrimination or harassment because of stereotypes or prejudice. Athletes whose gender expression is non-conforming, but whose birth sex and gender identity match (i.e. masculine women or feminine men) pose the least challenge to competitive equity. However, these athletes might be subjected to discrimination or harassment based on their gender expression.