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ARTICLE

Challenging the Coloniality of Sex, Gender and Sexuality

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Abstract

When most of us think about gender, it is extremely difficult to think beyond the system that the colonial ways of being have bestowed on us; that is, a hierarchized binary of male and female. This article challenges the coloniality of the normative concepts of sex, gender and sexuality. I do this through the embodiment of South African Olympic athlete Caster Semenya. By juxtaposing Semenya's story with that of another Olympian, Michael Phelps, the article analyzes the colonial power dynamics at play in reinforcing dualistic and racialized gender norms as well as heteronormativity.

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Keywords: sex; gender; sexuality; Coloniality; Afro-feminism

1. Introduction

*Am me and am happy to be me
The world went rough on me but I didn't change of being me.
They call names, bitch, slight whore, isitabane
But I kept going and stronger day by day
Who are you to tell me what I am
If you don't like what you see, Phuma Kimi!*
—Modise.¹

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1. Untitled, extract by Modise from Eastern Cape, South Africa. Posted on November 12, 2015 at: <https://weareallpoets2015.wordpress.com/2015/11/12/untitled-by-modise/> [accessed on January 19, 2020].

As is the situation elsewhere around the world, African identities and ways of being are fundamentally influenced by the core concepts of sex, gender and sexuality. These three interrelated concepts are further complicated when they intersect with ideas relating to constructs such as race, ethnicity, nationality, age and religion. Despite this reality, most of us are not consciously aware of the subtle, multidimensional and infinite ways that coloniality shapes our understandings of these aspects of our lives. The Indigenous knowledge which governed these aspects of African lives were unsettled, altered and delegitimized through processes of colonialism and imperialism.² Today, European global domination has an ironclad hold on our ways of thinking, feeling and being; hence it shapes our positionality in the world.³

The aim of this article is to surface many of those taken-for granted norms and assumptions that underlie the social institutions of sex, gender and sexuality in Africa. In particular, it challenges and problematizes the naturalized, normative modes of thinking about these three concepts. Doing so will help relocate the power that operates through these aspects of our lives, a particularly important goal in achieving Africa's transformative agenda of decolonization/decoloniality.

The postcolonial conceptualization of "coloniality of Being" which refers to the ways that our "common sense" understandings of being and knowing reflect processes of internalized colonization.⁴ Eurocentred colonialism was replaced with Eurocentred coloniality. It is the same phenomenon that Zulu Sofola described back in 1993: "It is and has been an automatic position taken by Western scholars and some Africans of European orientation, that the Eurocentric perception and definition of life is all that is and all that should be."⁵

Nelson Maldonado-Torres points out that coloniality of Being becomes most visible and concrete when we encounter liminal persons, that is, humans who are culturally ambiguous; those that cannot be easily classified into dichotomized and "naturalized" social categories that coloniality has constructed for us. Elizabeth Reis refers to them as "bodies in doubt."⁶ Such bodies have been well documented in African traditions. Among the Langi in northern Uganda there is an alternative gender known as *mudoko dako*.⁷ These "effeminate males" are allowed to marry men. The fact that the usual "common sense" sex markers would fail to classify *mudoko dako* clearly points to the limitations within the colonial knowledge system to understand humanity outside the constructed binaries of male/female.⁸ Similarly, the Imbangala of Angola shocked English traveler Andrew Battell in the 1590s when he discovered that "they have men in women's apparel, whom they keep among their wives."⁹ In other words, the appearance of humans like *mudoko dako* marks "the limit of

2. See e.g., Anne McClintock, *Imperial Leather: Race, Gender and Sexuality in the Colonial Contest* (New York: Routledge, 1995); Sylvia Tamale (ed.), *African Sexualities: A Reader* (Oxford: Pambazuka Press, 2011); Barbara L. Voss and Eleanor Conlin Casella, (eds.), *The Archaeology of Colonialism: Intimate Encounters and Sexual Effects* (Cambridge: Cambridge University Press, 2012); Marc Epprecht, *Heterosexual Africa? The history of an Idea from the Age of Exploration to the Age of AIDS* (Athens: Ohio University Press, 2008); Zine Magubane, *Bringing the Empire Home: Race, Class and Gender in British and Colonial South Africa* (Chicago: University of Chicago Press, 2004); and Nkolika Ijeoma Aniekwu, "Converging Constructions: A Historical Perspective on Sexuality and Feminism in Post-Colonial Africa," *African Sociological Review* 10(1) (2006): 143-160.

3. Frantz Fanon, *The Wretched of the Earth* (New York: Grove Weidenfeld, 1963); and Achille Mbembe, *On the Postcoloniality* (Berkeley: University of California Press, 2001).

4. See Walter Dignolo, *The Darker Side of the Renaissance: Literacy, Territoriality, and Colonization*, 2nd ed. (Ann Arbor: University of Michigan Press, 2003); Nelson Maldonado-Torres, "On the Coloniality of Being: Contributions to the Development of the Concept," in Walter Dignolo and Arturo Escobar (eds.), *Globalization and the Decolonial Option*, pp. 94-124 (London: Routledge, 2010).

5. Zulu Sofola, "Foreword," in Clenora Hudson-Weems, *Africana Womanism: Reclaiming Ourselves*, (Troy, MI.: Bedford Publishers, 1993) at p. xvii.

6. Elizabeth Reis, *Bodies in Doubt: An American History of Intersex* (Baltimore: Johns Hopkins University Press, 2009).

7. Jack Driberg, *The Lango: A Nilotic Tribe in Uganda* (London: Thorner Coryndon, 1923)

8. An equivalent term among the Hausa in northern Nigeria is yandaudu. See Stephen Murray and Will Roscoe (eds.), *Boy-Wives and Female Husbands: Studies in African Homosexualities* (New York: Palgrave, 1998).

9. Samuel Purchas, "Strange Adventures of Andrew Battell of Leigh of Essex," in *Purchas His Pilgrimage*, Vol. 6 (Glasgow: J. Maclehose Sons, 1905 [1613]) at p. 74. Cited in Marc Epprecht, "'Bisexuality' and the Politics of Normal in African Ethnography," *Anthropologica* 48(2) (2006): 187-201 at p. 189.

Being, that is, the point at which Being distorts meaning...¹⁰

Following the cue provided by Maldonado-Torres, this article discusses the well-known stories of two liminal subjects to demonstrate the complexities involved in decolonizing our everyday understandings of sex, gender and sexuality. Which better place to look than the stage of elite sports where the world gaze is ever-present, and scrutiny is constant and uncompromising. It is the world in which two iconic athletes—Caster Semenya and Michael Phelps—occupy and have been the subject of particular scrutiny with respect to issues that implicate our notions of gender and sexuality.

The analysis in the sections that follow begins with a brief account of the similarities and differences between Phelps and Semenya, focusing particularly on their physicality. Then, the article provides a brief discussion of African sex/gender systems which markedly differ from those in Western ideologies. Next, through a discursive intersectional analysis of the public discourse on Phelps and Semenya, we reveal the hidden power behind the written word (and the silences). As Semenya was subjected to scientific and legal inquiries, we examine their implications and discuss the role of science and the law in the social construction of gender and power relations in the final section. Which systems of power are salient and intersecting? Are any matrices of resistance visible in the stories of the two athletes? What is the real meaning behind the public discourses on the two athletes? How do the different texts talk to each other? What kinds of hidden values or power do they carry—hegemonic? subversive? colonial?

2. Michael Phelps and Caster Semenya: A Juxtaposition

The appearance of the two enigmatic athletes Caster Semenya and Michael Phelps onto the global elite sports stage, in many ways, unsettled the sports industry and the normative ways of thinking. They certainly opened the floodgates of public opinion and spectacularization. While the “body-scape” of both athletes is a source of confusion to the gazing public, the treatment that each was subjected has been quite different. Their juxtaposition, therefore, provides a useful basis for analysing the coloniality of Being and linking it to knowledge production relating to sex, gender and sexuality.

Implicated in this discussion are Michel Foucault’s key concepts of subjectivity, discourse and power. Foucault insists that power shapes and legitimates knowledge, just as knowledge facilitates the exercise of power.¹¹ He reminds us that “discourses are composed of signs; but what they do is more than use these signs to designate things... It is this ‘more’ that we must reveal and describe.”¹² The public discourses about the two athletes dramatically reveal power/ knowledge in operation. This echoes Chinua Achebe’s writing about the power embedded in stories and his call for critical Africans to “re-story” ourselves.¹³ By analyzing the public discourse on Semenya and Phelps, we hope to surface the power relationship between language, social institutions and subjectivity. Semenya’s case further reveals how legal and scientific discourses produce and reproduce power relations. The conceptual link between knowledge and language is further explicated by Walter Mignolo: “Science (knowledge and wisdom) cannot be detached from language; languages are not just ‘cultural’ phenomena in which people find their ‘identity’; they are also the location where knowledge is inscribed. And, since languages are not something human beings have but rather something of what human beings are, coloniality of power and of knowledge engendered the coloniality of being...”¹⁴

The tool of intersectionality is deployed in a bid to appreciate the complex ways that the sex/gender

10. Nelson Maldonado-Torres, “On the Coloniality of Being: Contributions to the Development of the Concept,” in Walter Mignolo and Arturo Escobar (eds.), *Globalization and the Decolonial Option*, pp. 94–124 (London: Routledge, 2010), Note 4 at p. 111.

11. Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings, 1972–1977* (New York: Pantheon Books, 1980).

12. Michel Foucault, *The Archaeology of Knowledge*, Trans. Alan Sheridan (New York: Harper Row, 1976 [1969]) at p. 49.

13. Chinua Achebe, “Today, the Balance of Stories,” in *Home and Exile* (New York: Anchor, 2000), pp. 73–105.

14. Walter Mignolo, *The Darker Side of the Renaissance: Literacy, Territoriality, and Colonization*, 2nd ed. (Ann Arbor: University of Michigan Press, 2003) Note 4 at p. 452

system and sexuality are shaped by and are constitutive of nationality, race and class. The similarities and differences between the two athletes provide a fertile ground for analyzing intersecting systems of power, privilege and oppression. Hence, via the discursive analysis of the stories of and about Semenya and Phelps, we hope to demonstrate the role of discourse in constructing colonial ways of Being. Using broad brush strokes to map out simple biographical descriptions of Michael Phelps and Caster Semenya as well as the outline of the areas of discourse on their physicality, this section lays the backdrop against which to identify ways in which coloniality shapes sex/gender and sexuality. The focus is mostly on their physicality as the public and the official establishment are obsessed with their bodies and their bodily functions as athletes.

There are a few key similarities that Phelps and Semenya share. Both are successful elite athletes who have competed in world and regional championships, including the Olympics, setting world records in their respective sports. Semenya is a middle-distance runner while Phelps is a swimmer. Semenya has thrice won gold medals at the women's 800-metre race in the World Championships of the International Association of Athletics Federations (IAAF) and twice in the 2012 and 2016 Olympics.¹⁵ Phelps holds an impressive total of 28 Olympic medals (23 of which are gold), setting the world record for most medal wins of an Olympic athlete in history.¹⁶

Semenya and Phelps are contemporary athletes as they were both at the Olympics in London (2012) and Rio de Janeiro (2016). This means that both of them were subjected to the Olympic Charter and the IAAF Constitution which explicitly prohibit discrimination of any kind. Article 4(4) of the IAAF Constitution specifically states in its objectives that it strives: "to ensure that no gender, race, religious, political or other kind of unfair discrimination exists, continues to exist, or is allowed to develop in Athletics in any form, and that all may participate in Athletics regardless of their gender, race, religious or political views or any other irrelevant factor."¹⁷ Both sports stars have unique physicality that cannot easily be classified as "normal" or "natural" under hegemonic cultural standards. Their bodies exist in a liminal space. For this reason, the world spotlight and intrusive gaze has been fixed on their biological makeup, and ultimately, for Semenya, her gender identity and sexuality. The dominant discourse on both athletes constructs them as human "freaks" based on their bodily physiques.

Valery Siebert provides a detailed description of Michael Phelps' physique. He has a relatively thin and long torso, which offers low drag in the water as do his relatively short legs and broad shoulders; his 6-foot-7-inch arm span, which is disproportionate to his height of 6-foot-4-inches, acts as long, propulsive paddles; and his large size-14 feet and larger-than-average hands provide the effect of powerful flippers; the double-jointed elbows allow him much more thrust into the water than the average swimmer; his double-jointed ankles are super strong and so flexible that they can go parallel to his shin beyond the point of a ballet dancer, which allows him to use them like fins for maximum thrust through the water.¹⁸ Some suggest that Phelps has a genetic condition known as Marfan syndrome, which affects a person's connective tissue.¹⁹ It has also been scientifically proven that Phelps produces less than half of the lactic acid that an average person produces, allowing him less recovery time between exertions and more powerful lungs.²⁰

15. See NBC Sports, "Caster Semenya will not attend world championships to receive gold medal" (Sept 12, 2019), available at: <https://olympics.nbcsports.com/2019/09/12/caster-semenya-world-championships-gold-medal/> [accessed Dec 17, 2019].

16. See Britannica, "Michael Phelps," available at: <https://www.britannica.com/biography/Michael-Phelps> [accessed Dec 17, 2019].

17. See Objective 4 of the 2017 Constitution of the International Association of Athletics Federations (IAAF).

18. Valery Siebert, "Michael Phelps: The Man who was Built to be a Swimmer," *The Telegraph*, (25 April, 2014), available at: <https://www.telegraph.co.uk/sport/olympics/swimming/10768083/Michael-Phelps-The-man-who-was-built-to-be-a-swimmer.html> [accessed Nov 15, 2019].

19. Emily J. Cooper, "Gender Testing in Athletic Competitions – Human Rights Violations: Why Michael Phelps is Praised and Caster Semenya is Chastised," *Journal of Gender, Race Justice* 14(1) (2010): 233–264.

20. Ibid. Also see, Michael Sokolove, "Built to Swim," *New York Times* (Aug 08, 2004), available at: <https://www.nytimes.com/2004/08/08/magazine/built-to-swim.html> [accessed Nov 15, 2019].

In contrast, Semenya's physical appearance or phenotype resembles that of a stereotypical male. With a broad chest and relatively deep voice, some describe her as "butch."²¹ A battery of tests imposed by the IAAF indicated that she had "an intersex condition that left her without a uterus or ovaries and with undescended testes producing androgens at three times the typical level for females."²² Apparently, the physicality of both athletes gives them an advantage over their competitors.

The differences between Semenya and Phelps generally fall under the constructs of gender, race, class and nation. Born on January 7, 1991, Caster Semenya is the child of relatively poor Sepedi parents in the rural village of Ga-Masehlong, located in Limpopo province, South Africa. She was assigned the female gender at birth and was raised a female.²³ On the other hand, Michael Phelps, is male and born on June 30, 1985 to a White middle-class family located in Baltimore, USA.²⁴ The main distinction in the career trajectories of Semenya and Phelps relates to their relationship with the IAAF. For one, it involves an action and for the other, a case of inaction. Following her 2009 victory in the Berlin World Championships, the IAAF subjected Semenya to a "gender verification" test for the purpose of verifying her "true" sex. This was based on Semenya's physique, voice tone and her "rapid improvement" in speed. The scientific tests included screening for high testosterone and physical examination of her intimate body parts such as measurement of the size of her clitoris. Test results revealed that she had elevated androgen levels (hyperandrogenism).²⁵ The IAAF reported that they wanted to ensure that Semenya did not have an advantage over other female athletes based on her "difference."²⁶ Phelps, on the other hand, despite his unique physique, has never been constrained—either by the International Olympic Committee (IOC) or the IAAF—to undergo any medical or physical tests. And if any tests were done, they have never been used in a decision regarding the athlete's official performances.

Additionally, as a female, Semenya is governed by the 2017 IAAF Eligibility Regulations for the Female Classification (Athletes with Differences of Sex Development)—hereinafter referred to as the DSD Regulations—which came into force on August 11, 2019. Men, including Phelps, are not subjected to any such tests, but female athletes whose sex is questioned must undergo the tests. Semenya was found to be eligible for the tests. The guidelines for eligibility are not clear and remain subjective. Marthe de Ferrer highlights the lack of guidelines for determining which female athletes would be eligible for testing: "In 2011 the IAAF were criticised for saying that [they] would use a range of stereotypical measures – such as having a low voice – to decide who they would subject to sex testing. They have since removed that category, but they have yet to confirm how they will decide which athletes they are testing. The IAAF regulations are founded in the misguided notion that sport is about fairness."²⁷

Together with Athletics South Africa (ASA), Semenya filed a case at the Court of Arbitration for Sports (CAS) against the IAAF, challenging her "gender verification" DSD test as discriminatory

21. See e.g., Ariel Levy, "Either/Or: Sports, Sex, and the Case of Caster Semenya," *New Yorker* (Nov 30, 2009), available at <https://www.newyorker.com/magazine/2009/11/30/eitheror> [accessed Nov 19, 2019].

22. Katrina Karkazis, Rebecca Jordan-Young, Georgiann Davis and Silvia Camporesi, "Out of Bounds? A Critique of the New Policies on Hyperandrogenism in Elite Female Athletes," *The American Journal of Bioethics* 12(7) (2012): 3–16 at p. 4. The range of testosterone for females is 0.7 to 2.8 nmol/L and for males, 6.9 to 34.7 nmol/L. Also see Simon Hart, "Caster Semenya 'is a Hermaphrodite', Tests Show," *Daily Telegraph*, (September 11, 2009). Available at: <https://www.telegraph.co.uk/sport/othersports/athletics/6170229/Caster-Semenya-is-a-hermaphrodite-tests-show.html> [accessed Nov 22, 2019]

23. South African History Online, "Mokgadi Caster Semenya" (15 August, 2017), available at: <https://www.sahistory.org.za/people/mokgadi-caster-semenya> [accessed Nov 20, 2019]

24. Michael Phelps, *Beneath the Surface: My Story* (New York: Sports Publishing, 2016).

25. Emily J. Cooper, "Gender Testing in Athletic Competitions," Note 19.

26. See Arbitral Award in the case of *Mokgadi Caster Semenya v. International Association of Athletes Federation and Athletes South Africa v. International Association of Athletes Federation*, available at: https://www.tas-cas.org/fileadmin/user_upload/CAS_Award_-_redacted_-_Semenya_ASA_IAAF.pdf [accessed Nov 15, 2019] at para. 287.

27. Marthe de Ferrer, "The ignorance is mindblowing— why the Caster Semenya ruling hurts millions of people like me," *Manchester Evening News* (May 6, 2019), available at: <https://www.manchestereveningnews.co.uk/news/news-opinion/the-ignorancemindblowing-caster-semenya-16224157> [accessed Nov 17, 2019]

on the basis of sex. They lost the case and, as a result, Semenya was ordered by IAAF to reduce her testosterone levels through hormonal therapy in order to qualify for the women's races. Semenya and ASA have appealed this decision, which is still under consideration at the time of writing.

Given the above account, it is clear that there are some factual similarities and a number of fundamental differences between Semenya and Phelps. What they share in common is that both are contemporary Olympic athletes whose bodies defy conventional understandings and challenge the normative colonial logics regarding the human body. Beyond that, the two inhabit very different worlds, particularly in terms of race and class. Indeed, there is a world of difference in their sporting experiences. Discourses imposed on Phelps and Semenya by the public and other external entities are also quite different. African and Western conceptualizations of the sex/gender system are different in this respect, a point that I consider in the next section.

3. Decolonial African Sex/Gender Systems

Studies in coloniality reveal the impositions on Africa of Western paradigms that are founded on polarized dualisms. This is how the dual sex/gender system took over African Indigenous arrangements and understandings of gender which were more pluralistic, elastic and accommodating. Historically, the organization of gender in many African societies was not necessarily arranged along heterosexual or patriarchal lines as we have learnt them through colonial conceptualizations. African-American scholar Clenora Hudson-Weems offers a paradigm for understanding African experiences of gender.²⁸ Rooted in afrocentric ideology, "Africana womanism" examines the interplay of the institution of gender and interpersonal relations as embedded in and influenced by race, capitalism and Judeo-Christian ethics. It offers women of African descent a strategy to theorize their own existence.

Ifi Amadiume's excellent study of Indigenous Igbo gender arrangements in southeastern Nigeria clearly demonstrates that orthodox Western sex/gender conceptions do not resonate with many of the realities on the African ground. Indeed, they unsettle mainstream Western feminist universalizations of gender. Amadiume introduces concepts such as "male daughters" and "female husbands" which were strange to Western feminism and to hegemonic gender paradigms based on polarized dualisms.²⁹ The point that Amadiume accentuates is that "bio-logical" sex did not always correspond to ideological gender in African societies. Moreover, because the gender system was relatively flexible, it was not unusual for women to play "male" roles "in terms of power and authority over others" because roles "were not rigidly masculinized or feminized [and] no stigma was attached to breaking gender rules."³⁰

British colonial administrator Lord Frederick Lugard, viewing woman-to-woman marriages in West Africa through Eurocentric lenses, declared them "not normal" and recorded them in his book, *The Dual Mandate in British Tropical Africa*, under the title, "*Slavery in British Africa*."³¹ Of course, such marriages were "not normal" in his European experience and his classic patriarchal mind could not fathom a woman marrying another woman, hence describing it as slavery. Oxford University Anthropology Professor Evans-Pritchard was also puzzled by the phenomenon. In 1951 he wrote about the Nuer of South Sudan: "What seems to us, but not at all to Nuer, a somewhat strange union is that in which a woman marries another woman and counts as the pater [father] of the children born of the wife. Such marriages are by no means uncommon in Nuerland, and they must be regarded as a form of simple legal marriage, for the woman-husband marries her wife in exactly the same way as a man marries a woman."³² Gender flexibility and gender bending existed

28. Clenora Hudson-Weems, *Africana Womanism: Reclaiming Ourselves* (Troy, MI: Bedford Publishers, 1993).

29. Ifi Amadiume, *Male Daughters, Female Husbands: Gender and Sex in an African Society* (London: Zed Books, 1987).

30. *Ibid.* at p. 185.

31. Frederick Lugard, *The Dual Mandate in British Tropical Africa* (1922) cited in Kirsten Kjerland, "When African Women Take Wives: A Historiographical Overview," *Poverty and Prosperity* Occasional Paper No. 6 (1997): 1-21.

32. E. E. Evans-Pritchard, *Kinship and Marriage Among the Nuer* (Oxford: Clarendon Press, 1951) at p. 108.

in many other African societies. For example, woman-to-woman marriages have been documented in more than thirty African societies, including the Nandi, Kikuyu, and Luo of Kenya, the Nuer of South Sudan, the Kuria in Tanzania, the Fon in Dahomey (present-day Benin), the Fanti of Ghana, the Thonga of Zimbabwe, the Konso and Amhara of Ethiopia, the Ottoro of Nubia, the Tanala and Bara of Madagascar, the Wolof of Senegal, the Kwayama and Ovimbundu of Angola and the Venda of South Africa.³³ Edmund Leach also noted the practice among the people of the Siwah Oasis in Western Egypt.³⁴ There is a wide variety of such relationships, including those which could be described as transgenerational and transgenderal (for lack of a better term).³⁵ In all these relationships, bridewealth is exchanged, which makes them legitimate marriages. Moreover, such Indigenous systems have persisted to the present day.

Woman-woman marriages are usually undertaken for reproductive, economic and diplomatic reasons, for example, well-to-do women who cannot have children of their own for biological reasons. Or it could be a woman whose offspring consists of only daughters. Such a woman will marry a younger woman who will take on male lovers and produce children for her female “husband.”³⁶ Thus, the family lineage of her male husband in the patrilineal context will be secured. Lonely widows have also been known to marry female partners.³⁷ But the reasons for such marriages went far beyond functionalist purposes usually reported in the literature. In their 2000 article, “Revisiting ‘Woman-Woman Marriage’: Notes on Gikuyu Women,” Wairimu Njambi and William O’Brien suggest more nuanced and complex reasons, as captured in the words of one participant in their study: “I ask myself, ‘What is it that women who are married to men have that I don’t have? Is it land? I have land. Is it children? I have children. I don’t have a man, but I have a woman who cares for me. I belong to her and she belongs to me. And I tell you, I don’t have to worry about a man telling me what to do.’”³⁸

Njambi and O’Brien critique the very concept of “female husband” for its potential to conjure up the idea that gender concepts are interchangeable or unrestricted; on the contrary, the women in woman-woman marriages do not equate their roles to maleness.³⁹ They conclude that: “By marrying women, these Gikuyu women are clearly radically disrupting the male domination that operates in their everyday lives. Their stories may begin with land and struggles over material resources, but they are also stories of love, commitment, children, sexual freedom, vulnerability, and empowerment.”⁴⁰ In the same way, many African grammatical constructions of gender make no distinction between male and female pronouns, which allows for “a more flexible semantic system, in which it is possible for men and women to share attributes.”⁴¹

Whether woman-woman marriages have a sexual/erotic dimension to them remains an open

33. See e.g., Edward Evans-Pritchard, *Kinship and Marriage among the Nuer* (Oxford: Oxford University Press, 1951); Denise O’Brien, “Female Husbands in Southern Bantu Societies,” in A. Schlegel (ed.), *Sexual Stratification: A Cross-Cultural View*, pp. 109-126 (New York: Columbia University Press, 1977); Stephen Murray and Will Roscoe (eds.), *Boy-Wives and Female Husbands: Studies in African Homosexualities* (New York: Palgrave, 1998); Melville Herskovits, “A Note on ‘Woman Marriage’ in Dahomey,” *Africa* 10 (1937): 335-341; Judith Gay, “‘Mummies and Babies’ and Friends and Lovers in Lesotho,” *Journal of Homosexuality*, 11(3/4) (1986): 97-116; Louis Leakey, *The Southern Kikuyu Before 1903* (New York: Academic Press, 1977 [1938]); and David Greenberg, *The Construction of Homosexuality* (Chicago: University of Chicago Press, 1988).

34. See Edmund Leach, “Marriage, Legitimacy, Alliance,” *Social Anthropology* 176 (1982) at 210, cited in William Eskridge, “A History of Same-Sex Marriage,” *Virginia Law Review* 79(7) (1993): 1419-1513 at 1459.

35. William Eskridge, *Ibid.* at p. 1458.

36. Ifi Amadiume, *Male Daughters, Female Husbands*, Note 29.

37. Wairimu Njambi and William O’Brien, “‘Woman-Woman Marriage’: Notes on Gikuyu Women,” *NWSA Journal* 12(1) (2000): 1-23.

38. Ciru, married to Nduta. *Ibid.* at p. 1.

39. Also see Eileen Jensen Krige, “Woman-Marriage, with Special Reference to the Lovedu—Its Significance for the Definition of Marriage,” *Africa* 44 (1974):11-37.

40. *Ibid.* at p. 19.

41. Ifi Amadiume, *Male Daughters, Female Husbands*, Note 29 at p. 89; and Oyeronke Oyewumi, *The Invention of Women: Making an African Sense of Western Discourses* (Minneapolis: University of Minnesota Press, 1997). This is also true for my own mother tongue, Luganda.

question. Several studies indicate that some of them exhibit deep emotional ties and hints of intimate relations.⁴² It would be unlikely that the erotic aspects of this relationship would be readily discussed with “outsider” researchers. Caution should be exercised in using Western conceptualizations of homosexuality onto same-sex desire in African contexts. Colonial notions of “sexual bodies” and “desire” differ quite distinctively from African ones. Serena Dankwa eloquently captures the nuanced differences from her study of homo-erotics in Ghana:

... first, southern Ghanaian cultures draw on norms of verbal indirection and discretion, which allow for the concealment of non-normative sexual conduct. Secondly, homosocial spaces of intimacy provide an environment in which female same-sex bonds are expressed through a language of allusion rather than a specialist, subcultural vocabulary. Erotic context is formed through practice and performance and is not discursively named or understood as a social identity. Rather, these understandings of female same-sex passions revolve around the notion of secrecy and are based on tacit but vibrant forms of knowledge.⁴³

Coloniality of Being would account for the more recent conceptualizations of same-sex desires within the Western identity politics of gay and lesbian. Political activism in Africa that coalesces around homosexual identities or any of the other identities that make up the LGBTIQ alphabet originates from concepts that evolved outside the continent. While they may carry similar experiences, their nuanced application and relevance to Indigenous experiences may not necessarily mirror those of their colonial contexts. Indeed, indigenous conceptualizations of same-sex erotics generally had no desire to pin them down or to burden them with identities; they kept its content in flux and left it elusive.⁴⁴ In that sense, secrecy becomes a tool, a way of “finessing the ambiguities created in daily desire.”⁴⁵ Indeed, “secrecy” in African sexualities is the antithesis of Western norms around the need for legitimate “sex” to be public (i.e., out). Most importantly, it allows for inconspicuous sexual and gendered variance.⁴⁶ It is thus against the background of an African sex/gender system that we should analyze Semenya’s ordeal with the IAAF. Such context allows us to liberate our knowledge production from the pitfalls of European rationality/modernity.⁴⁷ But before that, we consider the public responses to both Phelps and Semenya’s stories.

4. A Decolonial Analysis of the Phelps/Semenya Conundrum

Out of the multiple identities that define Phelps and Semenya, the most prominent for the purposes of this discussion are race, gender and sexuality. Maldonado-Torres argues that “Race and caste, along with gender and sexuality, are perhaps the four forms of human differentiation that have served most frequently as means to transgress the primacy of the self-Other relation and to obliterate the

42. E.g., see Wairimu Njambi and William O’Brien, “‘Woman-Woman Marriage’, Note 37; Eileen Jensen Krige, “Woman-Marriage, with Special Reference to the Lovedu,” Note 39; Christine Obbo, “Dominant Male Ideology and Female Options: Three East African Case Studies,” *Africa* 46(4) (1976): 371-89; Joe Carrier, “Some Comments on Woman/ Woman Marriage in Africa,” *Anthropological Research Group on Homosexuality Newsletter* 2(3) (1980): 2-4; and Chantal Zabus, “Of Female Husbands and Boarding School Girls: Gender Bending in Unoma Azuah’s Fiction,” *Research in African Literatures* 39(2) (2008): 93-107.

43. Serena Dakwa, “‘It’s a Silent Trade’: Female Same-Sex Intimacies in Post-Colonial Ghana,” *Nordic Journal of Feminist and Gender Research* 17(3) (2009): 192-205, at p. 192.

44. Ibid. Also see Neville Hoad, *African Intimacies: Race, Homosexuality, and Globalization* (Minneapolis: University of Minnesota Press, 2007); Marc Epprecht, *Hungochani: The History of a Dissident Sexuality in Southern Africa* (Montreal: McGill-Queen’s University Press, 2004); and Sylvia Tamale (ed.), *African Sexualities: A Reader* (Oxford: Pambazuka Press, 2011).

45. Serena Dakwa, “‘It’s a Silent Trade’” Note 43 at p. 203. Also see Steven Pierce, “Identity, Performance, and Secrecy: Gendered Life and the “Modern” in Northern Nigeria,” *Feminist Studies* 33(3) (2007): 539-565.

46. Serena Dakwa, “‘It’s a Silent Trade’,” Note 43.

47. Anibal Quijano, “Coloniality and Modernity/Rationality,” in Walter Dignolo and Arturo Escobar, *Globalization and the Decolonial Option*, pp. 22-32 (London: Routledge, 2013).

traces of the trans-ontological in the concrete world.⁴⁸ Indeed, race always intersects with gender and sexuality, so we can speak of a racialized gendered sexuality.

Hence, Semenya's intersexuality should not be viewed separately from her race or socioeconomic background or even her geopolitical location in the world. Quijano warns us that "coloniality of power is based upon 'racial' social classification."⁴⁹ And Anne McClintock reiterates that "race, gender and class are not distinct realms of experience, existing in splendid isolation from each other."⁵⁰ All are fused in a complex equation of additions and multiplications. In the same vein, Phelps' Whiteness, his hetero-maleness and socioeconomic privilege, as well as the geopolitical location from which he emanates, all mesh into complex and infinite ways that shape the way the world views him: "Gender is about race is about class is about sexuality is about age is about nationality is about an entire range of social relations," asserts Kath Weston.⁵¹ The discourses surrounding Phelps and Semenya are subtly laced with different forms of hidden-from-sight power.

The fact that Semenya's origins are located in rural South Africa, she is at once portrayed as primitive and inferior. MaldonadoTorres is correct when he writes: "The colonial aspect of Being sustains the color-line."⁵² Racism usually goes hand in hand with paternalism; the opening paragraph of Ariel Levy's 2009 article in the *New Yorker* magazine epitomizes both: When people in South Africa say "Limpopo," they mean the middle of nowhere. They are referring to the northernmost province of the country, along the border with Botswana, Zimbabwe, and Mozambique, where few people have cars or running water or opportunities for greatness. The members of the Moletjie Athletics Club, who live throughout the area in villages of small brick houses and mud-and-dung huts, have high hopes nonetheless.⁵³

By foregrounding Semenya's impoverished origins and spotlighting her deprivation, Levy—a White reporter for one of the leading weekly periodicals with a wide global circulation—is "sustaining the colour-line," for her largely White readers, upfront. Further down in the article, Levy provides a more detailed description of Semenya's village:

Ga-Masehlong is a small village dotted with jacaranda trees; goats graze on the garbage and the grass on the roadsides. The houses have tin roofs, and people put rocks on top of them to keep them from blowing away. There are satellite dishes in several yards, but most people have dug their own wells and collect firewood from the bush for cooking.⁵⁴

Through her words, Levy is almost suggesting that Semenya's very presence on the international elite sports stage itself is a "freak"; she doesn't belong. Such "discursive violence" as Ben Halm describes it, "often leads to, or anchors, material, cultural, and ontological violence."⁵⁵ Imperialism has always anchored its claims to cultural and material superiority and here, Levy is carefully re-sketching the backdrop of inferiority, heightening her readers' empathy with that single story about Africa and Africans. Paradoxically, the empowering "restory" of Ga-Masehlong was provided via a capitalist avenue. In November 2019, the multinational sports brand, Nike commissioned Semenya to feature in a short film where she (re)narrates her village as "The birthplace of Dreams."⁵⁶ Although this

48. Nelson Maldonado-Torres, "On the Coloniality of Being," Note 4 at p. 113

49. Aníbal Quijano, "Coloniality and Modernity/Rationality," Note 47 at p. 25.

50. Anne McClintock, *Imperial Leather*, Note 2, at p. 5.

51. Kath Weston, "Me, Myself, and I," in Yvette Taylor, Sally Hines and Mark Casey (eds.), *Theorizing Intersectionality and Sexuality*, pp. 15-36 (New York: Palgrave Macmillan, 2011) at p. 15.

52. *Ibid*

53. Ariel Levy, "Either/Or," Note 21

54. *Ibid*.

55. Ben Halm, "Atalanta's Apples: Postcolonial Theory as a Barrier to the 'Balance of Stories'", *Research in African Literatures* 34(4) (2003): 155-173 at p. 156.

56. See Brent Lindeque, "Birthplace of Dreams—Nike's incredible new short film featuring Caster Semenya!" (Nov 21, 2019), available at: <https://www.goodthingsguy.com/people/birthplace-of-dreams-caster-semenya/> [accessed Nov 24, 2019]

was an advertising campaign for Nike, Semenya's authentic description of her village "balanced out" the single, hegemonic stories that we often read about Africa; it offered a more empowering and affirming account of both the athlete and of the person. It is an account that views Ga-Masehlong through a positive lens—one that zooms into the positive vistas of the village.

In the 3.27 minute-film, Semenya narrates, "At home my sister would be like... 'you look like a boy,' I know I look like a boy; so what? What is it that you're gonna do about it?"⁵⁷ The comment by Semenya's sister is influenced by the "colonization of the imagination" and deeply embedded in the "coloniality of knowledge."⁵⁸ Like most of us, her imagination has been colonized from the inside out, making it difficult for her to imagine beyond the gender binary. But how exactly are colonial constructs of gender and their male/female bench markers perpetuated? The media plays a key role in constructing and maintaining the coloniality of knowledge. The public obsession with the two elite sportspersons, Phelps and Semenya, generated significant discourse and debate in the media. By taking a closer look at some of these discussions, we can delve deeper into the echoes of colonialism in our understanding of sex/gender, sexuality and other intersecting categories of identity, oppression and resistance. The language used in the media to describe both Phelps and Semenya portray them largely as monstrosities; they are constantly "Othered" as freaks of nature:

Obviously you don't get to be the most decorated Olympian of all time without a boat load of dedication and steely focus, but being a *biomechanical freak of nature* can't hurt. Phelps has *plenty of physiological quirks* that give more than a pinch of credence to the swimmer's nickname 'The Flying Fish', the first being his incredible wingspan.⁵⁹ [emphasis supplied]

Incredibly, we might actually be seeing peak Michael Phelps at age 31, and, at the end of the day, his incredible body has a lot to do with it... That enormous size on the periphery was captured perfectly in this Associated Press photo. Just look at the flexibility and the reach. Now look at the size of his hands with respect to the rest of his body, the instruments that drive him through the water! No, seriously, look at his hands! It is literally like he has flippers at the end of both his legs and his arms. And the flexibility! *It is like he is double-jointed everywhere!*⁶⁰ [emphasis supplied]

Michael Phelps, on the other hand, is a genetic freak. He's 6'4", but more to the point *he has the wingspan of a prehistoric bird.* His unusually lengthy torso (it's the right size for a man 6'8") affords him more flat surface area with which to surf the top of the water. And he's got hyperflexible knees and ankles that give his kick more snap, and big hands and feet that push a lot of water. But according to sports scientists, his physique tells only part of the story. Whereas most elite swimmers measure blood lactate levels of 10 to 15 millimoles per liter after a race, Phelps measures as low as five. In other words, he's able to go faster calling on far less lactic acid-producing anaerobic energy reserves than his opponents.⁶¹ [emphasis supplied]

Semenya won the eight-hundred-metre title by nearly two and a half seconds, finishing in 1:55.45. After the first lap of the race, *she cruised past her competitors like a machine.* She has a powerful stride and remarkable efficiency of movement: in footage of the World Championships, you can see the other runners thrashing behind her, but her trunk

57. See video at: https://news.nike.com/featured_video/caster-semenya-film-birthplaceof-dreams [accessed Nov 23, 2019].

58. Anibal Quijano, "Coloniality of Power and Eurocentrism in Latin America," *International Sociology* 15(2) (2000): 215-232.

59. Valery Siebert, "Michael Phelps," Note 18.

60. Cork Gaines, Business Insider, "Surreal photo of Michael Phelps shows just how much of a physical freak he is," Aug 13, 2016, available at: <https://www.businessinsider.com/photo-michael-phelps-physical-freak-2016-8?IR=T> [accessed Nov 17, 2019].

61. Joseph Hooper, "Get into Olympic Shape with Michael Phelps," *Men's Journal*, August 3, 2012, available at: <https://www.mensjournal.com/features/get-into-olympic-shapewith-michael-phelps-20120803/> [accessed Dec 12, 2019].

stays still, even as she is pumping her muscle-bound arms up and down. . . Semenya is breathtakingly butch. *Her torso is like the chest plate on a suit of armor.* She has a strong jawline, and a build that slides straight from her ribs to her hips.⁶² [emphasis supplied]

*Caster is a freak, and we paying tax money for this freak to compete, rules need to be laid down, otherwise anyone can send their own freak and change the game to who is the bigger freakshow.*⁶³ [emphasis supplied]

Semenya, 18, stormed to victory last week in the women's 800 metres at the world athletics championships in Berlin. But her rags-to-riches journey had been called into question even before the starting gun. The athlete's muscular build, deep voice, facial hair and suddenly improved performances led to a frenzy of speculation that *the fastest woman in the world over two laps is, in fact, a man.* The governing body of world athletics confirmed that it has ordered Semenya to undergo a "gender verification test" to prove she did not have an unfair biological advantage. *British bookmakers offered prices on whether she will prove to be a man, woman or hermaphrodite.*⁶⁴ [emphasis supplied]

Jenny Meadows says Caster Semenya's return to competition has not been accepted by her fellow 800 metres runners. Meadows, who won bronze for Britain at the world championships last year, has always been sympathetic to the plight of the South African, who faced questions over her gender following her world title victory, but she doubts other athletes will follow her example. . . Immediately after the world championship final last year two competitors publicly questioned Semenya's gender. '*Just look at her,*' said Mariya Savinova of Russia, and Elisa Cusma Piccione of Italy went one step further, saying: '*I am not taking [Semenya's win] into consideration – for me she is not a woman.*'⁶⁵

The above narratives are emblems of coloniality that view deviant bodies as "failed copies of a natural original."⁶⁶ The assumption is that there is a normal, essentialized natural way of presenting, of being. Human diversity, symbolized in their physical endowments and excesses of lactic acid (in Phelps' case) and testosterone (in Semenya's), instead of being embraced, cause anxiety. But what exactly is a normal body? How does discourse encode and structure everyday life?

It is quite clear that while both athletes are portrayed as freaks and described with patronizing criticism, the public seems to be generally more accepting, even exalting of Phelps than Semenya. This is a typical example: "With Michael Phelps it can all seem so simple, so pre-ordained. *A swimmer defined by victory, a man who has always come through.*"⁶⁷ [emphasis supplied] Despite acknowledging Phelps' "quirkiness" there are no suggestions from the public that he should undergo corrective surgery or administer medication to "normalize" his lactic acid levels. Instead, he is treated as a "wondrous marvel."⁶⁸ Contrast that to the opinions about Semenya:

62. Ariel Levy, "Either/Or," Note 21.

63. Posted by "Gamer16," on May 2, 2019 at the Polling website of Mybroadband, (May 1, 2019), available at: <https://mybroadband.co.za/forum/threads/vote-should-castersemenya-be-allowed-to-compete-without-reducing-her-testosteronelevels.1025968/> [accessed Nov 18, 2019].

64. David Smith, "Caster Semenya Row: Who are white people to question the makeup of an African girl? It is racism," *The Guardian*, (Aug 22, 2009), available at: <https://www.theguardian.com/sport/2009/aug/23/caster-semenya-athletics-gender> [accessed Nov 18, 2019].

65. Anna Kessel, "Rivals 'laughed and stared' Caster Semenya, says Jenny Meadows," *The Guardian*, (July 21, 2010), available at: <https://www.theguardian.com/sport/2010/jul/21/caster-semenya-jenny-meadows> [accessed Nov 18, 2019].

66. Tavia Nyong'o, "The Unforgivable Transgression of Being Caster Semenya," *Women Performance: A Journal of Feminist Theory* 20(1) (2010): 95-100 at p. 96.

67. Tom Fordyce, "Rio Olympics 2016: Five Olympics, five phases of Michael Phelps," *BBC Sport*, (Aug 10, 2016), available at: <https://www.bbc.com/sport/olympics/37030928> [accessed Nov 17, 2019].

68. Monica Hesse, "We celebrated Michael Phelps's genetic differences. Why punish Caster Semenya for hers?" *Washington Post*, (May 2, 2019), available at: https://www.washingtonpost.com/lifestyle/style/we-celebrated-michael-phelpssgenetic-differences-why-punish-caster-semenya-for-hers/2019/05/02/93d08c8c-6c2b-11e9-be3a-33217240a539_story.html [accessed Nov 17, 2019].

Caster Semenya, the double Olympic gold medal winner in the women's 800 metres, is a "*biological male*" who should be required to take testosterone blockers to continue competing as female, a court will be told next week. The hearing in Lausanne, Switzerland, will be a test case for athletes with "differences of sexual development" (DSD) and is likely to influence rules surrounding *transgender athletes* taking part in women's sport.⁶⁹

The same aversion to Semenya was apparent in a May 2019 online poll conducted on the South African *Mybroadband* website, asking voters "Should Caster Semenya be allowed to compete without reducing her testosterone levels?" The final results registered 68.3 percent voters saying that she should not be allowed to compete.⁷⁰ The IAAF argued that the ADA test is about fairness and "levelling the playing field." Marthe de Ferrer highlights the double standards employed by the organization in their treatment of Phelps and Semenya:

...since when was sport about everyone having a level playing field? At its very essence sport is about who has the most biological advantages over others, and how they can use them to run faster, throw further, or jump higher. Sport is entirely about the extremes of the human body, as we watch what our species is capable of. Take Michael Phelps as an example. He has been used countless times in this debate to undercut the IAAF's ruling, and with great reason. Phelps has been called a 'biomechanical freak of nature' and 'the ultimate superhuman' as he dominated the world of swimming for over a decade. And it's true – his body is literally built to be a top swimmer... Phelps kept other swimmers off the Olympic podium in multiple events for over 12 years, yet instead of subjecting him to humiliating tests on a global stage – we celebrated his victories and marvelled at his ability to smash records. That same luxury has not been awarded to Caster Semenya.⁷¹

Katrina Karkazis *et al.* also point out that "elite athletes differ from most people in a wide range of ways (e.g., rare genetic mutations that confer extraordinary aerobic capacity and resistance against fatigue). Why single out testosterone?"⁷²

For sure, the mode of alienation for Phelps and Semenya is depersonalization, but their physiques, their "freakiness" hold different *meanings* for the gazing public. Phelps' larger-than-average body with massive sinewy muscles, chiseled abs and tall frame may be exaggerated, but it fits into the dominant sex/gender mould. Many even have a secret desire to be like him when they describe his body as a "master piece."⁷³ The fact that he is married to a woman and they have three children further flattens out and "normalizes" his "freakiness"; it also reduces his distress from the spectacularization. Phelps' maleness and masculinity are "stable" and never questioned; gender and sexuality are not part of the narrative about him, nor do they feature in his Othering experience.

Semenya, on the hand, has a body that does not fit into the standard colonial mould; it must be "fixed." Her Black body, on the margins, in disappearance, under the colonial gaze, became the object of scrutiny and policy formulation. The fact that her intimate partner is female introduces another level of revulsion and deviance to her "freakiness" as this posting demonstrates: "Caster Semenya chooses to *live her private life as a man with a woman as a lover* but competes as a female athlete. I am not a doctor nor a psychologist and I cannot say that I understand the full scope of this

69. Gary Mitchell, "Caster Semenya Case: Women's Athletics Star is 'biological male,' *The Times* (Feb 14, 2019), available at: <https://www.thetimes.co.uk/article/caster-semenyawomen-s-athletics-star-is-biological-male-zgzx2v2vd> [accessed Nov 18, 2019].

70. Mybroadband, (May 1, 2019), available at: <https://mybroadband.co.za/forum/threads/vote-should-caster-semenya-be-allowed-to-compete-without-reducing-her-testosterone-levels.1025968/> [accessed Nov 18, 2019].

71. Marthe de Ferrer, "The ignorance is mindblowing – why the Caster Semenya ruling hurts millions of people like me," *Manchester Evening News* (May 6, 2019), available at: <https://www.manchestereveningnews.co.uk/news/news-opinion/the-ignorance-mindblowing-caster-semenya-16224157> [accessed Nov 17, 2019].

72. Katrina Karkazis *et al.*, "Out of Bounds?" Note 22 at p. 4.

73. See Pinterest posting: <https://www.pinterest.com/pin/527906387572749873/?lp=true> [accessed Nov 22, 2019].

problem. However, I feel something is not right.”⁷⁴ The heterosexual hegemony constructs a specific, supposedly stable femininity, for women, which is then reread as heterosexuality. Heterosexuality is part of gender performance whereby men and women display culturally-learned behaviours, gestures, dress codes and desires in contexts of capitalism and male domination.⁷⁵ In the binary world of modernity, society reads bodily performances and coded behaviour to fit us into one of two categories: man/woman; masculine/feminine; heterosexual/homosexual. It is this binary system, within coloniality of knowledge, that informed the gazing public which indicted Semenya for “living as a man with a woman lover.” The condemnation signifies one of the ways that the system naturalizes coloniality of being. By desiring a fellow woman, you are viewed as living outside the (gender) ideal.

For Semenya, in the context of the heteropatriarchal-capitalist world-system, the sex, gender, class, racial and sexual hierarchies simultaneously come crushing down on her. Public knowledge about her is squarely “situated within the axis of the colonial difference produced by the coloniality of power in the modern/colonial world-system.”⁷⁶ She found herself at the intersection of genderphobia, homophobia, racism and classism. Things would have been very different had such knowledge been situated within the cosmologies of her Indigenous African people that are more encompassing and tolerant of non-binary ways of being. As Michael Peletz points out, “gender pluralism” constitutes “pluralistic sensibilities and dispositions regarding bodily practices (adornment, attire, mannerisms) and embodied desires, as well as social roles, sexual relationships, and ways of being that bear on or are otherwise linked with local conceptions of femininity, masculinity, androgyny, etc.”⁷⁷ Unfortunately, thanks to coloniality, most of us are illiterate in such pluralistic sensibilities.

Bodies like Semenya’s threaten heteronormativity and that explains why the label “butch” is imposed on her body. The coloniality of gender consolidated the idea that male/female sexual relations are the norm, and totally ignored the realities of non-Western gender relations and ways of relating to the body beyond gender.⁷⁸ “Coloniality of Gender”, as conceptualized by María Lugones, helps us to understand gender as a mechanism of colonial domination over non-White racialized bodies.⁷⁹ It was at that historical moment when the West subjugated Africa, introducing its specific sex/gender system, that the everyday lives of Africans were transformed; their bodies and subjectivities were at once placed under a new governing mechanism. The new gender regime controlled bodies, sexualities and subjectivities and, through institutions such as education and religion, it was internalized by Africans (and those that it privileges). A decolonial shift of gender would require us, as Rosalba Icaza and Rolando Vázquez clarify, to relocate our reasoning in multiple and complex ways:

...it would entail a radicalization of the notion of gender itself that locate its geo-political, geo-historical, geoeconomic, and body-political contexts. It would entail to challenge the tendency in some feminists’ analyses and practices that understand gender, heteronormativity, patriarchy, women, men, female, male, and so on as cross-cultural and ahistorical categories of analysis.⁸⁰

74. Posted by “Fredl,” on May 2, 2019 at the Polling website of Mybroadband, (May 1, 2019), available at: <https://mybroadband.co.za/forum/threads/vote-should-caster-semenyabe-allowed-to-compete-without-reducing-her-testosterone-levels.1025968/> [accessed Nov 18, 2019].

75. See Judith Butler, *Bodies that Matter: on the Discursive Limits of ‘sex’* (New York: Routledge, 1993).

76. Ramón Grosfoguel, “Colonial Difference, Geopolitics of Knowledge, and Global Coloniality in the Modern/Colonial Capitalist World-System,” *Review* (Fernand Braudel Center) 25(3) (2002): 203–224 at p. 208.

77. Michael Peletz, “Transgenderism and Gender Pluralism in Southeast Asia Since Early Modern Times,” *Current Anthropology* 47(2) (2006): 309–340, at p. 310.

78. See Oyeronke Oyewumi, *The Invention of Women*, Note 41; and Ifi Amadiume, *Male Daughters*, Note 29.

79. María Lugones, “Toward a Decolonial Feminism” *Hypatia* 25(4) (2010): 742–759. Also see Rosalba Icaza and Rolando Vázquez, “The Coloniality of Gender as a Radical Critique of Developmentalism,” in Wendy Harcourt (ed.), *The Palgrave Handbook of Gender and Development: Critical Engagements in Feminist Theory and Practice*, pp. 62–73 (London: Palgrave Macmillan, 2016).

80. Rosalba Icaza and Rolando Vázquez, *Ibid.* at p. 65.

Indeed, through Semenya's story we see how the imposed colonial gender system dehumanizes the racial Other, denying her subjectivity and her very humanity. Such a system changes Semenya's gender from an abstraction to a vulnerability. As a mechanism, coloniality of gender allows us to clearly see and understand Semenya's humanity, not as a separate entity from her sex, gender, sexuality or race, but as constitutive of them. It brings into full view the possibility of being a woman outside the gender ideal. The ruling party in South Africa—the African National Congress (ANC)—rallied behind Semenya. But it is significant that even those who spoke in support of her were only reinforcing essentialized notions of sex, gender and sexuality. For example, Leonard Chuene—the president of the ASA who fiercely defended Semenya to the *Los Angeles Times*, argued that “Semenya was an inspiration to rural girls, [who were] some of the most powerless and disadvantaged people in the country, yet she was being raked over the coals with questions on her gender.” He pointed out that “There's no scientific evidence. *You can't say somebody's child is not a girl. You denounce my child as a boy when she's a girl? If you did that to my child, I'd shoot you.*”⁸¹ [emphasis supplied] For his part, then South African president Jacob Zuma issued an official statement welcoming Semenya back from Berlin in 2009 and hailed her for reminding “the world of the importance of the rights to human dignity and privacy, which should be enjoyed by all human beings.”⁸² Julius Malema, radical leader of the ANC Youth League, asked angrily, “What is hermaphrodite in Pedi? There is no such thing, hermaphrodite, in Pedi. So don't impose your hermaphrodite concept on us.”⁸³

In their defence of Semenya, these three South African political elites invoked the nation and its culture. Through anti-Western rhetoric they wished to create a sense of ontological security. The contours of the nationalist imaginaries were drawn by sports patriotism. But in the process, each of them reinforced not only the coloniality of the fixed gender binary, but also paternalistic and dominant-oriented attitudes.⁸⁴ I share Tavia Nyong'o's expressed wonderment whether such attitudes reflected the speakers' own shame, dealing with their own “gender panic.”⁸⁵

It is ironic that President Zuma, who is on record for his homophobic sentiments, would publicly defend Semenya and remind the world of “the rights to human dignity and privacy.” In 2007, Zuma said that same-sex marriages were a “disgrace to the nation and to God.”⁸⁶ So, here we see Semenya's “femaleness” cancelling out Zuma's macho hetero-masculinity in defence of the nation. He hijacks feminist discourse to appeal to his country people. Once again, the female body is used to signify the nation's honour.⁸⁷

Several elders subsequently educated Malema by telling him the sePedi term for intersex.⁸⁸ However, Malema's words of support cannot be read at face value; for a coherent understanding we must read in, under and behind the text. South African scholar Zine Magubane did exactly this when she saw Malema's comment as “an invitation to question what role race and imperial history

81. Robyn Dixon, “Gender Issue has always chased her,” *Los Angeles Times*, (Aug 21, 2009), available at: <https://www.latimes.com/archives/la-xpm-2009-aug-21-fg-south-africanrunner21-story.html> [accessed Nov 18, 2019].

82. Jacob Zuma, “IAAF publicly humiliated Caster Semenya,” *PoliticsWeb*, (August 25, 2019), available at: <https://www.politicsweb.co.za/opinion/iaaf-publicly-humiliatedcaster-semenya-jacob-zum> [accessed Nov 22, 2019].

83. Beauregard Tromp, Nontobeko Mtshali, Bronwyn Gerretsen, Xolani Mbanjwa and Sapa, “What is Hermaphrodite in Pedi?” *IOL News*, (Oct 2, 2009), available at: <https://www.iol.co.za/news/south-africa/what-is-hermaphrodite-in-pedi-460329> [accessed Nov 22, 2019].

84. See Neville Hoad, *African Intimacies*, Note 44 at p. 400

85. Tavia Nyong'o, “The Unforgivable Transgression,” Note 66 at p. 96.

86. Sunday Times (December 23, 2007), cited in Thabo Msibi, “Not Crossing the Line: Masculinities and Homophobic Violence in South Africa,” *Agenda* 23(80) (2009): 50–54 at p. 52.

87. Women have always been implicated in nationalism and nation-building as seen in the use of metaphors such as “motherland,” “mother tongue” and “mama Africa” to invoke a sense of love and care to the nation. See Anne McClintock, “Family Feuds: Nationalism and the Family,” *Feminist Review* 44 (1993): 61–80.

88. E.g., a sePedi expert from the University of Witwatersrand asserted that the word is setabane. See Beauregard Tromp *et al.*, “What is Hermaphrodite” Note 83.

have played in rendering intersex visible or invisible.”⁸⁹ She cautions us against empty analyses of intersex that strip the concept of racial and national histories. The *meaning* and/or “*baggage*” that the term intersex (or hermaphrodite for that matter) carries in the US is not necessarily the same as it holds in South Africa.

Semenya is also adored by the wider South African population, both White and non-Whites, a somewhat paradoxical situation given the deep chasms that threaten to destroy the post-apartheid body politic and the spirit and symbolism of the so-called “rainbow” nation. The public’s ecstatic reception of Semanya is evidenced, for example, by the hundreds of people that meet her at the airport on her return home from international competitions.⁹⁰ The slogan “Hands off our Caster” gained momentum in the heat of her trial with many South Africans blogging and posting criticisms on IAAF’s social media under that hashtag.⁹¹ In 2018, she was named by the South African Insurance company, Discovery Vitality as its ambassador.⁹²

Additionally, Semanya is widely “loved” as a national figure of resistance to the IAAF. However, this discourse accepts her as “a woman” but is not that interested in her gender/sex. It is more interested in her iconicity as a warrior against colonial/Western medical bullying, as well as her dignity and “African-ness.” However, such expressions of support do not take on board what it actually means to “exemplify” theory through a “Black woman’s body.” Zine Magubane reminds us of the role that feminist scholarship has played in recognizing intersex bodies as “ontological gender.”⁹³ She explains how Semanya’s story helps us to “write race into” the concepts of gender and intersex—an impulse that had largely been ignored by mainstream Western feminists. Semanya’s race blocks her rightful claim as a sportswoman among sportswomen.

“Bodies in doubt” have always existed in every part of the world; they are part of a diverse humanity. However, their medicalization and construction as a disorder started in Europe in the nineteenth century. Africa’s history of slavery and colonialism is entangled in the exposure of a Black woman’s body to various technologies of violence. Antje Schuhmann correctly points out that “the power of definition and classification, linked to a penetrating and curious gaze regime, [is] deeply involved in hegemonic politics of otherness.”⁹⁴ Intersexuality has a long and painful history that is closely tied to colonial homophobic discourses and practices. Reis and Kessler remind us that:

In the 19th century, when the new paradigm of sexual inversion emerged as a scientific explanation of homosexuality, ‘hermaphrodites’ (as they were then called) were considered potential homosexuals or ‘inverts’: If some people’s bodies could look both male and female, then would such individuals be attracted to the ‘wrong’ sex? Physicians believed that surgery was warranted in many cases of atypical genitalia, not necessarily for the health, comfort, or pleasure of the patient, but to preclude the undesirable potential for homosexual sex.⁹⁵

89. Zine Magubane, “Spectacles and Scholarship”: Caster Semanya, Intersex Studies, and the Problem of Race in Feminist Theory,” *Signs* 39(3) (2014): 761–785, at p. 768.

90. See Sean Jacobs and Herman Wasserman, “The Manufactured Controversy around Caster Semanya,” August 28, 2009, *Africa is a Country*, available at: <https://africasacountry.com/2009/08/if-caster-semenya-is-a-boy-im-a-boy> [accessed Nov 16, 2019].

91. E.g., see Bruce Stephenson, “Two Bits: Hands off our Caster!”, *The North Coast Courier*, May 10, 2019, available at: <https://northcoastcourier.co.za/130919/hands-off-ourcaster/>; “Aubrey O’Callaghan, “Hands off our Caster Semanya,” *Uncaptured South Africa*, June 29, 2018, available at: [http://www.uncapturedsa.co.za/HANDS_OFF_OUR_CASTER_SEMENYA!!p=readaid=262;NdiMishomo,1sitTestosterone?jWordPress,August19,2016,availableat:https://ndimishumo.wordpress.com/andEditorial:JustLetourCasterRun,jCityPress,February17,2019,availableat:https://citypress.news24.com/Voices/editorial-justlet-our-caster-run-20190217\[allaccessedNov16,2019\].](http://www.uncapturedsa.co.za/HANDS_OFF_OUR_CASTER_SEMENYA!!p=readaid=262;NdiMishomo,1sitTestosterone?jWordPress,August19,2016,availableat:https://ndimishumo.wordpress.com/andEditorial:JustLetourCasterRun,jCityPress,February17,2019,availableat:https://citypress.news24.com/Voices/editorial-justlet-our-caster-run-20190217[allaccessedNov16,2019].)

92. See “Caster Joins as Discovery Vitality Ambassador,” October 4, 2018, *Sport24*, available at: <https://www.sport24.co.za/OtherSport/Athletics/caster-joins-asdiscovery-vitality-ambassador-20181004> [accessed Nov 16, 2019].

93. See Zine Magubane, “Spectacles and Scholarship,” Note 89, at p. 781.

94. Antje Schuhmann, “Taming Transgressions: South African Nation Building and ‘Body Politics’” *Agenda* 24(83) (2010): 95–106 at p. 103.

95. Elizabeth Reis and Suzanne Kessler, “Why History Matters: Fetal Dex and Intersex,” *The American Journal of Bioethics* 10(9) (2010): 58–59 at p. 58.

The criminalization and Othering of persons involved in same-sex intimate behaviour was introduced to Africa through colonial laws and religions.⁹⁶ Thus the seeds of homophobia and transphobia were sown on the continent. To date, religion is playing a key role in providing toxic fuel for spreading homophobic poison on the continent.⁹⁷

The conflation of intersexuality with homosexuality also took root with such discourses. As we have seen, Indigenous knowledge systems around Africa accommodated gender plurality and “bodies in doubt.” But the colonial logic of a racialized gender foreclosed Semenya’s participation. Colonialists viewed such bodies as a threat to the integrity of the heterosexual norms; they triggered gender panic. Ambiguous bodies “messed up” the norm of dominant male and subordinate female in classic heteropatriarchy; it was important to ascertain which individuals were entitled to male privilege.⁹⁸ This was not the case in pre-colonial Africa where the nature of patriarchies were quite different.⁹⁹ In the section that follows, we analyze a related but different type of discourse to show how science and the law interact in the construction of binary gender distinctions.

5. Medico-Legal Taxonomies: Semenya’s Battle with Science and the Law

Mainstream scientific publications and dominant legal thinking lead us to believe that there are only two sexes and that the terms “man” and “woman” are natural, unambiguous and stable. They also operate under the mistaken assumption that one’s birth sex predicts one’s behaviour and actions. This is so despite medical evidence that has thoroughly disproved such assumptions.¹⁰⁰ The reality on the ground shows that 1 to 4 percent of the world’s population are intersexed.¹⁰¹ As Julie Greenberg explains:

A binary sex paradigm does not reflect reality. Instead, sex and gender range across a spectrum. Male and female occupy the two ends of the poles, and a number of intersexed conditions exist between the two poles. Millions of individuals are intersexed and have some sexual characteristics that are typically associated with males and some sexual characteristics that are typically associated with females.¹⁰²

Numerous studies have documented non-Western societies that view sex and gender along a spectrum. For example, the following names are used to formally describe “third genders”: *hijra* in India, *kwolu-aatmwol* in Papua New Guinea, two-spirited people (or pejoratively, *berdache*) among some Native Americans, and *guevodoche* or *machihembra* in the Dominican Republic.¹⁰³ Such pluralistic gender systems render “bodies in doubt” visible and legitimate.

On November 1, 2018 the new regulations adopted by the IAAF went into force. The organization reported that:

The Differences of Sex Development (DSD) Regulations establish new mandatory requirements governing the eligibility of women with certain differences of DSD and levels of endogenous testosterone above 5 nmol/L to participate in the female classification

96. See Sybille N. Nyek (ed.), *Routledge Handbook of Queer African Studies* (New York: Taylor Francis Ltd., 2019); and Sylvia Tamale, “Confronting the Politics of Nonconforming Sexualities in Africa,” *African Studies Review* 50(2) (2013): 31–45.

97. See Jessica Horn, “Re-righting the Sexual Body,” *Feminist Africa* 6 (2006): 7–19.

98. Elizabeth Reis, “Impossible Hermaphrodites: Intersex in America, 1620–1960,” *Journal of American History* 92(2) (2005): 411–41

99. For a distinction between Victorian European “classic” patriarchy and Africa’s “negotiable” patriarchy see Chapter five of the book: Sylvia Tamale, *Decolonization and Afro-Feminism*, Daraja Press (2020). Copies of the book are available from https://darajapress.com/publication/decolonization_and_afro-feminism.

100. See Julie Greenberg, “Defining Male and Female: Intersexuality and the Collision between Law and Biology,” *Arizona Law Review* 41(2) (1999): 265–328.

101. *Ibid.* at p. 267.

102. *Ibid.* at p. 275.

103. Ruth Hubbard, “Gender Genitals: Constructs of Sex and Gender,” *Social Text* 46/47 (1996): 157–165.

in eight events (the “Restricted Events”) at international athletics competitions. Athletes who fall within the ambit of the Regulations are defined as “Relevant Athletes.”¹⁰⁴

The Restricted Events include 400m, 800m and 1500m races—events in which Ms. Semenya regularly participates at international competitions. The IAAF reiterated that the DSD Regulations were based on “strong scientific, legal and ethical foundation.”¹⁰⁵ They further argued that the regulations were “an extremely progressive and fair compromise” between, on the one hand, the right of female athletes to compete separately from men so that they have the same opportunity to excel, and, on the other hand, the desire of “certain biologically male athletes with female gender identities” to compete in the female category of competition.¹⁰⁶ It compared Semenya’s inclusion in the women’s race to “an adult beating a child” or “a heavyweight boxer beating a flyweight boxer.”¹⁰⁷ The organization further argued that:

... the DSD Regulations are discriminatory but that on the evidence currently before the Panel *such discrimination is a necessary, reasonable and proportionate means of achieving the aim of what is described as the integrity of female athletics* and the upholding of the ‘protected class’ of female athletes in certain events.¹⁰⁸ [emphasis in original]

Julie Greenberg provides eight criteria that are typically used to determine sex, including: chromosomes (e.g., XY, XX); gonads (testes or ovaries); internal morphology (e.g., prostate or uterus); external morphology (penis or vagina); hormones (androgens or oestrogens); phenotype (e.g., facial hair, breasts); assigned sex at birth; and sexual identity. She further explains that for intersexed individuals, “the law must determine which of the eight sexual factors will determine their sex and whether any one factor should be dispositive for all legal purposes.”¹⁰⁹ In reality, the eight sex factors do not always cohere as expected. Indeed, they are incongruent for intersexed bodies and to determine their sex, the law almost always turns to biology and medicine.

So we see how the IAAF enlisted science in order to prove its case in court and to provide the benchmark for determining sex categories. Presumably based on experiments that the experts of the IAAF expert medical panel conducted, it submitted that:

(a) a marked difference in serum testosterone levels between men and women emerges at the same time as the sex difference in sport performance emerges; (b) the sex difference in serum testosterone levels causes the male physical advantages that drive the sex difference in sports performance.¹¹⁰

The panel concluded that females with 5 nanomoles of testosterone per litre of blood (nmol/L) and above, are biologically identical to male athletes and they “derive performance benefits from their physiology that are indistinguishable from the advantages derived by male athletes.”¹¹¹ The IAAF further augmented the findings of their science panel with a joint statement published by “42 leading sports science and sports medicine scientists” explaining the role of testosterone in athletic performance.¹¹² Hence, a “magical” line was drawn in the sand to distinguish “biological male” from

104. See Arbitral Award, Note 26, at para. 12.

105. *Ibid.* at para 286.

106. *Ibid.* at para. 285.

107. *Ibid.* at para. 55.

108. *Ibid.* at para. 626.

109. Julie Greenberg, “Defining Male and Female,” Note 100 at p. 278–79.

110. Arbitration Award, Note 26 at para 290.

111. *Ibid.* para 296.

112. *Ibid.* para 291

“biological female.” In order for the IAAF to maintain “the integrity of female athletics” this line must never be crossed.¹¹³

Based on these scientific findings, IAAF argued that Semenya was a biological male because her testosterone level was above 5 nmol/L, which gave her an unfair advantage. If Semenya wanted to compete with biological females, she had to use medication that would suppress her testosterone levels. The institutional power of the IAAF was deployed to ensure that anatomy corresponds to the idea of gender binary. It would not capitulate despite the fact that hormonal suppressive drugs have side effects with potentially harmful lifelong health risks.¹¹⁴

Many scientific journals, such as the *Journal of Clinical Endocrinology and Metabolism and Medicine and Sciences in Sports and Exercise* have defended the IAAF position. But feminists have challenged sex-linked biology. For instance, Katrina Karkazis *et al.* question the assumptions underlying such tests and, referring to the eight criteria described by Greenberg above, inform us that:

...sex is always complex. There are many biological markers of sex but none is decisive: that is, none is actually present in all people labelled male or female. Sex testing has been and continues to be problematic because there is no single physiological or biological marker that allows for the simple categorization of people as male or female... Although it may be surprising, given that this is a popular belief in both IAAF and IOC statements, the link between athleticism and androgens in general or testosterone in particular has not been proven. Despite the many assumptions about the relationship between testosterone and athletic advantage, *there is no evidence showing that successful athletes have higher testosterone levels than less successful athletes.*¹¹⁵ [emphasis in original]

Biologist Anne Fausto-Sterling also asserts, “complete maleness and complete femaleness represent the extreme ends of a spectrum of body types. That these extreme ends are the most frequent, has lent credence to the idea that they are not only natural (that is produced by nature) but normal (that is, they represent both a statistical and a social ideal).”¹¹⁶

So, why does non-conformity of the body raise anxiety to the extent of demands to “fix” and re-mould it to fit into the binaried gender pigeon-holes? The processes of “gendering” “racializing” “classing” “heteropatriarchy” “capitalism” and “colonialism” are interrelated; each element depends on the other in a constitutive system that works for a common purpose. The interactive system operates through power-full classifications to create fundamental relations of inequality.¹¹⁷

Physical scientists use taxonomies or classifications to map and define relationships among phenomena.¹¹⁸ This is very useful in fields such as biochemistry, astronomy and geology to facilitate theory construction and a more comprehensive understanding of natural phenomena. When the same formulation is transplanted to the social universe, the objective is very different, usually political. The “naturalized” sub-divisions of human populations are meant to facilitate the manipulation and subjugation of certain groupings.¹¹⁹ For example, human classifications such as race, gender and sexuality are based, not on biology but on arbitrary parameters linked to particular historical milieu

113. See Rebecca Jordan-Young and Katrina Karkazis, *Testosterone: An Unauthorized Autobiography* (Cambridge, MA: Harvard University Press, 2019); and Katrina Karkazis, *Beyond Treatment: Mapping the Connections Among Gender, Genitals, and Sexuality in Recent Controversies over Intersexuality* (New York: Columbia University Press, 2002).

114. Katrina Karkazis and Rebecca Jordan-Young, “The Trouble with too much T,” Op-Ed, *New York Times* (April 10, 2014), available at: <https://www.nytimes.com/2014/04/11/opinion/the-trouble-with-too-much-t.html> [accessed Nov 22, 2019].

115. Katrina Karkazis *et al.*, “Out of Bounds?” Note 22 at p. 6, 8.

116. Anne Fausto-Sterling, *Sexing the Body: Gender Politics and the Construction of Sexuality* (New York: Basic Books, 2000) at p. 76.

117. See Paula Ravecca and Nishant Upadhyay, “Queering Conceptual Boundaries: Assembling Indigenous, Marxist, Postcolonial and Queer Perspectives,” *Jindal Global Law Review* 4(2) (2013): 357-378.

118. See Gerhard Lenski, “Societal Taxonomies: Mapping the Social Universe,” *Annual Review of Sociology* 20 (1994): 1-26.

119. See George Miller and Mark Eleveld, “On ‘Having Differences’ and ‘Being Different’: From a Dialogue of Difference to the Private Language of Indifference,” in Stanley Steiner, Mark Krank, Peter McLaren and Robert Bahruth (eds.), *Freirean Pedagogy, Praxis and Possibilities: Projects for the New Millennium*, pp. 88-101 (New York: Falmer Press, 2000).

(such as the rise of capitalism or modernity). In the words of the twentieth century classical racist and politician, Adolf Hitler:

I know perfectly well, just as well as those tremendously clever intellectuals, that in the scientific sense there is no such thing as race... [But] I as a politician need a conception which enables the order which has hitherto existed on historic bases to be abolished and an entirely new and anti-historic order enforced and given an intellectual base.¹²⁰

In Semenya's case Eurocentric taxonomies of sex and sexuality were re-executed in a scientific laboratory in Berlin, by a board in Monaco (where the IAAF is headquartered) and by a judge in Lausanne (where the Court of Arbitration for Sport and the Federal Supreme Court of Switzerland are located). Together, all these institutions instrumentalized her body by policing the boundaries of the body-scape within a binary gender system, giving it an intellectual base. They exercised their power to "Other" via classifications.

Historically, non-White female athletes have been disproportionately targeted when it comes to "sex verification" testing by the IOC and IAAF. Hence, the dichotomized sex is also racialized, clearly exposing the racialized relations of power that have historically given meaning to gender. "Bodies in doubt," as conceived through the eyes of Europeans, take on another shade of doubt when they come in enigmatic Blackness. They must be testing by the IOC and IAAF.¹²¹ Hence, the dichotomized sex is also racialized, clearly exposing the racialized relations of power that have historically given meaning to gender. "Bodies in doubt," as conceived through the eyes of Europeans, take on another shade of doubt when they come in enigmatic Blackness. They must be "streamlined into 'modern' norms."¹²² Several scholars have challenged the IAAF regulation, demonstrating its racialized and regionalized characteristics.¹²³ Usually such analyses have to carefully peel away complex layers of convention to reveal camouflaged racial hierarchies. Insightful poking through the official language such as "undue advantage" "biological male" "hyperandrogenism" "integrity of female athletes" "reasonable and proportionate discrimination" uncovers racist and colonial ideologies lying at the foundation of this regulation. A member of the IAAF medical commission, Stéphane Bermon, remarked about hyperandrogenism:

... a lot of these cases arise in poor countries or developing countries where diagnosis is not done at birth like is the case in Western countries at least. Diagnosis is not done and you realize that you have a 16 or 18 years old very well-performing athlete with an intersex condition who's going to enter into a major championship, and here probably [would be] stopped.¹²⁴

Karkazis and Jordan-Young, anthropologist and sociomedical scientist, respectively, dispute Bermon's allusion that intersex cases are more common in developing countries:

There is no evidence that this is so. The major point of geographic variation is not in the *prevalence* of intersex, but in medical *responses* to intersex. Specifically, the standard

120. Cited in George Miller and Mark Eleveld, *Ibid.* at p. 89.

121. Most recently, in 2015, the IAAF disqualified the Indian athlete Dutee Chand on similar grounds. She dragged the organization to CAS and won the case. See Katrina Karkazis and Rebecca Jordan-Young, "The Powers of Testosterone: Obscuring Race and Regional Bias in the Regulation of Women Athletes," *Feminist Formations* 30(2) (2018): 1-39.

122. Munro, Brenna, "Caster Semenya: Gods and Monsters," *Safundi: The Journal of South African and American Studies* 11 (4) (2010): 383-396 at p. 391.

123. See e.g., Tavia Nyong'o, "The Unforgivable Transgression," Note 66; Neville Hoad, "Run, Caster Semenya, Run!" Nativism and the Translations of Gender Variance," *Safundi* 11 (4) (2010): 397-405; Adjepong, L. Anima, and Ben Carrington, "Black Female Athletes as Space Invaders," in Jennifer Hargreaves and Eric Anderson (eds.), *Routledge Handbook of Sport, Gender and Sexuality*, pp. 169-78 (London: Routledge, 2014); and Dawn Bavington, "Regulating Hyperandrogenism in Female Athletes: The History and Current Politics of Sex-Control in Women's Sport," unpublished PhD dissertation, University of Otago (2016).

124. Cited in Katrina Karkazis and Rebecca Jordan-Young, "The Powers of Testosterone" Note 121 at p. 20.

protocol in the Global North has, for more than five decades, been characterized by an urgency to identify and “normalize” people with intersex variations at the earliest possible stage of life, which includes modifying atypical genitals and controlling hormone levels by surgery or pharmacological intervention. For a variety of reasons that might include cultural differences, general infrastructure, medical resources, and others, early medical intervention has never been routinized outside the Global North.¹²⁵ [emphasis in original]

Zine Magubane also argues that selective investigation by the elite sports regulatory bodies can only be accounted for through the intersections of race and nation. For her, intersexed bodies in elite sports triggered a “gender panic” that was geopolitical and racial in nature. Surgical “corrections” of intersexed bodies in the West were prevalent to “normalize” Whiteness. “An ambiguously gendered White body needed to be corrected to retain its whiteness, whereas an ambiguously gendered Black body was seen as confirming the essential biological difference between whites and blacks.”¹²⁶

Through simple, but power-full, strokes of the signatures of a doctor and a judge, with the full backing of hegemonic EuroAmerican culture and ideologies, gender complexities are reduced to binaries. Biological and legal constructs are assembled by cramming human beings into dichotomized and hierarchized neat little boxes marked: male/female; masculine/feminine; heterosexual/homosexual; White/non-Whites; modern/traditional; civilized/uncivilized, and so forth. By so doing, many non-White people are subjected to injustice, stigmatization and ostracism. For Africans, the process started in the seventeenth century with the reification of race and it has continued through processes such as Semenya’s story. Just as the imperialists of old run to science to rationalize their political pursuits, so too did the IAAF in order to justify its gender reassertion. By initiating what Tavia Nyong’o terms the “ugly, gender-disciplinary inquisition,” the IAAF was reasserting both gender normativity and racial hegemony.¹²⁷

Despite the fact that science is presented as “pure”, “logical”, and “rational” and scientists as “detached discoverers”, the fact is that the discipline is always textured by the social and cultural contexts within which scientists operate. There is no such thing as “natural knowledge” or “objective truth.” Philosopher Thomas Kuhn’s work on the history of science revealed science to be a discipline designed to solve “clearly articulated problems with agreed-upon intellectual and instrumental tools... [and] within a given paradigm.”¹²⁸ In other words, paradigms serve as representations of reality (not reality itself) to guide scientific research. The scientific panel in Semenya’s case was working to reinforce and re-legitimize the sex/gender paradigm.

In *The Leviathan and the Air-Pump*, Steven Shapin and Simon Schaffer question the experimental method created in the seventeenth century as a means of producing scientific knowledge.¹²⁹ Coloniality has conditioned us to value and venerate the work of gloved and sanitized people (mostly White men) in White coats bending over microscopes in pristine labs; to accept their results as unquestionable and to respect their verdicts as the “truth.” So when the IAAF panel of medical experts declared Semenya “not female,” her fate was sealed. The “scientific” results were then confirmed and institutionalized by the gavel of the bewigged judge and the general public applauded. Indeed, science and law are very much part of the colonial body politic. Karkazis and Jordan-Young coined the term “T talk” to capture the colonial noise about testosterone in sports and reiterate:

Because T is coded as natural and in the realm of biology, T talk fundamentally serves scientism, which elevates scientific values, evidence, and authority above all others, even

125. *Ibid.* at pp. 20–21.

126. Zine Magubane, “Spectacles and Scholarship,” Note 89 at p. 781.

127. Tavia Nyong’o, “The Unforgivable Transgression,” Note 66 at p. 98.

128. See Thomas Kuhn, *The Structure of Scientific Revolutions* (Chicago: University of Chicago Press, 1962), cited in Azadeh Achbari, “The Reviews of *Leviathan and the Air-Pump*: A Survey,” *ISIS* 108 (1) (2017): 108–116, at p. 109.

129. Steven Shapin and Simon Schaffer, *Leviathan and the Air-Pump* (Princeton: Princeton University Press, 1985).

as it paradoxically obviates the need for evidence. Scientism equates scientific knowledge with knowledge itself, especially valorizing the natural sciences. Scientism thus lends added weight and substance to the scientific arguments about the regulation.¹³⁰

Hence, the court reinforced gender binaries, reducing sex to a measureable entity. But how exactly do we “measure” sex?

Monica Hesse exposes the ridiculousness of the court’s ruling in the following way: “If Caster Semenya has 4.99 nanomoles of testosterone, the ‘integrity of female athletics’ will be preserved, but at 5.01, it won’t.”¹³¹ Multiple standards of being a woman have been set by the courts; Semenya is a woman culturally and socially but biologically and legally she is not. Such arbitrary moulding of sex indicates its sociopolitical construction.¹³² African cultures that accommodate sex ambiguity and fluidity were not consulted. Instead, intersexuality was pathologized through imposing intrusive tests on Semenya and causing her considerable psychological stress and trauma. The Court of Arbitration for Sport, reports about Semenya’s personal statement for their consideration:

She began her first statement by explaining that ‘it feels like this new rule was created because of me.’ She described how her body ‘has been scrutinized by the IAAF for almost ten years’ while also being widely discussed ‘by other athletes, sports doctors, sports officials, and the public.’ The ‘scrutiny, judgement, speculation and medical intervention’ that Ms. Semenya has endured over the years has been an affront to her dignity and has caused her ‘immense pain and suffering.’¹³³

While the case was against one individual, it has far-reaching implications and touches all of us at various levels. The double standard employed by IAAF towards the Semenya and the Phelps of this world is a serious social justice issue. Ferrer points out the negative repercussions that the Semenya ruling may have:

Importantly, however, this ruling has repercussions beyond the world of elite sport. Sharron Davies may argue that this is a victory for women’s sport, but she is failing to recognise what a toll this decision is taking on the wider world. Most of us following the case are not elite athletes. Most of us following will never be directly restricted in sport by the ruling. But many of us following are still affected. For one, this case has fuelled transphobia and anti-transgender campaigners. Many people have mistakenly argued Caster Semenya is transgender. To conflate the two is damaging and extremely problematic. Furthermore, it has real world implications for intersex people. As the media and the public speculate endlessly over the intimate details of Semenya’s medical history, it shows the lack of respect we have for intersex – or suspected intersex – people’s lives.¹³⁴

In a joint letter, three UN Special Rapporteurs condemned the DSD test, charging the IAAF with sex discrimination:

130. Katrina Karkazis and Rebecca Jordan-Young, “The Powers of Testosterone,” Note 121 at pp. 7-8.

131. Monica Hesse, “We celebrated Michael Phelps’s genetic differences. Why punish Caster Semenya for hers?” *Washington Post*, (May 2, 2019), available at: https://www.washingtonpost.com/lifestyle/style/we-celebrated-michael-phelpss-genetic-differences-why-punish-caster-semenya-for-hers/2019/05/02/93d08c8c-6c2b-11e9-be3a-33217240a539_story.html [accessed Nov 17, 2019].

132. See Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1990).

133. See Arbitral Award, Note 26 at para. 73.

134. Marthe de Ferrer, “‘The ignorance is mindblowing’ – why the Caster Semenya ruling hurts millions of people like me,” *Manchester Evening News* (May 6, 2019), available at: <https://www.manchestereveningnews.co.uk/news/news-opinion/the-ignorancemindblowing-caster-semenya-16224157> [accessed Nov 17, 2019].

The IAAF regulations seem to have specifically singled out women with a specific set of differences of sex development, androgen sensitivity and natural testosterone levels that are higher than 5nmol/L. However, as recognized by the Court of Arbitration for Sport, a range of natural physical and biological traits are associated with performance in sports. These traits include height, lean body mass and specific genes that influence muscle composition, strength and endurance, in addition to social and economic factors and availability of economic resources.¹³⁵

The Special Rapporteurs further emphasized the human rights violation and stigma engendered by the regulation:

Moreover, scientific concerns cannot take precedence over concerns about enjoyment of human rights or human rights violations... The regulations reinforce negative stereotypes and stigma that women in the targeted category are not women – and that they either need to be ‘fixed’ through medically unnecessary treatment with negative health impacts – or compete with men, or compete in ‘any applicable intersex or similar classification’... which can call into question their definition of self. Should a woman athlete be excluded from competitions for women as an outcome of the process stipulated in the regulations, this will most likely be interpreted as a judgement or questioning of their sex or gender identity.¹³⁶

On stereotyping and surveillance, they said:

The assessment for ‘exclusion or treatment’ based on the IAAF regulations relies on suspicion and speculation, based on stereotypes about femininity. This effectively legitimizes widespread surveillance of all women athletes by requesting national federations as well as doctors, doping officials, and other official personnel to scrutinize women athletes’ perceived femininity, which can include appearance, gender expression, and sexuality. Women who are understood to be ‘suspicious’ about their natural physical traits are tied to subjective and cultural expectations regarding which bodies and modes of gender expression are ‘appropriate,’ or even valorised by adherence to traditional or normative aesthetics of femininity.¹³⁷

Societal fixation with a universalized system of binary oppositions regarding gender and sexuality is inextricably bound up with the broader patriarchal–capitalist system. Stereotyped sex and gender roles and behaviour, women’s enormous (unwaged) contribution to domestic labour within hetero marriages, belief in male primogeniture and neoliberal economic policies—all have a direct connection to the efficient operation of the capitalist system.

African countries continue to rely on institutions that have deep roots in colonialism, including education, religion, law and economics. All these ensure that the supremacy of the capitalist system is maintained. A rigid binary gender system that recognizes “superior” males over “subordinated” females is supported by legal power. Our legal status as male or female affects our relations in marriage, parenting, inheritance, and employment; it affects our access to healthcare and social security. Sex, gender and sexualities which do not conform to the institutionalized binaries totally disorganize the patriarchal–capitalist matrix, posing an existential threat to its strategic interests.

135. See joint letter dated 18 September 2018 by Special Rapporteurs: (a) on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; (b) on torture and other cruel, inhuman or degrading treatment or punishment; and (c) the Working Group on the issue of discrimination against women in law and in practice. Ref OL OTH 62/2018.

136. *Ibid.*

137. *Ibid.*

Caster Semenya is an important symbol of how society, governed by coloniality, works to fit all of us into the two boxes labelled “male” and “female.” Institutions such as science and the law are mobilized to moor social gender norms to birth sex, when in reality gender is neither a coherent nor a stable category. “Scientific” taxonomies of human populations that categorize us into hierarchized binary classifications facilitates the unjust distribution of resources. The law will gloss over the awkward contradictions and double standards that come with the rigid gender ideology simply to maintain the status quo.

Semenya went to court demanding that she be allowed to compete “free of drugs, free of speculation and free of judgment.”¹³⁸ She rejected being forced into, incorporated into the modern/colonial gender system when she refused to be subjected to hormonal treatment. Analyzing the embodied experience of Semenya allowed us to comprehend that “the modern/colonial system of gender is not a universal but a concrete historical experience of subjugation.”¹³⁹ She proves to us that there are multiple ways of inhabiting our bodies and the world. That is a central point in the struggle for the decolonial reimagination of our bodies. The article ends with an extract from Melissa Kiguwa’s empowering poem, “Raise the Sun.”

*

there are mud packed huts hidden
between the crevice of your elbows,
 moon shaped daggers under
 the curve of your fingernails.
with monsoons inside your voice,
 an avalanche inside your belly,
you raise the sun like hallelujah.
 –Melissa Kiguwa¹⁴⁰

138. Arbitral Award, Note 26, at para. 73.

139. Rosalba Icaza and Rolando Vázquez, “The Coloniality of Gender” Note 79 at p. 67.

140. Melissa Kiguwa, “Raise the Sun,” *Reveries of Longing* (Johannesburg: Africa Perspectives Publishing, 2014).