

Open Letter:
A Call for the Inclusion of Human Rights
for Intersex People

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H.E. Navanethem Pillay
UN High Commissioner for Human Rights
United Nations
New York, NY 10017

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Her Excellency Ms. Pillay,

We are writing to discuss the grave situation of human rights abuses of intersex people worldwide. We are concerned about the specific uses of prenatal Dexamethasone (DEX), nonconsensual medically unnecessary surgeries on infants and minors, the gross mistreatment of Pinki Pramanik, and the recent addition of intersex people under the language of “DSD” (Disorders of Sex Development) to the DSM-V.

Ms. Pramanik is the Indian gold medal winning athlete who was arrested on June 14th and forced to undergo invasive gender verification testing after being accused of rape and of “being male” by her live-in partner. Following the accusations, she was suspended from her job, detained in a male ward despite her lifetime status as a woman, and an MMS (picture message) of one of her gender-verification tests, in which she is nude, went viral.

Ranjit Sur, of the Association for Protection of Democratic Rights, shared on a CNN IBN Live broadcast that the “Human Rights Commission of West Bengal have already agreed that Pinki’s rights have been violated.” He went on to elaborate on her abuses: “Internationally, nationally, in school, in college, everywhere, she is treated as a woman, so so long as it is decided defensively that Pinki is male, she should be treated as a woman;” adding that, “(F)or the last twenty-one days, Pinki has been in government custody.... How did this MMS come out? The government has to answer.... These are totally naked pictures.”¹

Ms. Pramanik was released on bail on July 10th, after initial gender tests proved inconclusive, but was officially charged with rape and fraud on November 12th, after additional tests revealed that she has XY chromosomes. Intersex people are born with, or develop in their secondary stage of pubertal development, chromosomes, gonads, and/or genitals that are considered both male and female or atypical for either. We, and many others, are asking: why are the rape allegations against Pramanik only valid upon her being shown to be an intersex woman?

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<http://www.youtube.com/watch?v=4OZgdbEXVBU&feature=relmfu>

As an editorial in The Hindu observed, “Ms Pramanik has been put on public trial not for her alleged crime, but her intersex condition.”² Dr Samir Parikh, Director of the Department of Mental Health and Behavioral Sciences, Fortis Healthcare, also stated, “Sexual violation is unacceptable and should not be tolerated. But it needs to be regarded separately from questions of gender, rather than making it the determinant factor as in this case.”³ We agree, and make no statement regarding the question of whether violence has occurred, but merely argue that Pinki's "sex" should be irrelevant to the investigation. It is not that we call for the investigation of the complaint to cease, but that we call for the body of the defendant not to be made a public spectacle, or otherwise mistreated because of her supposed embodied state.

Like South African track star Caster Semenya, who was put on suicide watch following her testing in 2009, and Indian track star Santhi Soundarajan, who was stripped of a silver medal won at the 2006 Asian Games after failing a gender verification test, the humiliating treatment has caused extreme psychological duress. In an emotional November 15th interview, Pramanik said, “I have not done anything wrong, I know what I am. Why am I being tortured? I feel like committing suicide.”⁴

Common sense dictates that it is not a crime to be born and live with a body considered different from the norm, yet this is exactly how Pramanik is being treated. Authorities in her case continue to label her “male”, seemingly as a reason to press criminal charges (Indian law allows only men to be charged with rape), despite having been made aware by one of the very members of the medical panel investigating the case, Kaushik Mondol, that she is intersex. As Mondol stated, "Even though the report says Pinki is chromosomally a male, it doesn't conclude that Pinki is a man... it says the athlete suffers from DSD."⁵ DSD, or Disorders of Sex Development, is the medical term for intersex, although we point to the fact that it adds to discriminatory attitudes by portraying intersex traits as illnesses in need of correction.

Pramanik’s treatment is a glaring example of how intersex people are subjected to human rights abuses simply because we are born different. People with intersex variations, like all people, often grow up to be heterosexual. However, like members of the Lesbian, Gay, Bisexual and Trans (LGBT) community, we are targets of discrimination based on our non-adherence to sex and gender norms. However, in addition, we are subjected, in utero and as infants, to non-consensual medical treatments proven to be harmful, in efforts to avoid LGBT

² <http://www.thehindu.com/opinion/editorial/restore-pinkis-dignity/article3602997.ece>

³ <http://indiatoday.intoday.in/story/when-it-all-comes-down-to-the-sex-india-today/1/234618.html>

⁴ <http://timesofindia.indiatimes.com/videos/news/i-feel-like-committing-suicide-says-Pinki-Pramanik/videoshow/17228444.cms>

⁵ http://articles.timesofindia.indiatimes.com/2012-11-14/athletics/35111300_1_pinki-pramanik-medical-experts-medical-report

outcomes.

For example, the drug DEX, banned for pre-natal use in Sweden after studies found it dangerous, is still administered to pregnant mothers in the United States who are predisposed to giving birth to girls with the intersex variation Congenital Adrenal Hyperplasia (CAH). A study published this May in the American medical journal *Pediatrics* concluded that exposure to the drug “in preterm infants is associated with increased aortic arch stiffness and altered glucose metabolism in early adulthood,” i.e., increased risk of heart disease and diabetes.⁶ In addition, a more recent article in *The American Journal of Obstetrics & Gynecology* concluded that, “In human studies, first-trimester dexamethasone is associated with orofacial clefts, decreased birthweight, poorer verbal working memory, and poorer self-perception of scholastic and social competence.”⁷

Despite these adverse effects, DEX is still recommended *specifically* to avoid LGBTI outcomes. As a recent paper in the *Journal of Bioethical Inquiry* “The intervention has been aimed at preventing development of ambiguous genitalia, the urogenital sinus, tomboyism, and lesbianism. We map out ethical problems in this history, including... the use of medicine and public monies to attempt prevention of benign behavioral sex variations.”⁸

In addition, although intersex traits are naturally occurring variations of human sex, they have recently been included in the American Psychiatric Association’s statistical manual, the DSM-V, as a psychological disorder. The inclusion is of concern because it presumes our differences lead to psychological pathology, which has not been demonstrated, and is in fact contested by existing psychological research.

Given these human rights violations against us, it does not stand to reason that intersex people are not recognized as equally in need of anti-discrimination protection. While we applaud the adoption of the United Nations resolution on sexual orientation and gender identity (A/HRC/RES/17/19), and your office’s report on the resolution last year (A/HRC/19/41), we note that the language of “sexual orientation and gender identity” is not inclusive of intersex people because we are defined by our atypical “sex traits,” rather than atypical “sexual orientation or gender identity.” In addition, the use of the acronym “LGBT,” rather than “LGBTI”, which has already been adopted by numerous organizations such as ILGA,⁹ excludes the intersex population, despite the fact that we are more vulnerable to homophobia and discrimination against gender-variance due to the fact that our differences can be detected at, or prior to, birth. This exclusion from human rights rhetoric deems us invisible and thus even more vulnerable. As Dr. Payoshmi Mitra, an independent researcher on sex and

⁶ <http://www.ncbi.nlm.nih.gov/pubmed/22508917>

⁷ <http://www.ncbi.nlm.nih.gov/pubmed/23123167>

⁸ <http://link.springer.com/article/10.1007%2Fs11673-012-9384-9>

⁹ <http://ilga.org>

gender issues, stated about Pramanik's case, "There is no understanding of difference."¹⁰ In order to promote such understanding, "intersex" must be fully included in anti-discrimination rhetoric and policies extended to the LGBT community.

We thank and commend you for acknowledging us in your 2011 statement, "I also urge other states around the world to review their own laws, policies, and practices to ensure that discrimination against transgender and intersex individuals is addressed in a systematic and effective way."¹¹ We now call on you, as the United Nation's High Commissioner of Human Rights, to include us in the struggle for equality by adopting inclusive language and policy.

We are an international cooperation of intersex leaders, advocates, academics, and LGBT allies who have been involved in research, discussion, and publication regarding intersex human rights. In addition, some of us have been working with various government bodies in South Africa, Australia, Canada, the United States, the European Union, and others. For example, Tony Briffa, Mayor of Hobson's Bay, Australia, is the world's first openly intersex elected official. In June, intersex ally Silvan Agius, ILGA-Europe's Policy Director, co-authored and published the European Commission report "Trans and Intersex People: Discrimination against trans and intersex people on the grounds of sex, gender identity and gender expression"¹² In addition, in September, Dr. Dan Christian Ghattas, of OII's German affiliate OII Deutschland, presented to the European Parliament at the seminar "Trans and Intersex people: Challenges for EU law."¹³

We gladly offer our assistance in drafting language to facilitate the inclusion of intersex people, such as that which follows:

- a. Intersex people, those born with chromosomes, gonads, and/or genitals that are considered both male and female or atypical for either, are routinely subjected to human rights abuses based on their non-adherence to sex and gender norms. This discrimination includes but is not limited to: non-consensual medically unnecessary surgeries and drug treatment which has been demonstrated to be harmful, loss of employment, loss of marriage and/or inheritance rights, exclusion from social institutions, and invasive, psychologically harmful gender-verification testing.
- b. Intersex people are subjected to non-consensual medical treatments in utero and as infants in an effort to eliminate atypical sexual orientation and gender identity, as well as atypical sex anatomy. We recognize that because intersex traits are detectable at or before birth, intersex people are more at-risk for homophobia and discrimination against gender-

¹⁰ <http://www.youtube.com/watch?v=4OZgdbEXVBU&feature=relmfu>

¹¹ <http://news.smh.com.au/breaking-news-world/un-welcomes-aust-passport-changes-20110916-1kee2.html>

¹² http://www.ilga-europe.org/home/news/latest_news/ec_intersex_trans

¹³ <http://www.lgbt-ep.eu/intergroup-documents/summary-trans-and-intersex-people-challenges-for-eu-law/>

- variance than other members of the population.
- c. Due to human rights violations perpetrated against intersex people based on their non-adherence to sex and gender norms, we amend policies to accurately define this discrimination as “discrimination based on sex traits, sexual orientation and gender identity”. In addition, we recognize and include intersex people in the struggle for human rights and equality by adopting the intersex-inclusive “LGBTI” acronym.

Thank you for your time, and for all the work you do to secure human rights protections. We recognize that these issues may be more effectively conveyed if presented in person, and wish to discuss the possibility of doing so. Today, on Human Rights Day, we call on the UN to recognize that Ms. Pramanik’s human rights are being violated, as the Human Rights Commission of West Bengal has done. We also look forward to hearing from you regarding a meeting with your office regarding the inclusion of the intersex population in the United Nation’s efforts to achieve human rights for all.

Respectfully,

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