

A. Explanation and commentary on the letter from Ms. Reem Alsalem, Special Rapporteur on violence against women and girls, its causes and consequences, at the UN Office of the High Commissioner of Human Rights (OHCHR), to the German Foreign Minister, Annalena Baerbock, dated 13 June 2024, ref. AL DEU 4/2024, on the “Gender Self-Determination Act” (SBGG)

Overview

Reem Alsalem (R.A.) wrote an official letter to the German Foreign Minister (as a member of the Federal Government) on 13 June 2024 regarding SBGG and the amendments made by the Family Committee of Bundestag on 10 April 2024 (Ref. 20(13)105), taking into account the recommendations of the Federal Council's Committee on Internal Affairs of 2 May 2024 (Ref. 195/1/24), and using testimonies from female witnesses of male violence. In this letter, she criticizes violations of human rights of women and girls that SBGG already entails from the perspective of international law ("Gender Self-Determination Act ...falls short of a number of human rights obligations...") and does not fail to mention that the proposed law has met with resistance from a large number of women's organizations and activists due to the risks it poses, especially for female victims of male violence. She draws Mrs. Baerbock's attention to Germany's obligations to comply with codified human rights and asks her to comment on this in detail. The letter, including the annex (sources of human rights conventions codified by Germany, etc.), comprises 17 pages.

I. Relevant elements of international humanitarian law in relation to the protection of women and girls

1. Right to be free from discrimination and violence

R.A. praises Germany for taking the problems of trans-identified men and women seriously and for having made it easier for them to change their sex entry.

At the same time, however, she points out that SBGG poses a challenge regarding human rights of women and girls, whose protection is the responsibility of the state.

2. Risks of concrete violence against women, including further sex and gender-based violence against them as well as associated trauma.

R.A. refers Ms. Baerbock to **General Recommendation No. 35 of the Committee on the Elimination of Discrimination Against Women (CEDAW Committee)**¹ of 2017, which refers to the link between gender-based discrimination against women and other discriminatory characteristics that determine their lives, e.g. sexual orientation or gender identity.²

(Note: she explicitly includes trans-identified men alongside lesbians and bisexual women in "gender-based violence").

To justify the call for action to the state, R.A. explicitly points out to the Foreign Minister that human rights (as detailed in the annex) place a binding obligation on signatory states to prevent gender-based discrimination and violence and to take into

¹ The CEDAW Committee is made up of 23 experts and was set up by the UN to monitor the progress of the States Parties' efforts to end discrimination against women.

² CEDAW/C/GC/35, para. 12.

account the particularities resulting from biological differences in order to enable women to live a life free from all violence.

According to R.A., the SBGG in no way takes into account the specific needs of women in all their diversity, especially those women who are threatened with male violence or who have already experienced male violence, because the law does not provide for any measures to prevent the abuse of gender registration procedure by sex offenders and other perpetrators of violence.

In doing so, it refers to the recommendation of the Federal **Council's** Committee on Internal Affairs (erroneously the Bundestag) of 2 May 2024 (erroneously 17 May 2024), file no. **195/1/24** (erroneously 195/25), to appeal to the Mediation Committee because deletion of the obligation of the competent registration authority to inform security authorities poses a considerable risk to internal security. This is because the failure to inform security authorities about the change of name or sex

"...enables identity concealment for people who may want to exploit the law for dishonest reasons")³. LAZ reloaded reported on this.⁴

In the following, R.A. names two female witnesses (n.d.), one of whom experienced sexual violence by a "non-binary" man, and the other reports how young lesbians are forced into sexual relationships with men who identify as "women". R.A. comments that although these testimonies date back to the time of the old transsexual law, in her opinion they prove how *"legal gender recognition"* is instrumentalized on the basis of self-identification of sexual offenders and would facilitate access to their victims for those who have already committed violence against women and children in the past.

R.A. emphasizes that the demand for safeguarding measures is not about the assumption that trans-identified men pose a threat. Rather, it is about the empirical fact that the majority of sex offenders are male and that persistent sex offenders leave no stone unturned to gain access to their victims in order to abuse them.

In R.A.'s opinion, these acts of violence, which have already occurred, will increase with the entry into force of SBGG because, in addition to "self-declaration", these people will also have the opportunity to have their identity documents changed accordingly.

3. Undermining single sex spaces for females

R.A. sees a risk of abuse in fine reinforcement, which protects the new identity of trans-identified men, in particular because it endangers single sex spaces that serve to protect women and girls. In particular, she mentions women's prisons, access to which for men has not been regulated by the SBGG.

(Note: Prison laws that regulate accommodation of male and female prisoners are the primary responsibility of the Federal States following the Federalism reform, see Art. 74 (1) No. 1 GG - concurrent legislation. To date, Berlin, Hesse and Schleswig-Holstein have prison laws that allow trans-identified men access to women's prisons.)

R.A. also criticizes the fact that SBGG emphasizes contractual autonomy, domiciliary rights and statutory autonomy, but provides no further regulations for cases of conflict. Firstly, she assumes that sex-specific rooms (toilets and changing rooms) in public

³ Bundesrat, recommendations of the committees, Act on self-determination with regard to sex entry and amending other provisions of 2 May 2024, Drucks. 195/1/24, S. 2.

⁴ <https://laz-reloaded.de> Wissenswertes/Stellungnahmen/Der letzte Coup beim SBGG, 28.04.2024 and News, L Beatrice, Is the German Ministry of the Interior doing its job? 02.08.2023

institutions (schools, hospitals, universities, recreational centers) will be open to trans-identified men.

Secondly, private operators who want to maintain sex-specific spaces could face fines or criminal investigations if they want to know the former sex of the person seeking entry or simply because they publicly express their opinion on the subject of sex-specific spaces. Service providers could face similar consequences.

(Note: The problem for private operators is that the legislator shifts the resolution of such conflicts to the judiciary. The German "General Equal Treatment Law (AGG)", of which R.A. is apparently unaware, serves as the legal basis for admission or its denial. The problem here is the lack of clarity regarding the facts of the case - does the prohibition of disclosure also apply in the case of an obvious appearance, i.e. if the person requesting entry is clearly recognizable as a man? -, and violation of women's right to freedom of speech; furthermore, the woman would be required to have the "intent to harm" that has to be proven by the allegedly injured party.)

R.A. names below a witness who encountered a man in the toilet in a private fitness center; her complaint was rejected by the management with the argument that the person identified as "female". R.A. asks whether this woman would now be fined under the SBGG for "investigation" or "disclosure"?

(Note: lack of clarity, and intent to harm required, see above. The decision on this would then be a matter for the judiciary).

Three other witnesses who are victims of sexual violence have reported to R.A. that their mental health suffers from the presence of men in their shelters, regardless of their "identification", and that they would consequently exclude themselves from social life if they could not be sure that the rooms are reserved exclusively for women.

R.A. therefore emphasizes that the SBGG is particularly damaging to women's and girls' sense of security and that they will no longer visit sex-specific spaces for fear of state sanctions if they cannot prove a credible legal reason in good time.

R.A. emphasizes the dangers of re-traumatization when victims of sexual violence are forced to share their spaces with men. On top of this, there is a ban on disclosure, which is particularly negative for women when it comes to spaces for their private parts.

R.A. points out that in the area of human rights conventions, different treatment on the basis of sex and gender identity is certainly permitted if it is based on reasonable and objective criteria, pursues a legitimate aim and if its consequences are appropriate and proportionate to the legitimate aim being pursued⁵. In this specific case, this would mean that in justified cases there may be sex-specific spaces for women to which trans-identified men do not have access.

(Note: principle of proportionality, borrowed from German administrative law).

4. Lack of trauma-informed approach for women and girls who are victims/survivors of violence"

At this point, R.A. explains that the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has described the consequences for victims of rape and other forms of sexual violence as follows: The physical trauma and psychological pain and suffering are often compounded and prolonged by

⁵ International Covenant on Civil and Political Rights (CCPR) General Comment No. 18: Non-discrimination, 10 November 1989, para. 13, p.2.

subsequent stigmatization and isolation. R.A. therefore considers it essential that victims of gender violence, including biological women, are offered trauma-specific services that take into account their gender-specific needs. Such services must have an intersectional approach and take biological sex into account.

(Note: R.A. apparently calls for separate trauma-specific programs for women and trans-identified men, e.g. therapy groups for victims of violence, separately for women and trans-identified men).

Similarly, in R.A.'s view, all States parties have an obligation under international law to have legal procedures in place to prevent stigmatization and re-victimization, especially in cases of sexual and gender-based violence.⁶ Equally important are procedures that prevent the use of stereotypes that blame the victims or prevent them from going public with their experiences for fear of re-victimization.

R.A. names two female witnesses who reported having been victims of sexual and gender role violence by men who described themselves as non-binary or transgender. The women insisted that they had special protection needs as female victims; both were criticized for going public with their experiences. Their testimonies were each dismissed and they themselves were labelled "transphobic". Furthermore, R.A. notes that there is no information on whether the State authorities have investigated these cases, nor whether there are procedures in place to prevent the re-victimization of women who have experienced sexual violence through access to sex-specific shelters and services.

5. Obligation to collect disaggregate data, including based on sex

The **CEDAW Committee** has made it clear in its **General Recommendation No. 28** that states should

*"...provide for mechanisms that collect sex-disaggregated data to ensure effective monitoring, facilitate ongoing evaluation and allow for the revision or supplementation of existing measures and the identification of any new measures that may be appropriate."*⁷

R.A. concludes that states should collect up-to-date and reliable data on gender-based and sexual violence, indicating the sex of victims and perpetrators and the detailed background of the violent offences. This data is particularly important in order to correctly classify sex- and gender-based crimes against women - offences that are mostly committed by men as perpetrators against women as victims. SBGG, on the other hand, says nothing about how the State intends to deal with the lack of reliable data on an individual's sex and the impact that the lack of such data has on the categorization of these offences against women and girls.

6. Negative impact on women's and girl's highest standards of mental and physical health

R.A. names a detransitioner who reports that she was not sufficiently informed about the procedure. She underwent hormone therapy and a double mastectomy without understanding the short and long-term implications and consequences for her health and physical well-being. R.A. states that under SBGG, therapeutic counselling is no

⁶ CEDAW/C/GC/33.

⁷ CEDAW/C/GC/28, para. 28, p. 6.

longer required for gender reassignment and it therefore remains unclear how the legislator intends to ensure that people receive counselling in order to adequately understand the consequences of gender reassignment.

In view of the fact that the SBGG also authorizes gender transition of minors, it is also particularly important to ensure that these children and their families understand the consequences of such an intervention (some of which are irreversible) for their mental and physical health. The consequences of medical transition for children's mental and physical health are significant and should not be minimized. As the UK Cass report⁸ found, the short-term medical transition of gender dysphoric girls, which usually begins with puberty blockers, can cause temporary or permanent disruption of brain maturation. Gender dysphoric children are also entitled to have the causes of their suffering treated, and this includes the high number of cases of comorbidities (e.g. autism, ADHD, depression).⁹ A new study from 2024 on gender dysphoric children in Germany comes to similar conclusions as the Cass report. The study states that

"there was no clear evidence for the specific and unequivocal positive effects of opposite-sex hormones in minors with gender dysphoria".

The underlying data was very limited, based on only a few studies with small numbers of cases and also had methodological and qualitative shortcomings.

Psychotherapeutic treatment of gender dysphoric children and adolescents may be necessary to alleviate their suffering. The administration of puberty blockers and/or opposite-sex hormones should only be given on an individual basis and after a complete and thorough history of the mental health status of the patient concerned and a careful individual risk-benefit assessment.¹⁰

According to the findings of the **Committee on the Rights of the Child**¹¹, children's ability to give consent must take into account their maturity and age. Furthermore, child's welfare is paramount.¹² Treatment that takes full account of the child's best interests must therefore ensure that the child has access to all information, has had their health checked and receives support regarding the ongoing and serious consequences of taking puberty blockers and opposite-sex hormones.

SBGG, which allows adolescents from the age of 14 to legally change gender even against the will of their parents, provided it has been authorized by a family court, calls into question the child's welfare, especially with regard to the responsibility and rights of the parents, who have to ensure the best interests of the child.

⁸ *The Cass Report (2024) is an independent review of NHS gender identity services for children and young people in the UK. It has revealed serious shortcomings in the care of children and young people with gender dysphoria and recommends that they receive safe, holistic and evidence-based healthcare, preferably without puberty blockers and with psychosocial support.*

⁹ <https://www.ohchr.org/en/statements/2024/04/uk-implementation-cass-report-key-protecting-girls-serious-harm-says-un-expert>

¹⁰ *Beyond NICE: Updated systematic review of the evidence for pubertal blockade and hormone administration in minors with gender dysphoria, Florian D. Zepf, Laura König, Anna Kaiser, Carolin Ligges, Marc Ligges, Veit Roessner, Tobias Banaschewski, and Martin Holtmann Zeitschrift für Kinder- und Jugendpsychiatrie und Psychotherapie 2024 52:3, 167-187, <https://econtent.hogrefe.com/doi/abs/10.1024/1422-4917/a000972>*

¹¹ *The Committee on the Rights of the Child (CRC) is a supervisory body set up by the UN to monitor the implementation of and compliance with the Convention on the Rights of the Child and its additional protocols by the States parties.*

¹² *CRC/C/GC/15 and CRC/C/GC/12.*

(Note: The family courts must also consider the best interests of the child, see B. 9.c), p. 18).

Furthermore, the connection between social and medical transition is irrefutable¹³, even if the legislator explicitly states that SBGG only regulates social transition. Informing gender dysphoric persons, especially women and girls, about the consequences of medical transition for their physical and mental health is important in order to guarantee their right to informed consent.

7. Information on the lack of safeguards for the best interests of the child, particularly concerning girls

R.A. is concerned that under SBGG, children under the age of 14 are not protected from being victims of forced legal transitions by parents or other guardians, particularly because of the power imbalance between children and adults.

Research has generally shown that lesbian, autistic and depressed girls are particularly susceptible to social influence and pressure, which leads them to assume that the solution to their problems lies in transitioning to the opposite sex.

R.A. notes that SBGG does not contain any protective clauses to avoid such risks and thus exposes girls to particular health risks in the case of medical transition that often follows. She concludes that socially transitioned girls could conceal their true gender when utilizing medical services and, due to social and cultural pressure, could get into serious health problems as a result of incorrect treatment.

(Note: Section 6 (4) SBGG is based on the biological sex of the person concerned, disregarding the gender entry when utilizing medical services).

To summarize, R.A. states that such acts of transition violate children's right to privacy, to retain their identity and their right to freedom of thought, conscience and religion, all of which are protected rights under international law. Above all, the best interests of the child should guide all State decisions that may affect children's rights, especially those of girls.

8. Information on the risks to freedom of expression, religious freedom, and the prevention of violence due to the ban on disclosure

R.A. believes that the ban on disclosure, which is subject to a fine and makes it an offence to disclose a person's biological sex without a public interest or a credible legal interest, has a serious impact on women and girls.

Firstly, the majority of society has gender-critical views. The law does not clarify whether referring to a person with pronouns that refer to her/his biological sex or simply naming her/his biological sex in public can result in a fine.

¹³ Dr Hilary Cass (Chair), *The Cass Review. The Independent Review of Gender Identity Services for Children and Young People: "However, those who had socially transitioned at an earlier age and/or prior to being seen in clinic were more likely to proceed to a medical pathway"*, https://cass.independent-review.uk/wp-content/uploads/2024/04/CassReview_Final.pdf, para. 76, p.31.

(Note: It is essential that the biological sex of a transitioned person must not be generally known or known to the addressee, Section 13 SBGG, and the disclosure of the biological sex must be made with the intention to cause harm in order to fulfil the offence of an administrative offence, Section 14 SBGG. The problem here is an ambiguity in the offence: does "awareness" of the biological sex also mean mere appearance (male facial features, beard, etc.) or must the person be publicly known, e.g. Ganserer? Cf. point 3. above, p. 3.)

For example, it would remain unclear whether a statement in a public forum or on social media that a male person was occupying quota places for women or competing in women's sport would result in a fine.

(Note: For problems related to facts of the case, see above. According to Section 6 (3) SBGG, sports clubs regulate the participation of trans-identified men in women's sports themselves; the result can therefore vary).

If so, this could seriously violate the freedom of opinion, thought, conscience and religion, including the freedom of persons of specific faiths.

R.A. notes with regard to the best interests of the child involved here that the families of the transitioned person may also not publicly disclose the former first name and biological sex.

(Note: Close relatives, such as the parents and children of the persons concerned, are subject to the prohibition of disclosure subject to a fine if they act "with intent to cause harm", Section 13 (2) sentence 1 SBGG. It is then up to the judiciary to prove the "intent to cause harm" in the event of a dispute).

II. Obligations of the Federal Republic of Germany as a State Party to the International Conventions on International Humanitarian Law with regard to the protection of women and girls

R.A. concludes by expressing her great concern about the reported negative consequences that the new law could have on the rights of women and girls. She reminds the Federal Government that, as a State party to **CEDAW Convention on the Elimination of All Forms of Violence against Women**, it will be held accountable if it does not take all appropriate measures to prevent, investigate, prosecute, punish and provide redress for acts or omissions by State and non-state actors that lead to gender-based violence against women.

R.A. refers to the codified human rights in the annex. According to the mandate given to her by the Human Rights Council, it is her task to clarify the allegations brought to her attention and to respond effectively to the information received. She therefore requests the Foreign Minister's assistance in answering the following questions:

"1. Please provide any additional information or comments regarding the aforementioned allegations.

2. Please provide information on the safeguards adopted by your Government to prevent human rights violations against women and children, including girls, that may result from the implementation of the Gender Self-Determination Act.

3. Please provide information about how your Government intends to ensure that there is an updated and reliable registry of gender-based violence, that accurately relays disaggregated information on the perpetrators, the victim and the relationship between them.

4. Please elaborate on the measures your Government is taking to prevent the re-victimization of women and girls victims of sexual and gender-based violence, which is perpetrated primarily by males.

5. Please inform about the measures adopted to ensure the best interests of children, including girls, and to guarantee their right to the highest standards of physical and mental health as well as freedom from violence and coercion of any kind.

6. Please inform about the measures adopted to guarantee freedom of expression in the context of the implementation of the ban on disclosure/investigation."

R.A. requests a response within 60 days (i.e. by 13 August 2024), otherwise the letter will be published on the website of the Human Rights Office, and continues:

"While the awaiting your response, I would like to urge Your Excellency's Government to ensure the immediate and effective response to any report of women's and girl's rights violations related to the Gender Self-Determination Act.

(Note: !!)

"I may publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be made alerted of the potential implications of the above mentioned allegations. The press release will indicate that I have been in contact with Your Excellency's Government to clarify the issue(s) in question."

Annex

Reference to conventions of international humanitarian law

Ad 1. and 2.

- a) Firstly, it should be noted that according to the **Convention on the Elimination of All Forms of Discrimination against Women**, which Germany ratified on 10 April 1985, States are obliged to prevent discrimination on the basis of sex. This is laid down in **Article 1 of the CEDAW**:

*"For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction **made on the basis of sex** [emphasis added] which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."*

- b) Similarly, Article 2 of the **International Covenant on Civil and Political Rights (ICCPR)** and the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, ratified by Germany on 17 December 1973, stipulate the need to protect rights and freedoms.

*"without distinction of any kind, such as race, color, **sex** [emphasis added], language, religion, political or other opinion, national or social origin, property, birth or other status".*

- c) It is important to emphasize that the resolution that established the mandate of the Special Rapporteur on violence against women, its causes and

consequences 30 years ago stated in its introductory paragraph that the Commission on Human Rights was:

*"Reaffirming that discrimination based on **sex** [emphasis added] is contrary to the **Charter of the United Nations, the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women** and other international human rights instruments, and that its elimination is an integral part of efforts to eliminate violence against women".¹⁴*

Ad. 3 and 4.

- a) The **CEDAW Committee** stated in its General **Recommendation No. 25**:

*"It is not enough to guarantee women treatment that is identical to that of men. Rather, the **biological** [emphasis added] as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences."*

- b) These sources of international law have consistently established a prohibition of discrimination on the basis of sex. However, with regard to the prohibition of gender discrimination, it should be noted that CEDAW does not explicitly refer to the term "gender". The only binding international legal instrument that defines this term is the **Rome Statute of the International Criminal Court**, of which Germany has been a member since 11 December 2000. **Article 7.3** says:

*"For the purposes of this Statute, it is understood that the term '**gender**' refers to the two sexes, male and female, within the context of society. The term 'gender' does not indicate any meaning different from the above."*

- c) In addition, the **CEDAW Committee** has made a clear distinction between the terms "sex" and "gender" in its General **Recommendation No. 28**:

*"The term "**sex**" here refers to the biological differences between men and women. The term "**gender**" refers to socially constructed identities, attributes and roles for women and men and society's social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and the distribution of power and rights favoring men and disadvantaging women."*

- d) In the same General **Recommendation No. 28**, the **CEDAW Committee** stated the following:

*"The objective of the Convention is the elimination of all forms of discrimination against women on the basis of **sex** [emphasis added]. It guarantees women the equal recognition, enjoyment and exercise of all human rights and fundamental freedoms in the political, economic, social, cultural, civil, domestic or any other field, irrespective of their marital status and on the basis of equality with men."*

- e) In the field of human rights conventions, differential treatment on the basis of sex and gender identity is permitted if it is based on reasonable and objective

¹⁴ https://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-1994-45.doc

criteria, pursues a legitimate aim and if its consequences are appropriate and proportionate to the legitimate aim pursued, according to the Human Rights Committee for the **International Convention on Civil and Political Rights (ICCPR)** in its "**General Comment No. 18: Non-Discrimination**", 10 November 1989.

- f) The obligation of States Parties to prevent violence against women applies particularly in the context of imprisonment. According to the UN Working Group on Discrimination against Women, the percentage of imprisoned women who were abused in childhood is twice as high as that of imprisoned men (**A/HRC/41/33**). In the context of deprivation of liberty, there is a recognized need to protect women-only detention spaces. Threats and a sense of collective insecurity or invasion of privacy of female inmates in the presence of persons of the opposite sex in detention facilities have been recognized as forms of ill-treatment by the Special Rapporteur on torture (A/HRC/31/57).

This recognition of the need for spaces exclusively for women during deprivation of liberty is also contained in the **United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules)**, which state in **Article 11**:

"The different categories of prisoners shall be kept in separate institutions or parts of institutions, taking account of their sex [emphasis added], age, criminal record, the legal reason for their detention and the necessities of their treatment; thus: (a) Men and women [emphasis added] shall so far as possible be detained in separate institutions; in an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separate."

See also the **United Nations Bangkok Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders**. These rules set out the special needs of women while they are deprived of their liberty.

Women who have been victims of sexual violence need the attention of the state to prevent re-victimization. **CEDAW** has called on States to introduce gender-specific procedures to prevent re-victimization and stigmatization in connection with deprivation of liberty (CEDAW/C/GC/30). With regard to sex-based violence, States Parties to the Convention are also obliged to focus on the prevention of conflict and all forms of violence. This prevention includes effective early warning systems to collect and analyze publicly available information, preventive diplomacy and mediation, and prevention initiatives that address the root causes of conflict, i.e. a monitoring system (CEDAW/C/GC/30).

Ad 5.

General Recommendation No. 28 of the CEDAW Committee also makes it clear that, in fulfilling their obligations to eliminate discrimination against women under **Article 2 of CEDAW**, States parties should

"...provide for mechanisms that collect relevant sex-disaggregated data, enable effective monitoring, facilitate continuing evaluation and allow for the revision or supplementation of existing measures and the identification of new measures that may be appropriate".

Ad 6.

When it comes to medical treatment, informed consent is particularly important in decisions concerning the sexual and reproductive health of women and girls. In this context, the **CEDAW Committee** has repeatedly emphasized that

"...all health services [...] must be consistent with women's human rights, including the right to autonomy, privacy, confidentiality, informed consent and freedom of choice."

It also emphasized that States should ensure that women's and girls' decisions about their sexual and reproductive health are not influenced by third parties. Furthermore, the **CEDAW Committee** clarified that mechanisms should be put in place to ensure that women and girls have access to evidence-based and unbiased information in order to preserve their autonomy (ensuring sexual and reproductive health and rights for all women, especially women with disabilities).

Ad 7.

- a) The principle of the best interests of the child is enshrined in the **Convention on the Rights of the Child** ratified by Germany on 6 March 1992. This principle is contained in **Article 3** of the Convention, which states:

"[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

The **Committee on the Rights of the Child** has emphasized in its **general comment 14** on the right of the child to have his or her best interests taken as a primary consideration, highlighted that the principle of child's best interests is an umbrella term that encompasses three essential dimensions.

Firstly, it recognizes that this concept implies a fundamental right of the child, which means that the child has an intrinsic right to have his or her best interests taken into account first and foremost when a decision is to be made that affects him or her - individually, as a group or in general. Therefore, this right entails a corresponding obligation for States, which is directly applicable and enforceable against public officials.

Secondly, the best interests of the child principle is a fundamental principle of interpretation, which states that where a legal provision can be interpreted in different ways, the interpretation that best serves the best interests of the child should be chosen.

Thirdly, it implies a procedural rule that any decision affecting a child or group of children should be accompanied by an assessment of the potential impact - negative or positive - of that decision on the child or children concerned. In this respect, the Committee considers that the best interests of the child require procedural safeguards, which means that the judge or official must explicitly state how this concept has been taken into account when justifying a decision (CRC/C/GC/14).

- b) Furthermore, in accordance with the **Convention on the Rights of the Child**, in particular **Article 6**, States parties recognize that every child has an inalienable right to life and to full development. These rights are inextricably linked to the right of the child to a life free from violence. In the opinion of the **Committee on the Rights of the Child**,

"...securing and promoting children's fundamental rights to respect for their human dignity and physical and psychological integrity, through the prevention of all forms of violence, is essential for promoting the full set of child rights in the Convention."

- c) **Article 7 of the Convention on the Rights of the Child** also recognizes children's right to identity. The **Committee on the Rights of the Child** states that the right of the child to preserve his or her identity must be respected and taken into account when assessing the best interests of the child. In addition, **Article 14** provides that States Parties shall respect the right of the child to freedom of thought, conscience and religion.

Ad 8.

- a) Furthermore, it is crucial to consider the definition of gender-based violence against women given by the **CEDAW Committee** in its **General Recommendation No. 19 (1992)**, later updated by General **Recommendation No. 35 (2017)**. This definition is as follows:

"Gender-based violence against women constitutes discrimination against women under Article 1 and therefore engages all obligations under the Convention. Article 2 provides that the overarching obligation of States parties is to pursue by all appropriate means and without delay a policy of eliminating discrimination against women, including gender-based violence against women. That is an obligation of an immediate nature; delays cannot be justified on any grounds, including economic, cultural or religious grounds. In general recommendation No. 19, it is indicated that, with regard to gender-based violence against women, the obligation comprises two aspects of State responsibility for such violence, that which results from the acts or omissions of both the State party or its actors, on the one hand, and non-State actors, on the other."

- b) As mentioned above, Article 1 of the CEDAW refers to sex-based violence. The **CEDAW Committee's General Recommendation No. 33** emphasizes the need for a non-violent justice system that is free of stereotypes:

"Stereotyping and gender bias in the justice system have far-reaching consequences for women's full enjoyment of their human rights. They impede women's access to justice in all areas of law and may have a particularly negative impact on women victims and survivors of violence. Stereotyping distorts perceptions and results in decisions based on preconceived beliefs and myths rather than relevant facts. Often, judges adopt rigid standards about what they consider to be appropriate behaviour for women and penalize those who do not conform to these stereotypes. Stereotyping also affects the credibility given to women's voices, arguments and testimony as parties and witnesses. Such stereotyping can cause judges to misinterpret or misapply laws. This has far-reaching consequences, for example, in criminal law, where it results in perpetrators not being held legally accountable for violations of women's rights, thereby upholding a culture of impunity. In all areas of law, stereotyping compromises the impartiality and integrity of the justice system, which can, in turn, lead to miscarriages of justice, including the revictimization of complainants."

(Note: In view of the ideological policy of the current Government, the judiciary is still most likely the best guardian of women's and girls' rights).

Conclusion

The appreciation of the above-mentioned rights in conjunction with the best interests of the child and the mandate to prevent violence and discrimination against women, including lesbians, leads to the conclusion that the States Parties

have an increased obligation to protect the human rights of girls and women. R.A. does not mention lesbian spaces as autonomous spaces, as they are (unfortunately) not protected by international law.

B. Explanation of and comments on the reply (with Note Verbale) from the Permanent Mission of the Federal Republic of Germany to the Office of the United Nations and to other International Organizations, Geneva, to the Office of the High Commissioner of Human Rights (OHCHR), Geneva, dated 6 August 2024, Ref. Pol 381.70/13; Note No. 159/2024

Overview

The German Foreign Minister, Annalena Baerbock, did not respond to the letter from the Special Rapporteur on Violence against Women and Girls to the United Nations High Commissioner for Human Rights herself, but delegated the response to the Permanent Mission of Germany to the United Nations in Geneva (PMG), which can be seen as a lack of respect for R.A. Instead, the reply dated 5 August 2024 is addressed to Beatriz Balbin, Chief, Special Procedures Branch, OHCHR. It comprises three pages.

The PMG rejects R.A.'s allegation that it violates a number of human rights obligations by recognizing the right to "self-determination". Rather, PMG states that the SBGG is based on solid human rights standards.

(Note: R.A. does not say that recognizing the "right to self-determination" is in itself a violation of human rights, but that its (uncontrolled) consequences are likely to violate the human rights of women and girls).

I. Legal sources

1. Basic Law

The main motivation for the enactment of the SBGG was precisely to protect gender identity, which is in line with the general right of personality enshrined in the Basic Law (Article 2 (1) in conjunction with Article 1 (1) of the Basic Law).

(Note: However, the fundamental rights under Articles 1 and 2 of the Basic Law, which according to the case law of the Federal Constitutional Court also include gender identity, must be balanced by the legislator with other, possibly competing fundamental rights of women, e.g. Article 3 (2), (3) of the Basic Law; this is called "practical concordance". The PMG does not mention this tension ratio).

2. International legal sources/policy

Furthermore, the concept of SBGG is in line with international recommendations and regulations.

- a) In 2010, the Council of Europe issued a recommendation on combating discrimination based on sexual orientation or gender identity, in which it called on Member States to "take appropriate measures" to ensure legal gender recognition, including by enabling "the change of name and gender in official

documents in a quick, transparent and accessible" manner (CM/rec (2010)5)¹⁵.

- b) This recommendation is in line with various judgements of the European Court of Human Rights (ECHR), in particular with regard to the right to respect for private and family life (Art. 8 ECHR).
- (1) Küçk v. Germany, judgement of 12 June 2003, Appl. No.35968/97 (trans-identified male).¹⁶ Transsexuals have the right to reimbursement of the costs of gender reassignment surgery by their private health insurance company on the basis of Art. 8 ECHR.
 - (2) A.P., Garçon and Nicot v. France, judgement of 06 April 2017, Appl. Nos. 79885/12, 52471/13 and 52596/13 (trans identified male).¹⁷
The requirement of surgical gender reassignment for legal gender reassignment violates Art. 8 ECHR, but not the proof of a gender identity disorder and the requirement of a medical examination.
 - (3) X. and Y. v. Romania, judgement of 19 January 2021, Appl. Nos. 2145/16 and 20607/16 (trans identified female).¹⁸
The requirement of gender reassignment surgery for legal gender reassignment violates Art. 8 ECHR; procedures for legal gender reassignment should be fast, transparent and easily accessible.
 - (4) S.V. v. Italy, judgement of 11 October 2018, Appl. No. 55216/08 (trans identified male).¹⁹
The requirement of gender reassignment surgery for legal gender reassignment violates Art. 8 ECHR.
 - (5) X. v. the former Yugoslav Republic of Macedonia, judgement of 17 January 2019, Appl. No. 55216/08 (trans identified female).²⁰
A procedure for legal gender reassignment that is not fast, transparent and easily accessible violates Art. 8 ECHR.
 - (6) Christine Goodwin v. United Kingdom, judgment of 11 July 2002, Appl. No. 28957/95 (trans identified male).²¹
Transsexuals are entitled to a legal change of gender.

(Note: The judgements of the ECHR refer exclusively to the right of transsexuals to change their gender entry).

3. The PMG also refers to an initiative by 28 Member States of the United Nations, led by Argentina and supported by 66 organizations, which are campaigning for the legal recognition of gender identity through self-identification.

(Note: The number of 28 UN member states is relatively small in view of the total of 193 Member States. Argentina, a pioneer in transgender rights, has not enshrined any women's rights in its legislation).

¹⁵ https://gddc.ministeriopublico.pt/sites/default/files/recomendacao_cm_rec_2010_5.pdf, para. 21.

¹⁶ <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22002-4824%22%7D>, para 69.

¹⁷ <https://hudoc.echr.coe.int/eng?i=001-172913#%7B%22itemid%22:%5B%22001-172913%22%7D>, 4th, 5th, 6th (p. 44).

¹⁸ <https://hudoc.echr.coe.int/eng?i=002-13101#%7B%22itemid%22:%5B%22002-13101%22%7D>, iii. Conclusion.

¹⁹ <https://hudoc.echr.coe.int/app/conversion/docx/?library=ECHR&id=001-187111&filename=CASE%20OF%20S.V.%20v.%20ITALY.docx&logEvent=False>, para. 75.

²⁰ <https://hudoc.echr.coe.int/eng?i=001-189096#%7B%22itemid%22:%5B%22001-189096%22%7D>, Conclusion 1 and 2, para. 70.

²¹ <https://hudoc.echr.coe.int/eng?i=001-60596#%7B%22itemid%22:%5B%22001-60596%22%7D>, para. 93.

4. Finally, the PMG cites the report of the High Commissioner for Human Rights from 2019²² and that of the Independent Expert on Sexual Orientation and Gender Identity (SOGI) from 2018²³, which have advocated for the same goal.

(Note: R.A. has a difficult time in the Office of the High Commissioner for Human Rights, which is infiltrated by trans activists. The SOGI expert has been fighting for years not for the recognition of lesbians and gays, but exclusively for trans-identified men).

II. Legislative procedure/meaning and purpose of the SBGG

5. The SGBB was subjected to a thorough review during the legislative process through the involvement of NGOs.

(Note: It is true that NGOs have been able to publish their statements on the websites of the Federal Ministry for Families, Seniors, Women and Youth, and the Federal Ministry of Justice - including LAZ reloaded - but there has never been a public media debate with the responsible politicians about the effects of the SBGG on women and girls).

The following institutions also supported the SBGG: German Women's Council, German Institute for Human Rights, Amnesty International, Federal Association of Women's Support Services and Women's Crisis Helplines and the German Association of Women Lawyers. The German Women's Council, an umbrella organization with 60 women's associations, explicitly welcomed the SBGG, particularly denounced the increasing violence against intersex and trans people who identify as female and warned against the reproduction of mistrust and false stereotypes by associating the law with transgender persons posing a threat or being violent.

(Note: Voices critical of gender in Germany, especially those of the autonomous women's and lesbian movement, the political opposition and the medical profession, are completely ignored; cf. R.A. comment on male violence irrespective of their gender entry, A.I.2, p. 2, and A.I.3, p. 3f.).

6. The SBGG only allows non-binary, intersex and transgender people to adapt their civil registry entries and identity papers to their gender identity.

Note: The SBGG goes far beyond this. It allows anyone to have their gender entry in the civil register changed once a year by "self-declaration" without any state control. This time limit does not apply to minors.

It does not make any other legal changes, e.g. to the General Equal Treatment Act (AGG). The SBGG is therefore not concerned with access to single sex spaces.

(Note: The SBGG helps the trans activists to conquer women's spaces insofar as sex is equated with gender identity and the AGG allows exceptions to prohibited "discrimination" in the protection of privacy (e.g. of women), but in the event of a dispute - in the absence of legal clarification - courts ultimately have to decide whether or not trans-identified men

²² [https://www.ohchr.org/sites/default/files/Documents/Publications/Born Free and Equal WEB.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/Born%20Free%20and%20Equal%20WEB.pdf)

²³ <https://www.ohchr.org/en/calls-for-input/report-legal-recognition-gender-identity-and-depathologization>

may be excluded from women's spaces for these reasons mentioned in the AGG, regardless of their registered gender).

III. Gender-specific spaces, combating violence against women and non-binary, intersex and transgender people

7. The safety of single sex spaces, especially women's shelters, has always been a concern of the Federal Government. Violence - by "cis" men - against women is a fact.

(Note: The violence of trans-identified men towards women - see the statements by R.A. A.1.2, p. 2, and A.1.3, p. 3f., is simply ignored).

The Association Frauenhauskoordinierung (Women's Shelter Coordination Association) also welcomed the SBGG and expressed its concern about the increasing violence against intersex and transgender people who identify as female and about their particular marginalization. The organization points out that women in all their diversity should receive protection from violence. The women's shelters also have individualized protection procedures, including risk assessments and protocols. When a woman seeks protection from violence, the women's refuge will assess in each individual case whether it is suitable for the woman and whether the women's refuge offers adequate resources for her diverse protection needs. The granting of access depends on a number of factors and is not solely based on a person's gender entry.

(Note: "Autonomously organized women's shelters are usually non-profit associations and therefore dependent on state support (they are therefore often faced with the choice of becoming "trans-inclusive" or having to do without state support). ... Women's shelters have been founded since the 1970s by women of the autonomous women's movement to protect women from male violence. Today, men can often demand entry due to "trans-inclusivity" if they have experienced violence. However, this does not necessarily mean that biological women and men with a different gender identity are treated "equally" by the staff at the women's refuge. The "gender-specific" role behavior also continues in women's shelters - to the detriment of women. However, this problem is not discussed publicly - rather in the social media.

Regarding the role of the Women's Shelter Coordination Association (financially supported by the Federal Ministry for Families, Seniors, Women and Youth), which, according to the explanatory memorandum to the law, supposedly supports women's shelters "from a professional point of view", 'Geschlecht zählt' (Sex Matters) writes: "The Women's Shelter Coordination Association is ... itself not involved in the operational work of the women's shelters and therefore cannot support them from a professional point of view.

Nevertheless, it obviously shapes and directs their political orientation in its favor. The women's refuge coordination organization clearly expresses its understanding of shelters for women on social media when it posts: "No one is admitted to a women's refuge solely on the basis of their sex." Excerpt from the LAZ reloaded expert opinion on the SBGG draft bill, II § 6, p. 15).

8. The Federal Republic of Germany shares R.A.'s goal of eliminating gender-based violence.
- a) That is why Germany ratified the Istanbul Convention on 12 October 2017.

(Note: In the Istanbul Convention, "woman" is not clearly distinguished from "gender identity", see Art. 3.f and Art. 4.3).

- b) The Government is also currently working on the "Federal Government Strategy to Prevent and Combat Violence against Women and Domestic Violence"

(Note: There is an EU Commission proposal on this, which, because it conflates sex and gender identity, met with protests from radical feminists including LAZ reloaded in 2023.)²⁴

- c) and a law to support survivors of gender-based violence²⁵.
- d) The cause of violence against so-called "cis" women, transgender, non-binary and intersex people have common roots based on misogyny and gender role stereotypes. Therefore, strengthening the rights of transgender, non-binary and intersex people, which eliminates harmful gender role stereotypes, also benefits women and girls.

(Note: This assumption completely fails to recognize the sex-based interests and needs of women and can only be described as ideologically driven. R.A.'s arguments regarding violence by trans-identified men towards women - see A.I.2, p. 2, and I.3, p. 3f. are not addressed).

- e) Violence against transgender, intersex and non-binary people has increased²⁶.

(Note: It would be interesting to list and compare the increase in violence against women (e.g., femicides); what about the increase in violence by trans identified men against young lesbians, for example? cf. R.A. I.2, p. 2. Unfortunately, there are no figures on this).

IV. Child welfare

9. The best interests of the child are protected by the SBGG.

- a) The suicide rates of gender dysphoric children are alarming.

(Note: This is scientifically controversial, see Deutsches Ärzteblatt, 2022; 119(48): When puberty is stopped²⁷).

²⁴ Brussels, 31 October 2022 (OR. en) 14277/22 LIMITE JUR 695 JAI 1401 COPEN 372 FREMP 227 OPINION OF THE LEGAL SERVICE¹ From: Legal Service To: COPEN Subject: Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence □ Legal basis - Scope of Article 83 TFEU □ Rules for specific victims - Compatibility with the principle of non-discrimination, <https://data.consilium.europa.eu/doc/document/ST-14277-2022-INIT/en/pdf>

²⁵ This probably refers to the draft law on the protection against violence, <https://netzpolitik.org/2024/gewalthilfegesetz-das-plant-die-ampel-zum-schutz-vor-geschlechtsspezifischer-gewalt/>

²⁶ Politically Motivated Crime Report, 2022: 417, https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/nachrichten/2023/05/pmk2022-factsheets.pdf?__blob=publicationFile&v=5 EU Agency for Fundamental Rights on LGBTIQ equality: Increasing number of victims of hate crime; for figures see <https://fra.europa.eu/en/publication/2024/lgbtiq-crossroads-progress-and-challenges>

²⁷ <https://www.aerzteblatt.de/archiv/228699/Transition-bei-Genderdysphorie-Wenn-die-Pubertas-gestoppt-wird>

- b) The German Ethics Council and the Child Protection Association would advocate support for children's gender identity (the latter, an umbrella organization with more than 50,000 members, also supports the SBGG).

(Note: The Association "trans-teens-sorgeberechtigt" (trans-teens-care-authorized), which has been educating the public about the dangers of transgender ideology for years, is not mentioned.)²⁸

- c) The PMG also points out that children aged five(!) and over must be present at the registry office if their gender entry is changed by their legal guardians. Furthermore, the family courts, which may replace the consent of the parents, are obliged to act in the best interests of the child. In addition, the declaration of the young person before the registry office or the custodian must also contain information about previous counselling (by a psychologist or public or independent child and youth welfare organizations). Otherwise, the SBGG only regulates the change of the legal gender entry, which can be changed again at any time.

(Note: These "arguments" in no way take into account the differentiated argumentation of R.A., e.g. the connection between social and medical transition, the ability of children to give consent, the lack of safeguards for children under 14, see A.I.6 above, the best interests of the child and the child's right to identity, see Annex 6. and 7.)

Conclusion: Questions 1 to 6 of the Special Rapporteur to the United Nations, Ms. Reem Alsalem, were not answered.

There are no differences in interests between women/girls and trans-identified men for Ms. Baerbock and the Federal Government. Single sex spaces for women and girls are therefore irrelevant. According to the PMG, strengthening the rights of trans-identified persons also benefits women and girls, as the cause of discrimination against both groups of people is rooted in patriarchy.

According to this logic, violence by trans-identified men against women does not exist. On the contrary: the former are increasingly victims of violence. Their potential perpetration as men is not addressed.

The rights of girls to informed consent, especially at the critical developmental stage of puberty, and the connection between social and medical transition are completely ignored.

Here, **facts stand against ideology.**

Berlin, 03 September 2024

LAZ reloaded e.V.

Gunda Schumann ©

²⁸ <https://transteens-sorge-berechtigt.net/>

Mandate of the Special Rapporteur on violence against women and girls, its causes and consequences

Ref.: AL DEU 4/2024
(Please use this reference in your reply)

13 June 2024

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on violence against women and girls, its causes and consequences, pursuant to Human Rights Council resolution 50/7.

In this connection, I would like to bring to the attention of your Excellency's Government the information and reports I have received regarding potential violations of the human rights of women and girls in the Federal Republic of Germany which may result from the enactment of the Gender Self-Determination Act ("Gesetz über die Selbstbestimmung in Bezug auf den Geschlechtseintrag und zur Änderung weiterer Vorschriften").

According to the information received:

The Gender Self-Determination Act ("Gesetz über die Selbstbestimmung in Bezug auf den Geschlechtseintrag und zur Änderung weiterer Vorschriften") was adopted by the Parliament on 12 April 2024, and is expected to come into effect in November 2024. This law introduces significant changes to existing regulations regarding the legal gender recognition of individuals identifying as transgender.

This legislative initiative was widely contested by women organizations and activists, with a number of them highlighting the risks involved in implementing such changes without appropriate requirements or safeguards. In particular, a number of civil society organizations and advocates representing women victims of male violence have highlighted the increased risks of violence that the law could present once it comes into force.

The term "Geschlecht" in the Gender Self-Determination Act is understood to refer to both sex and gender, as German law does not make a distinction between them and uses the same word to denote both. This lack of distinction complicates the implementation of a sex- and gender- sensitive approach to applying the legislation, as the two terms pertain to distinct aspects with different implications for the rights of individuals. The adoption of the Gender Self-Determination Act will result in the following changes in German legislation:

Her Excellency
Ms. Annalena Baerbock
Federal Minister for Foreign Affairs

- A. Individuals in Germany will be able to delete or change their sex/gender and first names based on self-identification, i.e., by submitting a declaration (“Erklärung mit Eigenversicherung”) at the registry office. Indeed, the only conditions required are: (i) that the chosen option “best corresponds to their gender identity”, and (ii) that the person requesting it understands the implications of the change.
- B. Consequently, the requirements for obtaining recognition of a sex/gender other than that observed at birth, as stipulated in previous legislation, notably the 1980 Transsexuals Law (“Transsexuellengesetz”), have been replaced. In particular, this law provided that anyone wishing to have their legal sex/gender changed was to obtain a judicial decision by a court, and two supporting expert opinions.
- C. Regarding children, the Gender Self-Determination Act stipulates that for those under 14 years old, the person with custody of the minor may make the declaration to change sex/gender; for those over 14 years old, the minor themselves can make the declaration with the consent of their guardian, or if the guardian does not agree, with authorization from a family court judge.
- D. Concerning the effects of the sex/gender change, the law provides that:
- For laws that have quotas pertaining to sex/gender (such as in employment), the sex/gender registered in public records will apply.
 - Regarding access to facilities and other spaces, “the freedom of contract and the householder's rights of the respective owner or possessor, as well as the right of legal entities to regulate their affairs by statute, remain unaffected.”
 - Regarding the change of sex/gender in identity documents, driver's licenses, credit cards, once the sex/gender entry in public records has been made, the applicant can request that this entry be changed in all documents containing a sex/gender entry.
 - Regarding persons deprived of liberty, it establishes that this law will not regulate the matter; rather, subsequent regulations will do so.
- E. The Gender Self-Determination Act establishes a ban on disclosure, according to which “[I]f the gender entry and first names of a person have been changed ... the previously entered gender entry and first names may not be disclosed or investigated without the consent of the person.” The disclosure or investigation of the previously entered sex/gender in public records will be subject to pecuniary sanctions.

I am concerned that the Gender Self-Determination Act, as it stands falls short of a number of human rights obligations that your Excellency's Government has, in particular towards all women and girls.

Right to be free from discrimination and violence

Trans persons are entitled to live a life that is free from discrimination, harassment and to have their human rights safeguarded. They are also entitled to differentiated and equal services that recognize their specific experiences and needs. According to established international and regional norms, States are under obligation to provide access to gender recognition in a manner consistent with the rights to freedom from discrimination, equal protection before the law, privacy, identity, and freedom of expression. According to the Office of the High Commissioner for Human Rights, the lack of legal recognition of their gender identity can contribute to reinforcing and perpetuating discriminatory attitudes towards transgender people, including denial of their identity.¹ In this regard, this mandate has recognized the importance of carefully addressing the processes of identification for transgender individuals and commends Germany for seeking to address concerns expressed by civil society regarding the current regulations, such as the existence of multiple procedures for changing sex/gender. However, I consider that, the Gender Self-Determination Act poses significant human rights challenges whose implications, particularly for women and girls, must be addressed by the State.

Risks of concrete violence against women, including further sex and gender-based violence against them as well as associated trauma

The Committee on the Elimination of Discrimination Against Women (2017) (hereafter the CEDAW Committee), in its general recommendation 35 on gender-based violence against women, has highlighted that discrimination against women is inextricably linked to other factors that affected their lives, that may include ethnicity, race, colour, political opinion, disability, migratory status, as well as gender identity and sexual orientation.² The CEDAW Committee also indicates that States have an obligation, in the adoption of measures to address gender-based violence against women, to take into consideration the diversity of women and the risks of intersecting forms of discrimination.³ My mandate has long recognized that women experience discrimination and violence differently and on intersecting grounds. This includes transgender women who also face disproportionate violence in several countries around the world specific to their sexual orientation and gender identity. This has been well documented by my mandate and other human rights mechanisms.

As Your Excellency can verify in the Annex attached to this communication, international human rights law has established a non-derogable obligation for States to prevent discrimination and violence based on sex, to address the

¹ [Office of the High Commissioner for Human Rights, Written submission in response to request for an advisory opinion by the State of Costa Rica to the Inter-American Court on Human Rights, May 2016.](#)

² CEDAW/C/GC/35, para. 12.

³ CEDAW/C/GC/35, para. 23.

particularities arising from biological differences, and in any case, to ensure that women live a life free from all forms of violence.

The Gender Self-Determination Act appears to fail to take into adequate consideration the specific needs of women and girls in all their diversity, particularly those at risk of male violence and those who have experienced male violence, as it does not provide for safeguarding measures to ensure that the procedure is not, as far as can be reasonably assured, abused by sexual predators and other perpetrators of violence.

The potential risks that the concealment of the change of sex/gender was highlighted by the Bundestag's Committee on Internal Affairs on 17 May 2024. The Committee had expressed its concern that the Gender Self-Determination Act does not require the registration authorities to notify the security authorities about the change in sex/gender of the concerned individual stating that it "enables identity concealment for people who may want to exploit the law for dishonest reasons". It further noted that it may result in no information being transmitted about persons with changed gender and/or name as part of the statutory background check under the Security Check Act, though this information is stored under the original personal data.⁴

Furthermore, I have received concerning reports of alleged cases of sexual violence perpetrated by individuals who claim to self-identify as transgender or non-binary in Germany. In one case, a woman, [REDACTED], recounted the sexual violence she reportedly experienced at the hands of a male individual who reportedly identifies as non-binary. In another testimony submitted to this mandate, it was highlighted how young lesbian women are being pressured into sexual relationships with individuals born male who identify as women. While these cases occurred under the current legislation (Transsexual Act) and even with complementary provisions in the penal and criminal codes, they reportedly demonstrate how legal gender recognition on the basis of self-identification may be instrumentalized by sexual predators and those that have a previous history of violence against women and children to gain access to their victims.

It is important to note that emphasis on safeguarding and risk management protocols does not stem from a belief that transgender people pose a threat. Rather, it is based on empirical evidence showing that the majority of sex offenders are male, and that persistent sex offenders will go to great lengths to gain access to those they wish to abuse. One way they can do this is by abusing the process to access single-sex spaces or to take up roles which are normally reserved to women for safeguarding reasons.

These acts of violence that are already occurring may be intensified with the entry into force of the Gender Self-Determination Act. Under this Act, the process of changing the sex/gender entry in the civil registry, in addition to being expedited and based solely on the applicant's declaration, enables individuals who request it to have their personal documents modified with this new information.

⁴ Federal Council 195/25.

Undermining single sex spaces for females

Reportedly, the law imposes pecuniary sanctions on anyone who discloses or investigates the previous sex/gender entry of individuals who have legally changed their sex/gender under this new process. When these provisions are considered together, significant risks of abuse of this procedure become apparent, especially because it endangers the single-sex spaces designed to safeguard women's and girls' rights.

These provisions reportedly put the viability of single-sex spaces at risk. As noted in the annex, there are a number of international legal norms that underscore the importance of having separate facilities for men and women based on sex, particularly in contexts involving deprivation of liberty. While the Gender Self-Determination Act states that it does not regulate matters concerning detention facilities, it also currently does not provide any express safeguards to prevent sexual predators from potentially exploiting the law to gain access (for example, as inmates or staff) to female prison facilities.

Although the Gender Self-Determination Act states that regarding access to facilities and rooms, the freedom of contract and the householder's rights of the respective owner or possessor will be respected, the law does not account for certain specific issues arising from the regulation. First, the law does not specify the regulation for facilities and rooms in public institutions such as schools, medical centers, universities, and recreation centers, among others. Consequently, it could be understood that these institutions would simply endorse the sex/gender established in the civil registry, allowing any person who identifies as a woman (regardless of their sex) to access spaces designated exclusively for women and girls, such as bathrooms or changing rooms. Secondly, in private institutions, although the law establishes that the rules deemed appropriate by those responsible for them can be established, if the manager or owner of such institutions wished to set rules for single-sex spaces based on the biological sex, this will be practically impossible and could even lead to sanctions. In fact, this will be practically impossible because under the new law individuals can obtain, based on the change of their legal sex/gender in the civil registry, the modification of all documents that could identify them otherwise. Those who insist on separate spaces for individuals based on biological sex may also incur disclosure or investigation-related sanctions, as provided for under the new law, for inquiring about the history of the sex/gender entries of an individual wishing to benefit from the space or service without their consent, or more simply for exercising their freedom of expression. While in principle it can be waived if credible legal or public interest, it is not clear how such an exception can be invoked on individual cases as the need arises and in a timely manner without incurring a criminal responsibility. Service providers who may see a legitimate need to ask for the history of sex/gender entries of a person may therefore fear being accused of unlawful violation of privacy regulations.

According to information received, women have already suffered forms of violence under the current sex/gender change law (Transsexual Act), which

could be aggravated with the entry into force of the Gender Self-Determination Act. The women who submitted their testimonies to this mandate have reported how, in public and private spaces designated exclusively for women, they have encountered the presence of individuals who were born male, such as in bathrooms. One woman, [REDACTED], mentioned facing this situation in the bathroom of the gym she regularly attends, feeling uncomfortable and having her privacy violated. When she asked the staff, they indicated that the person identified as female. This case illustrates how the loss of privacy extends even to non-public spaces, such as private establishments, including gyms. It thus raises the question of whether, under the Gender Self-Determination Act, this woman could have been sanctioned for “investigating” or “disclosing” the person's biological sex.

Similarly, three women who were reportedly victims of sexual assault and other forms of sexual violence because they are female, have described to this mandate how the risk of being exposed in the same space as individuals born male, irrespective of how they may identify, affects their mental health, leading them to self-exclude from social life if they are not sure that the spaces will be exclusively for females.

The prohibition on inquiring about the sex of a person seeking the services of a single sex space under the Gender Self-Determination Act could negatively impact women and girls' sense of security, lead them to self-exclude from these spaces out of fear of inquiring about the sex of the attendant, and ultimately may subject them to state sanctions if they choose to do so if they cannot demonstrate credible legal and public interest in a timely manner.

The existence of safe spaces for women who are victims of sexual and gender-based violence, such as shelters, has traditionally been an effective preventive measure against re-victimization. Therefore, the negative effects that mandatory sharing of highly private spaces like bathrooms and changing rooms with individuals born male, irrespective of how they may identify, can have on victims of these violence are significant. According to the information received, the Gender Self-Determination Act contains no safeguards for women who are victims of sexual and gender-based violence and who may be re-traumatized if forced to share spaces with males. On the contrary, the law includes a disclosure ban that categorically as a general rule prohibits these women from inquiring about the previous sex/gender entries and first name of individuals in these private spaces without their consent.

Preventing further trauma for victims of violence may be a legitimate justification for providing single-sex services. Avoiding re-traumatization and re-victimization because of patriarchal male violence against women, is essential for allowing survivors/victims to heal and live their lives to their fullest potential.

According to international human rights law, States have an obligation to guarantee nondiscrimination in the enjoyment of human rights. However, differential treatment on prohibited grounds, including on the grounds of sex and gender identity, may not be discriminatory if such differential treatment is

based on reasonable and objective criteria, pursues a legitimate aim, and if its effects are appropriate and proportional to the legitimate aim pursued, being the least intrusive option among those that might achieve the desired result.⁵ For this reason, it is vital that Germany provide safeguards and single-sex services, especially in relation to women who have been victims of sexual and gender-based violence.

Lack of trauma-informed approach for women and girls who are victims/survivors of violence

The safety and security of all persons must be protected by the law. This includes protection from re-victimization, traumatization and other types of violence. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has highlighted that in addition to physical trauma, the mental pain and suffering inflicted on victims of rape and other forms of sexual violence is often exacerbated and prolonged due, inter alia, to subsequent stigmatization and isolation. This would also include women victims and survivors of gender-based violence, including transwomen.⁶ It is imperative therefore that victims of gender-based violence, including those that are born female, are provided with a trauma informed response to their needs based on their sex and that this is reflected in the services made available to them.

Such services must also take an intersectional approach, recognizing the unique experiences of victims of violence and the ways in which difference and disadvantage may hinder access to support and safety. This can include the provision of specialist services for victims of violence based on a number of grounds, including their sex.

Similarly, States are under an obligation under international human rights law to have judicial processes that prevent stigmatization and re-victimization, especially in cases of sexual and gender-based violence.⁷ In the same vein, the importance of protocols that prevent the use of stereotypes that blame the victim or discourage them from reporting due to fear of being re-victimized has been emphasized.

According to information received from two women that have reportedly been victims of sexual and gender-based violence by males that identify as non-binary or transgender and that have insisted on specific needs as victims that are born female, both women have been criticized for speaking about their experiences publicly. They have had their testimonies dismissed and labelled as simply transphobic. Additionally, there is no information on any investigations being conducted by authorities regarding these or other cases, nor are there measures in place to prevent the re-victimization of women who have experienced sexual violence by allowing them to have access to female only services and spaces.

⁵ CCPR General Comment No. 18 (1989) on non-discrimination and E/C.12/GC/20.

⁶ A/HRC/7/13, para. 34 and A/HRC/3/157, para. 51.

⁷ CEDAW/C/GC/33.

Obligation to collect disaggregate data, including based on sex

The CEDAW Committee's general recommendation No. 28 makes it clear that in complying with their obligations to eliminate discrimination against women under article 2 of CEDAW, State parties should "provide for mechanisms that collect relevant sex-disaggregated data, enable effective monitoring, facilitate continuing evaluation and allow for the revision or supplementation of existing measures and the identification of any new measures that may be appropriate."

In this regard, States should keep updated and reliable data on gender-based violence and sexual violence, including information on the sex of victims and perpetrators and the underlying causes. This data is particularly crucial for correctly classifying sex and gender-based crimes against women, which are often crimes predominantly perpetrated by males where the victims are predominantly females. However, the Gender Self-Determination Act fails to clarify how the lack of reliable records on individuals' biological sex and the impact that the lack of such data will have on the categorization of crimes committed against women and girls will be addressed.

Negative impact on women's and girls' highest standards of mental and physical health

According to information received from one woman detransitioner, [REDACTED], she did not receive adequate information about the process. In her particular case, she reported having undergone hormonal therapy and double mastectomy without fully understanding the short term and long-term implications and consequences for her health and physical well-being. Given that as a result of the amendments introduced to the German legislation through the Gender Self-Determination Act, therapeutic accompaniment for sex/gender change will be no longer required, it remains unclear how the law will reasonably ensure that individuals sufficiently understand and are consulted the effects of the change.

Moreover, given that the Gender Self-Determination Act allows for the change of sex/gender for children, it is crucial to ensure that these minors, as well as their families, fully understand the effects (some of which are irreversible) that such a change will have on their lives, physical and mental health. The consequences of medical transitioning on the mental and physical health of children, including girls are significant and should not be underplayed. As noted by the Cass Review, rapidly putting girls seeking gender therapy on permanent gender transition pathways that usually begins with puberty blockers could cause temporary or permanent disruption to brain maturation. As the Cass Review pointed out, children, including girls seeking gender therapy are entitled to comprehensive support that includes addressing the root causes of their distress, and that considers the high rates of co-existing neurodiversity and mental health issues.⁸ A new study on children with gender dysphoria (GD) in Germany published in 2024, reached similar conclusions as the Cass report. It established that "there was no clear evidence for the specific and clearly

⁸ <https://www.ohchr.org/en/statements/2024/04/uk-implementation-cass-report-key-protecting-girls-serious-harm-says-un-expert>

beneficial effects of cross sex hormones (CSH) in minors with gender dysphoria. It concluded that the available evidence on the use of puberty blockers and CSH in minors with GD is very limited and based on only a few studies with small numbers, and these studies have problematic methodology and quality and that psychotherapeutic interventions to address and reduce the experienced burden can become relevant in children and adolescents with GD. It states that PB and/or CSH should be made on an individual case-by-case basis and after a complete and thorough mental health assessment and carefully executed individual risk-benefit evaluation.⁹

In accordance with the observations made by the Committee on the Rights of the Child, when assessing the ability of boys and girls to consent, their maturity and age should be taken into consideration. Furthermore, the best interest of children must be upheld and always respected.¹⁰ An approach that centers best interest requires therefore ensuring that the child has access to full information and mental health assessment and support given the lasting and serious consequences of taking PBs or CSHs to a child.

Reportedly, provisions of the Gender Self-Determination Act would allow children aged 14 and older to consent to a legal sex/gender recognition, even against the will of their parents, if approved by a family court. This possibility presents challenges in terms of safeguarding the best interests of the child, as well as the responsibilities and rights of parents in securing these interests. These rights and guarantees could be nullified with the enactment of this legislation.

Furthermore, although the Gender Self-Determination Act explicitly states that it does not regulate medical transitions, the relationship between social transition (which involves changes in public records) and medical transition is undeniable.¹¹ Therefore, it will be essential to consider the seriousness with which information is provided and ensure understanding of the effects these treatments have on the physical and mental health of individuals undergoing transition, especially women and girls. This is also crucial for guaranteeing their right to provide full and informed consent.

Information on the lack of safeguards for the best interests of the child, particularly concerning girls

According to information received, the Gender Self-Determination Act regulates the modification of gender/sex and name on public registry for girls and boys as follows: (i) for those over 14 years old, the request can be made by themselves with the authorization of their parents or family judges; (ii) for children between 5 and 14 years old, the request can be made by their legal

⁹ [Beyond NICE: Aktualisierte systematische Übersicht zur Evidenzlage der Pubertätsblockade und Hormongabe bei Minderjährigen mit Geschlechtsdysphorie](#) Florian D. Zepf, Laura König, Anna Kaiser, Carolin Ligges, Marc Ligges, Veit Roessner, Tobias Banaschewski, and Martin Holtmann *Zeitschrift für Kinder- und Jugendpsychiatrie und Psychotherapie* 2024 52:3, 167-187, <https://econtent.hogrefe.com/doi/abs/10.1024/1422-4917/a000972>.

¹⁰ CRC/C/GC/15 and CRC/C/GC/12.

¹¹ Doctor Cass. The Independent Review of Gender Identity Services for Children and Young People. “However, those who had socially transitioned at an earlier age and/or prior to being seen in clinic were more likely to proceed to a medical pathway”.

guardian, with the child's consent; and (iii) for children under 5 years old, the legal guardian will request this change. This change must be made at the registration office in the presence of the child.

I am concerned that this law poses significant risks in terms of child protection. The law does not provide safeguards to prevent forced or coerced gender transitions at the hands of parents or other caregivers, particularly given the power imbalance between children and adults. According to available research, girls who are attracted to the same sex; may be on the autism spectrum; or may have depression may also be more susceptible to societal influence and pressures that may lead many to believe that the answer to their struggles and suffering, is to assume a gender identity other than the sex/gender that was observed for them at birth (female).

Based on the information made available to this mandate, the Gender Self-Determination Act lacks safeguards to prevent such situations, thereby exposing girls to further risks, inadequate safeguards, and insufficient guarantees to ensure that they have access to the highest standards of mental and physical health. When decisions regarding sex/gender recognition are taken, they may be accompanied by actions — including medical, hormonal, and surgical interventions, as well as social and cultural pressures — and can profoundly affect the health of both boys and girls. The fact that a child who has assumed a different gender identity can have that new sex/gender recorded on their medical records means their biological sex will be hidden to health and medical staff with whom they may engage. Such a situation may lead to the provision of services that may not sufficiently meet the health-care needs of the child, including as patients, and thus lead to serious health consequences.

Taken together, such actions may also violate their right to privacy, their right to preserve their identity, and the right of the child to freedom of thought, conscience, and religion, all of which are guaranteed under international human rights law. Above all, they may violate the best interest of the child, which should guide all decisions made by States that may affect the rights of children, including girls.

Information on the risks to freedom of expression, religious freedom, and the prevention of violence due to the ban on disclosure

According to the information received, the Gender Self-Determination Act imposes fines on individuals who disclose or investigate the previous gender/sex entries of those who have made modifications in their public records. This means that public disclosure or investigation of a person's biological sex will be subject to penalties under this new law. Information received by this mandate indicates that this information can only be disclosed or investigated for special reasons of public interest or if there is a credible legal interest.

This provision could have serious impacts on the rights of women and girls. Firstly, there is a considerable segment of society that is critical of gender identity beliefs. The law does not clarify whether referring to a person by pronouns corresponding to their biological sex, or simply mentioning this

biological sex in public discourse, could result in sanctions. For instance, it remains unclear whether stating in a public forum or on a social media platform that a person born male is occupying spaces designated for females according to quota laws, or participating in female sports categories, could lead to fines under the new legislation. This could substantially impact freedom of opinion and expression, as well as freedom of thought, conscience and religion, including for individuals of specific faiths.

Moreover, regarding the best interests of the child, according to information available on the German Government's website,¹² families of individuals identifying as transgender may refer to their previous data (name, gender/sex) only in private.

Without intending to prejudge the veracity of these allegations, I express my deep concern regarding the reported negative effects that this new legislation could have on the rights of women and girls in Germany. Also, I would like to remind the Government of Your Excellency that, in accordance with its obligations under the Convention on the Elimination of All Forms of Discrimination Against Women, States Parties shall be held accountable if they do not take all appropriate measures to prevent, investigate, prosecute, punish, and offer reparation for acts or omissions by state and non-state actors that lead to gender-based violence against women.

In relation to the aforementioned allegations, please find attached the Annex of references to international human rights law summarizing the relevant international instruments and principles. It is my responsibility, in accordance with the mandate granted to me by the Human Rights Council, to clarify the allegations brought to my attention and to effectively respond to the information received. In this regard, I would greatly appreciate your cooperation and observations on the following matters:

1. Please provide any additional information or comments regarding the aforementioned allegations.
2. Please provide information on the safeguards adopted by your Government to prevent human rights violations against women and children, including girls, that may result from the implementation of the Gender Self-Determination Act.
3. Please provide information about how your Government intends to ensure that there is an updated and reliable registry of gender-based violence, that accurately relays disaggregated information on the perpetrators, the victim and the relationship between them.
4. Please elaborate on the measures your Government is taking to prevent the re-victimization of women and girls victims of sexual and gender-based violence, which is perpetrated primarily by males.

¹² <https://www.bmfsfj.de/bmfsfj/themen/gleichstellung/queerpolitik-und-geschlechtliche-vielfalt/gesetz-ueber-die-selbstbestimmung-in-bezug-auf-den-geschlechtseintrag-sbgg--199332#:~:text=Mit%20dem%20Gesetz%20%C3%BCber%20die,2023%20einen%20entsprechenden%20Gesetzesentwurf%20vorgelegt>

5. Please inform about the measures adopted to ensure the best interests of children, including girls, and to guarantee their right to the highest standards of physical and mental health as well as freedom from violence and coercion of any kind.
6. Please inform about the measures adopted to guarantee freedom of expression in the context of the implementation of the ban on disclosure/investigation.

I would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting your response, I would like to urge your Excellency's Government to ensure the immediate and effective response to any report of women's and girls' rights violations related to the Gender Self-Determination Act.

I may publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that I have been in contact with your Excellency's Government to clarify the issue/s in question.

Please accept, Excellency, the assurances of my highest consideration.

Reem Alsalem

Special Rapporteur on violence against women and girls, its causes and consequences

Annex

Reference to international human rights law

I would like to draw the Government's attention to the international standards and norms applicable to them.

First, it is worth noting that in accordance with the Convention on the Elimination of All Forms of Discrimination against Women, ratified by Germany on 10 April 1985, States have the obligation to prevent discrimination based on sex. This is established in article 1 of CEDAW:

“For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction *made on the basis of sex* [emphasis added] which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

Similarly, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Germany on 17 December 1973, establish in their second article the necessity of guaranteeing rights “without distinction of any kind, such as race, colour, *sex* [emphasis added], language, religion, political or other opinion, national or social origin, property, birth or other status.”

It is important to highlight that the resolution establishing the mandate of the Special Rapporteur on violence against women, its causes and consequences 30 years ago stated in its preambular section that the Commission on Human Rights was:

“Reaffirming that *discrimination on the basis of sex* [emphasis added] is contrary to the Charter of the United Nations, the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women and other international human rights instruments, and that its elimination is an integral part of efforts towards the elimination of violence against women.”

The Committee on the Elimination of Discrimination against Women (CEDAW Committee) noted in its general recommendation No. 25 that:

“It is not enough to guarantee women treatment that is identical to that of men. Rather, *biological* [emphasis added] as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences.”

These sources of international law have been consistent in establishing a prohibition of discrimination based on sex. However, regarding the prohibition of

discrimination based on gender, it is worth noting that CEDAW does not explicitly refer to the term “gender”. In fact, the only binding international legal instrument that defines said term is the Rome Statute of the International Criminal Court, of which Germany has been a part since 11 December 2000. In its article 7.3, the Statute states:

“For the purpose of this Statute, it is understood that the term “gender” refers to the two sexes, male and female, within the context of society. The term “gender” does not indicate any meaning different from the above.”

Furthermore, the CEDAW Committee, in its general recommendation No. 28, made a clear distinction between the terms “sex” and “gender”:

“The term “sex” here refers to biological differences between men and women. The term “gender” refers to socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women.”

In the same general recommendation No. 28, the Committee stated the below:

“The objective of the Convention is the elimination of all forms of discrimination against women on *the basis of sex* [emphasis added]. It guarantees women the equal recognition, enjoyment and exercise of all human rights and fundamental freedoms in the political, economic, social, cultural, civil, domestic or any other field, irrespective of their marital status, and on a basis of equality with men.”

Furthermore, it is crucial to note the definition of gender-based violence against women as outlined by the CEDAW Committee in its general recommendation No. 19 (1992), subsequently updated by general recommendation No. 35 (2017). According to this definition:

“Gender-based violence against women constitutes discrimination against women under article 1 and therefore engages all obligations under the Convention. Article 2 provides that the overarching obligation of States parties is to pursue by all appropriate means and without delay a policy of eliminating discrimination against women, including gender-based violence against women. That is an obligation of an immediate nature; delays cannot be justified on any grounds, including economic, cultural or religious grounds. In general recommendation No. 19, it is indicated that, with regard to gender-based violence against women, the obligation comprises two aspects of State responsibility for such violence, that which results from the acts or omissions of both the State party or its actors, on the one hand, and non-State actors, on the other.”

As mentioned previously, article 1 of CEDAW refers to violence based on sex. Concerning the necessity of violence-free justice systems, the CEDAW Committee’s general recommendation No. 33 emphasizes the imperative of justice mechanisms devoid of stereotypes:

“Stereotyping and gender bias in the justice system have far-reaching consequences for women’s full enjoyment of their human rights. They impede women’s access to justice in all areas of law and may have a particularly negative impact on women victims and survivors of violence. Stereotyping distorts perceptions and results in decisions based on preconceived beliefs and myths rather than relevant facts. Often, judges adopt rigid standards about what they consider to be appropriate behaviour for women and penalize those who do not conform to those stereotypes. Stereotyping also affects the credibility given to women’s voices, arguments and testimony as parties and witnesses. Such stereotyping can cause judges to misinterpret or misapply laws. This has far-reaching consequences, for example, in criminal law, where it results in perpetrators not being held legally accountable for violations of women’s rights, thereby upholding a culture of impunity. In all areas of law, stereotyping compromises the impartiality and integrity of the justice system, which can, in turn, lead to miscarriages of justice, including the revictimization of complainants.”

Also, the Committee’s general recommendation No. 28 makes it clear that in complying with their obligations to eliminate discrimination against women under article 2 of CEDAW, State parties should “provide for mechanisms that collect relevant sex-disaggregated data, enable effective monitoring, facilitate continuing evaluation and allow for the revision or supplementation of existing measures and the identification of any new measures that may be appropriate.”

It is important to inform Your Excellency that the duty to prevent violence against women applies especially in the context of deprivation of liberty. According to the UN Working Group on Discrimination against Women, the percentage of imprisoned women who have suffered abuse in childhood is twice that of men (A/HRC/41/33). Indeed, in the context of deprivation of liberty, there is a recognized need to protect prison spaces designated exclusively for women. Threats and a sense of collective insecurity or violation of female inmates’ privacy in the presence of individuals of the opposite sex in prison spaces have been acknowledged by the Special Rapporteur on Torture as forms of ill-treatment (A/HRC/31/57).

This recognition of the need for spaces designated exclusively for women during deprivation of liberty is also established in the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), which state in article 11:

“The different categories of prisoners shall be kept in separate institutions or parts of institutions, *taking account of their sex* [emphasis added], age, criminal record, the legal reason for their detention and the necessities of their treatment; thus: (a) *Men and women* [emphasis added] shall so far as possible be detained in separate institutions; in an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separate”

Similarly, see the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules). These rules establish the special needs of women during deprivation of liberty.

Furthermore, I bring to Your Excellency's attention that women who have been victims of sexual violence require attention from the State to prevent their re-victimization. Indeed, CEDAW has called on States to adopt gender-sensitive procedures to avoid re-victimization and stigmatization in the context of deprivation of liberty (CEDAW/C/GC/30). Additionally, regarding sex-based violence, States parties to the Convention are obliged to focus on preventing conflicts and all forms of violence. This prevention includes effective early warning systems to collect and analyze publicly available information, preventive diplomacy and mediation, and prevention initiatives addressing the root causes of conflicts - that is, a monitoring system (CEDAW/C/GC/30).

Regarding medical procedures, I would like to draw your attention to the significance of informed consent in decision-making concerning the sexual and reproductive health of women and girls. In this regard, the CEDAW Committee has repeatedly emphasized that “all health services [...] be consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice.” Furthermore, it has pointed out that States should ensure that decisions made by women and girls regarding their sexual and reproductive health are not influenced by third parties. Also, the CEDAW Committee has clarified that mechanisms should be established to ensure that women and girls have access to evidence-based and unbiased information, thereby safeguarding their autonomy (Guaranteeing sexual and reproductive health and rights for all women, in particular women with disabilities).

On another note, I draw the attention of Your Excellency's Government to the best interest of the child principle, enshrined in the Convention on the Rights of the Child, ratified by Germany on 6 March 1992. This principle is contained in article 3 of the Convention, which states that “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

The Committee on the Rights of the Child, in its general comment 14 on the right of the child to have his or her best interests taken as a primary consideration, highlighted - regarding its legal nature - that the best interests of the child principle is an umbrella term that encompasses three crucial dimensions. Firstly, it acknowledges that this concept implies a fundamental right of the child, meaning that the child has an intrinsic right for their best interests to be primarily considered whenever a decision affecting them - individually, as a group, or in general - is to be made. Therefore, this right entails a corresponding obligation for States, directly applicable and enforceable against public officials. Secondly, the best interest's principle is a basic and interpretative principle, meaning that when a legal provision can be interpreted in various ways, the interpretation that best serves the child's best interests should be chosen. Lastly, it implies a procedural rule, whereby every decision impacting a child or group of children should involve an assessment of the potential - negative or positive - effects of that decision on the affected child or children. In this regard, according to the Committee, the best interests of the child require procedural safeguards implying that, in justifying a decision, the judge or official must explicitly demonstrate how this concept has been taken into account (CRC/C/GC/14).

Additionally, in accordance with the Convention on the Rights of the Child, particularly article 6, States Parties recognize that every child has an intrinsic right to life and to full development. These rights are intrinsically linked to the right of the child to live free from violence. According to the Committee on the Rights of the Child, “securing and promoting children’s fundamental rights to respect for their human dignity and physical and psychological integrity, through the prevention of all forms of violence, is essential for promoting the full set of child rights in the Convention.”

I would like to highlight to your Excellency’s Government that article 7 of the Convention on the Rights of the Child also recognizes the right of children to identity. The Committee of the Rights of the Child states that the right of the child to preserve his or her identity must be respected and taken into consideration in the assessment of the child's best interests. Furthermore, article 14 stipulates that States Parties shall respect the right of the child to freedom of thought, conscience, and religion. The appreciation of the aforementioned rights, read together with the best interests of the child and the mandate to prevent violence and discrimination against women, lead to the conclusion that States have a reinforced obligation regarding the protection of the human rights of girls and women.



Permanent Mission
of the Federal Republic of Germany
to the Office of the United Nations and
to the other International Organizations
Geneva

Ref.: (please quote when answering): Pol 381.70/13
Note No.: 159/2024

Note Verbale

The Permanent Mission of the Federal Republic of Germany to the Office of the United Nations and to the other International Organizations in Geneva presents its compliments to the Office of the High Commissioner of Human Rights has the honour to refer to the communication sent by the Special Rapporteur on violence against women and girls, its causes and consequences, dated 13 June 2024, Ref.: AL DEU 4/2024.

The Permanent Mission of the Federal Republic of Germany is pleased to transmit herewith Germany's response.

The Permanent Mission of the Federal Republic of Germany to the Office of the United Nations and to the other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner of Human Rights the assurances of its highest consideration.

Geneva, 6 August 2024



Office of the High Commissioner
of Human Rights
Geneva

DATE: 5 August 2024

TO: Beatriz Balbin
Chief
Special Procedures Branch
OHCHR

REF: AL DEU 4/2024

Safeguarding the human rights of all persons living in the Federal Republic of Germany is of utmost importance and a legal obligation the federal government is committed to in all of its legislative decision-making.

The Federal Republic of Germany refutes the allegation that in ensuring the right to self-determination, it “falls short of a number of human rights obligations”. The Act on Self-Determination with Regard to Gender Entry and Amending Other Regulations (henceforth “law on legal gender recognition”) is soundly based on human rights standards.

The main motivation for proposing legislation on legal gender recognition was precisely to safeguard a person’s gender identity in line with the general right of personality based on the German constitution (Article 2 para. 1 in conjunction with Art. 1 para. 1 of the Basic Law, *Grundgesetz*). The conception of this law is furthermore in line with international recommendations and provisions. In 2010 the Council of Europe’s Committee of Ministers Recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity (CM/rec(2010)5) called on member states to “take appropriate measures” to ensure legal gender recognition, including by enabling “the change of name and gender in official documents in a quick, transparent and accessible” manner. This is in line with numerous judgments of the European Court of Human Rights (ECtHR) – in particular with regards to the right to respect for private and family life as enshrined in Article 8 ECHR (see *van Kück v. Germany*, Judgment 12 June 2003, Appl. No. 35968/97, pt. 69; *A.P., Garçon and Nicot v. France*, 6 April 2017, Appl. Nos. 79885/12, 52471/13 and 52596/13; *X. and Y. v. Romania*, 19 January 2021, Appl. nos. 2145/16 and 20607/16; *S.V. v. Italy*, 11 October 2018, Appl. No. 55216/08; *X. v. the former Yugoslav Republic of Macedonia*, 17 January 2019, Appl. No. 29683/16). The ECtHR in its case law has reiterated the necessity of an autonomous decision with regards to the choice of gender in order for a person to be able to live according to their gender identity and in human dignity (*Christine Goodwin v. United Kingdom*, Judgment 11 July 2002, Appl. No. 28957/95, pt. 90). Legal gender recognition procedures should be “fast, transparent and accessible” (*X and Y v. Romania*, Appl. nos. 2145/16 and 20607/16, para. 168).

The new law on legal gender recognition will enable non-binary, intersex and transgender persons to change their birth registries and subsequently identifying documents in line with their gender identity. The law does not make any changes to existing legislation, such as the General Act on Equal Treatment and therefore has no legal implications on the access to single sex spaces. Ensuring that single sex spaces, in particular women’s shelters, are in fact safe has always been a main concern for the government. As in fact, violence perpetrated against women – particularly by cis-men – remains a reality. The Association of Women’s Shelters explicitly [welcomed the new law](#) and voiced its concern over the increasing violence against intersex and transgender persons identifying as female and their particular marginalisation. The Association points out that women in all their diversity should receive shelter from violence. Furthermore, shelters have individual safeguarding procedures in place including risk assessments and protocols. When a woman seeks shelter from violence, the shelter will assess in each individual case if it is the right fit for her and if the shelter offers adequate resources for her multiple protection needs. Granting access depends on a number of factors and is not provided solely on the basis of a person’s gender entry.

The Federal Republic of Germany shares your goal to eliminate gender-based violence. This is a high priority issue for the government, which is why Germany ratified the Council of Europe's Convention on preventing and combating violence against women and domestic violence (henceforth, "Istanbul Convention") on 12 October 2017. The government is currently also working on the "Strategy of the Federal Government to prevent and combat violence against women and domestic violence" and a law on supporting survivors of gender-based violence. The root causes of violence against cis-women and violence against transgender, non-binary and intersex persons based on their gender are the same – they are rooted in misogyny and stereotypical ideas of how persons of a certain gender should act. Therefore, strengthening the rights of transgender, non-binary and intersex persons and thereby eliminating harmful gender stereotypes, a goal of the Istanbul Convention, is beneficial for safeguarding the rights of all women and girls.

The legislative process allowed the law on legal gender recognition to undergo thorough scrutiny - non-governmental organizations were involved at various stages of the legislative procedure. The *Deutscher Frauenrat* (German Women's Council) – the biggest umbrella organization in Germany uniting 60 active women's organisations throughout the country – [voiced its support for](#) the new law on legal gender recognition highlighting its necessity to eliminate structural discrimination against transgender persons. The *Deutsche Frauenrat* warned against the reproduction of mistrust and false stereotypes by associating the law with transgender persons posing a threat or being violent. They also pointed out concern for the hostile discourse around the law. Multiple other associations, basing their assessments on human rights, expressed a positive opinion of the law. These include the [German Institute for Human Rights](#), [Amnesty International](#), the Federal Association of [Women's Support Services and Women's Crisis Helplines](#) and the [German Women's Lawyers Association](#) amongst others.

Transgender, intersex and non-binary persons themselves are predominantly affected by violence. A fact also recognized by the Istanbul Convention. Based on the [Politically Motivated Crime Report](#), it can be assumed that acts of violence due to 'gender diversity' have increased (for 2022, 417 such crimes were officially recorded – a higher level of underreporting is expected). In 2024, a [study](#) by the EU Agency for Fundamental Rights on LGBTIQ equality found that transgender and intersex people face increasing victimization when it comes to hate-motivated violence and discrimination.

The law on legal gender recognition furthermore has the best interests of the child at heart. Children and adolescents, whose gender identity do not conform to their sex assigned at birth, experience enormous psychological stresses and social challenges; the [suicidality rates](#) are [particularly alarming](#) when it comes to transgender children. The [German Ethics Council](#) pointed out that children and adolescents have a constitutionally protected right to live a life corresponding to their own perceived gender identity and to have this right recognised. In its [statement concerning the bill on legal gender recognition](#), the Federal Association for the Protection of Children (*Kinderschutzbund Bundesverband*) – an umbrella organisation with over 50.000 members in Germany – explicitly welcomed the legislation and highlighted the importance of ensuring children could also benefit from the law.

In order to ensure children are supported in their decision-making process, the law on legal gender recognition foresees that legal representatives provide the declaration on behalf of their children until they have reached the age of 14 years. Children above the age of five need to be present at the civil registry office. Above the age of 14, children can provide the declaration on their own with the agreement of their legal representatives. If the legal representatives refuse to agree, family courts may replace the missing consent and authorize the declaration. The family court and the legal guardians are legally bound to only act in the best interests of the child. The declaration before the civil registry's office should also entail the declaration that the child or their legal guardian have received advice. This can refer to advice by psychological specialists or by public or independent providers of child and youth welfare. The law on legal gender recognition solely allows for the administrative procedure of changing a legal gender entry. The change of the legal gender entry of a child is reversible at any time.

We have duly taken note of your statement voiced in your position as an independent expert. We are also closely following developments within the United Nations, where we have perceived numerous calls in support of legislation akin to the German law on legal gender recognition. For example, under the leadership of Argentina, a cross-regional group of 28 states, supported by 66 organisations, [called for legal gender recognition](#), based on self-identification in March 2023. In her [Report](#) on Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law, the UN High Commissioner for Human Rights in 2019 already found that “each person’s self-defined gender identity is integral to their personality” and called out abusive requirements, such as “medical certification, in violation of international human rights standards.” She further suggested the introduction of a “simple administrative process (...) and (to) give minors access to recognition of their gender identity”. Furthermore, the UN Independent Expert on Sexual Orientation and Gender Identity in his [Report](#) on legal recognition of gender identity of July 2018, recommended member states “eliminate abusive requirements as prerequisites for change of name, legal sex or gender” and for procedures to “be based on self-determination by the applicant” and “be based solely on the free and informed consent of the applicant” (UN doc A/73/152p. 23 and 24).