

**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:

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- 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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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

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<sup>1</sup> [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.](#)

<sup>2</sup> CEDAW/C/GC/35, para. 12.

<sup>3</sup> 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.<sup>4</sup>

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.

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<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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.

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

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

<sup>7</sup> 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.<sup>8</sup> 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

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<sup>8</sup> <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.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup> 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

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<sup>9</sup> [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>.

<sup>10</sup> CRC/C/GC/15 and CRC/C/GC/12.

<sup>11</sup> 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,<sup>12</sup> 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.

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<sup>12</sup> <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.