

WDI UK FQT Saturday, 19 October 2024

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, to the German Foreign Minister, Annalena Baerbock, dated 13 June 2024, on the "Gender Self-Determination Act" (SBGG)

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Overview

Reem Alsalem addressed an official letter to the German Foreign Minister on 13 June 2024 regarding SBGG 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. She 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 Ms. Baerbock's attention to Germany's obligations to comply with codified human rights and asks her to answer her questions in detail.

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1. Risks of concrete violence against women, including further sex-based violence against them

According to R.A., the SBGG in no way takes into account the specific needs of 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 the following, R.A. names two female witnesses (anonymous), 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". As to R.A.'s opinion, they prove how "*legal gender recognition*" could be instrumentalized on the basis of self-identification of sexual offenders and it would facilitate access to their victims for those who have already committed violence against women and children in the past.

In R.A.'s opinion, these acts of violence by mostly male sex offenders 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.

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2. Undermining single-sex spaces for females and associated trauma

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. 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.

Private operators who want to maintain single-sex 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 single-sex spaces.

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)" serves as the legal basis for admission or its denial. The problem here is the lack of clarity regarding the legal definition - 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? -. Even if prohibition of disclosure is applicable in this case, the allegedly injured party would still have to prove in court that the "attacking" party had the "intent to harm".

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. 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 pursued. In this specific case, this would mean that in justified cases there may be single-sex spaces for women to which trans-identified men do not have access. That is applicable for safe spaces but also for autonomous spaces for lesbian women.

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

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. 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-based 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 of trans-identified man to single-sex shelters and services.

4. Obligation to collect disaggregate data based on sex

R.A. insists 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. These data are 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.

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5. 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 longer required for gender transition. It 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 for their mental and physical health.

According to the findings of the UN Committee on the Rights of the Child in its General Comment No. 15 (2013), children's ability to give consent must take into account their maturity and age. Furthermore, children's welfare is paramount.

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.

Furthermore, the connection between social and medical transition is irrefutable, even if the legislator explicitly states that the SBGG only regulates social transition.

6. 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.

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7. 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.

Note: As mentioned earlier, it is essential that the biological sex of a transitioned person must not be generally known or known to the addressee, and the disclosure of the biological sex must be made with the intention to cause harm in order to fulfil an administrative offence. The problem here is an ambiguity in the legal definition: does the prohibition of disclosure also apply in the case of an obvious appearance (male facial features, beard, etc.) or not? In any case, the prohibition to name one's biological sex is a severe violation of the freedom of expression.

B. Explanation of and comments on the reply from the Permanent Mission of the Federal Republic of Germany to the Office of the United Nations, Geneva, to the Office of the High Commissioner of Human Rights, Geneva, dated 6 August 2024

The Federal Government rejects R.A.'s allegation that it violates a number of human rights obligations by recognizing the right to "self-determination". Rather, it 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.

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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 Art. 1 and 2 of the Basic Law.

Note: However, the fundamental rights under Articles 1 and 2 of the Basic Law, which also include gender identity, must be balanced by the legislator with other, possibly competing fundamental rights of women, enshrined in Art. 3.2 and 3.3 of the Basic Law. The Federal Government 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.

- b) This recommendation would be 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).

Note: The quoted judgements of the ECHR refer exclusively to the right of transsexuals to change their gender entry. The effects on women's rights have not been the subject of the respective proceedings.

- c) Germany 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. In addition, as to my information from Maria J. Binetti (WDI), Argentina is not involved in that initiative anymore.

- d) Finally, Germany cites the report of the High Commissioner for Human Rights from 2019 and that of the Independent Expert on Sexual Orientation and Gender Identity (SOGI) from 2018, which have advocated for the same goal.

Note: The SOGI expert has been fighting for years not for the recognition of lesbians and gays, but exclusively for trans-identified men.

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II. Legislative procedure/meaning and purpose of the SBGG

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

Note: The NGOs included by the lead ministries of the Federal Government were hand-picked, following the transgender ideology. Although other NGOs were also able to publish their statements on the websites of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and the Federal Ministry of Justice - including LAZ reloaded - they were not taken into account in the formation of political opinion. As a consequence, the effects of the SBGG on women and girls were not at issue.

2. 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, supposedly explicitly welcomed the SBGG, particularly denouncing 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.

3. 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 any adult person to have her/his gender entry in the civil register changed once a year by "self-declaration" without any state control. Furthermore, 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: SBGG helps the trans activists to conquer women's spaces insofar as sex is equated with gender identity. The AGG does allow exceptions to prohibited "discrimination" for the protection of privacy (e.g., of women). But in the event of a legal dispute - in the absence of legal clarification - courts ultimately have to decide whether or not trans-identified men may be excluded from women's spaces for the reasons mentioned in the AGG, regardless of their registered gender.

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

1. 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. [above A.I.1, p. 2, and A.I.2, p. 3], 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.

Note: "Autonomously organized women's shelters are usually non-profit associations and therefore dependent on state support (they are therefore ultimately 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 social media.

2. Germany shares R.A.'s goal of eliminating gender-based violence. That is why...
 - a) ...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 would currently also work 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 in 2023 from radical feminists including LAZ reloaded.

- c) ...and on a bill to support survivors of gender-based violence.

Note: The Bill is called "Violence Assistance Act" (Gewalthilfegesetz). It is conflating sex and gender identity and does not provide single-sex spaces for women in women's shelters. Because of its voluminous area of application (female and male victims), it would require a huge amount of taxpayer's money and will therefore have a little chance to become law.

- d) The cause of violence against so-called "cis" women, transgender, non-binary and intersex people would have common roots based on misogyny and gender role stereotypes. Therefore, strengthening the rights of transgender, non-binary and intersex people, which would eliminate harmful gender role stereotypes, would also benefit 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 above A.I.1, p. 1, and I.2, p. 2] are not addressed.

- e) Violence against transgender, intersex and non-binary people would have increased.

In 2022, there would have been 417(!) politically motivated crimes against these people in Germany.

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? [see R.A. above, I.1, p. 1]. Unfortunately, there are no figures on this. We will take care of it.

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IV. Child welfare

The best interests of the child would be protected by the SBGG.

1. The suicide rates of gender dysphoric children would be alarming.

Note: This is scientifically controversial, see Deutsches Ärzteblatt (German Medical Journal), 2022, 119: When puberty gets stopped.

2. The German Ethics Council and the Child Protection Association would advocate support for children's gender identity.

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

3. The Federal Government also points out that children aged five(!) and over would have to be present at the registry office if their gender entry is going to be changed by their legal guardians. In addition, the declaration of the young person before the registry office or the custodian would also have to contain information about previous counselling. Incidentally, the SBGG would only regulate change of the legal gender entry, which could 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 above A.I.6., p.4], the best interests of the child and the child's right to identity [see Applicable International Human Rights Conventions/Guidelines, 5. and 6., p 4f.].

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Conclusion

For the Federal Government, there are no differences in interests between women/girls and trans-identified men. Single-sex spaces for women including lesbians and girls are therefore irrelevant. According to the Federal Government, strengthening the rights of trans-identified persons also benefit women and girls, as the cause of discrimination against both groups of people is rooted in patriarchy. Following this logic, violence by trans-identified men against women including lesbians and girls does not exist. On the contrary: the former are increasingly victims of violence. Their potential perpetration as men vis-à-vis women as victims is not being 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, **ideology stands against facts.**

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Thank you!

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Member of the Board

International Human Rights Conventions for 1.:

- a) **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**, Article 1.
- b) **International Covenant on Civil and Political Rights (ICCPR)**, Art. 2, and
- c) **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, Art. 2.

International Human Rights Convention/Guidelines/Rules for 2., 3.:

- a) **CEDAW Committee, General Recommendation No. 25** (non-identical treatment of women and men justified under certain conditions; right to sex equality is not subordinate to other rights)
- b) **Rome Statute of the International Criminal Court**, Article 7.3 (gender= two sexes)
- c) **CEDAW Committee General Recommendation No. 28** (difference between sex and gender; right for women including lesbians to exclusively gather in public)
- d) **ICCPR Committee, General Recommendation No. 18: Non-Discrimination** (different treatment between sex and gender identity permitted under certain conditions)
- e) **United Nations Standard Minimum Rules for the Treatment of Prisoners -Mandela Rules-** (women and men to be detained in separate institutions)
- f) **United Nations Bangkok Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders** (special needs of women while they are deprived of their liberty).
- g) **CEDAW Committee General Recommendation No. 30** (prevention of re-victimization and stigmatization of women who have been victims of sexual violence in connection with deprivation of liberty; 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).

International Human Rights Guideline for 4.:

- **CEDAW Committee General Recommendation No. 28** (provide for mechanisms that collect relevant sex-disaggregated data).

International Human Rights Conventions/Guidelines for 5., 6.

- a) **CEDAW Committee (No. re medical procedures not quoted)**
- b) **Convention on the Rights of the Child**, Article 3 (principle of the best interests of the child), Article 6 (right of the child to life and full development and to a life free from violence), Article 7 (the right of the child to preserve his or her identity), and Article 14 (right of the child to freedom of thought, conscience and religion).

- c) **Committee of the Rights of the Child, General Comment No. 12, 14 and 15** (details on the principle of the best interests of the child, e.g., children's ability to give consent must consider their maturity and age).

International Human Rights Guidelines for 7.:

- a) **CEDAW Committee, General Recommendation No. 19 (1992)**, later updated by **General Recommendation No. 35 (2017)** (details on gender-based violence against women by the State and its actors and by non-State actors)
- b) **CEDAW Committee, General Recommendation No. 33** (non-violent justice system free of stereotypes).]