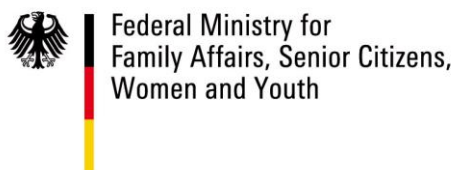


Parallel Report submitted by TransInterQueer e.V.

in response to the 7th and 8th Periodic Report of the
Federal Republic of Germany on the Convention on
the Elimination of All Forms of Discrimination against
Women (CEDAW)



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TransInterQueer e.V. (TriQ) advocates self-determination, depathologization and equality of transgender, intersex, and queer people in Berlin and beyond. TriQ was founded by trans and intersex people in 2006 and works in cooperation with Transgender Europe and the Internationale Vereinigung Intergeschlechtlicher Menschen (IVIM / OII Germany).

The present report, as well as our [List of Issues](#) submitted to the pre-sessional working group in August 2016, was compiled within the context of the project **Trans*Visible** and thus focuses on the situation of trans women / people. As to the implementation of the CEDAW convention in Germany with regard to intersex women/people we recommend reading the alternative report by IVIM/OII Germany.

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Explanation of abbreviations

→CO #	See Concluding Observation # of the CEDAW Committee on the sixth periodic report of Germany (CEDAW/C/DEU/CO/6) as well as the Federal Government’s response according to its combined seventh and eighth periodic report (CEDAW/C/DEU/7-8)
→Art. #	See Article # of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
→Gen.rec. #	See General Recommendation # of the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW/C/GC/#)
>	Term is explained in glossary (p. 7)

1. Violations of Fundamental Rights of Trans Female Refugees (→Gen.rec. 32; →CO 59/60)

For >trans female / transgender refugees in Germany, fundamental rights such as the right to protection from violence (→Gen.rec. 19; →CO 41-46), the right to safe shelter (→Gen.rec. 32 para. 48) and to health (→CO 53/54; →Art. 12) are not guaranteed: In refugee accommodations, >trans women and >gender non-conforming people are subject to an alarming extent of slander, intimidation and physical / sexual violence.¹ Women who are traumatized by such assaults are sometimes simply treated with tranquilizers and left in the same room with the offender. Interpreters reportedly often use derogative terms for the self-description of >trans refugees, sabotage their attempt to claim asylum based on the prosecution of their sexual/gender identity in their home countries (→Gen.rec. 32, para. 16), or reveal their trans identity to other occupants of the refugee accommodations, thus subjecting them to further assaults.

For >trans female refugees who have started hormone therapy in their home countries it is difficult to continue this treatment in Germany (→CO 53/54). In cases where the affected person is (due to traumatization or lack of knowledge of the German health system) unable to articulate the demand for hormones during the initial examination, physicians tend to ignore the obvious need for a continuation of the medical treatment or even actively refuse the prescription of hormones. An uncontrolled discontinuation of a hormone therapy poses a significant risk to both physical and psychological health. (→CO 53/54, para. 5).

Demands:

- To ensure safe accommodation for >trans and >gender non-conforming refugees
- To foster training and quality management regarding trans needs and rights for interpreters, physicians, psychiatrists, staff at refugee accommodations and the Federal Office for Migration and Refugees (BAMF)
- To explicitly recognize >trans and >gender non-conforming refugees as particularly vulnerable in accordance with EU Reception Conditions Directive 2013/33/EU
- To allow for change of name and legal gender as well as access to trans-specific medical services before the end of the asylum procedure

2. Violence Against Trans Women (→Gen.rec. 19; →CO 41-46)

In May 2008, a 30-year-old gender-variant/ trans person was killed in her own apartment in Essen by a 16-year-old male, who later confessed to having killed the gender-variant/trans person with whom he flirted after realizing that she was “not a woman”.

(Balzer/Hutta 2012: 57)

The defendant insults the victim as a “whore” and as a “son of a whore”, slaps her face and kicks her against the chest.

¹ Between August and December 2015, 16 cases of such assaults on refugees, including sexual violence and coercion, have been reported to the regional association of Lesbian and Gay Association Germany (LSVD) in Berlin (information provided per email to the author by Milena Jochwed, project director of “Support transgender and homosexual refugees” within the LSVD). On average, 3 cases of discrimination per week are reported to the counselling center „Stand-Up“ at Schwulenberatung in Berlin, most of which take place at the admitting facility for refugees, through security guards or in the street. On the problem of recording transphobic incidents see appendix.

Transphobic demand to a car driver to „run over“ the victim.
(Excerpts from case studies of the Berlin Public Prosecutors, 2016)²

Attacks on their right to life, their bodily integrity and their dignity are part and parcel of everyday life for many >trans women and >gender non-conforming individuals.³ In the context of reporting these hate crimes to the police, there have also been reports about humiliation and victim blaming through police officers (Fuchs et al. 2012: 79f.; LesMigras 2012: 35). This indicates that many of these hate crimes are not reported at all and that the dark figure is considerably higher (FRA 2014: 20). In police statistics of „politically motivated crime“, assaults against >trans people are subsumed under the category „hate crime against sexual orientation“ (→CO 45/46) even though it has been proved that trans people are far more likely to become the victim of intimidation and violence than >cisgender LGB people (FRA 2014: 10).

While the individual motives for verbal or physical attacks on >trans women and >gender non-conforming people may differ, there is no doubt that they are encouraged by the stigmatizing effects of the psycho-pathologization of transgender people in law and medicine, by the exoticization and devaluation of >trans women in the media (see chapter 7), by the legal and structural barriers which complicate the acquisition of matching legal documents (see chapter 5) as well as access to gender confirming medical procedures (see chapter 4) and finally, by an insufficient prohibition of disclosure – factors of discrimination which the federal government can be held directly or indirectly responsible for.

Demands:

- To take effective measures to prevent, solve, and prosecute anti-trans violence; to provide training for police and judicial staff that guarantees a victim support sensitive to the needs and concerns of the respective group (PACE 2015: para. 6.1.3)
- To record transphobic incidents systematically and to provide data about the extent of violence against >trans people in Germany in the next periodic report

3. No Right to Self-determination? Particularly Vulnerable Life Situations

The obstacles imposed on >trans women/people by legislators and by the medicojuridical diagnostic regime (see chapters 4 & 5) severely limit the agency and self-determination of all >trans people in Germany. They have even more incisive effects on the lives of those who depend on parents, relatives, caretakers or legal guardians or on those with low economic resources:

Trans Girls

Despite growing acceptance, some parents are still not willing or able to support their child in the pursuit of living their life in accordance with their gender identity. If parents do

² Information provided by Senior Prosecutor Ines Karl (01.12.16 via email to the author).

³ In a study by the European Fundamental Rights Agency, 8% of trans respondents in Germany indicated that they had experienced or been threatened with physical or sexual violence due to their trans identity within the last 12 months prior to the study (FRA 2014: 56). The police reported the following annual numbers of incidents classified as explicitly transphobic to the Public Prosecutor's Office of Berlin: 2013: 18; 2014: 22; 2015: 10; 2016 (to date): 19.

support their >trans child, for example by filing an application for a legal change of name they run the risk of having their parental competence questioned by the youth welfare office. In 2012 a 12-year-old in Berlin (“Alex”) was threatened with admission to a psychiatric hospital because the appointed legal guardian cast suspicion on Alex’s mother to have “induced” the transsexuality of her child.⁴

Seniors (→Gen.rec. 27) and Trans People with Disabilities (→Gen.rec. 18)

Older >trans people, >trans people with reduced mobility or those living outside of metropolitan areas (→Gen.rec. 34) have little or no access to the few counselling services available in Germany. With caretakers not prepared for their needs it often becomes impossible for trans people to live their identity. The gender identity of people with cognitive or psychological impairments are taken even less seriously by legal guardians or when they file an application for legal gender change. Some mental or physical impairments are even considered exclusion criteria for the indication of gender confirming medical procedures (TIS 2014: 26).

Trans Women in Poverty

Part of the medical services that >trans women need in order to express their gender identity and >pass successfully are not covered by health insurance. Those who cannot afford to cover the costs for these medical measures and for the issuing of new legal documents, certificates and bank cards etc. themselves face a significantly higher risk of discrimination, of exclusion from the job market (→Art. 11) and from social participation in general (→Art. 13c; →CO 31/32).

Sex Workers

Due to a lack of coherent legal documents, >trans sex workers with a refugee or migrant background often have no access to the social security system. Without health insurance, however, they may be forced to use hormones and other means of body modification without medical supervision, thus to subject themselves to high medical risks (→Gen.rec. 24, Abs. 6). In existing counselling centers, >cisgender social workers often lack the necessary sensitivity towards people who have experienced racism and sex worker stigmatization. This ignorance along with language barriers exclude precisely that group from counselling services which is at a particularly high risk of HIV (Fedorko/TGEU 2016: 8), homelessness,⁵ and physical violence.

Trans Women in Prison

In Germany, imprisoned >trans women have no reliable access to trans-specific health care. Also, they are at a particularly high risk of becoming a victim of physical and sexual violence (UN 2001: para. 23). This risk is enhanced by the fact that in most cases >trans women prisoners are detained in men’s prisons, in a recently recorded case even despite a detainees female legal gender.⁶ The importance of appropriate accommodation and gender-sensitive social reintegration programs, as recognized in recommendation CO 57/58 concerning girls in prison, should also be emphasized with regards to >trans girls/women in prison.

⁴ <http://www.taz.de/!5097684/>

⁵ Homeless shelters in which men and women are separated in a strictly binary way are not prepared to meet the specific protection needs of trans sex workers.

⁶ <http://www.swp.de/bietigheim/lokales/besigheim/transgender-im-maennerknast-13688161.html>

Demands:

- To strengthen the right to self-determination of >trans minors by lowering the legal age of eligibility for change of name and legal gender to at least 14 years (age of criminal responsibility and religious maturity) and by sensitivity trainings and quality management with regards to the needs and rights of >trans youth within general child and youth welfare services (*Kinder- und Jugendhilfe*).
- To establish “>Trans competence” as a mandatory subject within the vocational training of care professions
- To ensure cost coverage for >transition specific needs of recipients of unemployment benefits by the social welfare office (*Jobcenter*).
- To fund peer-to-peer support programmes for >trans sex workers
- To implement measures to protect >trans women in prison from violence, to guarantee their safe accommodation as well as access to trans-specific health care and to clothing in accordance with their gender identity

4. Precarious Health: Gaps in Healthcare Provision and Forced Therapy (→CO 53/54; →Art. 12)

>Trans women in Germany can still not fully exercise their right to the highest attainable standard of health: discriminating behavior (LesMigraS 2012: 98; FRA 2014: 42) and a lack of expertise on the part of health care practitioners (WMA 2015) deter patients from making use of necessary preventive and curative therapies. This deprivation of necessary health care affects a population group which is already marked by an increased risk of depression and suicide (assumedly caused by experiences of discrimination) and which is disproportionately affected by violence (Hanafi El Siofi/Wolf 2012: 11).

Access to measures of gender reassignment remains contingent upon the stigmatizing diagnosis of a mental disorder. Coverage of medical costs by health insurances will only be granted after a mandatory therapy of 12 or 18 months respectively has been completed. The alleged benefit of this mandatory therapy has been called into question even within the medical community (Hamm/Sauer 2014: 17). Not only is it insufficiently evidence based, it may in effect even be counterproductive: The delay caused by a mandatory therapy for mostly mentally healthy individuals, along with the experience of being subjected to and at the mercy of medical experts may cause the very psychological distress therapies are supposed to prevent or cure (Fuchs et al. 2012: 15; 87f.; Hamm/Sauer 2014: 21).

Demands:

- To provide training for medical professionals (WMA 2015: rec.6) in order to guarantee >trans women/people non-discriminatory access to needs-based healthcare of the highest attainable standard of medical science (WMA 2015: rec.6)
- To create a legal obligation for health insurers to cover costs for gender reassignment *without* mandatory psychotherapy (PACE 2015: para. 6.2)
- To present data on the health situation of >trans women/people in the next periodic report

5. In Urgent Need of Reform: the „Transsexual Law“

According to the current state of research of medical science, >trans identity is neither inherently pathological (WMA 2015: rec. 1), nor can it be diagnosed from the outside (Güldenring 2013). Disregarding these facts and contrary to the current trend in international human rights politics (PACE 2015: para. 6.2.2; Hamm 2016: 4 for an overview of current legislation), the German “Transsexual Law” still prescribes the acquisition of two expert reports as proof of a “transsexual character” before a change of name and legal gender will be recognized.

These expert reports are usually written by psychiatrists or sexologists. The procedure can take more than one year and costs between 1500 and 2000 Euros (BVT* 2016: 3). Those who do not meet the restrictive diagnostic criteria or who do not have the time or resilience to endure assessment sessions often experienced as degrading (Fuchs et al 2012: 84f; Krell/Oldemeier 2015: 25; LesMigras 2012: 155) have no choice but to accept that their identity documents do not match their identity and/or appearance – a situation which increases the risk of discrimination and impedes access to education and the job market (→Art. 11; →CO 37/38).

Demands:

- To „develop quick, transparent and accessible procedures, based on self-determination“ (PACE 2015: para. 6.2) for changing one’s name and legal gender
- To introduce alternatives to the existing legal genders “male” and “female”

6. Compensation Overdue: Forced Sterilization (→Art. 12; →Gen.rec. 21, para. 22)

Until 2011, >trans women/people had to undergo sterilization to have their legal gender changed.⁷ According to an estimate based on the numbers of cases processed by German local courts under the Transsexual Law since 1995, up to 15,000 individuals were affected between 1981 and 2011. Until today, no public debate on individual or collective compensation for the legislator’s violation of fundamental rights (the right to bodily integrity, the right to found a family) has been initiated in Germany.⁸

Demand:

- To compensate individuals for forced sterilisation in accordance with the “Transsexual Law” as it applied from 1981 to 2011

⁷ Federal Constitutional Court decision on January 11, 2011 (1 BvR 3295/07).

⁸ In April 2016, the Swedish government announced a legislative initiative to compensate trans individuals for forced sterilization under the former Swedish “Gender Act”. In doing so, it set an example of a responsible approach to injustice committed by the state.

Appendix

Transgender Rights and CEDAW

>Trans women are women and thus subject of the CEDAW convention. The specific discrimination trans women experience has its roots in the same causes that create the inequalities based on gender addressed by the convention and the following general recommendations: stereotypes about “masculinity” and “femininity,” as well as discourses and institutions which privilege the interests of (cisgender) men.

Against the often presented argument about the statistic insignificance of this relatively small group, we would like to point out that according to a current representative empirical study 3,3% of the respondents indicated that their gender identity differs from the gender registered at birth (BMFSFJ 2016b: 7f.). Also, the CEDAW convention and its interpretations have repeatedly appealed for a close examination of the situation of particularly “vulnerable” persons. Similarly, the UN sustainability agenda 2030 demands to “focus on the weakest and most vulnerable and to make sure that no one is left behind.”⁹

One aspect of the marginalisation of transgender women/people is the lack of empirical material about this group. This complicates the compilation of reports like ours. Non-clinical empirical studies about the lived realities of trans*women are rare and have to be compiled under precarious conditions. Due to a lack of sufficient funding, counselling-centers and social services do not have the capacities to collect and publish data beyond their regular antidiscrimination counselling services. An adequate response to this situation would be a more sustainable public support of non-pathologizing research which focuses on the needs and experiences (of discrimination) of trans*women/people in Germany.

⁹ http://www.bmz.de/de/ministerium/ziele/2030_agenda/index.html

Glossary

cis, cisgender	Cisgender people identify with the gender they were assigned at birth.
gender non-conforming	People whose behavior or gender expression does not comply with the norms of the gender they have been assigned.
non-binary	People who do not identify as (exclusively) man or woman.
passing, to pass	For trans people, passing means to be recognized and approached by others in accordance with their gender identity.
trans, transgender	People who do not (only) identify with the gender they were assigned at birth. Used in this report as an umbrella term; in the context of self-definition many other terms are used.
trans women	Women who were assigned male at birth. Used in this report as an umbrella term; in the context of self-definition many other terms are used.
transition	Process of physical (social, legal) alignment with the gender of identity

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