

39th Human Rights Council

UPR Outcome Germany

Statement by: International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA)

Delivered by: Diana Carolina Prado Mosquera

Thank you, Mr. President

This statement is delivered in consultation with the Bundesvereinigung Trans* (BVT*), the national federation of transgender CSOs in Germany.

In this cycle Germany received eight recommendations with regards gender identity issues. Two refer specifically to a third gender option: while Germany supported the recommendation made by Australia “to introduce a third gender category for people who do not identify as either male or female”, we regret that the recommendation made by Israel was noted. This even though also Israel recommended Germany the introduction of a third legal gender category – with a crucial add: it should be “a third gender option for intersex and non-binary trans people based on self-determination”.

Current developments in Germany show that German lawmakers continue pathologizing both intersex and trans people in Germany and ignore their right to self-determination in violation of international and European human rights law.¹

In August the German Cabinet adopted a draft bill² which would introduce a new gender option "diverse" into German law. Though we welcome this step, this bill does not keep its promises. The third gender category will be reserved for a specific group of intersex people who can provide a specific medical certificate on ‘*differences of sexual development*’. Two important target groups are excluded from gender recognition:

1) All intersex people whose condition is not classified as "differences of sex development" or who cannot provide medical proof of their condition, because their records got lost or they are too traumatized to go through medical examination again.

2) All trans people are excluded from this new option. BVT* estimates that this will exclude approx. 300.000³ non-binary trans people in Germany from gender recognition.

¹ See The Yogyakarta Principles, Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, 2007 and The Yogyakarta Principles plus 10, 2017, as well as the Resolution 2048 of the Council of Europe, Discrimination Against Transgender People in Europe, 2015.

² "Entwurf eines Gesetzes zur Änderung der in das Geburtenregister einzutragenden Angaben"

³ A recent study indicates that approximately 1% of the general population identifies as transgender (Deutsch, Madeleine: *Making it Count. Improving Estimates of the Size of Transgender and Gender Nonconforming Populations*. LGBT Health 2016; Volume 3; Number 3; 181-185). According to government research roughly one third of the German trans population identifies as "non-binary" (Deutsches Institut für Menschenrechte/German Institute for Human Rights, 2017: *Gender diversity in law: the status quo*

In practice, this law will apply only to a fraction of the people it was supposed to protect – and is thus very far from the spirit of the Constitutional Court decision.

The draft bill has now moved into the parliamentary process. It is not too late. We call on Germany to amend the draft bill so that it is built upon self-determination and fully respects the fundamental rights of persons who neither identify female nor male. We stand ready to work with the government.

Thank you, Mr President.

and the development of regulatory models for recognizing and protecting gender diversity; p.9). With a general population of 82 million this leads to approximately 300.000 non-binary trans persons in Germany.