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Comments for the UPR of Germany about the situation of transsexual people

(written: September 2012)

A Human Rights Report by ATME e.V.

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Something to think about

When we speak about transsexual people, we don't speak about „transgender“: Also the term „gender identity“ isn't appropriate to realize the extent of the world-wide violations of human rights against transsexual people. In Germany, as in many other countries in the world, transsexual people are still not recognized as existing per se till this day. Although the United Nations have repeatedly called on the German State to get in touch with NGOs of „transsexual people“ this has not happened to date.

There is a basic misunderstanding what transsexual people are. Maybe ideological beliefs are the reasons for believing that transsexualism has to do with „gender“ instead of accepting transsexual people as people born with a variation of sex (sexus).

Transsexual people primarily don't have problems with their gender role, even if societal gender expectations - especially if they are based on stereotypes - secondary often create big problems for transsexual people. The term „gender identity“ is a term that does not prevent human rights violations against transsexual people. And sometimes human rights violations are committed from those who raise the „gender identity“-flag.

Transsexual women are girls who were assigned as „male“ at birth, and transsexual men are boys who were assigned as „female“ originally. In Germany transsexual women are still seen as boys who were assigned as „male“ at birth, and transsexual men are seen as girls who were assigned as „female“ and later change their „gender“ and/or „sex“. There are differences regarding the view of sex between transsexual people and those who are not transsexual: Those who are the so called "medical-experts" on the one hand or those who know from their own experience that the definition of sex is too narrow on the other. This problem transsexual people share with intersex people.

“It is our sex that defines us, not our gender identity. Responses to our sex are based on fear of our possible gender identity or sexual orientation, but it's our sex itself that needs protection.” (Oll Australia¹)

But in contrast to intersex people transsexual people are sexual normvariances whose variation is considered as being outside the measurability of sex, along the following lines: Those who aren't able to prove who they are, are people who only have „subjective feelings“. That's the line of separation between those who're defined as existing and those who are not. It is important to understand that these boundaries are made of society and are not based on nature. In the 1920s even homosexual people are seen as „sexual intermediates“² and although Nazis and Psychoanalysts changed the society and the worldview radically - they were some of the first who divided between „natural“ and „unnatural“ and called homosexual people „unnatural“ - lasted on till the 50ies. Since the 60ies, in the time John Money invented the term „gender identity“, transsexual people are considered as people who have the wish to „change their sex“ caused by a „psychological condition“.

And still in Germany that's the prevalent opinion: Transsexual people aren't accepted as sexual variations.

Media

“The media consistently misgenders, refers to previous names, makes a trans person's body theirs, theorizes why we do it without talking to us properly, makes assumptions about our genders and motivations. They use language that makes 'trans' a third gender, stripping us of our identities. They use language that refers to us as abnormal and disrespects our bodies and our rights” (Trans-Mental-Health-Study 2012¹)

Similar to this study from Scotland, Media in Germany too misrepresents transsexual people on Television, Internet or in the press.

„There had been rumours for a long time in Hollywood, now writer and director Larry Wachowski made it official: He recently is a woman” (Bild.de²)

Instead of writing about a transsexual woman they call her „he” who „is woman now”. That a transsexual woman is a woman still was rejected.

„Against Me! Singer Tom Gabel is undergoing a sex change. Tom Gabel wants to continue his life as a woman [...] Afterwards he will take the name Laura Jane Gace.” (Rolling Stone³)

Even after this transsexual woman will have undergone a „genital surgery” - what the Rolling Stone Magazine calls „sex change” - the author of the article calls her a „he”.

And in a competition entry for the TV-show „Bundesvision Song Contest” a Band called „The Orsons” wrote a cynical song who represents the federal state of „Saarland” about a “man” who “changed” his sex and now is called „Monika”:

“Horst did not feel comfortable in his 'body, he had enough of his' scrotum. (Pocket billiards⁴ always the same). So, Horst thought ,I cut him off [...]”⁵

But even the noted magazine „Die Zeit” shows that they have a big problem in understanding, that a transsexual woman is a woman:

“The venerable Oxford University has decided that now finally women are allowed on the exam wearing pants - and men wearing skirts [...] The reason is that gender wardrobe might be unfair to transsexual students. [...] trannies are the new big thing!”⁶

What is Sex? Who decides?

The world view in which Ken and Barbie are confused with nature was strengthened in the late 1950s and early 1960s. Ulrike Klöppel from the Institute of the History of Medicine at the Charité Berlin wrote in an article:

„It is also evident that the intra-scientific problematizing of the definitions and the identifications of sex via medical experts do not stop them from claiming that they are able to assign people correctly to the male or female sex. Thus they are the definition of power and decision-making authority on the social status of people. Gender and sexual norms that include an assignment of social status so can be legitimized [...] from medical experts, as scientific facts despite all scientific doubt.”¹

The definition of “sex” had changed over and over based on the spirit of the time. Every dividing line between what is considered as the “biological” or “true” sex changed according to this. If you look closer you will find that the definitions of “sex” had been always used as an instrument of power. The consequences are the abuse of power against those who do not fit into these norms like transsexual people. Still today transsexual people aren't free and equal (Article 1, Universal Declaration of Human Rights, UDHR) based on definitions of “sex” (Article 2 UDHR)²

Self titled “experts”¹ define that transsexuality means to have „the wish to change sex”

A reparative therapy is a therapy who either has the aim to change the gender expression of a child who is called „gender atypical” and to reconcile them with their so called „birth sex”. But when doctors talk about „birth sex” they think about what they have defined as „birth sex” and not about the biological reality. So when they talk about „gender variance” they

think of homosexual boys and mix them with transsexual girls and homosexual girls with transsexual boys. And their diagnostic criteria is based on their own gender-stereotypes.

And so transsexual children are not seen as sexual variation when they raise their voice and have the courage to say „I am a girl” or „I am a boy” - they are seen as „gender variant children”. In reality that’s the opposite from each other. For example: A transsexual girl who says „I am a girl” is not a „gender-variant” boy who says „I am a girl”. Next up is the destination of transsexual children in Germany to become a garbage can for gender stereotypes. And now it...

“[...] should be asked in detail about preferred games and toys [...] Boys playing with dolls, and girls who like tumbleplay and football. [...] [A therapist] should ask about cross dressing, wearing clothes of the opposite sex. Boys [who] already in early childhood prefer skirts and dresses that are often imitated by scarves, shawls and the like. Also boys often imitate long hair and express the desire to wear their own hair long. Activities such as dancing and ballet are preferred, and there’s a special interest in jewelry and cosmetics, as well as typical girlish colors like pink and purple. Playmates are mostly girls.”²

“The therapeutic approach [...] is published in the Guidelines³ [...] In available therapy reports it is shown that a frequent therapy in children can result in giving-up the desire for a sex change.”⁴

That's a lie. There's not a single study who proves the effect of reparative therapy⁵. In a book from Helmut Remschmidt⁶ (Philipps-University Marburg) it's stated:

„All measures to encourage greater acceptance of the biological sex must be supported and initiated. These [...] activities must be rewarded as a part of a behavioural approach”⁷.

And if a transsexual person insists that his or her coming out as transsexual tells the truth about his/her own sex, the medical expert in Germany calls that a not-knowing, a lie.

„Transsexualism is an identity disorder. [...] It's about the deep inner sense of belonging, the deep inner certainty to be a man or woman. Usually humans know who they are. Transsexuals doesn't know that. So they for conclude: ‚I know I'm in the opposite sex”⁸(Dorette Poland)

In 2012 the German Ethics Council⁹ released a paper defining transsexual people as psychic illusion, too.

„Transsexual people have a distinct biological sex but mentally feel as if they belong to the other gender”¹⁰

So we have German society, media, medical experts and the German “Ethics” Council who define transsexual people as per se non-existent. Sex is still seen as body-parts and gender as something that develops in childhood.

“Also in the first years of life the child increases the perception of its own body, is comparing [the body] with other [children] and develops a sense of its own sex, a sense of belonging, which is also defined as gender identity.”¹¹

Her chief sexologist, Prof. Dr. phil. Hertha Richter-Appelt from the Institute for Sex Research and Forensic Psychiatry at University Hospital Hamburg-Eppendorf in Hamburg would say:

„Gender identity is, however, the subjective feeling of a person about living as a man or a woman (or in between).”¹²

The procedure for calling in expert opinion

Transsexual people need in order to make changes to personal status in the passport or to get medical health, psychiatric evaluations (opinions). The most called "experts" are forensic psychiatrists who specialize in "sex offender" cases.

And that's what they do in many cases:

Transsexual women tell:

"I had to walk naked through the room and be recorded on video. [...] For the second expertise my penis was kneaded, and then he asked me if it was getting hard. For the third expertise I was asked if he could shove the foreskin several times back and forth."

"He pressed me to agree that several homosexual practices which he exactly described were pleasant [...]. He meant I really needed to give a man a blow job so as to be certain of my identity. And anal sex would also be very important, no matter whether I was keen on it or not. [...] Then I would know whether I was truly transsexual."

A transsexual man:

"My breasts were measured with a tape about six times. [...] Then the doctor wanted to determine the weight of each breast separately. [...] I had to lay down naked on the examination table so that he could measure the growth of my clitoris caused by testosterone."

We have already several times pointed out, addressed to the German government, the above mentioned harassment in the context of the expert's opinion process. But nothing happened.

Even the Federal Constitutional Court is not independent as it should be and it decided with regard to the expert's opinion process:

"It is not constitutionally objectionable, to establish the civil status recognition to such conditions."¹

Legal situation of transsexual people

The worldview of defining a transsexual person as „man who's underwent a sex change" or a „man who wants to live in the female gender role" is supported from the Federal Constitutional Court, who in January 2011 decided on the subject of Transsexuality¹. The court argued:

„It is required that [a person] who is affected and wants to live in the other gender role approximates his appearance and adapts its behaviour to the perceived gender. This at first will be achieved only by suitable clothing, presentation and appearance[...]"

What is it other than sexual servitude that demands adaption to societal norms and stereotypes? (Article 4, UDHR², Article 5(a) & Article 10(c) CEDAW³)

Still there exists the „Law of Transsexuals" in Germany. It is a legal requirement that transsexual people undergo a psychiatric examination procedure for the juridical recognition. The criteria of these examinations are based on the WHO-Diagnosis „gender identity disorder" and the DSM 4/DSM 5 diagnosis that is called „gender dysphoria" in future. (Article 5 UDHR⁴, Article 16 CAT⁵)

Given that it is possible that the Federal Constitutional Court could promote a stereotype gender-test, it is obvious that the Constitution⁶ of Germany isn't able to protect people who are born with sexual deviations, who are called transsexual (Article 7 UDHR⁷).

Therefore a special human rights protection is necessary.

As long as the Constitution of Germany does not protect transsexual people, action from the United Nations is particularly urgent. We would like to reiterate that the terms "gender identity" or "gender expression" can not protect transsexual people from human rights violations. In societies like the German where people divide between „biological" and „non-biological" sex and so called (psychiatric and medical) "experts" decide about the dividing line, whose sexual variations are just a question of psyche and whose are not, in a world where heteronormy is stronger than the right of self-determination sexual variant people like transsexual people need special protection. They must be protected from gender-stereotypes and people who force them to act stereotyped enough to get the permission to live as the persons they already had been since birth.⁸

Human rights are commonly understood as "inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being."⁹

Transsexuality is not about what you do, it's about who you are.

It is necessary that transsexual people will be protected from ideologues which aim only to (mis)use words like „gender expression" for a new heteronormy with themselves as decision-makers who will claim that they are able to define what kind of „expression" is necessary to get access to fundamental human rights like the right to be recognized as a person before the law. (Article 7 UDHR). No human being on earth can define these behavioural necessities. It is a human rights violation if someone says „before you get your legal papers, you must show that you are able to live in a female/male gender role". In Germany that's the legal situation.

Thus to this day, several calls of the various committees of the United Nations (CEDAW 2009¹⁰, CESCR 2011¹¹) for the governments to get in contact with NGOs of transsexual people and to work together to solve problems has not occurred. More than that: every contact has been shunned.

The Committee on Economic, Social and Cultural Rights states clearly:

"26. The Committee notes with concern that transsexual and inter-sexed persons are often considered to be persons with mental illness and that the State party's policies, legislative or otherwise, have led to discrimination against these persons as well as to violations of their sexual and reproductive health rights." (art.12, 2.2)¹²

We call upon the United Nations to ensure that transsexual people will have the chance to be promptly and immediately legally recognized in Germany as existent and to declare the German „Law of Transsexuals" and the psychiatric examinations for changing the legal papers to be illegal.

We also call on the United Nations to recognize that transsexuality is not primarily a question of gender identity and that this term is not very suitable to describe the problems of transsexual people.

We urge also to recognize that intersexual and transsexual people are excluded from the so called rainbow with words like "LGBT" and call upon the United Nations - also due to the visibility of sexual minorities - to extend the term LGBT to LGBTTI¹³. It would be a positive signal that would show the UN member states that the United Nations are interested in making transsexual people visible.

We exist.

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- 1 <http://oiaustralia.com/17680/intersex-sex-not-gender-identity/>
 - 2 Sexual intermediates = sexuelle Zwischenstufen
 - 1 Page 76, Study "Trans Mental Health Study 2012, Jay McNeil, Louis Bailey, Sonja Ellis, James Morton & Maeve Regan, September 2012 (www.scottishtrans.org)
 - 2 Bild.de, "Matrix" director is a woman now!, Article dated 02/08/2012
 - 3 May 9, 2012, - Accessed 17/09/2012)
 - 4 In Germany: slang for masturbate
 - 5 Die Orsons, Lyrics „Horst und Monika“
 - 6 SOURCE: Die Zeit, 08.02.2012 No. 32. ADDRESS: <http://www.zeit.de/2012/32/Genderpolitik-Transsexuelle-Universitaet-Oxford/komplettansicht>
 - 1 Klöppel, Ulrike: "Zwitter, Zweifel, Zwei-Geschlechter-Norm, Ulrike Klöppel (GID Spezial Nr.9, 2009, Gen-Ethisches-Netzwerk/Berlin)
 - 2 One's sex is a part of one's personality and humanity. Denying, not respecting one's sex, means not respecting once humanity and dignity and denying a humans' personality.
 - 1 Without any scientific base, like psychoanalysts
 - 2 Transsexualität im Kindes- und Jugendalter von Dr. med. Bernd Meyenburg und PD Dr. med. Annette Richter-Unruh aus korasion Nr. 2, Mai 2012. <http://www.kindergynaekologie.de/html/kora85.html> (Abgerufen 7.7.2012). Dr. med. Bernd Meyenburg Klinik für Psychiatrie, Psychosomatik und Psychotherapie des Kindes- und Jugendalters. Deuschordenstr. 50, 60528 Frankfurt am Main
 - 3 Guidelines on Diagnosis and Treatment of Mental Disorders in Infancy, Childhood and Adolescence of the psychiatric professional associations for the child and adolescent (2007)
 - 4 Transsexualität im Kindes- und Jugendalter von Dr. med. Bernd Meyenburg und PD Dr. med. Annette Richter-Unruh aus korasion Nr. 2, Mai 2012. <http://www.kindergynaekologie.de/html/kora85.html> (Abgerufen 7.7.2012). Dr. med. Bernd Meyenburg Klinik für Psychiatrie, Psychosomatik und Psychotherapie des Kindes- und Jugendalters. Deuschordenstr. 50, 60528 Frankfurt am Main
 - 5 "Because no one has been able to prove to this day in a systematic study that either of these developments [homosexuality or transsexuality, comment from the writer] can be prevented or reversed using medical or psychological forms of treatment" Fegert, Jörg Michael / Annette Streeck-Fischer / Harald J. Freyberger (Editors): Adoleszenzpsychiatrie. Psychiatrie und Psychotherapie der Adoleszenz und des jungen Erwachsenenalters. Schattauer; 2009. p. 417 [title translates in English as: Adolescence psychiatry. Psychiatry and Psychotherapy in Adolescence and Early Adulthood.]
Diane Ehrensaft, Ph.D., is a specialist for child, youth and development psychology: "To me, this is coercive therapy," Ehrensaft says. "And I don't think we should be in the business of coercing people. ... I would say all the kids I've worked with who have gone through that kind of treatment, they have not come out better; they've come out worse." Reference: <http://www.npr.org/templates/story/story.php?storyId=90247842> "Two Families Grapple with Sons' Gender Preferences. Psychologists Take Radically Different Approaches in Therapy" by Alix Spiegel on NPR
 - 6 Helmut Remschmidt: a German child and adolescent psychiatrist and former director of the Department of Child and Adolescent Psychiatry and Psychotherapy, Philipps-University Marburg,
 - 7 Page 468, Therapie psychischer Störungen bei Kindern und Jugendlichen (Kart. Sonderausgabe) Ein integratives Lehrbuch für die Praxis (Helmut Remschmidt, Fritz Mattejat, Andreas Warnke) Georg Thieme Verlag 2010
 - 8 Dorette Poland, Die Bayerische Wochenzeitung für Politik, Wirtschaft, Kommunales und Kultur Ausgabe 28 vom 13. Juli 2012. BSZ Bayerische Staatszeitung
 - 9 German Ethics Council = Deutscher Ethikrat
 - 10 Page 11, Muskellunge Heterosexuality, Deutscher Ethikrat 2012

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- 11 Page 22, Dr. Katinka Schweizer is a research assistant and-Psychologist at the Institute for Sexualresearch and Forensic Psychiatry at the university medical center Hamburg-Eppendorf und employee of the Journal for sexual research.
UKE: Göttinger Schriften zum Medizinrecht, Band 10. Gunanr Duttge, Wolfgang Engel, Barbara Toll (Hrsg.).
"Sexuelle Identität und gesellschaftliche Norm"
- 12 Gender identity and dysphoria. Article on the website of the "Federal Agency for Civic Education. 08/05/2012
1 decision of 11 January 2011 (1 BvR 3295/07).
http://www.bverfg.de/entscheidungen/rs20110111_1bvr329507.html
1 1 BvR 3295/07
- 2 Article 4, UDHR: "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms."
- 3 Article 5(a) & Article 10(c) CEDAW:
"Article 5
States Parties shall take all appropriate measures:
(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;"
"Article 10
States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:
(c) *The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;*"
- 4 UDHR:
"Article 5
No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."
- 5 In the Convention against Torture any form of humiliation and degradation by state agents, such as by a court expert, is prohibited. It is stated in Article 16:
"1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."
COMMITTEE AGAINST TORTURE. GENERAL COMMENT No. 2. Implementation of article 2 by States parties :
"21. [...] States parties should, therefore, ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and protection, including but not limited to those outlined above."
- 6 Constitution of Germany: Grundgesetz
- 7 UDHR:
„Article 7
All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."
- 8 Transsexual people are recognised as a „group[...] made vulnerable by discrimination" by the Comittee Against Torture. COMMITTEE AGAINST TORTURE. GENERAL COMMENT No. 2. Implementation of article 2 by States parties
- 9 Sepúlveda, Magdalena; van Banning, Theo; Gudmundsdóttir, Gudrún; Chamoun, Christine; van Genugten, Willem J.M. (2004). Human rights reference handbook (3rd ed. rev. ed.). Ciudad Colon, Costa Rica: University of Peace. ISBN 9977-925-18-6). Transsexuality is not about what you do, it's about who you are.

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- 10 Committee on the Elimination of Discrimination against Women, Forty-third session, 19 January-6 February 2009, Concluding observations, observation 61 & 62 (<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/236/50/PDF/N0923650.pdf?OpenElement>)
 - 11 Committee on Economic, Social and Cultural Rights, Forty-sixth session, Geneva, 2-20 May 2011, Consideration of reports submitted by States parties under Articles 16 and 17 of the Covenant, Concluding Observations, Germany, Passage 26
 - 12 Committee on Economic, Social and Cultural Rights, Forty-sixth session, Geneva, 2-20 May 2011, Consideration of reports submitted by States parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, Germany, Passage 26
 - 13 LSBTTI: Lesbian, Gay, Bisexual, Transgender, Transsexual, Intersexual