

Report of the Lesbian and Gay Foundation in Germany (LSVD) on the combined Seventh and Eighth CEDAW State Report of the Federal Government of Germany

1 Introduction

The Lesbian and Gay Federation in Germany (LSVD) is a member of the CEDAW Alliance, a civil alliance of 38 organisations with a shared commitment to eliminating discrimination against women, and to equality and human rights. Alliance members have formulated political demands to present the CEDAW Committee with their alternative view of the situation in Germany – and also to firm up the call for action to the Federal Government. The Alternative Report was presented to the UN CEDAW Committee in December 2016. Due to involvement of the LSVD in several working groups, and LGBTI* organisations on the editorial team, the situation of lesbian, bisexual, trans* and intersex women* (LBTI) was extensively included in the Alternative Report as an issue that cuts across multiple themes and disciplines. The CEDAW Alliance expressly agreed to this, demonstrating that our concerns have strong backing in civil society, and that the LSVD as an organisation is strongly networked with other human rights organisations.

LBTIs are not a homogeneous group. Through other categories of social difference – such as race, citizenship/residence status, age and social background – they have different experiences of discrimination, some of which they have in common with heterosexual cis women. However, they are simultaneously affected by homophobia and/or trans*/interphobia and heteronormativity. These are the issues in focus in this report, grouped into sections on “Health”, “Refugees”, “Violence”, “At Work” and “Education”. The findings lead into specific calls for action on the part of Federal Government.

2 Preventing and combating homophobic and trans*/interphobic violence

Recommendations 41, 42, 45, 46: Violence against women – CEDAW art. 1, 2, 3, 6

Hate crime rooted in hostility toward specific groups is aimed not just at people as individuals. It also seeks to intimidate entire sections of the population and restrict them in their freedom to move around in the public space. The most extreme expressions of homophobia and trans*/interphobia are acts of violence.¹ The few studies that exist suggest that LBTI, notably those who suffer multiple discriminations, such as LBTI of Color, run a significantly higher risk of being violently attacked than the population average. This seriously restricts freedom, hampering the ability of the individuals concerned to participate fully in social life, and can also be seriously detrimental to health. Many of those affected also report they have been vilified and regarded as the guilty party by police, and have elected not to bring charges. Up to 90% of incidents are estimated to go unreported.

Violence, even as serious as forced marriages and honour killings, can take place in the family. It is then often young people who are affected. However, LBTI can also encounter violence in partnerships and close relationships. Even today, it can be dangerous to be identified or perceived as LBTI in public. Perpetrators in such cases are often complete strangers. LBTI can also be victims of sexualized violence. An (additional) motivation for perpetrators is to “correct” the sexuality of the victims.

Germany has little gender-specific data available on domestic and sexualized violence against women*, and the data that does exist is incomplete. Since 1964 official crime

¹ For more about medical violence, see “Gender-aware, diversity-aware healthcare”; for more about violence against refugees, see “Protection, participation and integration in refugee policies”

statistics have included information on offender-victim relationships, but there is no regular analysis of violence against women*.

Required measures:

- Combined programme at federal and state level to combat homophobic and trans*/interphobic violence.
- Commissioning of scientific research to obtain reliable empirical data on homophobic and transgender hate crime, how this manifests itself, how the police and judiciary deal with it. This serves as a basis for targeted measures including:
 - Preventive measures
 - Training for police and judiciary
 - Appointment of contacts within the police for LGBTI concerns, adequately resourced, with clear mandate and powers
 - Establishment of independent complaints offices
 - Target-group-aware measures to assist victims
- Explicit naming of homophobic and trans*/interphobic motives in legislation on hate crime, introduced in 2015 in Section 46 (2) sentence 2 of the Criminal Code
- Overall concept for preventing and protecting against violence in close social and family relationships; this should specifically also address same-sex relationships as well as sexual and gender diversity.
- Speedy, free, unbureaucratic access to protection and needs-driven support for all women* affected by violence, and for the children of these women. Support and protection measures must respect the gender identity of the women* concerned.
- Establishment of emergency lodgings for young people affected by homophobic, trans*/interphobic violence.

3 Gender-aware, diversity-aware healthcare

Recommendations 53 and 54: Gender sensitivity and gender equality in the healthcare sector, CEDAW art. 12

Heteronormativity is a basic assumption in healthcare policies. A health system that postulates heterosexuality as a social norm, implying a binary gender system inevitably prevents appropriate healthcare and medical research for those who fall outside this categorisation: LGBTI. The shortfall between the healthcare that LGBTI need, and what they actually get, is exacerbated by other categories of social difference (multiple discrimination).

Healthcare and medical services (of the statutory health insurance scheme) are not aligned with the needs of LGBTI. There is a lack of specific reports. Frequently, there are no doctors and/or medical staff with the expertise, experience and sensitivity to deal with LGBTI. This applies equally to geriatric care. There are insufficient gender-aware services, and those that do exist are not accessible to all LGBTI.

Drugs are tested predominantly on young, white, cis-male individuals. Differences in metabolism and hormone status are disregarded. The consequences are overdosing, lack of knowledge about gender-specific symptoms of illnesses, or risks and side-effects for women*. In the case of intersex individuals, there is tacit acceptance of the severe damage that can be caused by pharmaceutical treatment.

For trans* individuals, numerous barriers stand in the way of optimum physical and mental health:

- The “transsexual law” (including compulsory observation & reporting) which in practice inadmissibly psychopathologizes trans identity
- Inflexible, inaccessible guidelines for medical treatment and assessment (including forced psychotherapies)
- Late or non-payment of necessary healthcare services by health insurance funds
- Mandatory reporting by the Medical Service of the Federation of Health Insurance Funds (MDK) that is onerous, in part discriminatory, and incorrect in terms of substance
- Absence of nationwide service provision
- Lack of knowledge and discriminatory behaviour by healthcare providers
- No access to hormone therapies for female trans* refugees

Intersex individuals are even today exposed to violation of their right to physical integrity and self-determination, such as irreversible surgical and hormonal interventions without medical necessity, and without prior, free and fully informed consent. Cosmetic operations on genitalia still take place to assign infants to one particular sex. These regularly cause sterility, lifelong disorders and trauma.

Based on the Minority Stress Model (Ian H. Meyer), prevailing heteronormative discrimination affects the physical and mental health of LGBTI. The direct impacts can be psychological harm such as anxiety disorders, burnout and depression, even physical harm/permanent impairment caused by physical violence. Social stigma also has an indirect impact on health, since attitudes are internalized by the individuals concerned to the detriment of their self-esteem. Possible consequences are increased (self-harming) risk behaviour, which explains a higher incidence of addiction, eating disorders and suicide among LGBTI.

Paid and unpaid care for children, people with disabilities, the elderly and sick, is mainly provided by women*. There has been little study of the physical and mental health risks within the care system; however, findings suggest the risk is considerable. The health of care-providers is impacted in many ways. The physical, psychological and social health objectives of the *Ottawa Charter* are also valid for LGBTI* care recipients. Going by these measures, there is a major underprovision of services (in geriatric care, there are between two and three times as many women* as men*). The longer people are in need of care, the more precarious their circumstances become with regard to self-determination and social participation. In addition, care-dependent women* are particularly vulnerable to poverty, lacking resources of their own to deploy for their healthcare.

In addition, access to medically-assisted reproduction in Germany is subject only to the guidelines of the General Medical Council, so depends solely on the decision of the treating physicians and/or responsible ethics committee. There are narrow sets of circumstances under which costs are paid by insurance funds, and treatment is paid only for married couples. Same-sex couples and single women have no access to these procedures.

Required measures:

- Non-discriminatory access to healthcare; gender-appropriate and diversity-aware healthcare, oriented and aligned to the needs of (LBTI) patients.
- Development of high-quality care infrastructure and services to assist individual self-determination, participation in social life and relief for people who care for relatives. Gender-sensitive and culture-sensitive care shall to be ensured, with guaranteed access to these services.
- Findings of gender healthcare research and practice to be channelled into gender-sensitive development of policy and legislation, using the key questions formulated

for development of health objectives to reinforce overarching demands for healthcare equality

- Prohibition of non-essential medical treatment of inter* persons without their previous free and fully informed consent
- Healthcare for inter* and trans* people under the statutory insurance scheme to be based not on legal gender but on biological circumstances and the needs of the individuals in question
- Public awareness-raising about the danger of “conversion therapies”, offered primarily by fundamentalist religious organisations and aimed at changing sexual behaviour, sexual orientation or gender identity or expression. Legislation should be drafted to ban such pseudo-therapies on children and adolescents.
- Sexual & gender diversity issues to be a compulsory part of training and continuing professional development (CPD) for healthcare professionals, including midwives, health insurance personnel, doctors, psychotherapists and nurses
- Appropriate, accessible base of knowledge & advice
- Establishment of national competence centres on trans- and intersexuality
- Production of a report on the specific health situation of LGBTI in Germany by the Federal Ministry of Health
- Historical re-appraisal of the pathologizing of homosexuality, intersexuality and transsexuality as well as social rehabilitation and financial compensation of victims of (psycho) pathologizing and medical violence
- LGBTI*-inclusive awareness-raising by the Federal Centre for Health Education
- Adoption of legislation that provides for access to reproductive procedures for women irrespective of their sexual identity, partnership status and financial capacity.
- Improved working conditions for professional carers through improved staffing levels, prevention-oriented occupational health & safety, effective occupational health management, and greater employee participation

4 Protection, participation and integration in refugee policies

Among the many refugees seeking protection in Germany from war, violence and persecution, there are of course also LGBTI people. Persecution owing to sexual orientation or gender identity (SOGI) constitutes recognized grounds for asylum. It can be an additional (or the main) reason to flee. The social climate in Germany is divided. There is great readiness to help, but also open expression of hatred, with a frightening number of racist attacks on refugee accommodation and refugees themselves. As well as exposure to such attacks, LGBTI refugees experience homophobia and/or transphobia in their accommodation, in public or during asylum procedures. There continues to be a backlog of applications, and often long waiting times at the Federal Office for Migration and Refugees (BAMF). In addition, the quality of the BAMF decisions is often deficient, with the result that fugitives frequently have to take legal action.

Germany has to admit LGBTI refugees, ensure fair asylum procedures, and protect them from again becoming the target of hostility and violence.

Required measures:

- All parties involved in the asylum procedure – including refugees, BAMF staff or special officers for gender-based violence, interpreters and language teachers, counselling organisations, lawyers and judges in administrative courts – must be aware that SOGI persecution constitutes recognized grounds for asylum. They should be aware of the specific difficulties and relevant settled case law.

- Multi-lingual LSBTI-inclusive introductory brochure: this should be available online, at reception facilities, the BAMF and refugee accommodation.
- Accommodation, provisions and support for asylum seekers to be organized so as to prevent discrimination against LGBTI; if this should nevertheless happen, appropriate support shall be made available to the persons concerned
- All institutions shall comply with compulsory minimum standards, e.g.
 - Compulsory house rules in several languages requiring considerate, non-discriminatory conduct (the attributes stated in Germany's Equal Treatment Act can serve as a guideline)
 - An LGBTI-inclusive anti-violence concept with appropriately-trained staff.
- Abolition of residence requirements for refugees in order to reinforce social contacts, and to promote integration and free development
- The curricula of integration, orientation and language courses² for migrants are to include mandatory sections on the legal and social situation of LGBTI in Germany, the diversity of sexual orientations and gender identities, and different ways of life.

5 Equal rights, diversity and respect in school and education

Recommendations 33 and 34: Education – CEDAW art. 10

Kindergarten and school are important spaces to learn and live social diversity and individual esteem. All children and young people should feel at ease and respected. Achieving a society in which people co-exist free of fear and discriminatory practice is undoubtedly part of the state's education mandate. Germany has undertaken a human rights commitment to enable all children and young people, irrespective of gender identity and sexual orientation, to participate in education.

However, the educational system reproduces social inequalities. There is structural and individual discrimination owing to cultural, ethnic and social origin, sexual orientation, gender identity and sex. Such discrimination is shown to undermine opportunities to attain good educational qualifications. Formal education is made more difficult for trans* persons, because they often do not receive certificates with names corresponding to their identity.

Educational institutions are not discrimination-free spaces, either for learners or for teachers. Homophobic and/or trans/inter discrimination by peers and also by teachers is often the order of the day. Teachers often do not intervene sufficiently in cases of bullying. Curricula and teaching materials fail to present diverse lives and identities, e.g. of migrants. Schoolbooks continue to communicate historic gender stereotypes. Currently there is strong anti-feminist (sometimes threatening) resistance to LGBTIQ-inclusive syllabuses and gender studies.

Required measures:

- Mandatory education concepts nationwide with secure funding, aimed at overcoming stereotypes and supporting gender diversity, i.e. age-appropriate, objective information on the diversity of sexual and gender identities.
- Training for teachers and education professionals at all types of school must engage with communicating awareness of diversity of sexual orientations, gender identities, sexual characteristics and gender expression.

² For more about education, see "Equal rights, diversity and respect in school and education"

- In all types of school and in pre-school education, sexual and gender diversity shall be presented in all school subjects and material and in the everyday life of learners not as a special case but as an equal part of a diverse, inclusive society. The depicted persons should reflect the diverse lives of learners and include considerable variety; learning material should be easily accessible (e.g. simple and easy to use, multi-lingual, suitable for reading out loud).
- Dismantling of prejudices should be embedded in vocational education and training: complementing professional training, steps should be taken to promote awareness of diversity in the workplace and in dealings with co-workers.
- Age-appropriate sex education as an independent aspect of school education. This must lead out from the questions and needs of children and young people, and be based on the standards developed by the World Health Organisation and the Federal Centre for Health Education. This also of course includes engaging with issues of gender and sexual diversity.
- Principles and rules at schools and day-care centres should take a clear position against prejudice, bullying and marginalization,
- Reliable, legally watertight anti-discriminatory frameworks in educational and recreational facilities for inter* and trans* individuals and gender-non-compliant persons of all ages (including proper form of address, consideration of gender identity in non-co-educational lessons; gender-neutral WC and changing facilities; protection and counselling in transition and in cases of discrimination and violence).
- Inclusion and diversity strategies of the Conference of Ministers of Education and Cultural Affairs to be extended to include the criteria of sexual orientation, gender identity, sexual characteristics and gender expression.
- Reinforcement of work to combat homophobic and trans/inter discrimination at the Federal Center for Civic Education, in adult education and vocational training
- Educating the public on the diversity of gender identities, including LGBTI of Color.
- Ensuring non-discriminatory and gender-sensitive teaching in all university disciplines as well as equal access opportunities to professorships

6 Equal opportunities at work

Recommendations 35/36: Discrimination in professional life

Recommendations 37 and 38: Equal participation of women in the labour market

Recommendations 39 and 40: Equal pay

A gender-segregated labour market and lack of equal participation in professional life means there is a gender pay and pension gap in Germany. Owing to the gender pay gap throughout their working lives – which leads to lower pensions also – lesbian women are at serious risk of poverty in old age. This lessens opportunities for self-determination and equal participation. Female couples are potentially doubly affected by the gender pay gap and pension gap. Discrimination based on sexual orientation or gender identity, sexual characteristics, or gender expression are also encountered in the workplace. For example, trans* persons are more likely to be unemployed and/or suffer poverty despite higher education.

Even though Germany's "General Act on Equal Treatment" (AGG) expressly prohibits discrimination on grounds of sexual identity, ten years of experience have shown that the law in practice falls short of the mark.

Required measures:

- Removal of all obstacles to full-time (or near-full-time) employment of (LBTI) women* at all levels of qualification; encouragement of this on the principle of economic and social autonomy in the labour market
- Measures to enable (LBTI) women* to be economically independent through employment that pays a living wage and enables them to accrue their own retirement pension
- Strengthening of statutory retirement pension such that it is enough to live on; ensuring that at least the current pension level is maintained.
- Elimination of all barriers to equal integration of women* into working life; introduction of measures to eliminate inequalities in income between women* and men*
- AGG to be amended to reinforce it in particular with regard to:
 - Right of collective action
 - Longer time limits for bringing action
 - Sanctions
 - Removal of clause permitting unequal treatment on grounds of religion or belief (AGG Section 9)
 - Extension of grounds of discrimination to include specific mention of “gender expression”
 - Educational sector and governance (state action) to be included in areas of application
- Review of rules on public procurement contracts (anti-discriminatory principles must be observed)
- State oversight to ensure companies enact the AGG commitment to take measures protecting against discrimination. Companies must have an internal point of contact for complaints regarding discrimination.
- Mandatory diversity strategies for state institutions, including measures in training and professional development to raise awareness of diversity
- Guiding principles for state institutions that commit to acceptance and respect for sexual and gender diversity both among employees and in contacts with the wider public
- Regular use of anonymised application procedures
- Gender-sensitive, gender-neutral formulation of job advertisements, forms and all other documents
- Consideration of the needs of trans* and inter* in public administration (bathroom facilities, changing rooms, work clothing)
- Introduction of transition guidelines for public administration, describing good practice for all stakeholders for dealing with gender transition of employees
- Job centres to meet the costs of particular requirements during transition for social welfare recipients