



BOFAXE

Safety, Privacy, Self-ID (PART 1)

Questioning Priorities in Gender Self-Determination

Germany's Self Determination Act (*Selbstbestimmungsgesetz* or SBGG), which came fully into force on the 1st of November 2024 is welcomed both by hope and concern globally. The new law has been a key demand by activists for a long time (see also here) and replaced the outdated “*Transsexual Act*” (*Transsexuellengesetz* or TSG), which was imposing unnecessary bureaucratic, psychological and financial burdens on trans and non-binary people. The previous law also lacked legal recognition based on self-identification that would allow individuals to affirm their gender identity without external assessments. SBGG simplifies the process for transgender, intersex, and non-binary individuals, who are either German citizens or residents, to update their gender and first names in official records. Instead of requiring family court approval, individuals can now change or remove their gender entry through a personal declaration, without requiring further documentation. This shift ensures that gender recognition is based solely on self-identification rather than external judgment.

Although the transition from the previous law was welcomed, the SBGG also faced constructive criticism on several key aspects. One major concern is the requirement that applicants must choose a gender-appropriate first name, i.e. the selected name must ‘correspond’ to their self-identified gender (§ 2 SBGG). Additionally, individuals without a residence permit are excluded from the scope of the law (§ 2 (4) SBGG) (see also here). The law also imposes a mandatory three-month waiting period before the gender marker change can be processed, followed by a one-year blocking period before another change is permitted (§ 4 and § 5 SBGG) (see also here). In the situation of military tension or defence, a person's legal gender as “male” would temporarily remain unchanged if the application is made in a situation of active defence (§ 9 SBGG).

The Background of a Law That Is Deemed Controversial

While these criticisms primarily aimed to ensure that trans and non-binary individuals could fully benefit from the rights conferred by the law, the regulation also attracted different sort of criticism about its content and implications. The first wave came from within Bundestag. The CDU/CSU rejected the law, citing threats to gender equality, which is ironic in light of the minimal female representation in their ranks. They voted against it, with only one abstention, aligning with AfD and BSW. AfD's Reichardt mocked gender self-identification, dismissing the law as identity politics (see here). CDU-CSU's Hierl raised concerns about minors making irreversible decisions, while BSW's Wagenknecht warned of risks to women's protections (see ibid.).

Others labelled the law as “a two-pronged gender assault on German society” (see here), and “woke authoritarianism” by a “failing, ineffective government” (see here). An international protest was called for November 1st, the law's enactment day, condemning it for “legally replacing the category of sex with gender” (see here).

Another person vocal against the SBGG was Reem Alsalem, the Special Rapporteur on violence against women and girls. Her concern regarding the enactment of a gender self-determination law centers on its potential impact on the safety, privacy, and rights of women and girls, particularly those affected by male violence. She argued that the Gender Self-Determination Act lacks essential safeguards to prevent misuse by sexual predators and other perpetrators of abuse, including in single-sex spaces. This raises the question of whether one person's right to self-identify clashes with another's right to safety and privacy. To answer this question, we have to discuss whether the self-determination of trans and non-binary individuals' identity conflicts with the protection of cisgender women and girls and explore whether these concerns are inherently contradictory.

Alsalem claimed that the law's merging of gender identity and biological sex could have significant consequences for the safety of cisgender women and girls in places like shelters, bathrooms, and changing rooms. She also pointed out that the law doesn't adequately address the specific needs of cisgender female victims of violence, who might be re-traumatized or feel forced to avoid these spaces if they have to share them with individuals who were assigned male at birth, regardless of their gender identity. In a note verbal to the OHCHR by the Permanent Mission of the Federal Republic of Germany to the UN, Germany rejected the claim that it failed to meet human rights obligations, asserting that the SBGG aligns with human rights standards. The letter noted that 28 other countries have self-determination laws without the issues Alsalem mentioned.

Regarding single-sex spaces, the Association of Women's Shelters stated that they support the law and welcome women of all backgrounds. They also underlined the fact that each case is assessed individually, applying risk evaluations and safeguarding measures. Access depends on multiple factors, not only legal gender status. The Deutsche Frauenrat also cautioned against reinforcing mistrust and false stereotypes by linking the law to the idea of trans existence as a threat or being violent. They also raised concerns about the hostile discourse surrounding the law. Several other associations, relying on human rights principles, expressed support for the law.

Queer organizations, over the past years, have repeatedly criticized Alsalem for her anti-trans views. In 2023, The Association for Women's Rights in Development (AWID), a women's rights group, published an open letter accusing her of misusing her position to push discriminatory policies against trans people and ignoring human rights principles. The letter, signed by hundreds of women's and LGBTI organizations, including Verband Queere Vielfalt (LSVD) and The International Lesbian, Gay, Bisexual, Trans, and Intersex Association (ILGA World), raised serious concerns.

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BOFAXE

Safety, Privacy, Self-ID (PART 2)

Questioning Priorities in Gender Self-Determination

What All Women Really Need?

It is important to examine whether the right to self-identification conflicts with cis women or girls' right to safety and privacy. As highlighted rightfully, the debate that is going on both in national and international level, depicts trans women as a threat with the debate prioritizing the fears of some over the rights of those the Self-Determination Act is meant to support. Feminist concerns about protection from violence are being misused to fuel discrimination against trans and non-binary community. According to Grinspan, the Gender Identity Law of Argentina (Ley de identidad de género) is a great example for a source to change false beliefs on self-identity laws. The Law has been in effect for almost 13 years already and since then, neither cis women nor cis women's rights have been undermined because of it. To illustrate the fear surrounding these laws, Grinspan compares it to a Thanos-like scenario where half the world—women—would vanish with the enactment of the laws. However, real-world examples show the opposite. A conflict between the rights of cis and trans women has never existed, does not exist now, and will never exist.

At this point, a discussion on the actual sources of violence against both cis and trans women and girls is much more essential. Criticisms of self-identity laws often claim concern about male violence against cis women, yet the same level of concern should apply to violence cis men direct toward trans women. Butler, years ago, pointed out that the argument of trans exclusion relies on unfounded fears rather than reality, projecting anxieties onto trans women rather than addressing actual social dynamics. This anxiety assumes that a person's anatomy defines their identity and motives, framing trans women as deceptive threats. In reality, trans women face discrimination, especially in men's spaces, and their identities reflect lived experiences, not fantasies.

The lived experiences of trans and non-binary people need to be the forefront of discussions about the effectiveness of the self-ID laws rather than the anxieties surrounding the existence of trans women in gender-specific spaces. Structural discrimination against trans and gender diverse people has to be highlighted. Shifting the discussion on the common perpetrator of the violence against both trans and cis woman is crucial. It is possible, even crucial and necessary to think and advocate for them at the same time.

According to a report by the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, the UN continues to receive reports of transphobic violence worldwide, including murder, assault, kidnapping, and coercion. Trans people often face harassment, abuse, or arrest when seeking police protection due to lack of gender identity recognition. This denial of recognition also leads to human rights violations in medical and detention settings, including torture, ill-treatment, and coerced medical procedures (para 18). The same report reminds the fact that "when States deny legal access to trans identities, what they are actually doing is messaging a sense of what is a proper citizen" (para 23). Acknowledging these realities, Germany, in its written response to Alsalem's claims, calls to mind its responsibility as a government in safeguarding the human rights of all persons, including a person's gender identity that is inherent to one's general right of personality.

The Special Rapporteur Alsalem is responsible for addressing all forms of violence against women at the international level, including violence against trans women. The right to gender self-determination is a fundamental human right, and it falls within her mandate to uphold this principle. She must clarify misconceptions and ensure that debates on gender identity are not overshadowed by unfounded and transphobic anxieties about cis women's safety. Her role is not to validate fears that undermine human rights but to affirm that self-determination is a recognized and protected right.

Concluding Remarks

Contrary to Alsalem's claims, ensuring the safety and well-being of both trans and cis women is not a conflicting goal. The anxieties surrounding the SBGG overshadow its achievements, making it difficult for right holders to both celebrate progress and critically assess its shortcomings. Positive outcomes of self-ID laws worldwide have the potential to set a precedent in international law—one that acknowledges diverse experiences of womanhood, manhood, and gender diversity without altering anything except granting people a simpler path to living their realities.