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Submission to the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity call for inputs on the human rights situation of lesbian, gay, bisexual, trans and other gender-diverse (LGBT) persons deprived of liberty

Crime Punishment and Rights Research Cluster School of Law, University of Galway and LLM in Criminology, Criminal Justice and Human Rights 26-27

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The experiences and specific needs of LGBTQIA+ individuals deprived of their liberty remain largely overlooked. Challenges faced by LGBTQIA+ people in countries where they already experience discrimination within general society may be further exacerbated within the prison environment, an institutional context characterised by rigid structures, traditional gender classification and limited flexibility in responding to individual circumstances.[1] This submission focuses on the treatment of LGBTQIA+ persons in prison, looking in particular at their invisibility in data (section 1), the binary nature of prison estates and allocation decisions (section 2), searches and segregation (section 3), access to healthcare (section 4), and other issues including visits and misgendering (section 5). While the focus is on four jurisdictions (Germany, Hungary, Ireland and Italy) we conclude with general recommendations.

1. The invisibility of LGBTQIA+ persons in prison (Question 11)

Available prison statistics in Germany,[2] Italy,[3] Ireland[4] and Hungary[5] generally rely on a binary gender classification, which fails to adequately reflect the presence, let alone specific circumstances of transgender and non-binary individuals. This lack of data[6] significantly hinders identifying patterns of discrimination, assessing specific protection needs and developing evidence-based policies. In Germany, for example, the limited information that is available derives mainly from individual federal parliament questions[7] and a study conducted by a German Institute for Criminological Research[8] (2023-2025), which was only able to survey eight out of the 16 federal states.[9] Likewise, LGBTQIA+ prisoners in Ireland were described as a 'hidden', 'overlooked' and 'doubly-marginalised group' in a 2016 report.[10] The lack of reliable, disaggregated data contributes

[1] Antigone Association, 'Tra sezioni-ghetto, abusi e sopraffazioni. Dove e come vive la comunità LGBT ristretta? [Between ghettoized prison sections, abuse and oppression. Where and how does the LGBTQ community live in prison?: XII Report on detention conditions] (Associazione Antigone 2017) 1, 2.

[2] Federal Statistical Office (Destatis) 'Strafvollzugsstatistik Deutschland' <https://genesis.destatis.de/datenbank/online/statistic/24321/table/24321-0001/chart/line?utm_source> accessed 19 November 2026.

[3] Ministry of Justice "Statistiche" <https://www.giustizia.it/giustizia/it/mg_1_14_1.page?contentId=SST1527188> accessed 20 November 2026.

[4] Irish Prison System Statistics and Information, available at https://www.irishprisons.ie/information-centre/statistics-information/.

[5] Hungarian Prison Service Headquarters, A Review of Hungarian Prison Statistics 2026 (ISSN 2416-1233, 2026).

[6] See for Germany also Helena Schüttler, Erik Winter and Laura Klebe, 'Trapped in binary gender logic: Legal developments and social realities of transgender individuals in German prisons' (2024) 18 Forensische Psychiatrie, Psychologie, Kriminologie 265, 266 f.

[7] Berlin House of Representatives (*Abgeordnetenhaus Berlin*) *Drucksache 19/17 245* (19th legislative period) 3; State Parliament of North Rhine-Westphalia (*Landtag Nordrhein-Westfalen*) *Drucksache 18/10269* (18th legislative period) 2.

[8] Helena Schüttler and others, 'Zwischen Zuweisung und Selbstbestimmung: Perspektiven von Justizministerien auf die Vollzugspraxis bei trans*, inter* und nichtbinären Personen' 305, 314. The main goals of the study were to examine the law and current practice, identify areas where changes are needed, and develop recommendations for action: Kriminologisches Forschungsinstitut Niedersachsen e.V. (KFN) 'Transpersonen im Strafvollzug: Erfahrungen, Bedürfnisse, Herausforderungen' <https://kfn.de/forschungsprojekte/trans-personen-im-strafvollzug-erfahrungen-beduerfnisse-herausforderungen/)> accessed 19 November 2026.

[9] Schüttler and others (n 8) 305 f.

[10] IPRT (N. Carr, S. McAlister and T. Serisier) Out on the Inside: The Rights, Experiences and Needs of LGBT People in Prison, February 2016.

to the continued marginalisation of a population whose circumstances require particular attention from prison authorities and monitoring bodies.

2. **The binary structure of prison systems and allocation decisions** (Questions 1, 4, 9)

Allocation on the basis of biological sex (Italy and Hungary)

The binary structure of prison systems means that allocation decisions are usually based on biological sex characteristics.[11] Both Italy and Hungary enforce rigid binary allocation frameworks anchored in biological determinism rather than self-identification.

Under Article 14 of the Prison Administration Act, facilities in Italy segregate detainees predominantly by biological and anatomical characteristics rather than self-identification. Therefore, transgender women who have not undergone genital surgery are routinely placed in male facilities, while transgender men are placed in women's facilities, regardless of whether individuals have obtained legal recognition of their gender identity through the amendment of their civil status records.[12]

In Hungary, Section 33 of Act XXX of 2020 defines legal gender exclusively on the basis of chromosomes and primary sex characteristics and prohibits changes to civil registry records.[13] This leads to transgender and non-binary detainees having no choice regarding their placement, as risk assessments conducted upon admission do not take into account sexual orientation and gender identity considerations.[14]

Delayed regulation (Ireland)

As no formal national policy for managing and allocating transgender and intersex detainees exists in Ireland, decisions are left to local prison management.[15] In 2019, the Irish Prison Service (IPS) accepted an Office of the Inspector of Prisons (OIP) recommendation to develop a policy that aligns with Yogyakarta Principle 9. In its 2021 Action Plan, the IPS again pledged to finalize a Transgender Prisoner Policy and to clarify search rules by late 2023.[16] To date, however, these measures remain unimplemented.

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[11] Viola Schramm and others, 'Trans und Inter in Haft - wandelnde Anforderungen an den Justizvollzug?' (2025) in Thomas Vester and others (eds), Am Puls der Zeit?! Trends, Transfer und Tradition in der Kriminologie (Forum Verlag Godesberg 2025) 582, 585.

[12] Antigone Association, 'Senza respiro' [Breathless: XXI Report on detention conditions] (Associazione Antigone 2025) 11.

[13] Act XXX of 2020 on the Amendment of Certain Laws Related to Public Administration (Hungary), s 33.

[14] Hungarian Helsinki Committee (HHC) and Háttér Society, LGBTIQ Detainees: Strengthening the Rights of LGBTIQ Detainees in the EU - National Report: Hungary (HHC 2025) 27.

[15] Law Society Gazette Ireland 'Male-bodied transgender inmate housed with women' 18 October 2019, available at https://www.lawsociety.ie/gazette/top-stories/2019/10-october/male-bodied-transgender-inmate-housed-with-women-prisoners/.

[16] Office of the Inspector of Prisons, COVID-19 Thematic Inspection of Mountjoy Women's prison – Dóchas Centre, 14-15 September 2021, 28; Irish Prison Service Action Plan, December 2021.

In 2023, the OIP found that this policy vacuum was resulting in 'discriminatory treatment' and a 'more punitive' segregation regime for transgender women at the Dóchas Centre, prompting a reiterated call for clear guidelines aligned with 2024 CPT standards.[17] Also, in its 2023 CEDAW submission, the Irish Penal Reform Trust cautioned that the ongoing failure to adopt a tailored policy was exposing transgender women to 'inhuman treatment' and 'prolonged solitary confinement'.[18]

Ireland's Gender Recognition Act 2015 recognises two legal genders (male and female) and adults can apply for a Gender Recognition Certificate to update their legal gender through self-determination.[19] Non-binary and intersex identities remain legally unrecognized following the defeat of a Private Members Bill that sought to extend legal recognition.[20]

A high-profile case in 2019 involving the placement of a trans woman with biological male characteristics convicted of sex offences in a female facility led to the introduction of a private members Bill - the Gender Recognition (Amendment) (Prisons) Bill 2025.[21] The Bill seeks to retroactively make biological sex at birth the sole determining factor for custodial allocation under Rule 52(1) of the Prison Rules 2007, overruling Gender Recognition Certificates. Instead of introducing disproportionate legislative rollbacks that erase legal gender recognition and ignore non-binary and intersex detainees, Ireland should finalize its long-delayed national prison policy to enable individualized, evidence-based assessments that align with the Yogyakarta Principles and CPT standards.

Decisions on a case-by-case basis (Germany and Malta) (refers to Question 12)
Other countries have adopted models that permit decisions concerning prison placement to take gender identity and other circumstances into account. The CPT observed, for example, in Malta that trans women prisoners had been accommodated in female sections and had integrated into the ordinary life of the unit without reporting violence or intimidation from either prison staff or other prisoners.[22]

Similarly, even if the binary prison system in Germany is regulated differently within each federal state, allocation is, in principle, based on legal gender.[23] As citizens may enter 'male', 'female' or

[17] OIP, Inspection Report, Unannounced General Inspection of the Dóchas Centre, 19 September – 2 October 2023, 5, see also para. 2.116.
[18] See IPRT information for the List of Issues for Ireland's 8th Periodic Review under CEDAW (2023) 9-10, paras. 36, 38 at https://www.iprt.ie/site/assets/files/7260/final_iprt_submission_to_loipr_cedaw_88th_session.pdf.
[19] See section 18(1).
[20] For more on the Non-Binary and Intersex Recognition Bill 2026, see here https://www.oireachtas.ie/en/bills/bill/2026/92/.
[21] Private Members Bill 77 of 2025 entered the second stage of parliamentary scrutiny in December 2025 and is available here https://www.oireachtas.ie/en/bills/bill/2025/77/.
[22] Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment' CPT/Inf (2025) 20, 10 July 2025.
[23] Schramm and others (n 11) 585.

'diverse' as their gender or leave the entry blank,[24] a person who has had their legal gender amended may be assigned to a prison even if they do not possess the biological characteristics.[25]

In addition, many federal states have introduced exceptions to this principle, making decisions on a case-by-case basis[26] possible if the gender identity differs from the legal gender, including Berlin,[27] Hesse,[28] Saxony,[29] Schleswig-Holstein,[30] and Hamburg.[31] This includes reallocations after admission to prison.[32] The absence of a dedicated wing or prison for transgender prisoners was justified by some federal states by referring to the small number of such prisoners, which would result in them being held in only a few institutions and thus face long distances from their previous environment, as well as the risk of isolation and stigmatisation.[33]

Most German regulations contain specific criteria (such as the prisoners' preferred allocation,[34] individual protection needs,[35] the objective of imprisonment[36] and security and order[37]). At least one federal state, Berlin, has developed a guideline and check-list for applying their criteria.[38] If guidelines are clear they can help to strengthen rights whilst also enabling staff to make consistent and legally sound decisions, which in turn may reduce administrative burdens and cost.[39] However, the Berlin guideline and check-list are not publicly available.

Although individual assessments are a positive development, the criteria leave room for inconsistency, even more so if the applicable regulations are not public. Furthermore, it stays a cause for concern that transgender women who still have male biological characteristics are more likely to be treated as a security issue and a threat to cis women,[34] even though they have not been identified as posing an increased risk.[35] They may themselves be at risk.[36] In addition, by

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[24] Personenstandsgesetz § 22 (3), read in conjunction with Gesetz über die Selbstbestimmung in Bezug auf den Geschlechtseintrag § 2 (1)
[25] LG Meiningen (*Regional Court*) Beschluss (decision) 24 April 2026 - 104 StVK 605/25 Vollz, para 37 f. <https://landesrecht.thueringen.de/bsth/document/NJRE001642651> accessed 19 November 2026.
[26] See also Schüttler and others (n 8) 316.
[27] Berliner Strafvollzugsgesetz § 11 (2).
[28] Hessisches Strafvollzugsgesetz § 70 (2) (4).
[29] Sächsisches Strafvollzugsgesetz § 10 (2).
[30] Gesetz über den Vollzug der Freiheitsstrafe in Schleswig-Holstein § 11 (2).
[31] Hamburgisches Strafvollzugsgesetz § 116 (3) (4).
[32] See for example Dpa Sachsen, 'JVA: Transperson in Frauengefängnis Einzelfallentscheidung' *Die Zeit* (21 July 2026) <https://www.zeit.de/news/2026-07/21/jva-aeussert-sich-zur-in-frauengefaengnis-verlegten-transperson> accessed 6 November 2026.
[33] State Parliament of North Rhine-Westphalia (n 7) 2; Schüttler and others (n 8) 312.
[34] Schramm and others (n 11) 585; Clara Wellhäußer, 'Queer im Gefängnis: Warum der binäre Trennungsgrundsatz im Strafvollzug verfassungswidrig ist' (*Verfassungsblog*, 28 January 2025) <https://verfassungsblog.de/queer-im-gefangnis/> accessed 4 November 2026.
[35] Helena Schüttler and others, 'Zwischen Sicherheit, Moral und Geschlecht: Institutionelle Regulierung von Sexualität im Umgang mit trans* Personen im Strafvollzug' (2026) 39 Zeitschrift für Sexualforschung 70, 73.
[36] Deliberation No. 12 on women deprived of their liberty, Annex to 'Arbitrary detention', Report of the Working Group on Arbitrary Detention, A/HRC/48/55, 6 August 2021, 33-49, para. 47; Anke Neuber, 'Die gendered pains of imprisonment – Geschlechtertheoretische Perspektiven in der Strafvollzugswissenschaft' (2022) Gender & Crime Geschlechteraspekte in Kriminologie und Strafrechtswissenschaft 167, 179 f.

highlighting risks of exploitation, the self-identification of transgender people is delegitimised.[37] Relevant risk assessments should rather be based on data, not assumptions in relation to risk.

As these German Regulations do not lead to an abolition of the binary system, but rather a relaxation of this structure, there remains a gap in relation to the allocation of non-binary prisoners,[38] even though some federal states, such as Berlin[39] and Hamburg,[40] have explicitly addressed non-binary prisoners in their regulations. It also remains unclear how often prisoner requests are met. The available data on allocation decisions of transgender prisoners in Germany is limited to cases that have received media attention[41] or to individual enquiries made to federal states.[42]

3. **Segregation and Searches** (Questions 3, 6)

International scholarship has emphasised that trans prisoners are a vulnerable group in the prison population.[43] They, and other LGBTQIA+ individuals, may therefore be subjected to solitary confinement as a form of "protective custody".

Segregation (Italy)

The Italian prison system provides, under art.14 co. 7 of the Prison Administration Act, for the possibility of establishing separate or protected units for individuals considered particularly vulnerable to aggression or abuse from other prisoners.[44] Since 2018, so-called homogeneous protected sections have been established as informal arrangements, distinct from officially recognised protected units, generally intended for specific categories of inmates (e.g. sex offenders). These arrangements are designed to accommodate individuals whose sexual orientation or gender identity may expose them to heightened risks within the prison environment. The provision envisaged their uniform distribution across the national territory. However, only a limited number of such sections have been established to date.[45] Although protective units are intended to ensure physical safety, their implementation may result in a form of segregation that restricts access to the ordinary activities and opportunities available to the wider prison population. Reports concerning these units have highlighted limitations in access to educational programmes, recreational activities, and other opportunities for personal development.[46] This creates a

[37] Schüttler and others (n8) 77.
[38] Wellhäußer (n 34).
[39] Berliner Strafvollzugsgesetz § 11 (2) No. 2; see also Senatsverwaltung für Justiz und Verbraucherschutz, *Ausführungsvorschrift zu § 110 Abs. 1 und 2 StVollzG Bln, § 113 Absatz 1 JStVollzG Bln, § 84 Satz 1 UVollzG Bln und § 108 Absatz 1 SVVollzG Bln* (25. Mai 2023 JustVA III A 2) 3.
[40] Hamburgisches Strafvollzugsgesetz § 116 (4).
[41] See for example Dpa Sachsen (n 32).
[42] Berlin House of Representatives (n 7) 2.
[43] Schüttler and others (n 8) 307.
[44] National Report Italy, 'Strengthening the rights of LGBTIQ detainees in the EU' 2025 41, 43.
[45] Antigone Association, 'Il carcere visto da dentro [The prison seen from inside: XVIII Report on detention conditions] (Associazione Antigone 2023) 2.
[46] Antigone Association (n 12) 11-12.

fundamental contradiction where measures introduced in the name of protection may ultimately produce additional forms of exclusion and discrimination. The situation also affects the ability of LGBTQIA+ prisoners to exercise their rights without fear of adverse consequences. In men's correctional facilities, for example, gay men may be reluctant to disclose their sexual orientation because of concerns that doing so could result in their transfer to a protected unit and consequentially also the loss of their employment.[47]

Use of general security measures that may lead to solitary confinement (Hungary, Germany and Ireland)

The absence of dedicated, non-isolating accommodation may lead to authorities relying on general security segregation or medicalized units to manage safety risks, effectively penalizing vulnerable detainees. Such a use of general security measures may also lead to solitary confinement.

In Hungary, LGBTQIA+ inmates often face widespread verbal abuse, extortion, and sexual violence. Because there aren't any dedicated units for sexual minorities, authorities frequently transfer LGBTQIA+ detainees to psychosocial units under Section 107 of the Penitentiary Code. This practice pathologizes sexual minorities, while also reducing spaces for inmates requiring genuine psychiatric care.[48] Alternatively, authorities use solitary confinement as a protective protocol, locking detainees in their cells for 22–23 hours per day without meaningful human contact, education, or work.[49] According to the established case law of the European Court of Human Rights regarding Article 3 of the Convention, prolonged forced isolation without adequate sensory and social stimulation causes severe mental and physical deterioration and may constitute as inhuman or degrading treatment.[50]

Although German Ministries report few instances of violence between trans or non-binary prisoners and other prisoners,[51] the federal state of North Rhine-Westphalia has confirmed that general security measures may be applied to protect prisoners from assaults by fellow prisoners.[52] However, there is lack of data to assess whether, and if so, for what purpose (to protect the LGBTQIA+ prisoner or fellow prisoners) and how many LGBTQIA+ prisoners are placed in solitary confinement.

In one case in Ireland, the Office of the Inspector of Prisons (OIP) found that, in contrast with other detained persons who had assaulted staff, only a trans woman prisoner was placed on a Rule

[47] ibid.
[48] Act CCXL of 2013 on the Execution of Punishments (Penitentiary Code) (Hungary), s 107(1); HHC and Háttér Society (n 14) 28, 37.
[49] HHC and Háttér Society (n 14) 17, 31, 38.
[50] Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) Art 3.
[51] Schüttler and others (n 8) 317 f.
[52] State Parliament of North Rhine-Westphalia (n 7) 2.

62 regime and required two members of staff (one male and one female) to unlock her cell and was uniquely subjected to continuous formal high-risk assessments.[53]

Furthermore, the OIP noted that the segregation of a trans woman from the general population in the Dóchas Centre had led to a deterioration in her behaviour with increased agitation and outbursts.[54] The OIP found that following (unaddressed) allegations of gender-based bullying and verbal abuse,[55] the trans woman in question was being held in conditions of solitary confinement in the HCU (in her cell for 22 hours each day and less than 2 hours of meaningful human contact).[56] This isolation lasted for 167 days, in addition to the prisoner being subject to the basic regime level and disciplinary sanctions imposed as a result of her deteriorating behaviour.[57]

Searches – Ireland and Hungary

In Ireland, the OIP reported that a trans woman had been searched by both a male officer (bottom half of her body) and a female officer (top half of her body) at a women's prison without being consulted in relation to how the search could be conducted.[58] Cisgender women were only searched by female officers. The Inspection Team recommended that while there was no clear national policy on search procedures, international best practice indicates that the detained person should be given a choice in relation to the gender of the person searching them. Two years later the same oversight body reported that a trans woman had been searched by two male and two female officers, again without choice in relation to the gender of officers conducting the search in contravention of international best practice.[59]

In Hungary, body searches may be conducted only by officers corresponding to the prisoner's legal sex at birth,[60] which can result in verbal abuse and discomfort for both staff and detainees.[61]

4. **Access to healthcare** (Question 5)

The difficulties experienced by transgender persons may be compounded by the lack of or challenges in accessing gender-affirming healthcare within prison systems. Individuals may require specific medical and psychological support related to their gender identity, including hormone therapy, counselling and other forms of gender-affirming treatment. Nevertheless, access to such services remains inconsistent.

[53] OIP, Inspection Report, Unannounced General Inspection of the Dóchas Centre, 19 September – 2 October 2023, paras. 2.121, 2.123.
[54] Ibid, para. 2.117.
[55] Ibid, para. 2.118.
[56] Ibid, para. 2.124 and Recommendation DG23-13, para. 3.29.
[57] Ibid, paras. 3.30-1, 3.33.
[58] OIP, COVID-19 Thematic Inspection of Mountjoy Women's prison, Dóchas Centre, 14-15 September 2021, 27.
[59] OIP, Inspection Report, Unannounced General Inspection of the Dóchas Centre, 19 September – 2 October 2023, para. 2.122.
[60] HHC and Háttér Society (n 14) 33.
[61] CPT, Report to the Hungarian Government on the Visit to Hungary Carried out by the CPT from 16 to 26 May 2023, CPT/Inf (2024) 36, 3 December 2024, para 114.

Access to health care for transgender people includes recognition of hormone treatment and sex reassignment surgery,[62] which is sometimes linked to a diagnosis of gender dysphoria, making access to mental health care another essential requisite.

In both Italy and Hungary, transgender persons deprived of their liberty face significant barriers to accessing adequate healthcare, particularly concerning hormone replacement therapy and continuity of care. In Italy, access to hormone therapy varies across regions, with reported delays of up to one year in obtaining prescriptions.[63] Similarly, a trans woman detained in Ireland reported significant delays in the delivery of her medication.[64] Moreover, in some regions, treatment is not consistently covered by public healthcare services, resulting in cases where prisoners are required to bear the cost themselves.[65]

Although Article 11(10) of the Prison Administration Act in Italy provides for the continuation of therapeutic programmes initiated prior to detention, its practical implementation remains inconsistent. Similar concerns arise in Hungary, where hormone treatment initiated before incarceration is routinely interrupted upon admission or subject to unauthorized medication changes, which directly contradicts established European standards requiring continuity and equal access to medical care.[66] Under Hungarian law, special treatments not provided within the prison require the express authorization of the prison warden, while Section 162 of the Prison Code shifts the financial burden of such care directly onto the detainee. This includes the full cost of medical fees, special transportation, and security escorts.[67] These shortcomings are further exacerbated by an acute staff shortage throughout the prison system of physicians and clinical psychologists, which means that gender-specific needs and risks of self-harm remain largely unaddressed.

In 2023, the OIP noted that the Irish Prison System did not have a policy in place that explicitly recognised 'the health supports required' to support transgender people in prison despite recognition that they are a particularly vulnerable cohort that often face greater risks of suicide and self-harm.[68] The OIP noted that 'effective access to specialist care could, at times, be impeded' for this group.[69] On a positive note, the OIP stated the healthcare and psychology staff at the prison 'exhibited a strong understanding of the practical challenges involved in supporting women with a transgender history'.[70]

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[62] CPT 33rd General Report, Activities 2023, 42-44.
[63] Antigone Association (n 1) 4.
[64] OIP, Inspection Report, Unannounced General Inspection of the Dóchas Centre, 19 September – 2 October 2023, para. 2.120.
[65] Antigone Association (n 1) 4.
[66] CPT 2023 Visit Report to Hungary (n 67), paras 112, 114; HHC and Háttér Society (n 14), 34–35
[67] Penitentiary Code, s 162 (n 54).
[68] OIP, Inspection Report, Unannounced General Inspection of the Dóchas Centre, 19 September – 2 October 2023, para. 4.36.
[69] Ibid, para. 4.37.
[70] Ibid, para. 4.36.

5. OTHER ISSUES

Access to intimate and conjugal visits (Questions 5, 11, 12)

If access to intimate and conjugal visits is only permitted to heterosexual married couples, as is the case in Bosnia and Herzegovina,[71] or the requirements for unmarried partners are stricter and imposed against a backdrop of the prohibition of same-sex marriage, as is the case in Honduras,[72] this has a foreseeable discriminatory effect on LGBT prisoners.

In Germany, on the other hand, there is no apparent discrimination based on the wording of law, as same sex marriages are permitted.[73] Some federal regulations even explicitly provide for visits for partnerships without referring to a specific gender or marriage.[74] Discrimination may nevertheless arise when the individual regulations are applied at the prison level as some regulations may refer to non-transparent criteria such as behaviour in accordance with prison rules[75] or the verifiability of a stable relationship.[76]

Misgendering (Question 3)

After witnessing the misgendering of a prisoner by prison staff, the Office of the Inspector of Prisons in Ireland recommended that persons working in prison be reminded of the need to respect the gender identity of detained persons, including by being addressed by their chosen name, and the need for prison authorities to provide training in line with the Yogyakarta principles on sexual orientation, gender identity and human rights.[77] A 2023 OIP report also reported incidents of misgendering in communications and official documents, with one trans women detained at the Dóchas Centre reporting the use of 'belittling' language, misgendering and her former name during interactions with some staff.[78]

6. Recommendations

ALLOCATION (Questions 1, 4, 9)

In accordance with Principle 9(i) of the Yogyakarta Principles plus 10 (2017) and Rule 2(2) of the Nelson Mandela Rules, prison systems should seek to **adapt** institutional arrangements **to the**

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[71] SPT, Visit to Bosnia and Herzegovina undertaken from 11 to 17 December 2022: recommendations and observations addressed to the State party, CAT/OP/BIH/ROSP/1, 5 December 2024, paras. 112, 113(c).
[72] Visit to Honduras, Report of the Working Group on the issue of discrimination against women in law and in practice, A/HRC/41/33/Add.1, 8 May 2019, para. 66.
73 Bürgerliches Gesetzbuch § 1353 (1).
[74] See for example: Berliner Strafvollzugsgesetz § 29 (4); Bremisches Strafvollzugsgesetz § 26 (4); Strafvollzugsgesetz Nordrhein-Westfalen § 19 (4).
[75] Berlin House of Representatives (*Abgeordnetenhaus Berlin*) *Drucksache 19/11 506* (19th legislative period), 6.
[76] ibid.
[77] Office of the Inspector of Prisons, COVID-19 Thematic Inspection of Mountjoy Women's prison – Dóchas Centre, 14-15 September 2021, 27.
[78] OIP, Inspection Report, Unannounced General Inspection of the Dóchas Centre, 19 September – 2 October 2023, paras. 2.119-2.120.

needs of the person concerned with **gender identity as a starting point of allocation decisions** and deviations only be made if strictly necessary. International standards also recommend the involvement of prisoners in their allocation decision.[79]

SEGREGATION (Questions 1, 3, 9)

States should ensure respect for the prohibition of solitary confinement for prolonged periods,[80] and avoid the misuse of psychiatric units for purposes other than their intended clinical function. States should implement **individualised risk assessments and provide placement options that do not involve isolation**. In cases where protective separation is necessary, authorities should guarantee equal access to education, work, recreation, and healthcare.

SEARCHES (Question 6)

To ensure that searches are conducted in a manner that respects the inherent human dignity and privacy of the individual transgender detainees should **have a say in the gender of the officer conducting a search**.[81]

HEALTHCARE (Questions 5, 9, 10)

Imprisonment must not result in the arbitrary interruption of medically necessary treatment, nor should access to healthcare depend on an individual's financial resources or legal gender status.[82]

In line with Yogyakarta Principle 9 (b), LGBTQIA+ prisoners with gender dysphoria should be provided with **hormone treatment and mental health support**. Transgender prisoners who are on hormonal therapy should be able to continue the treatment and have access to gender reassignment therapy if it offered in the community.

DIGNIFIED TREATMENT AND VISITS (Questions 3, 5)

Every prisoner must be **treated with respect**. This includes addressing them correctly and ensuring equal access to intimate, conjugal and other visits in line with Principle 9(e) of the Yogyakarta Principles (2006). Clear policies with explicit criteria remove space for discriminatory, arbitrary or inconsistent decisions in relation to visits.

DATA (Question 11)

States should establish mechanisms for the systematic **collection of data** on LGBTQIA+ prisoners **guided by strict confidentiality and data-protection safeguards** to better identify

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[79] The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (2007) Principle 9(c); Council of Europe, *European Prison Rules, Recommendation Rec(2006)2-rev* r. 17.3.

[80] See UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* rr. 43-45.

[81] See Nelson Mandela Rules (n 80) rr. 50-53; The Yogyakarta Principles plus 10: Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles (2017) Principle 9(h).

[82] Nelson Mandela Rules (n 80) r. 24; European Prison Rules (n 79) r. 40.3.

patterns of discrimination, assess protection needs, and inform evidence-based policies. States should ensure that data collection is based on informed consent and self-identification.

Ultimately, the deprivation of liberty must never entail the deprivation of identity, dignity or access to fundamental rights and the experience of some jurisdictions demonstrates that more inclusive and individualised approaches are both feasible and compatible with the legitimate security requirements of correctional institutions.

States have a responsibility to ensure that prison environments do not reproduce or intensify discrimination experienced by LGBTQIA+ individuals in society at large. Ensuring the effective protection of LGBTQIA+ persons in detention is therefore not merely a matter of improving prison management; it is an essential component of States' broader obligation under international human rights law.