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To Dr. Ahmed Shaheed United Nations Special Rapporteur on Freedom of Religion or Belief
in response to the call for submissions “Anti-Muslim Hatred and Discrimination”

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GENDERED IMPACTS OF ANTI-MUSLIM HATRED AND DISCRIMINATION: THE CASE OF GERMANY

by the Center for Migration, Gender, and Justice

Introduction

In 2019, 871 anti-Muslim hate crimes were reported in Germany. However, it is estimated that these statistics solely represent a fraction of experiences as many go unreported. Adding to these staggering numbers of hate crimes are incidents of anti-Muslim discrimination in employment, education, health, and daily life as recent studies show that around half of the German population holds Islamophobic views (Islamophobia in Germany National Report, 2019).

These patterns of anti-Muslim hatred and discrimination are not localized to Germany; rather, they are manifested across the European Union (EU). According to the 2019 European Islamophobia Report, the alarming levels of Islamophobia - defined here as anti-Muslim racism - across the EU have led to several regional and international investigations. For instance, in the report *Countering Racism and Xenophobia in the EU*, the European Commission (2019) highlights the connections between the normalization of Islamophobia, online far-right networks, and violent attacks against Muslims. Referencing a survey by the European Parliament Research Service, the report indicates that anti-Muslim hate crimes rose from 12% in 2010 to 25% in 2016 (European Commission, 2019).

Anti-Muslim hatred and discrimination in Germany and across the EU carry specific gender dynamics (also often referred to as “Gendered Islamophobia”). As the European Network Against Racism (2016) found in their study *Forgotten Women*, Muslim women experience compounded inequalities not only due to their gender, but also due to perceived or real ethnicity, religion, and nationality. Discrimination against Muslim women is particularly prevalent in the labor market and occurs in the access to vocational training and employment, as well as at the workplace.

In Germany, anti-Muslim hatred and discrimination in the labor market has persisted despite the protections put in place with the 2006 General Act on Equal Treatment and the 2015 decision by the German Federal Constitutional Court that declared general headscarf bans for public school teachers to be unconstitutional. Restrictions on religious garb in the employment sector have only slowly been amended and labor market discrimination against Muslim women remains high.

For instance, a study conducted by the Network against Discrimination of Muslims (2012) found that female Muslim respondents experienced higher levels of discrimination (59%) than male Muslim respondents (36%). Furthermore, a 2016 study by the Institute for Labor Economics showed that women with migration background from a Muslim majority country wearing a headscarf are significantly disadvantaged in the German labor market. By using a correspondence test experiment, the Institute found that only 4.2% of all applications featuring a Turkish name and a picture of a woman wearing a headscarf received invitations for interviews (IZA, 2016).

While these statistics speak for themselves, it is important to note that the overwhelming majority of EU Member States do not record anti-Muslim incidents as a separate category of hate crimes (European Islamophobia Report, 2019). Indeed, the German federal government only began tracking anti-Muslim hate crimes - as such - in 2017. Before then, attacks on Muslims and Islam were categorized under the broad umbrella of “hate crimes,” more specifically under “politically motivated hate crimes” (German Federal Ministry of Interior, 2017). Additionally, according to the European Union’s Fundamental Rights Agency (2017), only around 12% of Muslims report incidents of discrimination across the EU. For Muslim women, challenges to reporting anti-Muslim hatred and discrimination are further heightened because of the intersectional discrimination that the women face. Reporting systems often lack options to indicate multiple grounds of hatred and discrimination (ENAR, 2016).

This report is the result of our ongoing research, advocacy, and education on migration and gender discourse and politics in the EU. The report focuses on the labor market as a space where gendered impacts of anti-Muslim hatred and discrimination are particularly prevalent and pervasive in law and practice. In our analysis, we draw on interviews with Muslim women in the state of Baden-Württemberg, Germany (2018/2019) discussed in our report “Unveiled or Unemployed? Gender Equality and Justice in the German Labor Market,” as well as a discussion of the socio-legal structures that frame experiences of Muslim women and research on good practices in hate crime reporting systems.

Based on our findings, we identify four key challenges that inform gendered impacts of anti-Muslim hatred and discrimination in the labor market: fragmented anti-discrimination framework (EU and national level), prevalent Islamophobia, lack of data and research on experiences of Muslim women, and limited hate crime reporting systems.

In our recommendations and discussions of good practices, we focus on the importance of safe and adequate hate crime reporting systems that speak to the specific needs and challenges of Muslim women in the context of gendered anti-Muslim hatred and discrimination. We - the Center for Migration, Gender, and Justice - thus recommend to:

- 1) Direct funds to community partnerships with organizations that collect data on anti-Muslim hatred and discrimination.
- 2) Expand Germany’s hate crime definition and categorization.
- 3) Create accountability mechanisms for criminal justice institutions that ensure hate crime data collection and public access to hate crime reports.
- 4) Provide support and resources for survivors of anti-Muslim hatred and discrimination that address trauma and fears of retaliation.
- 5) Improve hate crime reporting systems to capture intersectional experiences of gendered anti-Muslim hatred and discrimination.

Discrimination in Law and Practice

The legal-institutional framework that governs labor market participation of Muslim women in Germany includes the German Constitution (Basic Law), the General Act on Equal Treatment, and state-based religious garb policies. For the purpose of this report, the focus is on Baden-Württemberg's state-based religious garb policies. Since this report is centered around religious discrimination, the following overview only pertains to aspects of the legal-institutional framework that speak to religious freedoms and rights.

1949 German Constitution

German Basic Law (Constitution) guarantees the inviolable freedom of faith and conscience in Article 4. This includes the freedom to profess a religious or philosophical creed and the undisturbed practice of religion. Although Article 4 does not note any restrictions to the right to freedom of religion, constitutionally-immanent barriers are inherent to all basic rights. Furthermore, Basic Law establishes particular obligations for civil servants: civil servants are obliged to accept certain limits to their basic rights, given they are required for service (German Basic Law, 1949 / German Federal Constitutional Court).

2006 General Act on Equal Treatment

The General Act on Equal Treatment transposes the EU Equality Directives into German law. The Act prohibits discrimination based on gender, race, ethnicity, religion, belief, disability, age, and sexual orientation in various areas (i.e. education, employment etc.). Though discrimination on these grounds is prohibited, permissible difference in treatment based on occupational requirements is allowed. Permissible difference in treatment must be "genuine, determining, and proportionate to particular occupational activities" as per Article 8 of the law. Additionally, Article 24 outlines special exceptions to discrimination and unequal treatment clauses for public sector employees (General Act on Equal Treatment, 2006).

Baden-Württemberg's Religious Garb Policies:

The state of Baden-Württemberg enacted a religious garb policy for public school teachers in 2004. Article 38 of the State School Act prohibits the exercise of "political, religious, ideological or similar manifestations that may endanger or disturb the (religious) neutrality of the country towards pupils or parents or the political, religious or ideological peace of the school" (Baden-Württemberg State School Act, 2004). The article also notes that behavior vis-à-vis political, religious, and ideological manifestations is "particularly illegitimate" if it can be perceived as a "teacher's demonstration against human dignity, equality, basic rights to freedom or the free and democratic order of the constitution" (Baden-Württemberg State School Act, 2004). Important to highlight is the provision that exempts manifestations of Christian occidental values. Baden-Württemberg's School Act holds that Christian occidental educational and cultural values or traditions do not contradict the prohibition of political, religious, ideological or similar manifestations and do not constitute illegitimate behavior. Building on this restriction for public school teachers, Baden-Württemberg enacted a religious garb policy for kindergarten employees in 2006. The amendment to the Kindergarten Act similarly exempts Christian occidental values in its ban on political, religious, ideological, or related manifestations (Baden-Württemberg Kindergarten Act, 2006).

2015 German Federal Constitutional Court

In 2015, the German Federal Constitutional Court declared that a general prohibition of the headscarf or other forms of religious garb that may be perceived as political, religious, ideological, or similar manifestations, is not sufficiently justified by the provision of posing an “abstract danger”; rather, a prohibition must pose a specific danger of impairing school peace or the principle of neutrality. The Court also nullified exemptions for Christian occidental values in religious garb policies. To the Court, the exemptions violate the prohibition of discrimination on religious grounds. With this ruling, existing state-based religious garb policies were to be amended (German Constitutional Court, 2015).

Only one (North-Rhine Westphalia) out of the eight states that have enacted religious garb policies has amended its policy based on the 2015 decision. The state of Baden-Württemberg has yet to follow suit. A proposal to amend the State School Act was spearheaded by the Green-Social Democrat coalition in 2015, but was postponed due to state elections in 2016.

Multiple discrimination and hatred suffered by Muslims

The effects of pervasive structural and institutional discrimination against Muslim women in the German labor market are vast. To demonstrate the complexities of these effects, we draw on our co-authored report “Unveiled or Unemployed? Gender Equality and Justice in the German Labor Market,” with our Advisory Group member, WoW e.V., a community-based organization (Stuttgart, Germany) that addresses intersectional discrimination in employment. The data of the report was collected in 2018/2019 in Baden-Württemberg and includes interviews with university students and graduates aspiring to become public school teachers, as well as public school teachers. The following analysis is based on a sample of interviews with individuals wearing headscarves and hereby constitutes a case study that exemplifies impacts of multiple discrimination and hatred suffered by Muslims:

The interviewees generally perceived the 2015 decision by the German Federal Constitutional Court as an improvement. The interviewees felt more encouraged to pursue their educational and professional goals. Some interviewees mentioned that the decision provides an argumentative basis in instances of discrimination. Nevertheless, the interviewees expressed awareness that the existing legal-institutional framework remains vague in important aspects, for example in its definition of “endangering school peace” as a premise for restrictions on Islamic garb.

Furthermore, the interviewees recognized that since no legal amendments have been made to the State School Act of Baden-Württemberg, labor market access remains compromised. There was a persistent concern amongst the interviewees that because hiring decisions are made by respective school administrations, interpretations of the fragmented legal-institutional framework may disadvantage them.

Overall, the interviewees expressed fear that they be confronted with prejudices concerning the headscarf no matter which employment sector they work in. Some felt the need to work harder than their peers, an aspect which exhibited itself in studying more subjects to build an impressive portfolio.

The interviewees agreed that substantive change can only happen if views of Muslims and Islam change as well. In this context, the interviewees particularly appealed to the ways in which headscarf debates are discussed and how integration continues to be perceived as one-directional in the sense that “if one wants to integrate into the employment sector, one has to take off the headscarf” (interview with university student).

Good Practices

A key mechanism for addressing gendered anti-Muslim hatred and discrimination are safe and adequate hate crime reporting systems. As a good practice, safe and adequate hate crime reporting systems require comprehensive definitions of hate crimes and related concepts, as well as transparency in data collection and public access.

According to the Office for Democratic Institutions and Human Rights (2014), hate crime reporting systems benefit from a common, comprehensive, and simple definition of hate crimes. Such definition allows for consistent data collection, cohesive transnational tracking, and transparent public access to hate crime records. At the EU-level, conceptions of hatred and actions in relation to racism and xenophobia are established in the Council Framework Decision on Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law (2008). The framework notes that hatred should be understood as “referring to hatred based on race, colour, religion, descent or national or ethnic origin” (Preamble). In regards to addressing hatred, the framework outlines that offences concerning racism and xenophobia such as “publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin” are punishable by respective measures of EU Member States (Article 1).

Varied conceptions of hatred and discrimination in general, but particularly in regards to Muslims and Islam, have convoluted debates and policies. Additionally, a lack of disaggregated data along ethnic/religious/gender lines and the use of different proxies (i.e. nationality and migration background) has hindered systematic representations of experiences of hatred and discrimination across the EU.

In Germany, for instance, hate crimes are defined as a sub-category of “politically motivated crimes” (German Federal Bureau of Investigation). Under this broad umbrella conception, there are three main forms of hate crimes: extreme-left wing, extremism by foreigners, and extreme right-wing. This definition and categorization of hate crimes fails to address the specific underlying motivations and intentions of the act (i.e. anti-Muslim hatred, xenophobia, sexism, etc.), thereby severely misrepresenting the issue at hand. Subsequently, measures to effectively address anti-Muslim hatred and discrimination, particularly in an intersectional manner, remain inadequate.

On the European level, efforts to capture intersectional experiences of anti-Muslim hatred and discrimination have been championed by the European Network against Racism (ENAR). In 2017, ENAR published a report on Islamophobia and Muslim women; ENAR also held a symposium on intersectionality as a data collection tool in 2018. To improve data collection on gendered anti-Muslim hatred and discrimination, we strongly echo the demands outlined as part of the symposium. These include the establishment of a National Action Plan on Racism (including anti-Muslim racism) *and* the collection of data that highlights intersections of discrimination based on migration status, race, gender, religion, etc.

Our research on reporting systems across the EU also shows that transparency and accountability by criminal justice institutions - such as the police - is essential in combatting gendered anti-Muslim hatred and discrimination. While addressing definitions of hate crimes and related terms resolves challenges in data collection and analysis, data does not exist if it is not reported. Distrust towards criminal justice institutions results in underreporting and limited public access to hate crime reports misconstrues the magnitude of anti-Muslim hatred and discrimination.

In Germany, concerns regarding police bias and community policing have been on the rise. The global protests sparked by the killing of George Floyd in the summer of 2020 led to protests in Germany, urging police and government to reexamine their own relationship with bias and police brutality. Studies have shown that in Germany, there are at least five times more violent acts committed by police than actually recorded and investigated (Ruhr University Bochum, 2020). Government and police officials continue to downplay the existence of institutional racism and violence within their departments, rather than investigating within their own ranks. Several states, such as Berlin and Saxony-Anhalt, have taken steps to combat bias in police training by addressing prejudiced actions of police. These measures however remain isolated across Germany (Deutsche Welle, 2020).

An example for a reporting system that is responsive to intersectional experiences of anti-Muslim hatred and discrimination and that speaks to transparency and accountability with criminal justice institutions is TellMAMA. TellMAMA is a non-profit non-governmental organization that collects hate crime data and provides support for hate crime survivors across the United Kingdom. TellMAMA's reporting system collects data as perceived and experienced by survivors and is unique in that the organization simultaneously works with governing institutions to raise awareness around the issue.

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