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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 “United Nations General Assembly on Eliminating Intolerance and Discrimination Based on Religion or Belief and the Achievement of Sustainable Development Goal 16”

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UNVEILED OR UNEMPLOYED? GENDER EQUALITY AND JUSTICE IN THE GERMAN LABOR MARKET

by the Center for Migration, Gender, and Justice
and our Advisory Group Partner, WoW e.V.

Introduction

Unveiled or unemployed – that is the dilemma for many Muslim women in Germany. Since the case of Fereshta Ludin, a former Afghan refugee who was denied a teaching position at a public school due to her wearing Islamic garb in 1998, “headscarf debates” have framed discourses and politics on Muslim women in the German labor market.

Despite the 2015 decision by the German Federal Constitutional Court that declared general headscarf bans for public school teachers to be unconstitutional, existing restrictions on religious garb have only slowly been amended and labor market discrimination of Muslim women remains high.

As a 2016 study by the Institute for Labor Economics showed, 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).

These patterns of discrimination are not localized to Germany; rather, they have institutional roots across the European Union (EU). According to the Open Society Foundation (2018), thirteen member states restrict Islamic garb in employment (private and/or public) in some form. Despite the varying degrees in the implementation and scope of these restrictions across countries, the Open Society Foundation identified several common justifications for the restrictions, including the protection of gender equality and the pursuit of neutrality and secularity (Open Society Foundation, 2018).

Discrimination against Muslim women has been heightened in the context of recent migratory movements. Since 2015, most asylum claimants in Germany have come from Muslim majority countries, including Syria, Turkey, Iraq, Afghanistan, Iran, Nigeria, Eritrea, and Somalia (German Federal Office for Migration and Refugees, 2020). Muslim refugee women face significant challenges in the German labor market not only due to their migration status and nationality, but also due to their gender and religion. As of 2019, 6% of refugee women in Germany are employed compared to 27% of refugee men (IAB, 2019). This gender gap within refugee communities is particularly evident in underemployment rates, type of employment, and wage differences.

This report is the result of an ongoing collaborative research project with one of our local partner organizations in the Advisory Group - Europe, WoW e.V. The report was conceived within our joint contributions to the “Good Practices, Success Stories and Lessons Learned in SDG Implementation” initiative by the United Nations Department of Economic and Social Affairs; it draws on interviews with Muslim women in the state of Baden-Württemberg, Germany (2018/2019), an analysis of the socio-legal structures that frame experiences of Muslim women in the German labor market, and research on good practices in employment.

Based on our findings, we identify four key challenges that inform the pervasive discrimination that Muslim women (including Muslim refugee women) face in the German labor market: fragmented anti-discrimination framework (EU and national level), prevalent Islamophobia and anti-migrant racism, lack of data and research on experiences of Muslim women in the German labor market, and rise in right-wing nationalist dynamics.

These challenges point to the intersectional discrimination that Muslim women encounter in the German labor market. Relevant SDGs to consider to address this discrimination are SDG 5 (Gender Equality), SDG 8 (Decent Work and Economic Growth), SDG 10 (Reduced Inequalities), and SDG 16 (Peace, Justice, and Strong Institutions).



Muslim women not only face labor market discrimination on the basis of gender, but also on the basis of religion (nationality, migration status, ethnicity etc.). This intersectional discrimination must be recognized and addressed as such within anti-discrimination frameworks.



Restricting Muslim women from accessing certain employment sectors, such as the public employment sector, compromises decent work; it has pushed women into precarious labor, under- and unemployment, which has led to the endangerment of sustainable livelihoods.



Pervasive structural and institutional discrimination against Muslim women in the German labor market widens social and economic inequalities. These inequalities are heightened in the context of prevalent Islamophobia, anti-migrant racism, and right-wing nationalist dynamics which are widespread across Germany.



At the center of achieving gender equality and justice for all women are institutions. The legal-institutional framework that governs Muslim women's labor market participation exists within a fragmented anti-discrimination structure that allows for permissible difference in treatment. As policy and decision makers, institutions carry responsibility to ensure that human rights protections apply to all.

Five years into achieving Agenda 2030 and five years after the decisive ruling by the German Federal Constitutional Court that declared general headscarf bans for public school teachers to be unconstitutional, Muslim women still face discrimination in the labor market. This discrimination has imperiled the achievement of the SDGs (especially SDG 5, 8, 10, and 16) and has further marginalized communities at the intersection of gender, religion, and migration.

Based on our collaborative research, we – the Center for Migration, Gender, and Justice and WoW e.V. - have identified five aspects targeted at institutions (SDG 16) that need immediate response to ensure gender equality and justice in the German labor market:

1. Protect human rights of Muslim women!
2. Incorporate just labor market practices (i.e. anonymized job applications) into anti-discrimination frameworks!
3. Denounce and address Islamophobic, gender-based, and anti-migrant hatred, and violence!
4. Improve data collection and research - including disaggregating data by gender, religion, and migration status!
5. Promote partnerships with communities at the intersection of gender, religion, and migration!

These aspects speak to the needs and challenges of Muslim women in the German labor market and premise our demands for gender justice beyond borders.

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. Please note that Muslim refugee women, given their varied migration statuses, face additional legal-institutional barriers (i.e. Residence Act, Integration Act) to access the German labor market. 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 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).

Email: info@migrationgenderjustice.com
Website: www.migrationgenderjustice.com
Facebook: [@migrationgenderjustice](https://www.facebook.com/migrationgenderjustice)
Instagram: [@cmgi_ngo](https://www.instagram.com/cmgi_ngo)
Twitter: [@cmgi_ngo](https://twitter.com/cmgi_ngo)
#migrationgenderjustice

Email: infowow2015@gmail.com
Website: www.wow-withorwithout.com
Facebook: [@wowwithorwithout](https://www.facebook.com/wowwithorwithout)
Instagram: [@wowwithorwithout](https://www.instagram.com/wowwithorwithout)
Twitter: [@WoW_eV](https://twitter.com/WoW_eV)
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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 the exhibition of Christian and occidental educational and cultural values or traditions does not contradict the prohibition of political, religious, ideological or similar manifestations and does 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 symbols 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, was 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 symbols 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 which 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.

The Effects of Discrimination

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 WoW e.V.’s ethnographic data which include interviews with university students and graduates aspiring to become public school teachers, as well as public school teachers. The data were collected in 2018/2019 in Baden-Württemberg. The following analysis is based on a sample of interviews with individuals wearing headscarves and hereby constitutes a case study that exemplifies effects of discrimination:

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 amendment has 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 on 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 stakeholder in achieving gender equality and justice for all women (SDG5) are institutions (SDG 16), particularly law/policy-making institutions. A crucial mechanism through which institutions can contribute to a more equitable and just labor market is anonymized job application procedures. In Germany, it is standard practice to include a picture and other personal information (i.e. nationality) on résumés. Studies have shown, however, that including pictures and other personal information in applications carries significant discriminatory effects (see IZA, 2016).

While anonymized applications are commonly used in the United States and Canada, in Europe, anonymized application procedures are still in a “developing” phase. According to the German Federal Anti-Discrimination Agency (2020), anonymous application procedures are generally seen favorable. As reflected in results of a 2012 pilot study, employers and employees viewed anonymous applications positively. The pilot study involved eight organizations that voluntarily agreed to use anonymized application procedures - hiding the applicant’s name, gender, nationality, place of birth, disability, date of birth or age, marital status, and picture - for one year.

Incorporating anonymized application procedures into Germany’s anti-discrimination framework (SDG 16) presents a sustainable approach to achieve gender equality and justice in the labor market (SDG 5). Anonymized application procedures address loopholes in the German legal system in that they circumvent lawful unequal treatment (SDG 8, 10). As mentioned, Article 8 of the General Act on Equal Treatment provides a legal basis for unequal treatment in the employment sector based on occupational requirements. Anonymized application procedures can minimize the discriminatory use of the occupational requirements clause by ensuring that applicants that meet the required occupational requirements are chosen “bias-free”.

Anonymized application procedures also address decent work (SDG 8) and inequalities (SDG 10) in that the procedures are grounded in protecting human rights and ensuring anti-discrimination practices. Additionally, anonymized application procedures allow for improved data collection and research on labor market discrimination by means of holding variables such as (assumed) ethnicity, age, nationality, gender, etc. constant.

While we acknowledge that anonymized application procedures cannot guarantee that discrimination does not occur in later stages of the hiring process (i.e. job interview) nor at the workplace, we find that incorporating anonymized application procedures into anti-discrimination frameworks presents an important first step to achieve gender equality and justice for all women in the German labor market.

Email: info@migrationgenderjustice.com
Website: www.migrationgenderjustice.com
Facebook: [@migrationgenderjustice](https://www.facebook.com/migrationgenderjustice)
Instagram: [@cmgi_ngo](https://www.instagram.com/cmgi_ngo)
Twitter: [@cmgi_ngo](https://twitter.com/cmgi_ngo)
#migrationgenderjustice

Email: infowow2015@gmail.com
Website: www.wow-withorwithout.com
Facebook: [@wowwithorwithout](https://www.facebook.com/wowwithorwithout)
Instagram: [@wowwithorwithout](https://www.instagram.com/wowwithorwithout)
Twitter: [@WoW_eV](https://twitter.com/WoW_eV)
#imjobzählt

Authors and Contact Details:

Research Project Director: Dr. Lara-Zuzan Golesorkhi

(Ph.D. Politics, MPhil Politics, MA International Affairs / Founder and Executive Director of the Center for Migration, Gender, and Justice / Founder and Executive Director of WoW e.V.)

Research Project Team:

WoW e.V.: Miriam Aber, Lale Diklitas, Samira Ghozzi

Center for Migration, Gender, and Justice: Abigail Aspinwall, Andrea Thompson Guiza, Lauren Urbina

Center for Migration, Gender, and Justice

P.O. Box 600413

70304 Stuttgart, Germany

Email: info@migrationgenderjustice.com

Website: www.migrationgenderjustice.com

Facebook: @migrationgenderjustice

Instagram: @cmgj_ngo

Twitter: @cmgj_ngo

#migrationgenderjustice

WoW e.V.

P.O. Box 600413

70304 Stuttgart, Germany

Email: infowow2015@gmail.com

Website: www.wow-withorwithout.com

Facebook: @wow-withorwithout

Instagram: @wowwithorwithout

Twitter: @WoW_eV

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Email: info@migrationgenderjustice.com

Website: www.migrationgenderjustice.com

Facebook: @migrationgenderjustice

Instagram: @cmgj_ngo

Twitter: @cmgj_ngo

#migrationgenderjustice

Email: infowow2015@gmail.com

Website: www.wow-withorwithout.com

Facebook: @wowwithorwithout

Instagram: @wowwithorwithout

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