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Alternative report for the UN Committee on the Elimination of Racial Discrimination (CERD) concerning the German governmental report during the 111th session

Submission by Bundesverband Trans* (Federal Trans* Association)

Bundesverband Trans* (Federal Trans* Association, <https://www.bv-trans.de/>) is a nationwide non-profit umbrella organization and advocacy group committed to the rights of trans and non-binary people in Germany. BVT* today represents more than 50 trans and non-binary groups and organizations in Germany and is an NGO officially accredited at the lobby registry to the German Parliament (Lobbyregister Bundestag R 001715). The main goals of the BVT* currently are: the abolition of the Transsexuellengesetz (TSG) and the introduction of new legislation regulating legal gender recognition on the basis of self-determination; securing and improving trans health care; enhancing protection against hate crime; protecting the human rights of trans asylum seekers and refugees; supporting trans self-help groups, networks and non-profit organizations; the elimination of psycho-pathologization and stigmatization of trans and gender non-conforming people; and enhancing anti-discrimination legislation.

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1. Preliminary Remarks

This parallel report was assembled by trans* and queer activists in response to the governmental report submitted by the Federal Republic of Germany to the UN Committee on the Elimination of Racial Discrimination under Article 9 of the International Convention on the Elimination Of All Forms of Racial Discrimination (ICERD).

Primary and supplemental reports from the previous review cycles highlighted several important recommendations regarding the well documented legal vacuum that exists in Germany for comprehensive anti-discrimination legislation, racial profiling and racialized acts committed by law enforcement and the legal system at large, as well as the lived reality of unequal access to social and cultural services on the basis of race. These reports also brought attention to the need for an intersectional lens to be used, to examine and address the intersections between racism, islamophobia, antiziganism, and discrimination of other marginalized identities in Germany.

In 2023, it is still impossible to meaningfully have a discourse in Germany on race, let alone intersectionality, particularly in the political sphere. This is due, in large part, to the lack of any available data on the topic of race and racialized discrimination, as there is no legal definition for race or racism in Germany. It is important to underline that the lack of a legal definition also creates a difficulty in requesting funds for research, projects and programs directed at improving the lived realities of TINA* racialized individuals. Despite concern on the grassroots and international level, the State has continued to ignore the need for a legal definition of racism, particularly structural racism, in State antidiscrimination laws and programs or sponsored research. Instead, the State continues the use of the phrase “persons with a migrant background” as a proxy for racialized people in public discourse – a practice that continues to ignore the reality that this descriptor includes many German citizens, individuals who have lived in the country for centuries as well as individuals who do not live racialized lives.

Due to the absence of a legal definition for racism, the State and institutions do not have a common understanding on how to discuss and collect data on race in Germany. The current lack of data on race makes it impossible to bring to light the unique lived experiences of people with intersecting marginalized identities, such as religion, ability, sexuality, and gender. It is with this gap in mind, that our collaboration, seeks to highlight the experiences of racialized TINA* (Trans, Inter, Nonbinary, agender*) individuals. Racialized TINA* individuals experience multiple forms of discrimination simultaneously, including racism, sexism, and discrimination related to their gender identity, gender expression or sex characteristics. By highlighting their experiences, we recognize the intersectionality of their identities, which is crucial for understanding the complex, structural challenges that exist for racialized TINA* people in Germany.

As there is no data on this group in Germany, especially as it pertains to their racialized experiences, this report remains a preliminary first step. We hope that the report serves as a starting point to center the perspectives of more marginalized communities and to create policies and interventions in line with ICERD to address intersectional discrimination effectively.

Definitions

- **TINA*** stands for Trans, Inter, Non-Binary, and Agender*, and is to be understood as a term for individuals who do not fit into the binary gender system. The asterisk at the end of the abbreviation hints that the acronym does not list gender identities exhaustively. Please note that "cisgender" refers to individuals whose gender identity aligns with the sex they were assigned at birth.

- **Racialized People:** For the purpose of this report the terms “racialized” are used to denote that race is not an inherent quality of an individual, but rather a complex socio-cultural process. In addition, the authors of this report want to draw attention to the fact that this terminology erases important differences in the historical and contemporary experiences of people who are affected negatively by racism. These differences need to be discussed in further reports.

2. The Lived Realities of TINA* Racialized Individuals

TINA* racialized individuals navigate intricate, multidimensional challenges that span various aspects of their existence. They find themselves at the crossroads of marginalized identities, resulting in a pronounced form of intersectional marginalization. At the core of these challenges is the interplay of discrimination based on race, gender identity, and often also citizenship status. Racialized identities expose them to systemic racism, while gender identities demand recognition in a predominantly cis-normative society. Citizenship status adds another layer of complexity, influencing their access to rights and opportunities.

Discrimination permeates various aspects of their lives, shaping their access to resources, opportunities, and overall well-being. Challenges manifest across key life domains, such as healthcare, employment, education, housing, and interactions with the justice system (see the following paragraphs). Discrimination such as transphobia and racism intersect and is exacerbated if TINA* racialized individuals are disadvantaged by further types of discrimination, thus magnifying the adversity they face.

Importantly, these challenges also fuel resilience. TINA* racialized individuals are not passive victims; they actively advocate for their rights, educate their communities, and contribute to building a more inclusive and equitable society.

2.1 Absence of protective anti-discrimination legislation

The General Treatment Act (AGG – Allgemeines Gleichbehandlungsgesetz) at the federal level has serious gaps in protection that disproportionately affect TINA* racialized individuals as there is no right of collective enforcement. Particularly problematic is the lack of protection against discrimination committed by public bodies or in the health sector. Even though a call for reform has been agreed on in the coalition treaty and more than 100 civil society organizations have called for a reform of the act, the government has not presented a draft for the new legislation yet.^{i ii} On a regional level, Berlin is the only state that has implemented a more comprehensive anti-discrimination law (LADG - Landesantidiskriminierungsgesetz). Germany's commitment to ICERD requires a more harmonized approach to anti-discrimination legislation, ensuring that TINA* racialized individuals across the country have equal access to legal protections on the federal and local level.

2.2 Absence of intersectional anti-discrimination reporting

Intersectional discrimination against more marginalized communities often fall outside the scope of general anti-discrimination reports. This oversight has created a huge obstacle when drafting this report as no data that looked at the experiences of racialized TINA* individuals from an intersectional perspective was available from public institutions or civil society organizations (see also preliminary remarks). With the absence of data, the marginalization of racialized TINA* individuals is perpetuated and the development of targeted measures to address their unique challenges is hindered. To fulfill the promise of

ICERD, Germany must focus on generating accurate intersectional data that reflects the distinct experiences of TINA* racialized individuals.

2.3 Rise in Hate Crime

Police statistics have reported higher numbers for anti-LGBTIQA+ and racist hate crimes for years. This year's report on politically motivated violence by the Federal Ministry of the Interior (BMI) and the Federal Bureau of Investigation (BKA) showed a significant increase compared to previous years in violence based on gender identity (2021: 340, 2022: 417, rise of 22.65%), violence based on racism (2021: 2782, 2022: 3180, rise of 14,31%), violence based on antiziganism (2021: 109, 2022: 145, rise of 33,03%) and violence based on xenophobia (2021: 4735; 2022: 5372; rise of, 13,45%).ⁱⁱⁱ

The recorded cases are only an inadequate approximation of the real extent of the violence. Only 5% of trans people in Germany contact the police after experiencing violence and harassment according to a survey by the European Union Agency for Fundamental Rights (FRA).^{iv} So these numbers can only provide a rough estimate of the situation of the TINA* racialized communities as underreporting is highly prevalent among racialized and TINA* communities. International surveys such as the Trans Murder Monitoring (TMM) point to the fact that especially racialized trans people are most vulnerable to violence. In the 2021 TMM data, as in previous years, it was found, that racialized trans women and transfeminine individuals were affected disproportionately by fatal hate crime on a global level and are thus at a particular risk to experience severe forms of violence.^v

Hate crimes are a distressing reality faced by TINA* racialized individuals. These crimes manifest in various forms from verbal harassment to violent attacks. The emotional, physical, and mental toll on TINA* racialized individuals is immeasurable. It is imperative that Germany takes a holistic approach to tackling hate crimes by addressing both the legal framework and societal attitudes to ensure that TINA* racialized individuals are not only protected but genuinely embraced as equal members of the German society.

2.4 Challenges of Economic Inequity

Employment opportunities, wage disparities, and economic inclusion are shaped by discrimination based on race and gender identity, which further perpetuates existing disparities. Racialized TINA* communities often encounter discriminatory hiring practices and barriers, pushing them into precarious employment with limited job security. Addressing these economic disparities demands comprehensive action, from anti-discrimination measures in educational systems, on the job market and at the workplace to promoting entrepreneurship among TINA* racialized individuals. By doing so, Germany can move closer to fostering an economically equitable environment that adheres to ICERD's principles of non-discrimination and equality.

2.5 Limited or No Access to Healthcare

Access to quality healthcare is a fundamental human right, yet TINA* racialized individuals in Germany often face barriers to receiving equitable and inclusive care. Access to trans related health care is still dependent on a pathologizing diagnosis which is in stark contrast to the depathologizing perspective on trans and non-binary identities expressed in ICD-11.^{vi} Overt discrimination, everyday racism, lack of anti-discrimination training among healthcare providers, and insufficient reporting mechanisms when

discrimination is experienced can lead to a range of health challenges. Moreover, medical racism perpetuates inadequate (mental) healthcare, neglect of intersectionality, and a substantial negative impact on overall well-being. In some cases, healthcare providers' bias and lack of understanding of the unique health needs of TINA* racialized individuals can lead to misdiagnoses and delays in receiving essential medical treatment, potentially causing harm and suffering. The repercussions of medical racism extend beyond physical health, eroding trust in healthcare systems, deterring individuals from seeking care when needed, and resulting in persistently poorer health outcomes.

2.6 Racialized TINA* individuals living in vulnerable situations

The following list is not comprehensive, but an example to illustrate that not all racialized TINA* individuals are affected equally by discrimination based on gender identity and race. Further reports are needed to address the unique challenges that affect specific subgroups of racialized TINA* individuals such as sexworkers, homeless people, people living in prison and other more marginalized groups.

2.6.1 TINA* refugees and asylum seekers

TINA* refugees and asylum seekers are among the most vulnerable people in Germany, often fleeing discrimination based on their gender identity in their home countries just to experience transphobia as well as racism in Germany. TINA* refugees or asylum seekers often decide against disclosing their gender identity for fear of violence within the refugee shelter. Consequently, the City of Berlin decided to regard trans refugees as "vulnerable persons" in the sense of the EU Directive 2013/33/EU which allows for special protection. The federal government has followed this initiative in 2019 and established that regional governments have the duty to particularly address the needs of trans refugees and asylum seekers.^{vii} Local governments, however, are often still failing to provide safe accommodation to trans refugees and asylum seekers and support them against discrimination. Trans refugees are not entitled to LGR (legal gender recognition) until the asylum procedure is completed, which often takes several years. Trans health care isn't included in basic health care that is offered to asylum seekers and refugees in the first 18 months of their stay.

2.6.2 Racialized TINA* individuals living in rural areas

Racialized TINA* individuals residing in rural Germany face a unique set of challenges. These challenges often include isolation, limited support networks, and a lack of access to inclusive services. Rural communities may lack diversity, leading to feelings of loneliness and disconnection among TINA* racialized individuals. Access to support networks and community resources is often limited in rural areas, deepening their sense of isolation and exclusion and impacting the well-being of TINA* individuals. Rural communities often lack the robust network of civil society organizations available in urban areas, limiting the available support and advocacy for these individuals. Healthcare disparities loom larger in rural areas and access to gender-affirming care, mental health services, and sexual health resources may be scarce.

3. Recommending a Path to Equity for TINA* Racialized Individuals in Germany

Introduction: The pressing challenges of systemic racism and binary gender norms in Germany demand comprehensive recommendations. The following set of recommendations emphasizes urgent actions and long-term strategies inspired by the United Nations International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

3.1 Urgent Recommendations

- **Establishing Comprehensive and Effective Anti-Discrimination Legislation:** Germany must urgently implement comprehensive anti-discrimination legislation that unequivocally recognizes the intersectionality of racial and gender identities. These laws should offer robust legal protections against discrimination and hate crimes specifically targeting discrimination from an intersectional perspective, spanning all aspects of public and private life. Law enforcement of anti-discrimination legislation should be enhanced by decreasing obstacles for more marginalized communities.
- **Working Towards Healthcare Equity:** A fundamental reform of the healthcare systems is necessary to ensure equitable and non-discriminatory access to gender-affirming care and services for TINA* racialized individuals. This transformation includes the removal of legal barriers hindering access to essential medical procedures. In this context, accessible mental healthcare services addressing the needs of TINA* racialized individuals are crucial.
- **Increasing Support for Victims:** Establishing a robust support infrastructure is fundamental to facilitate the recovery and prevent traumatization of discrimination and hate crime victims. This infrastructure should offer access to legal assistance, (mental) health services, and community support networks, thus addressing medical, emotional, and legal needs.
- **Establishing an Independent Police Oversight Committee:** Considering the rise in racist and anti-LGBTIQA+ hate crimes, the establishment of an independent police oversight committee is crucial for ensuring safety and access to the legal system for TINA* racialized individuals. This committee should investigate allegations of police misconduct, especially those involving TINA* racialized individuals. The committee should comprise independent experts well-versed in policing, community representatives, and individuals with expertise in anti-discrimination and human rights.

3.2 Long-term Strategies

- **Intersectional Approach in Policymaking:** Germany must embrace an intersectional approach in policymaking and implementation, recognizing the unique experiences and nuanced discrimination faced by TINA* racialized individuals. Policies should be crafted to combat the specific discrimination faced at the intersection of race and gender identity.
- **Anti-Discrimination Training:** Investment in anti-discrimination training is pivotal for healthcare providers, educators, law enforcement, and public officials. These trainings should emphasize sensitivity to the diverse needs of TINA* racialized individuals and the importance of respecting their identities. Raising awareness should be integrated into school curricula, workplace training, and public awareness campaigns.
- **Research and Data Collection:** Germany should actively support research initiatives dedicated to collecting intersectional data on TINA* racialized individuals' experiences to empower and facilitate evidence-based policymaking. Research initiatives should be designed in a participatory manner that guarantees the inclusion of TINA* racialized individuals throughout the whole research process.
- **Community Engagement:** A vibrant and inclusive dialogue between TINA* racialized individuals, advocacy groups, governmental agencies, and civil society organizations is crucial to develop policies that meet this community's needs comprehensively. Public funding should be provided to organization from more marginalized communities to facilitate their engagement.

4. Concluding Remarks

From verbal harassment to institutional barriers and physical violence, the discrimination encountered by racialized TINA* individuals has far-reaching consequences and must not be ignored. Amidst these challenges, advocacy efforts play a crucial role in creating change and raising awareness. Although the responsibility to provide protection from violence and to decrease discrimination is public and a task of the state, organizations, activists, and allies tirelessly work to dismantle oppressive systems and foster environments that promote equity. The narratives of these champions of change offer a glimmer of hope in the quest for a more inclusive society.

The impact of policy on the lives of TINA* racialized individuals is profound. Whether through legal protections or the absence thereof, policies shape the daily realities of these communities.

In these multifaceted challenges and intricacies of discrimination and resilience, TINA* racialized individuals in Germany inspire not only understanding but action. Their stories call for a society where everyone, regardless of their racial, gender, and citizenship identities, can live a life free from prejudice and discrimination, a life rich with opportunities, dignity, and respect. Action is now needed more than ever given the current rise in anti-LGBTIQ+ rhetoric and hate crime.

ⁱ Bündnis AGG-Reform-Jetzt! (2023). Mehr Fortschritt wagen heißt auch mehr Anti-Diskriminierung wagen! Zentrale Aspekte zur Stärkung des rechtlichen Diskriminierungsschutzes. Retrieved from https://agg-reform.jetzt/wp-content/uploads/2023/08/2023-08-08_Stellungnahme_Buendnis.pdf

ⁱⁱ SPD, Bündnis 90/DIE GRÜNEN & FDP (2021). Mehr Fortschritt wagen. Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit. Koalitionsvertrag zwischen SPD, Bündnis 90/DIE GRÜNEN & FDP, p. 121. Retrieved from <https://www.bundesregierung.de/resource/blob/974430/1990812/1f422c60505b6a88f8f3b3b5b8720bd4/2021-12-10-koav2021-data.pdf?download=1>

ⁱⁱⁱ Federal Ministry of Interior & Federal Bureau of Investigation (BMI & BKA, 2023). Politisch motivierte Kriminalität im Jahr 2022 – Bundesweite Fallzahlen, p. 10. Retrieved from https://www.bka.de/SharedDocs/Kurzmeldungen/DE/Kurzmeldungen/230509_PMK_PK.html

^{iv} FRA (2020). LGBTI Survey Data Explorer. Abrufbar unter https://fra.europa.eu/en/data-and-maps/2020/lgbti-survey-data-explorer?topic=3.%20Violence%20and%20harassment&question=DEXindh4_1mc&plot=inCountry&superSubset=05--Trans-people

^v Trans Murder Monitoring (2021). TvT TMM Update – Trans Day of Remembrance 2021: 375 trans and gender-diverse people reported murdered in the past year. Abrufbar unter <https://transrespect.org/en/tmm-update-tdor-2021/>

^{vi} Bundesverband Trans* (BVT*, 2021). Policy Paper des Bundesverband Trans*: Trans*gesundheit – Empfehlungen für die Stärkung der transitionsspezifischen und allgemeinen Gesundheitsversorgung. Retrieved from https://www.bundesverband-trans.de/wp-content/uploads/2023/04/policypaper2_gesundheit_v5-web.pdf

^{vii} Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (BMFSFJ, 2019). Schutz geflüchteter Menschen in Flüchtlingsunterkünften. Retrieved from <https://www.bmfsfj.de/bmfsfj/themen/engagement-und-gesellschaft/fluechtlingspolitik-und-integration/schutzkonzepte-fluechtlingsunterkuenfte>