

**Submission of the Defender of rights
For the French review
by the Committee on the Elimination of Discrimination against Women (CEDAW)
(September 2023)**

Introduction

The Defender of Rights is an **independent authority enshrined in the French constitution, established by organic law no. 2011-333 of March 29, 2011**. It is responsible for ensuring respect for the rights of users of public services, the best interests and rights of the child, the ethics of professionals working in the security sector, and for supporting whistle-blowers in their efforts to protect their rights and freedoms. Finally, it is responsible for combating direct or indirect discrimination prohibited by law or by an international commitment duly ratified or approved by France, such as the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Women's rights, and in particular issues of non-discrimination on the grounds of sex and gender, are at the heart of the Defender of rights' activities. **In France, it is the "body responsible for promoting equal treatment", as set out in European directives on combating discrimination, particularly on the grounds of sex**. The responsibilities of the Defender of Rights include protecting rights by handling individual complaints, and promoting equality and access to rights. It bases his action on the complaints it receives throughout France thanks to its network of 570 delegates. It also maintains close links with NGOs involved in the fight for gender equality, notably through its dedicated dialogue forum. It also cooperates with relevant public institutions such as the *Service des droits des femmes et de l'égalité* (Women's Rights and Equality Department) and the *Haut Conseil à l'égalité* (High Council for Equality).

Claims are investigated and, where appropriate, followed by mediation, individual or general recommendations, or interventions before the courts. In 2022, of all the cases received at head office, in particular via the anti-discrimination.fr platform created in February 2020, almost 13% of claims concerned discrimination, i.e. 6,545 complaints. Of these, 4% were related to gender, 3% to pregnancy and 3% to marital status, representing a total of almost 10%. Of all gender discrimination cases received in 2022, 41% concerned private employment, 23% public employment and 16% access to private goods and services. In some cases, the Defender of Rights has also observed the intersectional dimension of gender-based discrimination.

Through its decisions and opinions to Parliament, as well as its thematic reports and the studies it finances, the institution recommends changes in the law and in the practices of stakeholders, to make them more respectful of gender equality.

Today, the Defender of Rights draws up a mixed assessment of the implementation of CEDAW in France: despite the new measures and legal obligations, discrimination against women, persist in many areas. In this contribution, the Defender of rights wishes to present some of her findings, largely resulting from her complaints, as well as her recommendations and proposals for reform in the field.

I - Youth and education: combating stereotypes from an early age

- **Education in emotional and sexual life** (questions 5.4 and 11.2)

A report by the General Inspectorate for Education, July 2021 indicates that **the objectives set by the 2001 law are far from being achieved 20 years after its promulgation:**

The Defender of Rights has been pointing out that sexuality education is a fundamental mission of the French education system and recommends to:

- **Train the professionals;**
- Disseminate **comprehensive action and intervention guides covering all aspects of the issue;**
- **Adopt a global approach** to sexuality education, integrating social, emotional, prevention and care dimensions, as well as the fight against violence and for gender equality, sexuality and gender identity, and the fight against gender stereotypes and discrimination.

- **Combating bullying** (question 11.3)

The July 26, 2019 law for a school of trust enshrines the right to harassment-free schooling. In recent years, public authorities are trying to curb the phenomena of harassment and cyberbullying.

However, complains received by the Defender of Rights reveal their persistence, and highlight the implementation difficulties, in particular, the anti-harassment protocol and the program to combat harassment at school (pHARe)¹. In her opinion of July 2021² on the issue, the Defender of Rights has made a number of **recommendations:**

- **taking appropriate action** as soon as a student and/or parent alleges harassment, **even if a complaint has been dismissed** or is being processed;
- regular assessment, in order to evaluate and improve practices;
- redistribution of anti-harassment protocols and tools to all school principals - training for all school managers, academic mediators, district inspectors, school doctors and nurses in identifying and dealing with bullying (including cyberbullying);
- regular awareness-raising campaigns on the consequences of harassment in all public and private schools under contract;
- promote children's rights in every school, including to protection from all forms of violence.

- **Digital education** (question 5.3)

Young girls, are particularly exposed to **cyber sexism**.

In the fight against cyber harassment, the Defender of Rights recommends:

- through the "no to harassment" ambassadors³, to **raise awareness among national education professionals of the reality of cyberbullying**
- **enshrine in law compulsory digital education modules for students,**
- **raise awareness among children and their parents** by providing dedicated information.

II - Access to justice: group action recommendations (question 3.2)

In June 2020, the National Assembly's Law Commission issued its [report on the assessment and prospects for group actions](#). Its rapporteurs tabled a [bill on the legal status of group actions on December 15, 2022](#).

¹ The pHARe program provides each school with a multi-category team specifically trained in dealing with harassment and prevention initiatives involving students and their parents.

² [Opinion n°21-10 of July 12, 2021 on school bullying and cyberbullying](#).

³ See : [Non-harassment ambassadors](#).

While the potential of group action remains major, particularly for responding to systemic discrimination, none of the few procedures launched since the entry into force of the November 18, 2016 law modernizing justice for the 21st^e century has been successful. This situation results in particular from the complex procedural framework provided by the law and the interpretations of case law.

In her [opinion 23-03 of February 23, 2023](#), on the bill amending the legal regime for group actions, the Defender of Rights welcomes the progress made in this text but also proposes improvements to it and especially :

- Under the bill, **judges will be able to impose civil fines** where the perpetrator has gained or saved money from the discrimination. The aim here is to introduce a penalty that will act as a real deterrent, so that it is not economically more advantageous to discriminate. However, the proposed law makes these fines conditional on the perpetrator having deliberately committed such discrimination. **This could annihilate any useful effect of the law, as group action often concerns structural discrimination that may result from unconscious bias on the part of employers;**

- The bill **alleviates the financial costs of the proceedings for the claimants**, by providing for partial coverage of costs by the State (expenses relating to investigative measures). However, it does not take into account all costs actually incurred, such as lawyers' fees and costs internalized by the union or association in connection with the proceedings.

Subject to the points raised for improvement, the Defender recommends that this bill, which has already been passed by the Members of Parliament, be adopted quickly.

III - AI and gender: The Defender of right's recommendations for preventing and punishing bias

The report "[Algorithms: preventing the automation of discrimination](#)", published by the Defender of rights with the CNIL (National Data protection Commission) in helped to highlight the reasons why algorithms were likely to be discriminatory, with a heightened risk for systemic discrimination.

As a result of occupational segregation, occupying positions that are lower-paid than those of their male counterparts women could be disadvantaged by recruitment algorithm. The latest, using this type of data, could reproduce or even accentuate their biases.

The Defender of Rights recommends to:

- **train and sensitize professionals who purchase and use such processes⁴ ;**
- **support research to develop measurement studies and bias prevention methodologies;**
- **strengthen obligations in terms of information, transparency and explicability of algorithms;**
- **carry out impact studies to anticipate their discriminatory effects.**

To be noted : The Defender of Rights has produced a joint [opinion](#) with the European network Equinet in June 2021 on the draft European Regulation on AI.

IV - Employment (questions 2, 7 and 12)

1) Pay inequality and gender discrimination

In 2022, 25% of working people in France said they had already experienced discrimination in the workplace.

⁴ For the past three years, the Defender of rights has been contributing to the necessary awareness-raising and skills-building of the players involved by offering a dedicated online training course, with the support of the Council of Europe.

Women say they have been discriminated against at work mainly because of **their gender, physical appearance or family situation**⁵. The rate of non-recourse to the law is also high: 51% of women compared with 33% of men⁶.

These declared differences in treatment are objectified by official statistical data⁷.

The COVID-19 crisis exacerbated certain inequalities⁸. Women played a major role during the health crisis, as they are over-represented in low-skilled, low-valued and hitherto invisible front-line and “care” professions⁹. Since then, pay rises for professions are to be welcomed, but remain too low to make these arduous jobs attractive¹⁰.

Determining the value of a job remains a key element in the application of the principle of equal pay between the sexes.

The **professional equality index** scheme, which is in line with the general recommendations of [opinion no. 18-20 "PACTE law" of August 30, 2018](#) by the Defender of rights, is a definite step forward in that field. However, it has limitations that need to be corrected: 75 points out of 100 are enough for the employer to exempt itself from corrective measures, whereas the indicators as they are set out already allow the employer latitude, and some even appear biased.

Particular criticism has been levelled at the decision to calculate gaps on the basis of full-time equivalents, despite the fact that 85% of part-time employees are women, and most of them are forced to work part-time. The index should also take specific account of the weight of women in low wages.

Furthermore, the Defender of Rights considers that collective bargaining obligations are not sufficiently respected. Nor have government departments been mobilized in this direction.

She recommends that the government revise the index, and that public employers and social partners, at branch and company level, continue their efforts and immediately upgrade the evaluation grids and classification systems for jobs predominantly held by women, particularly in the care, teaching and social sectors.

2) Discrimination based on pregnancy and marital status

Despite the general policies put in place an analysis of the complaints received by the institution and barometers¹¹ shows that discrimination linked to pregnancy and maternity leave is frequent.

The Defender of Rights recommends to:

- **Extend the legal period of prohibition of termination of the employment contract at the initiative of the employer for women at the end of their pregnancy and maternity-related leave, the law of August 8, 2016 having already increased this period from 4 months to 10 months;**
- **Expressly enshrine in law the prohibition on employers adopting measures preparatory to dismissal during the protection period.**

⁵ 15^{ème} barometer on the perception of discrimination in employment, Defender of rights with ILO, 2022

⁶ 14^{ème} barometer on the perception of discrimination in employment, Defender of rights with ILO, 2021

⁷ « Vers l'égalité réelle », édition 2022 [Chiffres clés de l'égalité 2021_ed2022_web.pdf \(egalite-femmes-hommes.gouv.fr\)](#)

⁸ Population et Sociétés n°579 : « [Le travail et ses aménagements : ce que la pandémie de covid-19 a changé pour les Français](#) », juillet 2020

⁹ « [Femmes providentielles mais femmes invisibles, sous-payées, surchargées](#) » - 13 mai 2020

¹⁰ [15^{ème} baromètre](#) on the perception of discrimination in employment, Défenseur des droits avec l'OIT, 2022

¹¹ 14^{ème} barometer on the perception of discrimination in employment, Defender of rights with ILO, 2021

More generally, attention needs to be paid to the risks of direct and indirect discrimination brought about by reforms to the social security and insurance systems.

Furthermore, professional equality can only be achieved by enshrining an extended and compulsory right to paternity leave. This rebalancing, which has already begun, is necessary if we are to effectively combat gender stereotypes within families and society as a whole.

The practice of freezing staff rating during maternity leave, which was widespread in the hospital civil service in particular, is now being curtailed following recommendations from the Defender of rights and the case law.

3) Sexual harassment:

A 2014 [study](#) by the Defender of Rights showed **that one woman in five had already been a victim of sexual harassment**, and that: almost three victims in ten (29%) have not confided in anyone, and few take legal action¹².

The Defender of Rights regularly receives complaints of sexual harassment, in employment, and has produced numerous tools and resources to help victims and raise awareness among employers:

- Campaign [#UneFemmeSurCinq](#),
- Publication of a booklet¹³ to guide and equip employers.

In recent years, progress has been made in the area of sexual harassment. For example, in 2016, thanks to the work of the Defender of Rights and AVFT, *Association européenne contre les Violences faites aux Femmes au Travail* (European Association against Violence against Women at Work), the definition of sexual harassment was broadened and **so-called environmental, or ambiance, sexual harassment was recognized**¹⁴. Developments in case law are a strong incentive for employers to take steps to prevent harassment.

Legislation has also been passed to reinforce the legal obligations of public and private employers:

- Publication in 2018 of a circular on combating sexual and gender-based violence in the civil service, and in March 2020 of the decree on the system for reporting acts of violence, discrimination, harassment and gender-based harassment in the civil service.
- Law of September 5, 2018 on the freedom to choose one's professional future.

Nevertheless, despite these advances, the Defender of Rights regrets the lack of resources for effective implementation of measures. She recommends to enable each ministry to improve its policy for preventing and dealing with reports of sexual harassment, which is particularly necessary in historically male-dominated professions, and to promote the reception of female victims of violence within the security forces. She recommends to pay particular attention to the prevention, training for staff representatives and supervisors, protection for employees who report sexist or sexual violence, handling of reports and punishment of those responsible for sexual harassment.

With regard to sexual harassment, the Defender of Rights also recommends to:

- **bring the definitions of sexual harassment** in the Criminal Code, Labor Code and Civil Service Code **into line** with Directive 2006/54 and the Anti-Discrimination Act of May 27, 2008, as well as the case law of the *Cour de cassation* (Supreme Court) and the *Conseil d'Etat* (Administrative Supreme Court). This harmonization should lead **us to consider that a single fact may be sufficient to characterize sexual harassment** if it undermines a person's dignity or creates a humiliating or offensive situation;

¹² [Survey on sexual harassment at work | Défenseur des Droits \(defenseurdesdroits.fr\)](#) 2014

¹³ [Harcèlement sexuel au travail - livret du formateur et de la formatrice](#) Défenseur des droits, November 2020

¹⁴ [Decision MLD-2016-212](#) of July 29, 2016 concerning sexual harassment within a newspaper editorial office.

- overcome **the evidentiary difficulties faced by** women who are victims of sexual harassment at work and to facilitate the admissibility before the civil courts of clandestine recordings
- **increase the minimum amount of compensation paid to any employee dismissed as a result of harassment;**
- **improve the functional protection procedure** and its implementation for civil servants who are victims of discriminatory harassment.

V - Obstacles to the social and professional integration of veiled Muslim women (questions 12.5)

In 2016, a survey by the Defender of Rights on the perception and experience of discrimination¹⁵ shows that the ground of religion is the fourth most frequent reason for discrimination considered by working people (43%). While only 2% of those surveyed said they had experienced discrimination based on religion in the last five years, this figure rises to 12% for Muslims, compared with 0.2% for self-professed Christians.

Women wearing visible religious symbols, such as the veil, are particularly exposed. In a 2021 report, the French NHRI (CNCDH) noted that the Muslim religion is the least well perceived of the major religions present in France¹⁶. **The TeO2 survey reveals that the proportion of people reporting religious discrimination has risen over the last ten years**, and that 10% of people claiming to be Muslim report religious discrimination, compared with 5% in 2008-2009¹⁷.

The obligation of neutrality, which was initially imposed on public service employees on the ground of secularity, has been extended.

Barred from more and more jobs, discriminated against in access to training¹⁸ and recruitment¹⁹, veiled women are seeing their prospects of professional integration increasingly reduced.

They tend to give up looking for work or accept under-qualified positions in companies that allow the wearing of religious symbols. Beyond employment, these women may also be denied access to certain goods, services and leisure activities, or treated less favourably²⁰.

VI - Residence rights and combating violence against foreign women

In France, women account for more than half of all migrants. Yet they are often invisible in political discourse on immigration, and the protection of migrant women, who are victims of domestic violence, homophobia, political violence or pimping in France or in their country of origin, is not sufficiently taken into account in laws and policies.

¹⁵ Defender of Rights " Inégalités d'accès aux droits et discriminations en France. Contributions de chercheurs à l'enquête du Défenseur des droits" tome 1, Doc. fr., 2019.

¹⁶ CNCDH, "Report 2021 on the fight against racism, anti-Semitism and xenophobia".

¹⁷ *Insee Première*, n° 1911, July 2022.

¹⁸ The Defender of rights regularly receives complaints from Muslim women wearing the headscarf, who encounter difficulties in accessing training, or from adult students or trainees who are confront with such refusals. These refusals are based on a misapplication of the 2004 law regulating the wearing of religious symbols in public schools. In each of these decisions, the Defender of rights points out that restrictions on religious freedom must be provided for by law, and must be justified by compelling reasons. See, for example, [Decision 2018-235](#) of October 1^{er} 2018 concerning a refusal of training by a private center to a Muslim woman wearing a headscarf.

¹⁹ See, for example, [Decision no. 2020-214 of December 9, 2020](#), concerning the refusal to hire a candidate wearing a headscarf.

²⁰ See also [Decision MLD-MSP-2016-299](#) on the conditions under which checks to prevent fraud during examination were carried out during two tests at a university

- **Combating human trafficking**

In addition to the reservations on the 2016 law aimed at reinforcing the fight against the prostitution system and supporting prostitutes presented in his opinion for the attention of the CEDAW in June 2016²¹ and expressed in his 2015 opinion²², the Defender of Rights has been approached by women unable to assert their right to residency despite fulfilling the obligations set out in the law. See on that matter an emblematic decision of the Défenseur des droits on this subject.²³

On the subject of prostitution of minors, the Defender of Rights expressed her views in her supplementary report to the UN Committee on the Rights of the Child²⁴.

- **Protecting girls from genital mutilation**

The Defender of rights expressed her views on the prevention and protection of girls from genital mutilation in that same report²⁵ (page 21 of the contribution). She **recommended an increasing of the number of medico-judicial units (UMJ) to enable families who believe their daughters are at risk of female genital mutilation to lodge their asylum applications as quickly as possible.**

²¹ [The Defender of rights represented at the pre-session of the Committee for the Elimination of Discrimination against Women | Défenseur des Droits \(defenseurdesdroits.fr\)](#)

²² [Opinion n°15-28](#) on the bill n°3149 aimed at reinforcing the fight against the prostitutional system and supporting prostitutes of December 16, 2015, Defender of rights

²⁴ [Supplementary report of the Défenseur des droits to the United Nations Committee on the Rights of the Child - December 2022 \(defenseurdesdroits.fr\)](#), see p. 39.

²⁵ [Supplementary report of the Défenseur des droits to the United Nations Committee on the Rights of the Child - December 2022 \(defenseurdesdroits.fr\)](#)