
genderace

The use of racial anti-discrimination laws

Gender and citizenship in a multicultural context

ANNEX 1

France Country Report

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by

Isabelle Carles

Grant 217237

Participants

EC Officer: Angela Liberatore

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Contents

1. Introduction	48
1.1 National social fabric	48
1.2 Expressions of race and gender discrimination	49
2. The country's anti-discrimination legal framework	53
2.1 In the wider context.....	53
2.2 National framework to combat gender discrimination.....	55
2.3 National framework to combat racial discrimination	57
2.4 Treatment of double discrimination based on race and gender	60
3. Equality bodies and support organisations based on race and gender.....	61
3.1 Equality bodies	61
3.2 Experts and key-stakeholders	62
4. Key data in the field of migration and gender.....	63
4.1 Migrant and ethnic minorities.....	63
4.2 Women and migrant women.....	64
4.3 Sources related to complaints	66
5. Review of national literature	66
5.1 Relevant research.....	66
5.2 Current anti-discrimination debate	69
6. Conclusion.....	72
Bibliography.....	73

1. Introduction

1.1 National social fabric

The history of migration in France during the twentieth century explains the diversity of socio-cultural groups within French society, with populations from Europe (Italy, Spain, Portugal), Africa (North and Sub-Saharan), and Eastern Europe (Turkey, Romania, Baltic countries, Russia). Public policies were put in place to integrate all these groups by facilitating access to French nationality.

Permanent immigration to France has grown consistently during the past decade, increasingly from the Maghreb and French-speaking Africa. France continues to be the leading EU country of asylum, despite recent declines (Mipex 2007: 68).

Third-country nationals represent 3.8% of the population (2004 census) and foreign-born residents make up 8.1% (Eurostat, non-EU 27, 01.01.2006). The three main countries of origin are Algeria, Morocco and Turkey (AGDREF 2004 in Mipex 2007).

The results of the annual survey on racism and discrimination by the *National Consultative Commission on Human Rights* (CNCDH, 2005) show clearly that Muslim immigrants are the most exposed to racism. Despite the lack of official statistics, the number of Muslims in France is estimated at between 4 and 5 million.¹ For 57% of those surveyed, Muslims (usually people from North Africa) are seen as being a "separate group" from the rest of the French population and only 69% say that French Muslims are "ordinary" French.

North Africans make up the second biggest community exposed to racism. They represent approximately 1.5 million people.² It is impossible to know exactly how many French people have North African origins because ethnic statistical data are not allowed in France.

¹ http://www.ambafrance-us.org/fr/aaz/culte_musulman.pdf

² <http://www.insee.fr/fr/ffc/ipweb/ip1098/ip1098.html>

Finally, the CNCDH survey demonstrates that the approximately 570,000 Sub-Saharan Africans in France³ are also victims of racial discrimination.

The Fauroux Commission report (2005) confirms all these results at the workplace, as all statistics on access to employment revealed ethnic and racial discrimination against people of colour or North African origin.

The representations underlying racism vary according to the victim's gender. Men are seen as a danger to the public order, especially young men living in the outer suburbs following the riots of 2005. Women are seen as victims to be protected (Roulleau-Berger 2004).

In addition, France is home to a Roma population estimated at 500,000 in 2004, which can be divided among French citizens, who represent two thirds of its members, and migrants from Romania and Bulgaria, who are now European Union citizens (Latraverse 2007). Both categories are victims of institutional discrimination concerning the right to stay and to live in specific areas (ENAR report 2006: 7).

1.2 Expressions of race and gender discrimination

The High Authority against Discrimination and for Equality (HALDE), the French body in charge of combating discrimination, was created in 2005. In 2006, 4,058 complaints were lodged with the new authority. Origin is the criterion cited most frequently by discrimination victims (39.6%). The other complaints concern health/disability (13.9%), age (5.6%), family situation (4.8%), trade union activity (4.6%), opinion (3%), sexual orientation (2.5%), religious beliefs (2.2%), and physical appearance (1%).

Employment-related complaints are the most frequent (45.3%), followed by public services (18.3%), access to goods and services (7.9%), laws (7.4%), housing (5.3%) and education (5.3%) (HALDE Annual report 2006).

³ <http://www.insee.fr/fr/ffc/ipweb/ip1098/ip1098.html#inter2>

The leading area of discrimination based on origin is employment,⁴ followed by housing. A test carried out by the HALDE in the private sector⁵ shows that candidates of North African or Sub-Saharan origin were nine times less likely to obtain a flat than a “French” candidate.

In the field of education, a survey conducted by the MRAP,⁶ one of the most important French NGOs combating racism, reveals that North Africans, Muslims and Sub-Saharan Africans are the main victims of racism at school. This form of racism can take the form of bad jokes, humiliations and even physical assaults.

Discrimination in access to goods and services is frequently based on religious beliefs, in particular in the public services. For example, a Sikh was refused entry to a courtroom because he was wearing a turban (HALDE 2006: 28). Another case concerns a Muslim woman who could not attend a citizenship ceremony because she was wearing an Islamic headscarf (HALDE 2006: 29).

Gender-based discrimination accounts for 6.2% of all complaints. Women lodge only 34% of these complaints.

The HALDE carries out regular opinion polls on public perceptions of discrimination. According to a poll conducted in December 2006, 52% of respondents mentioned origin, nationality, skin colour and religion and 7% gender discrimination when asked about reasons for discrimination (HALDE Annual report 2006: 71).

The public opinion is strongly in favour of public policies in this matter: according to 94% of those surveyed, the fight against discrimination is very important. However, the ranking of anti-discrimination priorities differs: top priority goes to combating discrimination based on disability (92%) followed by race or ethnic group, gender and family/marital status (79%).

⁴ See for example Adia and Jean-François Amadieu, Premier baromètre sur les discriminations : <http://www.adia.fr/AnnonceDis.htm>. It shows that a job applicant with a North African name is twice as likely to be rejected as a similar candidate with a traditional French name.

⁵ http://www.halde.fr/IMG/pdf/resultats_testing_logement.pdf

⁶ Survey on perception by 15-25 year-olds of racism and discrimination in education: http://www.mrap.fr/enquete_discriminations/synthese.pdf

Concerning gender discrimination, France is characterised by a high female employment rate (80% in 2003) as well as the higher European birth rate. Women are mainly employees (91.9% compared to 85.8% of men).

However, gender inequalities are still important, particularly in the field of *employment*. First, French women are more likely to experience unemployment than French men (INSEE 2001: 7% of men against 10.7% of women). The phenomenon is even more pronounced among the younger population (13% of men against 18.6% of women) because young women are seen as “potentially pregnant”.

Second, French women are more likely to have a part-time job and represent an important majority of the working poor. Their salaries are often under the official minimum rate (SMIC) and generally 10% to 15% lower than men's.

Finally, there is less professional diversification among women, who tend to work in only a few areas, especially in private services for the past decade (Pfefferkorn 2006).

In the field of education, while there has been a tangible positive evolution, there is still a gender gap. Women students now outnumber men at universities, but they are concentrated in a few fields, such as languages, literature, human and social sciences, law, political science, medicine and pharmacology (Pfefferkorn 2006:192-3).

Gender inequalities are also especially noticeable in the field of *political representation*: France has one of the worst rankings among the EU Member States in terms of women's presence in politics. At the end of the Second World War, women represented 5.6% of elected officials, a figure that had risen to only 10.9% in 1997. Despite the adoption of the **Parity Act** in 2000, which imposes equal representation in several elections, the proportion of female representatives remains incredibly low (Mossuz-Lavau 2005).

Lastly, *violence* against women was clearly established in France in a publication on this issue (Jaspard et al. 2003). Results show that 48,000 women were victims of rape in 1999 and that 17.1% endured physical violence or murder attempts. 4.9% of women experienced physical violence during the past year, with 2% experiencing repeated

episodes. The incidence of violence varied with age, with a 7% incidence in women aged 20-24 years.

Concerning more specifically race and gender discrimination, a report published in 2005 by the French government, "*Femmes de l'immigration*" (Migrant Women), states that migrant women, defined as recent migrant and ethnic minority women, have difficulty accessing justice and exercising their rights, and experience violence and discrimination in access to employment. They are also victims of very negative stereotypes.

However, according to sociologist Guénif-Souilamas (2005: 395), the hierarchy of problems encountered by migrant women is different. The main problem for these women is employment because they tend to work in the most precarious fields, such as care services (86% compared to 57% of migrant men). They also represent the biggest numbers of poor workers and have little professional mobility. Finally, they are more likely to be unemployed than migrant men (25% against 20%).

In addition, some studies demonstrate that diplomas and education levels do not offer effective protection against unemployment, especially for migrant women (Borrel, Boëldieu 2001: 3).

Guenif-Souilamas highlights the danger of instrumentalisation of the other problems encountered by migrant women, particularly violence. She insists on the fact that, even if violence is real among this population, it also exists among the rest of the French population, irrespective of origin or social level, as clearly shown in the Jaspas survey on violence.

2. The country's anti-discrimination legal framework

2.1 In the wider context

International instruments

France has ratified the Universal Declaration of Human Rights (1948), which confirms the equality principle laid down in the French Human Rights and Citizenship Declaration of 1789, as well as ILO Convention No. 111 concerning Discrimination in respect of Employment and Occupation (1958), one of the foundations of French anti-discrimination laws.

With its adoption of the International Convention on the Elimination of all forms of Racial Discrimination (1965), France made racial discrimination a criminal offence in its criminal code (Articles 6 and 7 of Law 72-546 of 1 July 1972).

The International Covenant on Civil and Political Rights was adopted in 1980 and France ratified the United Nations Convention on the Elimination of all forms of Discrimination against Women in 1983.

European instruments

The European Convention on Human Rights and the Revised European Social Charter have been signed and ratified by France. However, France is still reluctant to sign the Framework Convention for the Protection of National Minorities.

Directive 2000/43 of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin is transposed by Law 1006-2001 of 16 November 2001, the Law on Social Modernisation (2002-73) of 17 January 2002 and the Law creating the High Authority against Discrimination and for Equality of 21 December 2004.

The new laws punish discrimination on grounds of nationality and race or ethnic origin, whether direct or indirect, at the workplace, in education, social protection, social security and access to goods and services such as healthcare and housing.

Protection against discrimination extends to all individuals, in the public and private sector, and the principle of equality is applicable to non-nationals unless the legislator can justify a difference in treatment on the basis of the public interest.

Sexual and moral harassment are not defined in relation to a list of prohibited grounds of discrimination, but a regime applicable to any relevant employment situation and instructions to discriminate correspond to the notion of complicity of Articles 121-6 and 121-7 of the Penal Code and to general principles of liability in civil law.

Directive 200/78/EC establishing a framework on combating racism and xenophobia in the EU has only been transposed with respect to employees covered by the Labour Code (L122-45 ff. LC) and civil servants. It does not cover the professions and non-salaried workers.

However, the European Commission has initiated three infringement procedures against France for its failure to correctly implement the Race and Employment Directives as well as Directive 2002/73/EC of 23 September 2002 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

The French government recently tabled a bill⁷ in response to the infringement procedures and for the transposition of Directive 2006/54/EC, which consolidates several directives on gender equality at work, and Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

The bill establishes a more elaborate definition of direct and indirect discrimination and sexual or moral harassment, and organises protection against retaliation in favour of victims or witnesses of discrimination.

⁷ Bill establishing various adaptations to Community law in the field of combating discrimination, No 514, filed on 19 December 2007.

2.2 National framework to combat gender discrimination

2.2.1 Historical account

During the last 10 years, public debate on gender issues has focused mainly on the issues of female political representation, violence, prostitution and the Islamic headscarf at school.

The two main texts adopted during this period were the *Parity Act* of 2000 and the *Secularism in Public Schools Act*,⁸ which prohibits the wearing of ostensible signs or clothes showing religious beliefs.

2.2.2 Key legislation and main case law

Legislation

In employment, the first French law to promote professional equality is the Roudy Act of 1983,⁹ which introduces the principle of equal rights between women and men in the employment relationship, followed by the Guénisson Act of 2001 on equal treatment between women and men at work. The latter obliges companies to draw up annual plans comparing women and men's positions.

The law of March 23, 2006 on equal pay for women and men aims to encourage enterprises to open negotiations in order to eliminate the wage gap between women and men.¹⁰ The text also includes provisions on balancing work and family life.

Concerning violence, a 1980 law criminalised rape.¹¹ More than 10 years later, the Sexual Harassment Act was adopted, first against a *hierarchical superior*¹² and subsequently against colleagues.¹³

⁸ Law of March 15 2004, No. 2004-228.

⁹ Law No. 83-635 of 13 July 1983 amending the Labour Code and the Penal Code in respect of equality between men and women in working life.

¹⁰ Law No. 2006-340 of 23 March 2006 on wage equality between men and women, Official Journal of the French Republic(OJFR) No. 71 of 24 March 2006.

¹¹ Law No. 80-1041 of 23 December 1980, OJFR 24 December 1980.

¹² Law No. 92-1179 of 2 November 1992 on the abuse of authority in employment relations, OJFR No. 257 of 4 November 1992.

The 2006 law aims to prevent and punish domestic violence.¹⁴ Some of its provisions directly concern migrant women, such as those relating to forced marriages and female genital mutilations.

Equal representation of women and men in politics was given effect with the adoption of the law of 6 June 2000.¹⁵ A new law was adopted in January 2007 that is expected to lead to better representation of women in elected assemblies and the governments of towns, departments and regions. It also aims to reinforce financial sanctions against political parties that fail to abide by the rule of parity (Report on developments in EU gender equality law, June 2006-May 2007).

Case law

The main complaints lodged on the ground of gender are by men claiming equal rights to additional pension benefits on the basis of the case law established by Griesmar¹⁶, where the court held that male civil servants are entitled to equal rights to additional pension benefits when they have children.

2.2.3 Policy

Policies in favour of women tend to fall into two different tendencies: familialism and individualism on the one hand, or universalism and positive action on the other (Fouquet 2005: 332). France is reluctant concerning the latter approach, however, because of the principle of equality between citizens, which bars granting rights to specific groups, such as racial or female groups (Calvès 2004: 71), with the noticeable exception of the adoption of the Parity Act.

Otherwise, the Roudy Act (1983) was the first French law to promote professional equality, through local programmes in favour of the integration of single women (PLIF) and training programmes (FNE-FI).

¹³ Law No. 2002-73 of 17 January 2002 on social modernisation, OJFR No. 15 of 18 January 2002.

¹⁴ Law No. 2006-399 of 4 April 2006 strengthening prevention and punitive action against violence in couples or against minors, OJFR No. 81, 5 April 2006.

¹⁵ Law No. 2000-493 of 6 June 2000 favouring equal access for men and women to elected office, OJ No. 131 of 7 June 2000.

¹⁶ ECJ 29 November 2001.

The Guénisson Act (2001) imposed the addition of equality in working life to the other issues subject to annual collective bargaining within enterprises. Several trade unions, enterprises and local authorities signed the “*Charte de l’égalité professionnelle*” (Charter for equality in working life) in March 2004, which obliges them to make progress on equality in line with specific indicators and objectives (EU Report on gender issues 2-2007).

2.2.4 Social context

Feminism is in a paradoxical situation: on the one hand, feminist issues are legitimised from the far left to the right, through, among others, the position of the new government, which presented gender equality as one of its priorities.

On the other hand, the idea that equality between women and men is now a reality tends to undermine the legitimacy of feminist movements.

Trat (2006) also argues that feminism is in danger because of the resurgence of religious fundamentalism (both Catholic and Muslim).

2.2.5 Complaints

According to the HALDE (Annual report 2006), alleged sex discrimination cases account for only 7% of complaints. This is in keeping with the French feminist tradition: gender claims are expressed more often in the political arena because legal action is not considered a mean of advocacy.

2.3 National framework to combat racial discrimination

2.3.1 Historical account

Under the influence of the EU (Latraverse 2000), the fight against discrimination was debated in France during the 1990s within bodies such as the *Grenelle Round Table*, whose participants included the trade unions. This led to the creation of several instruments such as local commissions (CODAC), set up in 1999, and the publication of

many various reports¹⁷ and studies.

The new government presents the fight against discrimination as the third priority of immigration policy. It is included in the public integration policy that obliges the state to encourage integration through an active anti-discrimination policy in different areas of social life.¹⁸

2.3.2 Key legislation

In private law, the legal regime governing discrimination is to be found in statutes and codified law, i.e. the Labour Code (LC), the Penal Code (PC) and the Civil Code (CC). Administrative law, on the other hand, is mostly based on case law and on the implementation of a formal theory of equality (Latraverse 2007).

The *Law on the Press* of 1881¹⁹ prohibits incitement to discriminate on all grounds, including race and gender.

During the 2000s, anti-discrimination legislation increased significantly, first in the area of employment with the adoption of the *Anti-discrimination Act (No. 2001-1066)*²⁰, and second in access to housing with the *Social Modernisation Act (No. 2002-73)*.²¹

Penalties for anti-Semitic xenophobic or racist acts were also increased (2003)²² and the *Perben Act II of 9 March 2004* toughened up penalties for discrimination involving denial of access to goods or services and normal exercise of an economic activity.

The law (No. 2001-434) on the recognition of slavery and human trafficking as crimes against humanity²³ prohibits racial discrimination in all fields.

In addition, in response to the 2005 suburban riots, the adoption of law No. 2006-396 of

¹⁷ See for example the Bébéar Report (2004) on discrimination in access to employment or the Versini Report (2004) on diversity in the public sector.

¹⁸ <http://www.premier-ministre.gouv.fr/iminidco>.

¹⁹ www.legifrance.gouv.fr/texteconsolide/PCEAA.htm.

²⁰ Law No. 2001-1066 of November 16 2001.

²¹ Law No. 2002-73 of 17 January 2002.

²² Lellouche Law of 3 February 2003.

²³ <http://www.legifrance.gouv.fr/texteconsolide/PPEDY.htm> 05/23/2001.

31 March 2006²⁴ resulted in the creation of the National Agency for Social Cohesion and Equal Treatment. The law aims to reflect the government's positive action policies and significantly reinforces the HALDE's powers, for example by establishing the possibility for the perpetrator to pay a fine.

Concerning case law, the Court of Cassation recognised in June 2000, September 2002 and June 2005²⁵ that a situation test on restrictions to access to goods and services, carried out by prospective clients, is admissible as evidence of discrimination in cases concerning admission to night clubs.

Many interesting decisions can also be found on the ground of religious beliefs, mainly related to the issue of wearing external religious signs. Apparently, judges are setting strict limits on the law on secularism. Cases have involved both women wearing the Islamic headscarf²⁶ and men wearing a Sikh turban.^{27 28}

2.3.3 Policy

The French approach to tackling racial discrimination has developed along two complementary lines: the condemnation of inequality based on "origin" and the refusal to use criteria of origin for policy and administrative purposes (Latraverse 2007:3).

As a result, in the two main areas where positive actions have been developed by the French state - employment and urban policies – the government has created specific measures for ethnic minorities without using this terminology. While positive discrimination *techniques* suit the French system, the *spirit* of positive action based on specific groups is alien to the French model (Calvès 2004).

The criteria of socio-economic condition and territory are means of indirectly targeting discrimination based on origin.

²⁴ Law No. 2006-396 of 31 March 2006, OJFR No. 79 of 2 April 2006.

²⁵ See for example Decision of the Court of Cassation, Criminal Chamber No. 04-87354 of 7 June 2005.

²⁶ HALDE Deliberation 2005-25 of 19 September 2005.

²⁷ HALDE Deliberation 2006-132 of 5 June 2006.

²⁸ Administrative Court of Appeal of Paris, 19 July 2005, Chamber 1 Section A, Juris Data No. 20005-282552.

This is the case of territorial policy specific to disadvantaged suburbs, known as "*Politique de la ville*" (urban policy), which concentrates a number of actions targeting immigrant populations. In addition, a sponsorship programme to help get young people, mainly youth of immigrant origin, into employment has been in place since 1993.

In the field of education, the prestigious Political Science Institute has created partnerships with schools in disadvantaged neighbourhoods in order to select their best students and create a parallel recruiting system.

In 2004, the Minister of Social Cohesion proposed a programme²⁹ establishing a vast system of vocational training and support with a view to integrating some 800,000 unemployed into the work force in non-commercial activities and to promote equal opportunity, at a cost of €13 billion over five years.

Meanwhile, on 22 October 2004, important French businesses signed a Charter against Discrimination at the Workplace. They all undertake to abstain from discriminatory hiring policies and to combat discrimination in their promotion system.

2.4 Treatment of double discrimination based on race and gender

The current debate on race and gender discrimination at national level emerged in the French national context in connection with several key issues, such as the Islamic headscarf at schools (first in 1989 and later in early 2000), polygamy in 1991, forced marriages due to the case of Fatoumata, and violence as a result of the case of Sohane, who was burnt to death by suburban rioters in 2002. All these tragic stories were used to draw a very negative picture of the victimisation of migrant women.

In this context, the public authorities were mobilised to fight actively against discrimination based on race and gender, for which several tools were made available.

First, two specific framework agreements to promote the integration of migrant women were adopted, first in 2003 and later in February 2008. They aim to prevent and combat

²⁹ Law No. 2005-841 of July 26, 2005.

discrimination through, among other measures, the integration of new migrants, the promotion of an active policy on access to rights, assistance with education and social and professional integration, and incentives to participate in social life.

Several integration programmes are implemented for this purpose, such as regional programmes dedicated to migrant populations, urban social cohesion contracts, and specific aid for creating business and securing micro-credits.

In addition, several legal guides were drawn up and migrant women are invited to seek legal advice at Centres for Information on Women's Rights (CIDFF).

3. Equality bodies and support organisations based on race and gender

3.1 Equality bodies

The HALDE is the French body competent over all forms of discrimination, direct or indirect, including race and gender, prohibited by the French laws.

The Law creating the HALDE was adopted on 30 December 2004, and is in force since 1 February 2005. A commission of eleven members acts as decisional body and the High Authority formally started its activities in June 2005. Parliament voted a budget of 10,448,500 Euros for the year 2006 and has attained 66 staff members in 2006.

Its realm of power goes beyond the requirements of Directives 2000/43 and 2002/73.

In addition to investigative powers, the High Authority ensure the promotion of equal treatment, has the power to make recommendations on all issues relating to discrimination, to identify and promote good professional practices and to coordinate and conduct studies and research.

Otherwise, the HALDE may offer mediation to the parties or complete the investigation and has also been conceived as an ‘auxiliary of Justice’: the law creates the possibility for the criminal, civil and administrative courts to seek its observations in cases under adjudication. In addition, the High Authority has the power to seek permission to submit its observations in criminal matters.

3.2 Experts and key-stakeholders

Several government departments and public or consultative bodies deal with race and gender issues.

This is the case of the *Women's Rights Service* of the Employment Ministry, in charge of the issue of migrant women and of co-ordination of all actions in this area (Mongellaz Jocelyne).

The consultative body, the *High Council for Integration*, is also actively involved in this issue (Jacqueline Costa-Lascoux, lawyer).

In the *HALDE*, lawyers including Sophie Latraverse, Deputy Director of the Legal Service, and Marie-Thérèse Lanquetin, a member of the Advisory Committee specialised in race and gender discrimination at the University of Paris X, are responsible for anti-discrimination issues.

The Centre for Information on Women's Rights (CIDFF) engages in various information and assistance activities related to business creation by women as well as legal support in general, in the field of anti-discrimination in particular (Lorraine Nicolas).

Certain anti-racism NGOs, such as *MRAP* and *SOS-Racisme*, intervene in penal actions on behalf of complainants (Bernadette Hetier, from MRAP).

GISTI (Group for Information and Support for Immigrants) is active in the area of defending foreigners' legal rights and *the European Association against Violence towards Women at Work (AVTF)* in the area of sexual and moral harassment. They are both specialised in taking legal action (Emmanuel Blanchard).

In the sphere of migrant women's NGOs, *Femmes de la terre* (1992) aims to provide assistance for women confronted with administrative and social difficulties and to combat violence and double discrimination (Haoua Lamine, lawyer).

The feminist NGO *Ni putes, Ni soumises* combats violence directed against women in the suburbs and was set up by a group of young French Muslim women in 2002. Its work is grounded in universal values such as gender equality and secularism (Safia Lebdi).

The movement known as *Nous les indigènes de la République*, founded in 2005, argues that racial discrimination represents the most important form of oppression in French society, due to post-colonialism. Some migrant women have joined this movement in order to develop a post-colonialist view on feminist issues (Houria Bouteldja).

In addition, the *Network for the Legal Autonomy of Refugee and Migrant Women* (RAJFIR) is specialised in combating all types of discrimination against foreign women (Claudie Lesselier).

4. Key data in the field of migration and gender

The main sources of data on migration and gender in France are national research institutes such as INSEE (National Statistical Institute) and INED (National Demographics Institute), government departments dedicated to statistics such as DARESS (Directorate for Coordination of Research, Studies and Statistics) and DRESS (Directorate for Research, evaluation and Statistics) and public bodies or consultative bodies.

4.1 Migrant and ethnic minorities

Useful data can be found in the INSEE annual census surveys. The 2005 census shows for instance that 4.9 million immigrants live in France and that they make up 8.1% of the population. The proportion of men and women is now balanced because female

migration has increased regularly since 1974. Migrants are concentrated in three main regions: Ile-de-France (40%), Rhône-Alpes (11%) and Provence-Alpes-Côte d'Azur (9%). INSEE does not produce any evaluation on undocumented migrants.³⁰

INED produces regular data on migration flows, based on data from the Home Office. Migration totalled 215,400 people in 2003. Africa is the leading continent of origin (105,000), followed by Europe, including the EU, while entrants from Asia increased (30,300 compared to 20,000 in 1998).

Although labour migration has not been an option since 1974, more than 80,000 people come each year for a long stay. In addition, 120,000 people entered the country in 2004 for a short stay (students, asylum seekers, short-term workers).

Other sources of data on migration can be found in some ministries, such as the Home Office and the Employment Ministry, whose Directorate for Population and Migration publishes an annual report. In the 2006 report, less than half a page was devoted to migrant women.

The High Council for Integration also publishes an annual report on migration flows and integration in order to measure the effectiveness of public policies.

4.2 Women and migrant women

The main data on women can be found in INSEE publications, both its annual census and its employment surveys. In addition, *"Regards sur la parité"* (*Parity Studies*) gives a general overview in the fields of demography, family situation, health, education, activity, leisure and power.

It is also possible to find gendered data in several surveys published by the Education Ministry.

Eurostat's labour force survey is also a useful source of data, in particular on the working population.

³⁰ See INSEE Catherine Borrel, INSEE Première No. 1098, August 2006, www.insee.fr

Concerning political representation and participation, the Home Office is the main source of information, but additional data is also generated by IFOP and SOFRES, the two leading French polling agencies, and by CEVIPOF, a political science research centre in Paris.

In addition, since 2000, the *Women's Rights Service* publishes a comprehensive annual report called *Key Figures on Equality*, which presents gendered data on parity in power, equal access to rights and the intermeshing of social and private life.

Migrant women remained invisible in statistics until the category of migrants was introduced in the INSEE national census of 1999 (Guénif-Souilamas 2005: 390). This category is particularly unclear, however, as it encompasses foreign women born in another country, women born in France and women who become French citizens through naturalisation procedures.

As a result, women are more visible but the creation of this category does not give a clear view of very diverse situations. In addition, French women from a migrant background are not taken into account, because ethnic statistics are prohibited in France.

In its *Parity Studies* (2008), INSEE investigates the specific situation of new migrants who have been issued a resident permit. It shows that women outnumber men (54%) among new beneficiaries, but that they usually do not speak French as fluently as men. This is one of the reasons why they experience more difficulties than men when it comes to finding jobs.

Key Figures on Equality also contains specific data on migrants, showing that migrant women have a harder time securing employment than migrant men, in particular long-term employment.

The INSEE *Employment Survey 2005* is also an interesting source of gendered data on employment of foreigners. It shows, for instance, that foreigners, including those from the European Economic Area, represent 1,456,000 working people (1,040,000

employees, 133,000 other workers and 283,000 unemployed), of which 868,000 men and 588,000 women. Men work mainly in construction (24%) and women are employed in the tertiary sector (89%).

However, the activity rate of migrant women remains very low (less than 45% for North African women and 28% for Turkish women). The unemployment rate is high: over 30% for African women and 50% for Turkish women.

French people from a migrant background enjoy a more privileged situation than migrants, even women. For example, the female labour force participation rate is almost equivalent to that of "native" French women. Their unemployment rate is higher than that of French natives, but only minimally (INSEE 2005).

4.3 Sources related to complaints

The Home Office publishes data every year on racist violence and threats based on the complaint data compiled from police crime report registers.

It is also possible to find data from the Education Ministry, which registers school directors' reports on racist acts.

Another source of information on complaints is the judicial system, through the registration by regular and specialised courts and the HALDE of all complaints based on racist motivations.

5. Review of national literature

5.1 Relevant research

Research on discrimination based on race and gender was extremely rare in France until only recently. This is because there was little production of knowledge on "migrant" women until the end of the 1990s and what did exist was quite scattered. It is also

because there was little scientific literature on racial discrimination in general until the 1990s.

Under the lead of the European Union, public institutions and the academic world attempted to demonstrate the existence of racial discriminations against ethnic minorities in different areas of social life. Some research centres worked on the question of discrimination, including URMIS, EHESS and INED. Others were created during this period, such as the CREDOF, a legal centre on fundamental rights (Nanterre), and the Discrimination Monitoring Centre at the University of Paris 1, which studies all grounds of discrimination in the field of employment.

As a result, the number of works on the subject has risen. Studies have been carried out on racial discrimination in employment (Vourc'h, de Rudder and Tripier 2000; Poiret et al. 1997; Noel 2000) and at different career stages such as recruitment (Bataille 1997).

Racial discrimination in housing has also been brought to the fore through different studies (Simon et al. 2001; Barou & Maguer 2003; Boumaza 2003; Chignier et al. 2003; Drujon 2004). Institutional discrimination has also been studied, i.e. in the police (De Wenden, Body-Gendrot 2003), prison system (Faure 2000), education (Brenner 2002; Felouzis et al. 2002; Payet et al. 2002) and health services (Fassin et al. 2001; Assier-Andrieu et al. 2004).

The specific situation of migrant women or women from migrant backgrounds in the employment market is the subject of various studies. One concerns integration into employment after higher education (Primon and Fricket 2004). The segmented integration encountered by such women has also been demonstrated (Boubeker et al. 2002; Chaïb 2001; Roulleau-Berger and Ould-Mebarek 2001). The wage gap based on race and gender discrimination has also been investigated (Ait Ben Lmadani et al. 2007).

The question of double discrimination from a legal point of view is highlighted for women from a migrant background (Lanquetin 2004; Lanquetin and Roulleau-Berger 2004) as well as migrant women (Frigule 1999) in order to show the specific difficulties encountered by each category of women.

Meanwhile, the overlapping of racism and sexism has only recently been addressed in France (Dorlin 2005; Poiret 2005). It has been argued that this is the result of the dominance of gender and class analysis during the 1970s (Fougeyrollas-Schwebel 2005). But it is also because French feminist scholars, whose education is based on the principles of universalism and egalitarianism, have tended not to see women as a diverse group.

Several researchers criticise the post-colonial approach to feminist issues, especially on violence, arguing that male Muslims are shown as more violent than the rest of the French population, despite official statistics showing that violence is present in the whole population whatever the origin or the social background.

Delphy (2006) for example, argues that racism in France is often expressed in terms of a cultural (and value-laden) comparison of men and women in order to legitimise differential treatment of “black” and “white” members of the population. She demonstrates, through the example of the law on secularism relating to the wearing of headscarves in France, that legislation was justified in part by the need to protect Muslim women's rights in relation to their men.

In the same way, Hamel (2005) argues that the culture transmitted to young French women of a North African background is largely dependant on social relationships generated by sexism and racism in a French social context rather than being a direct heritage from their parents and communities.

The two authors underline that the representation of women from migrant backgrounds is determined by their perceived subordination to their men and defined in contrast to white women, who are supposed to be more liberated and free.

Guénif-Souilamas (2003) analyses the ambiguity of the representation of young French women of North African background in France, who are supposed to be more emancipated than their men since they are better integrated. The emancipation of these women, based as it is on the French model, can only exist if they reject their men, their culture and their past.

In terms of categories, studies focus mainly on men and women from North Africa, especially from Algeria. Research has focused on the difficulties of integration of this population based on their origin and on their religion. Works are more focused nowadays on the question of the headscarf and its compatibility with the laws of a secular state like France, and on the question of equality between men and women in the context of migration (Azoulay and Quiminal 2002), through the issue of polygamy (Rebuffel and Veniel 2001) or forced marriage (Belhadj 2003; Etiemble 2005). The issue of private violence (through repudiation, excision, etc.) is also at the top of the agenda (Bensadon N. 2002; Nadro and Lesclingand 2007).

Some new problems began to be studied recently, mainly through the political involvement of certain women. It is being shown that undocumented women (Cissé and Quiminal 2000) as well as refugee women (Freedman and Valluy 2007) are victims of specific discrimination.

Nevertheless, while the visibility of double discrimination is increasing, there is still little research on intersectional discrimination and multiple grounds of discrimination in France and it does not yet allow for the development of an approach likely to be transposed into a legal approach.

5.2 Current anti-discrimination debate

The anti-discrimination debate is now focused on the use of ethnic statistics to measure discrimination. This issue is still very sensitive in France because the country has been historically hostile to classifying people by race or ethnic group since the last war (Doytcheva 2007: 120).

Article 1 of the French Constitution and the Information Technology and Freedom Act of 6 January 1978 prohibit the collection of personal data based directly or indirectly on racial or ethnic origin. However, several institutions make distinctions between French people according to their origin in order to count them, such as INSEE since the 1962 census and to an even greater extent after the introduction of the so-called "immigrant" category in the census in 1999, based on place of birth. INED has also conducted

surveys on different generations of migrants, based on place of birth of the parents or mother tongue used (Tribalat 1995).

This issue represents a paradigmatic stage of the evolution of the French integration model, dividing the academic world as well as NGOs and trade unions.³¹ However, the Constitutional Council decided in November 2007 to prohibit the use of racial or ethnic origin in studies that aim to measure diversity (Decision No. 2007-557 DC of 15 November 2007).

The second current debate concerns positive actions. Many specialists consider that certain recent equal opportunity policies promote a “differentialist” approach, directly based on the social reality of origin (Maisonneuve 2002). This new orientation would lead to the end of the specific French model of positive actions based on neutral and general grounds such as territory or socio-economic condition, as laid down by Council of State case law.

However, several authors have assessed the real impact of anti-discrimination tools in regard to racism and gender.

Morokvasic and Catarino (2007) point out that some public policies, legal frameworks and public debates contribute to the victimisation of migrant women instead of helping them to reach autonomy and equality. This is the case, for instance, with the racialisation of sexist violence, human trafficking and prostitution.

The authors highlight many negative aspects on women of recent immigration laws, such as the Immigration Acts of 2003 and 2006 that increase the dependence of the partner in family reunification cases or the 2003 Interior Security Act that penalises foreign prostitutes.

They also underline that immigration laws are still based on a traditional distribution of roles between men and women, with male support of the family remaining the dominant

³¹ See *Le Monde*, 2 March 2007, "Statistiques ethniques: refus d'associations et des syndicats de l'INSEE".

model. Migrant women are seen as economically and socially dependent. As a result, migrant women are visible victims but invisible workers.

According to Blanchard (2007), although the universalisation of rights should remain the main objective of human rights defence, special attention should be paid to specific characteristics or situations, such as gender, origin or nationality. He advocates a common defence of foreigners' rights and women's rights, despite recent division within minority movements based on sexual, national or ethnic origin. He denounces the government's attitude of favouring the opposition between foreigners' rights and women's rights, showing the latter as being protected against "their males".

As shown by Lanquetin (2004: 23), foreign women as well as French women from a migrant background are victims of specific discrimination. In obtaining access to French nationality, some women, especially from Arabic-Muslim countries, are penalised by discrimination suffered in their country of origin, especially in the field of education and employment. As a result, integration criteria such as language or social integration work against such women.

French women from a migrant background are also discriminated against in social rights and social protection because both result from a "familialist" concept of rights. As a result, these are granted firstly to the husband, who is seen as the "breadwinner".

6. Conclusion

Although France was very late in setting up a legal framework to combat discrimination in comparison with other EU countries, it is now quite effective in tackling the covered grounds of discrimination. There has also been a significant evolution in terms of public awareness.

However, there are still a number of barriers to the correct implementation of anti-discrimination laws. First of all, judicial practice needs to change. Few NGOs are able to initiate judicial proceedings. They will need training and funding in order to help victims and to pursue test cases. Lawyers and professional judges will also need to be trained in anti-discrimination laws, especially in respect of the application of anti-discrimination laws in civil law.

Second, information on anti-discrimination needs to be improved. The media should become accustomed to reporting on the HALDE's decisions and case law in this field.

Furthermore, there is no legal rule addressing multiple grounds of discrimination such as race and gender. Complainants can claim to be victims of discrimination on a number of grounds, but there is no method developed for each case in order to apprehend the specificity of multiple grounds claims. This essentially impacts on evidence strategy, the facts to be brought forward as evidence.

At the academic level, knowledge on discrimination has been considerably improved through the publication of many reports and studies in the course of the last decade, especially on racial discrimination and double discrimination based on race and gender, which are debated in France by feminist movements. However, the data clearly show that there is still a long road to equality. Formal equality should be the first step in the fight against race and gender discrimination.

We should keep in mind that the final objective is for all migrant women or women from a migrant background to benefit fully, at every stage of the migration process, from the principle of equal opportunities, as do European women in other contexts.

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