

Note by the CNCDH concerning the examination of France's seventh and eighth periodic reports by the United Nations Committee on the Elimination of Discrimination Against Women

10 June 2016

The National Consultative Commission on Human Rights (CNCDH) is the French National Human Rights Institution (NHRI), founded in accordance with the Paris Principles with 'A' accreditation from the United Nations.

The CNCDH has been entrusted with a general consultative and oversight role serving the Government and Parliament within the field of human rights, international human rights law and human rights action. Within this framework, it contributes in a wholly independent capacity to draft reports by France to international bodies, and in particular to the United Nations Treaty Bodies, passing on information to these bodies concerning respect for and effectiveness of human rights in France.

In addition to its opinions, which are intended to inform political decision-making and include reflection on the sex-specific dimension of the issues dealt with, the CNCDH is an independent authority assessing public policy. It is thus the independent National Rapporteur with regard to the fight against racism, anti-Semitism and xenophobia and the fight against human trafficking. It is also in charge of the assessment of the "Women, Peace and Security" inter-ministerial plan which applies Resolution 1325.

These various endeavours are therefore central to the CNCDH's contribution to the examination of France by the United Nations Committee on the Elimination of Discrimination Against Women (hereinafter "the Committee").

In the interests of succinctness and relevance, the CNCDH thought it expedient to return in a note to the list of points pertaining to the seventh and eighth periodic reports by France set out by the Committee (CEDAW/C/FRA/Q/7-8), and to examine the responses made by the French Government (CEDAW/C/FRA/Q/7-8/Add.1) in a precise manner in light of its seventh and eighth periodic reports (CEDAW/C/FRA/7-8).

I) Training concerning the Provisions of the Convention - Question No. 1

In its opinions concerning women's rights, the CNCDH regrets that the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) is still little-known, and is not used as a frame of reference either by the legislature, the public authorities or legal professionals.

It recommends that this situation be rectified by including a specific component on the provisions of the Convention in training programmes aimed at legal professionals, and at

judges and members of the national legal service in particular. In this respect, it should be noted that the CNCDH recently made an offer to the French National school for the Judiciary (*Ecole nationale de la magistrature*) to direct an in-service training session for judges concerning United Nations international human rights conventions as a whole, and the CEDAW in particular, for which the national judge is the judge under ordinary law.

Failure to take the Convention into consideration on the part of legal professionals is confirmed in particular by the fact that it is not called upon in legal rulings. In France, duly-ratified international instruments rank higher than laws in the hierarchy of norms, but the direct applicability thereof is determined on a case-by-case basis, depending in particular upon the degree of clarity and precision of the stipulation.

Apart from the details of the provisions of the Convention which are deemed to be directly applicable by courts, the Committee may find it useful to ask France to list all legal rulings made which refer to the CEDAW, regardless of the outcome of the ruling, in order to be able to assess legal professionals' knowledge of this Convention.

II) The National Consultative Commission on Human Rights and the High Council for Equality between Women and Men - Question No. 3.4 - Article 3

The CNCDH regrets that France has not really answered the question raised by the Committee.

The CNCDH is an institution whose independence from the authorities is enshrined in law. Its duties have been considerably widened in recent years, without its resources for all that being increased. It is therefore surprising that the French Government presents an exercise in accounting entries, which has made it possible, in particular, to transfer the Prime Minister's allocation for the Human Rights Prize of the French Republic to the CNCDH budget, in the form of an increase in its funds, without any real increase in funds for its activities and without raising its maximum number of staff.

It should be recalled that, in 2014 the CNCDH was entrusted with the role of independent National Rapporteur in charge of the assessment of public policy for the fight against human trafficking and exploitation. Despite the substantial weight of this new mission, it was not accompanied with any additional financial or human resources, to the point of weakening the proper operation of the institution.

For its part, the High Council for Equality between Women and Men (*Haut Conseil à l'égalité entre les femmes les hommes*) is an institution reporting to the Prime Minister, whose resources are manifestly inadequate for the completion of the whole of the duties entrusted to it by decree. It would be particularly desirable for it to be made permanent, in view of the acknowledged quality of the work it undertakes.

As a national human rights institution, the CNCDH conducts operations of cooperation with bodies which, in their specific field of competence, contribute to one of the dimensions of human rights. The CNCDH and the High Council for Equality thus both take part in meetings concerning the "Women, Peace and Security" inter-ministerial plan and work together for the assessment of the strategic policy document on gender. Their fields of activity, their status and the scope of their recommendations and contacts are not of the same nature.

The Committee might find it useful to ask France whether it intends to provide these two institutions with the resources required for their duties, mentioned herein, that is to say the defence of equality between women and men and of human rights more broadly speaking.

III) Harmful Stereotypes and Practices - Question No. 4 - Article 5

The CNCDH considers that reinforcement of the fight against sexist stereotypes and prejudices, through education, training and the media in particular, is a priority area leading to full and effective equality between women and men. However it observes that sexist stereotypes and prejudices continue in the school environment, influencing choices and advice with regard to courses of study. Apart from stereotypes promoted by school textbooks, messages in the public arena as a whole constitute an obstacle to the implementation of public policies in favour of equality between women and men, and in particular the underrepresentation of women in the media, and advertisements.

On the basis of this assessment, the CNCDH had already set out recommendations in an opinion of 2010¹, which it recently reiterated in a recent opinion of 2016², since unfortunately the pertinence of these recommendations still remains. Indeed, in the first place it called upon the French government to support efforts to implement the inter-ministerial convention for equality between girls and boys in the educational system, in particular: training of the actors of the educational community with regard to questions of equality between women and men; elimination of sex-based stereotypes from school textbooks; improvement of sex education; establishment of preventive actions with regard to sexist behaviours and violence; promotion of diversification of choices of school courses of study for girls for more balanced representation of women and men in economic and social life. The CNCDH also encouraged the government to undertake reflection with regard to the image of women portrayed in the media and the consequences which stereotyped use of this image may have upon the effectiveness of equality between women and men, and therefore upon social attitudes.

The CNCDH shares the Committee's concerns and considers that it would be appropriate to once again ask France what it intends to undertake, in terms of concrete measures, in order to fight against continuing stereotypes and prejudices in the fields of primary and secondary education and the media.

In addition, the CNCDH would like to draw the Committee's attention more specifically to the prejudices and stereotypes endured by two particularly vulnerable groups: Roma women and immigrant women.

¹ CNCDH, *avis pour le 15^{ème} anniversaire de la Conférence mondiale de Pékin sur les femmes* ["Opinion for the 15th Anniversary of the Beijing International Conference on Women"], 4 February 2010.

² CNCDH, *avis sur les violences contre les femmes et les féminicides* ["Opinion on Violence against Women and Femicide"], 26 May 2016.

As far as Roma women are concerned, in an opinion of 2014³ the CNCDH alerted the Government to the high number of forced evacuations and to the urgency of bringing this practice to an end when it is implemented without any alternative housing solution having been found. Indeed, these practices are particularly questionable for the CNCDH insofar as they contribute to denial of the right of education for children, prevent access to health care and benefits for families with children, and contribute to the promotion of a negative image of these population groups in public opinion. Furthermore, they make it more difficult to monitor families, which is nonetheless necessary in order to combat violence against women, such as early marriage and domestic violence.

Accordingly the Committee might also question France with regard to the manner in which the specific needs of women living in shantytowns are taken into account, in particular in case of evacuation, as well as their vulnerability in the face of the risks with which they are confronted because of the increase in discriminations to which they are subjected.

Finally, as far as immigrant women are concerned, in a recent opinion⁴ the CNCDH denounced the negative image promoted by the reform of the law on foreign nationals adopted by the French government in March 2016 with regard to persons of foreign origin. Indeed, it is to be feared that French migration policy may increase the risks of stigmatisation and discrimination of which persons of foreign origin are the victims, and all the more so in the case of women.

In this respect, the Committee might ask France how foreign women's specific situations were taken into account in the reform of the law on foreign nationals and about the impact of this reform upon their situation, for example with regard to support for learning the French language and the establishment of personalised paths in order to enable faster integration of foreign women into French society.

IV) Female Genital Mutilation - Question No. 5

In its opinion of 2013⁵, the CNCDH noted that “progress had been made in France in terms of the fight against female genital mutilation”. Nevertheless, many young girls, the vast majority of whom normally reside within the national territory, are still in a situation of danger. Whilst the practice of female genital mutilation (FGM) has significantly declined within French territory, young girls now in most cases undergo FGM during temporary stays in their countries of origin, when the latter are countries that continue to practice excision or infibulation.

The CNCDH sets out several recommendations in its opinion, in particular emphasising the importance of data collection in order to adapt awareness-raising policy among at-risk

³ CNCDH, *avis sur le respect des droits fondamentaux des populations vivant en bidonvilles*, [“Opinion on Respect for the Fundamental Rights of Inhabitants of Shanty Towns”], 20 November 2014 *JORF [Journal officiel]* No. 0034 of 10 February 2015, text No. 92.

⁴ CNCDH, *avis sur la réforme du droit des étrangers* [“Opinion on the Reform of the Law concerning Foreign Nationals”], 21 May 2015, *JORF* No. 0159 of 11 July 2015, text No. 94.

⁵ CNCDH, 28 November 2013, *avis sur les mutilations sexuelles féminines* [“Opinion on female genital mutilation”], *JORF* No. 0287, 11 December 2013, text No. 81.

populations according to changes in prevalence within immigrant families' territories of origin. It stresses the need to reinforce training and awareness-raising with regard to the practice of female genital mutilation among the various different actors concerned, in particular medical staff, social workers, the police and gendarmerie as well as judges and members of the national legal service.

In view of the few elements of response provided by France on this issue, the Committee might reiterate its request while encouraging France to give details of the manner in which it has taken on board the CNCDH's recommendations suggesting that it improve the collection of primary data on female genital mutilation; conduct quantitative and qualitative research for the purposes of improved assessment of the risks of female genital mutilation among second and third-generation immigrant women; plan training programmes aimed at the personnel concerned and improve the response to these practices in terms of criminal justice.

V) **Violence Towards Women - Questions Nos. 6 and 7 - General Recommendation No. 19**

In its opinion of 26 May 2016⁶ concerning violence against women and femicide, the CNCDH notes various points with regard to which considerable margins of progress remain.

In the first place, the CNCDH establishes a damning assessment providing figures of the reality of violence affecting the life of women in France, whether originating in the home, within the professional environment or in public areas (street, public transport etc.). It calls for amendment of the Penal Code (*Code penal*), in order to improve the identification and punishment of violence and murders committed for sexist reasons, and changes in the definition of the causes of absence of criminal responsibility (including legitimate self-defence), in order to make the situation of women prosecuted for homicide secure when they were attempting to protect themselves or to protect their children. It draws the authorities' attention to the need for better protection of victims of gender-based violence, through both re-elaboration of the legal framework and improvement of the training and means allocated to police forces, judges and members of the national legal service, healthcare staff and social workers.

The Committee might also request amendment of the Penal Code in order to recognise homicides and violence committed for sexist reasons and provide better protection for women victims of domestic violence prosecuted for having attempted to defend themselves against their attacker by redefining the criteria of the reasons for absence of criminal responsibility.

Furthermore, in its opinion of 26 May 2016, the CNCDH observes the existence of specific threats to foreign women whose residence entitlements are very often based upon the existence of consortium and cohabitation or married life.

Although the Act (*loi*) of 7 March 2016 concerning the law on foreign nationals⁷ enabled improvement of the protection of women, the CNCDH observes that the protective

⁶ CNCDH, *avis sur les violences contre les femmes et les féminicides* ["Opinion on Violence against Women and Femicide"], 26 May 2016., JORF No. 0131 of 7 June 2016, text No. 45

mechanism put in place is inadequate to encompass all of the situations of administrative precarity in which persons of foreign nationality may be placed due to violence committed within the couple. It finds that major disparities exist between prefectures in terms of the implementation of the provisions of the Act of 7 March 2016 with regard to the renewal of residence permits in case of protective measures.

More broadly speaking, the CNCDH observes that foreign women who are victims of gender-based violence, other than domestic violence, forced marriage or human trafficking, currently have no possibility whatsoever of receiving support and protection.

A Bill in favour of the autonomy of foreign women was tabled on 13 April 2016 at the French National Assembly. This proposal is intended to make the autonomy of foreign women secure by putting an end to various situations which place women in a position of dependence in relation to their family, their spouse or even pseudo-“employers” who may put human trafficking in place.

The Committee might take up questions with the French Government concerning its position with regard to this Bill, whose provisions are in line with recommendations set out by the CNCDH and the Committee. In particular it would be appropriate to ensure that this text will be submitted for a vote before Parliament.

Finally, the CNCDH regrets that France did not provide any elements concerning protective measures aimed at disabled women in its answers. Nevertheless, women with disabilities, weakened by their physical or mental difficulties, are more vulnerable to all forms of violence and verbal, physical - and in particular sexual - and psychological assault. According to the Report on the situation of women with disabilities in the European Union, published by the European Parliament in 2007⁸, almost 80% of women with disabilities have been victims of violence and women with disabilities are four times more likely to be subjected to sexual attacks. Women with disabilities are subjected to twofold discrimination, because they are women and because they have disabilities. This abuse, which may occur equally in the family environment and in the institutional environment, has the specific characteristic of being in most cases invisible, since in the majority of cases victims are unable or refuse to make a criminal complaint, due to fear of being sent away from the institution which caters for them, or because they are placed in a situation of great moral and economic dependence in relation to their attacker.

The Committee might ask the French government whether there is any plan to include specific measures for the protection and support of women with disabilities in the 5th national plan to combat violence against women, which is currently in the course of elaboration.

⁷ Act No. 2016-274 of 7 March 2016 concerning the law on foreign nationals in France.

⁸ European Parliament, Committee on Women's Rights and Gender Equality, *Report on the situation of women with disabilities in the European Union*, (A6-0075/2007), 29 March 2007.

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A6-2007-0075+0+DOC+XML+V0//EN>

In its opinion of 26 May 2016, the CNCDH observed that protection orders provide a very comprehensive but still insufficiently used tool. They are intended to enable women under their attacker's power, who fear for their bodily safety, to request protection prior to a criminal complaint. However, judges all too frequently require a criminal complaint as evidence of the likelihood of danger. Furthermore, the current average waiting period for the issuance of protection orders, which is 37 days according to the Ministry of Justice, is too long for emergency measures. Moreover, the length of the period of protection (6 months) is too short in view of the mechanisms for punishment and provision of measures for perpetrators of violence, which results in the need to provide for extensions.

The Committee might usefully suggest that the Government publish a new ministerial circular in order to provide lines of policy for judges in favour of more frequent and appropriate use of protection orders, in particular with regard to assessment of the likelihood of the commission of alleged acts of violence and exposure to danger.

VI) Trafficking and Exploitation of Women - Question No. 8 - Article 6

Despite the answers provided by France, the CNCDH considers the funding provided for the prevention of human trafficking to be inadequate.

Since 2014, the fight against human trafficking has had the benefit of dedicated financing (programme 137 "Equality between Women and Men" - action 15 devoted to prevention and the fight against prostitution and human trafficking). Although the CNCDH salutes the creation of a specific budget entry for the fight against human trafficking, it considers that the title of action 15 "Prevention and Fight against Prostitution and Human Trafficking" and its inclusion in programme 137 do not make it possible to fulfil the announced objective of increasing the visibility of this policy, but once again tend to confuse the message and confine the fight against human trafficking to the fight against prostitution alone. The funds devoted to this issue have essentially financed associations implementing initiatives in favour of meeting, catering for and supporting prostitutes and preventive actions (aimed at young people and the public at large), as well as awareness-raising initiatives and the training of professionals.

According to the Budget Act⁹, in 2016, action 15 for "Prevention and the Fight against Prostitution and Human Trafficking" of the 137 programme was allocated 4.98 million euros of funds, which constitutes 18.5% of the programme, as compared with 2.39 million euros (9.5%) in 2015, that is to say a difference of 2.8 million in favour of the year 2016. This increase in funds translates the governments undertaking to establish a fund within the State budget for the prevention of prostitution and for social and professional support for prostitutes.

⁹ Budget Act (*loi des finances*) No. 2015-1785 for 2016 of 29 December 2015

Extract from the budgetary blue paper of the "Solidarity, Integration and Equal Opportunities" commission, programme 137: "Equality between Women and Men".

<http://www.performance->

[publique.budget.gouv.fr/sites/performance_publique/files/farandole/ressources/2016/pap/pdf/DBGPGMPGM137.pdf](http://www.performance-publique.budget.gouv.fr/sites/performance_publique/files/farandole/ressources/2016/pap/pdf/DBGPGMPGM137.pdf)

The financial allocation for action 15 of the 137 programme calls for several different observations on the part of the CNCDH. In first place, the major observed increase of 129% actually seems to be no more than a smokescreen, insofar as it does not correspond to additional investment on the part of the government, but results from a transfer of credits to the amount of 2.8 million euros from three programmes in the general budget.

Secondly, the fund for the prevention of prostitution and provision of social and professional support for prostitutes is planned to be financed by confiscation of property and products by the Agency for the Management and Recovery of Seized and Confiscated Assets (AGRASC / *Agence de gestion et de recouvrement des avoirs saisis et confisqués*) for the transfer of movable property and real estate confiscated from persons found guilty of acts of human trafficking, procuring and other offences resulting therefrom. This source of funding appears highly unpredictable and does not contribute to guaranteeing that the fund will be financed in a continuous and reliable manner in the most rapid possible timescale.

Finally, the CNCDH is concerned that for the year 2016 almost all of the credits allocated to the fight against human trafficking have in fact been solely allocated to the fight against prostitution and the provision of measures for prostituted persons. Indeed, in the funds allocated to action 15 of the 137 programme, at local level 4.57 million euros are to be allocated to the financing of local preventive actions and the fight against prostitution. In fact, other forms of trafficking and exploitation, such as domestic servitude, forced labour and exploitation of begging, which largely and even principally affect women, are barely taken into account or even entirely neglected.

Under these conditions, any implementation of the National Action Plan is illusory, which considerably prejudices the effectiveness and even the very existence of the public policy for fighting against human trafficking and exploitation which had been announced.

Moreover, the CNCDH considers that the inter-ministerial Mission for the protection of women victims of violence and the fight against human trafficking (MIPROF / *Mission interministérielle pour la protection des femmes victimes de violences et la lutte contre la traite des êtres humains*) should be able to have a specific budgetary entry (which is not currently the case). This budgetary entry should encompass the operating budget of the inter-ministerial mission and an action budget. On the one hand, this action budget could enable the direct financing of certain actions provided for under the National Action Plan and, on the other hand, in the interests of improved management efficiency, it would be the single point of contact for associations for validating and managing their subsidies on the basis of accurate projected workloads and regular monitoring of their commitments.

<p>In order to ensure that sufficient relevant resources are provided to fight against human trafficking and exploitation in France, the Committee might question the Government regarding its proposed undertakings in human and financial terms in this respect. It would also be appropriate to make sure that the Government indeed intends to address all forms of exploitation rather than sexual exploitation alone.</p>

VII) Participation of Women in Political and Public Life -Question No. 10.2

The assessment made by the French Government of access of women to high-level positions reveals the magnitude of the discrimination against them and the tendency to make this discrimination permanent.

The CNCDH regrets that the high administration does not focus on recruiting the best profiles, but always men in the first place and then the best amongst the latter, in order to hold positions of responsibility in managerial positions within the three public administrations, amongst ambassadors etc. More generally speaking, the tendency to exclusively appoint identical profiles among graduates of *grandes écoles* considerably limits the recruitment pool and, as a result, makes the administrative elite barely representative of the vital forces of French society.

With regard to managerial positions, the CNCDH welcomes the adoption of provisions concerning new appointments of women aimed at reducing the glass ceiling and imposing financial sanctions upon recalcitrant employers. The proportion of women imposed by law in new appointments will thus increase from 30% in 2016 to 40% in 2017. However, the selected modes of calculation (which for example only concern first appointments and enable offsetting between positions with different responsibilities) and the exclusion of appointments by the French President to the most prestigious posts, mean that this objective is more cosmetic than real.

In fact, it appears to the CNCDH that progress in terms of equality between women and men in managerial positions and in the civil service can only be effected in concrete terms if a real political will emerges in this respect.

The policy conducted by the employer-Government within its own departments is in this respect a sound indicator of the lack of voluntarism.

As far as reduction of the glass ceiling is concerned, numerous ministries do not appear to have reached the objective of 30% women with regard to new appointments, which leads them to pay a contribution of 60,000 euros per appointment below this target. The Prime Minister's Office even appears to show a reduction in the number of women among new appointments to managerial positions. In concrete terms this leads to a worsening of the glass ceiling, by drying up the pool of women likely to be offered high-ranking positions. This gives all the more cause for concern insofar as the proportion of 30% women imposed by the law only concerns new appointments, while persons already holding posts whose tenures are renewed do not form part of the basis of this quota. However, the latter are for the most part men in managerial positions in the civil service.

<p>It would be appropriate to ask the Government what measures it intends to implement in order to ensure that the administration complies with the law in the best possible manner, instead of circumventing it by paying a fine.</p>
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Moreover, as far as differences in pay within the civil service are concerned, company balance sheets show very large differences in pay between women and men, of the same rank and status. Indeed, it appears that a significant number of ministers continue to justify a policy of pay differences, on the basis of officials' previous pay. In so doing, they increase wage differences throughout the length of careers, and contribute to giving rise to considerable loss of earnings for women at the time of their retirement. The CNCDH regrets that no policy for convergence of pay between women and men of equal status and rank is planned within the civil service.

It would be interesting to know how the Government, as an employer, understands Article 11.1 d) of the Convention, by virtue of which France has undertaken to take all appropriate measures in order to ensure equality of pay for work of equal value.

VIII) Refugees and Asylum Seekers - Question No. 18

In an opinion of 2015¹⁰, on the situation of migrants in Calais, the CNCDH expressed its deep concerns in the face of a dramatic humanitarian situation.

It had observed that the number of women present in the camps with disgraceful living conditions had increased in the course of recent months, being around 300 migrant women, very much forming a minority among several thousand men. The situation of these refugee women gives cause for concern with regard to numerous points. Indeed, apart from the same sufferings endured by the refugees present in this region as a whole, because of their migratory path and their living conditions in a sanitary environment contrary to human dignity, they encounter additional difficulties, due to their special vulnerability.

As far as the protection of health and access to treatment is concerned, the CNCDH condemns the extreme living conditions which are factors giving rise to contagious diseases and aggravating factors in pathologies. This situation gives particular cause for concern with regard to pregnant women for whom health care is interrupted.

In the same opinion, the CNCDH also emphasised the fact that persons living in Calais were particularly exposed to violence, and that this fact applies to an even greater extent to women.

Finally, the CNCDH reported illegal practices of trafficking of migrants inevitably affecting women who are even more helpless than men in terms of fighting against their exploitation. Moreover, this is in a context of impunity of persons responsible for trafficking in the face of failure on the part of the authorities to take this phenomenon into consideration and fear of making criminal complaints or giving testimony on the part of the victims.

The Committee might question the French State on the solutions provided for the specific needs of women in Calais. It might be asked whether they are catered for in specialised day and night-time reception centres. It would also be appropriate to ask the State what steps have been taken to satisfy urgent needs for access to drinking water, sanitary facilities, showers and laundry facilities. It would also be useful to ask France how access to treatment for migrant women living in Calais is organised.

The Committee might ask France by what means it protects women against the risks of violence and exploitation to which they are exposed in Calais and, more generally, in the various migrant camps that exist within French territory. It might also ask it questions regarding the existence of mechanisms designed to identify potential victims of human trafficking, of which the CNCDH recommends the creation.

¹⁰ CNCDH, *Avis sur la situation des migrants à Calais et dans le Calais* ["Opinion on the Situation of Migrants in Calais and in the Pale of Calais"], 2 July 2015, JORF No. 0157 of 9 July 2015, text No. 102.