

A woman with long, dark, curly hair is looking out a window. She has a slight smile and is looking towards the right. The background is a blurred view of greenery outside.

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Executive Summary

# Discrimination and Origins: the Urgent Need for Action

We are all equal before the law

**Défenseur des droits**

— RÉPUBLIQUE FRANÇAISE —

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# Introduction

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The current health crisis and resulting lockdown have highlighted social inequality and exacerbated the discrimination suffered, in particular, by people of foreign origin or perceived as such. Stigmatising words and behaviours have increased, especially against groups perceived as vectors for the coronavirus.

Anti-Asian racism, denounced worldwide, has gained momentum, ranging from insults and assaults in the public sphere to bullying of children in school. Moreover, social networks and certain media platforms have contributed to the deepening prejudices against the residents of disadvantaged neighbourhoods, who are presented as more “undisciplined” when it comes to healthcare compliance. Recent studies have also highlighted the overexposure of individuals of immigrant origin to health risks and disease, owing to severe inequalities in employment, housing and health.

**This crisis has only amplified a reality that is too often ignored or downplayed. Indeed, all the studies and data available to the Defender of Rights indicate that origin-based discrimination remains widespread in France and affects the daily lives and pathways of millions of people, challenging their life trajectories and most fundamental rights.**

This discrimination affects a significant fraction of French society and is not limited to the issue of nationality or migration path.

It affects both foreign nationals and French nationals of foreign origin (almost 21% of the French population), as well as all generations born of French parents assigned to a different origin.

Origin as a ground, provided for in Article 225-1 of the French Criminal Code, refers to the projection of stereotypes and exclusion based on various characteristics resulting from essentialisation, including skin colour or surname. This symbolic distinction between “us” and “them” translates into concrete and substantive effects: discrimination, segregation, social inequality and even forms of harassment and violence.

**In mainland France, actual or presumed origin is the second most significant ground for discrimination after gender: 11% of individuals report that they have experienced discrimination based on their origin or skin colour over the last five years.**

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# Findings of the Defender of Rights and French public sector research

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Official data and numerous public reports confirm the extent of this discrimination in French society and its systemic dimension. The results of the statistical studies are indisputable.

People of foreign origin, or perceived as such, are more exposed to unemployment, social insecurity, poor housing conditions and health issues. Research also highlights specific inequalities in schooling related to origin and territory. In addition to social difficulties, these jeopardise the professional integration of young people and their subsequent living conditions.

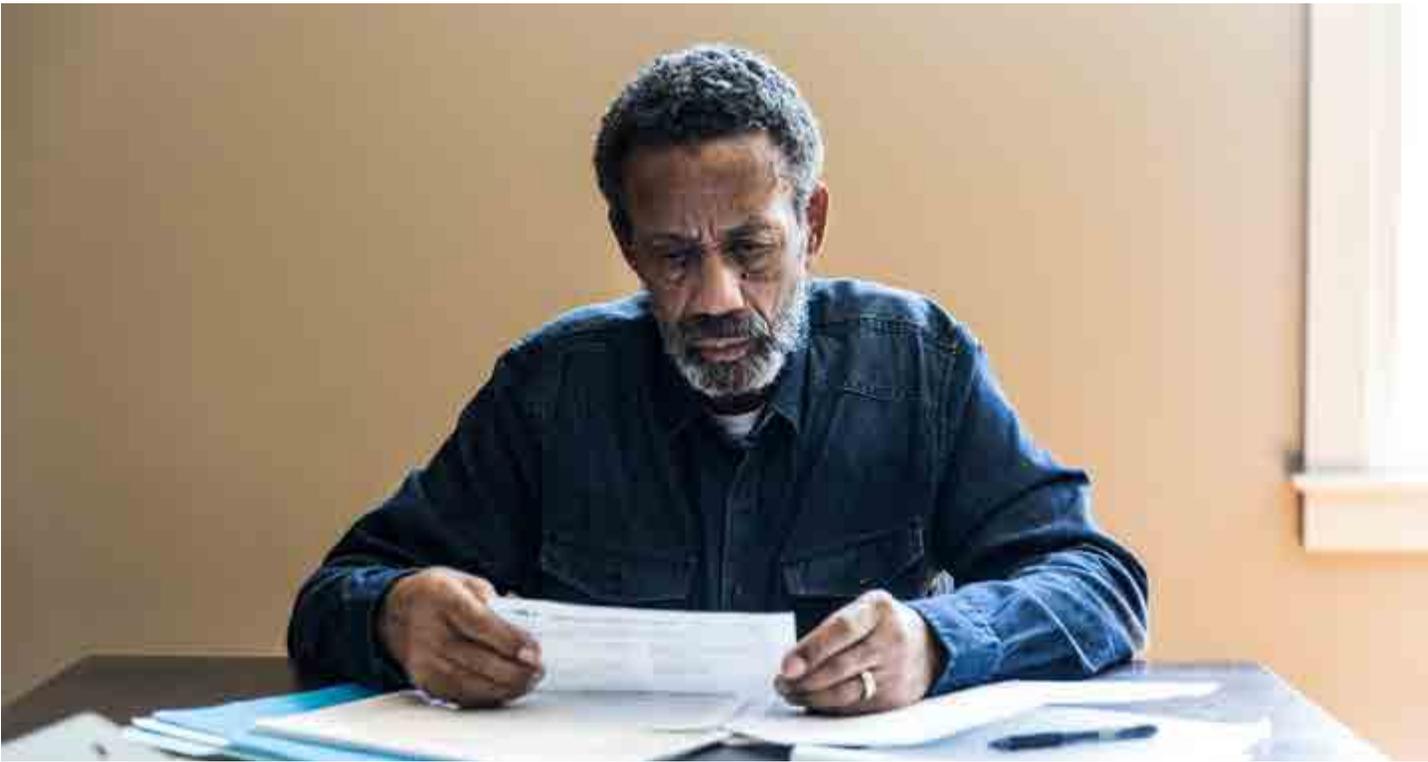
**All other things being equal, people of foreign origin, or perceived as such, are disadvantaged in access to employment, housing and education.** When seeking jobs, individuals with Arabic-sounding surnames must send out more than three CVs to secure an interview, whereas this figure decreases to two for individuals with metropolitan French-sounding surnames. Individuals of immigrant origin are 8% less likely to work in the public sector. Back in 2002, the French Economic, Social and Environmental Council (ESEC) noted that many young people of foreign origin were excluded from various spheres of social, economic and cultural integration. Almost 15 years later, France Stratégie makes the same point: *“All other things being equal, men with no direct migrant ancestry always have greater chances of accessing employment and better salaries (...)”*.

According to INED’s TeO survey, segregated neighbourhoods in France account for 10% of the French population and are characterised by over-representation of immigrants and descendants of immigrants, a high unemployment rate, significant concentration of social housing and near-absence of individuals belonging to higher

socio-professional categories. Due to the negative stereotypes surrounding residents of the French banlieues, the very fact of living in a housing estate or project greatly increases peoples’ exposure to origin-based discrimination. Some researchers indicate a form of *“spatialisation of ethno-racial discrimination”*: 14% of people living in French housing estates say they have been discriminated against because of their neighbourhood. This increases to 17% for individuals who identify or are perceived as being of Arab origin.

When applying for a private rental property, individuals with Arabic or African-sounding surnames are, respectively, 27% and 31% less likely to secure a first appointment with the owner.

Finally, they are overexposed to police checks and deteriorating relations with law enforcement agencies. The Defender of Rights’ 2016 survey on *Access to Rights* found that, while over 80% of men reported that they had not been subject to any police checks over the past five years, half the male respondents perceived as Arab/North African or black declared that they had experienced these at least once. They also reported that they were 5 times more concerned by frequent checks (more than 5 times over the last 5 years) than the overall male population. Within this population, the group most affected were young people aged 18-25, with 80% declaring that they had been subjected to police checks during the five years preceding the survey (compared to 16% for the rest of the respondents).



For the individuals concerned, origin-based discrimination often constitutes **a lasting and widespread day-to-day experience, with regard to employment, but also housing and access to goods and services. The role played by institutions in producing this discrimination is far from negligible.** Research clearly highlights that it occurs on an individual scale as an ongoing, repeated experience.

However, origin-based discrimination also combines with other forms of discrimination and inequality, linked to social position, economic resources, employment status, gender and religion, and thus produces lasting collective inequalities that result in segregation.

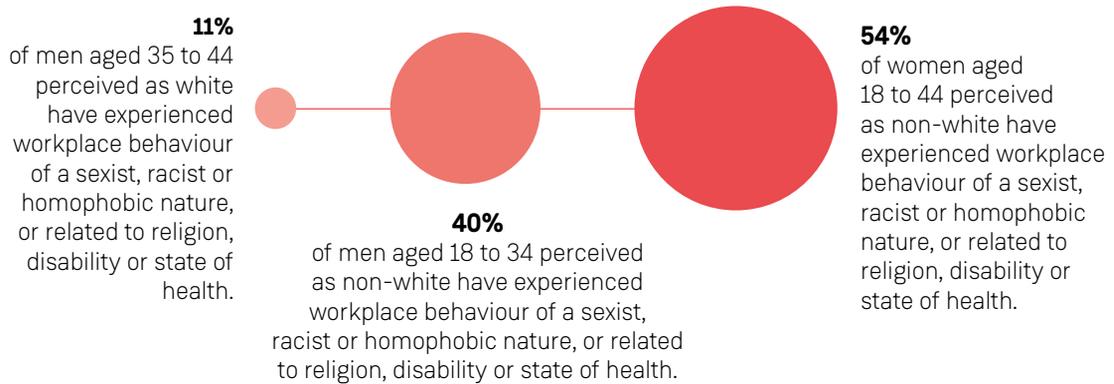
**Certain individuals, situated at the point where various forms of discrimination intersect, are particularly exposed to the processes of stigmatisation and exclusion.**

For example, the overall rate of discrimination in the professional sphere for women aged 18 to 44 perceived as black, Arab, or Asian (all criteria combined) is significantly higher than for women perceived as white (65% versus 42%). All other things being equal, they are 2.5 times more likely to experience discrimination in employment than women perceived as white.

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Distribution of comments or conduct of a sexist, racist or homophobic nature, or related to religion, disability or state of health, experienced in the workplace by certain social groups

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Origin-based discrimination must thus be viewed from a systemic perspective, i.e. in the broader context of the interaction between collective representations that stigmatise these individuals, the combination of the proven discrimination they face and the socio-economic inequalities that structure society, in order to understand the impact and systemic barriers at work.

**The repeated experience of discrimination and its systemic nature have long-lasting negative consequences on individual trajectories, the social groups affected and, more broadly, the cohesion of French society.**

At the individual level, discrimination translates into a “loss of well-being” and “loss of opportunity”, i.e. increased effort required to find employment and housing, difficulties in accessing chosen careers and living spaces, longer transport times, lower grades at school, feelings of anger and loss of self-confidence or discouragement, with possible negative effects on both mental and physical health.

Such discrimination also produces self-censorship, particularly in the professional sphere, where individuals, internalising the realities of society, may tend to limit their ambitions. Faced with the injustice of discrimination, they use circumvention strategies – such as choosing a profession

with a self-employed or liberal status, or a job in one of the sectors characterised by a high proportion of immigrants or descendants of immigrants – or attempt to break with the past, by leaving a job or city, moving abroad, or returning to their families’ country of origin. These strategies reflect renunciations, restrict career choices and produce forms of social downgrading.

This discrimination undermines people’s trust in French society and institutions: considered inevitable, it casts doubt on their place in society and fuels a feeling of not being recognised.

Though born French, descendants of immigrants are all too often regarded with a form of suspicion and treated differently when interacting with state officials and the authorities. As such, levels of trust in the police depend not only on the checks themselves, but also on how they are implemented and whether or not they are perceived as the product of racial profiling. The discrimination suffered by people with or perceived as having an immigrant background, along with their poor representation in the public sphere, thus fuels a painful search for identity and a sense of national disaffiliation, which are not offset by strong political discourse.

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# The absence of a national policy to combat discrimination on grounds of origin and the limits on recourse to litigation

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Discrimination based on origin does not benefit from the positive dynamics that have been observed in recent years with regard to the fight against discrimination based on gender or sexual orientation.

**Despite the adoption of the European directives in 2000, such discrimination is not the subject of a dedicated public policy. The possibilities for taking legal action are not enough to combat systemic discrimination.**

After belatedly being put on the agenda in the late 1990s, state policy for fighting origin-based discrimination quickly fell out of favour. **Competition from other paradigms, particularly the promotion of diversity**, came to impede the emergence of a genuine policy to combat origin-based discrimination, which quickly became relegated to an urban policy issue.

Political mobilisation then waned, with the return to a Republican-centric approach to security, secularism and anti-racism.

By relying largely on legal recourse as a conceptual tool and means of taking action, **public actions to combat discrimination have not addressed the systemic dimension** of origin-based discrimination and encounter difficulties in finding the right register for acting appropriately.

Influenced by European law, French law has certainly undergone many changes over the last two decades to incorporate a broader definition of discrimination and ensure that victims are supported. The mission of the Defender of Rights, which took over from HALDE (the High Authority for Combating Discrimination and Promoting Equality), bears witness to this.

Taking legal action nevertheless remains a painful, demanding process for victims, who cannot bear the burden of combating discrimination on their own. This explains why, despite the prevalence of origin-based discrimination, the percentage of individuals who opt not to take legal action remains very high: of those who reported having suffered discrimination at work based on their origins, only around 12% actually took legal action.

Certain constraints and specificities linked to the rhetoric of criminal law, including the particularly demanding requirements for proving discriminatory intent in current case law, make criminal remedy barely operational. Anti-discrimination branches have been established within the courts for more than ten years now, but few cases are heard, and even fewer are successful. The rare wins thus remain symbolic and do not act as deterrent or have a transformative impact.

Several other factors, common to both civil and criminal litigation, **allow to understand the limits of legal action for victims:** the complexity of providing evidence of discrimination, the low level of sanctions and compensation, as well as the financial and psychological cost to victims are all barriers to the effectiveness of legal action, which cannot be the sole anchoring point of social regulation.



In spite of legal developments facilitating the provision of evidence and a more accessible scope, ethno-racial discrimination is too rarely brought before the judge or, even then, given sanctions of proportionate severity.

Group action on discrimination at work is, like the American class-action, a tool with major potential, both curative and preventive. It could give rise to legal action of unprecedented form and scope to combat structural and collective discrimination and challenge the practices that generate and promote it.

However, the scheme created in 2016 has several limitations, in terms of filtering access to such action, reserved for associations and trade unions, lack of public funding and the complexity of the procedure. Only a few group actions have been initiated to date, and none of these targeted situations of discrimination based on origin. It is therefore essential for collective action to evolve towards becoming an effective tool for intervention in the future.

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# There is an urgent need to take action and defend the rights of citizens and residents of all origins to fully participate in society

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The fight against origin-based discrimination must become a political priority, as has been the case in recent years with gender equality.

It must bring all organisations, administrations and civil society stakeholders on board, together with the State, which must be exemplary in this regard. Effective levers do exist. They must be put into action and combined to produce structural changes and provide a comprehensive response to systemic discrimination. Specific policies to fight discrimination on the basis of origin must be deployed alongside public strategies to combat poverty, unemployment and poor living conditions, with ambitious anti-discrimination goals.

**This begins with a fundamental need for deeper knowledge on the subject.** Defining the reality and diversity of origin-based discrimination and raising awareness and gaining recognition of it among the general public, media and various stakeholders involved in society, while ensuring better access to research findings and public statistics analysis, is an essential first step to removing the current veil of invisibility surrounding the magnitude of this discrimination in France.

The past 20 years have seen considerable developments in social science research, which have helped us gain a better understanding of the mechanisms behind origin-based discrimination. This would be well worth pursuing and diversifying in order to assess the discriminatory effects of existing policies and procedures. The deployment of coherent anti-discrimination actions is also conditional upon an evaluation of the extent of discrimination, which must be drawn upon to determine how effective they are and thus enable necessary adjustments to be made.

Professional organisations have made little investment in measuring origin-based discrimination, particularly in employment. As with gender equality, it would thus appear necessary to overcome the current inertia and overly vague promise of diversity by demanding mobilisation from all those involved. Such commitment must go hand-in-hand with diagnostics and action plans that can be assessed and measured using **non-financial indicators**. If integrated into corporate social responsibility scorecards, these indicators would enduringly raise the profile of the fight against discrimination. This is one of the required conditions for its identification, the qualification of stakeholders and the implementation of effective strategies.

The public authorities could **require organisations, both public and private, to fully commit to combating origin-based discrimination through structured action plans, specifying a timetable, clear aims**, practical, cross-cutting methods of action and those responsible for implementing them. These multi-year plans, which would be periodically assessed, should set out different stages, from formalising the management's commitment and action plan to establishing mechanisms for preventing and reporting origin-based discrimination, through internal audits and staff training campaigns.



Statistical measurements would thus complement the audits scheduled to examine and then revise the procedures and criteria for selection and career development within organisations, as well as social housing allocation conditions, careers guidance at school, etc.

The lack of expertise and structuring of civil society, particularly as the result of the State's failure to commit to combating ethno-racial discrimination, calls **for a renewal of public support for the voluntary sector directly in touch with situations of discrimination and their victims.** Along with supporting those already involved, it is a question of encouraging others to invest in this issue and creating new networks capable of listening to and guiding victims, conducting investigations and group actions, and challenging the various organisations and institutions concerned.

Given the low financial impact of the limited number of civil and criminal sanctions imposed by the French courts each year against individuals and organisations guilty of ethno-racial discrimination, despite the scale of the phenomena demonstrated, **ensuring that the right to take legal action is truly effective, and guaranteeing the deterrent function of judicial convictions,** appears to be a crucial issue. This is also key to securing the credibility of the ambitious public policy to combat origin-based discrimination which the Defender of Rights is advocating.

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## Main recommendations

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The fight against origin-based discrimination must be removed from the realm of urban policy and become a political priority, as has been the case in recent years with regard to gender equality.

Beyond litigation, the challenge lies in developing a comprehensive public policy to combat discrimination. Such a strategy cannot be confined to the field of employment and human resources alone. Action plans must be developed by organisations themselves, in all sectors, to prevent and combat discrimination, not only as employers but also in the context of the services they provide.

**The Defender of Rights recommends:**

### A. In terms of developing tools to recognise and measure origin-based discrimination

- **Developing public statistics on origin-based discrimination and using these as genuine tools for coordination and action to promote equality policies.** This data must, on the one hand, allow for an understanding of the specific difficulties faced by individuals discriminated against on the basis of their origin and, on the other, provide information on the progress of public policy implementation throughout French society.
- **Establishing regular national testing campaigns focusing on access to employment, housing and other goods and services.** The results must not only be used in the context of communication campaigns targeting the general public and professionals concerned, but also to enable the actions and tools put in place to be assessed and monitored over time.
- **Ensuring that anti-discrimination policy is equipped with a statistical monitoring system.** This could include a “discrimination observatory” funded by the public authorities, reviewing the possibility of introducing census questions relating to country of birth and parents’ nationality, and a Government-established working group on the overall policy for collecting data related to actual or perceived origin for public sector statistics.
- **Conducting diagnostic studies on the risks of origin-based discrimination within organisations, particularly in the public sector, in the context of audits** adhering to the framework established by the Data Protection Act. Once identified, the aim would be to correct the procedures in question. Where appropriate, such audits could also be used as a basis to ensure direct and indirect discrimination is properly sanctioned, particularly in court.
- **Making the appropriate additions to companies’ legal obligations to publish non-financial and statistical indicators** so that they can make full use of these to combat ethno-racial discrimination.
- **Establishing a new working group, bringing together the Defender of Rights and the national CSR (Corporate Social Responsibility) platform** to align the various regulatory obligations regarding data production to combat discrimination in employment. This group could develop a shared repository to identify indicators for organisations to select and draw upon.

## B. In terms of a public policy to combat origin-based discrimination

The Defender of Rights would argue that any policy to combat origin-based discrimination must ensure that companies and administrations adopt **transparent and objective procedures in employment, access to housing, education and access to private and public goods and services**. Organisations must identify potential situations where discrimination could occur, along with the processes leading up to them, in order to correct these.

Recommendations:

### For employment

Establish a public policy that requires organisations, both public and private, to fully commit to fighting origin-based discrimination through multi-year, structured and periodically evaluated plans, based on the following principles:

- Formalising the senior management's commitment to combating origin-based discrimination;
- Regular risk analysis to diagnose potential situations of origin-based discrimination, through **audits and establishing suitable indicators to this effect**. As a starting point, the Defender of Rights would recommend the application of this legal analysis/monitoring obligation to certain flagship public service organisations with the duty to set an example. In addition, it might be useful for the Defender of Rights to have the power and resources to instigate structural investigations within organisations;

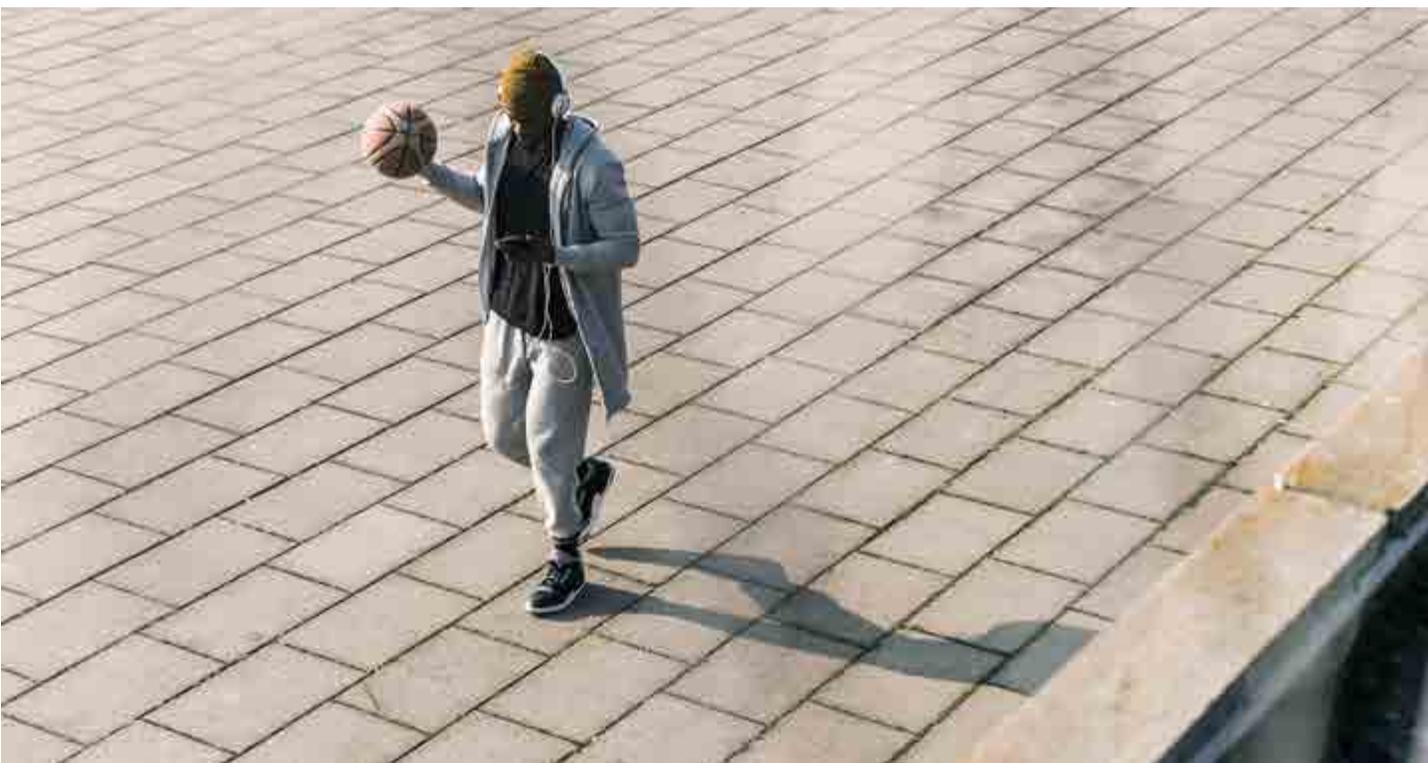
- Training staff and raising their awareness of racism, origin-based discrimination and employer obligations, in line with the current practice as regards sexual harassment;
- Establishing selection procedures based on the principles of objectivity, transparency and traceability, after **identifying risks of discrimination and reviewing criteria and practices that frequently go unquestioned**;
- Establishing mandatory mechanisms within companies and administrations to facilitate the collection and swift processing of reports of discrimination or harassment, protect victims and investigate and punish those responsible when the facts are established;
- Strengthening obligations **to ensure effective sanctioning of origin-based discrimination within organisations** themselves, by implementing measures of a disciplinary nature against those responsible within shorter timeframes.

### In terms of identity checks

**Ensuring the traceability of identity checks** is a recommendation the Defender of Rights has made since 2012, to guarantee that individuals subjected to discriminatory or abusive checks are able to take legal action. The Defender of Rights also calls for the amendment of Article 78-2 of the French Code of Criminal Procedure to explicitly indicate that identity checks cannot be based on criteria that, by law, constitute discrimination.

### In terms of housing

The Defender of Rights recommends that Article L.44.1 of the French Construction and Housing Code, which sets out allocation policy guidelines, specify that the right to housing should be implemented without discrimination.



### C. In terms of legal sanctions against discrimination

- **Improving the way discrimination is handled in the criminal courts** by amending Articles 225-1 et seq. of the French Criminal Code. Its effectiveness could be improved by providing for a mechanism to adjust the burden of proof with regard to the grounds for discrimination between natural or legal persons, enabling certain presumptions of facts to be used.
- **Making group actions against discrimination more effective.** To this end, the Defender of Rights recommends:
  - Specifying the court's role and clarifying how group action procedures should be organised, drawing upon the possibilities offered by the judge's powers as defined in Articles 10 and 11 of the French Code of Civil Procedure;
  - Expanding group actions to include associations involved with employment and access to goods and services;

and exploring the possibilities for groups to be set up specifically for the purpose of taking such action.

- Creating a fund to finance these class actions.
- **Applying proportionate and genuinely dissuasive legal sanctions to punish those responsible for origin-based discrimination.** In particular, the Defender of Rights advocates the amendment of Act No. 2008-496 of 27 May 2008, which sets out various provisions for adaptation to EU legislation on combating discrimination, in order to:
  - Enabling the civil judge to order diagnostic studies and issue corrective measures, subject to penalties, for organisations found guilty of structural discrimination in individual lawsuits;
  - Providing for the possibility of granting punitive civil damages in cases of direct discrimination or discriminatory harassment.

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