

Consultation for OHCHR study on Article 5 ‘non-discrimination’ CRPD
The Office of the High Commissioner for Human Rights (OHCHR) is calling for contributions to its study on the Article 5 of the CRPD on Equality and non-discrimination.

To guide contributions, the OHCHR prepared a questionnaire that is pasted at the body of this message below. Contributions do not need to be restricted to these questions.

You are invited to provide input to the study on article 5 (equality and non-discrimination) of the Convention, using the following questions:

**1. Has your country adopted legislation establishing disability as a prohibited ground of discrimination, including denial of reasonable accommodation as discrimination? Please provide details on any related legal reforms.**

The French Constitution in its article 2 guarantees the equality of all citizens before the law, without distinction of origin, race or religion, but not disability. Discrimination, including on the grounds of disability, is specifically prohibited by the article 225-2 of the Penal Code with regard to access to goods and services, normal exercise of any economic activity, as well as recruitment and retention of employees. However, as the burden of proof in penal cases is on the alleged victim and the rules of evidence admission are very strict, discrimination as a criminal offence is often quite difficult to prove.

Discrimination in the field of employment is further prohibited by the Labour Code, which was modified in 2008 following the transposition of the EU Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. Thus, the concept of appropriate measures (*‘mesures appropriées’*) was introduced to the French law as an equivalent of reasonable accommodation, but only with regard to employment. The article L. 5213-6 of the Labour Code provides that the denial of appropriate measures may amount to discrimination. The rules of evidence are much less restrictive in civil courts and the burden of proof is on the accused party, i.e. the employer, so the chance of proving discrimination is much higher, but the sanctions are much less severe as well (there is no imprisonment or fine in case of conviction, the victim may only get an annulment of a contested decision and, in some cases, compensation for moral damage).

A draft law on equality and citizenship, which is currently under discussion in the Parliament, provides for harmonisation of relevant provisions of the Penal and the Labour Codes, but will not recognise the denial of reasonable accommodation beyond the matter of employment as discrimination.

**2. Does your country apply an objective test to determine if an accommodation requested by a person with disability is undue or disproportionate? If so, please describe the tests and their different elements (500 words).**

The concept used in the French law is one of appropriate measures and not of reasonable accommodation and there is no test to determine if it is undue or disproportionate beyond general principles set out in the EU Council Directive 2000/78/EC: “to determine whether the measures in question give rise to a disproportionate burden, account should be taken in particular of the financial and other costs entailed, the scale and financial resources of the organisation or undertaking and the possibility of obtaining public funding or any other assistance”.

**3. Does your country apply affirmative actions for combating structural discrimination against persons with disabilities? If so, please describe how are these measures applied and enforced (500 words).**

The constitutional principle of equality of all citizens before the law prevents the French government from taking any specific measures in favour of persons with disabilities, including affirmative action measures. However, in employment, there is a system of quotas for persons with disabilities: any private or public company which employs 20 people or more has an obligation to have at least 6% of officially recognised workers with disabilities (ORWD) among its staff. If the company does not reach the quota, it has to pay a contribution to a national fund, which finances measures to promote employment of persons with disabilities (there is one for the private sector and one for the public sector).

In spite of these measures, the employment rate of ORWD is currently at 2.7% and according to a 2011 survey, 15% of OWRD which are currently employed claim that their employer is not aware of their status and 31% of OWRD employed in private sector, as well as 22% in public sector are not aware of the existence of the national funds for employment of persons with disabilities. Furthermore, discrimination based on disability constitutes one of the primary grounds for filing a complaint with the French Ombudsman.

**4. Does your country have laws, policies and strategies for combating discrimination against women and children with disabilities? Please describe how these policies are reflected in legislation and policy frameworks (500 words).**

With regard to children with disabilities, there are two recent laws that set forth the principle of non-discrimination of children with disabilities and introduce inclusive education for all children: the law No. 2005-102 of 11 February 2005 on equality and participation of persons with disabilities and No. 2013-595 of 8 July 2013 on organising and planning the public school reform. Following the Ombudsman report on children with disabilities in 2015, the Global Action Plan 2015-2017 for the protection of children provides for taking into account the specific needs of children with disabilities, but no specific strategy exists in this matter. Furthermore, there are significant complications in implementing the laws: thus, in 2016, the UN Committee on the Rights of the Child, after consideration of the French periodic report on the Convention on the Rights of the Child, found that some children with disabilities were institutionalised, some were still in segregated schools, and others dropped out of school as a result of a lack of accommodation and support.

With regard to women with disabilities, there is no specific national strategy in place, the gender-disaggregateddatais very scarce and the recent law No. 2014-873 of 4 August 2014 on true gender equality only mentions women with disability once in the section on preventing violence.

**5. Is your country monitoring and collecting disaggregated data on discrimination against persons with disabilities, including gender, age and impairment disaggregation?**

As a general rule, the data on persons with disabilities is not disaggregated by age or gender with some exceptions with regard to employment, and the data on the gender equality published by the Ministry of Women’s Rights does not mention disability.