

France: the State strives to shape “chosen” immigration

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In November 2007, France voted its sixth law on immigration since 2003¹. This intensive legislative activity has progressively focused on an apparently coherent policy agenda: the so-called “*politique 'immigration choisie*” (policy of “chosen immigration”).

This agenda departs from past French migration policies aimed at stemming immigration (“zero immigration”). Furthermore, the new policy agenda is openly based on the diagnosis that former migration policies failed in controlling immigration over the last three decades, a failure which led in turn to the death of the French model of integration.

Logically, the main objective of the new policy is then to re-open the gates to economic immigration, at the expenses of traditional post-colonial family immigration. Stigmatized as both a challenge to social cohesion and a “burden” for the French economy, family immigration is increasingly restricted and constructed as a racial issue. The “immigration choisie” policy strives consequently to select migrants according to their profile, skills and – though still indirectly – origins. It sounds like a return of the State in managing immigration flows, and a return of the national in restoring confidence in the French identity. This twofold program is assumed by the name of the newly created Ministry of Immigration, Integration, National Identity and Co-development, set up short after the 2007 presidential election.

Such selective labor immigration policy is still embedded in anti-immigration politics inherited from the colonial period and debates on migrants' integration in the 1980s. This contradiction between a pro-immigration policy, with new incentives for labor migrants, and strong anti-immigration politics hinders the ability of “immigration choisie” in shaping immigration, and sharpens conflicts between security-based, utilitarian and human-right interests.

1. POLITICS AND POLICIES ON IMMIGRATION: STATE OF THE DEBATE

1.1 Immigration and the identity politics in contemporary France

France shows a much contrasted picture. A country of immigration since the mid-19th century, by contrast to other European countries at the same period, and a colonial power until the mid-20th century, particularly in Northern and sub-Saharan Africa, France has not incorporated immigration in its dominant definition of national identity. Yet, the colonial venture and post-colonial migrations have been founding elements of the crystallization of French republicanism as the ideology of the French nation-state and its citizenship, particularly after the population originating from post-colonial immigration accessed active French citizenship, mobilized in favor of their access to equal opportunities, and claimed for their parents to access local right to vote in the mid-1980s.

By then, profound contradictions of the French republican color-blind approach to immigration and ethno-cultural and religious diversity developed in a new type of identity politics, paralleled by the increasing influence on this agenda of the extreme-right wing Front National between 1983 and 1986 (Bertossi 2001). Also, the central place of national identity in these debates contributed to openly anti-immigration politics, and translated into two main policy objectives in the 1990s: restrictions of access to French citizenship for post-colonial migrants' children (Long 1988); sharper

¹ Respective on Asylum (10/12/2003), residence permits and citizenship (26/11/2003), expulsions 26/7/2004), immigration and integration (24/7/2006), immigration, integration and asylum (20/11/2007).

control of migratory flows under the political motto of “zero immigration”, and the vote of the Pasqua Laws on immigration in 1986 and 1993.

As a result, national citizenship and migrants’ integration transformed into highly ideological notions after the 1980s. This prevented any positive politics of immigration, which never reached a “liberal” consensus, but remained predominantly treated by the media and the political elite as a threat to traditional conceptions of “common belongings”. Racialized in such a way, the immigration politics focused on Northern African migrants in general and Algerians in particular, whereas Portuguese nationals have been the more numerous group of foreigners in France up to the 2000s.

Such critical aspects of the French republican model as a means of managing immigration and its social and cultural consequences have culminated in the beginning of the 2000s through very contradictory developments (Bertossi 2007). The Front National candidate, Jean-Marie Le Pen, accessed the second round of the 2002 presidential election. Initiated by the ministry of Interior, the institutionalization of Islam succeeded with the creation of the French Council of the Muslim Religion (CFCM) in December 2002. Soon afterwards, new conflicts about *laïcité* ended with the ban of “religious signs” in public schools with the law of 15 March 2004, explicitly targeted at Muslim schoolgirls. In sharp contrast with this anti-Muslim new legislation, a new anti-discrimination policy was adopted, pursuant to the transposition of 2 EU Council directives (article 13 of the Amsterdam Treaty), and a new institution in charge of this agenda (HALDE)² was set up. This paralleled new debates about ethnicity in the color-blind republican model, after the Minister of Interior announced nomination of the so-called “first Muslim *Préfet*” and called for “affirmative action” policies, which contradicted key principles of the French Constitution (article 1).

These politics of identity also took the form of a “conflict of memories”, with the vote and then withdrawal of the 23 February 2005 law celebrating the positive aspects of French colonization, a text that led to a crisis between France and Algeria. While traditionally limited to Northern African organizations, a new kind of ethnic mobilization was launched by “Black” organizations under an umbrella association (CRAN – Representative Council of Black Organizations) aimed at the political recognition of “Black” people's racial specificity in France, and the importance of slavery in French history. Meanwhile, a polemic started on the so-called “new Anti-Semitism” of French population from Northern African and sub-Saharan origins, after anti-Semitic attacks were reported by the media and became a political concern, most particularly the “*gang des barbares*” in 2005.

In this context, the November 2005 riots in the “*banlieues*” was perceived as the symptom of the ultimate crisis of the French integration and immigration policies. If they were not the first “riots” in French suburbs ever, it was the first time such a violence was seen at such a national scale. A curfew was decided by the government, reactivating a 1955 law originally aimed at stemming insurrection in Algeria at the beginning of the independence war. Islam was presented as one important dimension of the violence, though a police report in December 2005 stressed roots of the “riots” were to be found in feelings of frustration and discrimination among the youth in the “*banlieues*”. The media reported different interpretations of the origins of November 2005: polygamy (Carrère-d'Encausse of the Académie française), hatred of the State (Nicolas Baverez), or a revolt of youngsters “most of whom are Black or Arab with a Muslim identity” (Alain Finkelkraut). In short: populations originating from “uncontrolled immigration who are so much foreign to our beliefs, our customs and our laws” (Claude Imbert, director of the weekly newspaper *Le Point*) (Fassin & Fassin 2006).

After the 2007 presidential elections, the direct policy response to such a “crisis” of the French model of integration, assessed as the failure of past immigration policies, took the form of the new

² Haute Autorité de Lutte contre les Discriminations et pour l’Egalité.

Ministry of Immigration, Integration, National Identity and Co-Development. This title sounded as a clear diagnosis made by the new government of the place of immigration in France: “uncontrolled” immigration was responsible for the failure of integration policies, aimed at populations who were seen as “reluctant” to integrate³. In other words, “(French) integration policies are no more a model” (MIINCD 2007). While a new museum commemorating the contribution of immigration to French history had just been created (CNHI – *Cité nationale de l'histoire de l'immigration*), the Ministry of Immigration delayed its participation in the official inauguration of the *Cité*, and most of the migration specialists who had contributed to the development of this project dismissed from the board, protesting against the link made between “national identity” and “immigration” in the title of the new administration, which they connected with previous “sombre” periods of French modern history.

1.2 The need for more migrants? Conflicting interests

In this broad context, the minister of Interior proposed in 2005 the notion of “immigration choisie” (chosen immigration) as a new coherent policy framework for a better control and management of immigration to France.

The notion imposed policy self-evidence in the debates: a “good” migration policy is a policy capable to “choose” the “good migrants”, and to shape migratory flows accordingly. Two laws were passed in 2006 and 2007 for implementing this new policy, based on the interrelationship between different objectives and means. The first objective remains the fight against irregular migration. The second is to shape migratory flows according to their “legal nature”: decreasing “family immigration”, increasing “economic immigration”, and reach a 50- 50% balance between both. A third line of this new policy stresses the importance of bilateral agreements between France and emigration countries for a more harmonized management of migrations, partly grounded on the idea that development of countries of origin is an alternative to immigration.

The equation remains difficult, however, and the policy has to reconcile conflicting interests. First, the perceptions and interests of a public opinion to which a strict control on immigration has been a priority for more than a generation, connected to identity and security issues which are perceived as directly linked to Islam. Immigration from the New EU member states (i.e. the “Polish Plumber”) and debates on the Bolkenstein Directive led to the May 2005 negative referendum on the EU Constitutional Treaty. As the minister of immigration stated in November 2007, “opponents to our (immigration choisie) policy are not always listening to electors in our Republic” (MIINCD 2007). The public opinion is clearly assumed as the principal target of the policy.

The second relevant stakeholder is the economic elite, striving to fulfill shortages in sectors of the labor market (Catering, hotels, construction, agriculture, engineering, etc.). Among the 300 Propositions of the Commission Attali (Attali 2008), was the complete liberalization of labor immigration. This proposition echoed a recent note issued by the Ministry of Economy according to which the French labor market would face 750.000 recruitment needs each year after 2015 (cf. also CAS 2006). Interestingly enough, this proposition was not enthusiastically received by the MEDEF, the national employer organization. MEDEF President, Laurence Parisot stated that “it is clear for everyone that we have not fully succeeded in integrating several generations of immigrants (...), we must be careful on this matter” of re-opening the borders to new waves of immigration (Le Figaro 2008).

³ A diagnosis contrasting strikingly with claims for equality of treatment, opportunities and rights, made by migrants’ and minority groups’ organizations, or social scientist research on integration.

A third set of constraints derives from the negative image of the government policy when expelling pupils and their “clandestine” parents. Organizations who had been traditional allies to the migrants, such as the GISTI⁴ or the CIMADE⁵, and the Catholic Church strongly criticized this policy. A Mobilization among parents and teachers in schools (RESF – Education without Frontiers Network) pushed the government to decide a collective regularization in the summer 2006, concerning 7,000 people (out of 30,000 claims)⁶. Striving to reconcile security-based, utilitarian and human rights-based approaches to migration, the “immigration choisie” policy attempts to promote a single and coherent policy able to satisfy them all.

The dominant political communication about the policy remains strongly based on fighting against frauds, and restricting family immigration through higher housing conditions (2003 law), wage conditions (2006 laws), longer period of time for mixed married couples before obtaining a residence permit (2003 and 2006), and new integration criteria, including minimum standards of French language (2003 and 2007). Enforced by the 2007 law, the DNA test focused most of the public attention. Aimed at discouraging abuses to family reunification, this article was finally accepted by the Constitutional council, although under so many conditions which will make the tool almost impossible to use. In January 2008, the HALDE declared this article as well as other restrictions to family reunification was discriminatory.

Another important issue about the 2007 law and the current policy of the Ministry of Immigration arises with the measures concerning irregular migration. The target of 25,000 expulsions in 2007, which has increased for the following year, is central to the mandate of the Ministry of Immigration and was mentioned in the mission letter Brice Hortefeux received from the President of the Republic in July 2007. Problems arose when, at the end of 2007, the quantitative objective could not be met (with 23,000 expulsions “only”). The Director of the General Police at the Police *Préfecture* in Paris, notably in charge of irregular immigration, Yannick Blanc was dismissed by a decree of the President of the Republic in January 2008, after it came clear that the objectives for the year could not be achieved (2,800 expulsions for an objective of more than 3,600 in the Paris region)⁷.

1.3 The central role of the State in the new selective immigration policy

The “immigration choisie” policy and politics are grounded on a strong postulate: the Nation State can shape migration flows, both quantitatively and qualitatively. This postulate is not really new in modern immigration policies in France. Above all, this is consistent with the particular centralisation of the French State, and the corresponding Jacobin ideology of the State being the centre of national political, social, economical and cultural organisation. The qualitative selection of migrants is also a policy objective that goes back to the 1950s (Spire 2005). In the 1950s-60s, when

⁴ GISTI: Groupe d’information et de soutien des immigrés, created in 1972.

⁵ CIMADE: Comité Inter-Mouvements Auprès Des Evacués, created in 1939 at the beginning of the WWII, originating from Protestant organizations, and involved at the end of the 1970s in mobilizations for the support of migrants in France in defense of their rights.

⁶ A decree (“*circulaire*”) of 13 June 2006 defines the scope of the regularization: parents of children attending schools, under certain conditions (permanent residence in France since at least 2 years before June 2006, parents of children born in France or living in France since the age of 13, obvious lack of any links of the children to their country of origin, the parents’ “genuine” will to integrate).

⁷ This gap is explained by contradictions between the expulsion policy, the response of judicial authorities on the privation of freedom and legal protection of certain categories of migrants from expulsion (these decisions against the administration increased by 250% in 2007), and the reluctance of consulates of the countries of origin to deliver “laissez-passer”.

the French State organised immigration through a central administration in charge of managing entries of migrants (ONI – National Office of Immigration), most of these entries were made outside these official channels, but were directly organized by employers who arranged a posteriori regularisation of migrant workers already present in France – that is, up to 82% of all migrants registered by ONI in 1968. At this time, the market drives immigration to France.

The rupture of 1974 opens a new period, with the return of the State in controlling immigration after borders are closed to labour migration and to family reunification. In the 1970s, central administration (of labour and of immigration) takes back the monopoly of controlling immigration.

Since the early 1980s, the Parliament becomes a central actor in migration policy-making and migration policies stop being exclusively shaped by decrees and become a matter for legislative activity (Laurens 2007, Weil 1991). Since 2003, an annual report to the Parliament on “the orientations of the immigration policy” is published by the CICI (Interministerial Committee on Control of Immigration), also created by the 2003 law.

This return of the State in the management of migrations follows the development of restrictive policies aimed at interrupting immigration, a policy culminating in the 1990s with the new motto of “zero immigration”. An incidental consequence, the role of the judiciary subsequently increased in controlling the control: the Council of State censored several texts on the suspension of family reunification (most importantly, its decision of 8 December 1978), enshrining the principle that “foreigners residing regularly in France have, as French nationals, the right to have a normal family life”. The role of the judiciary also concerns the fight against irregular immigration, as some irregular migrants are neither “regularisable” nor “expellable”. This constraint is probably the most important one upon today's “immigration choisie” policy.

1.4 Can the State afford the “immigration choisie” policy?

Policy-makers who designed the “immigration choisie” have emphasised since 2005 a diagnosis that legitimates the new orientation of the French immigration policy: immigration is needed within limitations, but France cannot benefit from the outcomes of immigration for its socio-economic development as migrants come through channels of family immigration (70%) and only 7% are labour migrants (for 2007). This “poor situation” is presented by proponents of the new policy as another striking failure of past French migration policies. The State claims it can reach a 50-50 balance, as foreseen in the *feuille de route* of the new Ministry of Immigration (Présidence de la République, 9/7/2007).

The *summa divisio* proposed by the new policy is therefore between “chosen immigration” (labour migrants whose skills are needed by the French labour market) and “suffered immigration” (family migrants, irregular migrants, labour migrants who do not fit the labour demand). It is not quite clear whether asylum seekers are considered in that respect as “suffered” immigration. If the minister of Immigration emphasised they could not be considered as such (respect of fundamental rights to protection) (MIINCD 2007), indicators show a pressure on these flows (acceleration of the procedure, reorganisation of the administration in charge of the treatment of asylum claims, objectives of fighting against abuses of the asylum legislation, and definition of a list of “safe third countries” which has been challenged by the Council of State in 2008). Consequently, the number of asylum seekers declined from 50,547 in 2004 to 26,269 in 2006 (CICI 2007).

Another problem arises with the definition and measurement of “chosen” immigration. This has to do with statistics, or more precisely with the political use of statistics. The claim that France suffers from too much family immigration and insufficient labour immigration is made by comparison with other immigration countries, particularly Canada and the UK, where the situation would be the opposite. But the problem is that Canada and France are not counting these respective groups of

migrants the same way. The first registers family members who accompany labour migrants as “economic migrants”, while France counts them as “family migrants”. – This shows incidentally how far a selective immigration policy is dependent upon further harmonisation of statistics on immigration, as claimed notably by the OECD. In its 2007 report, the CICI stresses this measurement problem as a problem of the “immigration choisie” policy, and indirectly ask policy-makers to provide better tools (CICI 2007).

A further problem is that the categories of migrants which are targeted by the restrictive aspects of the “immigration choisie” policy are not “discretionary” migrants, on which the State has any real control, since the right to a normal family life (article 8 of the ECHR) is enshrined in the French law (since the 1998 law). It is too soon to assess if- and what conflicts will emerge between policy-makers and the judiciary about this objective. So far, the Constitutional Council has never censored restrictions to family reunion, under the pretence every new restriction did not challenge the principle of the right to family reunification, and that such fundamental right had to be balanced with the necessity of the State to decide how much migration would be acceptable. In this logic, the DNA test of the 2007 law was confirmed by the Council.

If the government claimed first successes in shaping family immigration, with a first decrease of these flows in 2005 (from 102,662 in 2004 to 95,389 in 2005) (DPM 2006), family immigration increased again in 2006 with 98,780 (CICI 2007). Most of these family flows are constituted by foreign members of families of French nationals (54,695), while the very family reunification flows went down by 15.2% between 2005 and 2006 (20,000 entries). Interestingly enough, the side effect of attempts to restrict “suffered”/non-economic migration led to a constant increase of a third category of family immigration, of foreigners who can prove strong “family and personal links” and consequently gain the right to residence: with 5,100 permits of residence in 2000, this category exploded with 14,200 people in 2005 and 22,200 in 2006, composed mainly of rejected asylum seekers. The 2006 regularisation also contributed to increase this group, and policy-makers seem to regret that this category “exists exclusively with regard to the interest of the foreigner without any legal reference constructed with regard to the interest of France” (CICI 2007: 93).

2. SELECTING MIGRANTS: ACHIEVEMENTS, TRENDS AND OPTIONS

Within all these constraints (anti-immigration politics, low level of actual control on immigration by the State, and fundamental limits imposed by the judicial), the “immigration choisie” policy question is not how many migrants but what migrants will come to France in the next future.

2.1 The politics of numbers: migration vs. demography

The interruption of labour immigration in the mid-1970s led to a sharp decrease of this immigration, from 132,050 entries of third country nationals in 1973 to 8,920 in 2005 (DPM 2006), similar to the trend in seasonal immigration (from 131,800 to 16,242) – though the latter was never interrupted.

If labour immigration started to increase at the end of the 1990s, again, these flows decreased between 2001 and 2004. After 2005, a new rise was claimed by the government as a first success of the “immigration choisie” policy. This trend accelerated after 2006, from 4,532 entries for the first six months of 2006 to 7,245 for the same period in 2007 (+60%). However, 3/5 of the so-called “entries” of “labour migrants” do not correspond to their actual arrival in France, but concern

foreigners who were already residing in France and enter the labour market after they receive a work permit, notably students (DPM 2006).

In this context, debates on the “immigration choisie” policy have focused on the level of immigration needed in the medium-long term, and ways of measuring it. The politics of numbers have been associated to anti-immigration politics since the 1980s. This pressure of the public opinion remains as a constraint upon the “immigration choisie” policy, with regard to the level of unemployment in France, both in the French (9%) and the migrants' population (19.2%).

Demography is another set of arguments often made by the advocates of the “immigration choisie” policy in order to relativize the stated needs of the labour market for the next 50 years. It is argued that real shortages on the French labour market will only manifest after 2015, because of the ageing of generations of the post-war demographic explosion, strikingly for two job categories: low qualified jobs in the service sector (to families, elders, children, disabled people...), and highly qualified jobs in the service sector and industry (white collars and high-skilled technicians in the construction sector, teachers...). Secondly, demographic trends of the French global population show an increase of 10% until 2050 and the population will only decrease after 2040. Projections show that in 2050, the active population will be 2 million people less than in 2005 (27.5 million). The main consequence is an increase by 100% of the ratio active/non-active between 2000 and 2050 (from 26% to 52%), and a pressure on public funding of the Welfare system (CAS 2006: 36).

This demographic projection impacts the long-term objectives of the French immigration policy. It is argued that immigration is only one answer among many. First, compared to other EU countries, France has a relatively low level of activity among its active population (women, youngsters, foreigners). Then, efforts must be made to use this reservoir as an alternative to more immigration. Second, if immigration had to compensate the decrease of the French active population, with reference to its level of 1995, this would lead to “unbearable” levels of immigration (93 million of immigrants between 2006 and 2050). Following this perspective, there would be 187 million people in France in 2050, out of which 68% would be migrants or “second generation” of migrants (on the basis of the UN 2000 report). The solution advocated by the CAS – Center of Strategic Analysis of the Prime minister’s office – is to take 2010 as year of reference, instead of 1995. With this objective of keeping the same ratio between actives and the rest of the population, that would lead to 100.000 migrants a year, an increase of 5% of the global French population in 2050, out of which 12,1% would be a foreign-born population (10% in 2100 with 12.9% of migrants) (CAS 2006). The figure of 100,000 migrants a year makes the immigration policy sound relevant, with regard to the existing annual levels of permanent immigration in the 2000s, and around the same figure than the estimated migratory balance (DPM 2006). In turn, this contributes to strengthen the very legitimacy of the “immigration choisie” objectives: keeping the same levels of entries, but working on the qualitative selection of migrants according to their contribution to French economic and social development.

2.2 Enhancing economic immigration

The dominant policy approach is to enhance labour immigration per se, through the implementation of targeted incentives for attracting particular migrants, with facilitated right of entry and access to permanent or temporary stay, and a selective liberalisation of the labour market in sectors with important labour shortages (i.e. lift of the “opposability of the labour market situation” for specific occupations).

Some of these tools have already been used before 2005. Between 1998 and 2004, opposability of the labour market situation was suspended by decree (*circulaire*) for the IT sector (with a minimum gross salary condition of 2,250 Euros), after the ministries of Labour and of Interior responded to claims by the IT Professional Organisation that IT specialists were needed to prepare computer

systems to the New Millennium and the Euro. The immigration procedure was also simplified. Around 10,000 IT workers came to France, under both temporary and permanent residence permits – against 35,000 IT workers needed according to estimates of the “Syntec Informatique” professional organisation (*Le Monde* 2001).

Another decree from the Ministry of Labour in March 2004 facilitates and shortens the procedure for foreign “white collars”, and proposes a single official interlocutor to employers and foreign employees. Concerned migrants can work as soon as they arrive in France without having to wait for a formal work permit, and they can be joined by their spouse for whom the procedure is also accelerated, and who are entitled to a work permit if their salary is over 2,000 Euros a month.

Within the “immigration choisie” framework, the first option is a selective opening of the labour market to labour immigration. Since 2006, the government decided to suppress the opposability of the labour market situation for predefined lists of occupations. Since 1 May 2006, a first list and a special track is reserved to nationals from 8 New EU Member States (all the 10 new Member States which accessed the EU on 1 May 2004, but Cyprus and Malta). This list of 62 occupations was enlarged by decree in December 2007 up to 151, corresponding to roughly 40% of the labour market. For these jobs, most of them of low qualifications (construction, catering, services, commerce), the Labour administration does not oppose the situation of the labour market anymore, when employers recruit nationals from these 10 countries. This selective opening of the French labour market has shown very limited results. Between July 2006 and June 2007, 3,214 workers benefited from this measure, an increase by 57.5% compared to the previous 12 months, but still far below the initial objectives. By comparison, during the same period, labour immigration of third country nationals who were not concerned by the measure increased of 1,374 new migrants (+8.3%) (CICI 2007).

The same 33-page decree also defined a second list of 30 occupations for third country nationals. Out of the 30, only 6 are available nationally, the other 24 being eventually opened at a regional level. Algerians and Tunisians are excluded from the measure as they are subjects to bilateral agreements (respectively signed in 1968 and 1988), which have not been updated since 2001 with Algeria and 2000 with Tunisia. Other bilateral agreements have been signed with Western African countries, with which new “deals” have been defined after the 2006 law, allowing access to other specific jobs in France for nationals of the concerned countries (Benin, Senegal, Gabon, Congo).

2.3 Employability of “family migrants”

On the one hand, there is a dominant trend in the French policy to stem family migration, notably conditioned after the 2007 law by a minimum level of French language tested when the candidate applies for a visa to France, and by the demonstration that he/she endorses the main French constitutional principles. The DNA test for dubious family regroupment applications is another clear example of this new trend consisting of “verifying before allowing rights”. In 2003, the law created a *Contrat d'Accueil et d'Intégration* (CAI – reception and integration contract) between the migrant and the State, based on similar criteria verifying prospects of the migrant's integration into French society. Initially limited to 12 *départements*, it was then extended to 61 in 2005, and signed by 170,000 migrants in 2006 (out of whom the vast majority speaks French). The 2007 law added a new contract, aimed at “families” (CAIF) in order to “teach” them rights and duties of parents vis-à-vis their children. This conditioning of the residence to integration prerequisites, upon arrival and even when applying for a visa, fits the French politics of identity of the 2000s.

On the other hand, there is a growing attention to so-called “family migrants” as a reservoir of skills, vital for the French labour market particularly in services to disabled persons, young children or the elders. At the beginning of 2008, the Ministry of Immigration announced creation of a “*passeport*” (MIINCD 2007), in which migrants who are already residing in France will have their

ability to speak French officially assessed. This “passport” will be presented to future employers. As for the CAI too, which delivers to first migrants a degree from the National Education ministry, there is a superposition between identity-based criteria (integration as a pre-condition for obtaining a visa and a residence permit) and utilitarian criteria (enhancing prospects of employability of family migrants in France).

2.4 Attracting “chosen” foreign students

Students are not included in the “suffered” immigration, but they are not counted as permanent economic migrants either, which is “the first target” of the “immigration choisie” policy (CICI 2007: 85-6). Students' access to the labour market was facilitated after 1998, along with lower financial requirements compared to the general regime. Within the dominant “immigration choisie” framework, such policy had to reconcile two contradictory objectives: attracting future high-skilled migrants trained and graduated in France; fighting against “brain drain” in the countries of origin with partnership agreements. Interestingly enough, the 1990s policy aimed at draining students for the sake of the influence of France on foreign elite in the countries of origin. The logic has reversed: students are now considered as a valuable population to attract and keep.

After a regular increase in student entries between 1999 (15,000) and 2004 (55,000), the number of annual entries decreased after 2005 (with 46,000 in 2005 and 45,000 in 2006) (DPM 2006, CICI 2007). However, since 1998, the number of foreign student has progressed by 74.4% with an overall stock of 265,000 in 2005, equally distributed at the different levels of higher education. Relatively to their contribution to the total student population, they are even more represented at the Master's degree compared to French nationals (DMP 2006).

Another objective concerns the diversification of foreign students' nationalities beyond post colonial traditional inflows. With Northern African nationals (Morocco, Algeria, Tunisia) as the first group of foreign students in France, China has emerged as the first nationality in terms of annual entries (5,600 in 2005) and the third country of origin in terms of the global foreign student population. Attempts are now made to promote new inflows from other countries. In that respect, a bilateral agreement was signed in 2007 with the Philippines aiming at doubling the number of Philippino students in France in 2008 (MIINCD 2007).

2.5 Using skills of irregular migrants?

Regularisation of irregular migrants still appears as a red-line that will not be crossed, as being “tough” on irregular migration is one of the first messages of the new Ministry of Immigration. This has gained particular importance for French entrepreneurs. More control has been implemented on the legality of residence of migrant workers employed in France, in line with a fight against illegal work. Since 1 July 2007, employers are responsible for this legality check, and have to submit to the *préfecture* documentation about the migrant they recruit.

However, based on the 2007 law, another decree (*circulaire*) from the Ministry of Immigration of 7 January 2008 allowed for the complete regularisation of irregular migrants who were able to prove they were working durably in France (at least for one year), or would be shortly recruited in one of the 30 jobs for which the situation of the French labour situation could not be opposed. The message is blurred for entrepreneurs in need of foreign labour force. In February 2007, 7 chefs of a Paris restaurant were given permit to reside this way. Trade Unions intervene in defence of irregular migrants and advise them on how to stay with a job and to claim legal permit to residence. However, employers are afraid their demands of regularisation of foreign employees would lead to their being charged themselves for facilitating illegal migration through illegal employment – which is a penal offence.

3. MANAGING MIGRATION: CURRENT APPROACHES AND OPEN QUESTIONS

3.1 Selective liberalisation of the labour immigration procedure

The general rule is that a migrant has to obtain a work permit before obtaining a visa, through a procedure of “introduction” in the French labour market, initiated by the future employer and carried out by the DDTEFP⁸ which can oppose the situation of the labour market and refuse the demand. Beside this general framework, there is a remarkable variety of residence/work permits, for permanent and temporary stays, made even more complex by the numerous laws governing migrants according to their country of origin and, accordingly, the different occupations available for these different categories of labour immigrants.

Hence, some residence permits give automatic access to a work permit. Some concern “family” migrants (“resident” and “private and family life” cards)⁹, while others directly concern labour migrants and students:

- The “*skills and talents*” card allows to work only in the domain and for the project that was initially proposed and accepted for a duration of 3 years. It can be renewed, except for nationals from the “priority solidarity zone”, i.e. from developing countries particularly exposed to brain drain risks¹⁰(2006 law).
- Some temporary residence permits also give access to a work without going through the general procedure of introduction of labour migrants in France: “*scientific*” (transposition of the 2005/71/EC Directive by the 2006 law) and “*artistic and cultural professions*” cards, but only within the domains mentioned on the residence permit. Besides, in February 2008, a decree from the Foreign Affairs and Immigration Ministries asked French consulates in African countries to deliver “circulation visas” for these professions, with multiple entries, allowing stays of no more than 3 months.
- For *students*, the 2006 law allows to work, but no more than 60% of the annual work time (compared to 50% before). Also, it stipulates if they graduate from a French University institution (Master degree), they are allowed to reside in France for 6 months in order to search a job without sectorial or geographical restrictions (except for nationals from countries listed as “Priority Solidarity Zone”).

The direct and tight linkage with labor market needs (by region and sector of occupation) has led to a precarisation of work permits conditioned by increasing shorter residence permits, with the

⁸ DDTEFP: *Direction départementale du travail, de l'emploi et de la formation professionnelle* (Direction of Labor, Employment, and Vocational Training at the department level).

⁹ Resident card: with a 10-year validity, it gives automatic right to work in Metropolitan France (but not in the Overseas departments when delivered in Metropolitan France and vice versa). Access to this card has been regularly restricted (2003 and 2006 laws have limited the number of migrants who were automatically entitled to it) and conditioned to integration criteria (language, republican principles) and a regular residence of at least 5 years. “Private and family life” card: temporary residence permit of no more than 1 year and renewed each year. Some categories of migrants have an automatic right to it, though the 2006 law suppressed the automatic deliverance of this residence permit to all migrants after a 10-year residence in France (or 15-year if the migrant was a student).

¹⁰ Priority Solidarity Zone (*Zone de solidarité prioritaire*) includes countries for which the deliverance of a residence/work permit must not aggravate “brain drain”: almost all African countries (including Northern African countries), Lebanon, Palestinian territories, Yemen, Cambodia, Laos, Vietnam, Cuba, Haiti, Dominican Republic, Surinam and Vanuatu.

generalisation of a card entitled “temporary worker” for duration of less than 12 months, at the expense of opportunities for more durable residence in France (Lochak 2006: 53).

Furthermore, the general framework differs according to the country of origin of labour migrants:

1. EU, Common European Economical Space, and Switzerland: total freedom of movement and access to the labour market, including some occupations normally closed to non-nationals (education, health...). The obligation of holding a residence permit was suppressed on 1 January 2004 (2003 law).
2. New EU Member States of the 2004 and 2007 EU enlargements (except Cyprus and Malta): restricted access to the labour market except for 150 occupations. Transitory measures until 1 May 2009 for 8 of them, and 1 January 2012 for Bulgaria and Romania.
3. Third country nationals ruled by bilateral agreements and part of the former French colonies: Algeria, Morocco, Tunisia and 18 African countries. The regime of entry and residence is close to the general regime of the 2 November 1945 decree. They do not access to the list of 30 occupations opened in December 2007. Originally privileged by bilateral regimes, these countries face a reorientation of the French policy, which is less favourable to them. However, some of these countries have signed so-called new “concerted immigration and co-development agreements” in 2006-7 allowing their nationals to access these occupations (Senegal, Gabon, Congo, Benin). Negotiations for the renewal of the 1988 agreement with Tunisia have started in 2007. In 2008, negotiations will start with Mali, Haiti, Madagascar, the Democratic Republic of Congo, Cameroon and Togo. Most of them belong to the “Priority Solidarity Zone” which hinders the right of nationals from these countries to reside in France permanently.
4. Third country nationals ruled by new bilateral agreements and not part of the former French colonies: these “concerted immigration and co-development agreements” state that a certain number of economic migrants a year can enter France and occupy selected jobs, even outside the list of the 30 occupations. This is the case of the Philippines (18 October 2007) and Brazil (still in negotiation). The rationale of such agreements is to diversify migratory inflows to France, beyond traditional post-colonial immigration.
5. Other third country nationals ruled by the *decree of 2 Novembre 1945*: they are concerned by the list of 30 occupations.

3.2 Towards a quota system?

The “immigration choisie” programme initially refused a quota approach and rather privileged a more qualitative approach, inspired by the long-established Canadian (or maybe also the much more recent British) point system (Présidence de la République 9/7/2007). The emergence of a point system is illustrated by the creation of the “skills and talents” card, for migrants whose profile, skills and professional project could benefit French economy. Objectives of 2.000 “skills and talents” permits were announced for 2008 (including for example 150 from Congo).

This quantitative objective meets the essentially qualitative approaches of the “immigration choisie” policy, but also blurs the main categories of the debate. As the interministerial committee for migration policy (CICI) has emphasised: “it would be relevant to define as economic immigration part of the flows identified under other categories, for example those of foreigners admitted in France under family reasons who effectively have a work contract in France or show a level of employability in France – evaluated notably on the basis of their ability to speak French, their

professional qualification and experience, the correspondence between their skills and jobs available on the French labour market – in such a way their future economic insertion will not be difficult” (CICI 2007: 62). Also, “it would be possible to take into account certain foreign students as part of the economic immigration” (CICI 2007: 85).

Drawing conclusions from recent trends in the immigration from the different regions of origin that have been targeted by the selective opening of the labour market, the CICI gives estimations of the origins of future flows of economic immigration to France: between 5 and 15% would come from the New EU Member States, and 35 to 45% from third countries (CICI 2007: 87), making together the 50% of labour immigration the “immigration choisie” policy aims at.

At the beginning of 2008, the President of the Republic changed the general orientation of the “immigration choisie” policy, and asked the minister of Immigration to consider the implementation of a quota system, based both on professional skills of migrants and on their origins. Suggestion was made that the Parliament would decide each year how many migrants would be allowed to come to France.

As an immigration quota policy contradicts the French Constitution, a Commission, chaired by Pierre Mazeaud, was set up in February 2008 to propose ways of reforming the Constitution. The main difficulty concerns quotas on origins, be they geographical, national – and therefore “cultural”: for some, they constitute a breach in the universalistic ideology of the French Republic; for others, it would be an explicit manifestation of the racism historically nested in French immigration policies, or a return to non-republican policies which were experienced during some periods of the 20th century (Weil 1991). A survey in September 2007 proved popular support to such a quota system (74%)¹¹.

With a delay of few months with the initial scheduled deadline, the Mazeaud Commission finally concluded that quotas were “inefficient”, “unrealistic or not relevant” and that “an immigration policy based on limited numerical cap would present no real utility as far as labour immigration is concerned, and would be inefficient against irregular migration”(Le Figaro, 7 July 2008).

3.3 The impact of “immigration choisie” on the migrants' rights

In this combination of utilitarian and security-based rationales of the “immigration choisie”, the issue of rights is as much sensitive as it is absent from the policy agenda.

- Political rights: The minister of Interior argued in 2005 time had come to open the local right to vote to foreign nationals. Since then, this project was once more postponed, more than 20 years after it was first proposed by the Socialist candidate at the 1981 presidential election. Foreign nationals from third countries have no political rights and EU nationals have the rights provided by article 8 of the Maastricht Treaty.
- Citizenship: access to French citizenship remains the only gate to political rights for third country nationals (by birth, by descent, by marriage or by naturalisation decree). In 2005, 155,000 people became French citizens (100,000 by decree), out of whom 98,588 from African origins (including 75,295 from Northern African countries). If there is no restriction based on origins, it seems that naturalisation by decree takes into account professions of the claimants (i.e. reluctance to naturalise foreign medical doctors for example). The naturalisation policy is liberal despite increasing restrictions after 1993 (latest reform with the 2005 law). New French citizens immediately gain all rights of citizenship, including eligibility. No oath of allegiance, but a ceremony for the new citizens. Dual citizenship is

¹¹ Survey Le Figaro/ LCI, 17 September 2007.

allowed. The issue of racial and religious discrimination against French citizens of migrant origin is very important.

- **Social rights:** the legality and duration of the residence conditions access to social benefits. Permanent legal migrants with a work permit have access to all social rights (employment, health and family benefits). The situation is less favorable for legal migrants without a work permit who are not entitled to vocational training or “placement” by the national employment administration (ANPE¹²), or to social insurance benefits (except under the CMU regime¹³ and for accident on the work place). The weakest category is the one of the irregular migrants (with emergency housing, access to school for children, and access to national insurance through the CMU and the AME¹⁴). A special 10-year residence permit for retired persons, who worked in France with a “resident” card, allows them to come to France at any moment for one year maximum.
- **Discriminations:** Some occupations are strictly closed to foreign nationals (about 7% of all jobs, in the public sector or specific professions). Mobilization by organizations has outlined this situation as discriminatory.
- **Regularization:** There is a clear trend to sharpen restriction to asylum seekers and family immigration policy, which creates important groups of irregular migrants. Automatic regularization of irregular migrants proving a 10-year residence in France was suppressed by the 2006 law. Employer sanctions for illegal employment of undocumented foreign workers were made harsher with the 2006 law.

4. NATIONAL VS. EUROPEAN LEVELS?

The fiction of a nationally governed migration policy faces the reality of a competition with international and EU competitors in attracting so-called “good migrants”. As it was clearly a strong argument in the electoral competition in 2007 – and helped Nicolas Sarkozy being elected – the idea of the return of the State has paralleled a return of national identity in the “political philosophy” of migration policies. Once again, the public opinion is the main target of the immigration debate.

This has led to emphasize conflicts between the French policies and those of countries like Spain, particularly about collective regularizations of irregular migrants. This is a strong element in the debates in France, which follows two lines: first, accusations that other EU member states (i.e. Spain) hinder the French “immigration choisie” policy; second, the objective of the French government to impose to its EU partners a “European Pact on migration” (in formal collaboration with the Spanish government), with objectives presented to the French public opinion as the very objectives of the French policy. In that respect, the governmental communication about the “European Pact” suggests the latter constitutes a conversion of EU policies to the French agenda, and does not outline how far this transformation of the French immigration policy fits a new European policy rationale, particularly about the need for more labour migrants in the EU.

The European pact would include a European border police for controlling EU external Borders; organization of legal and economic migration, with numerical caps and no regularization of

¹² ANPE: Agence Nationale pour l'Emploi.

¹³ CMU: Couverture Maladie Universelle.

¹⁴ AME: Aide Médicale d'Etat (in 2005)

irregular migrants; European joint expulsions of irregular migrants; a common EU asylum policy; a link between migration policies and issues of development, that is "co-development".

REFERENCES

Books and articles:

Bertossi, C. (2001), *Les frontières de la citoyenneté en Europe: nationalité, résidence, appartenance*, Paris, L'Harmattan.

Bertossi, C. (ed.) (2007), *European Anti-Discrimination and the Politics of Citizenship: France and Britain*, Basingstoke, Palgrave.

Fassin, D., Fassin, E. (eds.) (2006), *De la question sociale à la question raciale? Représenter la société française*, Paris, La découverte.

Laurens, S. (2007), *Hauts fonctionnaires et immigration en France (1962-1982) Sociohistoire d'une domination à distance*, Thèse pour le doctorat de l'Ecole des Hautes Etudes en Sciences Sociales, Paris, EHESS.

Lochak, D. (2006), "La loi du 24 juillet 2006 relative à l'immigration et à l'intégration", *Regards sur l'actualité*, n°326, décembre, p. 45-55.

Spire, A. (2005), *Etrangers à la carte: l'administration de l'immigration en France (1945- 1975)*, Paris, Grasset.

Weil, P. (1991), *La France et ses étrangers: l'aventure d'une politique de l'immigration de 1938 à nos jours*, Paris, Gallimard.

Official reports:

Attali, J. (2008), *Rapport de la Commission pour la libération de la croissance française: 300 propositions pour changer la France*, Paris, La documentation française, XO Publications.

CAS – Centre d'analyse stratégique (2006), "Mouvements des hommes et des activités", *Horizons stratégiques*, n°1, juillet 2006, Paris, La documentation française.

CICI – Secrétariat général du Comité interministériel de contrôle de l'immigration (2007), *Rapport au Parlement: Les orientations de la politique de l'immigration. Quatrième rapport établi en application de l'article L.111.10 du Code de l'entrée et du séjour des étrangers et du droit d'asile*, Paris, La documentation française.

DPM – Direction de la population et des migrations (2006), *Immigration et présence étrangère en France en 2005. Rapport annuel de la Direction de la population et des migrations*, Paris, La documentation française.

Long, M. (1988), *Etre français aujourd'hui et demain*, Paris, La documentation française.

Official documents:

MIINCD – Ministère de l'immigration, de l'intégration, de l'identité nationale et du codéveloppement, (2007), "Conférence de presse de M. Brice Hortefeux, ministre de l'immigration, de l'intégration, de l'identité nationale et du codéveloppement".

Présidence de la République, 9/7/2007, "Lettre de mission au ministre de l'immigration, de l'intégration, de l'identité nationale et du codéveloppement".

Press articles:

Le Figaro, 7/7/2008, “Les quotas d'étrangers jugés 'inefficace' par un rapport”.

Le Figaro, 7/2/2008, “Attali/immigration: 'prudence' pour Parisot”.

Le Monde, 6/3/2001, “Le ni oui ni non de la France”.