Mapping of policies affecting female migrants and policy analysis: the French case

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Introduction

“We are sex workers. We want to be able to work in the best possible working conditions. And yet, since the government took office, we have been the target of repression and increasing police harassment. The penalization of passive solicitation turns us into delinquents incurring fines of 3750 euros and two months in prison, as well as deportation for foreign nationals (...).”

So goes an excerpt of the call to protest of those who declare themselves “sex workers” and who came together on Saturday, the 18th of March 2006 to protest as well as proclaim their pride in what they would like to see recognized as a profession. In Summer 2006, it was the illegal immigrants who called for demonstration to protest against the expulsion of undocumented immigrants from the squat of Cachan. In both cases, these groups denounce their stigmatization and criminalization in the public sphere, emphasizing the defence of rights endangered by restrictive laws, curtailing of liberties. Many other protests, by NGOs, Unions, political organisations against the new government bill amending the French Immigration and Asylum Code called CESEDA and against “disposable immigration” took place in 2006. In August 2006 it was the turn of opponents of deportation of undocumented children and their families (the network Education without Frontiers – Réseau Education sans Frontières) to mobilize and demonstrate against policies perceived as securitarian.

The legislation in France, increasingly restrictive, in the same time promotes a “useful but reasoned” immigration, an “immigration on demand”. The utilitarian conception of immigration is not new. The utilitarianism of public policies and among entrepreneurs who for many years conveniently closed their eyes to the illegal hiring of immigrants without proper documentation in a variety of economic sectors has been well documented, among others by Alain Morice (Morice 1997 and 2004).

There is in France a fundamental tension between utilitarian and securitarian approaches, between attraction and fear, well expressed in the formula “Immigrant, we want you, immigrant we fear you” by the Groupe d’Information et de Soutien des Immigrés in reference to the conflict of pragmatism versus xenophobia (GISTI 2004a). This tension can also be seen across the European Union, where demographic decline and the aging European societies are not only counselled to better integrate seniors but to look to immigration to stem the stalling rejuvenation of the generations and to strengthen the active population (Commission of the European Communities 2005a). The publication of two green books “On immigration, integration and employment” (2003) and “Confronting demographic change: a new solidarity between the generations” (2005a), has recently focused attention on the debate concerning the impact of immigration on the societies of the European Union member states, including France.

The evaluation of the immigrant and asylum seeker's situation in France cannot be made without considering the European legislation. Whereas a lot of attention has been given to European restrictive migration laws, it has to be underscored that the EU legislation occasionally even makes room for legal opportunities in favour of the defence of immigrants (GISTI 2005). Thus one can observe “the gradual integration of European Union law into French law and the influence of the international human rights law”, as witnessed by, for example the question of gender based discrimination in the workplace, or discrimination on the basis of nationality or mobility (Lanquetin 2004). But combating discrimination on the basis of gender, ethnicity, race

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2 Marche des travailleuses du sexe, in: http://www.lesputes.org/marche.htm (18.03.06)
4 Uni(c)s contre une immigration jetable, in: http://www.contreimmigrationjetable.org/ (25.04.06)
etc., is also officially presented as a means to optimise the use of human resources available in the EU labour markets as promoted by the European Employment Strategy.5

Another major characteristic of French politics derives from its joint conception of citizenship and nationality, at odds with the increasingly prevalent phenomena of geographic mobility and emergent forms of local and transnational identity. The exclusion of non-community foreigners from some of the expressions of citizenship, such as the right to vote in municipal elections (see below section 2.2.1), does not mean however their absence in political life. On the contrary, foreigners have participated in social mobilizations (strikes, demonstrations) – rarely considered in the literature as the manifestations of social movements (Wihtol de Wenden 1988) – and they have been objects of public policy by means of an “electoral politicization of the immigration phenomenon” (Wihtol de Wenden 1987). The emergence of Islam as a public matter in French politics contributed to this politicisation and to ideological debates (Galembert 2005) and plays a role in the development of restrictive policies.

The French migration landscape is increasingly feminised: women made 44% of the total of immigrants in 1968 and over 50% since 1999 (Borrel 2006). It is also more and more diversified: asylum seekers, illegal immigrants, newcomers reuniting with family, youth born in France to foreign parents, highly skilled professionals and students, have added themselves to an immigration that at one time was mainly coming from former French colonies or protectorates. Diversification has confronted society with its own multiethnic character. France has been shaken by a crisis, of which the “riots in the suburbs” at the end of October and mid-November, 2005 constitute a wake up call, bringing to light according to some observers the failings of French integration policy and questioning its values and certainties: equal opportunity encouraged and assured by equal rights, and lead by universalism. Multiculturalism and affirmative action have discursively been slowly gaining ground. More to the point, the debate of affirmative action was reenergized. It cannot be overlooked that the dogma of equal treatment has had its fair share of exceptions in French society, as evidenced by the application since the 70’s of corrective measures that could be considered affirmative action in employment or territorial policy (Calvès 2004).

From affirmative action that is not considered or described as such and that could well be losing ground in the area of employment (section 1), we move on to the recognition of racial discrimination, and the call by certain experts to draw lessons from it (section 2.3). The tension between multiculturalism and universalism – and between group-oriented policies or policies oriented towards individuals – cuts across numerous facets of the immigration debate: immigration policy with its temptation for quotas on one hand (section 2.3), or the emphasis put on Republican integration as a preliminary to obtaining residency on the other.

In the present text, aiming at mapping and analysing existing regulations, laws and social services for the integration of immigrants and more specifically of female migrants, immigrants and foreigners will be treated as objects of public policy, all the while taking into account some of their political protest mobilizations, and/or those of the organizations that support them.

1. General Policies and their effects on female migrants

Several laws have been proclaimed in recent years that generally or directly target immigrant populations, among the first those dealing with the employment and job market, the declared priority of governmental politics in France. The new orientation taken by French

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5 Fonds social européen en France, Stratégie européenne pour l’emploi, in: http://www.travail.gouv.fr/FSE/b_connaître/b13_strategie.html (22.09.06). Although recently, it seems that the Commission « does not explicitly refer to the exclusion of ethnic minorities as a deterrent to economic growth » (Malloy 2005: 6).
employment politics “converges with the guidelines for employment policies adopted by the members states for 2003-2006” (PNAE 2003: 47). It follows the line of the Lisbon Strategy (2000) to make the EU the most dynamic and competitive economy by 2010 and lies within the revision of the European Employment Strategy (2003).

Some of the measures envisaged to enhance employment creation by reducing labor costs; improving the efficiency of the Public Employment Service (Service Public de l’Emploi – SPE) so as to raise the employment rate of groups the most removed from the labor market (women, elderly, foreigners) for instance by combating discrimination in access to work; developing personalized follow-up of unemployed (PNAE 2003). Among the laws and general programs that influence the living conditions and the integration of immigrant women, one can single out the Law relative to the development of personal services in the area of employment; in the domain of security with an effect on prostitution, the Law on internal security; and finally the Constitutional Law regarding the decentralized organization of the Republic with implications for job retraining and re-employment policy. One can also mention the National plan to reinforce the fight against poverty and exclusion (plan national de renforcement de la lutte contre la précarité et l’exclusion) (March 2003) as well as the Charte nationale de l’égalité (presented to the Prime minister on March 8, 2004).

1.1 Policies regulating employment in sectors with high participation of migrant women

In 2002, 52.2% of active immigrant women worked as employees, 22% were workers and about 12% technical and associate professionals. Immigrant women are over-represented in personal services. 26,1% were employees directly providing a service to private individuals (as nannies, cleaning women, “concierges”) while the same was true of only 10.9% of non-immigrant women (INSEE 2005: 115, Tavan 2005), and 3% of immigrant men. Turning now for purpose of international comparison to foreign women, according to the European Community Labour Force Survey, in 2004 21,1 % of them were working in household services in France compared to 36 % in Spain and 27,9 in Italy (Oso Casas and Garson 2005: 12). Furthermore, women of different origins are distributed differently along socio-professional categories. In 2002, 21% of immigrants coming from Portugal were working as employees directly providing a service to private individuals compared for instance to only 8% of immigrants coming from Algeria, Morocco or Tunisia. These data were not disaggregated by gender (INSEE 2005: 115) but one knows that a majority in this sector are women (99 % of nannies and day carers; 97,9 of domestic servants, Viney 2004).

Another activity incorporating female immigrants, is prostitution. It is very difficult to evaluate the number of persons providing sexual services, most of the reports for France mention 15000 to 18000. This encompasses all the prostitutes, men, women and transsexuals and all types of practices (Handmann and Mossuz-Lavau 2005). In 1999 the Central Office for Action against Trafficking in Humans (Office Central pour la Répression de la Traite des Etres Humains - OCRTEH) estimated that foreign women make up half of those practicing prostitution in France (Derycke 2001) and as far as visible prostitution is concerned, 80 % in 2006 as announced by Ms. Catherine Vautrin, delegated Minister of social cohesion. 9

1.1.1 Policies regulating domestic and care work

The increasing out-sourcing of domestic jobs

There has been an increasing out-sourcing of domestic and personal activities (work considered social reproduction), generally carried out for free within the family, mostly by women. The causes of this externalization are now well known. It is a matter of “finding new ways in senior citizen policy, family policy, in order to confront the ageing of the population, to develop domestic care, and finally to diversify childcare with regard for the increasing workload of mothers, increasing single parenthood, and trend towards working couples” (Angeloff 2005: 283).

Housework, infant care, and home care for dependants are among the innumerable activities within paid employment. In France like in other countries these jobs still tend to be labeled as “help” – a reminder of a difficult and long process of their recognition as work (Morokvasic 2007).\(^\text{10}\) It is at the end of the eighties and beginning of the nineties that service jobs really began to be recognized an undeniable source of employment creation. Exoneration of social duties (1987), tax breaks (1992, 1995), recognition of an accredited organizational statute for service personnel for the benefit of non-profit organizations (1992), service employment checks (chèques emploi service) (1994), titres emploi service (1996) are some of the measures put in place to encourage families to create domestic jobs (Lallement 1998: 157). However, these steps which presumably could help curb undeclared work, could not stop the jobs from being mostly part-time positions, requiring considerable flexibility. Women would not put this flexibility in question. “This is due in part to the particular legal regimen of the work contracts for domestic help employment. For example, there is no guaranteed minimum duration for the position, for hours in the day, or weeks of the month. In other words, the notion of total availability finds its legal justification thanks to a series of derogatory precepts” (Angeloff 2005: 284).

The remuneration in this sector is low due to the lack of employers’ solvency, but also related to the low professional qualification of workers, to limited number of hours effectively worked as well as to the loss of seniority that comes with changing employers. Moreover the most vulnerable groups make up the work force for the majority of these jobs, but from them characteristics of professionalism are often demanded (skills and technical knowledge) (Lallement 1998).\(^\text{11}\)

Rendering the domestic demand solvent and increasing the professionalism of the sector

This type of employment can be carried out in one of two ways: the provider model (the person providing the service receives a salary from an intermediary, a business or association which sends the employee to the person receiving the services) or the direct model, with or without the intervention of a regulatory structure (the individual receiving the service is the employer of the person providing the service) (Ministère de l’Emploi, du travail et de la cohésion sociale 2005). Policy aimed at developing personal services through the direct model by increasing the solvency of private individual employers thanks to the use of service employment checks and lowering taxes and then through the provider model by developing of intermediary provider organisations (Bentoglio 2005). The development plan for domestic services includes

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\(^\text{10}\) Haushaltshilfe, assistante maternelle, aide-ménagère, assistenza or collaborazione familiare are official denominations of similar occupations in France, Germany and Italy regarding personal services and care; as for the “au pairs” they can be invested with full time child care, nanny and household responsibilities, but come within “cultural exchange programme” as in Germany (Hess 2005).

\(^\text{11}\) Lallement cites a study by Guiddo Ridder and Claude Legrand (1996) of nursemaids.
item 9 (concerning employment) of the Plan for Social Cohesion (presented in June, 2004) and the 2005 Law regarding personal services intend to provide more adequate solutions to some of the problems identified in this sector: the solvency of demand and the lack of professionalism among workers.12

The solvency of the demand should be improved through the creation of the Universal Service Job Check (Chèque Emploi Service Universel - CESU, entered into use on January 1st, 2006). The CESU is meant to replace the service employment check and the pre-financed CESU is a substitute for the “titre emploi service”. The former dispenses the employer of administrative formalities, lowers taxes, and possibly employer co-payments as well. The pre-financed CESU provides, as well as its predecessor, a guaranteed source of funds for the person receiving the services, since it is pre-financed “by the employers, the professional organizations, the local government, pension funds, the cooperatives in the interest of their salaried employees, officials, administrative personnel, or members”.13 The advantage of the pre-financed CESU compared to the “titre emploi service” is that it is no longer limited to uniquely those services offered by intermediaries, but extends to direct employment as well while providing fiscal advantages to organizations that finance the CESU (Ministère de l’Emploi, du travail et de la cohésion sociale 2005).

Concerning the supply, the plan makes provisions for the development of large referral agencies for a variety of domestic services, presented as guaranteeing an image of quality (these agencies will distribute these services provided by selected associations, businesses under their brand name). This grouping and the extension of the range of proposed services should allow for a more strict recruitment for employees, should make prospects of training available and increase the remuneration of workers once limited by the specialization of small employment structures, by circumscribed activities, and by scheduling slots that are themselves limited, the root cause of the wide-spread, part-time nature of the work and its typically low wages.

These arrangements are considered favorable for the employees as well. Individuals employed under this system receive a salary, and social security (the checks offer the possibility of paid vacations) and are subject to the collective conventions of the sectors under consideration. In other words, the aim of the Universal Service Employment Check is to reduce the cost of work for the receivers of the services, and by extension, allow an increase of the workers' remuneration.14

According to unions and left political party critiques of this aspect of the CESU, the reduction of labour costs for unskilled labor targeted by this system will benefit private individual employers and firms to an even greater extent, to the detriment of workers caught in job instability, under-employment, and low salaries.15 It is already possible to question whether the selection of workers based on the quality certification provided for in the creation of large multi-service referral agencies, and the development of provider-based and polyvalent employment will favor the recruitment of foreigners and immigrants, a group over-represented among the under

12 A National agency of personal services (Agence Nationale des Services à la Personne - ANSP) was created in October 2005 to promote the development of personal services.
14 Portail du gouvernement – Premier ministre, in : http://www.premier-ministre.gouv.fr/information/lettre_gouvernement_50/developpement_services_personne_52393.html (09.02.06)
15 Schuck Nathalie, «Jean Louis Borloo se donne trois ans pour créer 500.000 emplois dans les services à la personne », in: http://archquo.nouvelobs.com/cgi/articles?ad=politique/20050613.FAP1807.html&host=http://permanent.nouvelobs.com/ (29.08.06)
qualified, who are limited to these service jobs due to a lack of recognition of their diplomas, or due to difficulty finding employment in other sectors of the economy.

1.1.2. Policies controlling prostitution

The brothel, a place that allowed for sanitary and police control of prostitutes, is associated with France's regulatory policy for prostitution as applied in the 19th century. In 1946 under the Marthe Richard Law of April 13th, the brothels were closed without however, prohibiting prostitution. The French state had, in fact, loosened its controls on the activity to the point of aligning itself internationally with the abolitionist camp in the sense of the ONU International Convention for the Repression of Human Trafficking and for the Abolition of the Exploitation and Prostitution of Others dated December 2, 1949 and ratified in 1960. Henceforth the practice of prostitution has been tolerated, namely in public areas, as long as the act is an act of free will. Only procurers (those who exploit the prostitution of others) and solicitation are punished. The official abolitionist position has been reaffirmed publicly on a number of occasions. For instance, Martine Aubry, Minister of Employment and Solidarity, defended this position at the National Assembly in May, 2000 during a government consultation (“questions au gouvernement”). This position was reaffirmed during negotiations of the United Nations Convention on International Organized Crime and ratification of its protocol on trafficking of people (Hazan and Markovich 2002).

It is an ambiguous stance between a moral condemnation of prostitution (the 1949 convention ratified by France considers prostitution to be “incompatible with human dignity and value”) and a recognition of the freedom to practice it (Mathieu 2005). The latter manifests itself notably by rejecting any laws, regulations, or administrative practices that would aim to make people practicing or suspected of practicing prostitution register on “special registries”, to require the “possession of special papers, or conform to special conditions of surveillance or declaration”. It is an ambiguous position of tolerance without true recognition, except economic recognition, as prostitutes are supposed to declare their revenues for tax purpose. This last requirement has been described as a “breach in the abolitionist argument” since this economic recognition is itself the recognition and could even mean, in terms of the article 225-5 of the penal code, that the state is “profiting from the prostitution of another”, which is the definition of a “procurer” (Derycke 2001).

The number of prostitutes has been estimated in France to 15,000 - 18,000 of which 10 to 12,000 practised street prostitution. Immigrant prostitution, has been largely in the focus of the media, but little is known about it. The only verified figures that OCRTEH (Central Office for Action against Trafficking in Humans) can provide are those of the 2003 police check up of 2400 persons for street prostitution: 36% were from Eastern Europe or the Balkans, 31% from Africa, 8% from South America, 5% from North Africa, 3% from Asia, 1% from Western Europe and 6% only were French. 90% were women, 10% were men and a few minors. The Law on security reduced the visibility of the street prostitution: in 2004 they were around 650-700 in any 24 hour portion in Paris, 2000 a year before, before the legislation was passed. Majority are from Africa, whereas the East European prostitutes disappeared from the streets (Handmann and Mossuz-Lavau 2005: 12).

Under the cover of “curbing the spread of certain areas of crime or the development schemes that disturb the tranquility of the people and scorn their right to security”, the Law on Internal Security of March 2003 modified the penal code, transformed the infraction of

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soliciting into a crime, and reintroduced passive solicitation, a notion which had disappeared from French law.\(^{18}\) Henceforth whoever practices “the act, by any means, even including by passive attitude, to publicly solicit others in order to incite sexual relations in exchange for remuneration or promise of remuneration (...)” (article 225-10-1 of the penal code added by the article 50 of the law) risks two months in prison and a fine of 3750 euros.\(^{19}\)

This raised considerable debate and critique regarding the arbitrary nature of law enforcement and judicial officers’ appraisal of soliciting, the main point of contention being the criminalization of prostitutes. A critique comes not only from the ranks of organizations which defend prostitution as a profession or support a recognition of the rights of prostitutes, but also from those aiming to “reintegrate” prostitutes into society in order to eventually eradicate prostitution altogether namely “the abolitionists”, as well as from other eminent observers, intellectuals, and feminists on both sides of the debate. Criminalization is in contradiction with the protection of prostitutes and is denounced by some as “prohibitionist” since it tends to prohibit street prostitution by the reintroduction of passive solicitation as infraction of the law.\(^{20}\) For those who combat prostitution, this “criminalization” jeopardizes considering prostitutes as “victims” and thus further weakens the French abolitionist position according to which prostitutes must be considered as victims rather than offenders.\(^{21}\)

The law amounts essentially to a sanction against the women and men who practice street prostitution, henceforth constrained to the outskirts of cities, to practice in areas farther removed, hidden, isolated, where they are increasingly subject to ill treatment by clients and procurers, to dangerous solicitations (un-protected relations), to providing services for reduced fees (which worsens their economic instability) and are more easily overlooked by prostitute aid organizations (Mathieu 2005). This “criminalization” has an even greater effect on foreign prostitutes, who can have their residence permit\(^{22}\) revoked the moment they are brought up on charges for the crime of solicitation. They can even be expelled from the country when they “constitute a threat to public order” (article 12 of the 1945 ordinance of November 2nd as modified by article 75 of the law).

The law leaves room for a discriminatory treatment of prostitutes: while French prostitutes and migrant documented ones are invited to appear immediately before a court (“tribunal correctionnel”), undocumented ones risk deportation after appearing at the court. This was denounced publicly by Act-Up Organisation\(^{23}\) and by the Union of Magistrates who object to systematic immediate court appearances for prostitutes.\(^{24}\) Article 76 of the same law provides however, for a provisional stay permit (Autorisation provisoire de séjour - APS) to be issued to a foreigner who brings a charge or who testifies in a trial on trafficking or procuring (provided

\(^{18}\) Senate, the 2002-2003 Ordinary session, attachments to the minutes of the October 23rd, 2002 session, internal security bill, in: http://www.senat.fr/leg/pjl02-030.html (18.04.06)

\(^{19}\) Tickets given to prostitutes for illicit parking and that could amount to 7000 euros per month also put a serious strain on their economic resources (Deschamps 2006).

\(^{20}\) This stance is defended, in particular, by the Association des Amis du Bus des Femmes who support a recognition of the rights of prostitutes.

\(^{21}\) « Un point sur la loi Sarkozy. » Info Scelles. N°22, 2\(^\text{ème} \) trimestre 2003, 3 p.

\(^{22}\) Documented migrants may either be in possession of a provisional stay permit (“autorisation provisoire de séjour” – APS) valid for one, three or six months and possibly renewable; a temporary residence permit (“carte de séjour temporaire”) valid one year and renewable or a 10-year residence card (“carte de resident”) fully renewable.

\(^{23}\) According to April 4th, 2003 memo of the Procureur de la République de Paris on the application of the Law on Internal security prostitutes without valid stay permits where given Invitations to Leave the Territory, Expulsion Orders or Prohibition from French Territory, Act-Up Paris, Prostitué(e)s Etranger(e)s, in: http://www.actupparis.org/article1381.html (20.04.06)

\(^{24}\) Magistrate's union, press release concerning the penal policy of the Paris Prosecutor's Office (Procureur de Paris), in: http://www.syndicat-magistrature.org/article/353.html (20.04.06)
He/she is not considered a threat to public order). In case of a guilty verdict, a ten year residence card can be issued to the foreigner having brought the charges or testified.

At first glance, this measure which implies also the right to work appears to be in the spirit of the European directive granting residency to foreign nationals who are victims of trafficking and who cooperate with the authorities (European Community Commission 2005b). However, the figures show the low number of people who benefit from these measures. “At the end of 2004, 987 people were prosecuted for procuring, 950 for solicitation, and 352 prostitutes (...) received a provisional stay permit for having cooperated with the police”. These low numbers reflect the fear of reprisals on the part of witnesses whose protection is not guaranteed. Despite bringing charges against procurers, even in case of guilty verdicts against these, an increasing number of witnesses are trapped in new trafficking networks or into prostitution as soon as the old network is dismantled. Sometimes the reason is lack of legal documents or difficulty in finding work with a provisional stay permit (Kessous 2006).

Therefore the Law on Internal security does not seem to be up to the tasks set by the European Directive. The track record appears especially weak considering that the prostitution practices have adapted and diversified to better avoid the state control: recruitment of clients via internet, advertisements and practicing prostitution from apartments (Kessous 2006). In the end, relegating prostitutes to distant geographic locations, the deterioration of their sanitary conditions and their safety, the increased fragility of people without valid residence papers constitute yet another illustration of the ways in which the law constructs instability and irregularity at the expense of the very people that it intends, from a certain point of view, to protect.

1.2 Unemployment policies

Unemployment is compensated either by means of unemployment insurance, or by the welfare system. The latter applies to people who have used up their allotment of unemployment insurance, or who have not contributed enough in order to qualify for it, as well as some categories of people including refugees and asylum seekers. Foreign workers receive the same “Back-to-work allocation” (Allocation de Retour à l’Emploi - ARE) as French workers. They must meet the same conditions as French nationals in terms of duration of affiliation, made more restrictive by the January 2004 UNEDIC agreement (Council for Employment, Income and Social Cohesion 2005), and in terms of the nature of the cessation of their employment. Just like the French, they must be registered as job seekers with the National Employment Agency (Agence Nationale pour l’Emploi - ANPE), effectively and continuously searching for employment, be under 60 years of age with some exceptions, and be physically fit to work. Moreover foreign workers are subject to special conditions regarding their residency and work: depending of their nationalities, they may have to hold a residence permit and, if necessary, a

25 This law is in the spirit of and preceeded by the Protocol to prevent, suppress and punish trafficking in persons especially women and children, supplementing the United Nations Convention Against Transnational Organized Crimes (resolution 55/25 of November 2000).
27 According to Amnesty International (2006), two years after the law enactment, there was no condemnation for trafficking but only for procuring.
28 In order to implement the EU Directive granting residency to foreign nationals who are victims of trafficking and according to which the residence permit shall be valid for at least six months, Law No. 2006-911 of 24 July 2006 provides for a temporary residence permit instead of a provisional stay permit to be issued to a foreigner who brings a charge or who testifies in a trial on trafficking or procuring.
work permit in order to receive unemployment compensation. Verifying the validity of the residence and work permissions falls under the jurisdiction of the ANPE.30

The minimum income benefit (Revenu Minimum d’Insertion - RMI) was created in 198831, a social assistance allowance providing a minimum income to people over 25 years of age who have negligible resources. It is meant to facilitate the beneficiaries’ economic and social integration. The RMI recipient enters into an integration contract with the public authorities (at the local department level since 2003) which stipulates goals to be achieved within a specific timeframe.

The so called Pasqua Law (1993)32 regarding the entry, the residency, and the reception of foreigners in France modified the provisions of the Social Security code in France: the granting of social rights is henceforth associated with the legality of residency, so people with legal residency receive social benefits; those who are in an irregular situation may only apply for aide, resulting in “…denial of rights to social protection and minimal income for all people who are not, or not anymore in possession of a residence permit, even if they have previously worked and contributed to Social Security (...)” (Lochak 1997: 44).

The conditions under which one can qualify for unemployment compensation are increasingly demanding. The reduction of the duration of compensation coupled with extension of the required minimum duration of affiliation to qualify for unemployment insurance (UNEDIC Convention in force since January 1st, 2004) certainly has more of an effect on groups in precarious financial situation. In any case, unemployment insurance plans based on the duration of employment do not appear better adapted to the precarious job market and to its career paths. As a result, a growing number of job seekers are excluded, incapable of achieving the right to compensation. In 2003/2004 an increasing number of recipients of basic welfare were in active age and a number of associations see in it a large increase in unemployed who are not compensated and in ‘under employment’ (part time, precarious contracts, etc.) (Observatoire national de la pauvreté et de l’exclusion sociale 2006).

Foreign national job seekers are disproportionately more excluded from the unemployment insurance system. Accordingly, they are “less compensated than others over the course of their unemployment. For instance, only 50% of those registered at the end of December 2004 could claim a compensation from the unemployment insurance system or welfare as opposed to 60% of French nationals. The foreign nationals of sub-Saharan African countries are the least compensated”. Foreign nationals are on the other hand more likely to receive welfare: “14% of foreign job seekers receive RMI as opposed to 10% of the French unemployed” (Observatoire de l’ANPE 2005: 9). According to the same source, Northern African and sub-Saharan nationals are over-represented among recipients of RMI at 16% and 15% respectively. These figures are not broken down by gender. But it is probably that women, and even more acutely, foreign women, would have difficulty qualifying for the right to compensation. There are several reasons. Foreigners are much more often under employed than French nationals: 7.6% as opposed to 4.7%. The situation is aggravated for foreign women. 25% of African women and 17% of North African women working in France are under-employed (in other words working part time and wanting to increase their working hours). Women, and by extension, foreign women, are already disproportionately represented among the under-employed. In fact, in 2004, 8.4% of women found themselves under-employed contrasted with 1.9% of men. As shown previously, the rate of under employment is particularly high for jobs like cleaning, house-work, or concierges (Arnault 2005), a sector which includes a high percentage of foreign women. These women are also over-represented among the segment of the population collecting the lowest wages. Working few hours they are largely denied access to unemployment benefits (employment

duration lower than the minimum affiliation, unstable and precarious forms of employment) and receiving low pay, their unemployment compensation will also be relatively low provided they are eligible to obtain it at all.

Furthermore, foreign job seekers who are eligible to receive unemployment compensation have a greater propensity than French nationals to go back and forth between employment and unemployment: Foreign nationals who find employment (even for a short duration or small time quota) rupture their unemployment registration more frequently than French nationals (Observatoire de l’ANPE 2005: 13). Women’s ruptured registration is less likely than men’s to be due to their return to work, and more likely to reflect a temporary cessation of their job search (Observatoire de l’ANPE 2003). The same is true for foreigners. In 2004, only 12% left unemployment to return to work as compared to 25% of French nationals. Moreover, they had a much greater propensity to leave unemployment for “another reason”, including cases of temporary cessation of their job search due to illness, retirement, etc. or invalid residence permits (Observatoire de l’ANPE 2005).

1.3 Social policies for re-entering the labour market

1.3.1 Policies directed towards women: between universalism and positive action

Annie Fouquet reminds that the policies for employment of women have balanced between the family-based, individualist approach on one hand and universalist, and positive on the other. Between 1950 and 1975 the policy of full employment developed specific measures targeting the groups the most removed from the labour market. At that time (especially between 1960 and 1970), when social norms placed men in the role of the wage-earner in the home, and assigned women to the domestic sphere, the effort was made to protect women entering the labour market. “The normative aim of the right to work, in the name of protecting the weak, has lead to a treatment of women as a distinct social category, grouped with children for whom certain tasks or roles are forbidden. This logic of protection imposed itself, inherited from earlier measures essentially adopted at the end of the 19th Century and the beginning of the 20th century: limits to working hours, complementary wages, pregnancy and maternity protection, banning night shifts, and regulating of a number of occupations” (Fouquet 2005: 335-336). There was little of true positive/affirmative action (except allocations for single mothers).

The **Roudy Law in 1983** 33, known for making provisions for the principle of non-discrimination on the basis of gender for hiring, reordered the deal by actively promoting professional equality by positive actions as well. The law was thus in line with the resolution of the European Council of Ministers on the promotion of equal opportunity (1982). Various measures in the mid-eighties, although marginal specifically applied to women such as the National Employment Fund internships in favour of single women (FNE-FI) or the individualized employment assistance taking into account specific difficulties (childcare, fractured families...).

During the 1990's, measures specific to women were abandoned, in the name of the universalism at the heart of which “the equality of rights is supposed to assure, in some sense, ‘naturally’, the equality of opportunity” (Fouquet 2005: 337). The employment policies with universalistic aims (**Loi quinquennale of 1993**) define as priority groups the ones most removed from the labour market, limited categories such as people who have been unemployed for lengthy periods, the unemployed over 50 years of age, disabled workers, recipients of the RMI. The share of women in these arrangements decreases over the years.

It is during the Luxembourg Process, in the context of the European Employment Strategy of 1998 and its gender mainstreaming that policy with regard to women is reactivated in France without, however, targeting them as a population in need of specific measures. In fact, equality becomes an “obligation of result”, “followed by indications that sanction the action” (Fouquet 2005: 340). This period was marked by aide focused on employment, sharing of family time, reconciliation of family and career. The so called Génisson Law, introduced compulsory negotiation on professional equality between men and women at the level of the business and branch offices, ministerial memos, instructions from ANPE for follow up and statistics disaggregated by sex and by territory (region, department, economic sector). The share of women in the targeted measures increases even though it concerns principally the non market sector employment aide, hardly ever a route to durable employment (Fouquet 2005).

1.3.2 From targeted corrective policy to an individualized follow up

The public policy against unemployment, does not take the immigrant population into account as a specific population. “Despite the introduction by the government in the 1960s of the Social Action Fund for Integration and Anti-discrimination or FASILD which, in the face of the difficulties encountered by immigrants on the labour market, gradually extended its area of action to include training, literacy and job assistance services, it was primarily through policies for people experiencing hardship that the situation of the immigrant population began to be taken into account” (Gineste 2003: 57-58). In other words, it is through policy favouring “disadvantaged” groups such as the chronically unemployed, the disabled, the young and women that public officials address this population, for instance with subsidised jobs or training programs for the long-term unemployed and the youth or specific measures for job seekers. Thus, specific measures for job seekers such as individual support programs targeted only certain groups before 2001, young people without qualifications in difficulty (the TRACE system), the chronically unemployed or youth without work for 6 months (e.g. the Program for individualized service for a new start toward employment).

The new UNEDIC conventions extended the individual support measures to all job seekers from the moment they register as unemployed with ANPE (Council for Employment, Income and Social Cohesion 2005). The “back-to-work assistance plan” (PARE) established the personalized support measures for every unemployed person. The Association for Employment in Industry and Commerce (Association pour l’Emploi dans l’Industrie et le Commerce - ASSEDIC) commits to paying “Back-to-work assistance allowance” (Allocation de Retour à l’Emploi - ARE) while the job seekers agree not to refuse any employment or training offered without a legitimate reason. The personalised support to job search was implemented by the National Agency for Employment (ANPE) as part of the Personal Action Plan (Projet d’Action Personnalisé - PAP) and the new-start PAP (Programme d’Action Personnalisé pour un Nouveau Départ - PAP-ND) for the unemployed not eligible for unemployment compensation. In this system intensive services (such as workshops, competency assessments…), “once reserved for the long-term unemployed, are more widely available both to the compensated as well as the uncompensated unemployed and more frequently provided” (Crépon, Dejemeppe and Gurgand 2005: 2). To sum up, there is now a declared political will to extend back-to-work individual support measures and

35 Fonds d’Action et de Soutien pour l’Intégration et la Lutte contre les Discriminations, Formerly the Social Action Fund for Immigrant Workers and their Families (FAS).
37 Service public, le portail de l’administration française, vos droits et démarches : emploi, travail, in: http://vosdroits.service-public.fr/particuliers/F1715.xhtml (01.05.06)
to fight unemployment in advance by the creation of new jobs (Calvès 2004), namely in the service sector by lowering the cost of unskilled labour.

Since the Unemployment Convention of January 18th 2006, the PAP, as well as the PAP-ND were replaced by the Project for the Personalized Access to Employment (Projet Personnalisé d’Accès à l’Emploi - PPAE) which is signed by the job seeker and the ANPE or another organization participating in public employment services.

The evidence suggests that women were disadvantaged by the back-to-work assistance programs (subsidised jobs, training programs…) before the instigation of the PAP in 2001 (PNAE 2003). It was found that they benefited from access to a Personalized Action Plan (PAP) more than men (Observatoire de l’ANPE 2003). The most recent evaluations of services offered to job-seekers (workshops, competency assessments…) seem to indicate that they have a positive effect on the recurrence of unemployment, in other words the “risks of re-entering unemployment” rather than on the rapid return to work (Crépon, Dejemeppe and Gurgand 2005, Jugnot, Renard and Traversier 2006).

1.3.3 The dangers of decentralization, privatization and unequal access to aide measures for re-entering the job market

With the Law for social cohesion the so called Borloo Law, the ANPE theoretically lost its monopole on the placement of job seekers to temporary employment agencies.38 To immigrant rights organizations, the out-sourcing of some of the ANPE’s functions constituted a marked danger from the moment the bill was presented. For GISTI (2004a), this bill foresees “(...) to bring some of the jurisdiction of the National Employment Agency out of the exclusively public domain (...). The privatization of employment agencies could, as far as immigrants and their children are concerned, worsen discrimination for hiring and contract renewal. (...) the state (...) could decide, based on evaluations of private agencies, that job applicants lack motivation or are incompetent. A possibility for an increasing in racism exists in these recruitment facilities (...). Increasingly, forms of placement are emerging for temporary work or labour which circumvent the labour legislation, where private employment agencies use an ethnic rationale to mobilize a foreign workforce under (for it, for the workforce) unfavorable conditions.”39

Law No. 2003-1200 of December 18th, 2003 decentralized the RMI to the level of departments and prompted the creation of a minimum revenue activity (RMA).40 This law has already raised some concerns over a client-based compensation, allocation, renewal and suspension of the aforementioned compensation being delegated to the president of the general council and the implementation of program insertion possibly to the mayors, which could result in a selection of the “worthy poor” by local officials.41 The lack of “adequate resources” for departmental management of the RMI is also causing some worry, and prompting warnings of the possible risk of discrimination on the part of the allocating agency.42

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39 GISTI, Immigrant, on te veux, immigré on te craint, in: http://www.gisti.org/doc/plein-droit/63/edito.html (02-03-06)
41 « Le revenu minimum d’activité : une aubaine pour les entreprises », Claire Villiers, Agir ensemble contre le chômage ! (AC !) ; Philippe Villechalanne, Association pour l’emploi, l’information et la solidarité (Apeis) ; Jean-François Yon, Mouvement national des chômeurs et précaires (MNCP) ; Willy Pelletier, Fondation Copernic, in: http://www.politis.fr/article615.html (02-03-06)
Furthermore, article 21 of the law No. 2003-1119 of November 26th, 2003 called “the Sarkozy Law” relative to immigration control, residency of foreign nationals in France, and to nationality modifying article 14 of ordinance No. 45-2658 of November 2nd, 1945 raised the required number of uninterrupted years of residency in France from 3 to 5 in order to qualify for a resident card. And yet, this card or any other legal document proving the permission to stay and work since five years are necessary in order to be eligible for RMI. This legislation, by extension, reduces the possibilities for obtaining RMI for non European Union foreigners whereas the E.U. residents who are no longer required to show their residence permit in order to receive RMI, are now with the Sarkozy Law dispensed of having a residence permit altogether. Arguing that these measures were contradictory to the principle of equality and non-discrimination regarding social protection between nationals and foreign national residents as stated in various international texts applicable in France (article 4 of the ILO Convention, the European Social Charter, article 14 of European Human Rights Convention), the senator Roland Muzeau and the Groupe Communiste Rédépublicain et Citoyen filed an amendment aiming to implement for non-European Union nationals the same measures as for E.U. nationals. The requirement of a residency card no longer necessary for the EU nationals constitutes an indirect discrimination, in line with the Court of Justice of the European Communities, understanding of discrimination as “not only ‘ostensible discrimination, based on nationality, but also all dissimulated forms of discrimination that, by the application of other criteria of distinction, end up with the same result’ (like an arrangement ‘susceptible by its very nature, to affect migrant workers more than national workers’). The amendment was not adopted.

1.4 Policies combating illegal work

“Illegal employment”, a generic concept for “an ensemble of infractions to the public, economic, and social order” covers, in fact, forms as diverse as hidden work, dubbed “clandestine work” before the law, illegal labour subcontracting, undeclared employment of a worker by a private individual, the illegal provision of man-power, employment of foreigners without a work permit, etc. (ACOSS 2003). The year long attempts to combat illegal employment in France lead to the adoption of the Law No. 97-210 of March 11 1997, targeting the hidden work, “namely the practice of a professional activity or the recourse to a salaried activity without the knowledge of social organs, or by the omission of certain obligatory declarations (RCS registration, nominal hiring declaration)” (Chambre du commerce et de l’industrie de Paris 2003: 8). The employment of salaried workers implies that the employer files a prior declaration of hiring, a process that does not apply however to private individual employers in the field of domestic help (hiring for instance domestic employees). The intentional omission of any employer obligations (providing a pay slip or filing a prior declaration of hiring) is sufficient to constitute an infraction (the law provided for the accumulation of various omissions relative to employer obligations).

The struggle against illegal employment in the area of personal service was directly transcribed in the application of the European Council Directive 1999/85/CE of October 22nd, 1999 permitting the trial application of a reduced value added tax on labour intensive services

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43 Law No. 88-1088 of December 1st, 1988 based on article 12 of the 1945 ordinance.
45 Senate testimony of M. Roland Muzeau, December 10th, 2003, op. cit.
46 This law provides for the creation of the Interministerial Delegation for the Fight against Illegal Work (Délégation Interministérielle de Lutte contre le Travail Illégal- DILTI). Its predecessor in the 1970s and the 1980s was the “Mission de liaison interministérielle pour la lutte contre les trafics de main-d’oeuvre” created after the suspension of migrant labour recruitment in 1974.
47 As stated in the Law No. 97-210 of March 11th, 1997 that modifies article L.324-10 of the Labour Code.
that are not subject to cross-border competition. This economic sector, reputed as labour intensive and burdened by illegal employment, was chosen by France as a testing ground. This choice reflects the determination of both Europe and France to reduce the costs of work in order to develop this sector and absorb the illegal employment. The struggle against illegal employment remains one of the priority aims for the improvement of the quality of employment in the National Employment Action Plan 2003 (Guidelines No.9) in accordance with the recommendations of the European Council (June 2003). The priorities are focused on the construction, agriculture, shows, and hotel and restaurant work as seen in the National Action Plan 2004-2005 Against Illegal Employment. The proposal for administrative simplifications in order to increase the declaration of jobs and the use of new declaration and payment methods is supposed to reduce illegal employment. Measures such as the Universal Service Employment Check (CESU), in addition to the development of the personal service sector, constitute an attempt to fight against undeclared employment by rendering its use less attractive.

Lastly, a Central Office for the fight against illegal employment, a department of the judicial police, placed under the authority of the Minister of the Interior and Defense is created in 2005. A sign that the problem of illegal employment in France is associated more closely with that of illegal immigration, the Office cooperates with the Central Office for the curbing of illegal immigration and the employment of foreigners without papers. The summary of the actions against illegal employment in 2004-2005 mentions that employers were prosecuted primarily for hiding salaries and “more precisely for hiding salaried employees without papers” (Commission nationale de lutte contre le travail illégal 2006: 4). It appears that the personal service sector, which includes a large percentage of immigrant women some of whom are themselves without papers, is not among the sectors specifically targeted for checks for illegal labour, a situation which can be explained by inaccessible nature of the work (private homes are difficult to check) but also by success of the measures so far including service employment checks and others meant to curb illegal employment in that sector, by making the regular employment more attractive. The sector remains one of the priority targets for the governmental campaigns against and prevention of the negative aspects of illegal labour, carried out in cooperation with the respective professional branches.

2. Policies targeting migrants

“Immigration as opportunity” on one hand, “Controlling of migration flows” on the other are two of the recurring themes that have appeared in counterpoint to French political debate since the end of the Second World War, and with increased vigor since 1974 and the provisional migrant labour recruitment stop (Cour des Comptes 2004). The French debate is more and more marked by the seal of law, inexorably confronting two groups with distinct positions: “reform legislation to make entry controls and sojourn more streamlined, for some, and ushering in a new, increasingly restrictive judicial arsenal producing illegality as well as racism, for others” (Fassin, Morice and Quiminal 1997: 5).

The foundation text of the French legislation on the conditions of entry, residency and deportation of foreigners in France, is the November 2nd, 1945 ordinance constantly modified (33 times) (Cour des Comptes 2004) until the French Immigration and Asylum Code called CESEDA reunited in 2004 the migration legislation by incorporating to a large extent the articles

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48 Decree No. 2005-455 of March 12th, 2005 creating the Central Office of the fight against illegal employment (Office central de la lutte contre le travail illégal), JO 110 du 13 mai 2005 or in: http://www.admi.net/jo/20050513/DEFD0500583D.html (10.04.06)
of the 1945 ordinance. The latest laws targeting migrants in 2003 and 2006\textsuperscript{49} introduced two main novelties: the former reversed the logic of integration; the latter promotes a selected migration and discourages the “endured” immigration (section 2.1).

Within the renewal of the “public service reception” of immigrants and newcomers as the first line of the new migration and integration policy\textsuperscript{50}, the most recent measures concerning their introduction and reception, include the establishment of a “Contract of reception and integration” signed by newcomers and the creation of an agency of reception and migration (Agence Nationale de l’Accueil des Étrangers et des Migrations - ANAEM) (see below section 2.2). Another line of the policy focuses on anti-discrimination and equality measures targeting more specifically young people, migrant descendants improperly called “second or third generations of migrants” (Haut Conseil à l’Intégration 2006). Here the need to reassess the historical dimension of immigration was put forward as a priority and a Resource Center and database on immigration created. The \textbf{Law No.2004-1486 of December 30th, 2004} calls for the creation of the High Authority for the fight against discrimination and for equality (Haute Autorité de Lutte contre les Discriminations et pour l’Egalité - HALDE) while the official recognition of racial discrimination in France dates back to the late 1990’s (section 2.3).

\section{2.1 Migration and naturalization polices, polices regulating residence and work}

\subsection{2.1.1 Migration policies}

Regarding the residency and entrance into the French territory, the French Immigration and Asylum Code (CESEDA) applies to all foreigners excepting European Union nationals who enjoy freedom of movement and settlement in France and the nationals of certain African countries formerly under French authority for whom bilateral apply. The UE citizens with the exception of the nationals of new member states no longer need residence, “the Sarkozy law” exempted them in 2003. The nationals of the new member states (except those of Cyprus and Malta) are subject to transitional measures such as the obligation to hold a residence permit (“titres de séjour”) for the purpose of engaging in an economic activity. These measures apply for a period which cannot be extended beyond seven years from May 1st, 2004.\textsuperscript{51}

Various organizations and authors point out the amalgamation made by some governments between delinquency, immigrants, and asylum seekers, the fight against the former carried out namely at the cost of stigmatization and “criminalization” of the latter two. Over time the laws targeting crime and laws targeting immigrants overlap in legislation which hinders rights and legal protections in the name of national security. The \textbf{Laws of September 9th, 1986 and of August 24th, 1993} have their origins in two governments which, having won the respective legislative elections put into place measures which are particularly restrictive, anti-liberty, and

\textsuperscript{49}\text{Laws No. 2003-1119 of November 2003 on immigration control, alien sojourn in France and nationality and No. 2006-911 of July 24, 2006 relating to migration and integration.}

\textsuperscript{50}\text{Interministerial Committee meeting on integration, April 10, 2003.}

\textsuperscript{51}\text{The memo DPM/DMI3/2004/249/DLPAJ/ECT/AB/NOR/INT/D/04/00066/C of March 26th, 2004 concerning regulations applicable to European Union nationals, to those of the European economic area and of the Swiss Confederation regarding entry and work permission, in: http://www.interieur.gouv.fr/rubriques/b5_lois_decrets/04-00066/IN TD0400066C.pdf (11.04.06). Since May 1st, 2006, the nationals from eight new EU member states from Central and Eastern Europe have access to the French job market in seven economic sectors having job vacancies. This covers 61 occupations.
place the immigrant or asylum seeker in the position of a suspect, a potential disturbance for the public order (GISTI 2004b).

The Law called Résédà or Chevènement Law of March 11 1998 relating to the entry and stay period of foreigners in France, as well as to the right to asylum replaced housing certificates issued by local governments with certificates of sponsorship for foreigners as a prerequisite for the issuance of visas by the consulates. The Sarkozy Law of November 2003 restricted access to national territory by increasing the rigor of sponsorship certifications for visiting foreigners (under three months). The mayor's office, which found itself granted increased powers of discretion, can refuse to validate the certificate for various reasons (“absence of normal housing conditions”, etc.) and can resort to checks of the sponsors domicile.52 This suggests the underlying assumption of the legislator suspecting foreign visitors (80% of the visas are granted for short stays) of becoming overstayers.53

The reversal of the logic of integration

This legislation increasingly restricted the possibilities of obtaining a fully renewable 10-year residence card. As already mentioned, 5 years of legal residency is now necessary and not 3 as before, in order to apply for the first time. Its issuance is now “subject to the republican integration of the foreign national into French society, as demonstrated by a sufficient knowledge of the French language and of the principles that guide the French Republic”. This condition constitutes a reversal of “the logic that presided over the creation of the resident card in 1984: that the guarantee of a stable period of stay was presented as favoring integration” (Lochak 2004). In fact, 1984 with the institution of the card was a turning point in the hesitations and revisions of immigration legislation, establishing in law, the right of legal foreign residents whatever their nationality, to reside in France (Weil 2005a). In the 2003 law the necessary integration of foreigners is taken as a pretext to justify their being held in a precarious situation until they have not provided proof of integration”, what Danièle Lochak rephrased as “integration, the alibi for precarisation” (Lochak 2004). From this point on, integration constitutes a prior condition for granting the residence card. The law maintained, however, the possibility of individual sorting out of residency status (a procedure called “by inches” described in the preamble of the law as the automatic regularisation after 10 years of clandestine residency), in order to avoid the administrative load of mass regularisation (Weil 2005). This possibility was called into question in the law of July 2006.

Gender neutral regulations that destabilize the position of women

The Sarkozy Law of 2003, further limited the possibilities for family reunification by requiring more resources from the claimants and by additional restrictions: the right to a full 10-year residence permit for foreign nationals admitted by family reunification was suppressed, from now on the reuniting individual is issued a temporary residence permit labeled “private and family life”, whatever the nature of the permit held by the hosting individual. The reuniting family member can apply for a 10-year residence card after two years instead of one year previously and conditioned by a “satisfactory integration” evaluated in the light of a “wide range of indicators” (education, language skills, professional training, community participation). The Inter-organizational action committee “Women's rights, residence rights, against double violence” (DoubleViolence further in the text) denounced the extension of the period of cohabitation necessary for the reuniting family member, mainly a woman, to obtain residency.

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52 Journal Officiel du 27 novembre 2003, page 20136. These conditions are currently formalised in Articles L211-3 to L211-10 of the French Immigration and Asylum Code (CESEDA).
53 Assemblée nationale, in: http://assemblee-nationale.fr/12/projets/pl0823.asp (11.04.06)
This increases the vulnerability of women when they are subjected to domestic abuse. The law allows indeed for an exception to the two year rule for cohabitation precisely in the case of domestic violence, but this provision applies only to the renewal of temporary residence permits, is not automatic but at the sole discretion of the prefect (DoubleViolence 2004).

In addition, the issuance of residence permits for the spouses of French nationals became also more restricted. Obtaining 10-year residence card for the spouse of a French national was predicated on a continuous cohabitation, during two instead of one year as it used to be. The edifying testimony of women received by the DoubleViolence Committee attests to the various maneuvers men have employed to use the legislation to their advantage: claiming marriage of convenience in order to have the partner sent back; refusing to carry out the administrative steps to obtain the partner’s legalization; the spuriously claiming a rupture of life together in the case of divorce, which would result in the denial of a residence permit of the spouse. Some of the instances reported border on nonsense: a foreign spouse having difficulty obtaining a visa to join her French partner in France (the honey moon celebrated abroad) encountering opposition from the French authorities for the lack of cohabitation which then used as a rational for refusing to grant a residence permit once the spouse manages to legally enter France.

In each instance, it is the very meaning of living together (“communauté de vie”) assimilated to “cohabitation” as applied by the Prefectures that is questioned by this organization: it is an outdated conception of the family and conjugal ties, out of touch with social realities, it denies family reunification outside marriage, does not recognize homosexual couples for the same purpose - conditions which are no longer applicable to many French couples (DoubleViolence 2004). As we will see the admission criteria and access to residence permits are even more restricted for the reuniting family members of both foreign and French nationals in the frame of the latest immigration law of July, 2006.

Towards flexible immigration: enhancing selected immigration, curbing the rest

In the field of immigration, as in other areas, the path towards decentralization and “privatization” is also being followed. The Borloo Law of 2005 envisons removing some responsibilities of the Office of International Migration (Office des Migrations Internationales - OMI- former ONI-Office National d’Immigration) from the uniquely public sphere. The OMI, officially endowed with a monopoly on the introduction of foreign workers in France becomes “The National Agency for the reception of foreigners and of migrations” (Agence Nationale de l’Accueil des Etrangers et des Migrations – ANAEM). The Borloo Law states that the ANAEM could by way of contracts, associate to this public service “any public or private organizations, especially local government”. The impact on the recruitment and the status of workers is of concern to the GISTI which sees opportunities for creating illegal workers: “the reference to local government is particularly worrying in light of electoral pandering in sectors such as agriculture and tourism, which hold sway over seasonal employment policy. (...) the French government, by way of its Interior Minister, recently proposed ‘goodbye and thanks’ type work permits: as soon as the contract is over, the illegal status of the person begins” (GISTI 2004a).54

The new immigration Law July 2006 is inspired by the distinction made by its promoter the Interior Minister Nicolas Sarkozy between “endured immigration” and “chosen immigration” and intends to reduce the disequilibrium between family based migration and labour migration which only accounts for 7% of legal immigration. The admission criteria for family reunification considered as “endured immigration” are thus tightened. The sufficiency of resources necessary for reunification should, from now on, be evaluated on the basis of the revenue from work only, without taking social aide into account - which reduces the proportion of eligible individuals.

This law extends the regular waiting period prior to family reunification, a change from one year to eighteen months, constituting an attack on the right to live as a family. In absence of legal options, this indirectly creates conditions for illegal immigration of family members. The temporary residence permit of a reunited spouse may be withdrawn or not renewed within a period of three years in case of spouse’s separation aggravating the dependence of mainly women on their partners. The waiting period for receiving a 10-year residence card is also increased, from two to three years.

The spouses of French nationals must hold long stay visas to be able to claim a temporary residence permit in France, have to return to their country of origin in order to obtain the long stay visa (except derogation), thus rendering their status valid. Furthermore, three years of cohabitation instead of two previously are necessary to be granted a 10-year residence card. In sum, the extension of the length of cohabitation for spouses of French nationals to have access to stable residency and the possibility to withdraw reunited spouses’ temporary permit if this cohabitation ceases aggravates the dependence of spouses (mostly women) on their partners in spite of the law provisions that the rupture of “community of life” will not be sanctioned in derogatory cases (domestic violence, etc.).

Family reunification, spousal immigration, among others constituting “endured immigration” seem predicated on the assumption that family-based immigration is not geared to the job market or not considered as really destined to fill the needs of the job market. Nor are the undocumented workers living since at least ten years in France. The most commented upon measure of this bill is, without a doubt, the repeal of the full regularization of foreigners after ten years of residency in France, which amounts to increased instability for immigrants without documentation and their permanence in precarious occupations.\(^{55}\) Undocumented people, whose documents were not released or renewed, will be according to the law obliged and no more invited to leave the French territory.

On the other hand, labor migration (“chosen migration”) is promoted under certain conditions. Although the project does not actually call for nationality quotas by economic sector, an approach that would counter the French universalistic conception, it nevertheless attempts to intensify recruitment of migrant labor in targeted economic sectors and geographical zones, those where job offers exceed, for the time being, the demand for employment (construction, catering, etc.). These immigrants will either be granted a temporary residence permit with the label “salaried” valid for a period of one year and possibly renewable or a “temporary worker” permit depending on the duration of the work contract. The immigrants will keep these provisional documents even if they loose their jobs. More generally foreigners who come to occupy a salaried function must hold a work contract or an authorization to work and present a medical certificate. Holders of a 10-year residence card and those with temporary residence permit with the label “private and family life” are already granted the right to work and do not need such authorization. Furthermore and in order to attract skilled workers, the law creates a “skill and talent” stay permit, valid for three years renewable.

### 2.1.2 Asylum laws

The [1952 Law](http://www.contreimmigrationjetable.org/IMG/pdf/analyse_2006-06-05_Uni-e-s.pdf.pdf) concerning the right to asylum was modified by the [1998 Law](http://www.contreimmigrationjetable.org/IMG/pdf/analyse_2006-06-05_Uni-e-s.pdf.pdf) concerning the entry and residency of foreigners in France and the right to asylum as well as by

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\(^{56}\) Law No. 52-893 of July 25th.

\(^{57}\) Law No. 98-349 of May 11.
the 2003 Law\textsuperscript{58} and more recently by the above mentioned Law of July 24, 2006. The French Office for the Protection of Refugees and Stateless Persons (Office Français pour la Protection des Réfugiés et des Apatrides - OFPRA) recognizes refugee status in three categories of asylum: conventional asylum, constitutional asylum and in the context of the High Commissioner for Refugees mandate.

Constitutional asylum is granted\textsuperscript{61} on the basis of the fourth paragraph of the preamble to the Constitution of 1946 to “all persons persecuted for their actions on account of liberty”, whether this be by states or third parties. Here it is no longer so much being the object of grave menace, but rather that of being actually persecuted.

The status of refugee is also recognized to “all persons under protection of the United Nations High Commissioner for Refugees according to article 6 and 7 of its statute of the General Assembly of United Nations of December 14th, 1950”. The recognition of refugee status gives access to a 10 year residence card.

It is important to emphasize, that “women demanding asylum for violence of a sexist character almost never obtain refugee status, because the specific forms of persecution against women are not considered political in nature. We relegate them to the private sphere when they are committed by the family group or by non-state entities, we banalize them when they are a societal reality” (DoubleViolence 2004: 9), they are more systematically granted “subsidiary protection” as a substitutive protection. Article 36 of the Law No. 98-349 of May 11th, 1998 added a 13th article to the Law No. 52-893 of July, 1952 that instituted territorial asylum “in conditions compatible with national interests”, accorded by the Minister of the Interior “to a foreigner if it is established that his/her life of liberty is threatened in his/her country or is subjected to a treatment contrary to the article 3 of the European Convention for the safeguarding of human rights and fundamental liberties”.\textsuperscript{62} This territorial asylum once granted resulted in the issuance of a temporary residence permit and provided for the possibility of practicing a professional occupation. It was given to those who did not fulfill the conditions for obtaining refugee status. “Territorial asylum” was replaced with the “subsidiary protection” by the Law No. 2003-1176 of December 10th, 2003 in the same spirit (insufficient conditions for refugee status). Subsidiary protection can be granted to people who are threatened with the death penalty in their home country; with torture or inhumane or degrading treatment; or, to civilians whose lives are directly threatened by general violence resulting from an internal or international armed conflict. The granting of subsidiary protection allows for the issuance of a renewable temporary residence permit valid for one year, marked “private and family life”. Renewal of the permit can be subject

\begin{thebibliography}{9}
\bibitem{58} Law No. 2003-1176 of December 10.
\bibitem{59} Office of the High Commissioner for Human Rights, Convention relating to the status of refugees, in: http://www.unhchr.ch/html/menu3/b/o_c_ref.htm (08.05.06)
\bibitem{60} Article L 713-2 of CESEDA. Commission des recours des réfugiés, in: http://www.commission-refugies.fr/presentation_4/competences_6/asile_133/asile_conventionnel_257.html (08.05.06)
\bibitem{61} Law No. 98-349 of May 11, 1998.
\end{thebibliography}
to a new examination of the circumstances that justified the granting of subsidiary protection. Furthermore, these people have restricted access to social benefits such as the minimum income benefit (Revenu Minimum d’Insertion – RMI).

According to the law, only the OFPRA determines refugee status or subsidiary protection. People whose claims for asylum have been rejected, can appeal to the Refugee Appeal Commission (CRR). Even though France is one of the principal destination countries for asylum seekers in Europe (65,000 in 2004) with a growing ratio of women (OFPRA 2005), hypothetically linked to the enactment of subsidiary protection to which they can lay claim in the absence of fulfilling sufficient conditions for obtaining refugee status, most asylum demands are in fact rejected. One of the principal criticisms against the provisions of the Law of December 10th, 2003 concerns priority procedures (examination by OFPRA in 15 days without issuance of a provisional stay permit and 5 days for those who find themselves in detention and who, in addition do not have recourse to deferral by the Refugee Recourse Commission). The priority procedure allows for the rapid judgment of petitions, dispensing with the need for OFPRA to summon people to an interview, and accordingly to restrict the number of people to whom protection is granted.

The executive board of the OFPRA adopted a list of “safe” countries - considered to safeguard human rights including: Benin, Bosnia-Herzegovina, Croatia, Cap Verde, Georgia, Ghana, India, Mali, Mauritius, Mongolia, Senegal, and Ukraine. The list is provided for by the Directive 2005/85/CE on procedures in the area of asylum. The demand for asylum on behalf of foreign nationals from these countries is thereby considered “unfounded” and can lead to a priority procedure. This procedure is precisely applied in France to demands from the foreign nationals from these countries, but OFPRA points out in its 2005 report that the principle of individual examination of files is nevertheless respected (which constitutes a condition of the Directive 2005/85/CE) (OFPRA 2005).

### 2.1.3 Naturalization policies

French nationality derives from heredity (ius sanguinis), when at least one of the two parents is French, from the birth on French soil, when the child is born in France and at least one of the parents was born there (double land right – ius soli). The acquisition of French citizenship is still possible for children born to foreign nationals in France (ius soli combined with residency conditions). Since the Law No. 98-170 of March 1998 regarding nationality which revokes the condition of a statement of intent for acquiring French nationality, instituted by the Law No. 93-933 of July, 1993, the child born to foreign parents becomes French at the age of 18 if s/he resides in France continuously, or discontinuously, since the age of 11. S/he can state his intent to become French (with parental consent between the ages of 13 and 16). Meaning that with the consent of the child, parents may request the child's French nationality from the age of 13, if the child has lived in France for 5 years since the age of 8. This exempts from procedure of expulsion from France the foreigners in irregular situation if they are parents of French children aged at least 13 years. According to the new immigration Law of July 2006, are excluded from expulsion parents of French minor child(ren) living in France provided they do not live in polygamy and have contributed to his/her education and maintenance (since his/her birth) or for at least two years.

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64 Fédération des associations de solidarité avec les travailleurs immigrés, in: http://www.fasti.org/article.php3?id_article=165 (08.05.06)
The acquisition of French nationality is also possible by naturalization. Paradoxically, the number of naturalizations is relatively small despite the fact that the majority of those with access are not subject, in the regulations, to restrictive conditions, at least not to conditions on the period of residency (Weil 2002). Citizens of French speaking nations or under former French sovereignty, protectorate, or administration are no longer subject, since 1973, to a 5-year residency period in national territory in order to acquire French nationality. But there is the gap between the law and its practice. Everything goes hand in hand to not make the procedure a driver for political integration, in contrast to what can be observed in other countries such as Canada: from the disinclination of the administration to encourage foreigners to naturalize, to the lengthy delays for reviews of the files, to the jurisprudence of the State Council that grants naturalization only in the case of a stable, permanent residency of no less than 3 years. The procedure is subject to the discretionary power of the state, naturalization is suborned to the subjective evaluation of various conditions. Thus, article 21-23 of the civil code (Law No. 98-170 of March 1998) predicates the acceptance of naturalization on conditions of “Quality of life and morality” as well as the absence of convictions for some listed crimes and delinquencies. Article 21-24 of the civil code (from article 68 of the Law No. 2003-1119 of November 2003) makes this acceptance conditional upon assimilation into the French community defined by “sufficient knowledge of the French language and of the rights and responsibilities conferred by French nationality”. The linguistic condition does not apply to political refugees or to stateless persons under certain conditions of length of residency and age (article 21-24-1 of the civil code inserted by the same law).

Finally, marriage constitutes another way to acquire French nationality (“naturalization by declaration”). Patrick Weil, once again, recalls that citizenship law, at one time, relegated women to a position of inferiority. Spurred by French law (French civil code of 1804), a number of countries effectively established gender inequality, making women dependant on their spouses: in France for example, a foreign women marrying a Frenchman became French, whereas a French woman marrying a foreign was stripped of her French nationality. Accordingly the women took the nationality of their husband. It took until 1973 for gender equality to be gradually established in this domain: but already from the 1920’s French women no longer automatically lost their citizenship for that of their foreign spouse; after 1945, they stayed French except if they signaled the desire to take their spouse's nationality, and in the 1970’s foreign women could keep their nationality. France then adopts the Law No. 73/42 of January 9th, 1973 to complete and modify the French nationality code which attempts to implement the new regulations of the civil code concerning equality between spouses in marriage, liberal legislation, according to which both men and women marrying French partners may equally request French nationality by a simple declaration, without residency conditions (in France or abroad) within one year after the marriage (Weil 2005b). In 2003, 23% of the acquisitions of French nationality were made by declaration, namely following the marriage of a French partner (INSEE 2005). Suspected of being a route to valid stay permission by marriages of convenience, these mixed nationality marriages became the target of restrictive legislation in the struggle against illegal immigration.66

Women, whatever their nationality, have a greater propensity than men to become French, even as the gap between the sexes tends to diminish: 36.9% of immigrant women acquired the French nationality in 1990 compared to 26.3% of men, and 39.6% in 1999 compared to 32.7% of their male counterparts (INSEE 2005).

2.2 Policies addressing immigrants’ civic integration

2.2.1 Policies giving access to political rights and participation, enabling immigrants to establish associations

Adhering to the Republican contract

The new legislation on social cohesion of 200567, redefines the reception and integration of immigrant population. A public reception service is responsible for personal contact from the moment of arrival of immigrants allowing for providing practical information concerning their settlement in France, and eventually proposing social care. In this context, the law envisions the optional signature of a contract (“Reception and Integration Contract”) “by which the new arrival pledges to adhere to the values of the Republic, in particular the equality of men and women as well as the secularity. In exchange the state pledges to help the new arrival to integrate by offering a number of programs”.68 The contract includes the language instruction, the compulsory civic training presenting a view of the history of France and Republican values such as secularism and equality between men and women, and a session entitled “living in France”. The latter consists of a presentation of the public services and their functioning. One learns how to start a job, how to register with the ANPE or to family support programs, etc. Women are more likely to attend various available training programs than men.69 This civic Contract was made compulsory by the 2006 immigration Law of July 24th.

The non respect of these Republican values (gender equality, etc.) “manifested by a clear willing” (“volonté caractérisée”) becomes a criterion for the non-renewal of residency papers. Furthermore, the issuance of a 10-year residence card is conditioned by this integration. The latter is appreciated by the personal commitment to respect the principles of the Republic, the genuine respect of these and the sufficient proficiency in French. The vagueness of these conditions leaves room for arbitrary interpretation by administrative officers in charge.

The voting rights

The granting of political rights to immigrants is marked by the French conception of citizenship as tied to nationality. For a long time, there was no question of granting foreigners the rights conceded to citizens, of which the right to vote in local elections (which is still not accessible for all foreigners) and the freedom of assembly are two symptomatic examples.

The Constitution of 1958, in article 3, states that only French nationals of both sexes and of legal age, invested with their civil and political rights, may vote. It was not always the case: according to the Constitution of September 3rd, 1791, foreigners residing in France for 5 years were French without having to undergo any sort of naturalization. Advocates for the dissociation of citizenship and nationality, fond of citing foreign defenders of liberty elected deputies remind that it was not until the Constitution of 1848 sealed the tie between the right to vote and nationality that the right of vote was restricted to French citizens only (Mamère 2000). The most recent Constitution, of 1958, does nothing but reapply this principle, even though meanwhile “universal suffrage” was enlarged to include women. Not extending identical rights to both national citizens and to non-nationals, whether they be voting rights or the freedom of assembly, contravenes the first article of the Declaration of Human and Citizen Rights adopted in 1948 and

69 Minutes of the meetings of the Délégation aux droits des femmes et à l’égalité des chances entre les hommes et les femmes, Tuesday November 8th, 2005, Assemblée nationale, in: http://www.assemblee-nationale.fr/12/cr-delf/05-06/c0506004.asp (30.04.06)
ratified by France (“Men are born and remain free and equal in rights. Social distinctions can only
be founded on the common good”) as well as other international texts also ratified by France
(Belorgey 2000).

European Community nationals were finally able to vote, and were eligible for municipal
elections in France in 2001. Citizens of the Union can vote and are eligible for municipal
elections in the country where they reside “under the same conditions as nationals of that
country”, according to the Maastricht Treaty (1992) which created European citizenship (articles
40 and 39 respectively of the European Charter of fundamental rights). The directive 94/80/CE
of December 19th, 1994 specifies what is meant by “municipal elections” taking the “differences
in structure” between the countries of the Union into account. It includes “universal suffrage and
direct elections at the level of the local government and its subdivisions”, as well as
representatives of municipal assembly, and at the countries discretion, municipal executives
(Braibant 2001).70

Non-community residents remain excluded from the right to vote in municipal and
European elections71 despite the mobilization of immigrant organizations, political parties and of
collectives formed to defend this right. Their struggle predates the acquisition of the right to vote
by the EU nationals coming after the failed promise to grant the right to vote to foreigners in local
elections dating from the accession of the left to power in 1981. With the extension of the right to
vote to community nationals, the struggle focused on the unequal treatment of the EU and the
third country foreigners.

Excluding non-community nationals from the right to vote in local elections is contrary to
their genuine participation in the society: they even enjoy other election rights, participate in the
workers’ council elections, as well as in those for executive boards of social security funds, HLM
(social housing) offices, and industrial courts, etc. (Mamère 2000). The organization Même sol :
 mêmes droits, même voix (Same soil: same rights, same voice) was created on January 14th, 1999
at the initiative of the Léo Lagrange National Federation (FNLL), of the Movement against
racism and for friendship between peoples (MRAP) and the League of Human Rights (LDH).
Another organization was created on March 16th, 2000 called: “One resident, one voice”
(Mamère 2000). From December 2002 to December 2005, the organization Votation citoyenne
(Citizen vote) assembled organizations, unions, associations and the left wing parties to organize
consultations regarding the right to vote for foreigners during local elections. A referendum
concerning the right to vote for foreigners was held at the town hall of Saint Denis on Sunday
March 26th, 2006 in the presence of the left party representatives.

Creating associations

The right to associate constitutes another facet of citizenship. The Law of July 1st, 1901
regarding the association contract establishes the right to associate but in the same time (its article
12, Title 2) stipulates that associations comprised of a majority of foreigners or having foreign
administrators may be dissolved by decree of the President of the Republic if they, for example,
threaten the security of the state. This article was repealed in 1939 (decree-law on April 12th)
subjecting the creation of foreign associations to the prior authorization of the Minister of the
Interior. In 1981 the socialist government extended the measures of the 1901 law to foreigners

70 The article 88-3 of the Constitution added in 1992 regarding the practice of community citizens residing
in France, other than French nationals, of the right to vote and of eligibility for municipal elections,
 stipulates that community citizens in France may be elected neither mayor nor deputy mayor, and may not
participate directly or indirectly in the election of senators.

71 Which goes against the European Parliamentary Resolution of February 14th, 1989 charging the CEE
countries to accord the right to vote in local elections to all foreigners living and working on their national
territory.
who can henceforth associate without hindrance or discrimination.\textsuperscript{72} This “confirmed the existing situation, as foreigners have not stopped creating associations to further their social, judicial, and cultural claims” (ADRI 2002: 125). The 1981 revisions permit foreign associations to freely form, but the disclosure of the key staff nationality becomes mandatory since 1987. Institutionalization and professionalization of associative movement in France is gaining ground but under the control of the State.\textsuperscript{73}

Despite their freedom to associate, immigrants, according to an INSEE study, have less of a propensity than the rest of the population to participate in associative undertakings (respectively 23 % and 41 %) as well as to take positions of responsibility within them (15 % take up key positions against 20 % for the rest of the population). Interestingly, non-community immigrants more often take up such responsibilities than the European Union immigrants (20 % against 14 % respectively) and are more likely to be trade union members (15 % compared to 5 % respectively). Immigrant members of associations are more likely to be male, with a university education, the propensity to participate increases also with age, identification with a political party or a religion, with mastery of the French language, with extending friendship networks and occasional contact with family.

\subsection*{2.2.2 Language, education, culture}

The presentation of the evolution of French and native language instruction clearly demonstrates that it is closely connected to the perception of otherness in France. Following Nikola Tietze (2005), there has been a gradual increase in perceived necessity of teaching French to immigrants. Immigration largely coming in the beginning from the former French colonies, had made the capacity of immigrants to express themselves in French a given, \textit{not making instruction of the national language a priority} (for adults). The economic crises of the 1970's which particularly affected immigrants, the diversification of the immigrant population in France, the school difficulties of their children, which calls into question the republican equal opportunity credo, have one after another cast the teaching of French in the role of professional preparative, then instrument of integration, and weapon against discrimination, as this policy was declared and initiated under the Jospin government (1997-2002). The teaching of French is also reinforced by reception policy of first-time arrivals through an increase in the number of proposed class hours (from 200 to between 200 and 500 depending on the level of the first-time arrival since the implementation of the new reception and integration contract (CAI) adopted in 2005. There is also a growing portion of the public involved in linguistic instruction.\textsuperscript{74} The goal is the acquisition of “basic oral linguistic skills” as attested to by obtaining a ministerial certificate of linguistic competency (AMCL). This document allows those applying for French citizenship to prove their basic linguistic knowledge and dispenses with the related exam.\textsuperscript{75}

\textsuperscript{72} The law No. 81-909 of October 10th, 1981 repealed the 1939 Decree-law.
\textsuperscript{73} Quoting from Boitard (2001): the new methods of control of financial support granted to associations (laws 1992 and 1993), the clarification of their fiscal regulations (fiscal instructions for 1998 and 1999) as well as an accounting plan adapted to associations. Associations of foreigners must adapt to these forms of institutionalization and professionalization. They are obliged to “demonstrate their social utility and their efficient use of public funds to the French institutions if they wish to last. They are obliged to strategically reformulate their association’s objective to conform to administrative processes, to improve the knowledge of their institutional environment, to clarify their goals and their means and to implement evaluation methods” (Poinsot 2000).
\textsuperscript{74} Extended to foreign members of refugee families and to the spouses of French nationals in 1999 with the establishment of reception plateforms (Tietze 2005), then from July, 2003 on to refugees themselves, to holders of a “private and family life” stay permit and to permanent workers, a proposition which was formulated in a report of the High Council for Integration (Haut Conseil à l’Intégration 2002).
\textsuperscript{75} L’accueil en France, in: \url{http://www.social.gouv.fr/article.php3?id_article=776} (30.04.06)
The instruction of native languages has also been re-evaluated as what is from now on considered as an aide to integration into French society. A report of the High Council on Integration published in 1995 shows that “integration assumes a knowledge of self, of one's origins, and it is this knowledge that allows for a well thought out, responsible, and successful integration” (Tietze 2005: 222-223). In France, where labour immigration was perceived as temporary as in the rest of Europe, the instruction of native languages and cultures (Enseignement des Langues et Cultures d’Origine - ELCO) under bilateral agreements with the countries of origin, and carried out by foreign teachers was initially supposed to encourage integration into the French school system and to facilitate a possible return to the country of origine of some immigrants (Lorcerie 2002). The ELCO was suspected of being an attack on the principles of the republic at the heart of its school system - secularism, unity, and equality. It was on one hand perceived as encapsulating the potential spark for a “radicalization of differences” (Lorcerie 1994 cited by Tietze 2005). On the other, it was claimed that improving the traditional system of instruction would on the contrary help prevent families turn to religious organisations for language instruction (Legendre 2003: 54 and 57).

To sum up, in France, the desire to find a middle path between “the recognition of differences and the guarantee of equality” finally lead to encouraging native languages at the same time as seeking an integration in French society by the mastery of the national language (Tietze 2005).

2.3 Anti-racism, anti-discrimination, equal opportunities and affirmative action policies

2.3.1 Increasing awareness about discrimination?

Penal measures against racism and discrimination have existed for a long time: Law No. 72-546 of July 1st, 1972 regarding the fight against racism aiming to crack down race crimes; introduction of new infractions in the new 1994 penal code reinforcing the curbing of racist crimes (ADRI 2002). As many observers have noted, these measures were rarely been put to use, as evidenced by the few cases brought before the courts (Bleitch 1998 cited by Lamont 2005, Fassin 2002). The emergence of the topic of discrimination in the public sphere, which used to be hidden to the advantage of the racism and inequality issues, is one of the major developments in recent years in France.

Didier Fassin (2002) recognizes at once the meaning that taking into account of racial discrimination in French public life can have, the dangers inherent that it conceals, and the difficulty of extrapolating a strategy for fighting discrimination. Until 1998, the various reports issued by High Council on Integration tried to check off signs of integration and justify perceptible disparities between groups by invoking effects of population distribution (level of qualifications, gender make-up, etc.). The 1998 report marks a turning point in the way in which

77 Then later, the law No. 2003-88 that aims to strengthen penalties punishing racist, anti-Semitic or xenophobic crimes.
the immigrant topic is treated by recognizing that discrimination constitutes an obstacle to integration. “It is not only a simple rhetorical shift from a positive, voluntarist view (“act for”) to a critical and combative reading (“fight against”); it also amounts to an inversion of the causal imputation, since these are no longer the attributes of foreigners considered responsible for the difficulties with which they are confronted (their human worth), but the functioning of the society itself (including “unintentional behavior leading to discrimination”)” (Fassin 2002: 406-407).

Another remarkable fact, the report recognized that discrimination not only affects individuals based on their nationality but also “French persons of color, from overseas or of non-European origin” (Fassin 2002). The real or supposed origin, based on racial characteristics is thus recognized as a factor to discrimination, a sign of an increased awareness of racial discrimination in France. Didier Fassin notes the various episodes that punctuate that increasing awareness in the institutional and regulatory measures shaping their legitimacy as a force to be fought: creation of the study group for the fight against discrimination (GELD) 80; the free hotline for people who believe they have been victims of discrimination (# 114); transcription into the French law of European community legislation with the adoption of Law No. 2001-1066 of November 2001 regarding the fight against discrimination which adjusts the burden of proof concerning discrimination in the workplace; acceptance of new legal strategies in the courts for proving discrimination such as statistical evidence, testing, etc.

But one of the dangers, continues Fassin, is essentializing the object (discrimination) and the victimization of the subject. Essentialization because the transfer of the topic of discrimination into the legal realm is based on an individualized approach, on the examination of singular cases, which amounts to a misunderstanding of the “social processes that produce inequality”. Moreover, the complaints gathered by the hotline have been rarely taken to court, which Fassin says, “shows more of a recognition of suffering than a recognition of rights” 81 Finally, the question is whether it is advantageous to treat discrimination based on different criteria together and present a united front, or whether to separate activist movements for women, immigrants, homosexuals, etc. by recognizing the specificity of each type of discrimination and draw conclusions from them in order to fight. This question was asked during the foundation of the High Authority for the Fight against Discrimination and for Equality (HALDE). Is it better to create an organization responsible for treating all forms of discrimination identified by the European directives concerning equal treatment or to create specialized organizations? The first option was selected. The characteristic that distinguishes the French from the North American case is the intersection of social relations based on gender, class, and ethnicity encouraged from the “top” towards the “bottom”, due to “institutional initiatives connected to the process of building the European Union” (Poiret 2005: 220). The author is mostly in favor of consideration of “testimonies of minorities as a source of privileged information on the domination/subordination that structures the social order”, to avoid namely the construction of categories that reify otherness by the law and the institutions which tend “to reduce the effects of domination to victimization” (Poiret 2005: 221).

80 Which ceased operating in June, 2005.
81 It is unknown whether these “objects of suffering” are mostly female or male. A summary of the monitored calls carried out at the end of 2001 revealed the following tendencies: around 50,000 calls were made, primarily for discrimination linked to jobs (34 %) and the majority of the motives for the discrimination were based on the “real or supposed origin” of the persons. Most of the callers were between 26 and 39 years old (40.7 %), as mentioned these figures were not partitioned by gender, in: http://www.social.gouv.fr/htm/pointsur/discrimination/stats114.htm (25.04.06)
2.3.2 Implementation in the national context of EU anti-discriminatory policies

One has to underscore the impact of European community law on French law, in particular the 1997/80 European directive regarding gender based discrimination and the directives 2000/43/CE of June 29th, 2000 concerning racial equality and 2000/78/CE of November 27th, 2000 regarding the workplace equality which targets discrimination based on religion or belief, disabilities, age or sexual orientation, as well as various Equal programs (Fauroux 2005). The Law No. 2001-1066 of November 16th 2001 introduces the notion of indirect discrimination to the legal code, complementing direct discrimination, and overturning or rendering more flexible the burden of proof for discrimination in the workplace, which no longer falls to the plaintiff, but to the defendant (employer) as envisioned in the European directive regarding gender based discrimination. The plaintiff, in the course of the trial, recounts the facts that support a presumption of direct or indirect discrimination. It is up to the employer to prove that the incriminating practice or measure is objectively justified. The adaptation of the European directive against discrimination will enable “victims to have finally recognized the reality of offenses which remained far too long hidden due to the impossibility of their being proven in French courts” (GISSI 2005). The touchstone for this openly voluntarist policy to fight discrimination, and in line with the directive European regarding racial equality (Commission Européenne 2005), is the Law No. 2004-1486 of December 30th, 2004 which creates an independent administrative authority, the High authority for the fight against discrimination and for equality (Haute Autorité de Lutte contre les Discriminations et pour l’Egalité - HALDE).

One of the vectors of discrimination in the workplace is constituted as so called “hiring discrimination” which is more or less insidious. A practice of employers advertising jobs with the ANPE or with temporary employment agencies consisted of denoting, with the use of a code (of which the most widely known remains “BBR”, meaning “Blue, White, Red”, the colors of the French flag) to signal their preference in terms of nationality (French) and race (white) of prospective candidates. The same code has also been used by employment agencies and recruitment agents to indicate the nationality and race of job seekers, thus creating pre-selection criteria for individuals according to the requested traits (Samuel 2005).

One of the new policy measures to fight discrimination announced by the government at the April 10th, 2003 inter-ministerial committee meeting on integration consists of acting on behalf of equal treatment in employment. It includes awareness training for employment service intermediaries (Service Public de l’Emploi - SPE), such as the ANPE, the National Institute for Labour and Professional Training (Institut National du Travail, de l’Emploi et de la Formation Professionnelle - INTEFP), etc., on topics of discrimination. In this context, INTEFP has, for example, organized training sessions for labour inspectors and ANPE organized 5500 training days for new agents and 1200 for promoted agents (Aubert and Boubaker 2005). The ESPERE project, Public Employment Service Agreement to Restore Equality, created in the context of European Equality Program (topic B) aims “to improve the capacity of the SPE, including local branches, to prevent and fight against racial discrimination and discrimination on the basis of gender and ethnic origin” (PNAE 2003: 36). This program would permit three courses of action: the training on topics of discrimination for agents of the principal institutions of the SPE (ANPE, AFPA82, local branches), their immediate hierarchies, and the creation of a specific training on the prevention of discrimination (Aubert and Boubaker 2005). 60 trainers, as well as 450 agents and their supervisors were trained (Conférence nationale pour l’Egalité des chances 2005).

Having gone from the increasing recognition of discrimination, and its sometime racial basis, to affirmative action France seems to be at a turning point today. It is impossible to ignore

82 Association Nationale pour la Formation Professionnelle des Adultes (Association for adult vocational training).
the breadth of the public debate over affirmative action in France or at least the affirmation of the necessary recognition of racial discrimination in this country: not a week passes without the topics such as anonymous CV’s, quotas, or affirmative action being raised, and without the ministers declaring themselves for (Nicolas Sarkozy), or against (Dominique de Villepin). Azouz Begag, a scholar and writer, himself of immigrant origin, presently minister “delegate to the promotion of equality of opportunity” and close to de Villepin, used to be in favour of positive discrimination. Today he is against and explains why: “Because there are French citizens who are fed up of being able to go up the social elevator of Arabs and Blacks because they are Arab or Black. The positive discrimination was not a good thing. One had to substitute it with equality of opportunity. The republican principle. One should not be able to claim that (these) young beneficiaries of the system finishing high schools or Sciences Po were selected to go there because they were poor. One should know that they are the best…” 83 On closer inspection, studies of the discrimination topic have abounded in the last ten years, whether they are concerned with employment (Fauroux 2005), or administrative reorganization as a prelude to a more efficient fight against it (Belorgey 1999) or whether more general (Begag 2004).

2.3.3 Arguing against positive action: Republican universalism at risk

Pierre Rosanvallon (2004) describes the process that led the men of the French revolution of 1789 to produce a new “imagined equality”: a necessary rupture with the past which created an aspiration to unity and equality, hounding particularity and its distinctive divisions, in all its forms: privilege, guild mentality, pride of locality, or of province. Centralization and Jacobinism are two of the epithets often applied to the spirit of the French Republic, born in the Revolution and hostile to the recognition of groups in the political sphere who could threaten or undermine its authority and encroach on its sphere of activity. Its past “hatred of corps” has evolved into its distrust of associations. Unity and equality were repeatedly consecrated in the texts. According to the first article of the 1958 Constitution, “France is an indivisible, secular, democratic, and social Republic. It ensures the equality of all its citizens before the law, without distinction as to origin, race, or religion”. Moreover, following a decision of the Constitutional Council, “The principle founders of the Republican judicial order were against ‘the recognition of the collective rights of any group, defined by origins, culture, language or belief’”.84 This conception of uniqueness does not favor affirmative action conceived as measures benefiting groups or even less groups defined by notions of “origin” or “race”. In French law, such “criteria can never permit the differentiation of individuals one from another” (Calvès 2004: 60).

Thus, affirmative action, sometimes denoted as positive action, “(...) can only be applied in specific domains like that of the civil service or the economic or social domain, in which the judicial control of respect for the principle of equality by the legislator is guaranteed. If the legislator really can create positive actions in these areas, on the other hand, he cannot base them on distinctions expressly forbidden by the Constitution such as race, origin, religion, belief, or gender, but only on admissible criteria like those based on age, the social characteristics of individuals or their geographic location in the national territory (Lanquetin 2004). It is known that positive actions are in reality targeted toward populations along these criteria (like immigrants), under the cover of criteria such as their social characteristics (disadvantaged populations) or their geographic location in the national territory (populations living in Sensitive Urban Zones).

“Despite an open refusal to take an individual's origin into account, French territorial affirmative action policies – this is a public secret – allow the targeting, without expressly naming them and above all without specifically designating them, of members of groups which, in other countries

would be considered ethnic or racial groups. It is undeniable that these policies conform perfectly, in their conception, to republican principles: they rest on the consideration not of the “origin” of their beneficiaries, but very much on their singular socio-economic characteristics” (Calvès 2004: 113). The facade crumbles when voices are raised to demand that the existence of positive actions based on origin be recognized, since it is already practiced in reality, if not in political discourse.

While the idea of affirmative action gains ground in France, it is still not immune to criticism and strong opposition. The various critiques formulated in opposition to it focus on considerations that are reminiscent of the reticence already encountered in recognition of racial discrimination: the risk of essentializing individuals and their experience, and so enclosing them in a form of determinism; to see them dropped into a spiral of victimization to which is added the calling into question of some republican or liberal values. The detractors of affirmative action targeting and benefiting groups contrast it with “the right to equality of treatment conceived as an individual right, a fundamental right to be judged for what one does and not for what one is. The detractors of affirmative action emphasize that the beneficiaries of this policy are defined along the lines of an imposed heritage, of an innate trait, immutable, and what's more, employed in the past to maintain the given group in a state of subjugation” (Calvès 2004: 18). The victimization of groups, sometimes artificially constructed on the basis of “past discrimination”, that urges individuals who have not directly experienced criminal discrimination to make themselves eligible by clinging to “a collective being, a sort of moral entity across time” in order to base their claims and obtain reparations is also decried. This mechanism, while counter-productive, exasperates the ruling parties that are turned guilty (Le Pourhiet 2001). It can generate a spiral of victimization in that the members of the beneficiary group must “answer the critiques of those who accuse them of profiting, on an individual basis, from suffering formerly inflicted on the group in its totality. They must also make their oppression stand out among other potential candidates as particular, or establish the exclusivity of their right to obtain reparation” (Calvès 2004: 40). Finally, the act of reserving resources preferentially for members of, or more accurately, certain members of groups so targeted, and with elites accordingly created, reduces for their detractors to a favor, in opposition to the notion of meritocracy, and to the French revolutionary agreement that establishes “the primacy of the individual” and the “value of liberal policy” (Calvès 2004). The “boomerang effect” does not usually take long, taking form in the reinforcement of stigmatization of these groups (Le Pourhiet 2001), marked –by the others– as illegitimate beneficiaries of resources sheltered from competition or equal opportunity.

### 2.4 Securitarian laws and laws on security

#### 2.4.1 Policies combating illegal immigration

From Christmas evening in 1972 when priests declared a “mass strike” in solidarity with the hunger strikers threatened with deportation to the occupation, widely covered by the media, of the Church Saint-Bernard by the “undocumented” in 1996 – a movement of women picketing in front of the Élysée Presidential Palace to protest the deportation of their husbands –, including the demonstrations of the illegal Turks working in the Sentier sweatshops in Paris in 1980’, one can discern, Johanna Siméant tells us, the same constants: hunger strikes, threats of expulsion, demonstrations for legal residency, yielding of legal residency for humanitarian reasons. Despite the media coverage of the “movement of the illegals of Saint Bernard”, the undocumented immigrants did not elicit sympathy and support of a large audience. At the political headquarters, on the right as well as the left, it is even possible to find consensus on the question. The author sketches the new position of the left, which was formed after its coming to power, along with the 1981-1983 regularisation of foreigners: “Contrasting the ‘bad’ illegals to the ‘good’ settled
immigrants allows them to protect themselves on the left by underscoring that the principal concern of the government is the improvement of living conditions and integration of documented immigrants, all the while trying to protect themselves to the right, and the extreme right by avoiding being characterized as lax with regard to clandestine immigrants. In fact all claims oriented around the cause of undocumented immigrants were, during the 80's, threatened by new factors: the presence in the political spectrum of a new force, the National Front, for whom the denunciation of immigration is a permanent ideology, and a break with the socio-economic consensus regarding the utility of clandestine workers. The rupture was the result, particularly in the 80's, of rise in unemployment and instability in the French population and that of the documented immigrants, and would have considerable consequences for the perception of illegal immigration. Events in the 1980's seemed to bring about a change in perspective in which the perception of the clandestine immigrant shifted from ‘flexible workforce’ to ‘threat to the public order’ (Siméant 1998: 203).

The immigration Law of November 2003 precisely intended to fight “clandestine immigration” – as well as “the fraudulent acquisition of [French] nationality” – on a number of fronts: conditions of issuing of housing certificates which open up the way to short term visas; development of methods of biometric monitoring of individuals; the fight against “marriage and paternity of convenience”. Modifying the 1945 ordinance this law stipulates that foreign nationals soliciting “the issuance by a consulate or at the exterior border of the States party to the signed convention of Schengen on June 19th, 1990, of a visa in order to stay in France or in the territory of another State party to the aforementioned convention” may have their fingerprint and their photograph “taken, stored and made the object of an automated process”. Taking a photograph and fingerprint is compulsory in case visa is granted.

The law also hunts for “marriages of convenience”: “The act of marrying for the sole purpose of obtaining, or assistance to obtaining a residence permit (“titre de séjour”), or for the sole purpose of acquisition, or assistance to acquiring, the French nationality is punishable by 5 years of imprisonment and a 15,000 euro fine”. The acquisition of French nationality by marriage is also rendered more difficult: the necessary duration of uninterrupted cohabitation between spouses is prolonged (the waiting period goes to two years); proof of integration in the form of sufficient knowledge of the French language is required. The latest immigration law (Law of July 2006) reinforced these measures: concerning « marriages of convenience », it adds for example the act of marrying for the sole purpose of avoiding deportation. Furthermore, the waiting period to acquire French nationality by marriage is further prolonged to four years.

Several circulars are aimed at better combating illegal migration. One (dated 21 February 2006) mentions the places where undocumented people can be questioned (home, hospitals, NGO’s offices, etc.)85; others (dated 19 September 2005 and 30 March 2006) grant increasing financial assistance to undocumented immigrants accepting to return to their country of origin (4500 Euros for a couple with a child).86

2.4.2 Policies combating trafficking in human beings

In line with the provisions of the additional protocol to the United Nation Convention against transnational organized crime (resolution 55/25 of November 2000) as well as the Council framework decision of July 19th, 2002 concerning the fight against the trafficking

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85 Circular of 21 February 2006 for questioning of undocumented persons in: 
http://www.fasti.org/IMG/pdf/Synth2102_06.pdf#search=%22CIRCULAIRE%2021%20f%C3%A9vrier%202006%22 (06.09.06)

86 Circular n°NOR/INT/K/06/00058/C in: 
http://www.interieur.gouv.fr/sections/a_votre_service/lois_decrets_et_circulaires/2006/intk0600058c/downloadFile/file/INTK0600058C.pdf?nocache=1150882658.3 (06.09.06)
in human beings, the 2003 Law on Internal security\textsuperscript{87} creates a new infraction in the penal code, the trafficking in human beings. Article 225-4-1 of the penal code defines it as “the act, in exchange for remuneration or any other advantage or promise of remuneration or advantage, of recruiting a person, of transporting them, transferring them, housing or hosting them, in order to put them at the disposition of a third party, even unidentified, in such a manner as to permit the commission, against this person, of infractions of procurement, sexual aggression or assault, exploitation of begging, work conditions or housing contrary to their dignity, or to force this person to commit any crime or infraction.”\textsuperscript{88} The trafficking in human beings is punishable with 7 to 10 years of imprisonment and a 150,000 euro fine. The penalty is higher if the infraction is committed against a minor, a vulnerable person as defined by this law, under threat of violence towards the victim or her/his family, by natural or adopted family or a person having authority over the victim.\textsuperscript{89} The penalty incurred goes to 20 years of imprisonment and a 3,000,000 euro fine when the trafficking is done by an organized group, and is further aggravated in cases of torture or acts of barbarism (life sentence and a 4,500,000 euro fine) (respectively articles 225-4-3 and 225-4-4).

This introduction of the notion of the trafficking in human beings, punished by law, enlarges the possibility of contentious recourse between the various intermediaries of the networks operating at different levels (recruitment, housing, transfer, hosting, etc.) while the infraction of procuring only implicates the lone exploiters at the end of the chain.\textsuperscript{90} Whereas the Central Office for Action against Trafficking in Humans (OCTREH) estimates that 70 % of human trafficking concerns people forced to prostitute themselves and 30 % forced labour, mainly as domestic slaves, some organizations such as Amis du Bus des Femmes challenge the amalgamation implemented in the law between prostitution which can be freely consented on one hand, and trafficking, which consists of imposed sexual relations on the other, in short the law criminalizing “traditional prostitutes” (Les Amis du Bus des Femmes 2004).

3. Specific institutions defining immigration and immigrants’ integration policies

Created in 1945, the Department for Population and Migration (Direction de la Population et des Migrations - DPM) is attached to the Ministry of Employment. It has the objective to “participate in the elaboration of legislation regarding foreigners in cooperation with the Ministry of the Interior”, to, “handle requests for work authorizations and family reunification”, to “define and spur the integration policy for populations of foreign origin and fight against discrimination, in cooperation with the other ministerial departments and local actors”.\textsuperscript{91}

The 1945 ordinance created the National Office of Migrations (ONI) which became the Office of International Migrations (OMI) in 1988. Also attached to the Ministry of employment it is responsible for the recruitment and introduction of foreign workers in France as well as their repatriation and reinsertion to their country of origin (ADRI 2002). Despite this “exclusive jurisdiction” the ONI was quickly out-paced by the activities of entrepreneurs.

\textsuperscript{87} Law No. 2003-239 of March 18th.
\textsuperscript{88} Application circular for the Law on Internal security, in: http://www.agirprostitution.lautre.net/IMG/pdf/doc-12.pdf (20.04.06)
\textsuperscript{89} Article 225-4-2 of the penal code.
\textsuperscript{90} « Un point sur la loi Sarkozy. » Info Scelles. N°22, 2\textsuperscript{e} trimestre 2003, 3 p.
\textsuperscript{91} La direction de la Population et des Migrations, La DPM : ses missions, ses attributions, in: http://www.social.gouv.fr/htm/dossiers/dpm/ladpm/presentationdpm.htm (08.05.06)
Created July 25th, 1952, in the wake of the Geneva Convention regarding refugee status, by the **Law 52-893 of July 25th, 1952** concerning the right to asylum, the **French Office for the Protection of Refugees and the Expatriated** (OFPRA) constitutes a public establishment. It conducts all the requests for asylum since January 2004, following the enactment of the **Law No. 2003-1176 of December 10th, 2003** and the substitution of territorial asylum – what was once accorded by the minister of the Interior – by subsidiary protection.

An advisory body, the **High Council for Integration** has for its mission to “give its advice and to make useful propositions at the behest of the Prime Minister, on the entirety of topics relative to the integration of foreign residents or residents of foreign origin” (**decree No. 89-912 of December 19th, 1989, version consolidated on March 31st, 2006**). It drafts annual reports to the Prime Minister, the 1998 edition of it caused somewhat of a stir for, as previously mentioned, its recognition of racial discrimination as an obstacle to integration.

There has been an institutional reorganization in the frame of the policy aimed at fighting against discrimination (government Jospin, 1997-2002) and of the new integration policy defined by the Inter-Ministerial Committee meeting on integration on April 10th, 2003 (renewal of the reception policy; new policy aimed at fighting against discrimination). In accordance with the French anti-discrimination policy, the Social Action Fund for Immigrant Workers and their Families (FAS) has become, in 2001, **Action and Support Fund for the Integration and Fight against Discrimination** (FASILD). This public administrative institution has seen its mission redefined from social action towards the integration of foreign populations, immigrants and immigration issues, as well as towards the fight against discrimination. FASILD is in turn replaced by a new entity, the **“National Agency for social cohesion and equal opportunity”**. The agency's mission is by and large that of FASILD (support for the integration of the same populations and fighting discrimination) to which is added the fight against illiteracy and “actions in favor of residents of the urban disadvantaged neighborhoods”. This orientation has been criticized for its tendency to reinforce the amalgamation between immigrant populations or immigration issues and people in difficulty. The collective “No opportunity for equality” reproached the bill directing the creation of this agency for incurring the risk of locally accountable treatment of questions as well as their territorialization and its possible corollary, risks of “local pressures” and of “unequal treatment”.

As mentioned above in section 2.1.1 and in line with the decision of Inter-Ministerial Committee meeting of April 10th, 2003 to create a **public reception service** in the context of the new immigrant reception policy, the **2005 Law on social cohesion** created a new entity in the form of the **National Agency for the Reception of Foreigners and Immigrants** (ANAEM), put in place in April 2005 and placed under the tutelage of the Ministry of Employment. This creation resulted from the fusion of the OMI and the Service for Social Aide to Immigrants (Service Social d’Aide aux Emigrants - SSAE). The SSAE was an association, created in 1926, then recognized for its public utility in the 30's having as mission the reception of immigrants. The ANAEM, which encompassed the administrative jurisdictions of the OMI and the social activities of the SSAE, is more specifically “charged with the public service of the reception of non-EU

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92 Article 38 of the Law No. 2006-396 of March 31, 2006 for equal opportunity provides for the creation of a substitute for the FASILD.

93 Article 39 provides for participation in receiving immigrant populations, one of the prerogatives of FASILD that is remitted to the Agence Nationale de l’Accueil des Etrangers et des Migrations (ANAEM).

94 Which, for a time, raised concerns among the staff of the respective organizations that this agency would be born out of the fusion between FASILD, the Délégation interministérielle à la ville (DIV) and the Agence nationale de lutte contre l’illétrisme (ANLCI).

95 FASILD Press release, « Non à la casse du FASILD », in: http://noelnamere.org/article.php3?id_article=559 (08.05.2006)

foreign nationals first-time holders of a residence permit authorizing a long-term stay in France”. 97

The High Authority for the Fight against Discrimination and for Equality (HALDE) was recently created to fight discrimination due to racism, religious intolerance, sexism or homophobia, and conforming to the wishes of the President of the Republic (Mr. Jacques Chirac’s Speech at Troye on October 14th, 2002). 98 This high authority provides assistance to victims of discrimination99, and issues recommendations to the government, parliament, and public officials with the aim of better fighting discrimination. 100 The Collective for a Universal Independent Authority for the fight against Discrimination criticizes the high authority's lack of civil society members, staffing and financial resources.101

4.         Bottom up activities

4.1 Immigrant issues

A number of organisations – NGOs and less specifically unions, political parties – are more or less intensively involved in the immigrants’ rights defence. One of the most active NGO is undoubtedly the Groupe d’Information et de Soutien des Immigrés (GISTI). This organisation created in the 70’s and composed of members from diverse professional horizons and political obedience although close to left wing circles – lawyers, social workers, etc. – occupies a peculiar place in the constellation of organisations advocating for immigrants’ rights by proposing a national and European (migration) law expertise which is publicly recognised (Israël 2003). This expertise is dedicated to the denunciation of rights’ violation or inequality (publications, petitions, street protests, etc.) and the awareness raising of other professionals and militants to the (migration) law issue. The organisation thus offers sessions of training about legislation and its use targeting a broad audience (members of enterprises, administrations, NGOs, unions, social services, lawyers, and public more directly in touch with migrants).102 Other organisations are rather engaged in the immigrants’ defence field: migrant-oriented organisations such as the Federation of Associations of Solidarity with the Migrant Workers (Fédération des Associations de Solidarité avec les Travailleurs Immigrés - FASTI)103, the ecumenical La Cimade NGO (also dedicated to refugees and East and South development).104 These organisations offer to immigrants’ legal advice (permanences juridiques). Le Secours Catholique, an organisation targeting deprived persons is increasingly turned to foreigners (almost one third of its public) mainly undocumented migrants and asylum seekers whose claims were rejected in order to help them to get documents.105 Among organisations dealing with female immigrants’ administrative issues one can mention the small but very active Femmes de la Terre (Le Coq 2006).

97 L’ANAEM, in: http://www.anaem.social.fr/introduction.php3?id_article=6 (07.05.06)
98 Information file, in: http://www.senat.fr/dossierleg/pjl04-009.html#item_manuelbas (08.05.06)
101 GISTI – Groupe d’information et de soutien des immigrés, in: http://www.gisti.org/ (02.11.06)
102 FASTI – Fédération des associations de solidarité avec les travailleurs immigrés, in: http://www.fasti.org/ (02.11.06)
103 CIMADE – Service oecuménique d’entraide, in: http://www.cimade.org/ (02.11.06)
104 Secours Catholique – Caritas France, in: http://www.secours-catholique.asso.fr/ (02.11.06)
Many of these organisations advocate for equality of rights, and combat the utilitarian approach of the latest migration policies. A collective reuniting diverse NGOs was created, a petition “united against a disposable immigration” was signed (« uni(e)s contre la migration jetable »). Street protests organised with the purpose of condemning the latest immigration law (July 2006) and the underlying discourse distinguishing between “endured” and “chosen” migration, between “bad” and “good” migrants, thus reducing human beings to their mere workforce. The selection creates categories of excluded and accepted migrants. Among the former, undocumented migrants who will not be able to get papers despite ten years of regular residence; French migrants’ spouses, family members aspiring to family reunification, parents of French children whose rights to living documented and as a family are curtailed; ill people; refugees. Among the latter, qualified professionals and most talented students, whose arrival to France the law promotes depriving in the same time developing countries and other countries of origin of their human resources. More than 800 organisations petitioned to demand the withdrawal of this law including NGOs defending human rights (Ligue des Droits de l’Homme – LDH), NGOs more specifically defending immigrants’ rights such as the GISTI, the FASTI, la Cimade, NGOs defending women (Collectif des droits des femmes), homosexual rights (Act-up) or prostitutes’ rights (Amis du Bus des Femmes). Are also included NGO’s providing social and health support (Médecins du Monde), political parties (the communist party and the greens) as well as professional and students’ unions (including lawyers’ unions). Immigrants are also represented by NGOs and organisations of undocumented persons (Collectif des sans-papiers). But this collective mobilisation did not really arouse sympathy of a large audience.

The more popular support came in relation to the issue of children of undocumented migrants. In 2004, teachers, parents of school-children, trade-unions, associations, etc. reunited in Paris and created a network of associations – Education without Frontiers (Réseau Éducation Sans Frontières – RESF) to react against the threat of deportation of children in families of undocumented migrants. This network is bringing together teachers, parents of school-children from diverse social conditions and presenting a large spectrum of political opinions or allegiances. Sponsoring of illegal migrant children (“republican sponsoring”) multiplied as act of “civil disobedience”. Teachers and parents increasingly join the movement and commit themselves to hide children attending school whenever necessary. Street protests or in front of Courts; collective application for French residency in Police headquarters (Préfectures); lobbying and extensive mobilization via internet are some of the activities carried out by this broad network across France.

Presumably under the influence of this civil movement, the Minister of Interior Nicolas Sarkozy issued a circular letter for prefects on 13 June 2006 (coinciding with the debate of his immigration law in the Senate) enabling the regularization of some undocumented families with at least one child attending school. This circular which recalls the existing provision of financial assistance for voluntary returns, foresaw a possible regularization for families applying for French residency before 13 August 2006 provided their children were attending school since September 2005. Families would not qualify for regularisation if the child has maintained a link with the country of his/her nationality; if parents do not contribute to children’s maintenance and education; if the family is not willing to integrate, discretionary and vague criteria widely

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106 Uni(e)s contre une immigration jetable, in: http://www.contreimmigrationjetable.org/ (02.11.06)
108 RESF, in: http://www.educationsansfrontieres.org/. A similar network concerning this time professors of university and students and aiming at avoiding students’ deportation was also created in 2006 (Réseau Université sans frontières - RUSF).
109 Circular n°NOR/INT/K/06/00058/C, op. cit.
criticized. Out of 30000 regularisation demands only one third was successful and deportations of others are taking place every day.

4.2 Female migrant issues

Although many of the above mentioned organisations and their activities are not gender blind, some prioritize more specifically women’s issues in the framework of social movements, organizations, or various collectives focusing in particular on the rights of prostitutes, the discrimination and violence against women, the headscarves issue.

4.2.1 The Prostitution Debate: “abolitionists” versus “regulators”

The public debate surrounding prostitution in France typically pits “abolitionists” supporting abolition of prostitution, against “regulators” those who advocate for oversight. The conflict divides feminists, intellectuals, and politicians, as well as the aid organizations that provide for prostitutes. Feminist abolitionists denounce the patriarchal system’s sexual appropriation of female bodies, appropriation that reduces the prostitutes to the status of merchandise, as well as the resulting physical and symbolic violence. Violence (physical, economic, etc.) is most often conceived as responsible for the initial entry into prostitution. In any case, for abolitionists the prostitution can never be truly consensual, i.e. the supposedly ‘free choice’ is never anything but an illusion. The appropriation of the woman's body by clients and procurers, the majority of whom are male, can only be alienating, subjugating, and incompatible with human dignity.

The regulators instead argue that one has right over one's own body, including using it for selling sexual services. They advocate for the professional status of prostitution, and its recognition as an occupation, in the open, extended the same social benefits as other professions or at least to the recognition of prostitutes’ rights.

As shown by Lilian Mathieu (2003), two organizations in the greater Paris metropolitan area represent these contrasting positions, which so divide feminists: Le Mouvement du Nid and Le Bus des Femmes. The Mouvement du Nid, closely linked to social Catholicism, participated in the campaign for the closure of brothels. Officially active since the Second World War, the organization aspires to a “society without prostitution” and places itself firmly in the camp of the abolitionists. The organization is hostile to the increasing acceptance of prostitution, which follows on the heels of increasing regularization of prostitution as a profession. In accordance with abolitionist leanings, the organization contributes to two of the mainstays of the abolitionist philosophy, prevention and retraining of the victims. As stated in its mission statement the organization undertakes outreach, housing, and professional placement programs in several cities in France. Le Bus des Femmes, which, according to Mathieu, is a “public health” organization, advocates for the professional status and recognition of rights for prostitutes, and is composed both of health professionals as well as former prostitutes. This organization nevertheless refuses the labeling “regulation” and “sex workers” as it opposes the brothels’ re-opening and the prostitutes’ salaried status. The debate on the Internal Security Law of 2003 also gave birth to two organizations specifically composed of prostitutes France Prostitution and Hétaïra en colère (Deschamps 2006).

4.2.2 The question of violence against women

The movement Ni putes ni soumises (neither whores no victims) presents itself as feminist, and comes from the “March of neighborhood women against ghettos and for equality”
(February 1st-March 8th, 2003), in protest of the murder of Sohane Benziane, the young women burned alive in one of the Vitry-sur-Seine social housing in October, 2002. This march across France was punctuated with debates concerning various types of sexism and discrimination. The movement thus emerged amidst an extensive awareness raising campaign opposing fundamentalism and promoting republican and secular values with the slogan “secularism, equality, and diversity”. This widely publicized movement was criticized on one hand for distinguishing women in the immigrant suburbs in two mutually exclusive categories, the republican and modern ones, and the veiled, practicing Muslims who remain submissive, on the other, for creating divisions between genders, stigmatizing young men of Northern African descent in the suburbs, tending to describe them as violent and misogynist, all the while projecting a positive image of young women who demonstrate their attachment to republican values. This not only calls for a security based response on behalf of authorities, but also contributes to an impression that sexism is a speciality of the immigrant suburbs i.e. more specifically attached to ethnic origin or religion.110

Some organisations mostly composed of migrant women, such as ELELE, a Turkish association, in addition to proposing language courses, helping newcomers, giving personal assistance to migrants’ seeking regularisation, etc., also edited a booklet about gendered violence and addresses issues like forced weddings.111 The inter-organizational action committee DoubleViolence (Comité d’action inter-associatif « droit des femmes, droit au séjour, contre la double violence ») likewise opposes violence towards women, particularly from a judicial angle. This committee protested against the reform bill for the Entry and Stay Code (CESEDA). It demands the recognition of right to asylum for women persecuted by acts of sexist violence (in other words for the recognition of sexist violence as a political fact), in France and in the European Union. Constituted in 2005 and composed of several organisations, the Women Group Asylum (Groupe Asile Femme – GRAF) also advocates for the recognition of right to asylum for women victims of violence. Some mixed organisations such as La Cimade opened an advice centre (permanence) specifically for women (2004) and receives women demanding asylum for having been persecuted by acts of sexist violence. Despite those NGOs’ creation or actions, this issue remains marginal as shown by the difficulties encountered by the network Terra (dealing with asylum seekers and refugees’ issues) to raise money and organise a colloquium about the right to asylum for persecuted women.112

4.2.3 The headscarves issue

The law N°2004-228 of 15 March 2004 on Secularity and conspicuous religious symbols in schools outlawed the wearing of such signs in public educational establishments (to the exception of universities). This law reaffirming the secular principles of the French Republic supposed to address any religious symbols, was widely considered as targeting more specifically Islam religion and the wearing of headscarves. The legislation and in particular the very fact of prohibiting the religious symbols by law strongly divided feminists and other observers, two camps being mainly promoted through the media. On the one hand, one camp suggested that it would protect women, and more particularly younger ones from gender oppression, the other one denounced the fact that under the cover of protecting women, this law racialises foreign (Muslim) men, considered as oppressing women.

110 Mona Cholet, « Aïcha et les gros tas. Fortune médiatique des ‘Niputes ni soumises’ et des filles voilées », Périphéries, October 30th 2003, in: http://www.peripheries.net/e-voile.htm (08.05.06)
111 Lutter contre les violences, in: http://www.social.gouv.fr/article.php3?id_article=1077 (17.12.06)
112 Jérôme Valluy, Introduction to the Colloquium “Persécutions des femmes, mobilisations sociales et droit d’asile (Sorbonne, 14, 15, 16 septembre 2006)” organised by the Centre de Recherches Politiques de la Sorbonne (CNRS / Paris I) in the frame of the network Terra.
5. Concluding remarks

1. Policies guided by universalism and the republican tradition challenged by gender and other divisions

The laws or measures with universalistic intentions, supposedly neutral regarding gender differences or ethnic divisions, create their share of negative gender distinctions and have an even more radical impact when gender and ethnic divisions intersect, i.e. on vulnerable groups who are already singled out and discriminated against on the basis of ethnic or gender divisions, as in the case of immigrant women.

Gendered effects of neutral policies

Even though the legislation does not establish distinctions between the sexes, the gender differentiated routes of immigration will still result in situations where women and men are in specific situations and confront specific obstacles: for example, it is women than disproportionately more reunite with their established partner on French soil, it is also they who try to escape sexism in their native countries. Supposedly neutral immigration policies, such as those that impose extension of periods of living together as a condition for obtaining residency turn out to have gender specific effects.

Over-represented among immigrants rejoining their families, women are as a consequence targeted by restrictions on family reunification, depicted as undesirable “endured immigration”. They no longer appear to be the majority of those who obtain residence permits among the spouses of the French. The statistical evidence shows that since 1999 when they still represented a majority of reuniting family members (53%), in 2003 they were less than one half (their proportion is down to 48% or 61,489 out of a total of 136,407) (Bray, Costa Lascoux and Lebon 2004).

Women, more than men, are therefore more likely to endure conflict and violence in the relationship, rather than leave their partners and thus lose the opportunity to get residency. By not taking gender discriminations and violence against women into account, and in not insuring their protection, France breaches the 1983 European Convention on the elimination of all form of discrimination against women (CEDAW), which she ratified pledging to ensure the principle of equality between men and women (DoubleViolence 2004).

Policies for back-to-work assistance or service development to name a few, affect certain categories more than others: women, foreigners or immigrants, foreign or immigrant women. Whereas measures such as more demanding conditions for access to unemployment compensation do not incur gender or ethnicity-based discrimination, they have a more acute impact on those people who make up a disproportionate number of the under-employed and under-paid, and who are only able with difficulty to gain access to the compensatory rights. The reduction in the cost of unskilled labour in the context of personal service employment policy development or in the instigation of multi-service agencies for instance could over time be more detrimental to these women.

Relation to the Other and beyond: Individualization and contractualization of integration

113 But as mentioned it is only thanks to amendments to the new immigration bill (July 2006) adopted by the National assembly that the issue of domestic violence became one derogatory case of sanctioning the rupture of “community of life” by taking off reunited spouses or spouses of French citizens’ documents.
In its relation to the Other and to the nation, the one and indivisible France and its universalistic republican tradition, suspicious of communities, seems to be off and on challenged by a differential conception. But in spite of temptations of affirmative action or positive discrimination, recognizing groups targeted and identified as victims or disadvantaged in society, the integration of immigrants is still guided by the principle of individualization and contractualization: personalized service in the context of back-to-work policy completed by the signature of a contract between the job seeker and the state (the Personalized Action Project, PAP, then the Personalized Project for Access to Employment, PPAE); a Reception and Integration Contract linking the immigrating individual and the French state. The underlying principles in these contracts, especially in the PPAE project, “consecrate the individual as the principal actor of his or her personal trajectory. (...) the project emphasizes the individual aspect of change (...). The project confirms a current value in our society, for it derives from the ideal of self accomplishment, and presumes the mobilization of the person towards his or her auto-construction” (Castra 2003: 74-75).

The spirit of these measures, in accordance with the idea of meritocracy so highly touted during the French Revolution, merges with the economic liberalism of the day. It complements the European Union propensity to incite rather than to emphasize imposition or coercion. Imposing positive discrimination measures in the domain of back-to-work policy, would distort supply and demand for instance and is therefore preferable, to reduce the initial labour costs in order to create jobs (for women or the long-term unemployed).

Racialising individuals under the cover of protecting women?

The tension between universalism and differentialism make some authors even ask whether the universalistic French model is declining or has ever existed. The option for universalism or differentialism is presumably resorting to pragmatic or strategic political considerations related to determined contexts rather than to abstract philosophies (Fassin 2006a; Fassin 2006b). Considering the critics of multiculturalism in UK and the inclusion of assimilationism in UK policy as well as in Germany (see the UK and German Femipol Working papers 2 and 1) on the one hand and the temptation toward differentialism in the French context on the other, one can wonder whether these “models” are converging. More importantly for us, one should ask what place women and gender occupy in these presumed “models”? How are women strategically used, referred to, to represent a certain idea of the nation or of ethnic groups? (Yuval-Davis and Anthias 1989). On one hand, apparently gender neutral laws, may have gender effects, on the other hand the legislation, policy measures, public debates explicitly targeting immigrant women or gender may contribute to the racialisation of migrants or their descendants, to their essentializing as a group. The headscarves issue or the discourse about polygamy or the focus on male violence in the suburbs are examples among others (Fassin 2006c). «The manipulation of the gender issue has racist objectives and outcomes. Focusing on masculine domination “among Others” – whether they are Blacks, Arabs or working class – essentially contributes to the construction of stereotypes, of prejudice and hatred which structure racial oppression (...). This moreover banalizes and makes invisible the masculine domination “at home”, turning a blind eye to the transversal elements of our patriarchal system. With the debate on the headscarves issue we are witnessing the re-emergence of the figure of a “woman in Islam” – voiceless, victim and manipulated » (Benelli et al. 2006: 8).

2. Top down migration policies
Numerous measures having addressed immigration, asylum, equality of men and women as well as discrimination, various domains which make up the condition of immigrant and refugee women in France appear to be initiated from the top, rather than from the bottom up, in other words as the result of social mobilization. There are, it is true, notable exceptions, like the marches in 1983 leading to policy measures such as the institution of a combined residency and work permit in the form of the 10 year residence permit or the hunger strikes that ended in the issuance of residence permits (in 1996). Nevertheless, the civil society had less impact lately and the initiative for recent measures comes from the state or from supra-national instances.

French legislation versus the European framework: convergences and divergences

According to the notice board for the internal market of the Commission that summarizes the adaptations to European directives, France was classified 18th out of the 25 member countries as of February 2006. However, it must be admitted that France has adapted numerous directives, and that these adaptations have in certain cases strengthened or enlarged the framework for the protection of individuals against discrimination. Occasionally however, the adaptation of these directives proves to be disadvantageous for the interested parties. Such was the case, recalls Terre d’Asile, with the adaptation of the European Council directive in 2003 regarding minimal standards for the reception of asylum seekers in the member states. Modeled after article 11 of this directive, which determines that member states set a period during which the asylum seeker can work only if “an initial decision had not been made within one year after the submission of a demand for asylum (...), member states determine the conditions for granting the applicant access to the job market”, the August 23rd, 2005 decree directs that asylum seekers would be authorized to work only if OFPRA had not made a decision after one year of asylum procedure (whereas previously it was possible for asylum seekers to obtain a work authorization from the employment service). In other cases, French legislation has preceded the adoption of European directives. This was the case with the creation of alternative protection or with the possibility of providing a temporary stay permit to a foreign victim of trafficking who is bringing a charge against traffickers or is witness in a criminal trial.

Relative weaknesses of civil society and social movements

Despite the fast developing associative movement in France since the recognition of the freedom of association for foreigners in 1981, the state still exerts considerable influence on immigrant community based organizations and their sphere of action remains relatively limited. The weakness of their mobilisation applies to European public sphere itself, though bearer of resources and new opportunities for collective mobilisation. This may be due to a lack of

117 Or “subsidiary protection”: the French law No.2003-1176 is of December 18th, 2003 while the European directive 2004/83/CE was adopted on April 29th, 2004.
118 A measure which proceeded the 2004/81/EC Directive of April 29th, 2004 aiming to grant a residency to third-country nationals victims of trafficking and who cooperate with the authorities. The implementation of this provision varies form country to country and is far from being satisfactory according to the prostitute advocacy organizations.
experience within this new domain as well as to discrepancy of interests between European civic organizations and extra-European ones, or even the extra-European organizations themselves. There is also a longstanding preference for local over broader, federating issues, although there is evidence of more and more organizing on transnational level (Wihtol de Wenden and Leveau 2001). New forms of mobilization are emerging recalling “tranversal politics”, such as transclass and transpolitical networks aiming at helping migrants and immigrants in need. They do not seem to have any hierarchical structure or presidency (Réseau Education sans Frontières) (Van Eeckhout 2006) and advocate “civil disobedience” in order to protect undocumented children and by extension their families.
REFERENCES


