

Gender, Migration and intercultural Interaction
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Policy Analysis Report (WP3)

Turkey

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Gender, Migration and Intercultural Interactions: Policy Analysis in TURKEY

Introduction: Immigration Policy Context in Turkey

From 1990s onwards, Turkey is considered as a "migrant sending", "transit" and "migrant receiving" country at the same time.¹ Sending labour migrants to Europe has started in 1961 with the signing of an Agreement between Turkish and West German governments.² Covering Germany's need for temporary unskilled labour and at the same time decreasing the unemployment numbers in Turkey was aimed in this agreement. Germany was not the only European country that Turkey signed such pacts with; similar agreements were also signed with Austria, Belgium, Holland, France and Sweden. The Turkish government intended these emigrants to return to Turkey, and through the use of their new skills acquired in Europe, to help to reconstruct the economy. However, most of the Turkish labour emigrants settled down in these receiving countries. Turkish emigration to Europe slowed down in the 1970s when the European countries closed their borders to labour immigration due to economic recession. However, Turkish emigration to Europe slowly continued through family reunification and family formation.³

Turkish workers also immigrated to the Middle East in 1970s. This time receiving countries were Libya, Saudi Arabia, and Iraq due to growing economy in these countries. However, as opposed to emigration to Europe, emigration to the Middle East rarely involved the entire family of the Turkish worker. In addition to the Middle East, starting from the early 1990s Turkish workers also migrated to the Russian Federation and to other places in the Commonwealth of Independent States. This immigration of Turkish workers was due to the construction and industrial contracts of Turkish companies won in these places.⁴

The scholarly literature on Turkey as a 'migrant sending' country is fairly large and covers the period in the post-1960s beginning with labor migration from Turkey to mainly Western Europe which will not be discussed in this report due to the focus of the research on the period in the aftermath of 1990s. From 1990s onwards Turkey is identified increasingly as a "transit" and "receiving" country in addition to its traditional role of "sending" country. Asylum seekers, aliens marrying Turkish nationals, professionals, retirees and students constitute the bulk of the migrant population legally residing in Turkey. There are also increasing numbers of illegal migrants from countries such as Afghanistan, Bangladesh, Iran, Iraq and Pakistan as well as many African countries. These immigrants usually aim at transiting from Turkey towards Europe though they usually remain in Turkey. Additionally, nationals of the former Soviet Union, Balkan countries, the Middle East, Morocco and Tunisia arrive in Turkey. Official figures indicate that the entry of persons from Russia,

¹Due to the focus of this report on the post-1990 immigration policy context, the discussion on Turkish emigration mainly to Europe particularly in the 1960s later on to Middle East and North Africa as well as the Turkic Republics will be omitted. The emphasis will be on "transit" migration through Turkey and migrants who arrive in Turkey.

² Kemal Kirisci, 2007, "Turkey: A country of transition from emigration to immigration", *Mediterranean Politics*, Vol. 12, pp. 91-97.

³ Kirişçi, 2007, p.91

⁴ Kirişçi, 2007, p.92

Central Asian states, the South Caucasus and the Western (NIS) hover around 1.5 million to over 3.5 million in the post-2000 period. Entry of persons from the neighboring Balkan and Middle East countries hover around 3.5 million as well. The general total of persons amount to over 17⁵ million people which include entries for touristic purposes from European countries.

The foreign nationals who arrive in Turkey work in different sectors such as domestic work, construction, textile, tourism, entertainment, education and information technology. Legal employment of these nationals is governed by the policies on visa, work permit and residence policies. The policy framework for these areas is currently undergoing substantial reform. Moreover, the Turkish legislation which aims to deal with illegal employment is also changing.

The main locomotive for the changes in Turkish asylum and migration law is the process of accession to the European Union (EU). As the EU itself is going through substantial changes in the field of immigration and asylum particularly after the 1999 Tampere conclusions and the Amsterdam Treaty, the responsibilities on the part of Turkey as a candidate state are also changing and increasing. The Accession Partnership for Turkey was prepared by the European Commission, and was adopted on 8 March 2001⁶, and revised on 26 March 2003⁷. The following objectives are set out in the field of migration and asylum policy: 1. to pursue alignment of visa legislation and practice with the *acquis*, 2. to adopt and implement the *acquis* and best practices on migration (admission, readmission, expulsion) with a view to preventing illegal migration, 3. to continue alignment with the *acquis* and best practices for border management in preparation of full implementation of the Schengen *acquis*, 4. to start alignment of the *acquis* in the field of asylum including lifting the "geographical limitation" to the 1951 Geneva Convention, to strengthen the system for hearing and determining applications for asylum, and developing accommodation facilities and social support for asylum seekers and refugees.

After the adoption of the revised Accession Partnership Document, Turkey published its National Programme for the Adoption of the *Acquis* which provided a detailed list of the efforts to be made for issues concerning migration and asylum including legislative reforms. Turkey also published the Action Plan for Asylum and Migration, which came into force as of March 2005.⁸ This document sets out the parameters for reform in Turkey including reforms on Law on Aliens and Law on Asylum by 2012. The progress in this field is monitored by the regular progress reports produced by

5 Details can be found from the annual reports of the Foreigners' Department of the Ministry of Interior and the State Statistical Institute.

6 Council Decision of 8 March 2001, on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey (2001/235/EC) OJ L 85/13 24/03/2001.

7 Council Decision of 19 May 2003, on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey (2003/398/EC) OJ L 145 12/08/2003.

8 See Asylum and Migration Legislation, published as a result of cooperation between the Turkish Ministry of Interior and UNHCR Turkey as part of the EU Twinning Project on Asylum and Migration, February 2005, pp.1-63. <http://www.unhcr.org.tr/> and <http://www.egm.gov.tr>

the Commission.⁹ Accordingly, Turkey adopted directives toward progress in this field so as to align Turkish legislation with the EU *acquis* and there are also efforts to increase institutional capacity by working on the different units responsible in this policy field. Moreover, existing legal structures regulating this field such as the European Convention on Human Rights through the adoption of relevant directives.

A review of the policy documents, the academic literature and policy efforts to reform migration and asylum legislation in Turkey reveals that efforts for reform which highlight gender and migration concentrate in the field of visa policy, illegal migration, asylum policy and work permits.

Visa Policy

The main challenge concerning the visa policy in Turkey is that it is considered to be relatively liberal when compared to the EU regime, and the positive and negative visa lists of the EU and Turkey do not overlap. The Turkish visa policy identifies three categories of entry into the country. The first category consists of individuals who enter and remain in Turkey without a visa usually for three months, though there are different categories for 30 day and 60 day periods – which suggests a pre-determined time period of stay. The second category comprises of nationals of countries who need visas to enter and remain in Turkey. In the third category, there are the nationals of countries who need to acquire a visa at the port of entry which is called the “sticker visa”. The EU objects to this type of policy practice for visas.¹⁰

Nationals of Balkan countries and the ex-Soviet Union may enter Turkey with “sticker visas”. Turkey’s current close neighborly relations with all these countries, presence of Turkic and Muslim minorities in these countries, the socio-economic benefits attributed to the travel of nationals of these countries to Turkey constitute the main reasons for the liberal visa regime extended to these countries.¹¹ One of the reasons cited in the literature for the liberal visa regime toward these countries is that policy makers also expect them to return and also not become asylum seekers or refugees in Turkey.

By 2002, the EU negative visa list and the countries whose citizens require a visa to enter Turkey was different by twenty-one countries. From 2002 onwards with the accession process, Turkey introduced visas for the Gulf countries (Bahrain, Qatar, Kuwait, Oman, Saudi Arabia and United Arab Emirates) and others including

9 For the different progress reports see [www.abgs.gov.tr](http://www.abgs.gov.tr/files/Mukteseabat_Uyum_Programi/En/Chapter_24.pdf) and program for alignment with EU law http://www.abgs.gov.tr/files/Mukteseabat_Uyum_Programi/En/Chapter_24.pdf

¹⁰ Kemal Kirisci, 2005, “A Friendlier Schengen Visa Asylum System as a Tool of “Soft Power”: The experience of Turkey”, *European Journal of Migration and Law*, vol.7, no. 4., pp. 343-367; Kemal Kirisci, 2008, “Three Way Approach’ to Meeting the Challenges of Migrant Incorporation in the European Union: Reflections from a Turkish Perspective”, CARIM-AS-2008/3, Robert Schuman Centre for Advanced Studies, European University Institute, Badia di Fiesole; Kemal Kirisci, 2008, “Informal ‘Circular Migration’ into Turkey: The Bureaucratic and Political Context”, CARIM-AS-2008/21, Robert Schuman Centre for Advanced Studies, European University Institute, Badia di Fiesole; Lami Bertan Tokuzlu, 2007, “Migration Law in Turkey”, CARIM-AS-2007/1, Robert Schuman Centre for Advanced Studies, European University Institute, Badia di Fiesole; Ibrahim Kaya, 2008, “Circular Migration and Turkey: A Legal Perspective”, CARIM-AS-2008/37, Robert Schuman Centre for Advanced Studies, European University Institute, Badia di Fiesole.

¹¹Kirişçi, 2008.

Indonesia, the Republic of South Africa, Kenya, Bahamas, Maldives, Barbados, Belize, Seychelles, Jamaica, Fiji, Mauritius, Grenada and Santa Lucia, Marshall Islands, Micronesia. Currently, Turkey needs to include eight more countries in its positive visa list and revise its negative list by requiring visas from nationals of Azerbaijan,¹² Mongolia, Uzbekistan, Tajikistan and Turkmenistan.

Work Permits

A foreign national needs a work permit to be able to work in Turkey. The procedure is as follows: First, s/he needs to apply for a "work permit" through the Turkish consulate abroad; second, s/he needs to receive an "employment visa"; third, once s/he arrives in Turkey s/he needs to apply for a "residence permit" through the police authorities in Turkey. The Law on Work Permits for Foreign Nationals (LWPF) is the governing legal document for these procedures.¹³ Those who work as self-employed or as employees need to acquire work permits in accordance with this law (Art. 1). The categories of individuals who are outside the scope of this law are exempted from the work permit requirement on the basis of reciprocity, international law and EU law. Some government ministries, public agencies and institutions such as the Prime Ministry, the Ministry of Health and the Higher Education Council may issue work permits or employ foreign staff. Hence the foreign national who work in these sorts of agencies may not require work permits. The Ministry of Labor and Social Security acts as the main authority for the issuing work permits. The Ministry accepts applications by foreign nationals, or employers thereof, residing in Turkey with a valid residence permit.

Employment Visa and Residence Permit for Employment Purposes

A work permit is valid only when it is accompanied by an employment visa and a residence permit. Once a foreign national obtains a work permit, the permit holder is required to apply to a Turkish consulate for an employment visa within 90 days. In practice the employment visa is a stamp by the Turkish consulate on the passports of applicants which states that the visa is issued for the purpose of employment. Certain categories of foreign nationals are exempted from employment visas which include foreigners excluded from the scope of the LWPF.

Resident permits are regulated by the Law on Residence and Travel of Foreign Nationals in Turkey.¹⁴ Once the work permit holder enters Turkey with an employment visa he/she is also required to apply to the Ministry of Interior through local police authorities for a residence permit within 30 days of entry (Article 3(1) of Law on Residence and Travel of Foreign Nationals). In general residence permits are granted for a period of five years and the duration of permits depends on the type of and duration of work permits. In addition to this general rule, the duration of the residence permits is determined on the basis of applicant's request, international agreements, and relevant legislation. The Ministry of Interior is authorized to set a shorter or longer term in accordance with the principle of reciprocity after consulting with the Ministry of Foreign Affairs (Articles 8 and 9 of Law on Residence and Travel

12 European Commission, *Turkey 2007 Progress Report*, 2007.

13 Law no. 4817, Official Gazette, 06.03.2003 no. 2504.

14 See Yabancıların Türkiye'de İkamet ve Seyahatleri Hakkında Kanun, <http://www.mevzuat.adalet.gov.tr/html/952.html>

of Foreign Nationals).

In terms of types of work permits the Law on Residence and Travel of Foreign Nationals enumerate four categories. First, definite work permits are granted for a specific duration at a specified workplace or establishment and in a certain profession. Definite permits are issued for a period of one year for the first time and are renewable for a longer period under the conditions specified in the Law (Article 5). Second, indefinite work permits may be issued for foreign nationals who have legally resided in Turkey for an uninterrupted period of eight years and for foreign nationals who have legally worked in Turkey for six years. These permits are not restricted with respect to profession, geographical location and administrative type (Article 6 of the Law on Residence and Travel of Foreign Nationals). No restrictions regarding the occupation, sector (agriculture, industry or service), geographic location or locality can be imposed to holders of an indefinite work permit. Third, independent work permits which allow self-employment of foreign nationals may be granted to those who have legally and uninterruptedly resided in Turkey for at least five years which means that foreign nationals cannot apply to independent permits from abroad or prior to arrival in Turkey. Fourth, exceptional work permits may be issued to certain categories of foreign nationals irrespective of duration of previous stay. These categories are limited under Article 8 of the Law on Residence and Travel of Foreign Nationals and the law includes EU nationals and their spouses and children who may not be EU citizens.

Irregular/Illegal Migration and Illegal Employment

Turkey also aims at combatting illegal migration and continues to require visas from nationals of Afghanistan, Bangladesh, Pakistan, Syria and other Arab countries in order to prevent transit through Turkey. Another important policy challenge is the expectation of the EU to sign "readmission agreements" with different countries to enable the illegal immigrants to return. It is significant to note that the requirement of the EU for Turkey to sign readmission agreements presents a major challenge particularly in relation to management of return migration.

The Law on Work Permits of Foreign Nationals requires that employment of foreign nationals is to be notified by employers of foreign employees and independent workers themselves to relevant authorities. Independently working foreign nationals are required to report to the Ministry of Labor and Social Security within fifteen days of taking up work and before termination of work (Article 18 (a)). Employers who employ foreign nationals are required to notify the Ministry of Labor and Social Security within fifteen days of commencing of work, in case the employer has not started to work within thirty days after the issuing of the work permit and thirty days from the date the service contract was terminated for any reason. Employment of foreign nationals is to be regularly monitored by employment inspectors of the Ministry of Labor and Social Security and those of the Social Security Institution and inspecting and supervisory staff of other public institutions. The law provides for a set of administrative sanctions for discouraging illegal employment of foreign workers including fines for both self-employed foreign national and for the employer of foreign nationals.

Asylum policy

The main challenge for Turkey's asylum regime is that Turkey applies a "geographical limitation" to the 1951 Geneva Convention which means that Turkey will permit asylum seekers only from Europe. Turkey is under pressure to lift the "geographical limitation" due to the harmonization efforts with EU legislation. Therefore Turkey will no longer be able to only grant temporary protection to these individuals and will need to find policy solutions for the settlement of these individuals. The efforts in this field constitute of setting a date for lifting the geographical limitation, building institutional capacity for data on country of origin information, enhancing human resources capacity by training personnel working with asylum seekers as well as building and operating reception centers.

The state actors involved in the transformation and implementation of the legislative framework on migration and asylum policy include the Ministry of Interior, the Ministry of Foreign Affairs and the Armed forces. The international organizations which are actively involved in the process are the UNHCR and the IOM. Examples of non-governmental actors which emerge in the field are the Association for Solidarity with Migrants and Asylum seekers and the Human Resource Development Foundation among others. The EU remains central to the continuous and systematic institutional and legislative reform due to the accession process and its attendant requirements in the progress toward membership.

Chapter 1: Gender in Migration Policies

1.1. Gender and Gender Equality in Migration Policies

As far as gender and gender equality are concerned there are no specific and direct provisions integrated into the policy framework on migration. However, when examined closely there are many references to women particularly concerning the field of irregular migration, trafficking of women and the women working in the entertainment and tourism sector which will be discussed below. A more fundamental matter concerning the basis for introducing gender and gender equality into the policy framework originates from the amendments which renders Turkish legislation to conform with international legislation in an increasing manner. One of the most significant developments concerning migrants in general and gender issues in particular could be considered as the amendment to Article 90 of the Constitution, which provides that "International agreements duly put into effect bear the force of law [...]. In case of contradiction between international agreements on fundamental rights and freedoms approved through proper procedures and domestic laws, due to different provisions on the same issues, the provision of international agreements shall be considered."¹⁵ According to this amendment, Turkish legislation will need to be more attentive to international legislation on fundamental rights. For example, the Turkish Grand National Assembly amended Article 59 of the Penal Code which allowed for automatic deportation of foreigners by taking into consideration the ECHR jurisprudence which requires consideration of likelihood of persecution in the country of origin and family unity.¹⁶

1.2. Gender stereotyping and Policy-Making: Issues and Levels

The intersection of gender stereotyping and migration is taking place in the debates and research on irregular migration, illegal employment and trafficking of women. Illegal employment became a significant policy issue in Turkey with the arrival of increasing numbers of immigrants from 1990s onwards. Prostitution by Russian women and women from ex-Soviet Union (named/stereotyped as "Natashas" in public and policy circles for identifying sex workers) became the main form of illegal employment. This stereotyping became so common that one of the research on irregular migration and trafficking of women reports that Russian women who are married to Turkish men find it difficult to conduct their daily lives in Turkey.¹⁷ Trafficking of women was also on the rise in the aftermath of the 1990s. Although research does not report well advanced organized networks for trafficking through Turkey, it points to the different ways in which women are trafficked and end up working as sex workers or in the entertainment industry or in domestic work without any social security or any kind of security. As party to the UN Convention Against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish

¹⁵ Law on the Amendment of Certain Provisions of the Constitution of the Republic of Turkey, adopted on 7 May 2004, Official Journal No. 25469 22 May 2004.

¹⁶ For the Penal Code and provisions concerning deportation see <http://www.mevzuat.adalet.gov.tr/html/1414.html> and Tokuzlu, 2007.

¹⁷ Sema Erder and Selmin Kaska, 2003, "Irregular Migration and Trafficking in Women: The Case of Turkey", IOM-International Organization for Migration, Geneva.

Trafficking in Persons, especially Women and Children, Turkey has adopted a legislative framework which abides by these international conventions.

Women who arrived in Turkey in the transition period in Russia and the post-communist countries also were engaged in what was called the "suit case trade". This form of trade gradually resulted in these women setting up businesses and partnerships with Turkish nationals and being involved in the textile trade by setting up shops, engaging in production and working as sales representatives. Nationals of the ex-Soviet Union work in the tourism sector as sports instructors and animators, in the entertainment sector as dancers, in the fashion industry as models.

The domestic work sector is also populated with women particularly from the ex-Soviet Union and to a limited extent from Morocco and Tunisia. They arrive usually through the informal networks as "word of mouth" and also through employment agencies. These women mostly work without work permits and engage in a form of "circular migration" between their country of origin and Turkey.

1.3. Visibility of Gender in Policy Texts

Gender is a category that is on the road to becoming "visible" in policy texts in Turkey in migration policies. Gender is becoming part of the academic literature and the policy context in Turkey through different scholars who aim to generate data especially on numbers of irregular migrants entering Turkey. Gender is also part of the studies which concentrate on "circular migration".¹⁸ Government Agencies such as the Ministry of Interior, the Turkish Statistics Institute as well as international organizations such as the International Organization for Migration are major participants in the generation of data in this field. Different research projects are also pursued by the French Institute of Anatolian Studies, the German Orient Institute in Istanbul as well as the Migration Research Program at Koc University. Non-governmental organizations such as the Foundation for the Development of Human Resources and the Associations for Solidarity with Immigrants and Refugees are also active in this field. Although it is not possible to identify a direct link between the policy texts and the activities of these NGOs, it is possible to note that they have been fairly instrumental in providing shelter and services to victims of trafficking, and have been effective in providing training to security forces, judges and prosecutors who attend these victims. Moreover, these NGOs engage in advocacy efforts to highlight the deficiencies in the legislation concerning trafficking of women. For example, they emphasize the importance of supporting victims and instead of deporting women for engaging in prostitution focusing on their needs as victims of human trafficking and gender based violence.¹⁹

¹⁸ Kemal Kirisci, 2008, "Three Way Approach' to Meeting the Challenges of Migrant Incorporation in the European Union: Reflections from a Turkish Perspective", CARIM-AS-2008/3, Robert Schuman Centre for Advanced Studies, European University Institute, Badia di Fiesole; Kemal Kirisci, 2008, "Informal 'Circular Migration' into Turkey: The Bureaucratic and Political Context", CARIM-AS-2008/21, Robert Schuman Centre for Advanced Studies, European University Institute, Badia di Fiesole; Ahmet Icdygu, 2008, "Circular Migration and Turkey: An Overview of the Past and Present – Some Demographic Implications", CARIM-AS-2008/10, Robert Schuman Centre for Advanced Studies, European University Institute, Badia di Fiesole.

¹⁹ Muhtar Cokar and Turgut Tokus, 2005, " The Role of Non-Governmental Organisations: Human

Most studies on gender and migration focus on irregular migration and trafficking of women. For example, Article 8 of the Passport Law lists persons forbidden entry to Turkey among which are persons suspected of planning to undermine security and public order in the Republic of Turkey or helping or participating with persons wishing to do so; prostitutes and persons inciting women to prostitution and persons involved in trafficking women for prostitution and all other types of traffickers and smugglers; persons unable to demonstrate that they have sufficient funding to support themselves during their stay in Turkey or to leave the country, or that they have someone to support them or a guarantor attesting that they will not engage in jobs reserved for Turks.²⁰ A brief review of policies on residence permits or preferential residence treatment suggests that these policies mostly integrate gender related matters in human trafficking. For example, the Ministry of Labor and Social Security publishes extensively on its website legislation governing work permits as well as awareness raising activities on trafficking of women. It also advertises an emergency line (157) for help to victims of human trafficking.²¹

1.4. Links between National and Local Policy Trends to European and International Developments

Most policies in Turkey concerning policy initiatives on gender and migration are linked to the European and international policy developments particularly in terms of irregular migration and trafficking of women. For example, as mentioned above the accession process of Turkey to the European Union fundamentally transformed the ways in which migration policy and gender policy are going through reforms in Turkey. The Action Plan prepared for migration and asylum policy constitutes the basis for such transformation. Turkey as a member of the Council of Europe and a member of the International Organization for Migration also continues to address gender and migration policies at the international level by implementing projects on their own and in cooperation with different NGOs such as the Human Resource Development Foundation, which is an NGO which operates in this field. There are also other NGOs such as the Association for Solidarity with Refugees and Asylum seekers, which provides support services mainly to asylum seekers and migrants in addition to awareness raising.²² The different activities concerning introduction of new provisions to the Penal Code penalizing human trafficking are also reflections of how European and international policy developments become part of the Turkish policy framework. Moreover, new administrative units are also introduced such as

Resource Development Foundation/ Assistance to Victims" in Trafficking in Women: A Major Human Rights Violation, Conference Proceedings, 21-22 May 2005 Istanbul, 4- 5 June 2005 Trabzon, Medecins du Monde – Greece and International Blue Crescent Relief and Development Foundation with the support of the European Commission.

20 Pasaport Kanunu (Passport Law) <http://www.mevzuat.adalet.gov.tr/html/951.html>; Yabancilarin Calisma Izinleri Hakkinda Kanun (Law on Work Permits of Aliens) <http://www.mevzuat.adalet.gov.tr/html/1219.html>

21 For details on work permits and efforts to combat human trafficking and illegal employment by the Ministry of Labor and Social Security see http://www.yabancicalismaizni.gov.tr/english/index_eng.htm; http://www.yabancicalismaizni.gov.tr/insan_ticareti_ile_mucadele.htm; and the legal framework on consequences of illegal employment of foreigners vis <http://www.csgb.gov.tr/> (Izinsiz yabanci calistirmaya iliskin idari para cezalari/ Administrative Fines Employing foreigners without a work permit)

22 For details of their activities see respectively http://www.ikgv.org/eng_ikgv_gecici/ing_index.html and <http://www.sgdd.org.tr/index.php?lang=en>

the "Anti-Trafficking National Task Force". Turkey also continuously supports the efforts by the Organization for Security and Cooperation in Europe, Black Sea Economic Cooperation and Stability Pact in this field. Amendments to the laws on work permits, citizenship law and the legal basis for providing health care to the victims of trafficking are a few examples of official efforts in this field. Security Forces also report cooperation with security forces in other countries such as Romania for rescuing victims of trafficking. However, problems still persist with respect to data collection, the speed and extent of change in legislation and implementation of the adopted policy frameworks at both the national and local levels.

Turkish law on entry, deportation, expulsion and extradition constitutes of a mix of different international legal texts: the European Convention on Human Rights and its Protocols, the UN Covenant on Civil and Political Rights, the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention Relating to the Status of Refugees (Arts. 32-33), the International Convention on the Protection of Rights of all Migrant Workers and Members of their Families, the Geneva Convention Relative to the Treatment of Prisoners of War, the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, the European Social Charter, the European Convention on Social and Medical Assistance, the European Convention on Extradition, the Second Additional Protocol to the European Convention on Extradition, the Constitution of the Republic of Turkey, Law on Residence and Travel of Aliens, the Turkish Criminal Law, the Turkish Passport Law, Turkish Citizenship Law²³ and By-law No. 94/6169 of 30 November 1994 on the procedures and principles related to population movements and aliens entering Turkey individually or in groups seeking asylum in Turkey or requesting residence permits in order to seek asylum elsewhere. Therefore Turkey follows closely the European and international legal texts and integrates them into domestic policy-making though problems remain with implementation stages.

23 For citizenship law see <http://www.mevzuat.adalet.gov.tr/html/364.html>,; for Law on Residence and Travel of Aliens see <http://www.mevzuat.adalet.gov.tr/html/952.html>; for Passport Law see <http://www.mevzuat.adalet.gov.tr/html/951.html>.

Chapter 2: Migration in Policies of Gender Equality

2.1 Policy Framework on Gender Equality

Gender equality has been receiving increasing attention since the late 1970s and early 1980s in academic and policy practitioner debates and calls have been made by several non-governmental organizations most of which are informed by varieties of feminism. Such attention to gender equality is also coupled with an increasing awareness, albeit limited, of public institutions. The changes in terms of policy and practice in this regard also seem to have been informed by international organizations such as the World Bank and the United Nations agencies, particularly the United Nations Development Program. A milestone in this process was the ratification of the Convention on Elimination of all Forms of Discrimination against Women (CEDAW) in 1986. As a result of this process, specific references to “women” were inserted to the Fifth Five Year Development Plan (1985- 1989) for the first time in 1985.²⁴

In 1990, as a requirement of the CEDAW process, General Directorate for the Status and Problems of Women (KSSGM) was established to oversee that gender equality becomes the norm. After the approval of the Platform for Action at the 4th World Conference on Women in Beijing in 1995, KSSGM launched the National Program for the Enhancement of Women’s Integration in Development which aimed at increasing women’s participation in development, compiling gender-disaggregated data, and enhancing institutional capacity.²⁵ In addition to these, a new unit was established at the Turkish Statistical Institution producing, compiling and disseminating gender disaggregated data.

1990s saw many other developments including increasing compulsory basic education from five to eight years in 1997 which was in part aimed at reducing gender-based disparities in educational attainment. Through changes in the Civil Code in 1997, women were granted the right to maintain their maiden name along with the name of their spouse. The articles regulating adultery as a crime in the Penal Code were annulled by the Constitutional Court and the Ministry of Justice took measures to regulate virginity control in 1998. In the same year, a new law (Law on Protection of the Family) regulating measures for protecting those exposed to domestic violence was passed and the Law on Income Tax was amended so as to allow married women to file for income tax separately.

More developments followed in the 2000s. In 2001, the new Civil Code abolished the concept of the husband as ‘the head of the family’, acknowledging equal division of property acquired during marriage, and making legal age for marriage (17) equal for women and men. Changes in the Labor Law in 2003 aimed to ensure equality of women and men in working life and to combat discrimination against women when entering the labor force.

24 This section relies heavily on research results produced by the QUING project on Turkey and the website of KSSGM www.ksgm.gov.tr.

25 For detailed activities of the KSSGM see www.ksgm.gov.tr

In addition to the ratification of CEDAW with its attendant institutional mechanisms and other developments that followed, the EU accession process gave an immense impetus to the process of institutionalizing and mainstreaming gender equality in the socio-political arena. In terms of policy and practice, however, gender equality in Turkey still remains piecemeal and far from being systematic. These developments included the decision to comply with EU standards in the field of gender equality as indicated in the 2003 National Program for the Adaptation of the *Acquis* (NPAA). The government pledged to participate in the EU's Gender Equality Program. Although these developments were important, the Constitutional amendments of 2004 may be seen as a milestone in the process of mainstreaming gender equality. Although the 1982 Constitution had a provision on gender equality, the amendment required the state to be responsible for ensuring non-discrimination between women and men and to take necessary measures for equality in practice in every field. In 2004, KSSGM's organizational law as a General Directorate was adopted allowing the institution to carry out its functions properly and perform the tasks of policy formulation and coordination. In 2005, the Law of Municipalities was amended to require large municipalities to develop protective and preventive services for women who are subjected to violence.

In addition to these legislative developments, much debate has been going on with respect to enhancing the participation of women in politics in the 2000s. Demands were raised by civil society groups for a quota for the underrepresented sex in candidate lists of political parties in general and local elections. Progress reports by the EU Commission point to low levels of women participation in the national parliament and local representative bodies in 2005 and 2006. Although the number of seats occupied by women parliamentarians doubled in the 2007 elections, this is still far from desired levels.

The EU in the progress reports notes that there remains a wide gap between men and women in economic participation and opportunity, educational attainment, health and survival, and political empowerment.²⁶ It is noted that abolishing the gender requirement for nurses in May 2007 is a step forward in promoting gender equality. The transposition of legislation concerning discrimination on grounds of racial or ethnic origin, religion or belief, disability, age and sexual orientation is incomplete. Moreover, the EU expects the establishment of an effective and independent "Equality Body" to promote non-discrimination and equal treatment.

2.2. Migrant Women as part of Gender Policies?

Concerns relating to gender and migrant women mostly surface in the context of irregular migration and the efforts to combat irregular migration. The efforts along these lines have accelerated and diversified with the accession process to the EU. Turkey signed the UN Convention against Transnational Organized Crime and its two additional protocols, including the Protocol to Prevent, Suppress and Punish Trafficking, especially of women and children. Moreover, the amendment to citizenship law introduced gender equality for acquisition of citizenship which requires both husband and wife who are aliens to go through three years of

26 European Commission, *Turkey Progress Report 2007*, p. 18.

marriage, prior to the amendment the women could automatically become Turkish citizens.

2.3. Migrant Women's Special Need and Gender Equality Policies

In its current stage, the existing policy frameworks for gender equality do not directly address the migrant women's special needs and problems. However, it is possible to note that as a result of the debates and policy efforts to combat irregular migration and trafficking of women, new legislation is being introduced. For example, trafficking of human beings is classified under the heading of organized crime and recognizes women as victims. Prior to these amendments foreign women were being deported in an effort to combat trafficking. However, the current legislation and efforts concentrate on the perpetrators and networks involved in the sex industry. Moreover, as noted above, the Ministry of Labor and Social Security introduced awareness raising activities and an emergency line for these women.

Similarly, changes in the Citizenship Law aim to avoid false marriages and thereby the deception of women to a certain extent. New regulations on work permits also aim to provide the legal basis for making domestic workers legal and bringing them under a social security framework protecting them from being vulnerable and having to engage in a perpetual "circular migration" in order to sustain their employment. However, these efforts to promote legal employment do not necessarily reach their objectives when taking into consideration those women employed in the entertainment sector. This points to a lack of an administrative unit and attendant legislation concerning migrant women's special needs.

2.4. Multiple Discrimination, Pro-Active, Positive Policies and Gender Equality

It is not possible to suggest that pro-active, positive action policies deliberately and extensively target multiple discrimination. However, changes to the law on trafficking of women or the citizenship law suggest that the efforts on promoting gender equality also aim to cover migrant women to a certain extent.

2.5. Links between National and Local Policy Trends to European and International Developments

The developments in national and local policies mostly originate from responsibilities, research and awareness raising activities to which Turkey participates at both the international and European levels. Similar to the policy on migration the gender equality policy developed substantially as a result of the process of accession to the EU. Please see the analysis in 1.4 and 2.1 for details.

Chapter 3: Intercultural Interaction as a policy objective

3.1. Policies on Gender and Migration Meet Integration, Multiculturalism or Assimilation

The Turkish political system is built around the idea of territorial unity and integrity in the form of a unitary state with the parliament as the focal point of sovereignty of the Republic. Scholars such as Cizre state that "borders took precedence over other attributes of a nation-state in the creation of the Turkish Republic in 1923".²⁷ According to Cizre territorial aspect of Turkish nationalism is highly emphasized in official ideology. Two causes of this situation is identified: First one is the influence of Ottoman legacy. The involuntary and rapid loss of the territory in the later periods of the Ottoman Empire was perceived by the Republican elite as the biggest humiliation and failure. This fear of loss of a territory inherited by the Republican elite has been accepted as being equal to the destruction of the Republic, and through this fear the territorial aspect of Turkish nationalism has become a primary characteristic of Turkish nationalism. Second cause of the emphasis on the territorial aspect of Turkish nationalism was that the national territory of Turkish Republic became a differentiating factor between new Turkish nationalism and its late Ottoman version. Republican nationalism through its emphasis on territory that comprises Anatolia distanced itself from pan-Turkism of the Young Turk period. Anatolian territoriality was the main difference between Republican nationalism and Ottoman nationalism, which has territorialized Pan-Turkism and Islam. Therefore, according to Cizre's presentation the fear of loss of territory and the attempt to differentiate Republic's nationalism from the Empire's nationalism the "borders" were the primary attributes of Turkish nation-state in the early times of Turkish Republic. One could argue that today, borders and territory remain at the core of Turkish nationalism.

Nationalism studies usually state that in every nationalism there is an inherent duality in the sense that every nationalism has an ethnic and civic element with varying degrees at varying times. It is argued that at some times civic and territorial aspects of nationalism gain importance while at others ethnic aspects and primordial ties dominate the understanding of nationalism in the minds. This situation is also valid for Turkish nationalism that also carries both ethnic and civic elements. In those lines Cizre states that "Turkish nationalism also contains two contrasting strands, one highlighting the ethnic singularity of Turkishness and the other that essentially grants equal citizenship rights to all those living on the Turkish territory regardless of their ethnic origin".²⁸ Similar to Cizre Somer²⁹ also argues that Turkish nationalism is a mixture of civic and inclusive and ethnic and exclusive elements. He states that in some periods Turkish nationalism has some ethnic overtones, but nevertheless it is still based on cultural and secular nationalism. "It would be wrong to argue that the culture on which this nationalism was based was one that was

²⁷ Umit Cizre, 2001 Turkey's Kurdish problem: Borders, identity, and hegemony. In Brendan O'Leary, Ian Lustick and Thomas Callaghy, eds., *Right-sizing the State: The Politics of Moving Borders*, Oxford: Oxford University Press., p.226.

²⁸ Cizre, 2001, p.231.

²⁹ Murat Somer, 2005, "Defensive- vs. liberal-nationalist perspectives on diversity and the Kurdish conflict: Europeanization, the internal debate, and Türkiyelilik" *New Perspectives on Turkey*, 32, 73-91.

already there fully formed, and one that exclusively belonged to ethnic Turks. Instead, both the nation and its culture may be seen as assimilatory projects themselves and were created by (mostly elite) actors whose own identities were in the making".³⁰

Therefore, taking into account these discussions on Turkish nationalism, it is possible to conceive that there are alternative identities in Turkish nationalism. It could be argued that although it also carries some ethnic elements at certain times its civic elements prevents different sub-identities to be excluded from Turkish nationalism and the characteristics of the political system. Moreover, as referred by Somer Turkish nationalism's cultural aspect that has been in the making since early Republican era has enabled various identities to be incorporated into Turkish nationalism such as the incorporation of both Islamic identity and secular identity at the same time. The political system overall carries different aspects of the above mentioned characteristics of nationalism including the debates on secularism and those of how different ethnic as well as religious identities are to be situated within the system. A significant note to be made here is that questions around identity and religion all have acquired varied dimensions in the process of Turkish accession to the European Union and the approaches of different governments to this process and the accompanying reform efforts.

The policies on gender and migration in Turkey do not focus on advancing integration, multiculturalism or assimilation explicitly. The laws on settlement, employment and citizenship point to an emphasis on Turkish culture and Turkish descent for promoting integration hence an assimilationist tendency in limited terms.

The Turkish Settlement Law which has been amended in September 2006 sets as a condition that a person to be either of Turkish descent or belong to Turkish culture in order to be admitted as an immigrant in Turkey. However, there is not a clear definition of either of these concepts however it sets a procedure for determining them. Hence the determination of Turkish descent or attachment to Turkish culture shall be made by the Council of Ministers upon a proposal by the Ministry of Foreign Affairs by consulting the relevant ministries.³¹

After entering the Turkish territory, immigrants shall stay in the immigrant reception centers at the points of entry until their health, customs, administrative and transportation procedures are completed. These immigrants who arrive in Turkey by virtue of specific laws must apply for themselves and their family members to the civil governor of the place determined as their temporary or permanent settlement area by the State, in order to be granted Turkish citizenship. The "unengaged immigrants" must apply for themselves and their family members to the civil governor of the place where they are settled. Both are granted an "Immigrant certificate" which is valid as a temporary identity card for two years. They are granted Turkish citizenship by the Council of Ministers after the completion of the procedures.

³⁰ Somer, 2005, p.84.

³¹ Law No. 5543 of 19 September 2006, Official Journal No. 26301 of 26 September 2006, also see for Settlement Law <http://www.mevzuat.adalet.gov.tr/html/27159.html>.

As part of settlement and integration, acquisition of Turkish citizenship may be acquired by birth, marriage and naturalization. For the purposes of this study, it is significant to note that an amendment to Turkish citizenship law sets equal standards for acquisition of citizenship for both men and women. Before the amendment was in effect, women could immediately acquire citizenship by a declaration during the wedding ceremony. The amendment is related to efforts to avoid marriages of convenience and also the use of such methods in trafficking of women. According to the new law, marriage to a Turkish citizen does not automatically lead to acquisition of citizenship. Aliens wishing to acquire Turkish citizenship need to apply to a senior civil governor in Turkey or to a Turkish consulate abroad, be married for at least three years in a continuing marriage in which husband and wife live together.

Due to concerns about illegal employment, the right to work is tightly regulated and monitored. Moreover, certain jobs are reserved only for Turkish nationals and aliens are forbidden from engaging in employment in those jobs (Article 15 of the Law No. 5683 on the Residence and Travel of Aliens).³² These jobs range from working as medical doctors, judges prosecutors to pilots, judges, prosecutors and customs consultants. Turkey ratified the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families on 27 September 2004. This was expected to increase access of aliens to the labor market in Turkey however a long list of jobs forbidden for aliens remains valid. The Turkish Descent Professions Law introduces preferential treatment for those with Turkish descent.³³ However, overall integration into the Turkish labor market remains difficult for the limits to who can access the market as well as which professions they may pursue.

Moreover, political rights for aliens are also limited in Turkey. The European Union has expanded the right participate in municipal elections and elections to the European Parliament to EU citizens. Turkish law excludes aliens from political life in Turkey.

Therefore, it is significant to note that most existing policies signal an assimilationist policy with respect to integration rather than a multicultural or an intercultural dialogue approach.

3.2. Management of Emigration and Return Migration in Policies on Gender and Migration

The most important and relevant policy agenda items which relate to return migration and emigration are covered by debates and actions on freedom of residence and movement for aliens, deportation/expulsion decisions, readmission agreements and combating human trafficking and smuggling.

An example of how Turkey applies international rules on allowing freedom of movement and residence for aliens might be found in a case when Turkey had to reform its deportation/expulsion system after the ECHR found it in violation in the

32 See <http://www.mevzuat.adalet.gov.tr/html/952.html>

33 For details see <http://www.mevzuat.adalet.gov.tr/html/20060.html>

case of an Iranian woman who would have faced inhuman punishment by stoning, whipping or flopping if deported (Jabari vs. Turkey, ECHR, Judgement of 11 July 2000, Appl. No. 40035/98). Hence Turkey would not deport those individuals who are recognized as refugees by UNHCR in Turkey and those whose cases are pending before the agency. Moreover, Turkey introduced a new Directive by means of which the Ministry of Interior will decide on the cases of individuals whose refugee claims have been rejected by the UNHCR, and decide accordingly on their deportation (General Directorate of Security of the Ministry of Interior of Turkey, Directive No. 57 of 22 June 2006, Document no. B.05.1.EGM.0.13.03.02/16147).³⁴

As part of illegal migration, Turkey continues to sign readmission agreements with the source countries, transit countries and countries of destination as part of its efforts to align legislation with that of the EU. Accordingly Turkey has signed readmission agreements with Greece, Ukraine, Syria, Kyrgyzstan and Romania. Negotiations continue with countries such as the Russian Federation, Uzbekistan, Belarus, Hungary, Macedonia, Ukraine, Lebanon, Egypt, Libya and Iran. Readmission agreements are proposed with Pakistan, Bangladesh, India, the People's Republic of China, Tunisia, Mongolia, Israel, Georgia, Ethiopia, Sudan, Algeria, Morocco, Nigeria and Kazakhstan (Turkey's Action Plan on Asylum and Migration, para. 3.2.7.).

3.3 Intercultural Interaction and Policy Aims.

It is significant to note that it is not possible to identify policies and initiatives which aim to enhance intercultural interaction and cooperation so far as a policy objective except for recognized refugees. Some NGOs such as the Association for Solidarity with Migrants and Refugees and the Human Resource Foundation engage in activities and projects to promote integration of these individuals. Legislation concerning responding to especially the education and health care needs of the asylum seekers and their families are also part of the agenda on migration. In this field, the Institution for Social Services and Protection of Children also engages in efforts to serve the needs of asylum seekers and migrants particularly through the agency of its Unit working on the EU and External Relations.³⁵ There are also some studies by scholars who perform research on questions of integration of migrants in Turkey which are being published focusing on needs of these migrants recently.³⁶

Turkey presents a fairly interesting case in terms of focusing on intercultural interaction. The main reason for this is that Turkey is currently identified as a sending, transit and receiving country. On the one hand, Turkey is in a continuous process of reform through the EU accession process with respect to policies concerning intercultural interaction involving different ethnic and religious identities within Turkey which are not necessarily a consequence of recent migration. However at this point in time it would not be possible to find a direct link between these policies promoting intercultural interaction and the emerging needs as well as rising

³⁴ For details see Tokuzlu 2007.

³⁵ For details see activity report 2007 by this institution at <http://www.shcek.gov.tr/Yayinlar/FaaliyetRaporlari/2007.FAALIYET.RAPORU.pdf>

³⁶ Didem Danis, 2006, "Integration in Limbo: Iraqi, Afghan, Maghrebi and Iranian Migrants in Istanbul", MiReKoc Research Projects 2005-2006, Migration Research Program at the Koc University, Istanbul.

demands due to its current status as a receiving and transit country. The increasing activities of some NGOs and several state agencies point to efforts at integration particularly of asylum seekers and refugees, such as through language courses or attempts to provide or facilitate access to services via newly established reception centres. Though these efforts are currently far from being systematic they usually aim at responding to the needs emerging from the increasing numbers of immigrants. Nevertheless these activities have not resulted in a planned policy initiative involving a wide range of immigrants of different origin. On the other hand, Turkey is part of debates and activities on intercultural interaction for a considerable period of time due to Turkish emigration to European countries. The most recent debates revolve around discussions on Turks as Muslims in Europe, their contribution to the post-WWII history of mainly Germany, or particularly in the context of gender debates the controversies on domestic abuse, forced marriages or honor killings. A considerable number of immigrant associations as well as pro-immigrant associations and state agencies in different European countries, for example Germany, the Netherlands, France where Turks are in greater numbers compared to other European countries, are actively involved in promoting objectives of intercultural interaction at local, regional and national levels occasionally extending to European level cooperation as well.

3.4. Links between National and Local Policy Trends to European and International Developments

The preliminary research reveals that so far there is no a definite, systematic and clear policy on integration except for the legislation governing settlement, citizenship, labor market participation by aliens and restricting political rights in the case of Turkey. Most of the legislation emphasizes links to Turkish culture and Turkish descent. Almost all the current trends toward transformation of the rights of aliens and promoting integration are linked to the international conventions to which Turkey is a party and the responsibilities to the EU in the process of accession as listed in 1.4. It is significant to note that research on the role of NGOs in the matter concerning integration becomes important at this stage in the absence of a clear and systematic policy.

Preliminary Conclusions

Intersection between migration and gender regimes

A brief overview of the Turkish policy framework suggests that the intersection between migration and gender regimes is confined to mainly the debates on irregular migration and trafficking of women. Moreover, changes in the citizenship regime, laws governing visas, residence and work permits also brought matters concerning gender issues on the agenda. Moreover, preliminary research suggests that the transformation of legislation is increasing, diversifying and the levels and actors for implementing the legislation are multiplying. However, there seems to be a need to connect all these efforts with one step further toward intercultural cooperation. The case of Turkey is likely to offer interesting evidence particularly from a perspective of a candidate country to the EU whereby the legislation on migration and gender

equality are changing at the same time. Moreover, as a country which is increasingly becoming a country of transit and destination, the issues around gender and migration are capturing the center stage at the same time. However, it is not possible to note that the link between the two are systematically and effectively established and pursued. The sporadic efforts pursued by the NGOs point to increasing awareness and activism in this field, which require further research. The policies formulated seem to constitute reactive policy formulations rather than proactive policy initiatives. The relations with the sending countries also seem to remain at the level of bilateral agreements concerning readmission rather than mutual cooperation.

Re-examine and reassess with project objectives

This current research becomes more pertinent since there seems to be very little research on intercultural interaction which is recently developing due to the presence of increasing numbers of migrants in general and women migrants in particular in Turkey. The legislation seems to be relatively rapidly developing in issues concerning entry, exit, work, residence and settlement. However, there seems to be very little in the way of research on integration of those who settled in Turkey and also the issues surrounding problems arising from implementation and their consequences. Additionally, there seems to be much need for research on how violence, trafficking and the media may play different roles in the ways in which issues of gender become part of the migration and asylum policies.

Identify contradictions and problem areas

The policies in Turkey seem to be transforming to harmonize with EU legislation on immigration, asylum and gender equality. Therefore it is possible to identify mostly problem areas whereby the objectives set out by the EU or the standards as well as the objectives set out by the international legal framework are far from being realized. For example, in most policy documents and research on women, challenges arising from irregular migration seem to be central. However, questions around the women who engage in self-employment, work in the textile industry or the domestic sector remain to be marginal particularly when the issue is one of implementation of the existing/transforming legislative framework. For example, acquiring work permits remains to be a relatively complicated and lengthy process which results in most migrant engaged in domestic work to be part of "circular migration" between their country of origin and Turkey. There seems to be the need for further analysis, research to be conducted and legislation to be produced to bring together questions on the intersection of gender and migration matters by bringing in the voice of state agencies, NGOs and above all migrant women themselves.