The governance of international migration in Turkey and Morocco: Irregular migrants’ access to right to stay

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Chapter 3: International and Domestic Dynamics of the Production of Migrant Illegality in a Comparative Perspective

“The EU’s external policy is producing a new geography of remote control, which extends beyond carrier sanctions and placing customs officials in third country airports”. (Samers, 2004: 40).

“[Migrant illegality] is a product of converging global, regional, and national factors” (Willen, 2007: 27)

*Under what external and domestic conditions is migration politicised and migrant illegality produced in new immigration countries at the periphery of Europe?*

**Introduction**

The evolution of international mobility patterns in the contexts of Turkey and Morocco has been analysed, as country cases, from historical, sociological and political perspectives (Içduygu, 2006; 2007; Kirişci, 2008; de Haas, 2007; 2014; Castles, 2007; Iskander, 2010). Both Turkey and Morocco have a considerable number of citizens living abroad, predominantly in European countries. In both contexts, migration policy mainly has mainly referred to emigration policy. In the context of the EU’s interest in remote controls to prevent irregular migration (Samers, 2004), Morocco and Turkey assumed the role of transit spaces and have only recently become new immigration countries under the pressure of EU border policies (Düvell and Vollmer, 2009; Scheel and Ratfish, 2014).

The novelty and external character of the emergence of irregular migration as a subject of governance makes the country cases comparable with regards to the production of migrant illegality. They are suitable cases to explore the production of illegality in relation to the international context. Both contexts have been studied as conventional emigration countries in the literature, yet irregular migration has only emerged in the last decade as a category of governance and a subject of academic studies in both contexts. These are the contexts where the production of migrant illegality is a recent phenomenon. In other words, migrant illegality is a new process developed throughout the late 1990s and 2000s through the diffusion of norms, laws and institutions, mainly as a result of tightening EU border policies. Using the insight of existing research, this chapter puts this transformation from emigration to new immigration countries in a comparative perspective along the main problematic of my research on how irregular migration has been formulated as a policy issue and irregular migrants are framed as illegal deportable subjects.
This chapter looks at the interaction between the EU migration regime and emerging immigration policy in peripheral contexts. Irregular migration policies in Morocco and Turkey have been the subject of analyses in the context of external dimensions of EU migration control policies (Alami Mchichi, 2006; Wunderlich, 2010; İçduygu, 2007; Ozçurumez and Şenses, 2011). One line of research has analysed the expansion/export of EU migration control and migration management techniques without necessarily delving into the implications of this expansion for the production of migrant illegality (Boswell, 2003; Samers, 2004). Another approach has called for a focus on the migrant body as a vulnerable subject of this externalisation policy (Mountz and Loyd, 2014; Tsianos and Karakayali, 2010). Papadopoulos, Stephenson and Tsianos have drawn attention to the “productivity of the European migration and border regime” at the periphery of Europe (2008: 165) and give the examples of Morocco-Spain and Turkey-Greek borders as sites of this production. However, such studies mostly look at the implications of these policies at EU border areas. Few studies concentrate on the interaction between external dimensions of EU migration policies and migrant illegality beyond EU borders. As put by Menjivar, “the construction of immigrant ‘illegality’ (De Genova, 2002, Menjivar and Kanstroom, 2014) is no longer confined to the territorial borders of the receiving country; it is a process that starts before immigrants arrive at the physical border, in transit areas and, in some cases, even at the point of departure” (2014: 363). Given the observation that migrants are subject to the interacting migration regimes way before they reach the EU shores (Karakayali and Rigo, 2009: 125), this chapter aims to show how the restrictions imposed by the EU migration regime influence national policies and the kind of migrant illegality this interaction has produced.

The chapter first briefly summarises the evolution of mobility patterns in Morocco and Turkey to provide a comparative lens on immigration patterns. Second, I explore the international context in terms of the external dimensions of EU migration control policies that triggered legal and institutional change. With reference to migrant illegality literature, I call this process the international production of migrant illegality. As explained in Section 3.2, the externalisation of EU migration policies in the post-2000s period manifests itself through certain policy tools of governance that are common in both contexts. Among these, I focus on increasing investment in border infrastructures, cooperation agreements (such as readmission agreements (RAs)) with the EU and the intensification of activities by international and inter-governmental organisations, especially UNHCR and the International Organization for Migration (IOM). The third and fourth parts of the chapter discuss how this external production of migrant illegality has been translated in the domestic sphere in each country case, giving rise to the politicisation of irregular migration in the two countries studied. Note that the EU policies and responses to these policies are interlinked. The distinction between external and internal/domestic aspects of the governance of irregular migration is rather analytical. Descriptions of processes of the legal and institutional changes provided in this chapter will be used in the following chapters to provide
hypotheses on causal connections amongst the production of migrant illegality, migrants’ experiences of incorporation and migrants’ access to rights and legal status.

3.1 Becoming lands of destination

A closer look on mobility patterns reveals that immigration is part of the national history in Morocco and Turkey. Immigration was initially a subject of policy in the colonial context in Morocco and in the context of nation-state in the case of Turkey. A general look reveals that colonial relations have been influential in shaping the mobility patterns in Morocco in the pre-1960 period (Berriane et al., 2010: 18). Until the 1960s, Morocco was more of a land of immigration (for the French but also for those coming from its Southern neighbours).\(^\text{14}\) Throughout the 20th Century, Turkey has been a land of immigration for Muslim and Turkic groups from its wider region, but these arriving groups are perceived as natural citizens rather than foreigners. According to the 1934 Settlement Law, immigrants are defined as those from Turkish descent and culture who come to settle in Turkey. The policies shaped around this logic reveal continuity in the sense that even today, some groups or individuals can more easily access legal residence and citizenship on the basis that they are from Turkic descent (see Danış and Parla, 2009). They also widely challenged by the arrival of “real foreigners” coming to Turkey to work and/or continue on to Europe in the post-1990 period (Erder, 2009).

Initiated by bilateral labour agreements signed in the 1960s, Turkey and Morocco’s emigration histories have emerged as directed to Europe. The numbers of workers originating from Turkey or Morocco who live in different European countries have significantly increased. Despite the changing migration regime in Europe, which put an end to the mass recruitment of migrant labour, emigration to European countries continued through family reunification and later through family formation (de Haas, 2009; İçduygu and Sert, 2009). After the 1980s, irregular migration (for both Turkey and Morocco) and asylum (for Turkey) have become major types of flows to Europe. The introduction of a visa for Moroccan nationals to enter Spain (1991) and Italy (1990) and for Turkish nationals to enter France (1980), Germany (1981), the UK (1989) and the Netherlands (1996) reinforced irregular migration from Turkey and Morocco (de Haas, 2014; Doğan and Genç, 2014: 230).

Despite this change, there were still less barriers to travel to Europe (de Haas and Collyer, 2012: 471). Irregular migration was not yet a hot topic connected to security and social cohesion issues. Migrants without necessary papers and asylum seekers were mostly seen as spontaneous guest workers in the epistemological and political terrain of migration (Karakayali and Rigo, 2010: 130). It was possible for

\(^{14}\) In fact, the discourse that Morocco has been a land of immigration, referring to the pre-colonial and colonial period is revived during the pro-migration discussions on current situation of irregular migration and policy changes in Morocco. Section 3.3 details the particularities of this policy change.
migrants and asylum seekers from Morocco and Turkey to legalise their status after their arrival (Collyer, 2007: 670-671). Consequently, asylum seekers from Turkey – mostly from Kurdish origin – joined the labour force in Western Europe and eventually could become legal residents. Moroccans in irregular situation in France and in Southern Europe highly benefited from regularization campaigns (Garcés-Mascareñas, 2012: 158). The change in out-migration patterns reveal irregular border crossings were initially an issue pertaining to emigration.\textsuperscript{15}

Being a conventional source country, both Turkey and Morocco had to assume new roles in the European migration system as transit and eventually as immigration countries from 1990s onwards (Fargues, 2009; de Haas, 2007; Kimball, 2007). Within the context of globalization and within their continuing relations with the European migration regimes, Turkey and Morocco had already started to receive immigration from their wider region. As a result of EU’s interest to prevent irregular migration, the presence of migrants seeking clandestine entry into Europe – given the decreasing opportunities for legal entry – has become more visible and more subject to state regulations. Such regulations also affected those who are in Turkey and Morocco for other purposes than moving into Europe, such as working, studying, and seeking refuge.

Morocco receives migrants and asylum seekers from African countries such as Nigeria, Mali, Senegal, the Congo and Sierra Leone (Fargues, 2009; Mghari, 2009; Berriane et al, 2010; AMERM, 2008). Given the increasing obstacles to cross into Europe, migrants from sub-Saharan countries (commonly called sub-Saharans) have increasingly become visible in urban centres such as Casablanca, Rabat and Tangier and more recently Fez (de Haas, 2007; Berriane and Agerdal, 2008). While statistics and official data on immigration into Morocco are far from complete, previous estimates of the number of sub-Saharan irregular migrants ranged from 10,000 to 20,000 (see Khachani, 2011: 4). In the context of the regularisation campaign programme, the estimates on the volume of irregular migration in Morocco were as high as 40,000.\textsuperscript{16} By the end of the regularization programme in December 2014, over 27,300 migrants with an irregular status applied for the regularisation scheme, providing another source for estimating the volume of irregular migration in the

\textsuperscript{15} Turkish and Morrocan nationals are still represented among nationals crossing borders without valid documents in recent Frontex reports (see Frontex, 2014). As this point is beyond the focus of my research, I will suffice to say that irregular border crossing as a form of mobility for Turkish and Moroccan nationals has not disappeared but declined. The decline is more significant in the Turkish case. However, in both contexts, the attention of the EU and national policymakers has shifted to third country nationals.

country. In 2013, over 4,300 people entered the enclaves of Ceuta and Melilla through clandestine means (APDHA, 2014: 47). Although higher than previous years, the number is still much lower than the number of clandestine migrants within Morocco as estimated based on apprehended cases. The discrepancy between those entering the Spanish enclaves and those remaining in Morocco without status indirectly indicates that Morocco has become a land of (forced) settlement for thousands on their way to Europe, along with those arriving in Morocco to work or study. The numbers of asylum seekers and recognised refugees have remained relatively modest, as Morocco does not have borders with conflict generating regions in the African continent. The total population of concern by UNHCR (asylum seekers and refugees) amounted to nearly 5,000 by the end of 2013, and nearly 3000 of those were new applicants.

Besides irregular migrants, Morocco receives international students from sub-Saharan Africa, some of whom are sponsored by the Moroccan government (Berriane, 2009). Another trend in Morocco is the settlement of Europeans who are buying properties in big cities. The number of legal residents (a total of 74,316 as of 2011) and irregular migrants in Morocco constitutes less than 1% of the population and is by no means comparable to the number of emigrants originating from Morocco. Despite the relatively low number of incoming migrants with or without legal status, immigration into Morocco has been the subject of increasing academic and policy-oriented research. Most of the existing research concentrates on the most salient figure of the illegal migrant in Morocco, i.e undocumented Sub-Saharan allegedly on their way to Europe.

Since the 1980s, the geographical situation of Turkey coupled with relatively liberal visa policies has enabled different forms of undocumented entry and stay by foreign nationals (İçduygu and Yükseker, 2012). The data for comprehending the

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18 Illegal entries into the enclaves did not exceed 2,000 per year until 2012 (APDHA, 2010: 10). The Spanish government confirmed that in the first half of 2014, the number of entries into Melilla has more than doubled. According to UNHCR Spain, the increase was due to the increasing arrivals from countries torn by conflict such as Syria, the Central Africa Republic and Mali. (See UNHCR, 2014). To counter attacks by migrants, more control measures are initiated including the installment of barbed wires and the construction of another wall on the Moroccan side. See, Le ministre espagnol de l’Intérieur défend les barbelés des présides, [The Spanish Interior Minister defends the barbed wire], libe.ma, 22.07.2014. Retrieved 15.05.2015, from [http://www.libe.ma/Le-ministre-espagnol-de-l-Interieur-defend-les-barbeles-des-presides_a52448.html](http://www.libe.ma/Le-ministre-espagnol-de-l-Interieur-defend-les-barbeles-des-presides_a52448.html).

19 Interview with UNHCR Morocco, Rabat, April, 2012.

20 This population movement is considered insignificant from the policy perspective, as settlers are not conceptualised as a threat to national security, and people do not see themselves as migrants but as expatriates.
volume of irregular migration in Turkey is also limited. Looking at apprehended cases is inadequate yet is the most available tool for estimating the volume of irregular migration in Turkey. The number of migrants apprehended by security forces has rocketed from around 11,000 to nearly 100,000 in 2000. Since 2000, there has been a declining trend in this number to nearly 40,000 in 2013. In the same period, asylum applications have significantly increased from a few thousand in 2005 to over 30,000 applicants in 2013.\textsuperscript{21} The country experienced sizable asylum flows from Iran, Iraq and Afghanistan and recently from African countries. These numbers do not include the 1.5 million Syrians\textsuperscript{22} under temporary protection since the breakout of Syrian conflict in 2011.

Ahmet İçduygu has analysed irregular migration in Turkey under three broad categories. 1. Transit migrants who intend to cross to the EU through Turkey and usually enter the country without proper documents with the paid help of smugglers (see İçduygu 2006; 2007). Transit migrants, allegedly on their way to Europe, are from Middle Eastern countries such as Afghanistan, Pakistan, Iran, Iraq and lately Syria (İçduygu and Yükseker, 2012). 2. Irregular labour migrants who typically enter Turkey with a valid visa and work in the informal economy without valid documents. When compared to Morocco, the economic aspect of irregular migration is much more salient in Turkey. The country hosts economic migrants from countries of the former Soviet Republics including Turkic Republics, Ukraine, Moldova and Armenia. 3. Asylum seekers who originate from the same counties as migrants put into the category of transit, and enter the country without proper documents. They are admitted into the asylum system in Turkey and wait to be recognised by UNHCR and eventually to be resettled to third countries. As İçduygu also acknowledges, this typology rarely fits individual migrants’ trajectories, as most migrants move between legality and illegality and also between transit and settlement in Turkey. Meanwhile, it is a useful typology of how different groups of migrants fall into illegality, hence become deportable, as further explained in Section 5.1. Regardless of their aspirations to go to Europe or acquire legal status, migrants find employment opportunities in sectors such as

\textsuperscript{21} See Statistics by the Directorate General of Migration Management (DGMM) Retrieved 06.02.2015, from http://www.goc.gov.tr/icerik/goc-istatistikleri_363_378. According to UNHCR, the increase in asylum applications is due to the increasing arrival of Iraqi and Afghan refugees. Retrieved 06.02.2015 from http://www.unhcr.org/pages/49e48e0fa7f.html

\textsuperscript{22} As estimated in the planning figure by UNHCR, Retrieved 06.02.2015 from http://www.unhcr.org/pages/49e48e0fa7f.html. The Syrian case is another case showing the external and asylum related character of migration management and also indirectly migrant illegality issues in Turkey. Turkey adopted an open border policy with Syria, enabling the settlement of Syrians fleeing the conflict in refugee camps close to the Turkish-Syrian border (İhlamur-Öner, 2013). Syrian refugees, initially settled as “guests”, were later granted “temporary protection” status. In other words, they are not included in the UNHCR status determination process. Syrian conflict led to major asylum flows that Turkey faced after the Gulf Crisis (İhlamur-Öner, 2013).
domestic work, sex work, entertainment, textiles, construction and tourism. Migrants are mostly concentrated in big cities, and Istanbul hosts most of them.

Turkey’s immigration and asylum toll is much larger when compared to Morocco’s, and migrant profiles in terms of country of origin are more diverse. One should also note that Turkey’s overall population (81 million) is 2.5 times larger than Morocco’s (31 million). As depicted in Annex 2, numbers and profiles are not easily comparable. However, what is comparable is the emergence of political debate. Immigration and more specifically irregular migration have emerged as a policy subject in Morocco and Turkey, while migrants have remained at the edge of its demographic transition. In other words, Turkey and Morocco are not yet ageing countries in need of migrant labour. There has not been a political will to receive immigration. As explained in Section 3.2, the emergence of the governance of irregular migration has entered into the political agenda as an outcome of the “migration diplomacy” with the EU (Natter, 2014; İçduygu and Üstübici, 2014).

3.2 The International Context in the Production of Illegality

Restrictions have characterised the European asylum and migration regimes since at least the mid-1985s. In this context, concepts such as “first country of asylum”, “irregular secondary movement” (Oelgemoller, 2011: 415), “transit migrants” or “stranded migrants” (Dowd, 2008) have appeared to refer to what I call the international production of migrant illegality and its transposition to peripheral countries. As border policy and visa policy are highly developed policy domains in the EU (Samers, 2004: 34), cooperation with transit countries on the issue of irregular border crossings has been one of the primary policy tools of the EU (Boswell, 2003). The changes in the EU policy priorities have deeply affected policies and practices relating to irregular migration in Turkey and Morocco because of their geographical positions and geopolitical relations to the EU. Morocco and Turkey have similar geographical positions and close relations to the EU, which was an important factor among others leading to a particular production of illegality. These changes have turned them from spaces of transit into anti-transit where alleged transit migrants are stopped and controlled.23

In the African context, Morocco is a major example of the securitisation of migration (Belguendouz, 2009; Elmadmad, 2007). Morocco is only 14 km away from mainland Spain, separated by the Strait of Gibraltar. Plus, in the north, Morocco neighbours two Spanish enclaves on the African continent: Ceuta and Melilla. The enclaves are around 100 km away from the Algerian and Moroccan border where most migrants enter Morocco without legal papers. The Canary Islands, one of the outermost regions of the EU are reachable from the Moroccan South-West coast. Plus, the Southern borders of Morocco are not clearly defined because of the political

23 See Annex 3 for an overview of legal changes concerning immigration in Morocco and Turkey between 2000 and 2014.
dispute over Western Sahara. They are relatively more permeable to intra-African mobility due to lax border and visa regimes. With the growing economy of Spain throughout 1980s, the income differences on both sides of the border have become drastic, and along with irregular migration from Morocco and other parts of the world have triggered irregular migration from Morocco to Spain. The proximity to the EU borders and the political conviction to stop transit migration make Moroccan-Spanish borders a primary subject of migration diplomacy amongst Morocco, Spain and the EU.

Turkey is at the crossroads of Asia, Europe and Africa. Geo-politically, it is located between asylum seeker and migrant generating regions and European destinations. Most of the Greek islands in the Aegean Sea are a few miles away from Turkey’s Western coast. The border between Turkey and Greece has been identified by the Frontex as “one of the areas with the highest number of detections of illegal border-crossing along the external border” (Frontex, 2012: 4-5). As in the case of Morocco, the geographical proximity to the EU made Turkey’s western border subject to securitisation. In the East and in the South, however, Turkey has land borders with Georgia, Armenia, Iran, Iraq and Syria. These borders are permeable to the mobility of goods and humans due to lax visa regimes, geographical difficulties to control irregular border crossings, regional conflicts and historically established economic and social relations between both sides of the nation-state borderlands. This proximity coupled with ongoing migration diplomacy with the EU has made these countries subject to techniques through which EU migration controls have proliferated.

From the perspectives of Turkey and Morocco, the 1980s was a period of neglect towards the phenomenon of their own nationals and increasingly third country nationals crossing through their territory into the EU. The official negligence continued until they were identified as transit zones by the EU. De Genova (2005), among other researchers, has already identified techniques of making migrant bodies deportable. Similarly, assuming the role of a transit country implies subscribing to certain techniques of governance that render migrant populations deportable. This section focuses on some of these techniques such as increasing border controls (through financial and technical assistance by the EU (Samers, 2004: 38-9) and readmission agreements (RAs), which are seen as a main instrument for preventing irregular border crossings into the EU and materialise through cooperation agreements with EU agencies, member states as well as through increasing activities by international organisations. I first look at the role played by irregular migration issues in EU-Morocco and Turkey-Morocco relations.

**Morocco’s migration diplomacy**

Morocco has been identified as a transit space since the late 1990s, although it is known that Spain has been receiving irregular migration flows since the 1980s. Immigration first became a subject in international relations, then in internal politics in
Morocco in this context of political isolation. During the 1980s and 1990s, Morocco had been politically isolated with limited cooperation with the EU and tense relations with North African and sub-Saharan countries (Natter, 2014). As Morocco also had tense relations with its Eastern neighbour Algeria over sovereignty in Western Sahara, the country left the African Union in 1984, and the Eastern border with Algeria located near the city of Oujda has been closed since 1994 (Perrin 2011: 9). Morocco’s application in 1987 to become an EU member state was rejected. Throughout the 1990s, Moroccan-Spanish relations were tense because of the alleged tolerance of Morocco to illegal migration within its territory.

The Association Agreement between the EU and Morocco was concluded at the end of 1995 and went into force in 2000. This was the document whereby both parties agreed to initiate cooperation on illegal immigration and the conditions governing the return of irregular immigrants (DEMIG database, 2014). More concretely, the 1999 Action Plan proposed by the High Level Working Group on Asylum and Migration was one of the early documents identifying the necessity to stop irregular border crossings through Morocco. The Plan asked the government to conclude readmission agreements that would also cover third-country nationals and to adopt visa requirements for West African nationals (JAI 75 AG 30, 1999: 15 cited in Natter, 2014: 18). While Morocco rejected this plan imposed by the EU, as discussed in Natter’s (2014) analysis, the country strategically used the EU’s interest on irregular migration to improve its relations with the Union and engaged in migration-related diplomacy.

Throughout the 1990s, tensions related to irregular migration were common in Morocco’s relations to Spain and the EU. Spain, as a new destination country for Moroccans as well as for third country nationals travelling through Morocco, has been a key factor in Morocco-EU relations (Wunderlich, 2010: 263). The visa requirement increased entry through Ceuta and Melilla, which have special status outside of EU Schengen borders.24 To prevent illegal entries, the Spanish government started to build fences and walls around the enclaves in 1993. According to Zapata-Barrero and Witte (2007: 86), this was the first step towards the whole securitisation of the Spanish Southern borders as a whole. According to Lutterbeck (2006), there has been a shift in the locality of transit migration in Morocco. As measures were taken around Gibraltar, Ceuta and Melilla, the irregular routes shifted towards coasts near the Canary Islands. As a result, SIVE (Sistema Integrado de Vigilancia Exterior) was established in 2002 and “had reached full coverage of more than 500 km of Spain’s south coast and was due to extend to the Canary Islands by the end of 2007” (Collyer, 2007: 672). By 2001, relations in this context, where migration routes shift in a dynamic and rather fast fashion, resulted in the Spanish and Moroccan governments facing the challenge of cooperation.

24 Moroccans could enter the enclaves with a valid passport for a maximum of 24 hours (Zapata-Barrero and Witte, 2007: 86).
The introduction of Law 02/03 and the establishment of a department responsible for irregular migration were signs of cooperation on the part of Morocco in this context of tense relations with Spain (Valluy, 2007). As part of the cooperation, since the early 2000s, Morocco received technical and financial assistance to enhance its border control system (Wunderlich, 2010). EU funding amounting up to 70 million Euros (Nielselt, 2014: 13) was available within the context of cooperation measures designed to help Mediterranean non-member countries. In 2006, Morocco, in collaboration with France and Spain, hosted the first Euro-African Ministerial Conference on Migration and Development. The aim of the conference was to establish a global dialogue on migration. This initiative was one example of Morocco’s ambition to be a regional leader. Morocco was seeking a credible regional leadership role “as a migration manager at an international level by playing the role of a lobbyist of Mediterranean and African concerns” (Wolf, 2008: 263).

Another instrument of external governance by the EU member states and a means of cooperation with third countries are the readmission agreements (Cassarino, 2007). These agreements aim at setting the procedures for identification and return of persons “who have been found illegally entering, being present in or residing in the Requesting State”.25 Since the 1990s, Morocco has signed readmission agreements with individual European countries such as France (1993, 2001), Germany (1998), Italy (1998, 1999), and Portugal (1999). These agreements entailed the readmission of nationals but excluded third country nationals (MPC, 2013: 178). Despite prevailing undocumented border crossings from Morocco to Spain, the readmission agreement between Morocco and Spain signed in 1992 was ratified by Morocco only in 2012 (Cherti and Grant, 2013: 14), and it was never fully implemented because of the reluctance of Morocco to admit nationals and third country nationals in particular (Cassarino, 2007:183; Garcés-Mascareñas, 2012: 170).

Another phase in these negotiations was the Mobility Partnership agreement signed with the EU and six EU member states in June 2013. Along with initiatives to ensure the legal migration of Moroccan nationals, the agreement aims at enhanced cooperation “to prevent and combat illegal migration”, as part of “the exemplary partnership which has linked Morocco and the EU for several decades”.26 In this regard, one of the key aims was finalising a readmission agreement between Morocco and the EU, with provisions relating to third-country nationals, which had long been at the negotiation phase.27 The partnership document envisages EU’s assistance for the

27 Ibid. Art. 13.
introduction of a new asylum and international protection system in Morocco and for the improvement of a legal framework concerning various categories of migrants. 28

In the context of closer cooperation with the EU and Spain, international organisations working on migration, mainly the IOM and the UNHCR, signed formal agreements with the Moroccan state. The agreement with the IOM was signed in 2006 and entailed “efficient management” of the migratory question in Morocco and a budget to finance voluntary return (Valluy, 2007: 6). The EU and member states such as France, Belgium, the Netherlands and Spain are major donors for IOM projects in Morocco. 29 While Morocco ratified the 1951 Geneva Convention in 1956, the representation of UNHCR in Morocco was symbolic until 2004. After a period of de facto functioning of UNCHR’s office in Rabat between 2004 and 2007, the Headquarter Agreement with UNHCR was signed in July, 2007. The agreements recognised the UNHCR refugee status determination by granting a residence permit to those with refugee status (DEMIG database, 2014 Version).30 Valluy (2007) identified the two main factors behind the country agreement between UNHCR and Morocco. One was the changing priorities in the EU external policies in terms of impeding secondary movements of refugees from transit spaces. The second was the increasing number of applications to the UNHCR office from those unofficially settled in Rabat since 2004.

In the international context, demands by the EU have been influential in shaping the policies and practices of Morocco towards irregular border crossings of its own nationals as well as third country nationals. The relations between Morocco and the EU and Morocco and Spain are characterised by tensions as well as “à la carte cooperation”, as discussed by Wunderlich (2010: 266). Immigration has become a permanent topic in foreign relations not only with Europe but also with its Southern neighbours, as EU policy demands have increased inner-African deportations and removals (Trauner and Deimel, 2013). After the 2000s, EU-led international actors, mainly UNHCR and IOM, started to operate in Morocco, and immigration has become a subject of governance par excellence. As will be explained in Section 3.3, the post-2003 period witnessed the institutionalisation of immigration governance within the state, but the emergence of myriad domestic actors shaped and re-shaped the practices around migrant illegality in Morocco.

28 Ibid. Art. 28 and 35. In this sense, the document signalled changes in the Moroccan immigration policies that were initiated later in 2013, as discussed in Section 3.3.


30 However, a previous regular entry is required for the provision of a residence permit (DEMIG database 2014). The card provided by UNHCR, in principle, protects refugees from deportation but does not give access to residence permits and work permits in the country (Elmadmad, 2011: 4).
Irregular migration in Turkey’s long standing EU accession

Drawing on the communication between the Intergovernmental Consultations on Migration, Asylum and Refugees, UNHCR and Turkey, Oelgemoller (2011: 414-5) suggests that Turkey was the first country to be identified as a transit space, as early as 1987 for its role as a first asylum country for refugees fleeing conflicts in the region, such as the Iranian Revolution, the Iran-Iraq War and the Gulf crisis. Meanwhile, Turkey’s long-standing member status and its commitment to adopt the EU acquis have been major anchors for Turkey’s cooperation with the EU on the issue of irregular migration. In this context, legal changes in the field of asylum and immigration in the post-2001 period are commonly called EU-isation and the Europeanisation of migration and asylum policies in Turkey (Özgür and Özer, 2010; İçduygu, 2007; Ozcurumez and Şenses, 2011). As in the case of Morocco, issues related to border controls, the resolution of a readmission agreement and the increasing role played by international organisations in the context of the adoption of the EU acquis on migration and asylum have been major milestones of the international production of migrant illegality in Turkey.

Administrative, financial and technical support by the EU and member states played an important role in making irregular migration a subject of governance (Özgür and Özer, 2010: 138-9). The National Action Plan for Asylum and Migration, adopted in March 2005, was a product of a twinning project with Denmark and the UK, conducted between March 2004 and March 2005. The Action Plan envisaged legislative and institutional changes to harmonise Turkey’s asylum and migration legislation with that of the EU acquis. Officially starting with the 2003 Strategy Paper for the Protection of External Borders, border management issues have been on the agenda concurrently with membership talks, along with migration management and asylum issues. The framework of the Action Plan on Integrated Border Management, adopted in 2007, was initiated alongside another twinning project in collaboration with the UK and France.31 The EU funded a considerable portion of the budget to conduct these projects.32 The EU’s conditionality and financial and administrative support in border management issues highlight the novel and external character of the emergence of irregular migration policies in Turkey.

In the context of integrated border management, the EU expects Turkey and Greece to cooperate on matters related to border security. The readmission

31 See also “Entegre Sınır Yönetimi Eylem Planı Aşama 1 Projesi” (Action Plan for Integrated Migration Management Project Phase 1, policy brief); Entegre Sınır Yönetimi Eylem Planı Aşama 2 Projesi (Action Plan for Integrated Migration Management Project Phase 2, policy brief).

32 For instance, the EU contribution is envisaged as nearly 22 million Euro (slightly more than 75% of the total budget) for the execution of the Action Plan on Integrated Border Management-Phase 2. See Standard Project Fiche, the Action Plan on Integrated Border Management-Phase 2, Retrieved 06.02.2015, from http://ec.europa.eu/enlargement/pdf/turkey/jpa/2008/tr080210_action_plan_on_ibm_phase_ii-revised_final_en.pdf
agreement between Greece and Turkey came into force in 2002. Similarly to the readmission agreement between Spain and Morocco, there have been severe problems of implementation, which were due to reluctance from Turkey to agree to readmit irregular migrants who allegedly crossed into Greece through Turkey (İçduygu, 2011: 7). Increasing cooperation with Frontex along maritime borders led to a decrease in interceptions at sea borders between Turkey and Greece (Frontex, 2012: 18) but also to a shift in clandestine routes towards the Evros region and at the Turkey-Bulgaria land border (Özgür and Özer, 2010: 107-8). The Greek government, despite the economic crisis, along with the EU, co-funded the building of a doubled fenced 12.5 km long wall along the border, in a similar way as Spain erected a border around its enclaves in Northern Africa. These measures, however, did not stop irregular border crossings but diverted smuggling routes and enhanced migrants’ reliance on smuggling networks, raising the cost of border crossings. The situation along the EU-Turkey border closely affects migrants’ experiences of incorporation within Turkey. Given the increasing costs and risks of crossing into the EU, transit migrants allegedly spend more time in urban centres in Turkey and seek ways to survive within given economic, legal and social structures like other migrants who are categorised as asylum seekers and irregular economic migrants.

As another aspect of EU migration controls, after many years of negotiations, Turkey signed an RA with the EU in December 2013. The readmission concerns the nationals of the EU Member States and Turkey, plus the third country nationals and the stateless persons who “entered into, or stayed on, the territory of either sides directly arriving from the territory of the other side” (EC, 2013a). The provision concerning third country nationals and stateless people will come into force in three years. Turkey signed the RA in exchange for the initiation of EU-Turkey visa liberalisation dialogue. In other words, Turkish nationals’ potential visa-free travel to European countries depends on Turkey’s efforts to stop irregular migration into the EU. Interestingly, the RA was represented in the media as a technical commitment from the side of Turkey to open the borders of Europe for its own nationals. There was less discussion and almost no official statement on what the RA entails in terms of

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33 According to data compiled by İçduygu (2011: 7), between 2002 and 2010, Greece made 65,300 readmission claims to Turkey, out of which Turkey accepted to re-admit 10,124 persons, and only 2,425 readmission actually occurred.


burden sharing between the EU and Turkey on matters related to irregular migration, let alone the protection of migrants’ rights (Kılıç, 2014: 429). In a parallel vein, another major priority for the EU has been to increase the detention capacity of Turkey by funding the construction of “reception centers for asylum seekers and refugees and also removal centers for illegal migrants”.

These are attempts to increase control over the physical mobility of migrant populations, not only from Turkey into the EU but also within Turkey.

While the EU has been a major anchor in triggering substantive reform on migration and asylum policies, Turkey’s EU-isation in this realm has been selective (İçduygu, 2007). Turkey is lagging behind on its commitment towards integrated border management (EC, 2013: 64). While Turkey’s efforts to develop national legislation on asylum and migration were applauded by the EU (EC, 2013: 65), in Turkey, certain points are subject to critiques. Albeit a signatory of the 1951 Geneva Convention, Turkey currently retains the geographical limitation that only asylum seekers from European countries can obtain refugee status. Progress reports and reports by other agencies such as Fundamental Rights Agency have underscored that most irregular migrants apprehended in Europe arrive in Turkey legally and continue their journey into Europe in a clandestine way (EC, 2013: 65). On the one hand, Turkey complied with Schengen negative visa and other requirements of the EU acquis on the length of stay on tourist visas by adopting more restrictive entry policies. However, Turkey’s willingness to have close trade and cultural relations with non-EU countries in the region continued and at times further extended its liberal visa policies. These points, namely geographical limitations and lax visa policies imply that the entry of migrants and potential refugees is to some extent tolerated, but their access to legal status and international protection is jeopardised. This framework, which can be formulated as *tolerated but denied rights* constitutes the contours of migrant illegality in Turkey, despite the EU critique and requirements.

Like in Morocco, international organisations have played an important role in bringing Turkey’s immigration and asylum policies in line with the requirements of EU migration policies. In this context, emerging activities by UNHCR and IOM and decisions by the European Court of Human Rights (ECtHR) enhanced the external character of the politicisation of irregular migration in Turkey. In response to the asylum influx during the Gulf Crisis, the activities of UNHCR in Turkey expanded (Ozmenek, 2001). Similarly, the activities of IOM in Turkey were initiated in 1991 in the

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37 In the context of IPA 2007 Programme TR07 0216 Support Turkey’s Capacity in Combating Illegal Migration and Establishment of Removal Centers for Illegal Migrants and TR07 02 Establishment of a Reception System (Centers) for Asylum Seekers and Refugees.

38 Currently, Turkey applies visa exemptions or visas which are issued at the border to over 120 countries, known as “sticker visas”. See Visa Information for Foreigners at the website of Ministry of Foreign Affairs. Retrieved 22.02.2015 from [http://www.mfa.gov.tr/visa-information-for-foreigners.en.mfa](http://www.mfa.gov.tr/visa-information-for-foreigners.en.mfa)
aftermath of the regional crisis in the Middle East. A bilateral agreement was signed in 1995 and Turkey became a full member of IOM in 2004 in the context of a national action plan on asylum and migration. These two organisations have given administrative support for the activities of the two bureaus, namely that of the Migration and Asylum and the Integrated Border Management, as mentioned above. The UNHCR, as in the case of Morocco, has been working with implementing partners and covers their administrative costs (Özmenek, 2001). In this sense, the UNHCR is an important actor, triggering and shaping the activities of the civil society in Turkey. While the UNHCR used the existing human rights activism to draw attention to asylum related issues, the IOM set the agenda that irregular transit migration is a problem to be managed (Hess, 2012: 432). The IOM’s focus on human trafficking was an important factor behind Turkey’s signing of international protocols such as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air and was also influential in making related changes in its criminal law.

Turkey is a member of the Council of Europe. In this context, ECtHR has been another external actor in the governance of migration. Starting with the case of Jabari v. Turkey in 2000, ECtHR sentenced Turkey for not respecting the principle of non-refoulement of migrants and asylum seekers. The articles pertaining to detention and to non-refoulement in the Law on Foreigners and International Protection enacted in 2014 primarily aimed to be in line with the standards set in the Convention for the Protection of Human Rights and Fundamental Freedoms, commonly referred as European Convention on Human Rights (ECHR) to prevent cases against Turkey in ECtHR. As detailed in Section 5.4, NGOs taking cases to ECtHR played an important role in pushing for legal reform in Turkey in an indirect way (Yılmaz, 2012). At the same time, their using of ECtHR as a transnational advocacy mechanism reveals the strong external anchor in the governance of international migration in Turkey. Although not directly connected to irregular migrants’ rights, ECtHR decisions have enacted the principle of non-refoulement through the access to asylum to potential refugees who otherwise would be treated as illegal.

From international production of illegality to public policy

One can grasp the production of migrant illegality in Turkey or Morocco, hence migrant experiences of illegality only by linking it to emerging forms of migration management at EU external borders. To repeat, migrant illegality was initially a product of international dynamics. After the 1990s, there was more attention on irregular border crossings through Turkey and Morocco into Europe. This is the major concern of the EU, which pressures these countries to strengthen their border management, establish national asylum systems to be qualified as “first countries of

asylum” and to readmit third country nationals passing through their territories into Europe. Both countries have arguably had incentives to partly subscribe to the role of a transit country, ironically by policing EU borders against secondary irregular movements into the EU. They also had reasons to refrain from taking such a role.

Given their similar international contexts, the main similarity between Turkey and Morocco is the challenge to balance the demands of the EU to stop irregular border crossings with their national interests – that is not to become a buffer zone for immigrants - and not worsening their relations to the countries in the region. Their relations to the EU, as a sending country and a major political ally in the case of Morocco, and a former sending country and a candidate member in the case of Turkey, influenced their cooperation with the EU in the matter of irregular migration. The main differences have been Turkey’s, albeit fading, prospect of EU membership, and also the asylum recipient role Turkey has had to play since the 1980s and also in the ongoing Syrian conflict.

External dynamics in the production of illegality are coupled with internal dynamics of the peripheral context. The next section discusses the legal and political contexts that Morocco and Turkey had to police regarding illegalised migration flows, although the framework of legal changes is rudimentary and at times contested. Immigration policies in both contexts were introduced without the political will to receive immigration. Referring to Foucault, Walter Nicholls suggests: “the enforcement of interdictions contributes to the explosion of talk, ideas, controls, and practices of illegality rather than their repression” (2013: 202). In this light, the next two sections inquire into how migrant illegality is produced through national laws and policies in the context of high external pressure to curtail irregular border crossings and how the issue has been subject to different forms of politicisation.

3.3 Moroccan immigration politics from criminalisation to integration

Since the early 2000s, trans-Saharan migration through Morocco has been represented in Morocco not only as an external dimension of EU migration policies but also as a Moroccan public policy issue (Natter, 2014). This politicisation of irregular migration as a domestic issue has happened through the introduction of new legislation on the subject, the establishment of new institutions and public statements of the official framing of immigration as problem of security and criminality. Until 2013, the official discourse that Morocco is a transit country and that migrants in Morocco do not want to stay there underpinned their exclusion from the sphere of rights and membership. The extent to which a radically new immigration policy approach will replace the racialisation and criminalisation of irregular migration with a human rights based integration policy is questionable. What is clear is that Morocco has displayed a case of rupture in its irregular migration policy, at least at the discursive level if not in practice.
Emergence of immigration policy and criminalization

Law 02-03, the Law regarding Entry and Residence of Foreigners in the Kingdom of Morocco and Irregular Emigration and Immigration was enacted in 2003 to improve tense relations with the EU. The new law abolished earlier regulations concerning foreigners reminiscent of the protectorate period and with respect to emigrants dating back to the Royal Decree in 1949 (DEMIG database, 2014). As the name suggests, the law concerns irregular border crossings by Moroccans as well as irregular entry, stay and exit by third country nationals but with little provisions regarding the human rights of migrants (Belguendouz, 2009: 19-20). The law regulates administrative procedures to follow regarding the deportation of migrants and their removal to the frontal zones and prohibits the deportation of asylum seekers, refugees, pregnant women and minors. As envisaged by the law, the Directorship for Migration and Surveillance of Borders, the unit responsible for irregular migration within Morocco was established under the Ministry of the Interior. Law 02-03 coupled with EU funding for border infrastructure strengthened the mandate of the Ministry of the Interior and its securitised approach over issues concerning immigration (Wunderlich, 2013a: 415-6).

In a context where Moroccan nationals are highly represented among those crossing borders irregularly, it is surprising that there were very few discussions in the parliament regarding the substance of the Law and the debate amongst civil society actors (Feliu Martinez, 2009: 351). The parliament adopted the Law in the aftermath of terrorist attacks in Casablanca in May 2003, together with the law on terrorism. According to Belguendouz (2009: 20), civil society was more focused on the law on terrorism. One explanation why the law on irregular migration did not receive much criticism from opposition parties or civil society lies in the fact that irregular migration in Morocco has been publicly framed as an issue that is mainly related to trans-Saharan transit through Morocco into Europe (Natter, 2014). Even before the law, irregular migration in Morocco was presented as a sub-Saharan issue in the media (Belguendouz, 2009: 19).

The sub-Saharanisation, hence the racialisation of irregular migration has been instrumentalised to make the law more acceptable in the public domain. Officials have justified the use of coercive measures against sub-Saharan migrants by depicting it as a fight against mafia networks controlling human trafficking through Morocco. In November 2003, the King convened a meeting on the question of migration and the surveillance of borders with the aim of combatting human trafficking. As Khalid

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40 Dahir no: 1-03-196 (11.11.2003).
41 Article 26 of the Law no:02-03.
42 The Law 03-03 Regarding the Fight Against Terrorism, Dahir no : 26 (28/05/2003).
43 See Eriger en priorite la lutte contre les reseaux des etres humaines [To erect the fight against humain trafficking networks in priority], L’opinion, 12.11.2003.
Zerouali, the Head of the Directorship for Migration and Surveillance of Borders has explained: “Since 2004, we have disrupted 1,000 networks, it shows that we are not facing isolated cases or isolated attempts of clandestine migration but a market controlled by mafia gangs. [...] Morocco is equally a leading example of a cooperation model with the North as in the examples of close cooperation we have with Spain and other countries.”

By mid-2005, successful results of these measures were widespread in the Moroccan media, presented in terms of the decreasing the volume of clandestine migration into Spain (Valluy, 2007; Feliu Martinez, 2009: 350).

In response to the securitisation of borders, especially along the Canary Islands, and thus the shifting clandestine routes, as mentioned earlier in this chapter, migrants started to engage in more coordinated attempts to cross into Melilla and Ceuta. In September and October 2005, migrants were shot by Moroccan and Spanish border guards during their attempts at the borders between Morocco and the Spanish enclaves of Ceuta and Melilla, proving the human cost of these coercive measures (Belguendouz, 2009: 21; Migreurop, 2006). Moroccan security forces unlawfully removed large groups of undocumented migrants to the no man’s land between Algeria and Morocco before and after the clashes (GADEM, 2007: 16). The Ceuta and Melilla scandal led to increasing international attention to the treatment of international migrants on Moroccan soil. The coercive practices violating national and international laws have become much more visible and have been criticised by domestic and international actors. The event did not only show the human cost of border controls in the absence of fundamental rights but it also paved the way for contesting this production. In other words, criminalisation from above gave rise to an emerging politicisation from below.

2005 was a turning point for the expansion of civil society activities concerning irregular migration (Semeraro, 2011: 55; Jacobs, 2012). The increase in civil society activism, in general, has been part of the political liberalisation of Morocco since the 1990s (Cavatorta, 2010). Note that it was a period when more funding opportunities especially by the EU were available for NGOs working on irregular migration issues in Morocco (Dimitrovo, 2010). Sensibilities towards the vulnerable situation of irregular migrants passing through Morocco into Europe started before 2005. International organisations such as the IOM, the UNHCR but also humanitarian organisations such as Doctors Without Borders (MSF) and Caritas had initiated their activities on irregular migrants in Morocco. Civil society working on immigration

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44 Interview with Khalid Zerouali, the Head of Directorship for Migration and Surveillance of Borders, Khalid Zerouali: “Le Maroc est a moins de 65% candidats a l’émigration clandestine.” (Khalid Zerouali: “Morocco is 65% less candidate for clandestine emigration”), Liberation, 15-16 July 2006.

45 See for example “37% decline in clandestine embarcations in the first 8 months of 2005”, Liberation, 08.09.2005.

46 MSF Spain started to operate in 2003 in Tangier, in 2005 in Nador and a couple of years ago in Casablanca and Rabat. (Interview with MSF). Caritas has been operating with vulnerable populations in Morocco since 1950s, and their activities included irregular migrants as this group became more visible in urban centres.
related issues was rather nascent (Feliu Martinez, 2009: 352) but proliferated in a dynamic fashion. In a context of widespread rights violations, civil society actors have become much more vocal concerning the question of migrant rights.

Even after the Ceuta and Melilla events, authorities have been unwilling to hear civil society and migrants’ demands for the recognition of the rights of undocumented migrants stemming from national and international law. The use of the label “transit country” justified the security oriented legal framework but also the practices on the ground that are particularly restricting for irregular migrants’ access to fundamental rights such as non-refoulement, access to asylum, access to healthcare and minors’ access to education. A related justification for the lack of inclusionary and integration policies for migrants is the low capacity of the Moroccan state to receive migrants. Most officials interviewed during my fieldwork in the Summer 2012 underscored that Morocco is not a country of immigration in terms of economic development: “there is nothing for migrants in here but it is seen as better than Gabon... what Morocco can offer to migrants? Best scenario is exploitation”. The widespread conviction is that Morocco is a victim of its geographical position and has no policy option other than to follow European policies “We feel like we are in the right direction. Because of its geographical position, Morocco must implement European laws. Morocco does not have the means...”. While the need for regional cooperation rightly prevails in the discourses of state and non-state actors, putting the responsibility on European actors as the source of the problem also becomes a strategy to deny migrants’ rights. As articulated by an official: “There is violence, extreme poverty, but it is not to Morocco to find a solution. We need a global, regional, international strategy”.

The humanitarian and advocacy activities by civil society, intensified in the post-2005 period, have been at odds with the official state perspective. Civil society organisations (CSOs) have become part of the governance of irregular migration in Morocco by undertaking the integration task that the state is explicitly unwilling to perform (Natter, 2014). Hence, they have shaped the production of migrant illegality and have worked towards reversing the criminalisation of irregular migration. Civil society has not only created channels, albeit limited, for migrants’ de facto access to such as Tangier, Rabat and Casablanca since 2002. Their reception centre in Rabat was opened in 2005, as more migrants were coming to Rabat because of the intense deportation practices (interview with Caritas).

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47 The structure and main activities of these CSOs and their relations to the state are further discussed in Section 3.4.

48 Interview with Fondation Hassan II, 29 June 2012.

49 Personal communication with a member of the Moroccan parliament from the ruling Justice and Development Party, Rabat, September 2012 (emphasis added).

50 Author interview, Oujda, September 2012.
rights and services but it has also provided a political sphere for irregular migrants to claim rights as members of society. Plus, migrants removed from the Spanish frontier have become much more visible in urban settings, and they have also started to organise amongst themselves. As explained in Chapter 4, Section 4.4, civil society activities and migrant activism have contributed significantly towards what I call a rupture in Moroccan immigration policy.

The emergence of civil society working on irregular migration issues has to be contextualised in the wider political and institutional liberalisation process. This liberalisation process of the associative life has extended under the reign of Mohammed VI since 1999 (Sater, 2007: 160-161). Introduced in the aftermath of Arab revolts, the 2011 Constitution included articles on the human rights of foreigners. Article 161 of the Constitution reformed and enabled a more independent ground of action for the National Council of Human Rights (CNDH) (Cherti and Grant, 2013: 5-6). Despite its still very fragile and highly criticised position, the CNDH played a key role in shaping what is called a “radically new immigration policy”.

Towards integration?

In the context of growing national and international critiques on the treatment of irregular migrants in Morocco, the report presented by the CNDH on the human rights of foreigners in Morocco presented to the King in September 2013 initiated a clear turn in the migratory policies of Morocco. Acknowledging that Morocco has become a land of immigration, the CNDH recommended a set of policies to facilitate legal and socio-economic integration of both asylum seekers and migrants (see CNDH, 2013). As mentioned, the mobility partnership agreement signed with the EU in June 2013 recommended the introduction of a new asylum and international protection system in Morocco. These critiques and recommendations led to a paradigmatic change in Moroccan immigration policies, initiated by King Mohammed VI who underscored, in his royal discourse, that Morocco is becoming a land of immigration for sub-Saharan and Europeans alike and that there is need for a new policy perspective.

Following the initiative of the King, in November 2013, the government announced a regularisation campaign targeting immigrants in irregular legal status in Morocco. The regularisation programme lasted throughout 2014. Different categories of migrants became subject to different criteria in terms of years of residence required to be eligible for the regularisation:

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51 See Article 12 and 30 of the 2011 Constitution.

The exceptional operation of regularization concerns foreigners with spouses from Moroccan nationality living together for at least two years, foreigners with foreign spouses in legal status in Morocco and living together for at least four years, children from the two previous cases, foreigners with employment contracts effective for at least two years, foreigners justifying five years of continuous residence in Morocco, and foreigners with serious illnesses who had arrived the country before December 31 2013.53

As advertised by policy makers, this practice has made Morocco the first country amongst developing countries engaged in regularisation campaigns. Officials emphasise that the new policy envisages a humanitarian approach to asylum and immigration that respects international norms and the human rights of migrants. Clearly, this indicates a shift from previous official discourse that Morocco lacks resources to deal with immigrants, who are allegedly stuck on Moroccan soil on their way to Europe. For instance, Mustapha Kassou, a member of the CNDH publicly stated: “This is a sinuous but irreversible path. Our country has means to achieve socio-economic integration of migrants present in its territory” (cited in Lemaizi, 2013).

The launch of the new policy was followed by institutional and legal changes and a possible rapprochement between authorities, international organisations and civil society in Morocco. The Ministry Responsible of Moroccans abroad was renamed the Ministry Responsible of Moroccans abroad and Migration Affairs.54 This decision was welcomed by NGOs, as it is a Ministry in charge of social affairs rather than security issues (Alioua, 2013). The department has intended more collaboration with civil society organisations active in the field of human rights. The increasing coordination with the new Ministry was emphasised in follow up interviews conducted with the UNHCR and the IOM in May 2014. Foreigners’ Offices have been created to operate the regularisation programme. An ad-hoc commission was formed to work on the national asylum law. An asylum bureau opened in Rabat to coordinate with the UNHCR in processing asylum cases.

The introduction of the new approach to migration and the regularisation campaign have developed in a fast fashion, reflecting the decisive role of the King in Moroccan politics (Cavatorta, 2010: 17).55 It should be noted that this reformist turn in Morocco’s immigration policy was unexpected. As I started my fieldwork in Morocco

53 From January 1st to December 31st 2014, Morocco launched an exceptional operation of regularisation of foreigners in irregular situation. Retrieved 15.05.2015, from http://www.marocainsdumonde.gov.ma/actions-du-minist%C3%A8re-du-maroc-lance-du-1er-janvier-au-31-d%C3%A9cembre-2014-une-op%C3%A9ration-exceptionnelle-de-r%C3%A9gularisation-des-%C3%A9trangers-en-situation-irr%C3%A9gulière

54 Referred to as the Ministry of Migration Affairs, hereafter.

55 Since the independence, the royal power in Morocco retained a degree of pluralism, unless it does not threaten its unquestionable rule.
in April 2012, the demand for regularisation was rather implicit, and stakeholders interviewed were pessimistic about a positive change in Morocco’s immigration policy. Regarding the question on demands for regularisation, the response was very clear that migrants in Morocco are in transit and that Morocco cannot be “a solution for exchange” for those migrants who wanted to reach Europe in the first place and who want to stay in Morocco only because they cannot reach Europe. The policy and the striking turn in the tone of officials after September 2013, however, was clear. The public speeches of the Minister of Migration Affairs, Anis Birou, have underscored the radical change in the official discourse. For example, during an international meeting on the new policy, he stated that:

Morocco, because of this new policy will save thousands of lives. We, all want that we will all prevent that there are going to be new Lampedusas. We all want that this new immigration policy announced in Morocco will go beyond the borders of Morocco. This new migration policy of Morocco does not only concern Morocco...we believe that this is a shared responsibility, we are all assuming this responsibility in giving migrant a second chance to realize their dreams, instead of the hell of crossing the Mediterranean, to realize the Moroccan dream.56

While the impact of the new migratory approach in remediing migrants’ experiences of exclusion is yet to be seen, most analyses locate this recent turn in Morocco’s migration policy within geo-political strategies of the country seeking to forge firmer relations with the EU and with African countries to compensate for its absence from the African Union. It is also acknowledged that this process is linked with improvements in fundamental rights as envisaged in the 2011 Constitution, in a period when Morocco is acknowledged as a country of immigration rather than merely a transit zone. Despite the top down character of the new migratory policy initiative, we need to see this policy initiative as a response to the ongoing international and domestic criticism towards the Moroccan state for denying the rights of irregular migrants.

High criteria for eligibility and the uncertainty waiting those who are not regularised are the most criticised aspects of the regularisation campaign.57 Questions

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56 Author’s notes from the meeting “The new migration policy in Morocco, which strategy of integration” organised by Ministry in Charge of Moroccans Abroad and Migration Affairs, IOM, Confederation of Switzerland, March 11th and 12th, 2014, Rabat, Morocco (see Figure 4.2 in Chapter 4).

57 As a partial response, authorities loosened criteria for regularisation to include women, minors and Syrian refugees as vulnerable groups, as well as activists and leaders of informal migrant associations. Around 17,000 people were regularised by the end of 2014. “Close to 17,918 one-year residence permits were granted from 27,330 applications registered (almost half of them to Senegalese and Syrians, followed by Nigerians and Ivoirians)” (Martin, 2015). See also, Bonne nouvelle: 5 060 femmes migrantes obtiendront la carte de séjour. [Good news: 5,060 migrant women will obtain the residence permit] Tel Quel, 28.07.2014, Retrieved 15.05.2015, from http://telquel.ma/2014/07/28/5060-femmes-migrantes-obtiendront-carte-sejour_1411572; Maroc : 16 000 régularisations de sans-papiers en 2014 [Morocco: 16 000 regularization of undocumented migrants in 2014], Le Monde, 23.01.2015. Retrieved 15.05.2015, from
on the implementation of the regularisation campaign cast doubt about if the new policy will ensure human rights and the integration of migrants or if it will lead to another form of control over migrants, for example by collecting personal information from migrants, including those who are not eligible for regularisation. NGOs are equally concerned about how the personal information they provide will be used and if it will be shared with authorities such as the EU for other purposes such as readmission. Furthermore, the collaboration with NGOs might create bias against groups who were never involved in NGO activities (Chaudier, 2013). There has been scepticism about if the new policy approach will end the coercive measures (Chaudier, 2013). Along with a rupture from the previous approach that criminalised the presence of migrants on Moroccan territory, there was a continuity in securitised measures that was crystallised through removal practices, leading to severe injuries and deaths especially along the border throughout 2014 and after the end of the regularisation programme (Belghazi, 2015).

Since the early 2000s, irregular migration in the Moroccan context has been conceptualised as criminal activity. The stance that Morocco is a transit country rather than a migrant receiving country, victim of its geopolitical position was officially held until late 2013. Since September 2013, there has been a discursive turn in Moroccan immigration policies. Highlighting Morocco as a case of rupture, the section has clarified the policy background as characterised by the criminalisation of irregular migration as well as the gradual acknowledgment of irregular migrants’ right to stay. Chapter 4 will go further to explain how this particular criminalisation and politicisation is interlinked with experiences of illegality in terms of exclusion but also gives rise to particular forms of informal incorporation through migrant mobilisation. It also makes the case that bottom up politicisation directly or indirectly unfolded through the rupture in immigration politics.

3.4 Migrant illegality as Europeanisation in Turkey

Turkey’s transition from having no immigration policy to the adoption of an immigration policy through the EU accession process has been gradual. The institutionalisation of migration governance initially emerged as a response to incoming asylum flows and evolved as a matter of Europeanisation. Parallel with the adoption of techniques to govern external borders of the EU in the post-2000 period has witnessed a transition in scattered immigration policies in Turkey. Concurrently, immigration legislation and institutionalisation in Turkey have been mainly discussed in public and policy circles, within the technicalities of the EU accession process. The section re-evaluates what is documented in the literature as the Europeanisation of

migration and asylum policy (İçduygu, 2007; Özgür and Özer, 2010, Ozcurumez and Şenses, 2011.) as a case of the institutionalisation of migrant illegality.

**Emerged as refugee, developed as an EU issue**

Until the mid-1990s, the Turkish state was not actively involved in regulating immigration flows. In contrast with Morocco, the issue of asylum was the initial object of governance in Turkey, rather than the problems of irregular or clandestine migration. 58 Fears of mass inflows during the Gulf Crisis and at the peak of Kurdish armed conflict in the Eastern part of the country, authorities introduced a regulation on refugee status determination. According to the regulation—entitled “the Regulation on the Procedures and the Principles Related to Mass Influx and the Foreigners Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey or Requesting Residence Permits with the Intention of Seeking Asylum from a Third Country”59, the Ministry of the Interior became the final decision-making body for refugee status determination in collaboration with the UNHCR. 60

While the 1994 Regulation marks transition into international norms (İçduygu and Bayraktar, 2012: 40), the post-1994 period is also characterised by rights violations by Turkey, especially the right to non-refoulement and by increasing cases against Turkey at the level of ECtHR (Kirişci, 2012: 67-68). The 1994 Regulation introduced administrative procedures requiring applicants to register with the police within five days of arrival and to reside in cities designated by the police. Officials strictly implemented these measures and increasingly deported potential refugees failing to meet strict administrative requirements (Kirişci, 2012: 67). In other words, there were arguably few differences in the treatment of potential asylum seekers and those who are seen as “illegal” before the law.

After the initial phase leading towards the adoption of international norms on asylum, the signing of the Accession Partnership Agreement with the EU in 2001 pushed for legislative and institutional changes in the field of asylum and migration in Turkey. The National Security Council issued a resolution on irregular migration in 2002, and the Strategy Paper for the Protection of External Borders in Turkey was adopted in 2003 (DEMIG database, 2014). More restrictive visa policies have been adopted in line with the Schengen negative visa list (DEMIG database, 2014). Legal activism in the context of EU-led reforms targeted what might be called Turkish immigration policy, which was regulated through various legislation such as Passport

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58 In Hess’ study conducted in early 2000s, potential informants could only relate to research theme “transit migration” when researchers mention the name “refugees” (2012: 431).

59 Referred to as the 1994 Regulation, hereafter.

60 As a result of the 1994 Regulation and its Implementation Directive enacted in 2006, both the Ministry of the Interior and UNHCR process the applications of asylum seekers. However, Kirisci notes that in time, MOI relied more on UNHCR decisions (2012: 69).

61 Later extended to 10 days. The 2006 Implementation Directive removed this clause and replaced it with “reasonable time period”.

62
Law, the Law on Residence and Travel of Foreigners in Turkey and the Citizenship Law. The adoption of the Law on Work Permits of Foreigners, changes in the law regulating the acquisition of citizenship through marriage and harsher sentences introduced for human trafficking and smuggling in 2003 were among the important and unprecedented legal changes in the field of international migration in Turkey in the post-2000 period. Some of these legal measures were envisaged within the adoption of the EU acquis, and others were reactive measures to the changing mobility dynamics in Turkey. For instance, the introduction of a three years waiting period for the acquisition of citizenship through marriage was a response to the perception that female migrant workers with post-Soviet origins were legalising their stays through marriages of convenience (Bloch, 2011: 508).

The period between 2003 and 2008 is characterised by legal activism in the context of Europeanisation as well as increasing civil society awareness. At the level of implementation, enforcers had a wide space for discretionary power. The wide interpretation of notions such as Turkish traditions, political requirements and violating peace and security as grounds for detention and deportations, which led to various forms of human rights violations (Dardağan Kibar, 2013; Yılmaz, 2014). The case of Festus Okey, a Nigerian asylum seeker killed by a police gun while being detained in the Beyoğlu Police Station in Istanbul in 2007 has been a very visible example of such rights violations. The continuation of rights violations during the trial of this case triggered further civil society activism and led to rising awareness amongst academics, lawyers and other civil society actors about the question of asylum and immigration in Turkey.

As is further detailed in Section 5.4, existing, as well as newly established human rights organisations and other civil society actors, developed an interest in immigration and asylum issues in the post-2005 period. The EU accession process has provided the basis for the emergence of civil society organisations working on immigration issues in Turkey in terms of opening a political space for- and making available- funding opportunities. Humanitarian and advocacy organisations have become more involved by becoming service providers of the UNHCR. In this sense, the move from no policy to the adoption of a policy in post-2003 period has made irregular migration a subject of governance with the involvement of multiple external, state and non-state actors. Features of this emerging governance included a scattered legislative framework, a security dominated approach to irregular migration, a lack of public awareness or debate on the subject, rights violations in implementation and increasing civil society critiques. The extent to which Turkey’s new asylum and

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62 Common point made by informant in several NGOs such as Amnesty International, Turkey branch of Helsinki Citizen Assembly, TOHAV, Caritas.

63 As a result, asylum seekers have become primary clients of civil society activities on immigration issues in Turkey due to UNHCR’s leading role in the field, with the protection needs of irregular migrants are arguably sidelined (Scheel and Ratfisch, 2014), as further discussed in Section 5.4.
migration legislation and the institutionalisation around it, can remedy rights violations and change forms of politicization around immigration is yet to be seen.

**New legislation and the institutionalisation of migrant illegality**

The main motivations for the institutionalisation of immigration and asylum governance in the post-2008 period were the commitment to the adoption of the EU acquis, preventing the ECtHR’s decisions against Turkey and growing international and domestic civil society activism leading to critical reports on rights violations (Kirişci, 2012: 77; see for instance HCA, 2007). In close cooperation with particular EU states, the UNHCR and the IOM, the Migration and Asylum Bureau and the Bureau for Border Management were established in October 2008 under the Ministry of the Interior. The establishment of these two bureaus after 2008 is indicative of the institutionalisation of migration bureaucracy in Turkey as well as the first steps of the politicisation of immigration issues. The main mission of the Migration and Asylum Bureau was to draft the Law on Foreigners and International Protection (LFIP). Prepared in regular consultation with stakeholders such as CSOs and academics, the draft law was made public in 2011, and the LFIP came into force in April 2014 after a year of its enactment. Legal and institutional changes envisaged by the law arguably brought about a new phase in the governance of immigration and asylum in Turkey. The process has led to the institutionalisation and emergence of a bureaucratic cadre focused on immigration in the post-2008 period.

As the name suggests, the LFIP includes foreigners’ law and asylum law. It brings together formerly scattered pieces of legislation on entry, stay and the deportation of foreigners. For the first time, Turkey’s asylum policy is codified as law, as opposed to secondary legislation, which mainly referred to regulations in earlier periods. As a major institutional novelty, the law centralises the policy making and implementation in the field of international migration and asylum under the Directorate General of Migration Management (DGMM). Before the LFIP, various state bodies were simultaneously responsible for policies concerning immigration. As envisaged by the law, DGMM and its organisations that are institutionalised at the provincial level will gradually take over responsibilities from the Turkish National Police (TNP). As in the case of Morocco, the EU support institutionally strengthened the Ministry of the Interior, but the organisation has institutionalised under a civil bureaucracy rather than the police department and the military. The strengthening of the civil bureaucracy arguably led to the strengthening of human rights-based approaches in immigration policy making, along with the security agenda that dominated irregular migration discussions since the early 2000s.

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64 The most prominent of them are the Department of Foreigners, Border and Asylum under Directorate of General Security of Ministry of Interior and the Deputy Directorate General for Migration, Asylum and Visa under the Ministry of Foreign Affairs.
The law making process has revealed a gradual change in relations between rights-based NGOs in field and state institutions. In the process of law making, the state recognised the presence and importance of non-state actors and their experience in the governance of migration in Turkey. Despite tense relations between civil society and the state due to reports criticising deportation and detention practices, the opening of dialogue with civil society has been at the core of the law making process. The Migration and Asylum Bureau was open to exchanging ideas in terms of the content of the law. During the process of legislation in the parliament, the presence of NGOs in commission meetings was an important aspect of law making. The informant from Amnesty International articulated the following:

They are the ones organizing meetings. We received invitations from them. We do not receive many invitations from state institutions as CSOs. As state tradition, we do not have a participatory state tradition in any subject. Same goes for migration. This happened because of the vision and individual sensibilities of bureaucrats in the Bureau. Also, the Minister of Interior at the time was more open to dialogue with civil society. This also encouraged the bureaucrats. As a result, we were invited in several workshops and consulted.

The same informant also added that civil society’s presence in Parliamentary Commission meetings was not by invitation but was due to their insistence to participate: “I called the Commission to ask if we could participate at the meeting. They first said no, they said you need approval of the head of the commission. We had to act quickly; at the end, we forced them to invite us. We could receive the written permission”. However, limitations on NGOs’ participation in certain meetings and short consultation periods indicate a top down inclusion process. In this sense, it was different from Morocco, where civil society and migrant organisations had to carve out their political space.

Along with procedural changes, there has been a change in terms of the framing of the issue of irregular migration in particular and of immigration in general in post-2008 period. The arguments pertaining to inability to deal with migration also hold in Turkey, in a similar way as they were applied in the case of Morocco. Officials have maintained their concern over burden sharing with the EU (largely discussed elsewhere, Kirişci, 2012; Tolay, 2012: 54; İçduygu and Üstübici, 2014: 54-55) and security aspects of migration. As articulated by one official from the police department: “If we agree on readmissions, our streets will be full of foreigners, we cannot walk around comfortably”. At the same time, the perspective has shifted from a securitised to a human rights approach. Atilla Toros, a well-known bureaucrat in the field of migration and asylum, and currently the head of the DGMM, publically stated that he had visited detention centres himself and had spoken with asylum seekers in satellite cities. By stating, “we looked in the eyes of asylum seekers while writing these

laws”, he is referring to the degree of the shift from a purely state centric perspective to a more human rights perspective. The increasing numbers of reports by the Human Rights Commission in the Turkish Parliament also exemplifies the growing interests to protect the rights of immigrants (see reports by Turkish Parliament Human Rights Inquiry Committee, 2010; 2012; 2014).

Another motivation for the law was the economic aspect of immigration. The overall rationale of the law published by the Ministry of the Interior underlines “Turkey’s climbing economic power” as an attraction for migratory movements. In a parallel vein, officials interviewed widely referred to Turkey’s “own dynamics”, referring to the conviction that Turkey’s needs for these reforms regardless of EU accession have become widespread. The term “own dynamics” refers to the growth in the Turkish economy since the economic crisis in 2001. As the macro-economic variables indicate, Turkey is much more integrated into the global economy than Morocco. Thus, Turkey’s immigration experience is related to the country opening up to the global economy and its wide informal sector (Toksöz, Erdoğan and Kaşka, 2012; İçduygu and Yükseker, 2012). The informal sector has grown over many decades and has absorbed low skilled workers from different parts of the country who are excluded from the formal sector.

According to the Ministry of Labour and Social Security, the informal economy constitutes nearly half of the total economy. The Turkish Statistical Institute estimates that unregistered informal employment comprises 40% of the total employment (Arca, 2013). Within this picture, the unregistered foreign labour force has predominantly been informally employed in small and medium sized workplaces in construction and related industries, as well as in the industries of leather, textiles, agriculture, care and tourism. (Toksöz, Erdoğan and Kaşka, 2012: 72-76). Meanwhile, it is not possible to talk about either an official demand or a conviction for the need for a foreign labour force.

On the one hand, the relaxation in visa policies since 2010 shows that Turkey reflects the continuation of a laissez-faire approach to irregular labour migration and indirectly to transit migration into the EU. On the other hand, recent changes in visa policies have aimed at curtailing circular mobility and at registering those overstaying in Turkey. In line with the EU acquis, the law requires that “the duration of stay

68 There has been an ongoing on facilitating work permits of foreigners in certain sectors as well as in the case of Syrians. As of May 2015, these discussions did not turn into a concrete policy. The only sector where the need for migrant labour has been acknowledged by officials interviewed at various levels has been child and elderly care.
provided by the visa or visa exemption shall not exceed ninety days within one-hundred eighty successive days”. The EU accession process and the increasing visibility of irregular labour migrants in certain sectors have been main motivations for changing the visa policies. This legal change was followed by a one-time exceptional regularisation scheme implemented in the summer of 2012 to give a chance to those who entered the country before the illegalisation of multiple entries.69 It was a one-time amnesty whereby migrants with a legal entry could pay fines for the time they overstayed and apply for a six months exceptional non-renewable residence permit.70

On the other hand, the rationale behind the law acknowledges irregular migrants’ economic presence in the country. The Turkish state indirectly admits that there have been violations, particularly in the context of the deportation of irregular migrants. On the other hand, the content of the law does not radically extend the rights of irregular migrants. The law’s main impact on the lived experiences of illegality can only be seen in practice. However, as a written document, the law aims at providing a clear filter amongst asylum seeker, legal migrants and the illegal (Tolay, 2012). An official from the police department explained these distinctions and the aim of the law as follows: “The food comes into the body, if it is good (legal) it is digested, if it is bad (illegal), it is thrown away”. As this metaphor suggests, the content of the law arguably aims to reinforce the distinction between asylum seekers’ legitimate right to stay and the illegitimate presence of irregular migrants. The LFIP does not lift the geographical limitation on who can be admitted as a refugee in Turkey. However, provisions in the law ensure the principle of non-refoulement, access to asylum and enjoyment of fundamental rights by asylum seekers and refugees. The LFIP envisages no similar provisions regarding irregular migrants’ access to health care and education.

The issues of detention and deportation are the most criticised, hence politicised aspects of irregular migration management in Turkey. Reports have focused on the widespread use of detention, long detention periods, conditions of detention centres and unlawful deportations and detentions because of the problems inherent in the functionality of the international protection system (HRW, 2008; HCA, 2007; SRHRM, 2013, for an extensive list of report on the subject see Grange and Flynn, 2014: 19). As emphasised by the UN Special Rapporteur on Human Rights of Migrants, detention appears as a migration control technology rather than a measure of last resort (SRHRM, 2013: 10-11).


70 Note that it only applies to those overstaying their visa in exchange of quite high fees. The initiative was to remedy the change in the entry laws (see Article 11 of the LFIP) rather than to forge a regularisation campaign as we have seen in the case of Morocco. How migrants perceive this policy as one way to legalise their status is explained in Section 5.4.
In response to critiques from different actors, the law clearly aims to standardise the treatment of foreigners by leaving less room for discretion in the hands of authorities, especially with respect to deportation and detention decisions (Dardağan Kibar, 2013). When compared to previous legislation, the law provides more grounds for justifying deportations in cases of irregular entry, stay and work. At the same time, it provides protective measures to certain groups in vulnerable situations. The legal basis for detention is provided for the first time, and terms of detentions are clarified. As direct response to ECtHR decisions against Turkey, the law ensures procedural guarantees, the right to appeal to decisions entry bans, detentions and deportations. In other words, migrants and/or their legal representatives are given time to leave the country and the possibility to go to administrative courts to contest authorities’ detention and deportation decisions. However, there are exceptions in the law, which state conditions under which the legal period to leave Turkey may not be granted. These exceptions include obscure concepts such as posing “a public order, public security, public health threat” and give authorities a degree of discretionary power and the capacity to legitimise immediate deportations; thus, they can potentially preclude irregular migrants’ access to procedural guarantees and jeopardise their right to stay in the country. The law brings important novelties, especially procedural guarantees, regarding irregular migrants’ right to stay. At the same time, certain clauses on discretionary power may lead to the continuation of arbitrary practices that violate human rights.

The LFIP also brought unprecedented novelties such as permanent residence permits or articles mentioning the integration of foreigners and asylum seekers. What was interesting is that there were few political debates and hardly any negative views on this emerging immigration policy realm during the preparation and legislation processes. This resonates with the general lack of public discussion and parliamentary discussions on the subject of irregular migration and asylum (Tolay, 2012). Interviews with HCA confirm that despite the increasing awareness that Turkey is becoming a country of immigration, immigration has not yet become a political or electoral issue that should be introduced as a topic that concerns the general public or their opinions.

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71 Articles 54 and 55.

72 According to Dardağan Kibar (2013: 125), the clause foreclosing the possibility to appeal a court decision “is susceptible to paralyzing the development of case law and increasing overly elaborate decisions”.

73 Genç’s analysis of parliamentary proceedings between 1990 and 2010 reveals that Ministers of the Interior and of Foreign Affairs never raised the issue of irregular border crossings in and out of Turkey except one time in the context of Iraqi asylum seekers during the Gulf War (Genç, 2014: 58-59). This is striking given the sharp increase in the number of apprehended migrants in the same period (from nearly 11,000 in 1995 to nearly 100,000 in 2000 see Annex 2).

74 Interview with HCA, Istanbul, November 2013.
The issue has not become part of high politics in the sense that political parties would differ on their stance on the question of immigration. In this context of lower levels of politicisation, media coverage tended to reproduce stigmas around certain migrant communities rather than inform public opinion on socio-political and human rights aspects of the issue. Informants underscored that media attention to the subject has been limited to accidents and casualties along the land and sea borders. The sparse media attention on immigration is likely to change with the Syrian crisis. Even in the case of Syrian refugees, media attention has been limited compared with what one would expect when looking at the outstanding number of Syrian refugees (Düvell, 2013). Meanwhile, the Syrian conflict has gradually altered low political profile and external character in relation to asylum and migration issues in Turkey. In the South-Eastern provinces where Syrian refugees are most visible, there is evidence of discontent against Syrian refugees (Şimşek, 2015: 59-60).

The LFIP has arguably re-defined migrant illegality in legal terms and introduced procedures and rights that are more lenient with asylum seekers and are tougher on irregular migrants (Tolay, 2012: 52). The outcome of the legal changes in terms of remedying heavily criticised human rights violations can only be seen in their implementation. The rationale of the law recognises the presence of irregular migrants in the economy and shifts away from a security approach to one that is concerned with international mobility in general. However, the content of the law provides no rights for irregular migrants, aside from procedural guarantees in cases of detention and deportation. The law making process has clearly opened up a dialogue between state actors and civil society. However, the new legislation and institutions, in other words, the shift from no policy to policy on immigration and asylum did not necessarily alter the low levels of politicisation around the issue. This trend of de-politicisation is likely to change with the arrival and increasing visibility of Syrian refugees in Turkey.

To conclude the section, the discussions and practices around irregular migration in Turkey are incorporated into asylum and Europeanisation discussions. Scholarly research has framed the policy transformation as a case of Europeanisation. This section has argued that what is disguised as Europeanisation is the institutionalisation of migrant illegality. The section has explained the rather informal character of immigration policy and the de-politicised character of migrant illegality in Turkey. I have suggested that relatively lower degrees of politicisation have characterised the governance of irregular migration. Chapter 5 will further explore the impact of relatively low levels of the politicisation of irregular migration for migrant incorporation.

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75 Note that this situation is drastically changing with Syrian refugees. Major political parties before the 2015 General Elections included their policies towards Syrian refugees in their party programme and provided diverging views on the issue.
Conclusion: from the international production of migrant illegality to migrant incorporation

Focusing on the policy and institutional levels, this chapter has sketched the diversity of actors and contextual factors contributing to the production of migrant illegality in two contexts. Both Turkey and Morocco have intrinsically taken part in the EU migration regime. In both contexts, irregular migration was initially an aspect of their changing out migration flows to the EU and later became a policy concern regarding incoming flows. The volume, source countries and profile of incoming migrants differ from one context to another. What is comparable, as I have suggested, is the emergence of irregular migration as subject of governance in Turkey and Morocco, through similar techniques of producing migrant illegality and the countries’ similar positions within the international context.

It is undeniable that EU has played a major role in this process of making irregular migration a subject of governance in its periphery. The notion of transit country is important for understanding the impact of the international context on the production of migrant illegality in peripheral contexts. The countries identified as transit have taken measures to control mobility along their borders with the EU. Ironically, these countries are labelled as transit due to measures they have introduced in collaboration with the EU to stop transit. In peripheral contexts such as Turkey and Morocco, migrant illegality was initially produced as a by-product of the political will to stop irregular entries into the EU. This has led to the increasing involvement of the EU in the border infrastructure of the transit countries as well as the increasing activities of international/ intergovernmental organisations such as the UNHCR and the IOM; it has also led to changes in the legal infrastructure of transit countries.

This preoccupation with securing EU borders has had diverse outcomes. As is widely shown in the literature, rather than eradicating irregular border crossings, these measures resulted in costlier and riskier transit movement and led to migrants spending more time in the transit countries. One result of this process has been authorities’ instrumentalisation of the label transit country to suspend the human rights of migrants that are allegedly on their way to Europe. The construction of certain countries as transit contributed to state discourses that sidelined their responsibilities towards irregular migrants (Oelgemoller, 2011: 415). This led to the growth of the foreign population with no legal status, hence with no rights to have rights, in transit zones.

This process also resulted in the introduction of restrictive policies that were not only at border zones but were also apparent in internal migration controls. Sections 3.3 and 3.4 have revealed that both Turkey and Morocco introduced restrictive legal measures to control irregular migration. Irregular migration as a policy issue was arguably more problematised and criminalised in Morocco. Conversely, in
Turkey, labour aspects of irregular migration went hand in hand with security aspects. Restrictive policies and harsh enforcements have led to human rights violations and consequently to international and domestic critiques in both contexts. After years of denying responsibility for the rights of irregular migrants on its soil, Morocco recently, in 2013, shifted its policies to recognise irregular migrants’ right to stay and integrate. In parallel, Turkey introduced its first comprehensive law on asylum and foreigners only in 2013. Immigration policies in Turkey have gone through a process of gradual transition. EU-led reforms and state efforts have aimed at striking a balance between the ongoing, albeit slow, EU process and the increasing numbers of incoming refugees and migrants.

Given the similar emergence of the issue of irregular migration in the political agenda despite different levels of politicisation of the issue, Morocco and Turkey provide suitable comparative cases for exploring the impact of the interrelation between external and domestic factors on migrant illegality. Building on the conclusions of Chapter 4, Chapters 5 and 6 explore how the particular production of migrant illegality in the contexts in question has impacted migrant incorporation experiences. Chapter 4 on Morocco and Chapter 5 on Turkey question how the exclusionary practices vis a vis migrants have impacted migrants’ experiences of incorporation at the levels of policy, discourse and practice: What roles do enforcement by the bureaucracy, market and civil society play to define as available strategies for migrant incorporation and their access to rights and legal status? To answer these questions, Chapters 4, 5 and 6 are focused on the outcomes of the production of illegality in terms of migrant incorporation.