

CONTEMPORARY WOMEN'S ACTIVISM IN ENGENDERING THE  
POLITICAL AGENDA: A CASE OF LEGAL REFORM IN TURKEY

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## **ABSTRACT**

### **CONTEMPORARY WOMEN’S ACTIVISM IN ENGENDERING IN THE POLITICAL AGENDA: A CASE OF LEGAL REFORM IN TURKEY**

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The main aim of this study is to investigate the tools of the women’s activism which are used in transforming the gender equality agenda in Turkey in terms of legislative reform. To illustrate and study of the tools of women’s activism descriptively, a case study on the women’s activism for legislative reform in Turkey is conducted. The findings of the research verified the research thesis that women’s activism that occurred after 1980s and institutionalized during 1990s was incredibly influential in transforming the Turkey’s political agenda. The inner organization manner of women’s movement, its use of the media, lobbying activities such as finding allies in the commission and parliament, engagement with international women’s rights mechanisms, conducting effective communication through list-serve, arranging street demonstrations and actions can be enumerated as important tools.

**Keywords:** Women’s Movement, Women’s Activism

## ÖZ

### POLİTİK GÜNDEMİN DÖNÜŞTÜRÜLMESİ SÜRECİNDE GÜNÜMÜZ KADIN AKTİVİZMİ: TÜRKİYE’DE YASAL REFORM

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Bu çalışmanın temel amacı kadın aktivizminin Türkiye’de toplumsal cinsiyet eşitliği gündemini nasıl ve hangi araçları kullanarak dönüştürdüğünü incelemektir. Kadın aktivizminin etkisi ve araçları belirlenmeye çalışılırken Türkiye’deki yasal reform süreci analiz edilmiştir. Araştırmanın bulguları, 1980’lerden sonra ortaya çıkan ve 1990’larda kurumsallaşmaya başlayan kadın aktivizminin Türkiye’nin politik gündemini değiştirmede önemli bir etkisi olduğunu ortaya koymuştur. İç örgütlenme tarzı, medyanın etkili kullanımı, lobicilik faaliyetleri, uluslararası kadın hakları mekanizmalarıyla kurulan ilişki, sokak protestoları ve eylemler düzenleme, elektronik gruplar yoluyla etkili iletişim, kadın hareketinin hem Medeni Yasa hem de Ceza Yasası reformunda hükümetler üzerinde yoğun baskı yaratmakta kullandığı en önemli araçlar olarak ortaya çıkmıştır.

Anahtar Kelimeler: Kadın Hareketi, Kadın Aktivizmi

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## CHAPTER 1

### INTRODUCTION

In order to understand the impact of women's activism on the emergence of a gender equality agenda in Turkey, it is crucial to review the process of the Turkish women's movement after the 1980's. However, setting the 1980s as the starting point of the review of the impact of the women's movement should not be understood to imply that there was no women's movement before the 1980s in Turkey. Quite to the contrary, the present women's movement owes its presence and success to its predecessors. The Turkish women's movement can be clustered into two main periods; the first of which includes ten years between 1910 and 1920 and the second from the 1980s onwards.<sup>1</sup> There is also parallelism between the periods of the western women's movement and the Turkish women's movement. The second wave of the women's movement in Turkey began ten years later than that in the West.

The Turkish women's movement after the 1980s found an open space in which to mature, thanks to the political conjunctions of this period, which abolished all democratic rights and made both left and right politics impossible. Within this context, the women's movement was the first social movement to emerge with the return to a parliamentary system following the 12 September 1980 military

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<sup>1</sup> According to Şirin Tekeli, there was a preparatory period of the Turkish women's movement which lasted 40-45 years before the 1910s. Additionally, she defines the years between 1920 and 1980 as "stagnation period (çorak yıllar)" of the women's movement in Turkey (Tekeli 1998: 337).

intervention. This intervention had a great influence on the de-politicization of Turkish society. Repression of both radical left and radical right culminated in a silence in society, suspending democracy and halting the progress of political life. In this atmosphere, feminism was greeted as a new civil voice from society. According to Tekeli, the women's movement was the first and pioneering democratic opposition against the military coup and the demands of women for 'equality, freedom, solidarity' brought the feminist point of view naturally to the forefront of the fight for democracy (1986: 195). Today, the women's movement still has an indispensable function and role in the search for enhancing democracy in Turkey.

The majority of leading feminists of the women's movement in the 1980s were coming from the leftist movement of the previous period. On the grounds that the women in the left movement questioned their own position and subordination as "a woman", they considered the women's movement more proper and effective in their own policy making. In other words, the military intervention allowed women to break their ties with the ideological hegemony of the left movement and discover their own discourse. Thus, as a result of their shift from the left movement to the women's movement, the leftist activists called them "eylülüst".<sup>2</sup> For this reason, the women's movement was perceived as an insular movement excluding the left movement despite possessing leftist principles of "equality" and "social change" among others (Tekeli, 1993: 33).

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<sup>2</sup> They believed that the women's movement was a result of a bourgeois and anti-socialist climate which occurred after 12 September 1980 (Tilki 2001).

It is interesting to note that the growth of the women's movement during this period did not provoke any intervention from the state. There was no detectable state pressure on or obstruction of women's meetings, publications, or handouts. As a result, women could express themselves and have the opportunity to affect public opinion. Despite its assertive political and ideological discourse, feminist criticism on patriarchy and hegemony and the form and level of activities of the women's movement were not considered as threats, so the state did not intervene. It can be argued that the state didn't consider the women's movement threatening in any way and didn't take it seriously since there were no illegalities in the way the women's movement was organized.<sup>3</sup> According to Kardam, "...women's groups themselves did not challenge the state authority, and, in fact preferred to have minimal interaction with the state" (forthcoming 14).

In addition to the above-mentioned convenient political environment in Turkey, similar developments in the world made substantial contributions to the appropriate timing of the emergence of the new women's movement. The 1980's were the years of disappointment for previous social movements in the world. It was the time of the defeat of libertarian socialist projects and the victory of neo-liberalism through the rise of the new Right with Reagan of North America and Thatcher of Western Europe. Such a faithless atmosphere brought forth the search for new social projects among different and diverse social groups. In this sense, women became aware of their problems which are related to gender. This awareness made women in Turkey active and ambitious in organizing street demonstrations and carrying out campaigns

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<sup>3</sup> According to Zelal Ayman from the Women's Solidarity Foundation

in order to question the patriarchal order and women's secondary position in society. The model of the women's movement's mobilization was brand-new for Turkey's political history and played a significant role in the emergence of democratic social culture in Turkey.

The women activists of the new women's movement were also aware of the importance of the opportunities and rights which were beneficial to women and 'provided' by the reforms<sup>4</sup> of the Turkish Republic<sup>5</sup>. This reform period at the formation of the Turkish Republic is called "state feminism" by some feminists (Tekeli: 1993). In 1925 the wearing of the *charsaf* and the veil, which were perceived as symbols of religious oppression of women and backwardness by the modernizing state were prohibited. Modern style of dress was promoted by a vigorous propaganda campaign led by Atatürk himself. The Civil Code adopted in 1926 was inspired by and almost completely translated from the Swiss Civil Code. According to Kandiyoti, this Civil Code broke all ties with Shar'iah (Kandiyoti, 1991: 19). In 1930, women obtained the legal right to vote at local elections, and in 1934 they were given equal political rights and enfranchised for national elections. As a result of these reforms, Turkey took its place among democratic nations. However, it is asserted by women activists that these reforms were not enough for

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<sup>4</sup> The Turkish women were both participants in the political struggles and symbols of the new Turkey. The Kemalists' antipathy toward the traditional order became the source of the processes leading to the initiation of the Turkish reforms. Women's rights and women's emancipation were integral parts of Turkey's transformation plan. Kemal Atatürk viewed women's equality to men as part of Turkey's commitment to Westernization, secularization and republicanism (Moghadam 2003: 92-93).

<sup>5</sup> However, the "women question" as a political agenda dates back to Otoman modernization (Ertürk forthcoming b: 4)

women's emancipation and liberation.<sup>6</sup> These reforms were used as effective tools in the Turkish Republic's modernization process<sup>7</sup> but stopped short of criticizing the patriarchal ideology and its patterns in society.

In this regard, the main concern of the women's movement in the 1980s was to question the prevailing patriarchal system in society and to decipher its ideological foundations. Broadly speaking, it constructed and developed a new language of feminist criticism of society from a 'gender perspective'. Thus, this period could be evaluated as a challenge to the traditional paradigm of the state. Some of the women declared themselves "feminists" and started to speak on their own behalf rather than allowing themselves to be spoken for in the context of the official discourse of the state (Arat 1994).

In the 1980s, "domestic violence" became the most critical issue on the agenda of the women's movement<sup>8</sup>. Various women's groups and feminists mobilized societal support for this issue. The first public demonstration was organized on May 1987 in

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<sup>6</sup> According to Deniz Kandiyoti, the new Turkish woman was a self-sacrificing "comrade woman" who shared in the struggles of her male peers. She was depicted in the literature as an asexual sister-in-arms whose public activities never cast any doubt on her virtue and chastity. Turkish national identity was "deemed to have practically built-in sexual egalitarianist component. In this sense the image of the emancipated Turkish woman was in line with the emerging identity of the collectivity-the new Turkish-Nation (Kandiyoti 1991: 141-142).

<sup>7</sup> "The modernizing elites perceived women's advancement to be a part and parcel of Turkey's overall modernization. The founder of the Republic, Mustafa Kemal Atatürk emphasized that the road to progress must include both sexes working together. In this regard, he took an uncompromising stand on the place accorded to women in official and popular conceptions of Islam" (Ertürk forthcoming b: 4)

<sup>8</sup> According to Ertürk "during this period the international momentum for gender equality began to have its impact ... and fighting violence against women (VAW) was moving on top of the international agenda, as was manifest in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which the UN General Assembly adopted in 1979. (forthcoming b: 11).

order to protest “domestic violence”. According to Ertürk, this “no violence” demonstration opened the private sphere of life to public debate and helped legitimize the feminist movement in the eyes of many (forthcoming b: 11). Meanwhile, feminists established foundations to open women’s shelters and to help women who were subjected to domestic violence. They attempted to amend legislation and made policy suggestions to eradicate the problem of violence. Additionally, their attempts led to the expansion of women’s citizenship rights (Arat, 2000: 282).

Furthermore, in this period the feminist discourse of the women’s movement overlapped with the discourse of the second wave feminism of the 1970s in the West which organized around the motto “the personal is political.” Although the goals were the same in principle, the context in which they worked differed. The difference can be found in defining the parameters of domestic violence<sup>9</sup> (Arat, 2000:283). On the other hand, the manner of organizing of the Turkish women’s movement was derived from the Western model. For instance, non- hierarchical, independent forms of organizations, consciousness-raising groups, and issue-oriented ad hoc committees were similar to the Western experience (Sirman 1989: 19). In this period western feminist classics were translated into Turkish and women began to engage with international events<sup>10</sup> more systematically (Ertürk forthcoming b: 11).

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<sup>9</sup> This means that, Turkish feminists must have the proposal of a new law concerning domestic violence ratified in a parliamentary committee, members of which were traditional Muslim Turks who grew up in a patriarchal culture that legitimizes domestic violence and accommodates honor killings.

<sup>10</sup> “The Third World Conference on Women in Nairobi (1985), unlike the Mexico City (1975) and Copenhagen (1980) Conferences was attended by women of diverse backgrounds. Their experience helped to link local issues with the global agenda as reflected in the Nairobi Forward Looking Strategies” (Ertürk forthcoming: 11).

To conclude, in the 1980s despite “new roles” and new opportunities” emerging from the republican reforms of the 1920s and 30s, women in Turkey were still living in a sexist system which involved inequality and subordination and oppression in law, education, economic and political life and the family. To a large extent, the 1980s can be regarded as an activist period during which all women came together in big cities through consciousness-raising groups; informal meetings especially in homes; book and periodical clubs; through discussions in the daily newspapers and the weekly, bimonthly and monthly reviews and magazines; campaigns, and street demonstrations (Bora and Günel 2002: 8). Additionally, women set their own agenda and developed their own language. It is often argued that the current feminist terminology is rooted in this period (Işık 2002: 45). The 1980s were the period when “consciousness-raising” activities expanded and “empowerment” of women was put on the movement’s agenda (Timisi and Ağduk 2002: 15).

By the end of the 1980s, the women’s movement succeeded in putting women’s issues on the public agenda with a radical discourse. However, it did not have a significant influence on shaping policies. In consequence, institutionalization of the movement emerged as a new issue in this process. The existence of permanent and independent women’s organizations was a prerequisite for engendering the political agenda in a more effective and powerful way.

As a result of the preceding period, the Turkish women’s movement in the 1990s entered into an era of institutionalization. Therefore, the women’s movement in Turkey in the 1990s could be evaluated both as a period of continuity and a break

from the 1980s. The feminist terminology and group consciousness provided the continuity between the 1980s and 1990s. Due to the activities and campaigns of the 1980s, feminist terminology began to be used widely by the media, the state institutions and what is more, in daily language. Although women's organizations functioned in various capacities prior to the 1980's, forming a coherent group, engaging in regular meetings, and activism systematized only after the 1980's. Ađduk and Timisi argue that these activities became possible thanks to women's activist spirit during this period. According to them, the activist spirit of the 1980s was replaced by the tranquility in the 1990's. Women realized that in spite of their differences they could achieve empowerment and liberation all together. Although the activism of the 1990s was devoid of the enthusiasm of the 1980s, the activities undertaken diversified the agenda and the strategies used in approaching problems. The women's movement aimed to integrate the feminist policy suggestions which were proposed within informal organizations such as consciousness raising groups in the 1980s into the political agenda during 1990s. Institutionalization and gender mainstreaming which started at the end of the 1980s were important achievements of the 1990s. By virtue of women's activism and the public support given to the campaigns in the 1980s, gender equality terminology began to be used in public discourse and policies in the 1990s (Ađduk and Timisi, 2002: 37-38).

Additionally, in the 1990s "feminist militancy's" sharpening ideological stance tempered, giving way to a period of specialization and institution building. It is striking to note that, between the years 1973-1982 there were only 10 women's organizations; however the number increased to 64 between the years of 1983 and

1992 and to 197 between 1993- 2002. Not only did the number of women's organizations increase but also they became widespread all over Turkey covering diverse spheres of activities.<sup>11</sup> It can be argued that such trends in the institutionalization<sup>12</sup> of the women's movement are the most significant and manifest characteristics of the women's movement of the 1990s. As Kerestecioğlu claims institutionalization refers to the creation of a feminist consciousness during the 1990s; developing its own institutions on one side and gender mainstreaming on the other (2004: 75).

In the 1990s the women's movement spread beyond İstanbul, Ankara and İzmir. As a result, the movement was no longer defined as a "big city movement". Women organized, collaborated in organizing activities and created pressure groups for change. The expansion and increase in the number of women's organizations can be considered as an inevitable result of the transformation of the movement into formal organizations and projects oriented towards specific issues. Alternatively, some writers described this period as the "introversion stage" of the movement. According to Bora and Günel, the enthusiasm of the 1980s left its place to separate, formal, specialized groups, each occupied with their own projects and agendas. Within this

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<sup>11</sup> Some of the foremost organizations in 1990's are; Purple Roof Woman Shelter Foundation (1990), The Women's Library and Information Centre (1990), Women for Women's Human Rights – New Ways (1993), Association for the Support and Training of Women Candidates (KA-DER), the Women's Centre (KA-MER) (1997), Gender and Women's Studies Departments and Research Centers are established in various universities after 1990, Woman Platforms in İstanbul, Ankara, İzmir, Gaziantep

<sup>12</sup> According to Ferree and Martin (1995: 7), institutionalization denotes to conduct permanent structures such as women's organizations, women's units, women's centers at universities. It is argued that the women's movement exists in a dynamic and reciprocal relation with its organizations, giving them their broad purpose, specific agenda, and supply of activists, while drawing from them a set of practices, political and material resources, and a supportive context within which activists can carry on their lives while struggling for change. This relationship can be called as "accountability".

context, activities of the women's organizations led to a transforming effort of political targets to technical projects<sup>13</sup> and militancy to activism (Bora and Günel, 2002).

The 1990s also experienced other forms of women-oriented institutionalization. A governmental body "Directorate General on the Status and the Problems of Women<sup>14</sup>" (DGSPW) was founded within the Ministry of Labor. Although some have argued that the Directorate was not influential in engendering the political agenda, it was instrumental in contributing to the development of human resources, constituting technical bases and supporting research and training on gender issues (Acuner, 2002). Furthermore, such an institution facilitated the engagement of women's organizations in a dialogue with the state in a more effective way. As Kardam and Ertürk stated, these kinds of organizational changes within the government bodies have occurred with greater responsiveness to women's interests (1999: 170). According to Ertürk, the directorate led to Turkey's active engagement with international<sup>15</sup> gender equality regimes (forthcoming b: 13).

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<sup>13</sup> The term of "project feminism" is also used in some circumstances to criticize this transformation. According to Ertürk, it emerged earlier in the decade, dominating the agenda of women's groups after the Beijing Conference(1995) (forthcoming b: 13).

<sup>14</sup> DGSPW can be considered as the state's institutionalization on gender issues.

<sup>15</sup> According to Ertürk, "DGSPW gave women's groups an institutional framework within which to penetrate and influence the state apparatus; to become familiar with the international gender agenda, women's rights instruments and mechanisms; to give inputs into Turkey's official reports prepared in accordance with international and regional mandates, including the EU Commission mechanisms, intergovernmental bodies of the UN; and to provide a diverse set of women's groups a common platform for dialogue... it also gave women the ownership of the state's agenda on women's issues" (forthcoming b: 13).

In the meantime, during the 1990s women's studies programs and research centers were formed at universities. These programs and centers enabled the movement to generate a feminist theory and conduct research on gender issues. Above all, these structures facilitated young women's engagement into feminism and the women's movement.

The process of institutionalization in the 1990's around the women's issues both within and outside the state cannot only be attributed to women's activism. The influence of the international women's rights regime<sup>16</sup> on the women's movement in Turkey should not be ignored. Especially noteworthy in the international arena are the United Nations conferences<sup>17</sup> on women, which addressed women's subordination and lack of access to political, economic, educational and other critical resources, encouraging women to organize and become more proactive at national and local levels. The 1985 Nairobi Forward Looking Strategies and the 1995 Beijing Declaration and Platform for Action both defined the rights and obligations of governments and of international and regional organizations on the bases of principles of equality and non-discrimination (Kardam and Ertürk 1999). UN Special Sessions on the evaluation of implementation of decisions taken in the United Nations conferences on women, national and international women's forums, and Turkey's obligation as a part of international agreements such as the 1979

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<sup>16</sup> The international women's rights regime is an example of a regime formed by a truly transnational network that incorporates thousands of NGO's, many multilateral and bilateral donor agencies, as well as nation states (Kardam and Ertürk 1999: 180).

<sup>17</sup> Four Global UN Conferences on women; Mexico City in June 1975, Copenhagen in July 1980, Nairobi in July 1985, Beijing in Sept. 1995

Convention on the Elimination of all forms of Discrimination against Women<sup>18</sup> (CEDAW) all had important contributions to the institutionalization of the women's movement in Turkey.

To conclude, the period from the 1990s to the present is an era which has witnessed a growing presence of women's organizations on the political stage. They have assumed an important role in engendering the political agenda as they become institutionalized. Both the internal political dynamics of Turkey after the 1980s as well as the international conjuncture which generated new opportunities such as projects and foundations contributed to an increase in the number of women's organizations in Turkey and diversified their sphere of activity. As Kardam and Ertürk state, these NGO's have engaged in greater dialogue with governments, which in turn, are showing greater responsiveness to women's issues and collaborating with women's NGO's (ibid: 168). The primary goal of these women's organizations is to change the unequal position of women in society. They organized around the issues of politics, economics, education, violence, and poverty and sought to influence and engender the political agenda.

The main aim of this study is to investigate the impact of women's activism, including the institutionalization of the women's movement, on the gender equality agenda in Turkey, especially in terms of legislative reform. In this context, the thesis

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<sup>18</sup> “.. Such ratification represents both a formal commitment to apply the provisions of the Convention and an indication of willingness to accept a measure of international supervision. One-hundred-fifty-two states, including Turkey, have ratified this Convention, indicating their willingness to change domestic legislation and procedures to bring them in line with CEDAW's stipulations. The rules set by CEDAW are primarily monitored by the Committee on the Elimination of Discrimination Against Women... (ibid: 180).”

will be devoted to a more elaborate assessment of the Campaign for the Turkish Penal Code although women's activism concerning the Turkish Civil Code and other legislative change will also be considered. The research thesis is that women's activism in Turkey, which made its way into public discourse in the 1980's, maturing and becoming institutionalized in the 1990's, transformed into an effective civil society agent in shaping social policy. In the process, women's organizations increasingly engaged with international women's rights mechanisms and used them in demanding the state to comply with its international obligations.

The next chapter of this thesis will focus on theoretical issues and will examine the basic concepts related to the following processes; "engendering the political agenda", "women's activism" and emergence of "international gender agenda" in a global context from theory to practice. The third chapter will present the research method of this study. The following chapter will include an analysis of women's activism in relation to legislative reform in Turkey. Finally, in the last chapter, an overall assessment of the findings of the study will be provided and the areas for further research will be suggested.

## **CHAPTER II**

### **THE GLOBAL CONTEXT: FROM THEORY TO PRACTICE**

All around the world women face with inequality; they are paid less for work of equal value and they command less political and economic power. Women are often the target and subject of violence in their daily lives both in and outside the home. Thanks to women's activism, considerable progress has been achieved in policy and legislative reforms that have enhanced women's economic and political rights. Throughout this process, women's activism made great contributions to the emergence of international women's rights mechanisms. It shaped the agenda of international policy by mounting global campaigns, lobbying and building coalitions with women's NGO's around the world. In turn women activists have used the international mechanisms effectively to advance their struggle at the national and international level. The United Nations, through various conferences and forums has been the most effective platform in the formation of an international gender regime, thus engendering the international political agenda.

This chapter will attempt to discuss what is meant by "engendering the political agenda". It will focus on basic approaches within the feminist discourses in transforming politics. In this regard theoretical debates within the first and second wave of feminism will be presented. A discussion of some good practices of

women's activism in transforming mainstream politics worldwide and a brief history of the emergence of the international gender regime will follow.

### **2.1. What Is 'An Engendered Political Agenda'?**

Engendering the political agenda means ensuring that gender issues are addressed by means of policy measures. Inequality in education, literacy, unemployment, access to income and the labor market, wage levels political participation, violence and poverty are basic problematic cases which are experienced differently by women and men. All of these issues have been politicized by feminists, thus opening new space in the political agenda. Lovenduski introduces the argument of the political struggle of feminists as follows:

One important feminist angle on policy derives from a central understanding that the good society will give reasonable priority to both mind and body. It follows that social life is a function of issues of the private and public spheres which are by their nature difficult to separate. Public life depends on private arrangements, which are present but largely unacknowledged by policy-makers (1997: 289).

Presence of gender issues on the political agenda is required to challenge the discriminatory values and practices against women in all spheres of life. Legislatures, governments, political parties, electoral systems and interest organizations are all designed to reflect the interests of men (ibid 284).

A political agenda of a country is constituted in all levels of governance mechanisms. As Sikoska and Kardam (2000: 3) state, an engendered political agenda would be manifest in a country's overall governance – in the legislative, judicial and executive systems as well as in major sectoral policies and programs. Accordingly, this

manifestation would be the result of a dialogue, because the public sector would incorporate the mechanisms, processes and institutions through which citizens, specifically women can articulate their interests, mediate their differences and exercise their rights and obligations. An engendered political agenda would also mean the articulation of new discourses and inclusion of new voices on gender issues.

Amy Mazur offers five components of engendered policy and argues that if a policy includes at least three of these five components it could be considered as “feminist” (Mazur 2002: 30-31):

- a) the improvement of women’s rights, status, or situation to be in line with men’s;
- b) the reduction or elimination of gender-based hierarchies or patriarchy;
- c) a focus on both the public and the private spheres or an approach that avoids distinctions between the public and the private;
- d) a focus on both men and women;
- e) ideas that can be readily associated with a recognized feminist group, movement, or individual actor in a particular national context.

## **2.2. Changing mainstream politics**

### **2.2.1. Liberal Approaches: Involving Women into Decision Making Instances and Governance**

Engendering the political agenda is generally perceived as a process that would emerge in consequence of involving women in public, particularly high level

decision-making instances in governmental and private institutions. Today, throughout the world women face obstacles to full involvement in governance in general. Equal participation of women in specific decision making processes and bodies is still problematic.

One central theme is that the continued absence of women's voices in governance is largely due to inequitable representation and participation in institutional structures, from governments and political parties to NGOs and the private sector. However, it also recognizes that boosting women's political participation needs to go beyond raw numbers to encompass the complex relationship between power, poverty and participation. Women want and need to be able to participate in the decisions that affect them, their families, communities and countries (UNDP 2000: 5).

To achieve gender balance in political life, commitment to equality must be reflected in laws and national policies. The assumption of feminist theory is that bringing more women into politics and decision-making processes would lead to a shift in political agendas to include women's issues and a change in the nature of politics. Affirmative action measures are seen as necessary tools to secure a "critical mass" of women's representation in all levels of decision making. A common example of affirmative action measures is the establishment of quotas which can be in candidate lists, parliamentary or government committees. (INSTRAW 2005:4). For Dahlerup (2002), the reasoning behind the quota system is the need to recruit enough women into political power to ensure that they are not marginalized. In this sense quotas are temporary measures for removing the social and cultural barriers to women's entry into politics.

Azza Karam (1998) points out various criteria for the transformative impact of critical mass of women in policy-making. Such changes include:

- **Change in Perception** of women and men politicians, as well as in the expected division of labor between men and women in society. The more women who occupy higher levels of decision-making, the more the environment becomes rife in transforming capable women public figures from an exception to the norm.
- **Change in Discourse**, where women who participate politically manage to impact on the way that women in general can and should be referred to.
- **Change in Coverage** refers to how history is written and taught. School textbooks depicting mothers as 'always the one at home' and fathers as 'always out working' need to be rewritten as more and more women begin to 'go out of their homes' to make contribution to politics and economy.
- **Change in Policies and Legislation** where women's issues have found their way to the national agenda.
- **Change of Institutions** where specialized institutions which develop, monitor and implement gender-equality from within and without, are set up.

It should also be emphasized that increasing women's presence in politics will not be sufficient to acquire change in content and style of political decision-making. Women who are part of decision-making processes should have a gender perspective to transform the agenda and the manner in which politics is produced and conducted.

A critical mass of women in politics should make an impact and difference through influencing issues and policy agendas. For engendering the political agenda those

women should engage in a new form of politics as collaborative, non-hierarchical and reflecting women's way of working (Bunagan, Reyes and Yancha 2000: 14).

Furthermore, the national, cultural, political and socio-economic environment and capabilities of women leaders are determinants in engendering political agenda through direct involvement of women in decision-making processes. Sikoska and Kardam (2000: 4) reflect on this situation by explaining the obstacles faced by women in engaging in decision-making processes. In this regard, they determine factors such as the reproduction of the patriarchal male/female roles within the family, community and the workplace; the lack of gender equality consciousness of both women and men politicians; and the democratic deficit of the modern political systems as the major hindrances to the effective engagement of women in decision-making processes.

The feminist literature discusses how the implementation of critical mass, incorporating more women into politics and decision-making processes, would have an impact for leading a shift in political agendas to include women's issues and a change in the nature of politics. Cecilia Blondet (2002:278) questions the effectiveness of women's engagement in public life in promoting the rights of women and in making gender issues a part of the national political agenda. She asks to what extent such promotion is determined by the type of political regime and by the level of institutional development. In other words, is the increased presence of women in government desirable, even when they are primarily responding to the interests of the patriarchal regime?

To ensure the integration of gender equality into the political agenda as well as in constitutional, electoral and legal reforms, gender blindness in policy-making has to be challenged at all levels. Lovenduski argues that;

Amongst the many obstacles to achieving policy change or even policy recognition of women's issues<sup>19</sup> has been the assumption by decision-makers of gender blindness in many areas of policy-making. This has been possible not because the concept that a policy may affect men and women differently is difficult to grasp but because political structures and processes reflect conflict dimensions other than gender (1986: 245).

Lovenduski asserts three different ways that gender affects politics. First, gender relations traditionally have enabled men to dwell in the public sphere as a result of the work undertaken by women in the private sphere- a separation that also tended to prevent important domestic issues from receiving public attention. Second, women have mobilized within political institutions to alter gender relations both in the private and public spheres; hence gender has been brought directly onto the political agenda by feminists. Third, feminist ideas about sex, gender and equality have found their way into fundamental debates about democracy and political representation, and into discussions of social policy. Patterns of political participation and representation were developed over generations in political institutions designed to institutionalize the dominance of the groups who founded and influenced them (1995: 284).

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<sup>19</sup> The notion of "women's issues" has been criticized by some scholars. According to them there is no single "female identity" and women differ by age, race, class, nation, sexuality, physical ability and sexual preference. However, there are many issues that affect women and men differentially due to socially rather than biologically constructed differences (Lovenduski 1997). Additionally, Ertürk argues that these issues of similarity and difference should be perceived as complementary rather than exclusionary. "For example, demands for equal rights (equal treatment) can be accompanied by institutional arrangements that allow for the different needs of women, such as in the case of maternity leave or quotas for women" (2004: 7).

### **2.2.2. Transformative Approaches**

It is needless to say that, women's political participation and representation is of paramount importance in the process of engendering the political agenda. However, this perception creates an illusion that would connote the increase in the number of women in decision-making process with evidence of more gender equality in public policies. Definitely, participation in formal politics and decision-making processes is the most effective way of engendering the political agenda, however this is not enough to transform politics. Furthermore, this is only a liberal agenda. The next step is to transform the patriarchal order. As Ertürk states;

Although the agenda so far has concentrated on the liberal and relatively less threatening aspects of gender relations, the impact has been far reaching, provoking both resistance against and pressure for change. The challenge now is to move beyond the liberal agenda towards the transformation of masculine power that is embedded in human consciousness, language, values and major institutions such as state, economy, politics, family, etc. This is basically a political agenda requiring various strategies for action. A partnership among women and men to challenge and resist masculine gender politics at all levels is an area that needs to be explored and carefully integrated into the agenda for change (2004: 78).

Transformative approaches differ from liberal approaches with respect to their focus. Rather than focusing gender equality in power and decision-making processes, they put the emphasis on the ways of becoming effective in politics in order to transform the political agenda. Karam (1998) suggests that the "strategies and policy advocacy processes" rather than formal political participation of women should be analyzed. Staudt emphasizes different forms of women's involvement to formal politics as;

Political engagement takes many forms, ranging from civil service employment to conventional elections, from lobby groups and legislatures to nongovernmental organizations (NGOs), feminist groups, and resistance to complicity with corrupt governments and markets (1995: 212).

Promoting women's political engagement; their access to political power and developing women's agency in civil society is vital. According to Okeyo (1998), if we take the concept of governance broadly as a representation of the interests of all people, men and women, we should retain that the concept of governance encompasses issues of economic and political management, the interaction between the people and the state, popular consultation and participation, and ultimately the empowerment of civil society. Consequently, it is assumed that women's engagement in governance would put gender issues in the political agenda and it would promote involvement of women in development and democratization processes.

In this regard, the "empowerment<sup>20</sup> of women" is an effective instrument in transforming politics from a gender perspective. For women, active involvement at all levels of governance given the persistent structural inequalities is possible through "transformatory empowerment". Women's lack of political power reflects a concomitant lack of a strong social and economic position. Thus, strategies to improve the position of women, if they are to be effective, must involve the state in integrated policies across the cultural, social and economic components of women's lives (Lovenduski 1986: 295). Sikoska and Kardam (2000) define 'transformatory empowerment' as involving a process whereby women acquire the capacity to transform unequal power structures based on male dominance towards those that would lead to women's emancipation and gender equality. It should be emphasized that the empowerment of women and an engendered political agenda are mutually

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<sup>20</sup> Morgen and Bookman (1988: 4) offer a feminist definition of the term of empowerment as a process aimed at consolidating, maintaining, or changing the nature and distribution of power in a particular social context.

supportive processes. Empowerment is a both necessary condition for and an outcome of an engendered political agenda. As an enabling policy, an environment is created; the opportunity structures in society will become more inclusive, thus enhancing the capacities of women of diverse social status.

The empowerment of women (...) is a process that permeates all the conditions necessary for engendering the political agenda. Of course, this is not a unidirectional, uncausal process; to the greater capacity and greater voice for gender advocates in government and civil society and greater support and funding flows to gender sensitive agendas (ibid: 5).

## **2.3. Women's Activism**

### **2.3.1. International Women's Movement**

Women have notable and outstanding successes in influencing the political agenda through organizations and movements for social change (Karl 1995: 4-5). As a result of engagement with the state, interests and identities can also be re-constructed. It is therefore important to analyze how women's activism influences the state and policy agendas because the state could be a potential agent of empowerment and feminist strategies should make use of this in order to make progress.

Under the influence of globalization the nature of politics has changed. New social actors have entered into the political arena. These new political actors both above and below the state gain important space in the political arena and can be effective in transforming the traditional structure of politics and policy making. One of the most effective factors in reshaping politics, new social movements challenged the meanings of politics in particular dualisms of public/private, social/political, and, formal/informal politics (Craske: 1999).

Nickie Charles, in his study “Theorizing Social Movements” summarizes the theories on new social movements as follows (2000: 30-33):

- not based on traditional forms of class conflict
- they are primarily cultural rather than political bringing about social change through the transformation of cultural codes and collective identities.
- they are concerned with ‘cultural reproduction, social integration, and socialization’ and seek to defend the life world from encroachment by the system.
- they belong to a ‘different systemic location’ from previous social movements. Thus new social movements are associated with systemic change, whether this be conceptualized as a transition to a post industrial or programmed society, a transition to disorganized capitalism or the emergence of modernity
- the ‘new politics’ is about ‘quality of life, equality, individual self-realization, participation, and human rights’ whereas the ‘old politics’ is based on ‘economic, social, domestic and military security’
- new social movements arise not from relations of production and distribution but within the sphere of reproduction or the life world, hence issues of resource distribution are said to be irrelevant to them.
- their action is allegedly directed not towards the state but primarily concerns civil society, which needs protection from an ever expanding, interventionist state.
- some NSM theorists distinguish social movements from political movements; the latter being concerned with the state and state power, the former with

cultural codes, specifically ‘the production of symbolic goods... of information and images, of culture itself. Thus, ‘social movements, in a strict sense, represent conflicting efforts to control cultural patterns... in a given societal type.

- the structural location of new social movements is also reflected in their social base which is no longer the working class but ‘new class’ or the new middle class in association with the old rural classes and those who are peripheral to or outside the labor market, thus new social movements are class based, as are old social movements, but their base is middle class rather than working class. This has led some to argue that new social movements represent a ‘new politics of class’ rather than a new form of politics which has no relation to class.
- the demands of the new movements are not class specific but universalistic or particularistic and cannot be understood as representing class interests.
- the transition with which new social movements are associated is manifest in the changing technological basis of advanced capitalist society, the spread of information technology and the increasing significance of knowledge as a resource; all of which affect the form taken by social movements.

Women’s movements as one of the new social movements are female collective actions which are also in pursuit of social and political goals, like other new social movements. They have generally emerged in the context of modern state-formation and economic change and represented a response to the social and political conditions that accompanied them. In this perspective, Molyneux stresses that

women's movements and states have therefore ended up existing in mutual recognition (2002: 3).

The women's movement is understood as the whole spectrum of conscious and unconscious action of individuals, groups or organizations with the aim of combating gender subordination. Parts of the movement may disagree with each other, priorities may differ, and certain streams, groups or individuals may lie dormant at times. Some individuals may openly identify themselves as belonging to the women's movement; others may do not do so yet promote the cause of women through their actions (Vargas and Wieringa, 1998: 6).

The women's movement explicitly questions both cultural and social norms as well as the nature of politics and state institutions that impede gender equality. Along with women's organizations, the women's movement tries to transform ideological and cultural premises and the consequent redefinition of power and politics. For most women, there are no sharp distinctions between the public and private spheres of their lives. The women's movement emphasizes the ways in which this is an arbitrary divide and how 'private' or 'domestic' issues can become very politicized and public as well as how political and public organization can be very private.

Alvarez (1990) has argued that the extension of the reach of the state into the realm of the private has the effect of politicizing the private, through issues such as abortion, rape and domestic violence. This politicization then gives women's movements the ability to handle a campaign to influence the political agenda.

Shifting the boundary between the public and the private then becomes an important point of influence.

Additionally, the women's movement also deals with issues that are not the usual concerns of parties and governments and moves them into the political agenda as a result of social movement activity (Craske: 1999). In other words, women's struggle has the potential impact on the redefinition of politics and political agendas throughout the world (Sikoska and Kardam 2000).

Furthermore, the attitude of the state concerning gender-based issues is not fixed and stable. According to Alvarez (1989), battles can be fought out in the arena of the state and while the state has for the most part acted to reinforce female subordination, space can exist within the state to act to change gender relations. Additionally Waylen states;

At different times and within different regimes, there are opportunities to alter the existing pattern of gender relations. Women's relationship to the state, particularly its welfare element, can also be seen as a site of contestation which provides the context for mobilization, and the welfare state can function as a locus of resistance. The actions of the state can also become a focus for political activity by groups outside the state; an example would be poor women campaigning for an extension of services (1997: 91).

For Waylen (1996) different groups of women thus interact with the state in different ways, and can have some influence over the way in which the state acts; therefore feminist analysis has advanced from looking at the way the state treats women unequally in relation to men, to examine the ways in which particular states act to construct gendered state subjects, and the public/private divide in different contexts.

Staudt (1995) assigns three tasks to the women's movements to strengthen women's formal political engagement and pressure policy makers "to engender the political agenda"

- a) identify women's needs
- b) formulate strategies for increasing their capacity for leadership
- c) become actively engaged in the electoral process to make sure that a critical mass of women vote and are elected.

Additionally, Abzug and Kelber (1993) identify two other factors stressing the importance of an organized women's movement:

- a) the need for government-level gender advocacy, such as the need for organized women's caucuses in political parties to promote women's leadership or the creation of departments or rational commissions on gender equality;
- b) active collaboration between women in political parties and women's organizations in civil society to identify potential women candidates.

Women are not just individually challenging the status quo, they are also presenting collective action. The women's movement is composed of variety of women's collective actions. In many situations women activists organize across differences of racial, ethnic and class distinctions. As Nancy Naples states:

While generational differences in political contexts and political analyses are salient in some of these accounts, gendered experiences consistently shape the grounds upon which women organize their political responses (1998: 2).

Significantly, women's activism embraces women's social networks and their constructions of community for their political work. Through these communities women politicize and translate their consciousness into political action.

Activist networks established in and through local struggles for social and economic justice provide one of the primary means by which activists sustain and promote progressive analyses and alternative political strategies during times of political quiescence and backlash. Women's social networks, in particular, are powerful resources for promoting resistance strategies especially for those most marginalized in contemporary society (ibid: 18).

In her study, "Negotiating boundaries: women's organizations and the politics of restructuring in Ecuador" Amy Lind (2000) considered women's organizations and state in a consumption relationship. According to Lind, women's organizations have developed political strategies which are derived in part from their gendered roles in, and identification with, processes of local reproduction and consumption. It is argued that these types of organizations consider themselves as "clients", "recipients", or "consumers" vis-à-vis the international development apparatus- in order to demand state services, push for legal reforms, and collectivize consumption. In this perspective it could be argued that women's movements are constructing new consumer based political identities and women's activism uses all kinds of political bargaining tools for transforming the agenda.

Today, educated, professional middle-class women of different generations, together with thousands of organized women from lower socioeconomic classes with experience as grassroots leaders, constitute an important activist movement and call the governments into action for gender issues. Those women create new political styles and networks that differ from men's political organizations (Kendrick 1998).

Women's exclusion from politics in the past does not hinder the development of networks. They are more open to creating new forms of leadership. Sharon Bays explain this situation as before women were outside of men's power arrangements, women had no political or economic stake in erecting barriers or maintaining tensions. In fact, they found it more advantageous to build interactions with others than to focus only on internal community products (1998: 320-21).

Collective action in associations and organizations is a considerably effective means of women's political participation. For political action, women are becoming members of community groups, women's and other non-governmental organizations (NGO's) on the local, national, and even international levels. This type of political participation is no less important than participation in government. As Arvonne Fraser, former director of the international Women's Rights Action Watch (IWRAW), states;

Non-governmental organizations are the conscience of the body politic, whether they are providing social welfare services or advocating for changes in public policies. Civil Societies cannot exist long without them because NGO's are a check on the power of governments. Every government needs to be held accountable by its citizens, and citizens acting together in nongovernmental associations are far more powerful than individuals acting separately. NGOs also have the freedom to generate, test out and promote the adoption of new ideas, policies and programs (1993: 11).

As a result of associating with a variety of forms of political linkage, within and outside of state institutions, autonomy is a basic principle of feminist organizations which are an important part of women's movement. Autonomy is important in view of the fact that greater autonomy from the state enables independent mobilization for changes in government policy and donor strategies. Ransall (1982) in "Women and

Politics” emphasized the necessity of associational autonomy in order to make it possible for societal actors to gain leverage with which to demand policy changes. According to him, autonomy allows organizations to operate outside of state-based patronage networks, enabling non-governmental actors to determine and broaden their own goals, regardless of whether or not they conform to the goals of central or local government, political parties, donors or other powerful actors (ibid: 6). Additionally, for organizations both at the national and local level, autonomy has allowed marginalized sectors of society, like women, to challenge the existing distribution of resources and power that has discriminated against them (ibid: 7). It is also critical to resisting the state through strikes, demonstrations, petitions and the other manifestations of opposition. Autonomy gives power to women’s organizations and the capacity to determine their own goals, regardless of whether or not they conform to the goals of government and donors.

The feminist movement has its roots in the West and especially in the reform movement of the 19<sup>th</sup> century. The organized movement is dated from the first women's rights convention at Seneca Falls, New York, in 1848. Early feminists and primary feminist movements are often called the first wave and feminists after 1960s are called the second wave.

First-wave feminism refers to the feminist movement in the nineteenth century and early twentieth century, which primarily focused on women’s status in the social system and especially gaining the right of women's *suffrage*. They undertook a

variety of issues, eventually focusing on the vote as a necessary step in the process of having a say in the social and political decisions over their lives (Ryan 1992: 9).

Second-wave feminism refers to a period of feminist thought that originated around the 1960s and was mainly concerned with independence and greater political action to improve women's rights. Second-wave feminism was concerned with gaining full social and economic equality. One of the main concerns of second wave feminists was to gain reproductive rights, which were almost totally restricted until the 1960s all around the world. Access to abortion was also widely demanded, but this was much more difficult to achieve because of the deep societal divisions that existed over the issue. Today, abortion remains a controversial issue and is under attack in many parts of the world (Ferree and Hess 1995:152).

There are several feminist discourses shaped by three major traditions which are: liberal feminism, radical feminism and Marxist/ Socialist Feminism. These traditions are not discrete, and many feminists make use of either one or all of them.

Liberal feminism is the most widely known form of feminist thought. It explains women's subordinated position in society in terms of unequal rights or 'artificial barriers' to women's participation in the public sphere. Consequently, liberal feminists focus on the public sphere, on legal, political and institutional struggles (Beasley 1999: 51). They see social policy as an important force in establishing access to economic opportunity and civil rights (Ferree and Hess 1995:50).

Radical Feminism offers a challenge to patriarchal order in society. It gives a positive value to womanhood rather than supporting a notion of assimilating women into arenas of activity associated with men (Beasley 1999: 54). According to radical feminists, women are oppressed as women, not as members of other groups such as their social class. They see that the oppression of women has its roots in sexual oppression. In other words, women are oppressed because of their sex (Rowland and Clein 1990: 272).

The third feminist tradition, Marxist/Socialist tradition advocates Marxism/socialism and class analysis for feminism. In Marxist feminism, all hierarchical class relations are seen as the source of coercive power and oppression and of all inequalities ultimately. Therefore, sexual oppression is seen as a dimension of class power (Beasley 199: 61). Donovan suggests five concerns of contemporary socialist feminism as follows;

A central concern of contemporary socialist feminism has been to determine the role of household in capitalist society: The most extensive analysis has revolved around the question of domestic labor and its contribution of capitalism. A second area of discussion on the “woman question” concerns the direct relationship women may have with the modes of production as wage-earners. Third is the connection between women and class. Fourth, theory has developed around the question of the home or family’s role in ideological socialization. A final direction in contemporary feminist theory that derives from Marxist categories is that which focuses on the idea of praxis and on questions about ideology and the nature of consciousness (2001: 90)

Liberal and transformative approaches for engendering the political agenda as stated earlier in this chapter are based on the above mentioned traditions. Liberal feminism with its liberal approach does not focus on basic structures that support patriarchal values but rather it emphasizes equality between sexes. However, from the approach

of transformation, only radical and socialist feminism have a revolutionary vision for the future. Both socialist and radical feminists engage in deep analysis of the basic structures that support patriarchal values. They believe that effective strategies for transforming the current order are needed for a proper understanding of the dynamics of the existing system (Feree and Hess 1995: 216).

### **2.3.2 Good Practices**

As stated earlier in this chapter, in many areas of the world women are still in unequal positions; they are paid less than men for equal work, hold less political and economic power and they are often the subject of violence in their daily lives. All over the world, feminist activists continue to fight against these conditions. Some good practices of women's activism in changing unequal gender structure are presented below.

#### **2.3.2.1 Abortion Rights Activism in Ireland**

Today, abortion is illegal in Ireland. However the Irish law was more restrictive in the past because it prohibited women to travel across countries for an abortion or to provide information on abortion services in other countries.<sup>21</sup>

The Irish feminists worked for a period of 20 years for reproductive freedom. Certain key political challenges have enabled women's access to abortion. One of the most significant feminist challenges to abortion law was initiated in February of 1992,

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<sup>21</sup> "Fearful of the influence of EU, in 1983, the Catholic Church and many politicians launched an anti-abortion referendum that made abortion illegal in the Irish Constitution... To insure that Ireland would not be forced to alter its abortion law in lieu of the Maastricht Treaty pending in 1993, the Irish Prime Minister negotiated a special clause in the treaty that allowed Irish Law on abortion to be protected from any EU directives surrounding abortion rights (Hobson: forthcoming)."

when Irish High Court enjoined a 14 year old pregnant rape victim from traveling to get rid of her pregnancy in England. This is referred to as “Case X” and became a major tool for feminist activists to get international and national attention on the issue and to launch a campaign for abortion rights, which resulted in a successful referendum in 1995 that removed the travel restrictions and the ban on information on abortion (Taylor 1998).

#### **2.3.2.2. Battered Women’s Movement in Texas**

From November 18 to 21, 1977, feminist activists met in Houston, Texas to celebrate International Women’s Year and to identify goals for women for the next decade. The conference represented a distinct high point of the feminist movement of the 1970s. It was the first time that the federal government had authorized, sponsored and financed a national women’s conference. Never before had women come together as elected representatives from every state and territory in the nation to voice their needs and hopes for the future.

The main work of the delegates was to vote on a proposed National Plan of Action, a 26-plank agenda of recommendations on major issues affecting women. Plank 2 of the National Plan of Action was devoted to the battered women. That plank provided statistics about the widespread incidence of domestic violence, critiqued the unwillingness of police to intervene to protect women, and described the legal obstacles that women faced in gaining court protection against husbands’ violence.

At this conference, shelter activists held several workshops. They empowered women through sharing information and telling their stories. This conference was instrumental in the formation of the National Coalition against Domestic Violence. After this conference the activists decided to form the Texas Council of Family Violence. Feminists mobilized women and built a national movement to end abuse of women. In 1979 the Council started a project that would provide state funding for six Texas Shelters. Thanks to feminist activism, this project got statewide community support. In 1981 they succeeded in signing a contract on funding with Department of Human Service which would also include the provision of training, technical assistance, and evaluations related to shelter program development (Reinelt C. 1995).

#### **2.3.2.3. Legislation on Domestic Violence in South Africa**

In South Africa, the first half of the 1990s was a transition period towards democracy. This situation opened new space to civil society and gave opportunities to influence the political agenda through negotiations. During the negotiations process of the early 1990s women and feminist activists engaged in coalitions that shaped the gendered discourse of rights to equality and full citizenship. The forces of change that intersected to influence the policy agenda included non-governmental organizations working against violence against women, international organizations and United Nations instruments such as the Convention on the Elimination of all Forms of Discrimination against Women, and key institutions and individuals in the state itself.

In the Law reform issue women's organizations raised the public awareness on violence and conducted partnership with state. The Government commitment to addressing the issue of violence against women rose after the Beijing World Conference in 1995. Following the Conference the South African government entered a partnership with civil society organizations to combat violence against women. A National Network on Violence against Women was formed. This network was funded by United Nations Development Programme. The main work of this network was to circulate information about policy initiatives. This led women's organizations to be able to give input into the policy and legislative process at different times (Meintjes 2003).

In many areas of the world women are still in unequal positions; they are paid less than men for equivalent work and hold less political and economic power. They are often the subject of violence in their daily lives. Feminist activists continue to fight these conditions.

#### **2.3.2.4. The Evolution of EU Sex Equality Policy**

Women as legal experts and policy activists have played a central role in the evolution of supranational social policy in Europe. Thanks to their national and international activism they became an important integral part of international agreements (Chichoeski 2001: 220).

Women activists had significant effect on shaping the sex equality policy in the EU. The case of Equal Pay Principle (Article 141) is a good example of this. The Article

141 of Treaty of Rome<sup>22</sup> requires the member states to ensure and maintain the principle that women receive equal pay for equal work. However, member states did not commit seriously to providing equal pay in their national markets.<sup>23</sup> According to these states, implementation of such a measure would result in considerable costs and restructuring of the labor market. Until the late 1960s, none of the member states had undertaken domestic policy changes to enshrine the equal pay principle (ibid: 223-224).

However, Belgian women's activism on this issue paved the way for women to push for stronger policy within the European Commission. In this regard, in the implementation and evolution of Article 141, women used transnational information exchanges among women's legal networks, equality units and women's organizations. In the Spring of 1966, a labor union in Belgium discussed the implications of Article 141 for women workers. Following that, more than 3000 women were organized and protested wage inequalities between men and women through a strike. In the early 1970s national activists shifted their attention to include the European Court of Justice. Women lawyers worked with the European Court of Justice for expanding the scope of the article and providing real situations to which

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<sup>22</sup> Full Text of Article 141 from the 1957 Treaty of Rome (Prior to 1998 Article 141 was numbered as Article 119):

Each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work.

For the purpose of the Article 'pay' means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives, directly or indirectly, in respect of his employment from his employer.

Equal Pay without discrimination based on sex means:

- a) that pay for the same work at piece rates shall be calculated on the basis of the same unit measurement;
- b) that pay for work at time rates shall be the same effort the same job

<sup>23</sup> In member states, legal provisions for equal pay varied widely: Four countries had some provision, but Belgium and the Netherlands lacked any legislation (Chickoeski 2001: 223).

article 141 was applicable; as a result the court ruled on the “direct effect” of article 141. With this new amendment community citizens were endowed with individual rights enforceable under EU Law (ibid: 224).

Consequently, a space for policies on wage equality was created and women activists became more involved in EU politics in Brussels through their work within research centers, umbrella organizations, consultancy firms (ibid 235-236).

#### **2.4. The Emergence of the UN Gender Agenda**

The women’s movement was aware of the time when it was difficult to promote their interests at their home; they could bring these issues to international levels. Therefore, the UN became one of their primary interests. Women’s international organizations could often get resolutions, recommendations and international conventions that were more advanced than those adopted in their own countries. They could then lobby for change at the national level through using international agreements. According to Ertürk, emerging transnational feminist networks have been instrumental in simultaneously localizing global gender politics and global local struggles (forthcoming b: 11).

Over the past quarter century, the UN has convened four world conferences on women’s issues; 1975 in Mexico City, 1980 in Copenhagen, 1985 in Nairobi, 1995 in Beijing. Each has marked a different stage of a process that has raised gender equality to the center of the global agenda. Kardam argues that all of these developments point to existence of a regime:

These conferences have highlighted that women lag behind in virtually all aspects of life (education, health, literacy, access to income, and labor market

so on) and established Platforms for Action for promoting gender equality. These conferences have also provided a platform for women's NGOs and global women's networks to lobby for a gender perspective to be included in development policies and strategies. They have generated cross-cutting coalitions from all classes and economic groups from North and South with an unprecedented and indisputable effect on changing awareness and programs for women in many countries. In the two decades between Mexico City and Beijing, the way women are viewed in the development struggle has changed. Gender equality is embodied in an international legal instrument, the Convention on the Elimination of Discrimination Against Women (CEDAW) which entered into force in 1981 and has been ratified by 168 countries – more than two-thirds of the members of the United Nations. There is also a set of norms and rules related to gender equality as demonstrated by the various Platforms for Action from a number of conferences signed by states, together with CEDAW and other regional conventions. States have further established national women's machineries on gender issues (bureaucracies, departments, policies and programs) and some have changed laws and policies to follow up on global commitments (Kardam 2002: 411-12).

Ertürk (forthcoming) identifies different discourses that distinguish five stages in the promotion of women's rights and gender equality. These are (i) the norm of non-discrimination (1945-65), (ii) integration of women into development (1966-75), (iii) the Decade for the Advancement of Women(1976-1985), (iv) empowerment of women, (1986-1995) (v) 1996- present: women's human rights.

According to her;

Each phase embodies landmark developments in expanding the boundaries of mainstream approaches to rights and equality. In this process, intellectual as well as grass-roots movements increasingly engaged with the UN decision making bodies, thus linking policy, paradigm, and praxis. As a result, unlike any other UN agenda, the gender equality agenda not only gained a comprehensive outlook but also generated an ownership among women themselves bringing together women of increasingly diverse geographies and interests to the center of international public discourse (forthcoming:3).

#### **2.4.1 The Norm of Non-discrimination (1945-65)**

According to the liberal approaches as described earlier in this chapter, involving women into decision-making instances and governance is crucial for transforming

mainstream politics. In this period women did not actively participate in public issues, were silent in public discourse and moreover they had limited or no rights which were fundamental for their societal membership. Education, political participation, access to property, decision making over matters related to marriage, divorce and child custody rights were the main demands of women. During this time, women's movements, especially those of the First World, concentrated on formal rights of women to attain equality. Through interaction with international women's activism the UN agenda consisted of conventions on the principle of non-discrimination on the basis of sex as enshrined in the Universal Declaration of Human rights.

How did the UN's commitment to the advancement of women begin? During the UN Charter Conference in 1945, women delegates attending the Conference succeeded in including key concepts for women's rights in the UN Charter. They demanded that the Preamble to the UN Charter be changed from "equal rights among men" to read "equal rights among men and women". As a result, the UN Charter affirmed women's equality and outlawed sex as a basis for discrimination. Equal rights are also explicitly asserted in Articles 1 and 8 of the Charter.

On 21 June 1946, the Economic and Social Council agreed to establish a separate commission named Commission on the Status of Women (CSW). This Commission would have two basic functions: to "prepare recommendations and reports to the Economic and Social Council (ECOSOC) on promoting women's rights in political, economic, civil, social and education fields and to make recommendations "on

urgent problems requiring immediate attention in the field of women's rights"<sup>24</sup> (UN 1995: 13) CSW was created to set standards of women's rights, support educational efforts, encourage governments to bring laws into conformity with international conventions and foster global awareness of women's rights and eliminate obstacles women face (Women go Global). The Commission on the Status of Women helps to shape the language of the Universal Declaration of Human Rights, and used the principles of the Declaration as the basis for its Agenda. Women monitored the drafting of the Declaration paragraph by paragraph in order to prevent the inclusion of any sexist phrases (ibid).

As a first task CSW conducted a global survey on the status of women's rights. According to responses from countries which were not members of the UN at that time, four areas of concern were revealed. Under sponsorship of the CSW, several conventions were put forth by the UN; The Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others (1949); The Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (ILO 1951); The Convention on the Political Rights of Women (1952); Convention on the Nationality of Married Women (1957); the International Convention against Discrimination in Education (UNESCO 1960); and convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962) (Pietila 1999: 16).

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<sup>24</sup> However the Commission's mandate remained essentially the same, until 1987 when it was expanded to include such activities; advocacy of equality, development and peace; monitoring the implementation of internationally agreed measures for the advancement of women; and reviewing and appraising progress at the national, subregional, regional, sectoral and global levels (UN 1995: 13).

In this period, the Declaration on the Elimination of all Forms of Discrimination against Women was accordingly drafted by the Commission between 1965 and 1967. This work became an important milestone in the effort of the United Nations to promote equality between sexes (Reanda 1992: 284).

#### **2.4.2. Integration of Women into Development (1966-75)**

The modernist development strategies adopted after the Second World War for new emerging states had failed. Concentrating on finding a solution concerning the gap between poor and rich countries, the period 1961-1970 was proclaimed to be the first Decade of Development by the UN.

The 1960s and 1970s were a time of profound change within the United Nations, whose membership had begun to expand dramatically with the emergence of more newly independent nations, many of them former colonies in their economic infancy. As the ranks of these developing countries swelled, the Organization began widening its focus to include the problems of what was then commonly referred to as the third world. The role of economic relations between developed and developing nations, which directly and indirectly affected the lives of women, increasingly overshadowed debates over women's legal equality. Because early action on women's issues was oriented primarily by the concerns of women from Western Europe and the Americans, some delegations were concerned that the problems of women in developing countries and rural areas would be neglected. As a result, United Nations efforts towards the advancement of women increasingly focused on the role of women in development, both as beneficiaries and as agents of change (UN 1995: 26).

The policy shift from economic growth to welfare and equitable redistribution included the integration of women into development as a part of the Second UN Development Decade (1971-1980). This integration indicated a broadening of the shift in the UN gender agenda for women and development discourse thanks to the belief that industrialization and economic growth would benefit women by opening up employment opportunities and hastening their attainment of equal rights with men

(ibid: 27). The first measure for the advancement of women and their role in development was to mention women explicitly, endorsing the full integration of women in the total development effort (ibid: 29). In 1971, a resolution was adopted by the General Assembly calling for a programme of concerted international action for the advancement of women. This resolution indicated main gender concerns of this period such as progressive elimination of illiteracy, universal acceptance of the principle of equal pay for equal work, health and maternity protection, including the ready availability of family planning information, and participation of women in decision-making processes at all levels (ibid 29).

In this period, the year 1975 was defined as International Women's Year. On 10 December 1974, the General Assembly approved the programme for the International Women's Year focusing on equality, development and peace, and proposed that an international conference should be held. Over 80 countries' national commissions or committees promoted the International Women's Year through special events and activities. The agenda for the advancement of women had broadened from equality and development to peace<sup>25</sup>. Equality, development and peace emerged as a three part agenda on the eve of the International Women's Year (IWY).

The success of IWY exceeded expectations and brought the UN into the minds of wider circles of the world's women. It stimulated acknowledgement of the deteriorating place of women in developing countries in their economies and of practices by which, by oversight or by imitation of foreign societies, women's work and hence women themselves were considered to be marginal to economic development. As such, it contributed to a better understanding of the role that should be envisaged for women in the New Economic Order which was declared by the United Nations in 1975 to

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<sup>25</sup> "Equality represented the priority of the first world women, development the priority for the third world women and peace the priority for second world women" (Ertürk, forthcoming: 4 ).

specifically address issues of poverty and of economic development in the Third World (Women Go Global).

In 1974, The Commission on the Status of Women decided that it was important to convene a major conference to coincide with International Women's Year. The first Women's World Conference in Mexico City convened on 19 June 1975. The Mexico City Conference considered five main agenda items, the first two of which were discussed in the plenary, while the other three were deliberated in two committees:

- The objectives and goals of the International Women's Year: present policies and programmes.
- The involvement of women in strengthening international peace and eliminating racism, apartheid, racial discrimination, colonialism, alien domination and acquisition of territory by force.
- Current trends and changes in the status and roles of women and men, and major obstacles to be overcome in the achievement of equal rights, opportunities and responsibilities.
- The integration of women in the development process as equal partners with men.
- World Plan of Action.

By 2 July 1975, when the Mexico City Conference came to a close, delegates had adopted the "Declaration of Mexico on the Equality of Women and their Contribution to Development and Peace and a World Plan of Action"; a set of regional follow-up plans for Africa, Asia and the Pacific, Europe, Latin America and

Western Asia, and 35 separate resolutions and decisions on a wide-ranging set of issues.

In the Declaration, Governments pledged to abide by 30 separate principles, including the elimination of all obstacles standing in the way of women's full integration into national development and peace. It stressed the important role that women had to play not only in the achievement and maintenance of international peace, but in "peace in all spheres of life: in the family, the community, the nation and the world". In other words women must participate equally with men in the decision making processes which help to promote peace at all levels (UN 1995: 35).

With the conclusion of the Conference, a long-sought process of change had been set in motion. The UN, as a consequence, was in an ideal position to advocate for and help sustain the new global momentum towards achieving equal rights and opportunities for women in all fields (Women Go Global).

#### **2.4.3. The Decade for the Advancement of Women (1976-1985)**

The UN General Assembly proclaimed the years between 1976 and 1985 as the "UN Decade for Women: Equality, Development and Peace". The existence of United Nations Decade for Women promoted and legitimized the international women's movement through its various activities which helped to bring women's issues to the forefront of the world agenda at national, regional and international levels. (The United Nations Decade for Women, 1976-1985". (UN 1995: 37) As Ertürk emphasizes;

The 1976-1985 period was devoted to effective and sustained national, regional and international action to implement the outcomes of the Mexico Conference, particularly the goals of equality and the full integration of women in the development process and in the promotion of world peace. The mobilization of efforts and resources toward this end gave the UN gender

agenda greater visibility and legitimacy both within and outside the Organization (forthcoming: 4)

In this period, two new UN institutions, the United Nations Development Fund for Women (UNIFEM) and International Training and Research Institute for the Advancement of Women (INSTRAW) were created to provide technical assistance and conduct research.<sup>26</sup>

During this period the second and third world conferences on women, in 1980 and in Copenhagen and 1985 in Nairobi convened.

### **1980 The Copenhagen Conference**

The Second World Conference on Women was held 14-30 July 1980 in Copenhagen. The Copenhagen Conference had two main objectives: to review the progress in implementing the goals of the Mexico City Conference at the midpoint of the UN Decade for Women and to update the 1975 World Plan of Action adopted at the earlier Conference and targeted for the remainder of the Decade.

The Conference focused on three urgent areas of concern for women: employment, health and education. These issues came to the forefront on the grounds that the broad goals of equality, development and peace which were enumerated at the Mexico City Conference could not be achieved unless they were refined into specific, highly focused objectives for women (Women go Global) .

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<sup>26</sup> “UNIFEM’s and INSTRAW’s establishments have been recommended by the Mexico City Conference. INSTRAW was created for the need for improvements in research and training, especially in issues related to women and development. UNIFEM was mandated to carry out operations and activities. It often trains and works with NGOs and Government groups as part of an effort to enhance cooperation between citizens’ organizations and Governments. It helps improve the living standards of women in developing countries by addressing their concerns through the provision of technical and financial support and by promoting the inclusion of women in the decision-making process of mainstream development programmes (UN 1995: 41)”.

The Copenhagen Programme of Action and its 48 resolutions called for stronger national measures to ensure women's ownership and control of property, as well as improvements in women's rights to inheritance, child custody and nationality. Recommendations addressed problems faced in implementing the goals of the Mexico City Conference. These included lack of sufficient involvement of men in improving women's role in society and political will to improve women's status in many countries, non-constructive attitudes on the part of both men and women in many countries, lack of recognition of the value of women's contributions to society and of attention to the particular needs of women in planning, absence of women in decision-making positions, insufficient services to support the role of women in national life, such as co-operatives, day-care centres and credit facilities, overall lack of necessary financial resources and deficiency of communication between policy makers and women in the greatest need, and ignorance among women about opportunities available for their development (Women Go Global).

At the end of the Copenhagen Conference it was decided to convene a third global women's conference in 1985 for assessing the accomplishments of the United Nations Decade for Women and preparing a new set of guidelines for the 15 years leading up to the twenty-first century. It also suggested the preparation of a world survey on the role of women in development (ibid).

### **1985 The Nairobi Conference**

The World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace was convened in Nairobi, Kenya on 15 July 1985 with a mandate to establish concrete measures to overcome the obstacles to achieving the goals of the UN Decade for Women.

The World Survey on the Role of Women in Development and other reports prepared by the Secretariat during 1984 helped lay the groundwork for the third global conference on women, the Nairobi Conference (UN 1995: 46).

The Conference focused on obstacles to achieving the goals of the Decade. These obstacles were the persistence of underdevelopment and mass poverty, major factors in the enduring inequality of women and *de jure* and *de facto* discrimination against them; the continuation of women's subordinate roles in development, consequence of physiological, social and cultural biases; and ongoing threats to international peace, resulting from armed conflicts, human rights violations, terrorism and other obstacles to overall progress, especially the advancement of women.

At the end of the Conference, governments had agreed to adopt the Forward-looking Strategies for the Advancement of Women. According to the observers, a number of delegations declared that they had reservations about the The Nairobi Forward-looking Strategies (NFLS);

The Nairobi Forward-looking Strategies were nothing less than an updated blueprint for the future of women to the end of the century. The heart of the document was a series of measures for implementing equality at the national level. Since countries are at various stages of development, the Strategies

explained, they should have the option to set their own priorities based on their own development policies and resource capabilities. There were three basic categories: constitutional and legal steps; equality in social participation, and equality in political participation and decision-making. Specific measures were recommended in many key areas, especially employment; health; education; food, water and agriculture; industry, trade and commercial services; science and technology; communications; housing, settlement and community development and transport; energy; environment; and social services (ibid 47).

The NFLS offered guidelines for national measures to promote women's participation in efforts to promote peace, and education for peace. The General Assembly responded to the Nairobi Conference in an Assembly resolution of 13 December 1985 in which it urged Governments "to establish collaborative arrangements and to develop approaches" in their national programmes to implement the Nairobi Forward-looking Strategies. It also asked the United Nations system "to establish, units in the places where they don't exist, focal points on women's issues in all sectors of the work of the organizations of the United Nations system". At the same time, the Assembly assigned the Commission on the Status of Women, the task of overseeing implementation of the Nairobi Forward-looking Strategies, and urged that all organizations of the United Nations system co-operate in this task (Women Go Global).

In this decade, CEDAW reflects the normative standards applicable to women's human rights.

### **1979 CEDAW**

In 1979, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted and entered into force in 1981. The Convention has

been ratified by 180<sup>27</sup> Governments, known as "States parties"<sup>28</sup>. As a comprehensive international treaty on women's human rights CEDAW, often described as the first international women's bill of rights, brings states together and binds them legally on internationally accepted principles on the rights of women. It commits Governments to take "all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men".<sup>29</sup> It sends a message that the passage of laws is not sufficient and that governments must ensure that women actually enjoy the rights that the laws are designed to protect (Women Go Global).

CEDAW is an effective legal instrument that binds ratifying states. According to CEDAW all state parties should respect and guarantee human rights of women.

It defines what constitutes discrimination against women as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural,

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<sup>27</sup> After Monaco's accession on 18 March 2005, today **180** countries are party of the Convention (<http://www.un.org/womenwatch/daw/cedaw/states.htm>) (29 August 2005)

<sup>28</sup> "It is the second most widely ratified international human rights treaty, but many States have accompanied their ratifications with reservations. The number and breadth of these reservations have raised concerns that while the Convention is in force, a significant number of Governments are not fully committed to some of its most basic principles. In recent years, some Governments have been persuaded to withdraw their reservations. But the problem persists, and the issue has been the subject of much debate (Women go global)"

<sup>29</sup> <http://www.un.org/womenwatch/daw/cedaw/states.htm>

civil or any other field and sets up an agenda for national action to end such discrimination.<sup>30</sup>

By accepting the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms, including (ibid) ;

- to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;
- to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and
- to ensure the elimination of all acts of discrimination against women by persons, organizations or enterprises

The Convention's aim is to provide the equality between women and men through guaranteeing women's equal access to political and public life and also equal opportunities especially in education, health and employment. States agree to take all appropriate measures, including legislation and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms. Ratifying states are legally bound to put CEDAW's provisions into practice. They are also obligated at least every four years to submit national reports on measures they have taken to comply with their treaty commitments.

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<sup>30</sup> <http://www.un.org/womenwatch/daw/cedaw>

Implementation of the Convention is monitored by the Committee on the Elimination of Discrimination against Women (CEDAW), which was established in 1982.<sup>31</sup> The Committee's primary mandate is to monitor the progress made for women in those countries which are the States parties to the Convention. The Committee holds two meetings annually and reviews national reports submitted by States parties within one year of ratification or accession, and thereafter every four years. Government Representatives present the reports to the Committee, covering national action taken to improve the situation of women. CEDAW experts comment on the report through discussions with government officials and obtain additional information. The Committee also receives information from non-governmental organizations and prepares alternative reports. On the basis of the review, the Committee makes concluding comments and may suggest areas for further action by the State party. The Committee can also make general recommendations on any issue affecting women to which it believes the State parties should devote more attention or on ways to eliminate discrimination against women (Women Go Global).

#### **2.4.4 Empowerment of Women (1986-1995)**

Until this decade, the UN's approach to gender issues could be defined as liberal. However, by putting the "empowerment of women" on its agenda, the UN began to be closer to the transformative approach which was mentioned earlier in this chapter.

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<sup>31</sup> The Committee is composed of 23 members of high moral standing and competence in the fields covered by the Convention. Elected by the States parties to the Convention for four year terms, they serve in their personal capacity. Consideration is given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems. The Chairpersons are chosen from among the members for a two year term.

Throughout the UN Decade for Women, 1976-1985, women's organizations built networks within and across national boundaries, sharing information and supporting each other's activism. As the number of women's organizations and networks grew and their influence spread, the voices and concerns of women both in developed and developing countries solidified. Numerous new regional networks were also formed as a result of the global UN conferences. Countless programmes to empower women through grassroots organizing and micro-enterprise development were carried out. The international women's conferences organized by the United Nations, that brought together unprecedented numbers of women and stimulated transnational organizing, had helped to legitimize global feminism (Women Go Global). Ertürk emphasizes;

By the end of the decade, as evidenced at the Nairobi Conference, women came together in ever increasing numbers and orientations with the conviction that through the empowerment of women, the patriarchal gender order could be changed. Thanks to the efforts of the international women's movement, violence against women, a subject grossly overlooked in the UN gender agenda, started making its way into public debate (forthcoming: 4-5).

The issue of violence against women gained full recognition as a human rights concern at the Conference on Human Rights in Vienna in 1993. Moreover, in 1993, the Declaration of the Elimination of Violence against Women was adopted.

A new phase in the United Nations commitment to the growing campaign against violence began in March 1994, when the Commission on Human Rights welcomed the General Assembly's adoption of the Declaration on the Elimination of Violence against Women, and announced that it had decided to appoint a Special Rapporteur to collect the most comprehensive data, and to recommend measures at the "national, regional and international level" to eliminate violence against women and its causes. The impetus for this action came from the World Conference on Human Rights, held the previous year, which had declared that violence against women was a fundamental human rights issue and called for the appointment of a Special Rapporteur on violence against women. (UN 1995: 49)

In 1994 the Commission on Human rights established the mandate of the Special Rapporteur on violence against women. In 1995, the Fourth World Conference on Women (FWCW) convened in Beijing.

### **1995 The Beijing Conference and Platform for Action**

The Fourth World Conference on Women, held in Beijing from 4 to 15 September 1995, significantly advanced the global agenda for women's human rights and gender equality. The Beijing Declaration and the Platform for Action, adopted by 189 countries, built on political agreements reached at the three previous global conferences on women, establishing twelve priority areas for action. The Platform for Action (PFA) provides an assessment of the global situation from a women's perspective. It specifies twelve critical areas of concern where action was deemed necessary. It calls governments to take steps to abolish traditional practices which are harmful to girls, including female infanticide, prenatal sex selection, genital mutilation, sexual abuse and sexual exploitation, as well as early marriage and discrimination against girls in food allocation. Governments are also asked to enact laws that would ensure that marriage occurs only with free and full consent.

To this end, governments, the international community and civil society, including non-governmental organizations and the private sector, are called upon to take strategic action in 12 critical areas of concern;<sup>32</sup>

1. The persistent and increasing burden of *poverty* on women

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<sup>32</sup> <http://www.un.org/womenwatch/daw/beijing/platform/plat1.htm#concern>

2. Inequalities and inadequacies in and unequal access to *education and training*
3. Inequalities and inadequacies in and unequal access to *health* care and related services
4. *Violence against women*
5. The effects of *armed or other kinds of conflict* on women, including those living under foreign occupation
6. Inequality in *economic structures* and policies, in all forms of productive activities and in access to resources
7. Inequality between men and women in the sharing of *power and decision-making* at all levels
8. Insufficient *mechanisms* at all levels to promote the advancement of women
9. Lack of respect for and inadequate promotion and protection of the *human rights of women*
10. Stereotyping of women and inequality in women's access to and participation in all communication systems, especially in the *media*
11. Gender inequalities in the management of natural resources and in the safeguarding of the *environment*
12. Persistent discrimination against and violation of the rights of the *girl child*

The Beijing Conference on Women represented a major achievement for women throughout the world. The nations recognized existing inequalities and agreed to a Platform for Action. The Conference made a significant contribution to the gender issues, addressed the most acute and important problems of women and marked the ways for their solution. As a result of the Beijing Conference, the world

has recognized the critical importance of gender equality to peace and development.<sup>33</sup>

## **2.5. Women's Human Rights (1996- present)**

Until 1996 the issue of Women's human rights has been kept out of the mainstream of international and national debates. One can interpret this ignorance as the creation of specialized bodies for addressing women's issues within the United Nations which has had the negative effect of allowing the mainstream human rights bodies to absolve themselves of this responsibility, resulting in the treatment of women's human rights as "lesser" rights (Stamatopoulou 1995: 48). Ertürk illustrates the grounds of inclusion of Women's Human Rights into global gender agenda as follows (forthcoming: 5);

After the Beijing Conference, where human rights were accepted as one of the critical areas of concern requiring special attention, the human rights discourse increasingly embraced all other critical areas of concern. The Platform for Action (PfA) adopted at the Beijing Conference acknowledged that the full enjoyment by women of all human rights is an integral dimension of women's empowerment and an end in itself. This idea was well articulated by the slogan of the Vienna Conference: "Women's rights are human rights."

### **1993 CEDAW Optional Protocol**

In the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights (1993) the possibility of individual complaints to the CEDAW Committee was recommended. On 6 October 1999, the General Assembly adopted an Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. Under the Optional Protocol, individual women or

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<sup>33</sup> The Beijing Platform for Action

groups of women may bring complaints regarding sex and gender-based discrimination to the Committee on the Elimination of Discrimination against Women, only when all national remedies have been exhausted. The Committee may also conduct inquiries into grave or systematic violations of the Convention.<sup>34</sup>

As Ertürk emphasizes (forthcoming: 14) this protocol is important as a tool for improving States' and individuals understanding of the obligations imposed by the Convention: as a stimulus for States to implement the Convention and to ensure change in discriminatory laws and practices; and as a tool for creating greater public awareness of human rights standards relating to discrimination against women.

In this chapter, the basic concepts of the study and the emergence of the UN Gender Regime were aimed to be explained in order to understand how women's activism is effective on participation in terms of policy designs and issue constructions in regard to the discourse of women's human rights. It was crucial to outline the evolution of this process owing to the fact that the Turkish women's movement developed its own discourses on women's human rights issues as a result of the interaction with the international gender regime. The next chapter will focus on the Women's Campaign for the Turkish Penal Code to understand women's activism's role in transforming politics.

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<sup>34</sup> [www.un.org/womenwatch/daw/cedaw/protocol](http://www.un.org/womenwatch/daw/cedaw/protocol)

## **CHAPTER III**

### **METHOD OF THE RESEARCH**

#### **3.1. Objectives of the Research**

In Turkey, the intensification of the women's movement since the early 1980s has increasingly challenged the discriminatory-patriarchal values in society. The Turkish women's movement has been experiencing on the one hand fragmentation and on the other hand institutionalization in terms of becoming more specialized and issue oriented particularly since the mid-1990s. Today, the magnitude of women's organizations and their diverse activities are the result of these developments. The most significant characteristics of the post-1990s women's movement is the diversity of the types of organizations, the wide range of their membership and the constructive and creative attitude for the solution of the problems of women (Ecevit 2004: xi).

Since their establishment, women's organizations have been struggling against all kinds of violence, especially domestic violence, and to raise public awareness on women's issues. As a result of their successful campaigning, lobbying and advocacy efforts, there have been remarkable achievements particularly in legislative reforms.

With this in mind, the main aim of this study is to examine the impact of women's activism, including through project/issue oriented institutionalization on the gender

equality agenda in Turkey. The underlying research question is; “how and in what ways has women’s activism transformed the gender equality agenda in Turkey, particularly in the context of the Turkish Penal Code Reform”? It is argued that women’s activism which started as consciousness raising groups, through the process of institutionalization evolved into specialized, issue oriented organizations and a gender sensitive lobbying force. Thus the internal dynamics of Turkey since the early 1980’s, and the international conjuncture enabled the women’s movement to mature and seize the opportunity to play a critical role in shaping the political discourse in a gender sensitive manner in recent years. This research aims to provide an overview of the efforts of the women’s movement to transform the political agenda while identifying the transformation of the movement itself. In essence, therefore, this is primarily a *descriptive* study. According to Neumann;

Descriptive research presents a picture of the specific details of a situation, social setting, or relationship. Much of the social research found in scholarly journals or used for making policy decisions is descriptive...In descriptive research, the researcher begins with a well defined subject and conducts research to describe it accurately. The outcome of a descriptive study is a detailed picture of subject (2000: 21-22).

To illustrate and study of the women’s activism in transforming the political agenda descriptively, a case study on women’s activism for legislative reform in Turkey is conducted. The campaign launched by the women’s groups and organizations for the Reform of the Turkish Penal Code, which lasted for two years, constitutes the basis of this case study.

The importance of this study is the effort of recording recent history of Turkish women’s activism for the future studies. This research aims to be a contribution to

the documentation of a historic moment in the women's movement and Turkey's democratization. The case study focusing on the women's campaign for the Turkish Penal Code Reform, occupied the Turkish political agenda quite recently. It is believed that keeping the information of proceedings of the women's activism in that period, and transferring the experiences, knowledge and skills obtained from the campaign are crucial outcomes for the future women's activism.

### **3.2. Research Procedure**

In this study, the content analysis technique will be used as a major data gathering technique in order to review information in various forms, including archival data in electronic form, newspapers, articles, reports and data in visual form such as television programs. The data gathered will cover a two year time period. During this time period all materials related to the issue will be defined as the population of the study. Various forms of materials including archival data in electronic form (messages of the TCK\_Kadin Listserv), newspapers, articles, reports and data in visual form such as television programs will be reviewed.

Specifically, the analysis of the messages of the TCK\_Kadin list-serve will enable a clearer understanding of the historical process of the campaign. What is problematic with the list serve is the absence of data for earlier processes of the campaign to revise the Turkish Penal Code due to the fact that it was formed in response to the resistance of the new government to meet women's demands.

The TCK\_Kadin list-serve doesn't include the early efforts of the Women's Working Group for the Turkish Penal Code on the draft law. On top of that, this earlier effort of the Women's Working Group didn't receive sufficient coverage in the media's agenda. For this reason, with the aim of reaching missing former data, semi-structured interviews will be conducted with the prominent women of the campaign for the New Turkish Penal Code. By means of interviews it will be possible to access hidden details of the process and enrich the research.

### **3.3. General Profile of Interviewees**

Within the limitations of the study, interviews were conducted with only four women to get detailed information on the women's campaign for the Turkish Penal Code Reform. The interviewees were selected among the key activists in the campaign. However, it was neither an exhaustive list nor representative of the universe of women's activists in the campaign. I want to acknowledge that numerous women and their unbelievable efforts made important contributions to the campaign.

Another limitation of this study is not including the interviews with the representatives of the state. However, the main aim was to search women's activism in the campaign and within the limitations of the study, it was unfeasible to conduct interviews with more people other than women activists.

Hülya Gülbahar is a feminist lawyer, a member of the İstanbul Bar-Women's Rights Enforcement Center and a volunteer of the Purple Roof Women's Shelter and Foundation. Since the 1980s she has been one of the leading activists of the women's

movement. She has been struggling against violence against women and defending numerous cases on women who were targets of violence. She is also an eminent activist in the campaign for the Turkish Penal Code Reform. During the campaign, in addition to her contribution to the lobbying efforts, she participated in numerous meetings, television and radio programs and gave interviews to the newspapers and magazines.

*İlknur Üstün* is a psychologist, member of Ankara University Women's Studies Center (KASAUM) and chairperson of the Association for Supporting and Training Women Candidates' (KA-DER) Ankara branch office. She does research on women's political participation and women's poverty. Üstün, as one of the crucial activists of the campaign for the Turkish Penal Code, has made important contributions in lobbying efforts of the platform both on the national and international level. She also enabled the coordination between the members of the platform in Ankara and İstanbul and coordinated the street demonstration before the voting on the Penal Code took place in Parliament on 14 September 2004.

Pınar İlkkaracan, a psychotherapist and researcher, is cofounder of several NGOs and the founder and coordinator of Women for Women's Human Rights. She has been studying violence against women, women in Muslim societies, women in Turkey, sex-workers, and sexuality. She edited two compilation books which are "Women and Sexuality in Muslim Societies" (2000) and "The Myth of a Warm Home: Violence in the Family" (1996). She coauthored *Human Rights and Legal Literacy Training Manual*, which is being used in community centers across Turkey to

increase women's knowledge and understanding of their sexual and reproductive rights. She continues to be a leading advocate for women's human rights internationally.<sup>35</sup> She was also among the activists who campaigned for amending the Turkish Civil Code. Her organization WHHR initiated both the campaign for the Turkish Civil Code Reform and the Turkish Penal Code Reform. İlkkaracan, as a leading activist of the campaign for the Turkish Penal Code, coordinated the efforts of the Women's Platform for Turkish Penal Code such as lobbying, arranging fax campaigns, publishing press releases and informing the public.

*Şenal Saruhan*, a feminist lawyer, is a women's rights advocate and a member of Republican Women's Association. Since the 1980s she has been one of the key activists of the Turkish women's movement. She dedicated herself to women who are victims of violence and defended several cases of women who were the target of violence. She made significant contributions to the campaign to revise the Turkish Penal Code and its lobbying efforts. She was a member of the Working Group for Turkish Penal Code that prepared the draft law from the women's perspective.

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<sup>35</sup> <http://www.iwhc.org/who/profiles/ilkkaracan.cfm>

## **CHAPTER IV**

### **WOMEN'S ACTIVISM for Legislative Reform in Turkey**

#### **4.1. Legal Reforms for Women's Rights in Turkey**

Until the late 1990s, despite the constitutional gender equality principle and numerous international documents that Turkey signed, the national legislation contained various discriminatory provisions in its civil and penal codes and labor laws that reflected a patriarchal perspective. However, there has been a continuing effort through constitutional and legal amendments to bring the laws in harmony with democratic values respecting the rule of law and universal human rights

Article 41 of the Constitution was amended in 2001 to provide the equality of spouses in marriage. The Constitution now provides that “The family is the foundation of Turkish society and is based on equality between spouses.” This constitutional amendment constitutes the foundation for several important changes in the Civil Code concerning family issues which will be discussed in the following parts.

On 22 May, 2004, Law No 5170, which amended 10 articles including “Article 10” of the Turkish constitution, came into force. Article 10 of the 1982 Constitution arranges equality before law without discrimination. It states that: “all individuals are

equal without any discrimination before the law, irrespective of language, race, color, sex, political opinion, philosophical belief, religion and sect, or any other such considerations”. However this was not sufficient to establish equality before law for women. Therefore, women activists demanded an amendment to Article 10 for affirmative action as in the following:

“Women and men have equal rights. The state takes all necessary measures to provide gender equality, including special temporary measures”

Despite the lobbying efforts of women’s groups,<sup>36</sup> the constitutional amendment which was voted on in April 2004 is still devoid of an affirmative action perspective.

The new formulation of the Constitutional amendment is as follows;

“Women and men have equal rights. The State is responsible for overseeing that this equality goes into practice”

However, through this amendment the State was given not only the responsibility of ensuring non-discrimination between women and men, but also taking necessary measures to provide equal rights and opportunities in practice for women in every field. Additionally, with the amendment to Article 90 of the Constitution, the supremacy was given to international conventions concerning fundamental rights and freedoms over all national laws. With this amendment, the international human rights law became a part of the legal system. This amendment could, to some extent, overcome the shortcoming of the amendment to the Article 10. With this law, the Convention on Elimination of Discrimination against Women can be taken as a basis when there is a contradiction between laws.

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<sup>36</sup> During the debates and voting the amendment of the Constitution in the Parliament more than 40 women’s organizations members and individual women attended as observers in the meeting of the general assembly to pressure for acceptance of the article. After the rejection of the CHP’s proposal on the Article 10 by the AKP they left the parliament (Cumhuriyet 5 May 2004).

In this process, the opposition Republican Peoples Party (CHP) supported the women's demands and submitted a proposal allowing affirmative action favoring women. But this proposal was rejected at the second round of debates by the ruling Justice and Development Party (AKP)<sup>37</sup>. The argument of the AKP was that there was already a provision against gender discrimination in the Constitution. Additionally, AKP argued that women do not actually demand "affirmative action," rather they want equal opportunities with men<sup>38</sup>. However, one of the 13 female deputies of the AKP, the deputy from İzmir, Serpil Yıldız supported CHP's proposal<sup>39</sup>. In addition, AKP deputies Orhan Yıldız, Nurettin Aktaş, Faruk Ünsal and Mevlüt Akgün also supported the opposition's proposal.<sup>40</sup>

These amendments, which started in 2001 and were considered within the context of "European Union Compliance Laws/Reforms", were a partial fulfillment of requirements to be met by Turkey as part of the European Union accession process. They are considered to be the beginning of major democratization steps in Turkey's political history by prioritizing individuals' rights and freedoms over the State's. However, this period coincided with the period when the women's movement was most empowered. Without the women's movement efforts, the EU Accession process could not generate the same achievements on the legislative reforms for

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<sup>37</sup> Some headlines in the newspapers: "AKP Değişiklikte Uzlaşmadı", Hükümet Samimiyetsiz" (Cumhuriyet 21 May 2004); "İki Cümle Arasında Medeniyet Farkı Var" (Radikal 30 May 2004); Fikret Bila in his column wrote that AKP failed the exam on the equality of women and men (Milliyet 5 May 2004)

<sup>38</sup> Cumhuriyet 5 May 2004

<sup>39</sup> "AKP'li kadınlardan hayır" 05/05/2004 Milliyet

<sup>40</sup> <http://www.tukishdailynews.com.tr> (08.05.2004)

gender equality. In this process, women have attained the legal basis to exercise their human rights and demand full gender equality before the law to a large extent. The women activists' advocacy efforts on legal issues contributed major advancements towards the realization of women's rights in accordance with global human rights (WWHR 2005: 3).

In this regard, first of all the women's activism for the new Turkish Civil Code will be examined generally. Secondly, the women's campaign for the New Penal Code Reform will be analyzed in a detailed manner.

#### **4.2. The new Turkish Civil Code**

The previous Turkish Civil Code of 1926 was translated and adapted from the Swiss Civil Code. It had several articles placing women in a subordinate position within the family. There was no equality between spouses. The husband was defined as the head of the marriage union, and thus granted the final decision over the choice of domicile and matters related to the children.

Prior to the reforms of 2002, the Turkish Civil Code had gone through few changes. The first effort to reform the Turkish Civil Code to the advantage of women took place in 1951. Since 1951 there have been numerous commissions formed by the Ministry of Justice and several proposals have been drafted for a comprehensive reform of the Civil Code; but until 2001 no such reform had been put into practice.

Women's rights groups in Turkey have struggled to reform the Civil Code and have argued that women's legally subordinate position in the family has contributed to continuing and serious violations of women's human rights. Since its beginnings in 1980, the greatest achievements of the Turkish women's movement have been in the amendment of certain articles in the Turkish civil and criminal codes (Arin 1997). Women activists organized several campaigns and demonstrations in order to realize their demands. They succeeded in the repeal of two articles: Article 159 and Article 438 which discriminated against women.

According to *Article 159*, a woman was required to have the permission of her husband if she was to work outside the home. The women's movement appealed to the Constitutional Court and succeeded in annulment of the article on the grounds that it contravened the Constitution. In a ruling made on 29 November 1990, the Constitutional Court found Article 159 unconstitutional. The court ruled that requiring a wife to have the permission of her husband to work violated two constitutional provisions - Article 10, guaranteeing equality before the law regardless of sex, and Article 49, stating that employment was the right and duty of all citizens. Moreover, the court ruled that Turkey was bound by international human rights standards because it had proclaimed itself a "law-state" in Article 2 of its Constitution. The Constitutional Court also noted that the Universal Declaration of Human Rights and CEDAW, to which Turkey is a party, had established the equality of men and women. Today, a woman no longer has to have the permission of her husband in order to be able to work outside the home (Arin 1997: 6).

Article 438 of the Turkish Penal Code which provided the reduction of one-third in the punishments for rapists if the victim was a prostitute was repealed by the Turkish Parliament as a consequence of excessive public outcry by women. The philosophy lying under this article was that sex crimes committed against non-virgins are less serious offenses than those committed against virgins because the potential damage to family order is less severe. Additionally, the harm was defined in terms of woman's honor rather than her physical integrity. Between the years of 1989 and 1990, women activists launched a public campaign for the nullification of Article 438 and put the issue on the public agenda. Human rights organizations supported this campaign with the motto "reduced penalties are against the equality of men and women and human rights". However, feminists criticized this article on the grounds of its differentiation of women as honorable or non-honorable. Additionally, according to them this reduction legalized violence against women (Tilki 2001). Thanks to the advocacy efforts of women's groups, in 1990 the Turkish Parliament repealed this article.

Today, the new Turkish Civil Code is in force. It was approved by the Turkish Parliament on November 22, 2001 and came into force on January 1, 2001. The new law which consists of 1,030 articles covering important provisions to the family law amends the Civil Code enacted in 1926. It abolishes the supremacy of men in marriage and establishes the full equality of men and women in the family.

The pioneering force of this reform was the Turkish women's activism<sup>41</sup>. In 1994, when a new commission was formed to prepare a new draft of the Civil Code, a major campaign was initiated by women's groups all over the country. They organized an international letter and fax campaign demanding full equality for women in the Civil Code. Women and NGO's from all over the world supported this campaign for the demands of Turkish women. Finally, a new draft law was prepared by the commission and presented to the National Assembly in September 1998. However, the following year, in April 1999 general elections were held and a new commission for the Turkish Penal Code was formed. When the discussions of the Civil Code draft law in the new commission started several reforms met strong resistance from religious conservatives and nationalists in the Parliament. As a matter of fact, those parliamentarians believed that equality between men and women would 'create anarchy and chaos in the family' and thus 'threaten the foundations of the Turkish nation' (WWHR 2005: 7). To overcome this resistance of parliamentarians women's groups from all around country united and initiated a nationwide campaign. The campaign, which was made possible by cooperation and coordination between 126 women's groups representing different sectors of society, was successful in creating a general atmosphere where objections to equality between men and women were viewed with scorn (ibid: 7).

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<sup>41</sup> Furthermore, according to the political criteria decided in Copenhagen in 1993, to enact the Draft Turkish Civil Code embodying improvements in gender equality was one of Turkey's short term commitments for EU Accession (The related political criteria is "Full Enjoyment by All Individuals without Any Discrimination and Irrespective of Their Language, Race, Color, Sex, Political Opinion, Philosophical Belief or Religion of All Human Rights and Fundamental Freedoms; Freedom of Thought, Conscience and Religion"). Turkey's commitments to CEDAW also required a complete reform in civil code. These two requirements accelerated the reform process.

The new Civil Code has a new approach to the family and to women's role in the family. The old legal approach, which assigned women a subordinate position in the family concerning rights and duties defined in respect to the husband, has been abandoned in favor of one that defines the family as a union based on equal partnership. This new concept is also reflected in the language of the new Civil Code. The terms "wife" and "husband" have been replaced by the term "spouse(s)." Moreover, the language of the Code has been considerably simplified and out-of-date legalistic terminology has been replaced with comprehensible, modern terms, making the law more accessible to everyone (ibid 7).

The significant provisions of the new Turkish Civil Code, which ensure gender equality are;

- The provision on the legal age of marriage, which was 17 for men and 15 for women, has been replaced with minimum 17 ( women and men cannot marry before they turn 18) years of age for both men and women. However under certain situations and sufficient cause both men and women who are over the age of 16 can marry with the permission of the judge (Article 124 -Former Article 88). The provisions in the previous Civil Code regarding the minimum age of marriage were clearly discriminatory against girls and incompatible with the principle of the best interest of the child. It was also contrary to the Convention on the Rights of the Child (CRC)<sup>42</sup>. The current age 17 falls short of CRC- which accepts 18 as adult but it is an improvement over the previous law. According to İlkkaracan, the amendment in the age of

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<sup>42</sup> Turkey ratified the Convention on the Rights of the Child on 9 September 1994.

marriage as minimum 17 is compatible with women's psychological and biological development (WWHR 2005: 20).

- The provision in former Article 154, which reads as “the marriage is represented by the husband” has been removed. Both men and women are given equal status within the marriage and are both able to represent the family in legal matters (Article 188). A new provision has been introduced, which reads as “Both spouses may legally represent the marriage with respect to the expenses of the marital union for the duration of the marriage” and Article 188 (Former Articles 154 and 155).<sup>43</sup>
- Perhaps the most significant change is the provision determining the property regime, which grants spouses equal rights over the family abode: a new clause has been added, which reads as “the spouses will choose the house together”. The provision in former Article 152, which reads as “the husband is the head of the household”, has been replaced with “the spouses shall manage the household together.” The provision in former Article 152, which provides that the expenses of the marriage are to be met by the husband, has been replaced with the new provision, which reads as “spouses shall contribute in labour and in property to the expenses of the marriage to the extent they are able to do so” (Article 186 (Former Article 152)) The new code allows couples to jointly decide where they will live (Article 186).

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<sup>43</sup> In October 2001, Article 41 of the Constitution was amended, redefining the family as an entity that is “based on equality between spouses.” The new article reads: “The family is the foundation of Turkish society and is based on equality between spouses.”

- Spouses have equal rights over the property acquired during marriage: These provisions replace the “separation of property” regime referred to in former Article 170 with the phrase “share in properties obtained”. These provisions aim to remedy inequalities between spouses created by “the separation of property” regime in case of divorce. These provisions have been introduced to remedy injustices that may result from the enforcement of the former “separation of property” regime, which tended to be in favour of the husband. (Article 202 and the following articles (Former Article 170)) The regime of participation in acquired property is hereby accepted as a legal estate regime. Additionally, couples may also accept one of the other estate regimes existing in the law (Article 202).

In this regard, equal division of the property acquired during marriage as a default property regime assigns an economic value to women’s hitherto invisible labor for the well-being of the family household (WWHR 2005: 29). This regime explicitly accepts that women’s invisible labor has a definite contribution to the unity of marriage. Consequently, this invisible labor would be taken into consideration when separating property among spouses. In this manner, the power inequality as the source of male domination over the wife would be balanced through this regime and women could feel themselves as equal partners of the union of marriage.

- The obligation for spouses to obtain permission from the other spouse before choosing a profession or a job is hereby abolished. However, in the choice and pursuit of professions, the welfare and benefit of the unity of marriage

shall be taken into consideration (Article 192). On the one hand, this article, seems to provide gender equality but on the other hand it reproduces patriarchal ideology by emphasizing “the welfare and benefit of the unity of marriage”, which implies sex-typed professions. Therefore, the statement could be interpreted to determine professions that are proper for women.

- Spouses have equal representative powers: With this amendment, the regime pertaining to the representation of the marital union in former Article 154 and the following articles has been changed. Article 193 introduces the provision that “Either one of the spouses may undertake legal transactions with their spouses or with third persons unless otherwise is provided for in the law”. The provision in former Article 155, which allowed for the representation of the wife by her husband in legal transactions with third persons, is no longer in force. According to the amendment in Article 193, either one of the spouses may undertake legal transactions with the other spouse or with third persons (Article 193).

This article is one of the marks which drastically changed the legal status of women in the family. To be more precise the family is now defined as a union based on equal partnerships.

- The concept of “illegitimate children,” which was used for children born out of wedlock, has been abolished. The custody of children born outside marriage belongs to their mothers: The sub-heading “on the establishment of lineage”, which has been added to the second section beginning with Article 282, eliminates the discrimination between legitimate and illegitimate children. The provisions in this section ensure that illegitimate children are of the same legal status as legitimate children, and thus, the rights of the child are

protected. (Article 282 and the following articles). With regard to descent, discrimination between children born in terms of the marriage and those born out of wedlock is hereby ended. As a result of this, children born out of wedlock are protected from damages and their future is safeguarded.

### **4.3. The Penal Code Reform**

#### **4.3.1. The Former Penal Code**

The previous Turkish Penal Code was adapted from the Italian Penal Code in 1926. Since then, it went through only a few minor changes. More than 50 percent of the law was still dated from the late 1920s and the changes undertaken were not related to women's rights and gender-equality. The underlying philosophy of the former penal code was that women's bodies are commodities of men, family and the society, and women's sexuality has to be suppressed. This philosophy was reflected in the provisions on sexual offenses both in the former Penal Code and in the proposed draft law. During late 1990's, the reform of the Penal Code was continually on the Parliament's agenda,<sup>44</sup> but it was never pursued to the end. A complete reform of the Penal Code became an issue once more due to the EU ascension process. It was in 2002 that the 2000 draft law was re-included in the government agenda primarily in line with this process (WWHR 2005: 10). The new draft law was submitted by the government to the Parliament for review in the Justice Sub-Commission.

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<sup>44</sup> First draft law was prepared by the parliamentary commission in 1985 under Prof. Dr. Sulhi Dönmezer, the chairperson of the commission. Undemocratic content of this draft law was seriously criticized. In view of those criticisms, the draft law was revised in 1988 but it couldn't avoid having the same criticisms. A new draft law was prepared in 1997 and amended in 2000 by the Justice Ministry Commission, headed by Sulhi Dönmezer. Due to disagreements between coalitions (DSP, DYP, ANAP) in the government it was not possible to put this draft law before the parliament.

### **4.3.2. Women's Activism for the Turkish Penal Code Reform**

When women started to take initial steps to achieve amendments in the Turkish Penal Code in terms of gender equality, they already had the experience of successful activism experience of the Turkish Civil Code Reform. Throughout the Turkish Penal Code Reform process they made use of the advantages of this earlier experience.

First of all, they had the knowledge and skill of how to mobilize themselves and use advocacy and lobbying efforts both on the national and international levels. They gained many allies both in the political sphere and media. Most importantly, they had already attracted the attention of women who did not have considerable concern on women's issues until Civil Code Campaign. They paved the way of empowerment in public participation for a great number of women through this public campaign.

According to Hülya Gülbahar a leading activist;

In a meeting I participated in, women from Eğitim-Sen told me that the number of women who wanted to join the studies in Eğitim-Sen increased after the campaigns of the Civil Code and the Penal Code. Women are empowered thanks to these campaigns. They recognize that they have their own ideas and these ideas are meaningful. They recognized that if they work together they can attract attention and make people listen to their demands.<sup>45</sup>

In the beginning of the Penal Code Campaign there was already a communication network (*Kadın Kurultayı/ Women's Assembly*) of women activists which doubled the number of its members throughout the Civil Code campaign process. Each woman member in this network was coming from various fields and bearing politically different ideas and conceptions on women's issues. Organizing different

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<sup>45</sup> Interview with H.G., 21 July 2005

women from different positions and creating a common political platform was the Turkish women's movement's main success achieved through *Kadın Kurultayı*.

In the first place, The Civil Code succeeded in gathering different women who are interested in different subjects from all over the country under the roof of a common aim. In the second place, it became a good example of bringing different women who have different political positions together and producing an autonomous discourse independent from their political stances and struggling. We attained knowledge and experience about conducting an organized campaign through the Civil Code Campaign. Turkish Penal Code was in the next to do list.<sup>46</sup>

Subsequent to the successful outcome of the Civil Code reform, in 2002, women commenced the campaign for “the Reform of the Turkish Penal Code from a Gender Perspective”. In reality the year 2002 was too early for such a campaign, because at that time, the Penal Code Reform was not on the agenda of the Parliament, at least it was not among its short term targets for EU accession. Hülya Gülbahar states the reason behind it as follows;

We considered the Turkish Penal Code was in the next step. We thought that we always followed the agenda however this time we wanted to prepare ourselves, determine our demands, find out the bases of this demands in the international law before agenda occurs. We analyzed the problems in Turkey through a scientific study and we identified what should be amended with their justifications and in what manner.<sup>47</sup>

Pioneering work for this campaign came from the organization of Women for Women's Rights- New Ways (WWHR)<sup>48</sup> which also undertook the role of secretariat of both the Civil Code campaign and Penal Code campaign.

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<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> WWHR – NEW WAYS, an autonomous women's NGO founded in 1993 and based in İstanbul, works toward the promotion of women's human rights on the national, regional and international levels and the active participation of women in processes of social change as equal citizens and free individuals.

At April 2002, WWHR-New Ways initiated and then coordinated a national “Working Group on the Reform of the Penal Code from a Gender Perspective”<sup>49</sup>.

This working group consisted of representatives of NGOs and bar associations, lawyers and academicians from various regions of Turkey. There were fifteen people in this technical working group. The number, sex, geographical location and qualifications of members of this working group were determined strategically according to some conditions. As İlkaracan states;

We invited people to the Working Group for Turkish Penal Code. There were 15 people in this group. It was impossible to constitute a working group with 50 people as the Women’s Platform because the group would find itself in a more intensive working process. Therefore it shouldn’t exceed 15 people. In other words, we needed dynamism. The geographical diversification was also significant because in the case of the Civil Code a discourse on “Anatolian Woman (Anadolu Kadını)” and “non-Anatolian Woman” occurred. As a result, women from İzmir, Ankara, İstanbul, Diyarbakır were invited to the group. Additionally, we required men to take place in this group as well, due to the fact that Penal Code was a concern of both women and men with regards to human rights. Besides lawyers, we required interested people from academy to participate to the group.<sup>50</sup>

The Working Group started to analyze both the Turkish Penal code in effect and the 2000 Penal Code Draft Law. It listed all the articles that lead to gender discrimination. The group concluded that both the law in effect and the draft law

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<sup>49</sup> Participants of Working Group on the Reform of the Penal Code from a Gender Perspective are: Şenal Sarıhan (*Cumhuriyet Kadınları Derneği/* Republican Women’s Association), Vildan Yirmibeşoğlu (*İstanbul Valiliği İnsan Hakları Masası/* İstanbul Governorate Human Rights Desk ), Ayşegül Kaya (*Mor Çatı Kadın Sığınağı Vakfı /* Purple Roof Women’s Shelter Foundation), Zülal Erdoğan (*Diyarbakır Barosu/* Diyarbakır Bar), Remziye Tanrıku (*Diyarbakır Barosu/* Diyarbakır Bar), Aysel Çelikel (Academician, İstanbul University; also the Minister of Justice who promoted one of the drafts of the Penal Code) , Ayten Ağırdemir (*İstanbul Barosu Kadın Hakları Uygulama Merkezi/* İstanbul Bar- Women’s Right Enforcement Center), Canan Arın (*İstanbul Barosu Kadın Hakları Uygulama Merkezi/* İstanbul Bar- Women’s Right Enforcement Center) , Hülya Gülbahar (*Mor Çatı Kadın Sığınağı Vakfı/* Purple Roof Women’s Shelter Foundation), Pınar İlkaracan (*Kadının İnsan Hakları- Yeni Çözümler Vakfı/* Women’s for Women’s Rights –New Ways), Ela Anıl (*Kadının İnsan Hakları- Yeni Çözümler Vakfı/* Women’s for Women’s Rights –New Ways ), Liz Amado (*Kadının İnsan Hakları- Yeni Çözümler Vakfı/* Women’s for Women’s Rights –New Ways) , Mehmet Emin Artuk (Academician , Marmara University -joined only first three meetings)

<sup>50</sup> Interview with P.İ., 21 July 2005

embodied the same discriminatory, patriarchal outlook and contained numerous provisions which legitimize women's human rights violations. Therefore, it was essential not only to focus on individual articles, such as the elimination of the article allowing for sentence reductions to perpetrators of honor crimes- which was the only issue on the public agenda- but to strive for a holistic reform, aiming to transform the entire underlying philosophy of the Penal Code, which implicitly considered women's bodies and sexuality to be commodities of men, family, and society; and reflected a notion that women's sexuality must necessarily be controlled and suppressed by the state (WWHR 2005: 11).

With regard to the listed articles the Working Group analyzed the draft law from this perspective. Additionally, they examined the penal codes of the European countries, India and South Africa. Subsequently, they prepared their solid proposals. The work of criticizing prevailing articles determining alternatives to the articles of draft law is of paramount importance. İlkkaracan explains this strategy as follows;

We scanned all the Penal Code and identified all the articles which violate women's human rights. We produced alternatives as a substituted to these articles. It was the acquisition of our experiences that we gained as a result of long years of struggle. I think the women's movement has made a mistake. It criticizes everything and demands changes... Change it! But, what? It is also Turkey's defect. If you identify what you want, it would be easier to realize it. Consequently, the Working Group decided not only criticizing the draft law but also producing alternative amendments.<sup>51</sup>

Subsequent to sending those proposals to relevant academicians and bar associations and taking their advice, the group prepared a booklet about their proposals which includes more than 30 amendments. These amendments were published in the form

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<sup>51</sup> Interview with P.İ. , 21 July 2005

of new articles as a report and sent to all Member of Parliaments, NGOs and media representatives in 2002.

While the efforts of the Working Group were in progress, in 2002 there occurred a political crisis and the three-party coalition<sup>52</sup> led by the social democrats resigned. Under this circumstance, according to the Turkish Constitution, the Minister of Justice has to be replaced by an independent expert for a period of three months before a new election. Until the early elections Aysel Çelikel -a jurist and academician- was appointed as the Justice Minister, who was also a member of the Working Group. Immediately after her appointment, women groups all around Turkey visited Aysel Çelikel. According to Şenal Saruhan a leading activist lawyer and member of Republican Women's Association;

After Aysel Çelikel became the Minister of Justice, we visited her with women from Ankara, İstanbul, İzmir. We arranged this visit because of two reasons; firstly we were proud of her ministry as a woman and secondly, her tenure is an opportunity for us to integrate our demands to the penal code.<sup>53</sup>

During the brief period of her tenure, Aysel Çelikel formed a commission<sup>54</sup> to revise the draft law. Some of the members of the Working Group worked also in this commission. In September 2002, while the temporary government was in effect, the recommendations of the Working Group for the New Penal Code were discussed in this commission with the Justice Minister Aysel Çelikel. Several positive steps, such as criminalization of marital rape and sexual abuse were taken to revise the 2000

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<sup>52</sup> The 57. Government was a coalition formed by Democratic Left Party (DSP) with the True Path Party (DYP) and the Motherland Party (ANAP). It lasted three years between 28 May 1999 and 18 November 2002.

<sup>53</sup> Interview with Ş.S., 1 August 2005

<sup>54</sup> Prof. Dr. Köksal Bayraktar, Prof. Dr. Nur Çentel, Doç. Dr. Türkan Sancar, Şenal Saruhan, Ayten Ağirdemir were participants of this working group.

draft law from a gender perspective. The draft law was substantially revised in accordance with women's demands. The draft law in its revised form still contained provisions contradicting the proposed amendments; however, many important alterations were made, promising a hopeful head start for the campaign.

However, following the November 2002 elections<sup>55</sup> Cemil Çiçek was appointed as the new Justice Minister. The Working Group sent their report to all members of the Parliament again and asked for an appointment with Cemil Çiçek. He persistently refused those appointment requests. This attitude was the obvious signal that the new government was to completely ignore the demands of the Working Group and also the changes made to the draft law by the pre-election Justice Minister Aysel Çelikel.<sup>56</sup>

The 2000 Draft Law of Prof. Dr. Sulhi Dönmezer was submitted with minor changes to the Parliament. The draft law in question upheld the traditional philosophy of the Penal Code that was in effect and included all the provisions that were explicitly discriminatory against women. The government did not publicize the preparation of this draft law, nor did it consult any experts on the subject from non-governmental women's and human rights organizations (WHHR 2005b: 5). The new government foresaw reform of almost all other articles of the Penal Code other than those pertaining to women. The demands of the Working Group to obtain a copy of the

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<sup>55</sup> The parliamentary elections took place in November 2002 and AKP (Justice and Development Party) got 34.27% of the total votes. First Abdullah Gül became the Premiere of the new Government, and later Recep Tayyip Erdoğan succeeded him. CHP (The Republican People Party) got 19.39% of the votes and entered the Parliament as the opposition party. None of the other political parties could pass the 10% threshold thus remained outside of the parliament.

<sup>56</sup> On 5 June 2003, Aysel Çelikel made a press statement and stated that she supports the women platform's demands (Hürriyet, June 6 2003).

draft law before it was submitted to the Parliament were ignored. In fact, the Working Group was only able to get a copy of the draft law from third parties close to the government (WWHR 2005: 12).

The strong resistance of the government to the women's demands led the Working Group to launch a massive public campaign. The campaign was launched on 23 May 2003 in İstanbul with a big press conference. At this conference the proposed amendments and the government's resistance to them was declared to the media. The press conference also served to expand and transform the Working Group into a national platform named "*TCK Kadın Platformu* (the Women's Platform on the Penal Code)".<sup>57</sup> More than 30 women's NGO's, human rights and gay & lesbian groups took part in this platform.

On October 2003 The Justice Sub- Commission<sup>58</sup> started working on the draft law. Throughout this process, the Women's Platform for Penal Code followed the sub-commissions sessions step by step. The platform sent the booklet, "The Turkish

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<sup>57</sup> The members of the platform are Amnesty International Turkey Branch, Ankara Women's Solidarity Foundation, Association for the Support and Training of Women Candidates, Association for the Support of Sincan Community Center, Çanakkale Association to Promote Women's Labor, CEDAW NGO Forum Preparation Committee, Diyarbakır Bar Women's Commission, Edirne Women's Human Rights and Handicrafts Group, Filmmor: Women's Cinema Group, IRIS Equality Watch, İstanbul Bar-Women's Rights Enforcement Center, İstanbul Governorate Human Rights Desk, İstanbul Governorate Women's Status Unit, İzmir Bar Women's Rights Enforcement Center, İzmir Bar Women's Commission, KATAGİ, Kibele Women's Cooperative, Okmeydanı Women's Atelier for Paper Art, Purple Roof Women's Shelter Foundation, Republican Women's Association, Turkish Women's Union, Women's Solidarity Foundation, Women for Women's Human Rights – New Ways, Van Women's Human Rights Initiative.

<sup>58</sup> The participants of the justice sub-commission are members of parliament Halil Özyolcu (Ağrı AKP), Hakkı Köylü (Kastamonu/ AKP), Bekir Bozdağ (Yozgat/ AKP), Feridun Ayvazoğlu (Çorum/ CHP), Orhan Eraslan (Niğde/ CHP) and 3 academicians from law faculties; Prof. Adem Sözüer (University of İstanbul) , Prof. Ahmet Gökçen (Marmara University), Prof. Doğan Soyaslan (Çankaya University).

Penal Code from the Gender Perspective and Proposed Amendments”<sup>59</sup> to all members of the Parliament and the media.

At the beginning, the government did not take this platform into account seriously. After its first meeting with the representatives of the platform and listening to their demands for changes in the Penal Code, the head of the Justice Commission Köksal Toptan regarded these demands as marginal and unrealistic. Two years later, the same person confessed from the Parliament’s tribune that the articles referring to gender equality in the New Penal Code which enables gender equality between women and men, owes its success to the efforts of women’s movements.

Despite the strong resistance of the government, this campaign succeeded in contributing to the achievement of a holistic reform to transform the philosophy and principles of the Penal Code. The new Turkish Penal Code which will be discussed below acknowledges women’s autonomy and right to have control over their bodies and sexuality and contains more than thirty amendments that constitute a major step towards protection of women’s human rights.

During this public campaign the Women’s Platform for Turkish Penal Code made use of important strategic tools such as the media, lobbying, street demonstrations, panels and conferences, international mechanisms and networking.

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<sup>59</sup> 14 October 2003, resource TCK\_Kadin list serve

#### 4.3.2.1. Using the Media

Throughout the campaign, to create awareness in the local and international public opinion, to make the platform demands more visible and accessible and to intensify pressure on the government, media was used effectively by women. During 2003-2004, numerous conferences, meetings, and press conferences were held in Ankara and İstanbul, as well as in smaller cities in Turkey which were followed by the media. Women used the media successfully to introduce themselves to the public and declare their goals. The campaign generated an impressive wave of media coverage for the Turkish Penal Code Reform. On the whole, the media has been supportive of the women's movement.

Immediately, after the first press conference the platform formed a list serve for the media. Through this list serve<sup>60</sup> they communicated with reporters and some columnists from the press, who are effective in creating public opinion. They sent news to this list serve about their campaign work on a day to day basis.

The platform followed up on the media day by day and picked up news on the campaign. If a columnist wrote a supportive essay on the campaign, the platform sent

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<sup>60</sup> Members of the list serve are Zübeyde Yalçın (Sabah), Turkish Daily News, Cengiz Hortoğlu (Akşam), Ruhat Mengi (Vatan), Duygu Asena (Yarın), Fatma Kolçak (Özgür Gündem), Ayşe Olgun (Yeni Şafak), Ali Bayramoğlu (Yeni Şafak), Belma Akçura (Milliyet), Yazgülü Aldoğan (Posta), Balçıçek Pamir (Sabah), Derya Sazak (Milliyet), Perihan Çakıroğlu (Finansal Forum), Türker Alkan (Radikal), Zeynep Oral (Cumhuriyet), Yalçın Bayer(Hürriyet), Elif Koralp (Milliyet), Ferai Tınç (Hürriyet), Hakkı Devrim (Radikal), Şerife Üstüner (Akşam), Erdogan Aktaş (NTV), Nuray Babacan (Hürriyet), Fikret Bila (Milliyet), Zeynep Göğüş (Hürriyet), Adnan Keskin (Radikal), İclal Aydın (Vatan), Murat Çelikkan (Radikal), Hasan Parkan (Şok), Adnan Ekinci (Radikal), Halim Bayadır (Posta), Emel Armutçu (Hürriyet), Musa Ağacık (Star)

to this writer a thank you e-mail or fax. By means of such strategies the platform achieved many allies in the Turkish media.

Some of the important allies in the media can be enumerated as in the following; Zeynep Oral (Cumhuriyet), Ferai Tınç (Hürriyet), Ruhat Mengi (Vatan), Ali Bayramoğlu (Yeni Şafak), Cengiz Hortoğlu (Akşam), Burçin Belge (Bianet), Özgür Erbaş (Cumhuriyet), Emel Armutçu (Hürriyet), Murat Çelikkan (Radikal), Yıldırım Türker (Radikal), Oral Çalışlar (Cumhuriyet), Ayşe Özgün (Vatan), Mehmet Yılmaz (Milliyet), Işıl Özgentürk (Cumhuriyet) among others.

In some cases these writers formed bridges and provided communication between sub-commission members and the Women's Platform on the Penal Code. For example, Zeynep Oral mentioned in her column that the commission ignored the women's platform's demands and rejected women activists' requests for appointments. After this article, Köksal Toptan called her and tried to convince Zeynep Oral that they sent the draft law to all organizations but couldn't receive any response. Zeynep Oral mentioned this explanation in her column. The platform presented their booklet to Toptan.<sup>61</sup> In the same way, Ferai Tınç (7 June 2003, Hürriyet) wrote an article on Cemil Çiçek's attitude towards women's organizations. Cemil Çiçek called Tınç and asserted that the commission had asked the opinion of all civil society organizations about the Penal Code, but nobody returned to them. After this statement the platform presented their booklet including a folder on press reviews on the Penal Code to Çiçek.<sup>62</sup>

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<sup>61</sup> Cumhuriyet, 14 June 2003

<sup>62</sup> Ibid.

In some cases, some writers got into trouble with the commission members. The most striking example is the case between Ruhat Mengi and Sulhi Dönmezer. Ruhat Mengi wrote two articles<sup>63</sup> criticizing the commission's attitude on gender equality in the Penal Code draft law. She condemned the commission's perspective as diseased (hastalıklı). Upon these articles Sulhi Dönmezer sued Mengi and requested compensation. In the court hearing<sup>64</sup> the platform members, women and the wife of US Consulate were supportive of Mengi. This case was also an opportunity for the platform to repeat their demands to the public. Hülya Gülbahar's advocacy during the court trial and Canan Arın's speech on the issue, delivered to CNN Türk, were impressive.<sup>65</sup>

Moreover, during the campaign, the women's platform utilized the foreign press. Towards the final stages of the struggle they sent faxes and e-mails to the media and demanded pressure<sup>66</sup> from the international press for the necessary amendments to the draft law. This tactic was useful for drawing the attention of foreign public opinion to the Turkish women's remaining demands and helped them to publicize the issue widely and accurately.

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<sup>63</sup> Tasarı Değil Skandal (15 May 2003, Vatan), "Edep Törelerine Karşı Suçlar (16 May 2003, Vatan)

<sup>64</sup> 26 February 2004

<sup>65</sup> <http://www.bianet.org> / 26 February 2004

<sup>66</sup> One week before the voting of draft law in the parliament on 14 September 2004, the Women's Platform send faxes and emails to the foreign press. They informed the foreign press on the fact that the Draft Law was still failing to penalize women's human rights violations effectively such as honor killings and virginity testing and prohibiting discrimination based on sexual orientation. They also notified that the current provisions were leaving room to penalize consensual sexual relations among youth and the government's recent proposal to re-criminalize adultery.

#### **4.3.2.2. Lobbying Efforts**

It was of vital importance for the platform to find allies in Parliament. The Platform managed to convince the opposition party to take a group decision to support the Platform's demands. Establishing alliances with the opposition party, as well as advisors in the commission facilitated the acceptance of demands by the sub-commission. Platform members lobbied members of the Justice Sub-Commission who had the task of finalizing the draft.

During the campaign, Adem Sözüer, advisor of the sub-commission was the most important ally of the Women's Platform. He supported all of the demands of the Women's Platform until the end of the campaign. Throughout the reform process he met with the Platform members at different times and exchanged information. He was very successful in persuading sub-commission members through giving concrete examples concerning honour killings etc. Moreover, in some cases he advised the Platform to send pressure letters, mail, and faxes to the sub-commission at key decision-making moments. As İlkkaracan argued;

Adem Sözüer helped us a lot. He was important because he was an academician and didn't permit the other two academicians to interfere to the work of commissions.<sup>67</sup>

Another prominent ally in the Parliament was Gaye Erbatur of CHP who was also coming from the women's movement. She was a member of the list serve and many times she provided information flow from the Parliament. With Oya Araslı, another female representative of CHP, she convinced the party to take a group decision

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<sup>67</sup> Interview, 21 June 2005

supporting the Women's Platform's demands for the reform of the Penal Code<sup>68</sup>. Orhan Eraslan of the Justice Sub-Commission defended these demands and tried to convince other members in order to transform these demands into law.

#### 4.3.2.3. Street Demonstrations

Throughout the campaign, with the aim of getting public attention and making pressure on the government, the Platform arranged many street demonstrations. There were two basic subjects of the Platform's demonstrations which are specifically "honour killings" and generally "remaining demands".

In 8 March 2004 the Platform members organized a cemetery demonstration called "cemetery action" to protest honour killings.<sup>69</sup> They carried pancartes on which "*Mezarlık değil sığınak istiyoruz*", "*Namus belasına verdiğimiz can bizim*"<sup>70</sup> were written. The Platform reiterated their demands concerning the amendment of the remaining discriminatory provisions from the draft law which includes penalizing women's human rights violations such as honor killings. One month later the Platform members arranged another "cemetery action" on the case of Nuran<sup>71</sup> who

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<sup>68</sup> In November 8<sup>th</sup> 2003, the CHP organized a press conference in İstanbul, Harbiye Kenterler Tiyatrosu and declared its group decision on supporting women's demand's in the new penal code.

<sup>69</sup> During these days the press occupied with the case of Guldunya Toren. She was a young woman, raped by a family member and impregnated. Tören fled Bitlis where she gave birth. Two of her brothers later tracked her down and shot her. She survived and was taken to a hospital, where her brothers shot and killed her in front of witnesses. (01.03.2004 /Güldünya Şehitliğe Defnedildi/ Milliyet).

<sup>70</sup> Kazate.com.tr/ March-April 2004 (Törelerle ölür 8 Martlarla doğarız)

<sup>71</sup> In April, 14 year old Nuran Halitoğulları was killed by her father and brother in İstanbul. A 32 member family council had ordered her killing to "clean the family honor" after she was kidnapped and raped earlier in the year. ("Töre bu kez Nurdan'ı boğarak Öldürdü/ Milliyet, 28/04/2004)

was a victim of honor killing. Women from the Platform organized a burial and buried Nuran.

On 14 September 2004, the campaign organized a massive street demonstration just before the voting on the law took place in Parliament. Women all over the country gathered in Ankara and marched to the Parliament. They expressed their remaining demands once again.<sup>72</sup> Seven women's platform and 80 women's organizations participated in this march and expressed their demands.<sup>73</sup> Some members of the Platform entered the Parliament to watch the talks of the General Assembly through the help of parliamentarians from CHP. This march had a great effect on the Parliament, hindering any backlash against the movement.

#### **4.3.2.4 Press Releases and Fax Campaigns**

The platform organized fax campaigns to make pressure on the government. Through those fax campaigns many women, NGO's, and associations sent the texts which were prepared by the Platform in advance. Just before the voting on the law took place, the Platform initiated an international fax campaign to express women's remaining demands.

During the campaign process, the Platform used numerous press releases and fax campaigns effectively and strategically. At critical times they composed a text through discussions in the list serve. According to the situation women's

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<sup>72</sup> "Kadınlardan Türkülü Eylem", Milliyet, 15.09.2004

<sup>73</sup> Some slogans were "Yaşasın kadın dayanışması", "Devlet elini bedenimden çek" "Zinanın TCK'da ne işi var", "Meclis zinayı bırak, şiddete bak".

organizations and individual women sent these texts to members of Parliament and sub-commission members through emails, faxes or letters. In some circumstances they arranged press conferences to get public attention.

Through the end of the campaign, the public agenda engaged in the debate of the article on criminalizing adultery. The Platform decided to initiate an international fax campaign urgently and they asked foreign people, press and organizations to follow and circulate the action widely to attract the attention of the Prime Minister and the Minister of Justice concerning the amendments of the remaining discriminatory provisions from the draft law that penalize women's human rights violations such as honor killings and virginity testing and prohibiting discrimination based on sexual orientation.<sup>74</sup> At this point, pressure from the international arena was crucially effective to lobby the government for the remaining necessary amendments.

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<sup>74</sup> The signators of this fax campaign were, Aida Touma-Suliman , General Director, Women Against Violence (Egypt), Angela M. Kuga Thas, Trustee, Knowledge and Rights with Young People through Safer Spaces (KRYSS), Inc., Member, Association for Progressive Communications Women's Networking Support Programme (APC WNSP), Annemarie Sancar, President of Gender Unit, Swiss Development Corporation - SDC (Switzerland), Asghar Ali Engineer, Chair, Asian Muslim Action Network , Director, Centre for Study of Society and Secularism (India), Christine Buttin, New Ways (France), Center for Reproductive Rights (USA), Evelyn Accad, Professor Emerita, University of Illinois (USA), Lebanese American University (Lebanon), Caroline Brac de la Perrière, Chair, 20 Ans Barakat Algeria (Algeria), Frances Kissling, President, Catholics for a Free Choice (USA), Hazel Reeves, BRIDGE Manager, Institute of Development Studies (IDS) (United Kingdom), Henry Pablo Armas Alvarado, Director, GRUPAL - Working Group for Participation (Peru), Jennifer Radloff, Association for Progressive Communications (APC), APC-Africa-Women (Cape Town, South Africa), Lebanese Council to Resist Violence Against Women (Lebanon), Leila Hessini, SAGE - Strategic Analysis for Gender Equity (USA), Louis A. Herman, Co-Coordinator, Women's UN Report Network – (WUNRN), Louisa Ait Hamou, University Lecturer (Algeria), Khedija Arfaoui, Secretary General AFTURD - Association of Tunisian Women for Research and Development (Tunisia), Mary Jane Real, Regional Coordinator, Asia Pacific Forum on Women, Law and Development (Thailand), Miriam W. Yeung, Director, New York LGBT Community Center (USA), Nadera Shalhoub-Kevorkian, Faculty of Law-Institute of Criminology & School of Social Work and Public Welfare Hebrew University-Jerusalem (Israel), Najia Elboudali, President of Synergie Civique Morocco (Morocco), Prof. Cecilia Sarfdenberg, Director, NEIM – Women's Studies and Research Center, Universidade Federal da Bahia (Brasil), Prof. Dr. Yakin Erturk, United Nations Human Rights Commission Special Rapporteur on Violence Against Women (UN), Rodelyn M. Marte, Co-Coordinator, Network of Asia Pacific Youth, Sandra Hunnicutt, Executive Director, Captive Daughters (Los Angeles, California, USA), Susie Jolly, Gender Communications Officer, BRIDGE -

#### **4.3.2.5. International Mechanisms**

The Platform was aware of the fact that a complete reform of the Penal Code became an issue due to the EU accession process. For this reason, the campaign utilized the EU accession process strategically. On top of that, international instruments such CEDAW, 1993 Declaration on the Elimination of Violence against Women and the Beijing PFA were used as tools of advocacy for demands of women.<sup>75</sup>

Although the campaign utilized the advantages of the EU accession process, the Platform was very careful in the way they used international mechanisms. Especially they consciously avoided the opportunism of appropriating the “Turkey’s Membership in European Union discourse” as the main justification way for their demands with respect to the Penal Code. They emphasized in all occasions that this campaign was independent and autonomous. They elucidated that instead of sprouting out from the instrumental enthusiasm of Turkey for being a part of Western civilization through showpiece reforms for gender equality, it was engaged in the international dynamics of women’s long lasting struggle in Turkey. It was also a strategic position for the campaign because there could be a backlash from the government anytime and other populist circles on the grounds that women’s movement had its origin in the West and not here in Turkey.

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Gender and Development Information, Valeria Pandjarian, Regional Coordinator, CLADEM (Brazil), Women In Development Europe - WIDE (Belgium).

<sup>75</sup> According to Ertürk, “Turkey’s accession bid to the EU has complemented and reinforced the opening of new venues for individual liberties, particularly for women. Diverse women’s groups, despite their mutual suspicion and seemingly irreconcilable differences, are joining to use both regional mechanisms of the EU and the global ones of the UN in pushing their agenda forward” (forthcoming b: 3-4).

Stressing these reservations and articulating its stance about the relation of local movements and international mechanisms, the campaign explicitly used international mechanism in legitimizing their demands. The most important exemplary event for this position was the meeting entitled “Dialogue on the Turkish Penal Code, Gender and International Human Rights Law” held in Ankara on 10 December 2003 organized by the Women’s Human Rights- Yakın Ertürk the UN Human Rights Commission Special Rapporteur on Violence Against Women (UN SRVAW), Women for Women’s Human Rights (WWHR) and Gender and Women’s Studies Program in Middle East Technical University. Representatives of Turkish government, the Parliament, European Union, United Nations country team and women’s movement met at this conference. It was the first time that all related parties came together to discuss the Penal Code reform within the framework of international human rights law. In his speech, the head of the EU Commission Turkey Representative, Ambassador Hans Jörg Kretchmer emphasized the importance of the Penal Code reform from a gender perspective for Turkey’s EU accession process. The Minister of Justice Cemil Çiçek assured that the reform of the Turkish Penal Code is not only for EU accession criteria but also for the sake of a modern Turkey respectful to human rights.

The Platform members took all the opportunities to inform international mechanisms of their demands. On all occasions, they met individually with members of delegations in Ankara,<sup>76</sup> and requested their support in the Platform’s struggle to

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<sup>76</sup> There is an informal evaluation report prepared by Ela Anil during the campaign (available on archives of WWHR) on the attitudes of embassies that she met for the reform of the penal code. In this report she evaluated the attitudes of British, Swedish, Netherlands, Swiss and German ambassadors on the issue.

ascertain that the new Turkish Penal Code protects the rights and freedoms of men and women fully and equally in compliance with global human rights norms and EU standards.

#### **4.3.2.6. TCK\_Kadin E-group**

The Women's Platform formed an e-group named "TCK\_Kadin" just after the first press conference in May 2003. NGO's, human rights and gay/lesbian groups, and academicians enrolled in this e-group. This e-group provided women a rapid communication network. As a technological tool it facilitated networking and mobilizing women all over the country. All street demonstrations, fax campaigns, and press releases were organized via this e-group. İlkkaracan explained the terms of membership and format of communication as follows;

General issues were discussed in the TCK\_Kadin list-serve. We didn't include individuals except academicians. The members were the representatives from women's organizations. We didn't want the list-serve to enlarge. We thought it would be a problem as in the example of Kadin Kurultayi list-serve. As a consequence, we included only the signatory organizations of the Working Group's booklet<sup>77</sup>.

#### **4.3.3. Proposed Amendments of the Women's Platform**

The aim of the Women's Platform's campaign was not only to amend articles one by one but also to change the patriarchal philosophy underlying the penal code. Due to the mentality of the former Penal Code, women's bodies and sexuality were under the auspicious of society, family and men. According to the Platform a non-gender discriminative Penal Code required changing the language of the law and definition of sexual crimes. In this context, the below mentioned amendments were demanded.

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<sup>77</sup> Interview data, 21 July 2005

**a) The Penal Code Draft Law regulates sexual offenses under “Crimes Against Society”, instead of under “Crimes Against Persons”**

Both the previous Turkish Penal Code and the draft law classify sexual crimes under “Crimes against Society.” In the draft law, articles pertaining to sexual offenses (Articles 315-329) are listed under the sub-section entitled “Crimes against Sexual Integrity and Traditions of Morality”. For the Women’s Platform, this classification reflects the overall discriminatory and obsolete approach of the Penal Code draft law. Placing crimes against sexual and bodily integrity under crimes against society implies that women’s bodies and sexuality do not belong to themselves, but rather to the constructs of the patriarchal society and family. It overtly dismisses a person’s right to control her/his own body and sexuality and contradicts the fact that any sexual offense is first and foremost an attack against an individual human being. The amendment they demanded was to place sexual offenses under “Crimes against the Person” and revise the section title as “Crimes against Sexual Integrity in order to safeguard the personal rights and freedoms of citizens equally and completely (WWHR 2005b: 6).

**b) The draft law legitimizes “honor killings” and does not take preventative measures to eradicate these violent crimes.**

The Platform argues that the provisions in the draft law do not propose preventive measures against honor killings. On the contrary, Article 31 (Unjust Provocation) implicitly offers license to perpetrators of honor killings and legitimizes this violent tradition under the pretext of penal law. According to Article 31, honor killing perpetrators can benefit from “unjust provocation” and thereby receive up to three

fourths reduction in their sentences. Therefore it is lacking any actual intent to stop honor killings. The Platform demand that the paragraph should be removed from the justification and be replaced with a clause acknowledging Turkey's commitment to provisions in the Beijing +5 Outcome Document and recommendations of the European Council to eradicate the harmful traditional practice of honor crimes (ibid 7).

**c) Crimes of rape and sexual assault are erroneously named and defined in the draft law, implying these offenses are violations of one's "honor" and "chastity" rather than sexual and bodily integrity.**

According to the Platform; the articles on sexual defenses in the draft law based on concepts of "chastity", "honor", and "morality" rather than sexual and bodily integrity and human rights are extensions of the underlying notion that women's bodies and sexuality are properties of the society and family, and women's chastity is seminal to define the societies' honor and morality.

Instead of employing internationally and legally accepted terms such as "rape" or "sexual assault"; Article 315 and 317 of the draft law literally translate as "Forced Seizing of Chastity" and "Forced Assault on Chastity" respectively. The Platform demanded that these articles be titled correctly as "rape" and "sexual assault" and emphasized that without the correct titling penalizing these crimes adequately will not be possible.

Additionally, they demanded the revision and expansion of the definition of rape. The deficiencies and flaws in the definition of rape in draft law Article 315 hinder the law from effectively protecting women's sexual bodily rights and freedoms, because it does not explicitly describe the modes through which rape may take place and does not acknowledge the fact that rape may occur through oral and anal penetration, as well as vaginal or through the forced insertion of an object into the anus (ibid 8).

**d) The Penal Code Draft Law sanctions marital rape.**

The draft law states in the Justification of Article 315 (Forced Seizing of Chastity) that marital rape does not constitute a rape offense. According to the Platform; marital rape is clearly a serious violation of human rights and such an article sanctions and legitimizes tradition and patriarchy over law and offers men license to force their wives into sexual relations.

They demanded the revision of article 315 to include marital rape coherent with global human rights norms, international documents and treaties and the Turkish constitution (ibid 8).

**e) The draft law discriminates between married and unmarried women, virgin and non-virgin women.**

The Penal Code Draft Law included violation of Article 10 of the Turkish Constitution that states all women and men are equal before law. It discriminates

married- unmarried and virgin – non-virgin women. The Women’s Platform on the Penal Code demanded such discriminatory provisions to be removed.

Article 4 of the draft law includes a clause defining “woman” as “including girls” suggesting a distinction between virgin and non-virgin women, while there is no definition of “man” in the article as “including boys.” in the article consisting of definitions of “nighttime”, “weapons”, “violence”, “citizen”, “civil servant” etc., the definition of “women” is completely irrelevant and only highlights the discriminatory approach of the penal code per se.

Article 325 of the draft law (Abduction and Retention of Persons) foresees a higher sentence if the kidnapped woman is married, implying that the severity of an attack on a basic human right is dependent on the marital status of the woman. Along the same lines, the justification of Article 319 (General Aggravating Circumstances) states that the rape of a virgin woman constitutes a more severe offense than the rape of a non virgin woman, suggesting that the affliction caused by rape can be determined by whether the woman’s hymen has previously been broken or not.

The Women’s Platform argued that all women who are subject to sexual assault must be equally protected by law and these articles have to be amended to exclude such discriminatory clauses coherent with Article 10 of the Turkish Constitution that all women and men are equal in the face of law (WWHR 2005b: 9).

**f) The draft law sanctions forced marriages and legitimizes rape and of abduction of women.<sup>78</sup>**

According to the Platform, Articles 326 (Active Penitence and Mitigating Circumstances) and 327 (Active Penitence Necessitating the Suspension of Criminal Proceedings or the Sentence) of the draft law stand in clear violation of women's human rights and have to be removed. According to İlkaracan, this provision not only sanctioned the crimes of rape or abduction, but also encouraged men to abduct or rape women who refuse them, thus virtually forcing women to marry their rapists in order to preserve their honor (forthcoming 5). To offer a reduction or postponement in the sentence of such crimes if the perpetrator marries the victim sanctions the notion that women's bodies belong to the society and family and that constructs of honor and chastity hold greater import than a woman's sexual and bodily integrity.

The Platform argued that both articles which use the institution of marriage to violate a person's rights and freedoms and unjustly protect the perpetrator while further victimizing the aggrieved party should be annulled (ibid 10).

**g) The draft law fails to adequately define the sexual abuse of children and assumes the possibility of consent on the child's part.**

That the draft law addresses sexual crimes against children together with sexual offense against adults scattered among four separate articles (No.315-318), assumes

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<sup>78</sup> During the discussions on this article in the justice-subcommission, Prof. Doğan Soyaslan stated that nobody wants to marry with a non-virgin women. Nimet Çubukçu a member of the parliament from AKP/İstanbul criticized this article. Soyaslan argued that this draft law is an outcome of a long run effort and he said "*Bir tuğla çekerseniz bina yıkılır*". Orhan Eraslan (CHP/Niğde) answered as "*Bina zaten çürük*" ( "Kimse Bakire Olmayan Biriyle Evlenmek İstemez" Milliyet, 23.10.2003)

there may be consent of the child in such offenses and dismisses nature of the offense particular to the case of children. According to the Women's Platform to protect the rights of the child in accordance with the Convention on the Rights of the Child, the draft law should be revised to address sexual offenses against children separately under one article entitled "Sexual Abuse of Children" and remove concepts of "chastity" and "honor", as well as supposition of consent (ibid 10).

**h) The draft law legitimizes the killing of the newborn child born out of wedlock by the mother.**

Draft law Article 139 (Homicide of the Newborn Child out of Wedlock) offers a reduced sentence for the murder of a newborn out of wedlock by the unmarried mother. The Platform argued that this article is violating of children's rights and reflects the philosophy that a child out of wedlock compromises a woman's and family's "honor" and thus the mother may be justified in murdering the child. They demanded the annulment of this article (ibid 11).

**i) The articles criminalizing so-called "Indecent behaviors" should be removed from the draft law.**

Article 320 of the draft law (Indecent Behaviors) states that any person who acts indecently or "severs others' feelings of chastity" in public will be sentenced to six to twelve months of prison.

According to the Platform this article rests on no legal or objective ground and violates the human rights of transgendered people and prosecutes them on unfounded

grounds. It also serves to restrict women's sexual and bodily rights and freedoms and imposes tradition to further control women's sexuality through manipulating the law. Therefore, the Platform demanded it be removed from the draft law (ibid 12).

**j) The offense of sexual harassment is incompletely defined and does not recognize sexual harassment in the workplace.**

The Platform argued that sexual harassment in the workplace violates not only women's sexual integrity, but also their right to work. Therefore it should be explicitly defined and included in the sexual harassment article (No. 321) (ibid 12).

**k) The General Aggravating Circumstances for sexual assaults in the draft law exclude sexual assaults by security forces and sexual assaults under custody.**

The Platform demanded to revise Article 319 regulating the general aggravating circumstances of sexual offenses and to include the use of weapons and similar objects and the offense occurring under custody or by security forces in order to eliminate sexual assaults as a form or constituent of torture (ibid 12).

**l) The draft law does not criminalize the practice of virginity testing.**

The Platform argued that virginity testing is a severe human rights violation against a woman's sexual and bodily integrity and the state has a duty to ban and penalize harmful practice of virginity testing in the Penal Code in order to protect women's sexual and bodily integrity (ibid 13).

**m) The article of “Discrimination” in the Draft law does not fully support the equality principle of the Turkish Constitution.**

The draft law of the Penal Code included an article entitled “Discrimination” (No: 186) penalizing discrimination by institutions and individuals. According to the platform, this article should be revised to penalize “all those obstructing the exercise of one’s social, political, and economic rights” due to discrimination on the basis of language, race, color, gender, sexual orientation, political view, philosophic belief, religion or similar grounds in accordance with the equality principle of Article 10 of the Turkish Constitution.

#### **4.3.4 Major Amendments of the New Turkish Penal Code**

##### **4.3.4.1 Content of the New Penal Code**

The new Turkish Penal Code which represents a profound change is the success of women’s activism. The achievement of the campaign is more than thirty amendments that constitute a major step towards gender equality and protection of women’s human rights in Turkey.

Turkish Penal Code Reform marks a transformation from the philosophy and principles of the former Penal Code. It is a holistic reform with its new philosophy which safeguards women’s rights. As İlkkaracan emphasized;

The campaign succeed to transform the underlying philosophy and principles of the old penal code that constructed women’s bodies and sexuality as belonging to their families, fathers, husbands and society; eliminate all articles in the old penal code that constituted violations of women’s human rights, particularly sexual and bodily rights; and to ensure progressive definitions of sexual crimes. Throughout the campaign, advocates emphasized the *holistic* nature of their demands, stating that their aim was not the revision of a number of articles, but rather a complete reform of the penal

code, overhauling the patriarchal framework of the code so as to legally recognize women's autonomy over their bodies and their sexuality within Turkish Law (İlkkaracan forthcoming: 1).

Below are the major amendments (WWHR: 2005c: 1-4);

**a) Sexual offences are classified under the section "crimes against individuals / crimes against inviolability of sexual integrity" instead of "crimes against society / crimes against public morality and family"**

In the old Penal Code, sexual offences were regulated under the section "Crimes against Society" in the sub-section "Crimes against Public Morality and Family." This classification reflected a patriarchal notion that women's bodies and sexuality did not belong to themselves, but rather to their families or society.

In the new Penal Code, sexual offences are now regulated as "Crimes against Persons," in the sub-section "Crimes against Inviolability of Sexual Integrity." This constitutes a groundbreaking shift in the overall perspective of Turkish Penal Law, legally acknowledging women's ownership of their bodies and sexuality.

**b) Patriarchal concepts such as chastity, honor, public morality, public customs, shame or decency are eliminated from the Penal Code**

In the old Penal Code, there were several references to vague patriarchal constructs such as chastity, morality, shame or decency. For example, crimes of rape and sexual abuse were defined as "forced seizure of chastity and attack on honor." Killing of a newborn child out of wedlock by the mother received a reduced sentence, as this crime was considered to be committed to cleanse the woman's honor.

In the new Penal Code, all such references are eliminated and definitions of such crimes are brought in line with global human rights norms.

**c) Progressive definitions of sexual offences are adopted, sexual harassment at the workplace is criminalized, and sentences for sexual crimes are increased**

The new Penal Code contains progressive definitions of rape, sexual assault, sexual abuse and sexual harassment. Rape and sexual assault used to be defined as "forced or consensual seizure/attack of chastity", rather than attacks on individual sexual integrity, in the old Penal Code. In the reformed Penal Code, sexual assault is defined as "any sexual behavior violating a person's bodily integrity".

The definition of rape has been expanded to include anal and oral penetration, as well as the insertion of an object or any organ to the body. Psychological coercion is recognized as a means of coercion by the perpetrator and damage to the victim's psychological health is acknowledged as an aggravating circumstance. Sexual assaults under custody or by security forces, public officials or employers, by relatives or in laws are also regulated as aggravated offences.

Sexual harassment is defined to include "all harassment with sexual intent" and sexual harassment in the workplace, perpetrated both by superiors and co-workers, is explicitly recognized as an aggravated offence.

**d) Provisions assuming rape, sexual assault or sexual abuse of children can occur with the consent of the victim are removed**

In the old Penal Code, there were provisions assuming that sexual abuse of children could occur with their "consent," and foreseeing reduced sentences in such cases.

In the reformed Penal Code, the notion which assumed that rape, sexual assault or sexual abuse of children could occur with the victim's consent has been eliminated and all references to consensual rape, sexual assault and sexual abuse of children have been removed.

**e) Marital rape is criminalized**

Marital rape was not acknowledged as a crime in the old Penal Code. The justification of the article regulating rape stated that marital rape did not constitute a sexual offence.

Marital rape has explicitly been acknowledged as a crime in the reformed Penal Code. It can be prosecuted upon the victim's complaint.

**f) There are new measures to prevent sentence reductions granted to perpetrators of honor killings and "killings in the name of customary law" are regulated as aggravated homicide**

The new Penal Code takes an important step forward towards eradicating the customary practice of honor killings. In the old Penal Code, a general article regulating cases of "Unjust Provocation" was often misinterpreted by judges to cover

murders committed in the name of honor and was used to grant sentence reductions to perpetrators.

In the reformed Penal Code, the article has been amended to only include "unjust acts" and in the justification of the article, it has been explicitly stated this amendment was made to prevent its application to honor killing cases.

Furthermore, "killings in the name of customary law" have been defined as aggravated homicide in the new Penal Code, which does not encompass all honor killings, however still constitutes a significant advancement.

**g) Provisions regulating the sexual abuse of children have been amended to explicitly define sexual abuse and remove the notion of "consent of the child" in sexual abuse**

The old Penal Code did not acknowledge sexual abuse of children as a distinct crime, but rather regulated the crime under articles pertaining to rape and sexual assault. In the reformed Penal Code, sexual offences against children under fifteen have been aptly defined in a separate article entitled "Sexual abuse of Children." If the offence is perpetrated by parents, relatives, stepfathers, legal guardians, caretakers, teachers, and healthcare providers, it is considered an aggravated offence. Damage to the psychological health of the child is also acknowledged as an aggravating circumstance. As mentioned above, references to the child's consent in sexual abuse have been removed.

**h) Non-discrimination between virgin, non-virgin, married and unmarried women has been ascertained**

The old Penal Code discriminated between virgin and non-virgin; or married and unmarried women, by regulating rape and abduction as aggravated crimes in case the woman was a virgin or married respectively. The provisions foreseeing more severe sentences if the rape victim is a virgin and if an abductee is married have been removed in the new Penal Code.

The provision in the article on definitions, which made a distinction between "women" and "girls" is removed.

**i) The article granting sentence reduction to the killing of the newborn child born out of wedlock by the mother is removed**

The article in the old Penal Code offering a reduced sentence for the murder of a newborn out of wedlock by the mother has been removed. This provision was based upon the notion that a child out of wedlock would compromise a woman's and family's "honor" and thus such a murder could be legitimized.

**j) Provisions legitimizing rape and abduction in case the perpetrator marries the victim have been abolished**

The old Turkish Penal Code entailed articles foreseeing reduction or suspension of the sentence in case rape or abduction perpetrators married their victims. This was based on a notion it would be better for a woman to marry her rapist, as this could save her "honor," and marrying the victim would thereby undo the offence.

These provisions, which also served to legitimize forced marriages, have been removed in the new Penal Code.

**k) The article regulating "indecent behaviors" has been amended only to include sexual intercourse in public and exhibitionism**

This article foresaw criminalization of the so-called "indecent behaviors," or "acts that severe others' feelings of "chastity," vague and subjective notions open to misuse by security forces and courts. The article was often used to prosecute sexual minorities on unfounded grounds. It could also be used to restrict women's sexual freedoms and rights.

In the reformed Penal Code, the article has been amended only to penalize sexual intercourse in public and exhibitionism.

**4.3.4.2. Remaining Demands**

Despite the overall success of our campaign, some of the Campaigns demands were not accepted<sup>79</sup>. Moreover, during the review of the Penal Code in the Justice Commission, two new articles were added to the Penal Code, which constitute a backlash. One of the articles provides for the criminalization of consensual sexual relations of youth aged 15-18 upon complaint. The other new article criminalizes publication of obscene material thereby threatening freedom of expression and legitimizing discrimination based on sexual orientation (WWHR 2005d: 15).

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<sup>79</sup> Cumhuriyet, 12 June 2004 "Kadınlar: Bu Yetmez";

Despite the progress achieved, several provisions legitimizing violations of women's rights and gender-based discrimination remaining in the new Penal Code stated as follows. Women's demands in this regard are as in the following (ibid).

- "Honor killings" have to be explicitly defined as aggravated homicide to include all murders in the name of honor, not just those in the name of "customary law". In the new Penal Code "honor killings" were not regarded as an aggravated circumstance for homicide. Thanks to the Platform's efforts the commission has included "killings in the name of customary law" in aggravated circumstances. But this amendment is not enough for putting an end to the honor killings. Because, in some circumstances the perpetrators of honor killings could get sentence reductions. For example, if the perpetrator claims to have killed in the name of his own honor, the provision would not apply. Furthermore, the statement of "customary" limits this killing practice only to certain regions not all the country. The provision also remains incompatible with international documents which acknowledge the term "honor crimes." The article should be amended to include explicitly honor killings as an aggravated circumstance.
- Discrimination based on sexual orientation has to be banned explicitly and criminalized. In the Justice Commission sexual orientation has been removed from the Article penalizing discrimination even though it had previously been approved in the Penal Code Draft Law Sub-Commission. Furthermore, the Discrimination article in the draft law only penalizes violation of economic rights. The article has to be amended in order to penalize any violation of

political, social and economic rights based on discrimination, including based on sexual orientation.

- The Turkish Penal Code penalizes sexual relations between young people aged between 15-18 years if there is any complaint. The Penal Code fails to define the complaint; it leaves room for complaints from third parties such as parents, families and school administrators and teachers, and leaves space for penalizing consensual sexual relations between young people. The article thereby allows for the restriction of young women's freedoms and rights and discrimination against them. The article should be removed and a provision has to be added to the previous article (Article 106: Sexual Abuse of Children) to only penalize sexual relations of minors of 15-18 years of age in case the sexual relation involves the use of force and violence or threat or any other reason affecting the involved parties' consent .
- The practice of virginity testing has to be explicitly banned and criminalized under all circumstances. The new Penal Code doesn't effectively penalize virginity testing. It used the term "genital inspection" instead of "virginity testing" thereby failing to criminalize the practice explicitly. Although it limits the authority for issuing an order for a genital inspection only to judges or public prosecutors and penalizes others, it does not penalize the doctors or medical personnel who actually perform the inspection which allows families, parents and guardians to take women for virginity testing to private offices and still providing space for this human rights violation. Furthermore, by criminalizing consensual sexual relations between young adults, young women can be forcefully taken for virginity testing based on this article.

- The "Obscenity" article should be amended to define acts of "obscenity" clearly in order to prevent threat to freedom of expression, invasion of privacy and discrimination based on sexual orientation. The related article of the New Penal Code foresees severe sentences to anyone who publishes/broadcasts/disseminates "obscene" material through the media defining the boundaries of the term. Likewise, the same article penalizes publication and broadcast as well as possession of material that contains "unnatural sexual acts" without explaining what an unnatural sexual act is. The article constitutes a serious threat to freedom of expression, leaves room for serious discrimination based on sexual orientation and invasion of privacy. The article has to be amended to define obscenity as child pornography, necrophilia, zoophile and sexual violence.
- The legal abortion period has to be extended to 12 weeks. The period allowed for abortion was stated as 12 weeks in the original draft law. However, the Justice Commission has reduced the allowance of abortion to 10 weeks despite the lobbying efforts of the Women's Platform on the Turkish Penal Code. The article should be amended to re-extend the abortion period by allowing abortion up to 12 weeks instead of 10 weeks as was initially stated in the original Draft Law.

Under these conditions the women's movement has two new goals. Firstly, to struggle for remaining demands in order to eradicate all provisions legitimizing women's human rights violations and discrimination in the Penal Code; secondly, to monitor the implementation of the Penal Code.

## **CHAPTER V**

### **CONCLUSION**

The main aim of this study was to explore the impact of women's activism on the gender equality agenda in Turkey. The research thesis claims that women's activism with the contribution of the institutionalization of the women's organizations facilitated the mobilization of the women's movement towards engendering the political agenda in a more effective and powerful way.

The thesis started with a discussion of the Turkish Women's Movement after the 1980s, and reviewed its basic concerns, discourses and breaking points in general in order to evaluate the impact of women's activism on engendering the political agenda. This review demonstrated that the 1980s were the period that the ideological conditions of the movement were determined and current feminist discourses were produced, however the 1990s were the period when the women's movement was institutionalized and became widespread. Since the 1990s until today, legal issues were the crux of transforming the agenda of the struggles experienced within the women's movement.

The campaign launched by the women's groups and organizations for the Reform of the Turkish Penal Code, which lasted for two years, has constituted the basis for analyzing the impact of women's activism in achieving gender aware change.

It is crucial to discuss the evolution of the process of the emergence of an International Gender Agenda owing to the fact that the Turkish women's movement developed its own discourses on women's human rights issues as a result of the interaction with the international gender regime. The demands of women in the Campaign for the Turkish Penal Code were the inevitable outcomes of women's human rights discourse which was derived from the international gender regime.

The findings of the research verified the research thesis that women's activism that occurred after the 1980s and institutionalized during the 1990s was incredibly influential in transforming Turkey's political agenda. Both in the Civil Code experience and in the Penal Code Campaign, the inner organization manner of the women's movement, its use of the media, its personal relations with the columnists and correspondents and lobbying activities such as finding allies in the commission and Parliament and conducting effective communication through a list-serve can be enumerated as important tools. As a result of arranged street demonstrations and actions and considerable interest and support of the media, public opinion was attained and ordinary people were informed on the importance of the campaign which was arranged for the good of women. As a result, all these efforts created an intensive pressure on the government.

Although the reform of Penal Code was considered as a success of women's activism, the effect of the interaction with international mechanisms shouldn't be overlooked. The source of Turkey's efforts to make reforms in its legal system, in the scope of this study the Civil Code and the Penal Code, had its grounds in the

Copenhagen Criteria for the EU accession process. Furthermore, Turkey's international obligations such as CEDAW and Beijing PfA were used as tools of advocacy for demands of women. However, it has to be emphasized that it was first and foremost the efforts of the women's movement, interacting with the above-mentioned mechanisms that lead the reform process to materialize as it did. Had it not been for the efforts of the women's movements, international bodies<sup>80</sup> wouldn't have been informed effectively and as a result may have overlooked the gender biases of the law. Thanks to the briefings, panels, letters and faxes to the national and international authorities, an environment of awareness was created thus making it possible for the reform of the Penal Code to be in harmony with the Women's Platform's demands.

The Turkish new Penal Code came into the effect on 5 April 2005. Despite the success of the women's movement in influencing the reform process there are still pending issues that require future attention, these are;

- § "Honor killings" have to be explicitly defined as aggravated homicide to include all murders in the name of honor, not just those in the name of customary law,
- § Discrimination based on sexual orientation has to be explicitly banned and criminalized,

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<sup>80</sup> According to İlkkaracan; "Nevertheless the initiative was quite daring, as in contrast to the case of gender equality in the civil code, gender equality in the penal code had never been on the Turkish public's agenda. The European Commission, which urged Turkey to reform its penal code, was concerned mainly with the abolishment of the death penalty, pre-trial detention provisions and the extension of the scope of freedom of expression, and not with gender equality. In fact, the only reference made by the EC concerning women in the penal code was related to honor crimes" (forthcoming 11).

- § The article penalizing consensual sexual relations of youth aged 15 – 18 upon complaint should be removed,
- § The practice of virginity testing has to be explicitly banned and criminalized under all circumstances,
- § The “Obscenity” article should be amended to clearly define acts of “obscenity” in order to prevent threat to freedom of expression, invasion of privacy and discrimination based on sexual orientation,
- § The legal abortion period has to be extended to 12 weeks.

Working for the above-mentioned remaining demands, monitoring the application of the new Penal Code and informing women about their new rights concerning the Penal Code were set as the new goals of the women’s movement.

With respect to the philosophy of the previous Penal Code, women’s body and sexuality were under the auspicious of society, family and men; however as a result of well organized and successfully mobilized women’s activism for the Reform of the Penal Code with a philosophy respectful to women’s human rights, women gained the control of their own body and sexuality rather than being the property of society and men. The success of the women’s movement in this process was verified and the importance of this struggle was admitted by the members of the Parliament when the draft law was ratified in the Parliament. The new Turkish Penal Code can be accepted as one of the gifts given by the activists of the women’s movement who teach the power of organized activism to the women of the new generation.

In this regard, this study is important in that it records the experiences within the struggle process and detects the tools of women's activism in transforming the political agenda. The researcher who identifies herself as a feminist and makes the effort to be an active participant by being involved in the process of the campaign sustains her own gender perspective both in the academy and in daily life.

The interviews with the activists of the women's movement provided not only specific information concerning the new Penal Code, but it also ensured a quantity of data on the history of the Turkish women's movement. In light of the findings of this study, a tentative research area can be an elaborate and comprehensive study of the women's movement in the period after the 1980s. Beyond that, it is suggested that oral history techniques should be used in this study in order to attain the rich life experiences of the activist women of the movement with the aim of preventing the loss of their priceless experiences and recording them for the future generations.

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