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Gulf Labour Markets and Migration

The Normal and the Exceptional in Irregular Migration in the Gulf

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BOOK CHAPTER

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II

The Normal and the Exceptional in Irregular Migration in the Gulf

Philippe Fargues*

Abstract: The first part addresses the universality of irregular migration and argues that rising irregular migration results from global interconnectedness between highly differentiated nations in terms of economic and political security, conflicting with the reluctance of nation-states challenged by global processes to accept otherness. The second part is dedicated to what makes the Gulf States unique in terms of the production of irregular migration: a rigid sponsorship system that is not compatible with the free mobility of labour requested by markets and a strict closure of access to nationality that prevents the smooth integration of non-citizens. The third part looks at the social conditions of migrants in irregular situations and the spiral that drags poor migrants down into irregularity, a driver of precariousness and insecurity. The fourth part deals with the politics of irregularity and the two responses states employ to eliminate a situation that they regard as an offence to their sovereignty: deportation or regularisation.

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Introduction

Spring–early summer 2015. Boats believed to be carrying up to 1,000 Rohingya Muslim migrants from Myanmar are still wandering the ocean after Indonesia, Malaysia and Thailand pushed them back; Australia returns hundreds of asylum seekers smuggled by sea to Vietnam and declares a zero tolerance on migrant vessels approaching its shores; some 2,000 migrants from Syria, Afghanistan and Eritrea try every day to cross the Channel from France, where they are camped, to the UK where they are refused entry; hundreds of migrants landed in Sicily are stuck in Ventimiglia, northern Italy, where they have been forced back from France; Mr. Donald Trump, a US presidential candidate, declared in the course of his campaign: "We need to build a wall, and it has to be built quickly. And I don't mind having a big beautiful door in that wall so that people can come into this country legally"; raids net more than 100,000 migrants in Jeddah and 25,000 in Madinah in six months since the beginning of 1436H, police announced; and thousands of foreign workers in Oman have filed for correction of labour status followed by deportation, etc. Whether they seek international protection or a better fate, many migrants find that they are increasingly unwanted in the global north as well as in the global south.

This chapter first addresses the universality of irregular migration. It argues that rising irregular migration results from the forces behind international migration colliding with obstacles to international migration: from global interconnectedness between highly differentiated nations in terms of economic and political security conflicting with the reluctance of nation-states challenged by global processes to accept otherness. The second part is dedicated to what makes the Gulf States unique in terms of the production of irregular migration: a rigid sponsorship system that is not compatible with the free mobility of labour requested by markets and a strict closure of access to nationality that prevents the smooth integration of non-citizens whose limited rights mean that they are at risk of falling into an irregular situation. The third part looks at the social conditions of migrants in irregular situations and the spiral that drags poor migrants down into irregular migration and irregularity, a driver of precariousness and insecurity. The fourth part deals with the politics of irregularity and the two responses states can employ to eliminate a situation that they regard as an offence to their sovereignty: deportation or regularisation.

Irregular Migration in a World of Nations

We read, day after day, media stories and hear political statements about "irregular migrants," "unauthorised migrants," "illegal migrants" or more often and more

bluntly "illegals." Such expressions have become so familiar that one may miss their implicit meaning, which is that migrants whose entry or stay breaches a host country's laws are negated as persons. "No Person is Illegal" was the name of a movement born in Germany in 1997, and now known as No One Is Illegal (NOII), advocating rights for all migrants. Migrants in an irregular situation are denied the right of being present. Whether they have entered that country without proper authorisation or whether their authorisation to stay has expired, their situation results from a discrepancy between the two universal principles commanding the international mobility of people. On the one hand, exiting any country is a right enshrined in the 1948 Universal Declaration of Human Rights (Art. 13) but, on the other, entering another country is a privilege, for the admission of foreign nationals is universally recognised to fall under the state's sovereignty. Freedom of movement, which is recognised as a basic right within any (democratic) country, stops at the frontier, as international law does not provide for the right to move between countries (Weiner 1996; Benhabib 2004).

This chapter will not use the above terms: first, because they are derogatory, offensive and unethical, and second, because they do not reflect reality. Irregularity must be situated in space and time. It does not characterise the person herself but his or her transient situation. Migrants are "people living in a country or area other than that in which they were born" (UN 2013). Those who do not fully comply with migration-related legislation of the country where they live are "migrants in an irregular situation." The corresponding phenomenon can be called "irregular migration" keeping in mind that what is "irregular" in country A may be "regular" in country B as irregularity is a context-specific, not an absolute situation. The same person can, then, be in a regular situation at time t but no longer at time t+1; or vice versa, for being in a regular or irregular situation regarding migration law is a reversible status.

"Irregular migration" is a widely used, though recent term. It dates back to the second half of the twentieth century, when the nation-state became a universal form of organising communities of citizens.[1] Defined as one people, one territory and one narrative, the nation-state has erected borders, with inclusion from within as an

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1. An early appearance of the term is found in: Royal Institute of International Affairs (1946), Chronology of International Events and Documents, Vol. 2, No. 16 (August 12-25), pp. 489-508. "Prague radio announced that the frontier with Poland had been closed in view of Britain's decision to stop illegal immigration into Palestine" and later in Jon & David Kimche (1954), *The Secret Roads: The 'Illegal' Migration of a People 1938-1948,* London, Secker & Warburg.

objective and exclusion from without as its corollary. Two forces came into collision here. On the one hand, the fundamental right of individuals to wellbeing and security makes the case for open borders (Carens 1987), as cross-border mobility may be the best (and sometimes the only) strategy for those born on the wrong side of a border. On the other, though, the state has a duty to protect its citizens. From the migrant receiving state's perspective, admitting foreign nationals can be advantageous if they contribute to the nation's wealth, but it must stop as soon as their presence is detrimental to citizens. Safeguarding citizens' employment, welfare, security and identity makes the case for restricting non-citizens' admission, their stay and their access to labour. Irregular migration results from this tension between the forces of international mobility of persons and the nation-state's reluctance to accommodate otherness.

Irregular migration is usually defined as the result of a violation – deliberate or not – by the migrant of conditions set down by the host state, i.e. as "international movement or residency in conflict with migration laws" (De Haas 2008). Some authors insist that it can either be the migrant that breaches the law or the law that changes and affects the migrant's status: the situation of migrants initially admitted on a legal basis may, due to changing legislation on stay or labour, become irregular without them knowing it. This happens, for example, when activities employing foreigners become reserved to nationals, a change that often means that foreign workers are no longer eligible for residence (Fargues 2009). Finally, other authors dispute the relevance of the regular/irregular dichotomy preferring gradation in terms of compliance: yes, there are migrants who reside and work in full compliance with the law of their host country and, then, there are those who fully violate restrictions on entry, stay and employment. However, between these two, there are a wide spectrum of intermediate situations, which they term "semi-compliance" (Ruhs and Anderson 2008). As soon as full compliance with host states' regulations is restricted, semi-compliance often becomes the only option left to migrants. Irregular migration is, therefore, a direct product of regulations that governments put in place to control the movement, settlement and access to employment of foreign nationals as part of a concern to establish the state's sovereignty over territory as well as to protect citizens.

All countries are at the same time migrant senders and migrants receivers and irregular migration can be found everywhere in the world. Estimated to stand between thirty and fifty million, the (unknown) number of migrants in irregular situation worldwide is likely to have grown in recent years as a result of the two conflicting trends mentioned earlier. On the one hand, the structural forces

that make migration increasingly desirable or even necessary – from economic differentials between nations to conflict and political instability in many of them – have not abated. Moreover, communications, virtual or real, that make migration a realistic option have continuously intensified. On the other, states, increasingly challenged by global processes, tend to reaffirm their sovereignty, and societies and public opinions their attachment to national identity. In brief, reasons for, and hurdles to migration have risen in parallel.

Irregular migration exists everywhere but it is nowhere exactly the same. Migrants in irregular situation are in breach of laws that vary from one nation to another. Laws that can make a migrant's situation irregular relate to the entry, stay and work of non-citizens. Migrants find themselves in an irregular situation as soon as they fall into one or more of the following non-exclusive situations:

- Unauthorised entry: persons entered with no visa, including those who bypass border checkpoints, smuggled and trafficked persons;
- Unauthorised stay: overstayers on a temporary entry visa (seasonal or short-term worker, student, visitor of a family member, tourist, pilgrim, etc);
- Unauthorised employment: workers with a non-work visa or with an occupation that is not allowed by their visa.

While they are universal, these categories vary in magnitude and in their causes and consequences: they change according to time and place. What is the prevalence of irregular migration in the Gulf? Scarce and incomplete data offer only a glimpse of the situation (Table 2.1).

Saudi Arabia stands out from all the other states with 5.3 million irregular situations detected in 2014 with 9.7 million recorded migrants. Even if the same person can have more than one form of irregularity and the proportion of migrants in irregular situation is smaller than 55% (5.3 / 9.7) numbers are still extraordinarily high. This is partly due to several peculiarities of the Kingdom, such as: the pilgrimage to the holiest sites of Islam, Haj and Umrah, which offers avenues for visa overstayers; the long border with Yemen that creates easy entry points by land for migrants with no visa; the size and diversity of the labour market; etc. Saudi Arabia also puts more efforts into tracking down migrants in an irregular situation. At the other end of the spectrum, in 2014, the number of migrants applying for status regularisation represented only 1.2% of all foreign nationals in Oman and 4.3% in Kuwait while Bahrain (7.2%) is in an intermediate situation. Estimates provided in Table 2.1 suggest that the Gulf States differ greatly from one another in terms of the prevalence of irregular migration, and that they roughly compare with

major receivers of global migrants in the West. For example, in the United States, 11.3 million migrants were estimated to be in irregular situation in 2013, 670,000 were arrested and 400,000 deported the same year, representing respectively 26.7%, 1.6% and 0.9% of the total migrant stock in the country (42.4 million). It must be noted, however, that statistics of apprehended migrants do not properly reflect the magnitude of irregular migration. In the Gulf, official data necessary for estimating irregular migration are not available. Moreover, deportees include not only migrants in irregular situations but also all those who engage in strikes and demonstrations.

Table 2.1: Foreign citizens apprehended in an irregular situation in the GCC states - most recent year in the 2010s

Country	Total Population mid-2014	Foreign Citizens					
		Number mid-2014	In % of the Population	In Irregular Situation			
				Regularised	Deported	Total	In % of Non-Citizens
Bahrain	1,338,400	683,000	51%	30,000	19,130	49,130	7.2%
Kuwait	4,169,410	2,884,849	69%	11,479	32,036	124,142	4.3%
Oman	3,887,000	1,696,000	44%	na	11,051	21,150	1.2%
Qatar	2,230,800	1,911,000	86%	na	na	na	na
Saudi Arabia	29,994,272	9,723,214	32%	4,700,000	600,00	5,300,000	54.5%
UAE	9,350,000	8,277,000	89%	na	na	224,548	2.7%
Total GCC	50,969,882	25,175,063	49%	na	na	na	na

Sources: Total population computed from the UN Database (http://esa.un.org/unpd/wpp/unpp/panel_population.htm) except for Kuwait (Public Authority for Civil Information; http://www.paci.gov.kw/en/).

Stocks of immigrants on July 1, 2014 estimated by the authors assuming that their proportion has remained constant since the most recent population census (or survey), as calculated by GLMM (http://gulfmigration.eu/glmm-database/demographic-economic-module).

Estimated numbers of migrants apprehended in Irregular situation are retrieved from the corresponding country chapters of this volume.

Dual Societies and the Production of Irregularity in the Gulf

With immigrants and their sons and daughters comprising between 32% (Saudi Arabia) and 88% (UAE) of the total population, can Gulf States be described as "immigrant nations"? Are they places where new societies emerge from the encounter between former local populations and a variety of new communities brought in by migration? Gulf States are the number one destination for migrants originating in the giants of South Asia (India, Pakistan, Bangladesh, the Philippines, etc.), as well as in the Arab East (Egypt, Jordan, Lebanon, pre-2011 Syria, Yemen,

etc). Such massive flows from the East and the West have undoubtedly created new social realities at their confluence. But these are not cohesive societies. Neither first- or second-generation migrants are admitted into the citizenry despite their outstanding demographic weight. First, they have limited membership in society, in terms both of rights and social interaction. Their "right to have rights" (Arendt), understood as the right of individuals to be members of a political community and to enjoy protection from that community, is negated where they live. Second, their social integration is mediated by the sponsorship system specific to the Gulf States and to a few other countries (Jordan, Lebanon).

"Dual societies" (Fargues 1980) have emerged in the Gulf, in which citizens and non-citizens are separated in economic and legal terms. Citizens have the world's lowest rate of economic participation and they are almost invisible on the labour market outside the public sector (with variations from country to country). Non-citizens, meanwhile, have the world's highest rate of economic participation and fill almost all private sector jobs. By law, every non-citizen must have a national sponsor. Non-citizens have only limited access to basic rights, notably the right to bring one's family, and to universal labour rights. Their access to citizenship through naturalisation is extremely restricted (if not inexistent). Moreover, as a result of nationality at birth falling under a strict *jus sanguinis* unmitigated by any *jus soli,* migrants' sons and daughters who were born and grew up in the Gulf remain non-citizens. In Qatar, the Nationality Law of 2005 stipulates that Qatari women married to a foreigner cannot transmit their Qatari nationality to their children (Zahra 2014) and the same is true for other Gulf States. In the United Arab Emirates, Mahdavi (2012) reports the case of children born to a migrant woman (a domestic worker) and an Emirati man (her employer and sponsor). The children are Emirati nationals while the mother is a migrant in an irregular situation, subject to deportation, when she is fired by her employer and the father of her children.

Actually, opening the door of citizenship to migrants is regarded by Gulf States as a triple threat to local citizens. It is, first, a threat to their cultural identity (migrants bring in alien values); second, to their social cohesion (they bring in a working class with its potential for political protest); and, third, to their wellbeing (if naturalised, migrants would receive social benefits from the state). Instead of integrating migrants, reducing their numbers has been a persistent goal for the last quarter of a century (Fargues and Brouwer 2012): so far though it has failed and the proportion of non-citizens in all six GCC states has continuously increased (Fargues 2012). The above-described duality has an important bearing on the production of irregularity among migrants.

The legal obligation to have a sponsor generates specific forms of irregularity. Indeed, the sponsorship system collides with basic rules of market economies for it hinders two fundamental requirements: the free mobility of labour and free entrepreneurship. Because both are necessary for markets to work and as markets can be stronger than states, there are a number of situations where the law is bypassed (mostly by sponsors) and the migrant is put into an irregular situation.

First, the sponsorship system hinders labour mobility thereby generating irregular situations. Irregularity can start with a visa. Visas available to migrant workers do not offer open access to the labour market as in other major migration destinations. A visa ties its bearer to a specific job and a specific sponsor, thereby creating two sources of irregularity: visa trading and sponsorship trading.

Jureidini explains how in Qatar visa trading, the (unlawful) practice of selling visas between companies, is a common strategy to get around occupation quotas. If, as an employer, I have unused visas for recruiting migrant workers in occupation A and you have reached your recruitment quota in occupation B but still need to hire more workers, I can sell you the visas you need. The migrant workers you recruit will receive visas that do not correspond to their actual employment and as a consequence they will automatically be in an irregular situation as soon as they enter the country (Jureidini 2014).

The transfer of sponsorship, when migrants change sponsor in the course of their stay, is another common case of irregular situation. Indeed, this kind of transfer is not permitted to the migrants themselves. It must be done by their new and former employers and approved by the competent authority (the Ministry of Labour). The same applies to the temporary secondment of a migrant worker by one employer to another, which is forbidden and that exposes the migrant to the risk of detention and deportation. There are variations from country to country (Zahra 2014). In both Qatar and Bahrain, however, domestic workers are excluded from the benefit of this new legal provision for it is the Ministry of Interior, not the Ministry of Labour, that is responsible for managing employment (Khan and Harroff-Tavel 2012). In Saudi Arabia, the recently implemented Nitaqat programme (quotas) provides for the labour mobility of long-term foreign residents under certain conditions and waives the obligation of the 'No Objection Certificate' normally requested for any transfer from one employer to another (De Bel-Air 2014).

Second, the sponsorship system hinders entrepreneurship and this might be a cause of the irregular situation for migrants. Migrants' self-employment is not legal in the Gulf, except in a few specific activities. Yet there are gaps and opportunities for migrants in occupations that are usually performed by independent workers

(craftsman, shopkeeper, specific services, etc.). And actually migrants are found in these occupations even if this is in breach of the law. In order to get around the prohibition of migrant self-employment, the foreign worker is fictitiously employed by a sponsor who formally owns the business and receives an income for a job another does. As stressed by Dito (2013), this kind of employment is legal but the agreement between the local sponsor and the sponsored foreign national is not: being registered as an employee while he/she is actually self-employed, the migrant worker is in irregular situation.

Overstaying or misusing a visa is, in every country in the world, a breach of the law. In the Gulf States, however, the obligation to have a sponsor generates specific forms of visa overstay or misuse. For example, when the employer cancels the work permit before the original visa expires; when the migrant worker takes another job and the former employer/sponsor reports the employee as a "runaway worker"; when the employer fails to pay the work permit renewal fees; when the migrant engages in a work different from that provided for by his or her visa, etc. (Dito 2013). In some of these situations, the migrant is in irregular situation regarding stay and in others regarding work. In all cases, he or she risks detention and deportation. In the Gulf States, certain forms of irregularity are not a breach of migration law so much as an unwanted, but logical consequence of the law (Dito 2013).

It has been stressed that the sponsorship system results in transferring to private citizens what is elsewhere seen as a state's prerogative: the surveillance of non-citizens (Beaugé 1986, Lori 2012, Dito 2013). Therefore, migrants can find themselves in an irregular situation as a result of their sponsors using the law for private purposes. Domestic workers in particular are at the mercy of employers, who can arbitrarily put them into an irregular situation. In Saudi Arabia, for example, victims of trafficking who run away from an abusive employer break the law by fleeing from their sponsor and therefore are in danger of detention and deportation. It is the victim, not the perpetrator of trafficking and abuse, who is handed over to justice, for the Anti-Trafficking in Persons Law of 2009 is not yet fully implemented and fails to protect such victims (Zahra 2014).

Different Pathways to Social Predicament

As a general rule, irregular migration comprises many different situations, including: workers attracted by labour opportunities in mostly informal activities, which are not conducive to the right to a work permit; domestic workers employed by private households and not protected by labour laws; unrecognised *de facto* refugees, i.e. persons fleeing life-threatening conditions in their own country who do not want

or who cannot obtain the status of refugee; and transit migrants initially bound for a destination which they are unable to reach for lack of entry visa and who are waiting for a passage to that destination. The borders between the various categories of irregular migrant situations are fuzzy. In particular, there is a growing difficulty in distinguishing between forced and voluntary migration as their causes are closely related, their migratory paths often similar, and host states' responses undifferentiated. Many economic migrants and political refugees come from the same weak, conflict-affected, underdeveloped states and take similar routes (Castles and Van Hear 2011). Often, individuals will jump categories to obtain work or as they acquire new information concerning legal categories.

Regardless of the different motives for migration, the various categories tend to merge into one. Being in an irregular situation implies that migrants have to hide from the authorities, that they enjoy limited freedom of movement, little or no legal protection and poor access to basic rights. Their stay is often unstable and migrants' two-way mobility can take several forms, from back and forth movements of temporary or seasonal workers to the forced return and deportation of apprehended migrants. Whether the reason is that the receiving economies already have surpluses of national workforce or that protectionist policies hamper labour market mechanisms, the supply of workforce through irregular migration most often exceeds local demand. Migrants in an irregular situation form a pool of underemployed workers whose availability contributes to keeping labour cheap and flexible: what was once called a "reserve army of labour" (Marx 1859).

In the 1990s, when globalisation became an obvious economic reality and a popular topic in the social and political sciences, some scholars advanced the hypothesis that the rise of irregular, or unregulated, migration was one of the many symptoms of declining state sovereignty. They mused whether a new regime was emerging, whereby international agreements and conventions as well as rights gained by migrants themselves were gradually substituting states in controlling immigration. Acknowledging that unrecognised asylum seekers and migrants in an irregular situation must, as human beings, enjoy a number of inalienable rights, human rights advocates in receiving countries in the West started to defend this growing category, thereby speaking for an extremely vulnerable part of modern societies. In this vein, Sassen (1997 & 2008) interpreted popular support for undocumented migrants in Europe as international human rights law gaining momentum over sovereignty. Basic rights must be decoupled from citizenship status (Benhabib 2004), as, for example, does the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

of 1990. Focusing on Europe and the growing influence of civil society and courts in defending non-citizens, authors like Soysal (1994) and Joppke (1999) hailed a narrowing rights gap between citizens and non-citizens and the emergence of an era of "post-national" citizenship. Liberal democratic societies were, then, believed to grant entitlements to migrants in irregular situation and asylum seekers, to give precedence to the plight of those who sought admission over the needs of the receiving society, therefore preventing large scale deportation (Weiner 1996).

Two decades later, disillusion seems to have taken over the optimistic views of earlier times. Irregular migration has spread beyond the industrialised world and is now found, at varying degrees, in every nation, developed as well as developing. Has progress towards the recognition of non-citizen rights been limited to the western world (Gibney 2009), or did irregular migration drive pro-human rights action in the developing world as well? The collapse of the political order in the Middle East eloquently demonstrates that some Arab countries were able to absorb millions of refugees fleeing first Iraq under American occupation, then war-torn Syria, while western nations would only resettle a few tens of thousands and reluctantly offer temporary protection to those smuggled across the Mediterranean at the risk of their lives. (At the time of writing, just 15% of all Syrian refugees have been accepted as asylum seekers in the European Union). As Australia, a nation of immigrants par excellence, pushes back boat people to Indonesia, who had made the long and perilous journey from as far away as Iraq and Syria, some Arab countries have taken a different stance, as illustrated below.

Despite the fact that Jordan had been receiving massive flows of Iraqi refugees since the 1990s, King Abdullah was able to declare in his speech from the throne in October 2008: "As for the Iraqi brothers who live among us, they are our brothers and our guests. It is our duty to care for them as brothers who are facing difficult circumstances, until the day comes when they will be able to return to their homeland and territory" (Abdullah Ibn Al-Hussein). Lebanon, a politically fragile state where a National Pact of 1943 (slightly amended after fifteen years of civil war in 1990) continues to distribute power and responsibilities between the many religious communities, has been able to accommodate 1.2 million Syrian refugees (one quarter of its own 4.5 million population) between 2011 and 2015 despite the fact that the vast majority belong to only one community (Muslim Sunni). Morocco, which is host to a large population of "transit" migrants from Sub-Saharan Africa and beyond, a population stuck at the door of Europe for lack of entry visas, was able to launch in 2014-2015 the first ever systematic regularisation campaign of migrants to be carried out by a developing country.

There is a fundamental distinction between the social conditions of migrants according to whether they are in a regular or irregular situation. Because they are denied the right to reside, migrants in an irregular situation are left with no choice but to hide and to live in limbo. They have been described as "precarious residents" (Gibney 2009), i.e. persons that: hold fewer rights than legally residing non-citizens; are more exposed to deportation; risk economic exploitation – from unpaid wages to dangerous working conditions – and often sexual exploitation; are not in a position to claim that their basic rights be respected because "in the eyes of state officials (and large sections of the public) they are trespassers with no right to be present in the state" (Gibney 2009).

Human rights principles dictate that no one should be subjected to exploitation or abuse because of their residence status and these continue to inspire those who stand up for migrants in an irregular situation. However, migrants themselves are nowhere offered real opportunities to become fully fledged members of their host society. Citizenship is, meanwhile, impossibly far off. On the contrary, the low status attached to their irregular situation translates, more often than not, into social predicament and destitution.

Because most state policies on immigration favour highly-skilled migrants, those left with no choice but irregular entry, stay or employment are usually the less skilled and the more disadvantaged. Because poor migrants are more likely than non-poor ones to engage, or be engaged in irregular migration (Sabates-Wheeler 2009) and because, in turn, irregularity generates precariousness and insecurity, there is a spiral that makes immigrants in irregular situations one of the most vulnerable and disadvantaged segments of society. For this reason, they have become a resource in modern economies in which they represent a cheap, tractable and flexible workforce (Castells 1975; Brennan 1984), one which is ready to fill labour positions unpopular with nationals. In a sense, irregular migration is an economic blessing that was once described as a deliberate process of "inclusion through illegalization" (De Genova 2002).

It is sometimes said that migrants in an irregular situation, since they are willing to accept underpaid work, have a depressing effect on wages that is detrimental to nationals. However, no evidence for this has been found (see, for example, Espenshade 1995). From the point of view of migrants, instead, the question is whether their economic benefits from finding themselves in a less destitute, or less insecure, environment than the one left behind in their country of origin, compensate or not for irregularity. On the basis of a series of surveys among African immigrants going to, and returning from, the UK, Sabates-Wheeler

(2009) argued that for poor migrants the priority is escaping poverty, not acquiring a legal status. In other words, irregular migration would bring benefits to individual migrants despite exploitation. Surveys find that the decision to migrate is made independently of legal status and that irregular migration may even bring higher earnings than regular migration because persons in irregular situation escape taxation (in countries where income is taxed), while "regular" migrants pay income tax. According to this view, irregularity would be a free choice made in a context of non-free mobility.

A particular mention must be made of "transit" migrants, i.e., persons en route to a country that they cannot reach for lack of entry visa and who are stuck in a neighbouring country waiting for a passage (legal or illegal) to their intended destination. While these "stranded migrants" (Dowd 2008) are unable or unwilling to regularise their situation in the transit country, they soon need to earn a livelihood and find themselves mingled with the larger category of migrants in an irregular situation in search of employment. The longer transit migrants are stranded, the more vulnerable to economic destitution and human rights abuses they become (Collyer 2006). Moreover, transit migrants are often found moving with "*de facto* refugees" (Bosniak 1991), i.e., persons who do not have the legal status of refugee, even if they cannot return to their countries "for reasons of race, religion, nationality, membership of a particular social group, or political opinion" (the definition of a refugee in International Refugee Law). For this reason, it is worthwhile flagging up the blurred boundaries of the "transit migrant," often a political rather than a scientific term as it disregards asylum claims (Düvell 2006). To what extent is the category of transit migration relevant to the Gulf States? There is ample anecdotal evidence (including several chapters in this volume) that some migrants find themselves stuck in a Gulf country they cannot leave for lack of the proper documents, and that others are employed in country A waiting for a move to country B. Put in other terms: transit migration exists in the GCC as elsewhere.

The Politics of Irregularity

Not only is irregular migration an economic resource for employers (and generally for migrants), it can also turn into a political resource for governments, in internal as well as international politics. Manipulating irregular migration can bring substantial benefits for states in search of legitimacy and, in democracies, to political parties hunting for votes.

In crisis times when governments' accountability is challenged, foreign nationals are often scapegoated and those in a (real or alleged) irregular situation may find themselves targeted. This happened more than once in the Arab world in the years preceding the uprisings of the 2010s. In Libya, for example, massive deportations of migrant workers in an irregular situation took place in 1995, when the economy was faced with an international embargo, and between 2003 and 2005, when post-embargo recovery was slackened by cheap oil and gas exports. Larger deportations had occurred in Africa. In Nigeria, in 1983, while the country was hit by a deep economic crisis, foreign nationals were stigmatised by officials as being responsible for all evils: from the spread of armed robbery and transmittable diseases to inflation and unemployment. An estimated 1.2 million migrants in an irregular situation, most of them from Ghana, were given two weeks to leave the country (Adepoju 1984). In Côte d'Ivoire, when the country entered into political turmoil and civil war in the 2000s after a decade of economic downturn, the 20-30% immigrants who once carried the Ivorian economy and were hailed by the slogan "land belongs to who farms it" (Fargues 1986) became "irregulars" and were chased away in the name of a newly invented "Ivorianity." In the Gulf States, repeated, and sometimes massive, crackdowns on migrants in irregular situation in the 2010s can be tied to rising discontent on the part of young nationals faced with unwelcoming labour markets, even though undocumented migrants are most probably not their competitors. In 2014, the numbers of migrants deported amounted to 6.2% of all foreign nationals residing in Saudi Arabia (to be added to more than 10% the year before), 2.8% in Bahrain, 1.1% in Kuwait and 0.7% in Oman (Table 2.1).

Beyond internal politics, irregular migration has also become a resource in international politics. In particular, it has been a recurrent matter for bargaining between European states and their southern and eastern Mediterranean neighbours. Readmission agreements oblige states to readmit their own citizens caught in an irregular situation regarding entry or stay, but also sometimes third-country nationals who transited through their territory. These agreements and their negotiating has become a leitmotiv of European migration policies. On the other shore of the Mediterranean, controlling territory and borders in order to prevent the exit of transit migrants to Europe has been an argument for obtaining aid for militarisation or for buying the silence of the West over anti-democratic practices. For example, cooperating with Italy to curb irregular migration across the Strait of Sicily was instrumental in Libya's rehabilitation in EU diplomacy at the time of Col. Qaddafi. It is still a matter of legitimacy for the factions that have fought over what is left of Libya since Qaddafi was ousted in 2012. Until now, none of the

Gulf States have engaged as has Europe with states of origin on readmission issues. Detaining migrants in an irregular situation then sending them back to where they come from is, in the Gulf, a unilateral decision.

As a general rule, governments regard migrants in an irregular situation as a challenge to their authority. "Fighting illegal migration" has become a national political agenda objective worldwide. The fight targets the migrant and whoever helps them, from smugglers to simple citizens who hide the migrant from the authorities. Detaining and deporting migrants is common practice. For this purpose, special prisons – or "detention centres"– are built and special flights are chartered. This is the case in the Gulf just as in other large migrant receiving states, with outstanding variations from country to country, as shown in Table 2.1.

Irregular migration is an offence that can be sanctioned or pardoned. Arresting, fining, detaining, deporting, but also regularising individual migrants caught in irregular situation are daily practices for states. Granting an amnesty to communities of migrants – whether they have been arrested or they are requested to spontaneously come to the authorities – is, instead, exceptional, a one-off measure often preceded by an advertisement campaign. Several amnesty programmes have been launched since the 1990s in the Gulf States. The most recent ones in Kuwait (2011), Saudi Arabia (2013-2014) and Oman (2015) reached respectively 124,142, up to 5 million and an expected 60,000 migrants in irregular situations (Shah 2014, *Khaleej Times*). Amnesties exempt migrants from (part of the) penalties but they can produce two contrasting outcomes: regularisation or repatriation. They can allow the migrant to stay, or they can lift the sanctions at deportation. While the objective is, in both cases, to reaffirm the law by eliminating a situation that offends it, regularising stay or regularising an exit have different meanings. The first marks a recognition of the migrant's place in the country and their right to be there, while the second is in line with the general purpose of limiting the presence of non-citizens and restricting their rights.

Conclusion

Irregularity and illegality are unwanted but unavoidable by-products of regulations and laws. This common sense statement applies to any phenomenon, not least migration. Migrants in irregular situation can be found in every nation as soon as a nation legislates on foreign nationals' entry, stay, and rights and duties. Terminology is important, however: a situation can be irregular or illegal, not a person. Irregularity is not a stable characteristic, it is one that varies according to time and place.

Migrants fall into irregular situations in different ways, from one country to the other. The most straightforward form of irregularity, that of a person bypassing police controls at the border and finding himself with no proper documents, is certainly possible in Saudi Arabia which shares long and porous land borders with non-GCC states. It can also happen in the UAE, which has erected fences at its borders with Oman and Saudi Arabia to stop unauthorised entries (WikiLeaks 2007). However, it is practically impossible in all other GCC states that are only accessible by air. Passports and visas are controlled at entry and "undocumented" migrants are here irrelevant.

It is after entry that the situation of documented migrants can become irregular, because their visas or residence permits have expired or have been misused. And this is precisely where the Gulf States differ from all other major migrant destinations. The sponsorship system that governs the presence and activity of foreign nationals in the Gulf hampers the free mobility of labour and free entrepreneurship that go hand in hand with market economies. This simple fact causes a multitude of situations in which migrant workers can find themselves, often unwillingly, in breach of the law. Moreover, a system by which states delegate control over foreign nationals to private sponsors opens the door to arbitrary power and abuse. We see migrants absconding and falling into irregularity. Fighting against irregularity means the reform or the abolition of the Gulf sponsorship system.

Bibliography

Abdullah Ibn Al-Hussein (His Majesty the King), Speech from the Throne, October 5, 2008, http://kingabdullah.jo/index.php/en_US/speeches/view/id/400/videoDisplay/0.html.

Adepoju, Aderanti. "Illegals and Expulsion in Africa: The Nigerian Experience." *International Migration Review* 18, no. 3, Special Issue: Irregular Migration: An International Perspective (Autumn 1984), 426-436.

Agence France Presse (AFP). "Algerian Police Chief Warns of Immigrant Crime Wave." June 2, 2009.

Bean, Frank, Rodolfo Corona, Rodolfo Tuira, Karen Woodrow-Lafield and Jennifer van Hook. "Circular, Invisible and Ambiguous Migrants: Components of Difference in Estimates of the Number of Unauthorized Mexican Migrants in the United States." *Demography* 38, no.3 (2001): 411-422.

Beaugé, Gilbert. La kafala : un système de gestion transitoire de la main-d'œuvre et du capital dans les pays du Golfe. *Revue européenne des migrations internationales* 2, no. 1 (1986): 109-122.

Bosniak, Linda S. "Human Rights, State Sovereignty and the Protection of Undocumented Migrants under the International Migrant Workers Convention." *International Migration Review* 25, no. 4 (Winter 1991): 737-770.

Brennan, Ellen M. "Irregular Migration: Policy Responses in Africa and Asia." *International Migration Review* 18, no. 3, Special Issue: Irregular Migration: An International Perspective (Autumn 1984): 409-425.

Carens, Joseph. "Aliens and Citizens: The Case for Open Borders." *The Review of Politics* 49, no. 2 (1987): 251-273.

Castells, Manuel. "Immigrant Workers and Class Struggles in Advanced Capitalism: the Western European Experience." *Politics & Society* 5 (1975): 33-66.

Castles, Stephen, and Nick Van Hear. "Root Causes," in *Global Migration Governance,* ed. Alexander Betts. Oxford: Oxford University Press, 2011.

Collyer, M. "States of Insecurity: Consequences of Saharan Transit Migration." Compas Working Paper no. 31, 2006.

De Bel-Air, Françoise. "The Demographic and Economic Framework of Migration in Kuwait." GLMM-EN-1/2013.

_____. "Demography, Migration and Labour Markets in Saudi Arabia." GLMM-EN-1/2014.

_____. "The Socio-Political Background and Stakes of 'Saudiizing' the Workforce in Saudi Arabia: the Nitaqat Policy." GLMM-EN-3/2015.

De Genova, Nicholas P. "Migrant 'Illegality' and Deportability in Everyday Life." *Annual Review of Anthropology* 31 (2002): 419-447.

Dito, Mohammed. "Kafala: The Grim Prospects of Exclusion in GCC Labour Markets." 2013.

Dowd, R. "Trapped in Transit: the Plight and Human Rights of Stranded Migrants." Research Paper No. 156, UNHCR, 2008.

Düvell, Franck. "Crossing the Fringes of Europe: Transit Migration in the EU's Neighbourhood." Centre on Migration, Policy and Society, WP-06-33, Oxford, 2006.

Espenshade, Thomas J. "Unauthorized Immigration to the United States." *Annual Review of Sociology* 21 (1995): 195-216.

Fargues, Philippe. "Immigration without Inclusion: Non-Nationals in Nation-Building in the Gulf States." *Asian and Pacific Migration Journal* 20, 3-4 (2011): 273-292.

_____. "Work, Refuge, Transit: An Emerging Pattern of Irregular Immigration South and East of the Mediterranean." *International Migration Review* 43, no. 3 (2009): 544–577.

Fargues, Philippe, and Imco Brouwer. "GCC Demography and Immigration: Challenges and Policies." In *National Employment, Migration and Education in the GCC,* ed. S. Hertog. Gerlach Press: Cambridge, 2012.

Gibney, Matthew. "Precarious Residents: Migration Control, Membership and the Rights of Non-Citizens." Human Development Research Paper 2009/10, UNDP, New York.

Haas, Hein de. "Irregular Migration from West Africa to the Maghreb and the European Union: An Overview of Recent Trends." IOM, 2008.

Jasso, Guillermina, Douglas S. Massey, Mark R. Rosenzweig, James P. Smith. "From Illegal to Legal: Estimating Previous Illegal Experience among New Legal Immigrants to the United States." Forschungsinstitut zur Zukunft der Arbeit (Institute for the Study of Labour), IZA DP No. 3441, 2008.

Jureidini, Ray. "Migrant Labour Recruitment to Qatar." Report for Qatar Foundation Migrant Worker Welfare Initiative, Bloomsbury Qatar Foundation Journals, 2014.

Khaleej Times. "Oman Amnesty to Help 60,000 Illegals." April 29, 2015.

Khan, Azfar, and Helene Harroff-Tavel. "Reforming the Kafala: Challenges and Opportunities Going Forward." *Asian and Pacific Migration Journal* 20, no. 3-4 (2012): 293-313.

Klugman, Jeni, and Isabel Medalho Pereira. "Assessment of National Migration Policies: An Emerging Picture on Admissions, Treatment and Enforcement in Developing and Developed Countries." Human Development Research Paper 2009/48, UNDP.

Lori, Noora. "National Security and the Management of Migrant Labor: A Case Study of the United Arab Emirates." *Asian and Pacific Migration Journal* 20, 3-4 (2011): 315-337.

Mahdavi, Pardis. "'Trafficking' Parenting: Migration, Motherhood, Forced Labor and Deportability in the United Arab Emirates (UAE)." MELG 2012.

Marx, Karl. *A Contribution to the Critique of Political Economy.* 1859. Online version: https://www.marxists.org/archive/marx/works/download/Marx_Contribution_to_the_Critique_of_Political_Economy.pdf.

Massey, Douglas, and Audrey Singer. "New Estimates of Undocumented Mexican Migration and the Probability of Apprehension." *Demography* 32, Issue 2 (May 1995): 203-213.

Mobilité du travail et croissance d'une économie agricole: la Côte d'Ivoire, Revue Tiers-Monde, IEDES, Paris, no. 105 (1986): 195-211.

Pew Research Center. "Five Facts about Illegal Immigration in the US." 2015. http://www.pewresearch.org/fact-tank/2015/11/19/5-facts-about-illegal-immigration-in-the-u-s/.

Réserves de main-d'oeuvre et rente pétrolière. Les migrations de travail vers les pays du Golfe. Editions du CERMOC / Presses Universitaires de Lyon, Beirut / Lyon, 1980.

Ruhs and Anderson. "The Origins and Functions of Illegality in Migrant Labour Markets: An Analysis of Migrants, Employers and the State in the UK." Compas Working Paper No. 30a, University of Oxford, 2008.

Sabates-Wheeler, Rachel. "The Impact of Irregular Status on Human Development Outcomes for Migrants." Human Development Research Paper 2009/26, UNDP New York.

Sassen, Saskia. "Immigration Policy in a Global Economy." *SAIS Review* 17.2 (1997) 1-19.

_____ "Fear and Strange Arithmetics: When Powerful States Confront Powerless Immigrants." Open Democracy 2008, http://www.opendemocracy.net.

Seyla, Benhabib. "The Rights of Others: Aliens, Residents, and Citizens." Cambridge, Mass.: Cambridge University Press, 2004.

Shah, Nasra M. "Recent Amnesty Programmes for Irregular Migrants in Kuwait and Saudi Arabia: Some Successes and Failures." GLMM - EN - No. 9/2014.

United Nations. Department of Economic and Social Affairs, Population Division, *International Migration 2013 Wall Chart*, http://www.un.org/en/development/desa/population/publications/migration/migration-wallchart-2013.shtml.

Weiner, Myron. "Ethics, National Sovereignty and the Control of Immigration." *International Migration Review* 30/1 (1996):171-197.

WikiLeaks. "New UAE-Omani Border Fence Aimed at Stopping Illegal Immigration." 2007. https://wikileaks.org/plusd/cables/07DUBAI282_a.html.

Zahra, Maysa. "The Legal Framework of the Sponsorship Systems of Qatar, Saudi Arabia and Kuwait: A Comparative Examination." GLMM - EN - No. 7/2014.

_____ "Qatar's Legal Framework of Migration." GLMM - EN - No. 2/2013.

SKILFUL SURVIVALS: IRREGULAR MIGRATION TO THE GULF

The Gulf States are among the most sought-after destinations by global migrants. Part of this migration is irregular, due to five main causes: entering without a proper visa; overstaying after a visa or residence permit has expired; being employed by someone who is not the sponsor; absconding from a sponsor; and being born in the Gulf to parents with an irregular status. The treatment reserved for migrants in an irregular situation marks out the Gulf States. Arrest and detention are widespread practices in spite of constitutional guarantees against arbitrary imprisonment. Staying without a proper visa or absconding from a sponsor is regarded as a criminal act, and foreign nationals who commit such acts are detained in the same prisons as common law criminals with no clear right of recourse. Domestic workers, most of whom are women employed by private households and, therefore, not protected by labour laws which in the Gulf apply only to businesses, are particularly subject to arbitrary sanctions and jail.

Lived experiences suggest that migrants may not see their irregular status as being disastrous. Many, in fact, are willing to perpetuate this situation, despite their awareness about possible arrest, jail term, and deportation. A theme that emerges repeatedly in interviews indicates the lack of options open to migrants elsewhere, including their country of origin. Migrants in an irregular situation learn to negotiate the formal and informal spaces and systems they encounter. Most irregular migrants seem to share one characteristic: resilience. As their stay in the Gulf lengthens, they gather enough capacity to exercise their agency to achieve a skilful survival in the face of adversity. A wide-ranging system of mutual benefits constituting win-win situations for varied actors enables and perpetuates irregular migration.