Skilful Survivals
Irregular Migration to the Gulf

Edited by
Philippe Fargues and Nasra M. Shah

Gulf Research Centre Cambridge
K n o w l e d g e   f o r   A l l

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Gulf Labour Markets and Migration

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About the
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The Gulf Research Center (GRC) is an independent research institute founded in July 2000 by Dr. Abdulaziz Sager, a Saudi businessman, who realised, in a world of rapid political, social and economic change, the importance of pursuing politically neutral and academically sound research about the Gulf region and disseminating the knowledge obtained as widely as possible. The Center is a non-partisan think-tank, education service provider and consultancy specializing in the Gulf region. The GRC seeks to provide a better understanding of the challenges and prospects of the Gulf region.

About the
Gulf Labour Markets
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The Gulf Labour Markets and Migration (GLMM) programme (http://gulfmigration. eu) is an independent, non-partisan, non-profit joint initiative of a major Gulf think tank, the Gulf Research Center (GRC - Jeddah, Geneva, Cambridge), and a globally renowned university, the European University Institute (EUI - Florence). GLMM provides data, analyses, and recommendations contributing to the understanding and management of labour migration in countries of the Gulf Cooperation Council, engaging with all stakeholders.

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I

Introduction:
Skilful Survivals - Irregular Migration to the Gulf

Nasra M. Shah*

Introduction

The overall objective of this volume is to advance existing knowledge about irregular migration to the Gulf, a subject about which huge research gaps remain. We focus on the role that legislation, policies and practices play in enabling and sustaining irregular, or undocumented, migration. Case studies highlighting these elements are presented on all the six Gulf Cooperation Council (GCC) countries, namely: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates (UAE). In addition, case studies of six major sending countries are included to better understand the entire pathway of irregular migration from a sending to a Gulf country: these countries are Bangladesh, Egypt, Ethiopia, India, Pakistan and the Philippines. The volume also offers an overview of the conceptual dimensions underlying irregular migration and a framework for providing protection to migrants in an irregular situation.

Why is irregular migration to the Gulf such an important topic? There are at least two major reasons. First, this kind of migration, by its very nature, is difficult to detect. It eludes measurement as well as regulation, both of which are essential for

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a complete understanding and management of the labour market. Second, those in an irregular situation are in contravention of some laws and therefore reside in the host country in a permanently vulnerable position. They live in constant fear under the threat of apprehension and deportation. Also, they cannot compete for better jobs due to their illegal situation. Irregular migrants in the Gulf consist primarily of relatively lower-skilled workers and women, mainly in domestic service, as elaborated in a later section.

There is a general consensus among statements and reports by government officials, policy makers, and migration researchers that some foreign residents in the Gulf reside there in an irregular situation. Beyond this general agreement, however, there are questions about the definition of an irregular migrant, the length of time a person typically stays in the Gulf, and the diverse and highly fragmented nature of Gulf migrants, as highlighted in this chapter.

Defining Irregular Migration

Terminology and definition for irregular migration is not universally accepted leading to a certain amount of confusion. Also, irregularity is not a permanent situation. A migrant may move in and out of such a situation, depending on circumstances, changes in labour or other laws, not to mention the degree of compliance with such laws. A migrant may be in a regular situation in some respects but at the same time irregular in others: take freelance workers who may have a legal residence permit but who are employed by someone other than their *kafeel* (sponsor), contrary to Gulf laws. Different terms have been used to describe irregular migration in the Gulf. In newspaper articles, foreign residents apprehended in violation of one law or another are usually referred to as 'illegal' residents or simply 'illegals'. In this volume, we consider that an action or a situation can be illegal or irregular, but that a person cannot be. We, therefore, use the term 'irregular migration' but avoid terms such as 'illegal migrant' or 'irregular migrant'. We use, instead, 'migrant in an irregular situation' to refer to those persons who are residing in the Gulf and who find themselves in an irregular situation. They are in this state because they have violated a law relating to lawful entry, legal residency status, legal employment status, or any other situation regarded by the host country, or a sending country, as a breach of the existing laws.

One category of residents in an irregular situation that does not fit our definition, and that is, therefore, not included in this volume, is that of stateless persons living in the Gulf. The number of such persons in the region varies across countries and is estimated to stand at around 100,000 in Kuwait. Most stateless

persons are Arabs from neighbouring countries who may have lived there for decades or even generations, but who were not awarded the citizenship of the Gulf state where they live. In this volume we focus on international migrants who left their country of citizenship, legally or illegally, to enter a Gulf country for work, to join a family member, to visit, to study, or to perform pilgrimage.

Data on Irregular Migration

Regular data collection systems such as population registration, or the population censuses, do not collect information on those in an irregular situation in the Gulf. Such data are collected by the Ministries of Interior or other security related agencies, since they essentially relate to violations of the law. Absence of this data from routine data collection systems makes it very difficult to map the volume and characteristics of those in an irregular situation, as elaborated in the chapter by De Bel-Air empirical data on undocumented migrants are rarely revealed by the GCC countries. While some countries publish data on infiltrators entering the country illegally, and visa violators who may have overstayed their valid resident permit, any estimation of the number of migrants in other kinds of irregular situations (e.g. freelance workers) is problematic.

Several of the chapters in this volume have relied on qualitative methodologies to locate and interview migrants in an irregular situation. There is obviously no sampling frame that might be used to choose representative samples from the pool of irregular workers. Since many of them live in a perpetual fear of apprehension and arrest, such migrants are naturally reluctant to talk to a researcher unless they have assurances from some network member that they would not be reported to the authorities. Gaining the confidence of such migrants so that they are prepared to talk to an interviewer is a difficult and painstaking job. However, a wealth of data has been collected by the contributors of this volume to get a closer look at many facets of the lives of irregular workers, including: the circumstances that led to their irregular situation; their strategies for earning a livelihood and surviving; the network connections that enable and sustain their survival; and their plans and aspirations for the future.

Types of Irregular Migration

Migrants may be irregular for several different reasons. Jureidini, in his analysis of irregular migration to Qatar, identifies eight different pathways that can lead to an irregular situation for a migrant. Rajan and Jolin's analysis of Indian workers

provides an even more exhaustive list of various situations relating to the migration process, employment conditions, and residency conditions that can lead to a person's irregular status. In order to simplify our understanding of the many types of irregular migrants in the Gulf, at least five different types may be clearly identified, as follows: (i) entering unlawfully into a country; (ii) overstaying a valid residency permit; (iii) being employed by someone who is not the sponsor; (iv) running away from an employer, or absconding; and (v) being born in the Gulf to parents with an irregular status. Each of these types is briefly described below.

First, a person may enter a Gulf country illegally without the requisite papers. While this type of irregular migration is to be found in all GCC countries, it is especially large and problematic in the case of Yemenis entering Saudi Arabia, as described in the chapter by Fahad Alsharif. Of the 3.4 million illegal entrants to the Kingdom during 1978-2008, 98% were Yemeni. They kept returning to Saudi Arabia despite deportation. The story of one irregular migrant who had been deported thrice and came back within the same week exemplifies the relative ease with which this well-established pattern of movement may be negotiated.

The second type of irregular migration, prevalent in all six GCC countries, consists of overstaying a valid residence permit. Published data on the number of such residents is available for some Gulf countries. In their chapter on Kuwait, Shah and Al-Kazi reported that 103,154 visa overstayers were living in the country in 2014. Almost three-quarters of these violators were Asian and about half were domestic workers. In the case of Bahrain, Alhasan reported that some 60,700 non-Bahrainis (11% of non-Bahraini workers) were residing in the country irregularly; about 10% due to expired work visas. Other countries, such as Oman, provide data on the arrests and the deportation of irregular migrants, as shown in the chapter by Safar and Levaillant.

The third type of irregular migration is perhaps the most numerous and widespread in all the GCC countries, but it is also the most elusive to accurately measure. It consists of a migrant worker being employed by a person or institution that is not his sponsor or *kafeel*. It is well known that the *kafala* (sponsorship) system mandates that every non-citizen must have a sponsor in order to reside legally in a Gulf country. Working persons are sponsored by the employer while dependents, such as wives and children, are sponsored by the worker in cases where they accompany him. Once a person is hired on a valid work permit, issued by the concerned government authorities, he/she is issued a residency permit, usually for the period of the contract. Work contracts are usually renewable for varying lengths of time. If the regulations for renewal are followed by the employer in a

timely manner, non-citizens may reside in the Gulf for many decades, although in a temporary capacity, depending on the validity of the contract. Failure to issue or renew a work permit or residency permit can result in the worker's illegal status. Thus, as summarized in the chapter by Fargues "Irregularity and illegality are unwanted but unavoidable by-products of regulations and laws," the *"kafala"* system constituting a basic one.

One major practice that lies at the core of irregular migration, identified by almost all the authors in this volume, relates to the sale of visas by Gulf sponsors to potential migrants that they fail to employ. This practice is commonly known as 'visa trading'. The demand for work visas among residents of sending countries exceeds the available supply of such visas. Also, the competition for securing a Gulf visa in the sending countries is quite intense, especially among relatively low skilled workers. Such potential migrants are, therefore, willing to buy a work visa, sometimes without the guarantee (or even the existence) of a job. Visas of this kind are commonly referred to as "free" or *azad* visas (visa *maftoohah*), implying that the migrant worker has an implicit permission to find a job on the open market. This practice is, however, unlawful and contrary to the legal framework for regulating the employment of foreign workers in the Gulf. Thus, as soon as a mismatch occurs between the person (or institution) who sponsors an individual and the one who employs him/her, the migrant worker's employment status theoretically becomes illegal. If the sponsor colludes with the worker and tacitly 'allows' the worker to be employed by someone else, finding such persons is nearly impossible. Such workers are legal in as much as they hold a valid residency permit, but they are illegal in terms of employment.

The fourth type of irregular migration results from absconding and running away from employers, accounts of which are provided by several contributors. For example, Safar and Levaillant report that of the 21,190 irregular workers arrested in 2014 in Oman, about 85% were runaways or absconders. Absconding was recognised as a serious problem in Oman since, in the first six months of 2015, official data showed "an alarming figure" of 57,420 workers who had absconded from their employer. In the case of Bahrain, absconding workers constituted about 15% of the estimated 60,000 irregular workers in 2014, as reported by Alhasan. Once a worker absconds, or runs away, he/she is immediately faced with an irregular situation since he/she loses connection with the sponsor, an essential 'custodian' in the host country. They are unlikely to have any documents, such as passport, since those documents are usually taken and kept by the *kafeel*.

Running away from the employer is especially common among women, a majority of whom are domestic workers. Shah and Al-Kazi reported that half of all irregular migrants who had overstayed their valid residence permit in Kuwait in 2014 were domestic workers. Among the runaway workers they interviewed, a majority were female domestic workers. Among the Filipino irregular migrants interviewed by Alsharif, almost all had, also, run away from their employer.

Fifth, and perhaps less widely prevalent, is being born in the Gulf to parents in an irregular situation at the time of birth. Alsharif provides examples of this category from Jeddah, Saudi Arabia where children were born to undocumented parents and had no option except to work as beggars on the street. Similarly, Mahdavi provides examples from her field research in Dubai and Abu Dhabi of children who were born to mothers in irregular situations. Fernandez provides an analysis of Ethiopian women who find themselves pregnant as a result either of rape or consensual relationships. They chose to become irregular, often by running away from the employer in order to avoid deportation. The children born under such conditions had no nationality documentation, and, therefore, were often not able to access formal medical services or education.

While I have tried to group irregular migrants into various distinct types, it must be recognised that the above five categories are not mutually exclusive. For example, a person may be a runaway and may have also overstayed his/her valid visa, and thus lack a sponsor. Similarly, overstayers may engage in freelance work for several employers, both situations being illegal. It should also be recognised that an irregular status is not permanent and those in this situation may be regularised, especially during amnesties that are periodically held by all Gulf countries.

Number of Irregular Migrants

In terms of the number of irregular migrants, perhaps the most widely cited estimate is that by Kapiszweski (2001) who concluded, largely on the basis of newspaper reports, that "in recent years, illegal immigrants in each GCC country made up at least 10 percent of the total population or 15 percent of the workforce," with the number said to be as high as 700,000 in Saudi Arabia. In another frequently cited article, Shah (2009) provided some estimates of irregular migration by looking at departures during amnesty periods declared for the regularisation or exodus of irregular migrants. She reported that, in the case of Saudi Arabia, between 2-2.3 million irregular migrants either left the country or regularised their status during 1997-2000. In the UAE, 176,000 migrants regularised their status and more than 174,000 departed in 2007.

The chapters in the present volume make a major contribution to our knowledge by showing some novel ways of arriving at estimates of irregular migration. For example, Rajan and Jolin use returnee migrant surveys in a sending community, Kerala, to estimate the number of Indians proceeding overseas in a potentially irregular capacity. They report that 20-40% of the returnees had proceeded to the Gulf on a "free" or *azad* visa, and not a work permit. Migration without a work permit implies that the person would work for an employer other than the sponsor, which puts them in an illegal situation. For Bangladeshi irregular migrants in Saudi Arabia, Ullah reports, on the basis of qualitative interviews, that the largest category consisted of persons who had arrived on a pilgrimage visa (for Haj or Umrah), and who overstayed the visa. In case of Filipinos, Batistella and Asis report that about 150,000 of the 2.4 million Filipinos residing in the GCC countries were in some form of irregular situation.

Deportations from Gulf countries also provide a very rough and partial estimate of irregular migration. In the case of Pakistan, Arif and Ishaq report that, during 2009-2014, about 193,000 Pakistanis were deported from the Gulf countries, constituting about 6% of all workers who were placed in the Gulf during that time period. Deportations of Egyptians during the latest amnesty held in Saudi Arabia from April to November 2013 amounted to around 300,000, corresponding to 23% of the total Egyptian workforce in Saudi Arabia, according to Awad and Aziz. For Ethiopians, Fernandez reports that 163,000 were deported from Saudi Arabia after the last amnesty that ended in November 2013. Deportation data provide some idea of the scale of irregular migration in the Gulf. But these figures probably represent only the tip of the iceberg, since the majority of irregular migrants may be able to regularise their status or may decide to continue living in the host country in an irregular situation.

Within the destination countries, records of regularisations and departures during the period of amnesty, when irregular residents may adjust their status without paying any penalties, also provide some idea of the scale of irregular residency in the Gulf. The recent record of regularisations conducted during the six-month amnesty in 2013 in Saudi Arabia indicates that the scale of irregularity was massive (De Bel-Air, in this volume). Records of regularisation and departures following an amnesty in a Gulf country provide a useful but incomplete picture of the total number of irregular residents. During the last amnesty held in Kuwait in 2011, for example, only 37% of the known overstayers regularised their status or departed, while most decided to continue living in an irregular situation (Shah 2014). A similar situation was reported by Safar and Levaillant for Oman (in this volume) where around

50,000 undocumented and overstaying expatriates were expected to apply for the 2015 amnesty, but only 14,254 (28.5%) made use of it.

Groups at Higher Risk of Irregular Migration

Two groups are at higher risk of being in an irregular situation: the relatively lower skilled workers and domestic workers. Some of the root causes of this are centered in migration environment in the sending country. As outlined for India by Rajan (2011: p.134) "Low economic opportunity, lack of information, a culture of migration, transnational migrant networks and the operation of unregulated intermediaries, organized racketeers and trafficking rings are key determinants of irregular migration from India." Unemployment and underemployment are likely to be higher among the unskilled and lower skilled workers in the countries of origin, leading to a large potential supply of workers eager to find a job in the Gulf. The desire to work in the Gulf is exacerbated by the apparently successful experience of returnees, who often flaunt their wealth and assets when visiting the home country. Some of the low skilled workers pay exorbitant amounts to buy a work visa for a Gulf job that in reality may not exist. The money is frequently borrowed from friends, relatives, or money lenders. This kind of debt bondage is one of the reasons that compels and prolongs irregular residence in the Gulf.

Sending countries differ in terms of whether they encourage the migration of women, especially as domestic workers. Of the six sending countries included in this volume, most migrants from the Philippines and Ethiopia are women, while substantial numbers from India are in this category. However, Pakistani migrants contain almost no such women. The qualitative data presented by various authors provide vivid descriptions of pathways through which female migrants become irregular, even though most enter the Gulf legally. In Kuwait, about half of all overstayers in 2014 were domestic workers, many of whom are likely to have run away from their employer.

Why Irregular Migration is Perceived as Not Being that Bad

Policy makers, security officials, and researchers tend to think of irregular migration as being risky, unfair, and potentially harmful not only for the migrant but also for the sending and host countries. However, the lived experiences of many interviewees described in this volume suggest that several 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 re-emerges repeatedly in interviews in several host countries relates to the lack of options open to migrants elsewhere, including their country of origin, and the perception of their current situation as being tolerable. To survive in an irregular status becomes normality for many. They learn to negotiate the formal and informal spaces and systems they encounter. Many have specific goals they want to achieve during their Gulf stay, whatever the cost. Education of their children and building a house in the origin country are paramount among these goals. They are willing to suffer and sacrifice to achieve these goals for a better future. Most irregular migrants seem to share one characteristic: resilience. As their stay in the Gulf prolongs, they gather enough capacity to exercise their agency to achieve a skilful survival in the face of adversity.

Support by large networks of friends and relatives is a key enabler and sustainer of the skilful survival of irregular migrants. Not only do such networks initiate and finance the migration of their kin and friends, they also provide shelter and sustenance when necessary. As Rajan and Jolin report from the results of their Kerala survey among intending migrants, emigrant households and returned emigrants, over 70% of emigrants utilise networks of friends and relatives as their preferred emigration channel, with many of these flows falling outside the purview of legal stipulations.

In the case of some workers on "free visas" this situation may in fact be regarded as the preferred option rather than being tied down to one employer for a fixed sum of money, regardless of their irregular status. The financial and personal gains outweigh the risks in the migrant's calculus. As Mahdavi points out for her interviewees in Dubai and Abu Dhabi "irregular migration can often be experienced as more lucrative, empowering, and safer for many migrants and their loved ones. Migrants often make decisions that are best for themselves and their loved ones, not necessarily in accordance with laws or formal migratory and labour trajectories. It is often the case that migrating or working irregularly is the more desirable option due to financial opportunities and available avenues for increased mobility—be that physical, economic, or emotional."

In several respects, irregular migration may be beneficial not only for the migrant but also for several actors who indirectly profit from this situation. As pointed out in the case of Kuwait by Shah and Al-Kazi: "Sponsors gain by selling visas; apartment dwellers by sub-letting rental space; intermediaries by charging recruitment assistance fees; employers by a reduced cost in hiring workers etc. At the same time, social and familial benefits are gained by aiding the migration of

kin and countrymen, and the accumulation of social capital. Thus, a wide-ranging system of mutual benefits, constituting win-win situations exists."

What Does the Future Hold?

The picture that emerges from the analysis in this volume illustrates that irregular migration is a complex, multifaceted, and deep-rooted phenomenon that will not be eliminated by simple policy changes. Many legal frameworks aimed at curtailing it already exist in sending as well as host countries, but migrants continue to evade these rules. Irregular migration will remain difficult to control as long as migrants are willing to maintain their irregular status and those who help them to maintain this status gain from the current situation.

Instead of looking the other way and ignoring the existence of irregular migration, Gulf countries have become increasingly proactive in the last two decades. They have become so both in terms of making efforts to curb and contain irregular migration, but also in terms of reforming some regulations and practices that may help in reducing migration to a minimum. Qatar has probably been most active in this respect, followed by the UAE and Bahrain. At the same time, sending countries are trying to improve their efforts at discouraging irregular migration through awareness campaigns, better pre-departure orientation of migrant workers and better regulation of the work of private recruitment agents. The chapter by Frantz advocates that additional concerted efforts are needed in safeguarding the rights of migrants in an irregular situation, such as a 'firewalling strategy' where people can pursue legal claims against abuses by employers without being subject to arrest and expulsion. Finally, in the concluding chapter of this volume, Fargues addresses the broader global and regional contexts that will impact irregular migration in the Gulf and in the wider world.

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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 "Ivoriality." 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.

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III

Irregular Migration in the Gulf States: What Data Reveal and What They Conceal

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Abstract: Since the late 2000s, all Gulf States have been conducting widely-publicised campaigns aiming at regularising foreign residents in irregular administrative situation, as well as clampdowns on so-called "illegal" migrants, detentions and deportations. Using the material gathered by the Gulf Labour Market and Migration (GLMM) Programme, the chapter presents, discusses and assesses datasets touching on the topic of irregular migration, available in Gulf country statistics. Part I presents methodologies, statistical and administrative apparatuses involved in the production of data, and discusses estimates available on undocumented migrant stocks in the region. Part II assesses the sources and the limits posed by datasets aiming at estimating flows of migrants in irregular situation to and from the Gulf States. Part III deals with their socio-demographic profile. The chapter concludes that data is scarce in most countries in the region. The various aspects of irregularity and the process of falling into this state cannot be traced with existing datasets. These focus on specific subpopulations constructed for the purpose of policy action: deported or regularised populations, border arrests, etc., hence fragmenting the stocks and flows of undocumented migrants in various categories, categories that are sometimes overlapping, or disconnected from each other. Available data thus have to be used with caution: political stakes

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are at play in the constructions and representations of irregularity and in the selection of the data released to the public. Defining irregularity as a clear-cut and stable phenomenon is impossible.

Introduction

Since the late 2000s, all Gulf States have been conducting widely-publicised campaigns aiming at regularising and facilitating the exit of foreign residents in irregular administrative situation, as well as clampdowns on so-called "illegal" migrants,[1] detentions and deportations. In this context, various sets of data have been released by the governmental bodies in charge of implementing these measures. However, data are still scarce. Moreover, available data have to be used with caution: providing estimates of migrants in irregular situation is fraught with political challenges, defining irregularity as a clear-cut and stable phenomenon is hardly possible, and many institutional logics and representations of irregularity are at play in the construction and selection of the data released to the public.

Using the material gathered in the framework of the Gulf Labour Market and Migration (GLMM) Programme, this chapter presents the various sources and types of data available in each country and discusses how they can help us estimate the size, structure and dynamics of irregular migrant populations in the Gulf States. Part I presents methodologies, statistical and administrative apparatuses involved in the production of data and discusses estimates available on undocumented migrant stocks in the region. Part II assesses the sources and the limits posed by datasets aiming at estimating flows of migrants in irregular situation to and from the Gulf States, and Part III deals with the socio-demographic profile of these migrant populations. Qatar will not be covered as no data could be gathered on these populations in the country.

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1. The chapter does not use the term "illegal" migrant. The terminology most suited to designate this category of migrant is currently debated in the press and among scholars and practitioners. We employ "migrants in an irregular situation," instead of "illegal migrant," as well as the less precise "undocumented" migrant (migrants do have documents, but not the right ones to be acknowledged as "legal" residents or workers), in order to avoid repetition. "Illegal" migrant may also be used with inverted commas in quotations from the Gulf press or official discourses on the issue.

Stocks

Methodology and Sources Available for Estimating Stocks of Undocumented Migrants

Estimates of the number of undocumented migrants have been produced with a range of different methods. In the European Union (EU), for instance, the following methods were used:[2]

- Residual methods compare regular migration data (taken from the records of relevant institutions dealing with non-EU citizens' residency and labour) with broader data sources, which cover all residents irrespective of their status (censuses and population registers, for instance).

- Survey-based methods aim to incorporate irregular migrants in survey samples, in order to improve weighting techniques and to ensure the better statistical representativeness of the sample.

- Capture-recapture methods adjust population biology techniques to estimate the size of a population from the repeated identification of individuals.[3]

- Multiplier methods make extrapolations for the total population from the share of irregular migrants in an observed sample group.

- Drawing of estimates based on regularisation data: evidence derived from such data is only a broad indicator of the extent of the phenomenon, for the following reasons: a) not all migrants in irregular situation can or do take advantage of the regularisation campaigns; b) regularised immigrants who are granted a short-duration work or residence permit risk falling back into irregularity; and c) the method runs on a closed-country assumption, while regularisations conducted in EU countries showed that migrants in irregular situation move to the country conducting the amnesty from neighbouring countries and try to benefit from the regularisation initiative (Jandle 2004: 7).

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2. See, for instance, the Clandestino research project on irregular migration to Europe: http://research.icmpd.org/research-home/projects/irregular-migration/clandestino/. The methods for estimating numbers of migrants in irregular situation in the EU were taken from CLANDESTINO 2009 and from Jandle 2004.

3. "At two specific moments in time and at one specific location, the population is being counted. The amount of population not present at that specific moment and location can be estimated by using the Poisson parameter and so the total population can be counted" (Jandle 2004: 5).

GCC sources for population estimates, hence making deductions possible on the scale of irregular migration, include:

- Records from sending countries' embassies;

- Population censuses;

- Population registers.

Embassy records and, more generally, sending countries' data on their expatriate nationals are usually inaccurate and of little help in pinpointing the numbers of migrants in an irregular situation. Registration of foreign residents in their diplomatic representations abroad is voluntary and some migrants never come in touch with their embassy for any administrative procedure: to register changes, or renewal of identity documents, for instance. Those who registered in the consular records may omit to signal their departure from the country. Consular records, therefore, comprise migrants who are not residing in that country any longer.[4] Sending countries' data more generally, also fail to capture citizens' movements. Most countries do not record border exits very thoroughly and register only the emigrants benefitting from governmental and bilateral labour schemes, who are a minority among migrants. Those who find employment directly from abroad, through personal networks, may not be counted. Even in countries which control departures to enforce laws pertaining to employment abroad, some migrants will, for example, forge or borrow identity documents, or emigrate to the GCC from other countries, in order to pursue their project.[5]

As regards censuses in the GCC states, they are conducted every ten years at best: the last census in the United Arab Emirates (UAE) dates to 2005; Oman, Saudi Arabia and Bahrain conducted censuses in 2010; Kuwait in 2011; and Qatar alone in 2010 and in 2015. As migration patterns change rapidly, censuses miss important intercensal events and dynamics. Moreover, quality assessment of census data in some GCC countries revealed discrepancies with other sources of population data. In Kuwait, for instance, a comparison between the 2011 census results and records from the Public Authority for Civil Information (PACI), the institution in charge of delivering civil identification (ID) document to each resident of the country, pointed

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4. It should be noted that in the Gulf, dual nationals (Gulf nationality + non-Gulf nationality) are very few: naturalisation in these countries is rare and, officially, GCC countries do not acknowledge dual nationality. In countries where naturalisations of migrants are common, consular records of sending countries comprise sizeable numbers of citizens naturalised in the host country, or nationals born in that country by virtue of the *jus solis*.

5. On the case of Nepal, for example, see Paoletti et al. 2014.

to a discrepancy of 491,680 non-residents between the two sources. The assessment of both sources meant a significant undercount of certain categories of persons in the censuses (domestic workers, expatriates in an irregular situation, for instance) (Shah 2014). Similar conclusions were suggested for Oman. Figures of expatriates recorded in the 2010 census (816,143) were markedly lower than the more plausible number expected for that same year, on the basis of the intercensal yearly estimates drawn from the Civil Registration System for 2004-2009 (about 1,162,000) (De Bel-Air 2015: 7-8).

Population registers, on the contrary, seem to be more likely to provide a comprehensive coverage of the foreign populations residing in the Gulf, including those in an irregular administrative situation. Indeed, the six GCC countries have just finalised or near-finalised comprehensive recording of every national or foreign resident in each country, within the realm of the "smart identity cards" compulsory delivery programmes conducted across the region since the mid-2000s including for newborns. The data recorded on each cardholder (biometric, demographic, pertaining to the migration and economic status and more) constitute a *de facto* population registry. Moreover, this register is updated in real time: arrival, departure, return, application for dependents' visas, birth of children, granting or change of labour permit, of sponsorship, change of address, etc. This is due to the centralisation of all information pertaining to the resident in one single institution in each country: the PACI in Kuwait; the Royal Oman Police; the Ministries of Interior in Saudi Arabia and Qatar; the Central Informatics Organisation (CIO) in Bahrain; the Emirates Identity Authority in the UAE. The last introduces its programme as follows:

> "In order to reduce the cost of establishing and maintaining similar or repeated database and simplifying the governmental measures and services for the population, the Emirates Identity Authority will link the Population Register with other ministries and corporations so that the Register becomes a central source for decision making in the UAE, the matter which supports the UAE to become a pioneer and leader in various development aspects. The below diagram reflects the integration between the Population Register and the most critical sectors in U.A.E."[6]

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6. Reproduced from EIDA website: http://www.id.gov.ae/en/emirates-id/emirates-id-strategy/population-register.aspx.
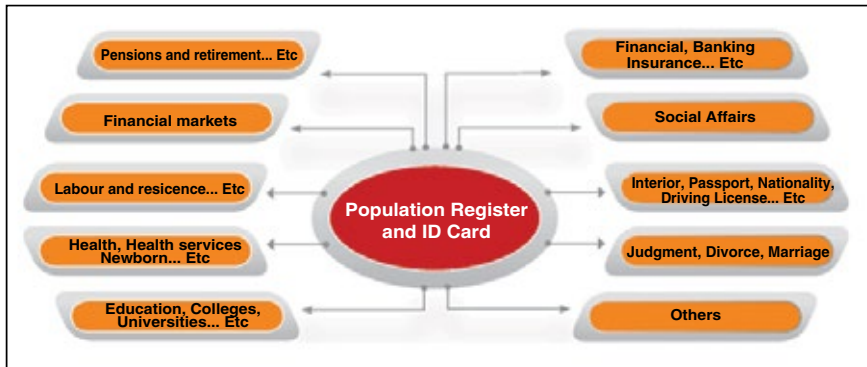
Source: Emirates Identity Authority website (www.id.gov.ae).

In a similar fashion for Kuwait,

> "The Public Authority for Civil Information - Kuwait (PACI) is the
> government agency responsible for maintaining all information on population
> and civil event registration (e.g. births, deaths and immigration) for Kuwaiti
> citizens and residents. The information collected is held in a central national
> database and is used as a basis to provide a number of applications known
> collectively as the Civil Information System (CIS)."[7]

In such a setup, living in an irregular situation becomes increasingly difficult
for the migrant, who loses access to basic services:

> "A civil ID card is necessary for most civil and legal transactions, including
> a visit to the clinic or hospital, opening or operating a bank account, and
> renting a house. A valid civil ID is also proof of legal residence in the country.
> The civil ID is therefore a vital document for all residents." (Shah 2014: 4).

Additionally, in the aftermath of the Arab uprisings, the growing political
instability in the Middle East and the threat of terrorist organisations further
enhanced security concerns regarding the non-registration of expatriates or
irregularities in their records. Identity-monitoring systems have been tightened:
new generations of cards are now mandatory for every citizen and expatriates, and
the renewal process highlights any irregularity. Police forces also run street and
workplace controls to verify the registration of expatriates and the accuracy of their
details.[8] The registration of migrant populations may thus become increasingly
complete and allow the use of the residual method, for instance, in estimating the

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7. https://intercede.com/the_myid_system/who-needs-this/customer-case-studies/kuwait-na-tional-identity-card/.

8. On Qatar, for instance: http://dohanews.co/moi-announces-overhaul-of-qatar-id-system/.

size of the irregular migrant populations. However, the multifaceted, transient, context- and time-specific nature of the phenomenon of irregularity undermines the significance of figures.

Available Data on Stocks of Irregular Migrants

Overall estimates of undocumented migrant stocks are provided only sporadically and by certain Gulf countries for amnesties and crackdown campaigns. Moreover, the methods and sources used by the government and other institutions to establish these estimates are never made available to the public.

Amnesty campaigns: Partial data. It might have been thought that improved identity-monitoring systems in most of the GCC allowed for better estimates of the numbers of migrants in an irregular situation. However, Table 3.1 suggests that the results of the last regularisation campaigns were clearly stated only in Kuwait.[9] The migrant stocks remaining in irregular situation are, thus, difficult to deduce from these partial data.

Table 3.1: Estimates of stocks of migrants in an irregular situation before and after latest amnesties (as of March 2016) (selected countries)

Country of citizenship	Amnesty dates	Estimates of migrants in an irregular situation before amnesty	Regularised cases		Remaining in irregular situation after end of amnesty
			Departures	Regularisation of status	
Kuwait (1)	March 1-June 30,	124,142	32,036	13,653	78,453
UAE (2)	December 4, 2012-Feb. 2013	61,000-135,000	61,826	?	?
Oman (3)	May 3, - October 28, 2015	47,000-50,000	23,653	?	?
Bahrain (4)	July 1 - December 31, 2015	61,000	10,125	31,894	18,981

Sources:

(1) http://gulfmigration.eu/record-of-residency-law-violators-having-benefitted-from-the-amnesty-ministerial-decision-20111054-and-estimation-of-the-residents-remaining-in-irregular-situation-by-country-of-citizenship-0107/.

(2) http://www.thenational.ae/news/uae-news/uae-amnesty-woos-more-than-61-000-illegals and Malit, F. T. and A. Al-Youha, "Labor Migration in the United Arab Emirates: Challenges and Responses," Migration Source, September 18, 2013. http://www.migrationpolicy.org/article/labor-migration-united-arab-emirates-challenges-and-responses.

(3) https://issuu.com/eshabiba/docs/t26-10-2015.

(4) http://www.bna.bh/portal/en/news/704370.

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9. The two figures presented in Table 3.1 for the UAE are 1) the "official" figure (as claimed in the press by government members, for instance), and 2) the "unofficial" estimates, as stated by Froilan Malit and Ali Al-Youha.

Saudi Arabia. Saudi Arabia is a peculiar case. In that country, estimates of the numbers of migrants in an irregular situation are not published by the official statistical bodies, save in very rare cases. In December 2012, for instance, Saudi authorities claimed in the press that up to five million migrants were working and residing illegally in the country.[10] As a matter of fact, the figures of foreign nationals retrieved from sending countries' embassies and published in the press in 2013, suggested between 13 and 18 million foreign nationals.[11] These figures may not be accurate: note the concerns explored earlier, about embassy records. However, the estimate of five million migrants in an irregular situation seems plausible given the official figure of 9,7 million non-nationals in Saudi Arabia mid-2013.[12]

A massive amnesty campaign was conducted between April 3 and November 3, 2013, followed by a clampdown on remaining undocumented migrants after the end of the amnesty. The results of the amnesty and the regularisation campaign (Table 3.2)[13] resulted in 9.9 million cases of administrative regularisations: for example, those working for someone other than their sponsor, hence contravening labour and residency laws,[14] were registered under the name of their actual sponsor (i.e., their current employer). One worker could perform several administrative operations on his/her status (for instance, change sponsor *and* regularise labour permits): therefore, the number of administrative regularisations does not allow estimates for the number of actual expatriates having benefitted from the regulation campaign. The Ministry of Labour also announced that 713,524 undocumented foreign nationals left the country. No indication is available for how they exited: forced deportations after detention, or by free choice "chosen" exit. Whether these populations actually left the country or were given an exit visa, for instance, is also unclear. A further 1,086,593 migrants were registered as runaways,[15] which does not note whether they were inside or outside Saudi Arabia.

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10. http://www.arabnews.com/saudi-arabia/shoura-tackle-problem-5-million-illegals-kingdom.

11. http://gulfmigration.eu/estimates-of-non-nationals-by-country-of-citizenship-saudi-arabia-november-3-2013/.

12. Published by the CDSI, and based on the results of census 2010.

13. http://gulfmigration.eu/saudi-arabia-amnesty-of-2013-april-3-to-november-3-number-of-work-status-corrections-by-type-and-sector-final-results/.

14. The sponsor is meant to employ the worker but also grants him/her the *de facto* right to residency.

15. Workers classified as "runaway" are persons who 1) absconded from their workplace but are thought to be still in the country; or 2) left on a "leave-and-return" visa but did not return.

Table 3.2: Saudi Arabia, amnesty of 2013 (April 3 to November 3): Number of administrative operations performed by type and sector (final results)[16]

Regularisation operation/ document/ Worker's final status	Private sector	Public sector	Domestic sector	All sectors
Change of profession	2,417,273	322	6,184	2,423,779
Transfer of services	2,512,041	2	103,237	2,615,280
Recruitment visas granted	570,242	26,691	338,508	935,441
Labour permits granted	3,890,916			3,890,916
Total administrative regularisations	9,390,472	27,015	447,929	9,865,416
Workers registered as runaway	1,034,265	538	51,790	1,086,593
Final exits	437,314	17,069	259,141	713,524

Source: Statistical Yearbook 2013, Ministry of Labour, Saudi Arabia.

The figures indicate the number of administrative operations performed, not of persons concerned.

The scarcity of data available on Saudi Arabia's irregular migrants thus poses a challenge in estimating final numbers. Moreover, Saudi Arabia is a major hub for population movements. Beside attracting workers, Saudi Arabia also receives millions of Muslim pilgrims every year, to the holy sites of Makkah and Madinah. In 2015, over two million came from abroad for the Haj (great pilgrimage) and around four and a half million for the Umrah (minor pilgrimage). Every year some of these pilgrims stay over in the country in search of job opportunities. Additionally, Saudi Arabia has thousands of kilometres of land and maritime borders, which facilitate unrecorded entries. The 1,800 km border with Yemen is considered particularly sensitive and Saudi Arabia resumed the construction of a fence between the two countries in an attempt to limit infiltrators. Ethiopians, Somalis and Eritreans can also cross the Red Sea to Yemen, in order to reach Saudi Arabia. The political chaos in Yemen that followed the collapse of Ali Abdullah Saleh's regime, and the ongoing war there, which began March 2015, also pushed Yemenis to go to Saudi Arabia or stranded them in an irregular position in the Kingdom: 463,562 of them were actually regularised in mid-August 2015,[17] with visitors' visas. In December 2015, 420,000 Yemenis had their visit visas renewed for six months.[18]

Sending states. Seen from the sending states, the difficulty of estimating stocks of nationals in an irregular situation abroad, and in Gulf States in particular, is aptly illustrated in the case of Ethiopia. Following the amnesty and deportation campaigns of 2013, in Saudi Arabia, the Ethiopian government was apparently expecting just 23,000 nationals to be deported back to Ethiopia (Frouws and Horwood 2014: 68).

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16. Data and totals in Table 3.2 only indicate the number of regularised documents or situations.

17. http://www.alriyadh.com/1073976.

18. http://www.gdp.gov.sa/.

However, about 160,000 eventually returned to their country, which is indicative of the levels of irregular migration in the Gulf among certain nationalities. The Nepalese government, too, stated that most of the 20,000–25,000 female Nepalese domestic workers in Saudi Arabia were working there "illegally" in the late 2000s (Paoletti et al. 2014: 46).

A Special Case of Irregularity: the **Biduns** *and Stateless Persons in GCC Countries*

Stateless persons residing in the Gulf States constitute a special case as regards irregularity: they are not migrants, they are not nationals of any other state and they are denied the nationality of their country of birth. Some 100,000 stateless persons are said to live in the UAE,[19] about 80,000 in Saudi Arabia,[20] and 1,200 to 1,500 in Qatar.[21] As compared to the other countries' *biduns,*[22] the stateless of Kuwait had a peculiar fate. They originate from three broad categories: 1) those whose ancestors failed to apply for nationality or lacked necessary documentation at the time the 1959 Nationality Law came into force (these are mainly descendants of Bedouin populations); 2) those recruited to work in Kuwait's army or police force during the 1960s, who settled in Kuwait, along with their families (coming originally from Iraq, Jordan and Syria); 3) the children of Kuwaiti mothers and stateless, or foreign fathers – nationality in Kuwait being transmitted by patrilineal descent, the children of a Kuwaiti mother and non-Kuwaiti father [with specific nationality] inherit the father's nationality and are necessarily stateless if the father is stateless. Nevertheless, in spite of their statelessness, most of them enjoyed socio-economic privileges on a par with Kuwaiti nationals, and they were not considered to be illegally resident in the country until the mid-1980s.

Yet, as regional and domestic political tensions were rising during the period, they were accused of a double allegiance with enemy countries in the region, Iraq especially. After 1985, they were gradually deprived of all the socio-economic privileges they had shared with Kuwaiti citizens until then: employment on a par with nationals, access to free health and education, for instance. Moreover, their

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19. https://bostonreview.net/world/katie-cella-united-arab-emirates-stateless-citizens.

20. http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=4696388a1e&skip=0&query=statelessness&coi=SAU.

21. http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=510fb4d355&skip=0&query=statelessness&coi=QAT.

22. In Arabic: "without."

residency status was suddenly made illegal, placing them under threat of deportation.[23] During the year 2000, the *biduns* were deprived of the civil identity cards issued to citizens and legal non-Kuwaiti residents. The most recent "*Bidun* Committee," the Central System to Resolve Illegal Resident's Status, was set up in November 2010. According to the Human Rights Watch, 106,000 *biduns* who registered with the Committee between 1996 and 2000, were issued with security cards.[24] In February 2012, the Kuwaiti Government asserted that 93,000 individuals had been registered as "unlawful residents." Shortly after it was established, the Committee announced a five-year plan to resolve the *bidun* issue and declared that eleven "facilities" would be granted to all *biduns* in Kuwait whilst the plan was implemented (Council of Ministers Decision No. 409/2011 of March 6, 2011).

These facilities included access to free healthcare and medical care, the issuance of birth, marriage and death certificates, applying for a driving license and access to employment. Identity documents issued under this plan would include the term "non-Kuwaiti" in the slot for citizenship. However, anecdotal evidence from non-governmental organisations and the *bidun* community suggests that the granting of these facilities has been inconsistent. Most importantly, these stateless persons are still considered illegal residents (Home Office 2014, Beaugrand 2014; Refugees International & Open Society Foundations 2011; Human Rights Watch 2011). In Kuwaiti statistics, however, they remain unaccounted for, be it in the total figures for Kuwait and non-Kuwaiti residents, or in the official figures of undocumented migrants. They may only appear under the heading "non-Kuwaiti" in the nationality breakdowns of persons departing from Kuwait.

Flows

Characteristics of Undocumented Migrants' Flows

Flow data can take on several forms.

- There are "demographic" flows: births of children whose parents are in an irregular situation and deaths of persons in an irregular situation.

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23. In 1986 the government began to apply the Alien Residence Act to *biduns,* effectively re-classifying them as "illegal residents" (Refugees International and OSF 2011; Beaugrand 2011: 228).

24. Or better, "reference" cards, informally known as green cards, which display personal data including the registrant's name, address and date of birth. The reverse of the card states that "this card does not serve as proof of identity, and may be used only for specified purposes."

- Another case is the cross-border flows of undocumented migrants. The only proxy for such flows are the three following datasets. First, there are the police records of inflows of arrested "infiltrators." In the terminology used in the Gulf States, these are persons crossing international borders away from border posts and apprehended for lack of proper identification documents, entry permission or visa. These records are only available for Saudi Arabia. Second, there are police records that allow us to measure the outflows of migrants forcibly deported after they were arrested in an irregular situation inside the host country. The third kind of dataset records migrants in an irregular situation, being forced to exit after failing to regularise their administrative situation, or "deciding" to leave during an amnesty period (in order to avoid paying a backlog of fines, for instance). Their statistics may be published by Labour Ministries that conducted inspections on worksites with the police (Ministries of Interior) forces in most GCC countries. However, such data are most often released punctually, in the press.

- A third kind of flow data pertains to the modification of the expatriate's administrative status in the host country, from regular to irregular (or reverse) category. For example, a migrant may enter the host state with a valid visa and labour documents but may eventually work for someone other than his/her sponsor, work in an industry other than that indicated on the *iqama,* or his/her sponsor will fail to renew the documents on time. Conversely, some migrants in an irregular situation fix their status by paying the fines, or by achieving regularisations during an amnesty. Statistics on such cases are usually maintained by Labour Ministries (Saudi Arabia, Oman), by Interior Ministries (Qatar, UAE, Kuwait) and by the Labour Market Regulation Authority (LMRA) in Bahrain. As indicated in Table 3.1, these kind of data are not readily provided by these institutions.

Assessing the Data Available on 'Irregular' Migration Flows to and from GCC States

Data on demographic flows (births and deaths of persons in an irregular situation) do not exist in separate published records of vital statistics in any of the six countries. As a matter of fact, persons in an irregular situation cannot obtain birth certificates for their children: in the UAE, for example, the parents' passports, visas, Emirates

ID, and medical insurance certificates are mandatory for obtaining this document.[25] The *de facto* stateless irregular residents face the same problem and the tightening of identity-monitoring systems makes the process increasingly difficult.[26] In Kuwait, the birth of the children of *biduns* who benefitted from the measures passed in 2011 are probably classified with those of non-Kuwaiti Arab nationals.[27] Using the estimates of cross-border inflows and outflows of undocumented migrants also raises a number of methodological and political issues.

Partial records of events. The main issue pertaining to this kind of data is that it only records the migrants in irregular situation who were arrested. These data, then, do not help us with the total numbers of infiltrators, or the general trends of infiltration. Figure 3.1 on Saudi Arabia illustrates this.

Figure 3.1: Saudi Arabia: Arrests of infiltrators by Border Police (Nov. 2012-Jan. 2016)
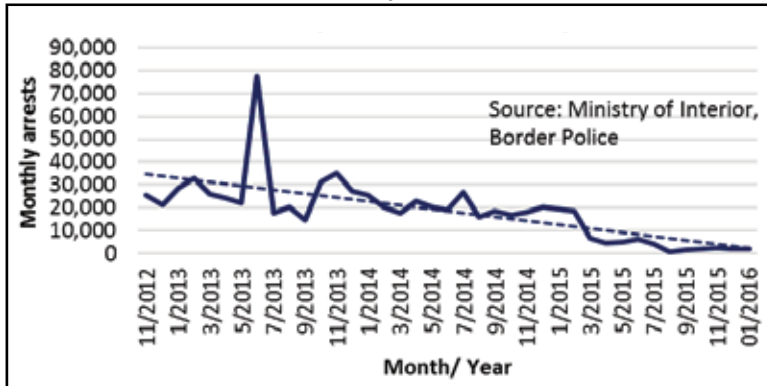
Source: Ministry of Interior, Border Police.

Apart from the spike of arrests in May 2013, the general trend of the numbers of infiltrators captured seems to actually be decreasing. Does this confirm that, since the 2013 crackdown on migrants in an irregular situation, increased border patrols and the new fence made it more difficult to enter Saudi Arabia or that migrants are using different routes or means to ensure their successful crossing of the border, while resorting in larger numbers to people smugglers, for instance? Bram Frouws and Christopher Horwood from the Regional Mixed Migration Secretariat (RMMS) suggest that this decrease in attempts to enter Saudi Arabia is due to a dip in the

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25. http://gulfnews.com/guides/family/how-to-register-a-birth-in-the-uae-1.1375738.

26. https://bostonreview.net/world/katie-cella-united-arab-emirates-stateless-citizens.

27. Vital statistics records from PACI: https://www.paci.gov.kw/STAT/SubCategories/Index? CategoryId=8.

number of new arrivals on Yemen's coasts from the Horn of Africa (Frouws and Horwood 2014: 37). Figures of arrests at borders thus tell us little about the larger picture of undocumented migrant numbers and characteristics.

Regarding exits, information on the number of deportees is not part of the routine statistics of the sending-country databases, and, in any case, existing police records of deportations provide only a partial account of the outflows of migrants in an irregular situation. First and foremost, they evidently miss the movements of those who are not arrested, either inside the host country or while leaving it.

"Border spectacles." Second, deportations serve political purposes: the wide publicity given in the national media to police clampdowns, arrests and deportations proves this. Likewise, the construction of irregularity as an issue to be combated is a "border spectacle," a display of sovereignty enforcement addressed to nationals.[28] Figures of deportations performed, especially when released through the press, should therefore be used with caution. Indeed, the politicisation of deportations sheds light on operations conducted over a specific period of time, hence undermining longer-term dynamics: for instance, cumulated figures of deportations of migrants in irregular situation since April 2013 (the beginning of the "regularisation" campaign) amount to a stunning 1,648,798 migrants deported as of February 28, 2016. However, Figure 3.2 also highlights the relative stability of monthly deportations' figures over the five-year span of March 2011 to February 2016 (notwithstanding the peak in November and December 2013).

In Oman, too, in the run-up to 2015's "anti-illegal migrants" campaign and the deportation of 23,000 residency laws' violators, the Ministry of Manpower indicated that 15,885 arrests and 7,391 deportations of migrants in irregular situation had been performed in 2013, up from 7,694 arrests and 4,501 deportations in 2010. This proves the psychological effect of the widely publicised campaigns, which conceal longer-term dynamics and thus distort the perception of events (here, the movements of migrants in irregular situation).

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28. As suggested by Nicholas de Genova, the "border spectacle" emphasises migrant "illegality" and renders it spectacularly visible, and thereby "sets the scene – a scene of ostensible exclusion, in which the purported naturalness and putative necessity of exclusion may be demonstrated and verified, validated and legitimated, redundantly" (De Genova 2005; 2013).

Figure 3.2: Deportations of residents in an irregular situation from Saudi Arabia by month (3/2011 to 2/2016)
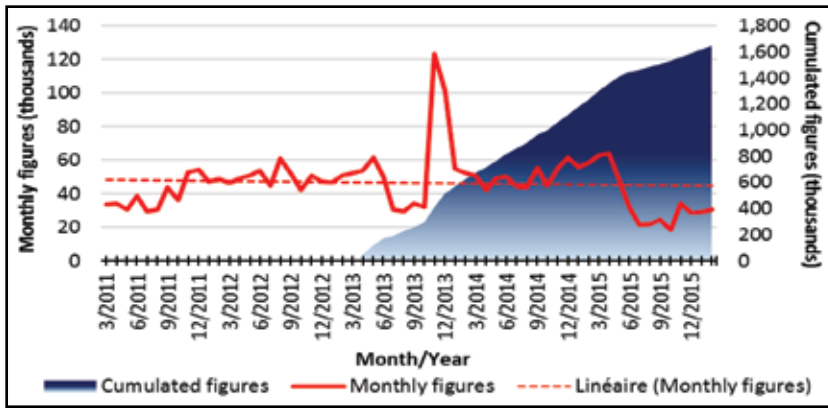
Source: Ministry of Interior.

Overlap of categories. Third, the term "deportation" is not usually defined and neither are populations included in the category. For example, the Saudi Ministry of Interior's records indicated that 665,960 deportations occurred during 2013 and 605,420 during 2014.[29] We have seen, too, that 2013's amnesty campaign gave way to 713,524 exits as announced by the Ministry of Labour. How many of these exits are classified under the category of "deportations"? Figure 3.2 on monthly figures of deportations indeed shows a peak in the last two months of 2013 (123,470 and 100,961 for November and December 2013, respectively). However, we do not know how to articulate the Ministry of Interior's figures with the ones summarising the outcomes of the amnesty, published by the Ministry of Labour. Deportation data are thus not only incomplete in estimating the movements of migrants in an irregular state, they are also probably flawed by an overlap of categories used by the concerned bodies (in the Saudi case, the Ministries of Labour and Interior). "Enforced deportations" and "final exits," are the overlapping terms used by the Saudi Ministries of Labour and Interior. This could lead to some double counting of exits.

Categorisation of migrants: migrants in an irregular situation vs. criminals. Fourth, those deported before and after the amnesty and crackdown periods, for irregular administrative status, are only a share of those deported routinely from those countries on a wide array of charges. The Kuwaiti Ministries of Interior and Justice

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29. See GLMM data: http://gulfmigration.eu/saudi-arabia-deportations-from-saudi-arabia-by-month-march-2011-february-2016/.

publish deportation statistics by category of charges, which include violations in residency laws.[30] However, Figure 3.2 highlights the following: the number of deportations was similar in 2008 and in 2014 (respectively 21,276 and 21,364), yet the share of the deportations conducted under "residency law violations" decreases steadily from 73 to 24% of all deportations between the two dates. This is puzzling, given the tracking down of migrants in irregular situation, implemented during the period in Kuwait. Moreover, these statistics record only 4,762 deportations for residency laws in 2011, while the four-month crackdown campaign alone resulted in 32,036 exits on similar charges. This must mean that the results of the massive 2011 crackdown on migrants in an irregular situation and overstayers are not included in these statistics. Exits which followed the crackdown operation are, as it happens, categorised as regularisations by departure, not as deportations.[31] The distinction between the two categories of exits for undocumented migrants is puzzling. We, nevertheless, see here the inconsistency of the category of "residency law violator" or "irregular" in administrative records. Similar movements may be categorised as criminal, or not, according to the context in which they take place (within, or outside the amnesty period) and the administrative purpose of the file recording the event (regularisation, or criminal registry). In any case, capturing all exits of migrants in an irregular situation would mean collating data from different sources.

Figure 3.3: Deportations from Kuwait by type of charges (2008-2014)

Source: Ministry of Interior; Ministry of Justice.

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30. http://gulfmigration.eu/kuwait-deportations-kuwait-type-charges-residence-law-violations-sex-deported-migrant-2009-2014/.
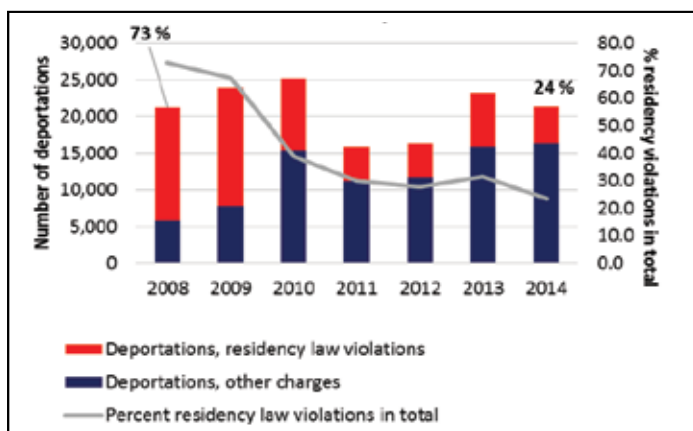
31. http://gulfmigration.eu/record-of-residency-law-violators-having-benefitted-from-the-amnesty-ministerial-decision-20111054-and-estimation-of-the-residents-remaining-in-irregular-situation-by-country-of-citizenship-0107/.

Data on status-related flows are very rare in Gulf statistical records. Kuwait publishes statistics on residency permits by type and holder's group of country of origin, which comprise data on holders of expired documents (overstayers) for a given date.[32] These include, therefore, migrants who have newly fallen into the category of irregular stay (overstayers only), and migrants who lost their legal status in earlier years. Disaggregated figures are not available. Figure 3.4 shows how increasing numbers of foreign residents have fallen into the category of overstayers since 2010: the number of recorded overstayers increased by 5.9 times over five years.[33]

Figure 3.4: Number of holders of expired residency permits in Kuwait (2010-2014)
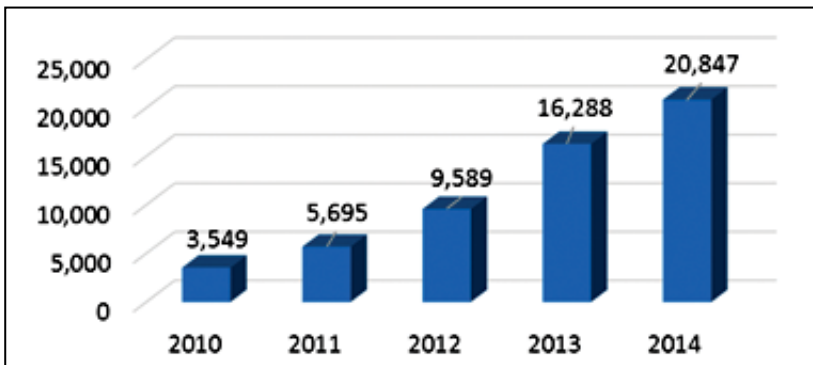
Source: Ministry of Interior, Kuwait.

Considering that records from the Public Authority for Civil Identification allow the government of Kuwait, as noted earlier, to pinpoint the bulk of migrants in an irregular situation without arresting them, the increase in figures probably does not reflect the tightening of policies applied to undocumented migrants. However, the nature of the data, which merges flows and stocks, does not allow us to highlight the dynamics characterising this category. For instance, how should we view undocumented migrants? Are they a growing stock of migrants living hidden from police arrests as years pass, unable to fix their status or leave Kuwait? Or are they, alternatively, a continuously expanding flow of newcomers who fall into

32. "Migration Statistics," Central Statistical Bureau, Kuwait's Ministry of Planning. The reports tabulate the Ministry of Interior's (Directorate of Migration) data on permits granted to foreign residents by type/ purpose of permit, sex and regional origin of holder.

33. The figures refer to foreign residents who are still living in Kuwait at the end of the reference year, but who were found contravening the law on residency by staying beyond the period allowed by their residency document.

irregularity and who are soon deported and replaced by new overstayers? Does the swelling of the numbers of overstayers reflect some jamming in the deportation procedures? These overstayers can, indeed, be: 1) still working for their employer/sponsor who did not renew the employee's documents; 2) in the process of renewing their documents; 3) detained, waiting to be regularised by the sponsor; 4) waiting to be deported, or 5) hiding away. No indication is available as to which measures are applied to the residency overstayers as a whole.

Changes of category from irregular to regular, usually happen during amnesty or regularisation periods, or when the sponsor fixes the situation of the employee. No data is available on this last topic and the scale of routine regularisations cannot be evaluated. Reports on the outcomes of regularisation campaigns are the only source of information on regularisations, but, as noted before, they are partial sources. Kuwaiti data in Table 3.1 indicated that hardly 11% of the recorded 124,142 migrants in an irregular situation, picked out in the 2011 amnesty campaign, were regularised, while 26% had their case settled by deportation. Sixty three per cent of the undocumented migrants remained in that situation. In Bahrain, regularisations were more generous when 52% of the approximately 61,000 unauthorised migrants shifted category and became legal, and 17% left Bahrain. Almost a third of all migrants in an irregular situation (31%) did not fix their status.

Socio-Demographic Characteristics of Irregular Migration

Very few data are available on the socio-demographic characteristics of undocumented migrants in the Gulf. Kuwait is again an exception. Records of the regularisation campaign of 2011, for example, give the nationality breakdown of these migrants before and after the campaign (Table 3.3). Three Asian nationalities (Bangladesh and India, first and foremost, then Sri Lanka) made up more than half of all migrants in an irregular situation, before and after the amnesty campaign.

Table 3.3: Kuwait, amnesty of 2011: Migrants in an irregular situation before and after the amnesty (top-20 most represented nationalities among undocumented migrants)

Country of citizenship	Residency law violators as of February 28th, 2011	Regularised cases		Remaining in an irregular situation after the amnesty
		Departure	Regularisation of status	
Bangladesh	26,019	4,891	1,271	19,857
India	24,433	9,585	2,664	12,184
Sri Lanka	16,267	4,969	916	10,382
Egypt	9,338	2,532	2,740	4,066
Indonesia	9,199	2,116	399	6,684
Philippines	7,498	2,055	1,006	4,437
Pakistan	5,225	1,366	1,051	2,808
U.S.A	4,117	131	72	3,914
Nepal	3,788	2,035	487	1,266
Syria	3,442	477	873	2,092
Ethiopia	2,055	732	582	741
Iran	1,961	164	304	1,493
Afghanistan	1,477	246	216	1,015
Jordan	1,342	89	274	979
Britain	1,027	14	17	996
Lebanon	961	69	228	664
Iraq	945	47	136	762
Turkey	544	20	18	506
China	421	101	40	280
Sudan	396	148	32	216
Yemen	330	48	60	222
other nationalities	3,357	201	267	2,889
GRAND TOTAL	124,142	32,036	13,653	78,453

Source: Ministry of Interior.

If added to available figures of migrants in a regular situation as of December 2011,[34] the figures for migrants in an irregular situation after the regulation campaign (mid-2011) seem relatively low (Figure 3.5). Data suggest than Bangladesh and Sri Lanka only have sizeable proportions of undocumented migrants (respectively, 9.2% and 8.6% of these nationals in Kuwait). The other nationalities (at least, those

34. The date closest to the end of the regulation campaign, http://gulfmigration.eu/non-kuwaiti-population-by-migration-status-and-country-of-citizenship-of-holder-2011-some-national-ities/.

for which total numbers of regular migrants are available here), all, meanwhile, comprise less than 5% of nationals in an irregular situation. These low figures suggest that some migrants in Kuwait could have totally escaped registration at all stages of their entry and sojourn.

Figure 3.5: Estimates of the proportion of 'irregular' migrants in selected populations by nationality (Kuwait, 2011)
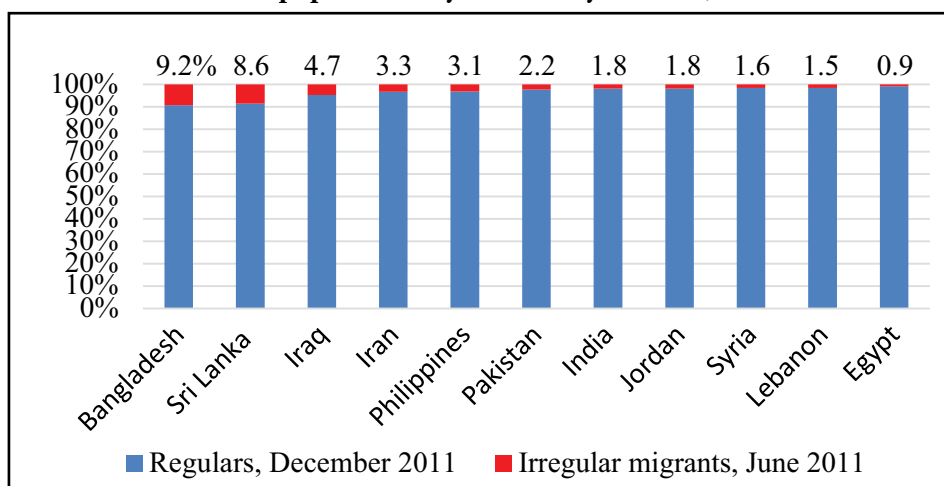
Source: Ministry of Interior, Kuwait.

Kuwaiti data[35] also indicate that migrant residency permit overstayers were mostly employed in the private sector (21% of all overstayers) and in the domestic sector (61%) in 2014. By comparison, "only" 42% of overstayers were recorded in the domestic sector in 2010.[36] Moreover, data also tell us that nationals from African countries make up 21% of all recorded overstayers (5,219) in 2014, a tremendous hike since 2010 when they made up only 2% of expired residency holders (79 migrants). Asian nationalities make up 65% of all recorded overstayers.[37] This information is consistent with the concentration of expired residency holders among domestic helpers, who are most often from Asian countries: the Philippines,

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35. "Migration Statistics," Central Statistical Bureau, Kuwait's Ministry of Planning. The reports tabulate the Ministry of Interior's (Directorate of Migration) data on permits granted to foreign residents by type/ purpose of permit, sex and regional origin of holder.

36. http://gulfmigration.eu/kuwait-foreign-residents-overstayed-legal-period-residence-typep-urpose-expired-residency-permit-2010-2014/.

37. http://gulfmigration.eu/kuwait-foreign-residents-overstayed-legal-period-residence-nationality-group-2010-2014/.

Sri Lanka, Indonesia, and, to a lesser extent, India, as well as from Sub-Saharan Africa, particularly from Ethiopia.

Deportation figures recorded in Kuwait are also the only source of data regarding the gender distribution of this specific sub-category of migrants in an irregular situation. Table 3.4 indicates that the gender gap is progressively closing as regards deportations, but men outnumber women among deportees under charges of violating residency laws.

Table 3.4: Deportations from Kuwait (residency law violators; all charges), by sex (2009-2014)

Year	All charges		Residency law violations	
	Males	Females	Males	Females
2009	16,021	7,928	11,228	4,937
2010	16,651	8,498	7,694	2,089
2011	8,894	7,027	3,403	1,449
2012	7,824	8,400	3,270	1,252
2013	12,373	10,931	5,778	1,590
2014	11,184	10,180	3,898	1,139

Source: Ministry of Interior; Ministry of Justice, Kuwait.

Conclusion

The chapter aims at presenting, discussing and assessing datasets touching on the topic of irregular migration, available in Gulf country statistics. Be it to estimate the stocks, flows, or socio-demographic characteristics of migrants in an irregular situation, data are still inexistent or scarce at best, in most countries in the region. Moreover, the various aspects of irregularity and the process of falling into this state cannot be traced with existing datasets. These focus on specific subpopulations constructed for the purpose of policy action: deported or regularised populations, border arrests, etc., hence fragmenting the stocks and flows of undocumented migrants in various categories, categories that are sometimes overlapping, or disconnected from each other.

This confirms the elusive nature of irregularity: its multifaceted, transient, context- and time-specific nature, which undermines the significance of figures. Political stakes, the logic of public action and the limits of administrative body task-descriptions all contribute to selecting specific populations and to shaping categories of populations: "who counts [matters] depends on who counts [enumerates]"

(Zarkovic Bookman 1997: 71). Migrants in an irregular situation may be viewed either as criminals to be deported, or as victims deserving regularisation.

However, the more data that is made available to the public, the more metadata can be shared, and the better we will understand migration. This requires, nevertheless, different methodologies (field surveys, collation of administrative records), and, most importantly, it means that we must turn away from the ever-tightening security approach to migration currently adopted by Gulf countries.

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IV

The Legal Production of Illegality: Obstacles and Opportunities to Protect Undocumented Migrants in the Gulf States

Elizabeth Frantz*

Abstract: Irregular migration has been identified as a major policy "problem" by Gulf governments. The prevailing approach focuses on punitive measures such as the imposition of fines on overstayers and law enforcement efforts involving detention and deportation. More recently, some governments have proposed that Gulf Cooperation Council (GCC) states work together to reduce the number of irregular migrants by imposing GCC-wide entry bans on migrant workers who have absconded from their employers. These efforts are unlikely to succeed in curbing the phenomenon. This chapter argues that the large number of migrants in an "irregular situation" in the Gulf States should be understood not as a result of insufficient migration controls but rather as a product of the rules on entry, residence and employment to which non-citizens are subject. Efforts to punish individuals are likely to be less effective than comprehensive policy measures designed to prevent and minimise irregularity. The chaper is divided into three parts: the first examines the production of irregularity – the constellation of factors driving migrants into irregular situations, including strict rules which create incentives for migrants to leave or avoid regular employment. The second part discusses the impact

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of irregularity on migrants, particularly how this affects their engagement with the labour market and ability to defend their rights. The third and final section discusses the role governments of origin and destination countries could play to develop more effective, sustainable approaches to address both the causes and effects of irregularity.

Introduction

In almost every region of the world, the question of how to respond to the problem of irregular migration is hotly debated. The prevailing government response in many countries has been to strengthen border controls, to introduce one-off or successive regularisation or amnesty campaigns, and to use punitive measures such as detention and deportation to assert state sovereignty and deter further arrivals. But these measures often fail to manage migration effectively or efficiently.

Saudi Arabia's recent crackdown on undocumented migrants is part of a familiar pattern. In 2013, the government embarked on one of the largest and most aggressive "regularisation" campaigns in the region's history. Portrayed as an effort to reduce unemployment among Saudi youth, the campaign followed an amendment to the labour law empowering police to enforce provisions against undocumented workers, including by detaining and deporting all foreign workers found working for someone other than their sponsoring employer (American Bar Association 2013). Some 20,000 workers were detained in the first two days (Human Rights Watch 2015: 1). By November 2013, when the "grace period" presumably meant to allow workers to regularise their status ended, five million workers had legalised their status, and at least one million had been expelled or left voluntarily (De Bel-Air 2014: 5). Hundreds of thousands more were deported in 2014 (Human Rights Watch 2015: 1). The campaign was accompanied by reports of ill-treatment of migrants, including attacks by Saudi police and citizens, and poor conditions in detention, including inadequate food and beatings by guards (Global Detention Project 2015: 68-9).

These events took place against the backdrop of rising unemployment among Saudi nationals, and in a political climate in which migrant workers are perceived as an economic necessity but a cultural and demographic threat. In such contexts, regularisation and expulsion campaigns such as those implemented by Saudi Arabia serve as "border spectacles" (De Genova 2014), displays of enforcement that make undocumented migrants visible as subjects to be punished in ways that both affirm national unity and give the impression the state is "in control." The stated goal

is to force undocumented migrants to leave or become included in the regular administrative framework. But this is only a stop-gap measure, a temporary fix rather than a holistic solution. Such approaches overlook, and in fact leave intact, the structures driving people to become undocumented in the first place.

In much of the public rhetoric in the Gulf States and beyond, undocumented migrants are cast as transgressive for working and living in the country without authorisation. This chapter proposes a different view. The aims are, first, to demonstrate that the large number of migrants in an "irregular" situation in the Gulf States should be viewed not as a result of insufficient migration controls but rather as a direct product of the legal rules on entry, residence, and employment to which non-citizens are subject. I take, as a starting point, a view of irregular migration not as a form of deviance on the part of migrants but instead as the effect of a constellation of laws, regulations, and practices established by the state for the express purpose of controlling migration. As De Genova's work on Mexican migration to the US shows, the irregularisation of migration is a regular, predicable feature of the routine functioning of border management (De Genova 2014:8). Second, while seeking to avoid the often state-centred approach taken by many who have written about this subject, this chapter does have policy in mind. The second half of the chapter proposes a policy approach to undocumented workers that would both protect migrants' rights and reduce the drivers of irregularisation in Gulf labour markets.

Terminology

There are dangers associated with taking policy categories as the starting point for analysis (Mezzadra 2014: 121). Fixating on the figure of the "irregular migrant" could serve to reify problematic taxonomies, asserting some forms of cross-border movement as legitimate and others not. While the term "irregular migration" is used in this chapter, when speaking of people I have opted to use the term "undocumented migrant" in place of more derogatory terms such as "irregular migrants" or "illegal migrants." It is worth mentioning, however, that the migrants we refer to as "undocumented" are not necessarily without papers; they may or may not have in their possession valid identity documents attesting to their citizenship. The meaningful distinction is that they are people whose entry, stay, or employment is not authorised by the state.

Historical Genesis of Contemporary Migration Policies

Migration has been a constant feature throughout the Gulf's recorded history. The port towns of Manama, Kuwait City, and Dubai attracted migrants from the opposite side of the Indian Ocean long before the discovery of oil. During the nineteenth century, migrants from India, Iran, and farther east, along with groups from the desert and inland agricultural areas of eastern Saudi Arabia, flocked to coastal Gulf towns to work in the pearling industry and commercial trade (Fuccaro 2005, 2009, 2010). Immigrants, settlers, sailors, and administrators from British India dominated the social landscape in early twentieth-century Manama (Fuccaro 2010: 28). Government apparatus were minimal, and patronage played a key role in facilitating migration, with settled migrants sending for kin and providing them with employment and protection upon arrival. Economic migrants continued to represent a large proportion of the urban population in the Gulf port towns after the discovery of oil in the 1930s, when foreign labour was sought for oil production, manufacturing, and construction (Fuccaro 2009: 208).

But a dramatic transformation took place in the 1960s and 1970s, when the oil boom prompted massive social, economic, and political shifts in the region. The 1973 Organisation of the Petroleum Exporting Countries (OPEC) embargo caused oil prices to quadruple. Many of the newly wealthy oil-exporting Gulf states became independent from Britain and began to launch large-scale infrastructure projects requiring manpower beyond the capacity of the local supply. The stock of expatriate workers began to swell. In the 1950s and 1960s, labour migrants to the Gulf had been predominantly Arab, but from the 1970s onward migrant workers from Asian countries were increasingly favoured. The proportion of Arab workers in the Gulf workforce declined from 72% in 1975 to 32% in the early 2000s (Kapiszewski 2006: 7, 9). This turn to Indian, Pakistani, and Bangladeshi labour was driven by the fact that Asians were less expensive to employ, easier to dismiss, thought to be easier to manage. Just as importantly, they were considered less of a political threat to ruling families (ibid: 6-7). The preference for Asian over Arab workers was not simply the result of market forces but had important political dimensions (Chalcraft 2010). Under the banner of Pan-Arabism, while Gulf monarchies were struggling to establish legitimacy among local populations, Gulf state borders had been relatively open to Arab labour. But from the 1970s onwards the popularity of the Pan-Arab concept declined, and Arab migrants were viewed with increasing suspicion by Gulf monarchies. Greater restrictions were imposed on Palestinian labour, and large numbers of Palestinian and Yemeni migrants were expelled from Saudi Arabia (Chalcraft 2010: 18), where the proportion of Arabs in the foreign

population dropped from 91 percent in 1975 to 33% in 2004 (Kapiszewski 2006: 8). In contrast to their Arab counterparts, Asian workers were not only "more easily alienated from politics, in no small measure because of language barriers, but they came without intra-Arab and regional entanglements" (Chalcraft 2010: 19). They were politically disenfranchised and could be segregated from the local population and "rotated" every few years, which further limited any political threat they might pose to royal families.

This trend accelerated, as seen in the example of Kuwait. While the inflow of migrant labour had been relatively unregulated at the beginning of the oil era, this also gradually changed. A new set of immigration and nationality laws began to create new legal and political divisions between nationals and non-nationals, Arabs and non-Arabs (Fuccaro 2009: 223). The notion that GCC nationals should be entitled to privileges above and beyond those of non-nationals began to take hold (Crystal 1990: 79). In Kuwait, in 1948, two decrees established the first legal basis for nationality (ibid). By the late 1950s, with the number of expatriate workers increasing steadily, more explicit policies were passed favouring nationals. Labour laws specified the hiring of nationals, expatriates engaged in labour disputes were swiftly deported, and the formation and activities of unions were tightly regulated (ibid: 80). In 1964, a private sector labour law was passed limiting employment contracts to five years, compelling workers to register with the state and establishing priority for the hiring of Kuwaitis, followed by other Arabs (ibid). According to Crystal, "These policies encouraged Kuwaitis, including potential dissidents, to set themselves apart from expatriates. In the 1950s and 1960s, as Nasserism grew around the world, this policy was a very important containment mechanism" (ibid).[1] Fuccaro writes of Bahrain, "Immigrants, who had been the building blocks of pre-oil Manama, turned into possessors of visas and travel documents, a disciplined labour force subservient to the new economy" (2009: 211).

Opinion is divided over whether *kafala* requirements, as these restrictions became known, were in place when post-oil labour importation began in the 1940s. Longva writes with reference to Kuwait:

> According to some testimonies there may have been a practice whereby migrants were vouched for by a respected citizen of Kuwait. If this was the case, then the practice was not formalized in the first decades of labour

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1. In 1964, a private sector labour law was passed limiting employment contracts to five years, compelling workers to register with the state, and establishing priority for the hiring of Kuwaitis, followed by other Arabs (Crystal 1990: 79).

importation, since the text of the Aliens' Residence Law issued in 1959 and amended in 1963, 1965, and 1968 made no mention of it. The 1960 Law of Commercial Companies did stipulate that foreigners might not establish businesses in Kuwait except with Kuwaiti partners who, in turn, were required to have 51 percent ownership. This requirement of partnership, however, was not strictly the same as the requirement of sponsorship… (1997: 78).

What is clear is that by the 1950s and 60s, while natives from other parts of the Gulf could enter and settle freely in Kuwait, Indian migrant workers were required to have guarantees from employers in order to enter (Longva 1997: 78, citing Joukhadar 1980). By 1969, all migrant workers, including Palestinians, had to be guaranteed by Kuwaiti employers (Joukhadar 1980 and Russel 1989a as cited in Longva 1997: 78). While the sponsorship system had become common by the end of the 1960s, it was not until 1975 that it was finally codified in an amendment to the Aliens' Residence Law (Longva 1997: 79). By the 1980s, all foreigners originating from non-GCC states had to be under the sponsorship of a private citizen or private or state institution (Longva 1997: 79; see also Kapiszewski 2001: 202).

What is striking is how late what is now known as the "sponsorship system" became officially regulated. Longva's work suggests it emerged only recently as an administrative tool institutionalising a broader system of patronage and control over labour that had long been in place. It now functions ostensibly to ensure that no more workers enter than jobs exist, that migrants are personally tied to a national sponsor, and – in principle – that migrants stay only as long as they are employed. The reality is different, as we will see in the next section.

Contemporary Migration Policies and Factors Driving Irregularisation

Today, expatriates comprise 68% of the workforce in the GCC states (Gulf Labour Markets and Migration (GLMM) Programme 2013). The contemporary system under which migrants are recruited and employed is partially codified in law but also comes about through a constellation of regulations, administrative rules, bureaucratic procedures and practices. Although not homogenous throughout the region, the basic elements are similar: Foreign nationals must have local sponsors to obtain residence and work permits. These sponsors serve as the worker's guarantor and sole employer. Comparisons can be drawn with guest worker programmes in other parts of the world that also tie migrant workers to their employers. In most instances, the worker cannot change jobs or even leave the country without the

sponsor's consent, and the employer has the power to send the worker back to his or her country at any time. The fact that sponsors have the power to cancel workers' visas effectively shields them from legal responsibility to respond to charges of non-payment, forced labour, or abuse by allowing them to petition authorities to cancel workers' legal residency before a worker can pursue a claim. Employers often engage in practices that further the exploitative nature of the relationship, such as retaining passports and creating obstacles to prevent workers from leaving the country. The sponsorship system creates a labour market that is anything but free – migrant workers are bound to their employers for the terms of their service, which typically last two years. This contributes to profound inequality between worker and employer which, as the following passages describe, can produce "illegality."

Although the phrase "irregular migration" tends to conjure images of people breaching borders, in the Gulf States, as in Europe (Jansen eds. 2014: xiii), most migrants do not arrive without documentation but rather fall into an irregular status after they have entered. This can happen in a number of ways. Migrants can enter an irregular status if they are brought to the Gulf by a recruiter or other intermediary under false pretenses, including being misled about the type of work they will perform. This can occur, for example, for women promised jobs as caretakers, domestic workers, or salespeople who find when they arrive that they are meant to work as sex workers. Migrants also may become undocumented if they overstay the time allowed by a valid residence permit or visitor's visa; this could be either a tourist visa, which is commonly issued for three months, or in the case of Saudi Arabia, a religious visa for Haj or Umrah pilgrimage.

The other three main ways migrants can become undocumented derive specifically from the workings of the sponsorship system. The first is through what is known as the "free visa" system, whereby sponsors sell visas to migrants, often with a substantial levy of several thousand dollars which they keep for themselves. In addition to the upfront cost, sponsors may also charge a yearly fee from the migrant to maintain the sponsorship relationship. In visas issued under this system, the sponsor usually has no intention of employing the migrant – the job under which the sponsor has obtained the visa is a fiction. Migrants in these circumstances may have a valid residence permit but are considered to have broken the law if they work for someone other than their sponsor and may be jailed or deported. In some instances, migrants do not know they are entering the "free visa" system until they arrive in the destination country. In other instances, workers intentionally seek out this arrangement, in some cases with help from kin or friends, as an alternative to the formal sponsorship system. Many come to realise that in contrast to the

highly rigid conditions imposed by the sponsorship system, working under a "free visa" gives them greater freedom and flexibility in employment. Work by Pessoa, Harkness and Gardner on "free visa" holders in Qatar found that while vulnerability permeated the daily lives of such migrants, many said they would not prefer to switch to the legal option (2014: 211). Under the "free visa" system, they could "shop around" for work, and they claimed they made higher salaries than officially sponsored workers (ibid). Another advantage is that they could leave jobs at will if employers mistreated or refused to pay them. They contrasted this with officially sponsored employers who are locked into abusive employment relations.

A second way workers may become undocumented is if they arrive for the purposes of a specific job but their sponsoring employer fails to issue, prematurely cancels, or does not renew their residence permit. Although it is the legal responsibility of the employer to obtain and renew workers' permits, and workers cannot do this by themselves, it is the employee who can be charged overstay fees if their employers fail to do this and they stay in the country, and it is the employee who can be punished with detention and deportation.

The third way of becoming undocumented is if a worker absconds from his or her sponsoring employer. Rigidity in the sponsorship system preventing workers from transferring to new employers in case of a dispute means that workers with abusive employers may be forced to leave their sponsors and become undocumented as their only recourse to non-payment of wages or other types of mistreatment. Some people unwittingly become undocumented by leaving their place of employment, whereas others make deliberate decisions to enter an irregular situation. For domestic workers, the very act of leaving the workplace without permission can mean becoming undocumented, as they are often forbidden by the terms of their employment contracts from leaving their employers' homes without permission. Their passports are commonly confiscated by their employers, so leaving an abusive employer usually results in loss of access to one's identity documents. Many migrants know or come to understand that by going to their embassies, they may eventually be deported, and those who wish to remain in the country stay with friends and work illegally.

The assertion that "regular" migration is less dangerous is questionable when we consider the realities of life for low-wage migrants in the Gulf. Many migrate through legal channels only to find themselves in situations in which employers have absolute power. The fact that they arrive legally with valid visas and work contracts does not lessen the risk of mistreatment. Their movement across national borders may be regulated, but the work itself seldom is. When it is regulated, it is

done in ways that are heavily slanted in favour of the employer. One of the ironies of this situation is that, in some instances, migrants may enjoy greater autonomy while in an irregular status.

Employers of undocumented migrants have an unfair advantage in that they can pay them less for their services and discipline them with the threat of exposure to the authorities. Such workers are less likely than others to demand full pay or safe working conditions. They can be forced into some of the most hazardous work environments. The rise in the proportion of undocumented migrants in many countries is convenient to capital, sitting neatly alongside wider trends away from stability and towards flexibility in employment relationships. The undocumented migrant is "the prototype worker of informalisation" (Noll 2010: 263). They are maximally mobile, excluded from any welfare benefits, and utterly disposable.

Before concluding this section, it is worth mentioning that the children of irregular migrants – who may be second or even third generation migrants – are also usually undocumented. Even if they were born and spend their entire lives in one of the Gulf States, they will be considered foreigners and their legal status will be dependent on that of their parents. There is no data on the numbers of children of undocumented migrants born in the Gulf, but estimates for the number of children of migrants overall who are born in Saudi Arabia range from 1 million to 2 million (De Bel-Air 2014: 7).

No Right to Have Rights: The Legal Position of Undocumented Migrants

It is a common misconception that there are no strong laws protecting the rights of migrant workers in the Gulf States. In fact, labour laws in many of the Gulf States are progressive and contain a number of safeguards which should, in theory, apply to all workers. Most labour legislation in the region does not specifically distinguish between citizens and non-citizens, nor does it expressly exclude undocumented migrants. For example, in the United Arab Emirates (UAE), labour matters are governed by Law Number 8 of 1980 Regulating Labour Relations, which applies to all private sector employees, whether UAE nationals or expatriates, but which excludes certain categories, namely employees of the federal government as well as municipalities and those employed in local government projects, members of the armed forces, police and security units, domestic workers and agricultural workers. In Kuwait, the Law of Labour in the Private Sector Number 6 of 2010, which replaced the 1964 Labour Law, provides workers with more protections on wages, working hours and safety, and broadly defines a worker as "any male or female

person who performs a manual or mental work for an employer under the employer's management and supervision against a remuneration." It applies to all workers in the private sector, excluding domestic workers, and represents a "minimum level of workers' rights."

In reality, while the labour laws governing the private sector are thought to apply universally to all categories of paid work, albeit with exceptions for some categories, the safeguards they provide are *de facto* not applied to undocumented migrants. The letter of the law might not discriminate against undocumented migrants but its application does. In practice, the application of labour protections against basic employment-related infringements, such as non-payment of wages or unfair dismissal, presupposes having a residence and work permit, and in practice those who do not are usually detained and deported before they can pursue a legal claim against an employer or recruiter. Employment rights are effectively subordinated to immigration requirements.

Further research is needed to understand the way the courts have dealt with migrants in an irregular situation. Do the courts affirm that undocumented migrants have a legal right to be paid for work performed even if they did not have authorisation from the state to undertake the work for that specific employer? Absent in-depth research, reports from NGOs and human rights groups suggest this population generally receives very little protection or support in the legal system, and that as soon as they are found to be residing without authorisation or working for someone other than their sponsor, they are swiftly detained and eventually deported (Global Detention Project 2015). They reportedly have very little room to challenge detention and deportation decisions. This means that employers who do not pay wages, impose excessive working hours, forcibly confine or physically or psychologically abuse workers without documentation go unpunished. In effect, by pursuing deportation before a migrant can pursue any legal claims against his or her employer, the state is neglecting its duty to fully enforce the labour law.

Writing about the plight of stateless people, Hannah Arendt coined the term "the right to have rights" with reference to those who, by virtue of losing their rights as citizens, were effectively rendered without rights (Arendt 1958). In the case of undocumented migrants, it is not that they have no rights but that their rights are systematically ignored. Any human rights and labour protections are practically inaccessible to them. In this regard, they represent a challenge to the notion that human rights are universally applicable (Noll 2010: 241).

An Alternative Policy Approach to Reduce the Irregularisation of Migration

The interweaving of residence rights with employment relations such that individual sponsors/employers are empowered to control workers' migration status creates the conditions by which many people either opt to or unwillingly become undocumented. At a policy level, the tools most commonly used by Gulf governments involve the issuance of general amnesties. Rather than being open-ended amnesties for all, such measures generally allow an opening for an administrative process lasting several months during which individual cases are assessed, and people without legal status can either leave the country without paying overstay penalties or regularise their stay and become assigned to a sponsoring employer. But amnesties may actually encourage migrants to gamble on future regularisation efforts, encouraging them to enter an irregular status if they assume there will eventually be a way out. Amnesties are often followed by crackdowns in which migrants without the proper documents are arrested and deported, resulting in considerable hardship for many migrants and generating considerable expenses for the state.

A more effective, holistic solution designed to prevent workers from becoming undocumented in the first place would be to enable greater flexibility in the sponsorship system to allow workers to change jobs without individual sponsor approval and to repeal the power of individual employers to cancel workers' visas. This would take away migrants' fear of being deported by their employers and would give them greater flexibility to choose their employment, thereby removing the main incentives which lead them to opt into the "free visa" system. While there has been some experimentation with reforms to the sponsorship system to achieve greater flexibility, most notably in Bahrain, the governments of many Gulf countries so far have been reluctant to fully implement reforms that would dismantle the sponsorship system. One unstated reason may be the fact that the current system, and the disposable labour it produces, is convenient to many employers. The "free visa" system is also highly lucrative for the sponsors who make use of it.

Given states' reluctance to dismantle the sponsorship system, this chapter proposes an alternative approach to address both the causes and effects of irregularisation. This approach involves separating enforcement of the laws and administrative procedures governing migrants' residence and legal status from those governing their employment. This entails severing jurisdiction over labour matters from matters of immigration, two spheres which in most Gulf countries are already dealt with by separate organs of the state.[2] Another way of describing this is

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2. In most of the Gulf States, although the nomenclature of government departments differs,

Carens' notion of "firewalling." Carens argues that states should establish firewalls "between the enforcement of immigration law, on the one hand, and the protection of general human rights, on the other" (2013: 132-133). This guarantees that people can pursue legal claims concerning employment-related abuses without exposing themselves to arrest and expulsion. Ultimately, such a strategy would privilege the implementation of the labour law over immigration enforcement and would have the effect of ensuring that the existing laws and regulations governing working conditions apply equally to all workers regardless of their migration status. One serious drawback in the context of the Gulf is that this approach alone would not sufficiently address the situation of domestic workers, who are specifically excluded from coverage in the labour laws of the Gulf States.

In order to maintain a firewall approach in practical terms, training and strong guidelines would have to be provided stipulating that labour inspectors should not be influenced by whether workers are documented or not in the course of their duties with respect to working conditions. This approach also would require ensuring that the courts and other administrative apparatus responsible for hearing migrants' claims in employment-related matters would not provide information to the authorities handling removal proceedings. Legal immunity from deportation would need to be ensured to protect undocumented migrants filing claims against their employers.

For a firewalling strategy to have a real impact, workers would need practical access to channels of legal redress in order to be able to make claims against abusive employers. At the moment, state systems for processing and adjudicating migrants' grievances are extremely difficult to navigate even for those with valid legal status and written employment contracts.[3] Steps would need to be taken to ensure that documented and undocumented migrants alike had access to the basic resources needed to make claims, such as access to translation services and the legal right to take up other remunerative work while cases are ongoing. These aspects of the workings of the justice system are within the state's capacity to control, and this is an area of governance where incremental improvements could have a significant impact on the well-being of hundreds of thousands of workers.

There is a risk that ensuring employment rights regardless of immigration status could serve to increase the incentives for other migrants to become undocumented.

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labour matters are dealt with by ministries of labour, and legal disputes resulting from them are adjudicated by the federal and local courts, whereas deportation matters fall within the remit of ministries of interior.

3. This is illustrated well for the state of Qatar in a recent report by Gardner et al. (2014).

But the benefits far outweigh this. There are moral justifications – it could make a huge difference in migrants' lives, lessening their vulnerability and ensuring a basic standard of legal protection for all workers which today does not exist. It would take away the fear of detention and deportation which currently enables employers to exploit workers. There are also strong pragmatic reasons the state could be encouraged to consider this approach. Ensuring that employment laws apply to undocumented workers, and that employers who abuse them can be sanctioned, would effectively raise the costs of employing undocumented workers. This could decrease the incentives for those employers to hire them, ultimately leading to a reduction in the scale of irregularisation by tackling the "demand" side.

There are clear precedents for upholding the employment rights of undocumented workers in international law. Although the Gulf States are not signatories to most international human rights and labour rights treaties, it is worth mentioning that two of the main treaties dealing with the rights of migrant workers guarantee employment rights to undocumented workers. This includes ILO Convention 143 of 1975, which guarantees undocumented workers "equality of treatment … in respect of rights arising out of past employment as regards remuneration, social security and other benefits." Similarly, the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families states in Article 25(3) that "employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by any reason of any … irregularity [in the workers' stay or employment]."

There have also been rulings affirming the need to separate the enforcement of legal provisions relating to working conditions from immigration law by the ILO body which examines the application of ratified ILO Conventions, the Committee of Experts on the Application of Conventions and Recommendations (CEACR). In a decision on Malaysia in relation to the Labour Inspection Convention 81 of 1947, the Committee emphasized the fact that "the primary duty of labour inspectors is to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers, and not to enforce immigration law."[4] The Committee requested the Malaysian government to provide information on "action undertaken by the labour inspectorate in the enforcement of employers' obligations towards migrant workers, including those in an irregular situation, such as the payment of wages, social security and other benefits."

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4. See Malaysia, CEACR Observation, published 104th ILC session, 2015. http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3177140.

At the national level, the intersection of migration and employment law has vexed the courts in many countries. Comparing jurisprudence in the UK, United States, and Canada, Bihari (2011) writes that while in the UK the courts have generally subordinated employment law to the enforcement of immigration law, courts in the US generally have been more inclined to enforce the employment and labour rights of undocumented workers. This has been the subject of a great deal of debate in recent years, however. In 2002, the US Supreme Court issued a decision in Hoffman Plastic Compounds v. NLRB denying labour rights for undocumented migrants. The five-four ruling said that an undocumented worker, because of his immigration status, was not entitled to back pay for lost wages after he was illegally fired for union organising. Criticisms were made that this let the employer off the hook, and the four dissenting judges argued that labour and immigration legislation represent two independent spheres of law which should be upheld independently of one another (Bihari 2011: 19). Following the Hoffman case, other US government agencies including the Department of Labor and the Equal Employment Opportunity Commission have asserted their commitment to enforcing laws within their jurisdiction without regard to workers' immigration status (Human Rights Watch 2004: 119). In 2013, the Inter-American Court of Human Rights examined the Hoffman ruling and issued an advisory opinion holding that American states have an obligation to guarantee the labour rights of all workers, and that undocumented workers are entitled to the same protections as citizens and those working lawfully. There are also other examples from the US in which the courts have been more favourable to undocumented workers. In a 2002 case involving allegations of illegal trafficking in persons and involuntary servitude of an Indian woman brought to the US as a domestic worker, a judge in New York refused to allow defendants to conduct discovery into a worker's immigration status, noting that '[A]llowing parties to inquire about the immigration status of other parties, when not relevant, would present a danger of intimidation [that] would inhibit plaintiffs in pursuing their rights…'[5]

France provides another perspective. There, all workers, regardless of their immigration status or whether they hold a valid residence or work permit, are entitled to a minimum level of labour protection (Murphy 2015). Undocumented workers are entitled to salaries not less than the guaranteed minimum wage, payment for overtime, annual paid holidays, and compensation if the employment ends early.

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5. Topo v. Dhir, 210 F.R.D. 76 (S.D. N.Y. 2002).

Conclusion

This chapter has sought to demonstrate that the current matrix of laws and regulations governing the recruitment and employment of migrant labour in the Gulf States developed as the region became increasingly intertwined with global capitalism through the oil trade with the interaction of money, capital, and the state. Migration policies emerged in the context of a particular kind of state – one that distributes oil rent to citizens in exchange for political acquiescence, the pursuit of free-trade policies, and a laissez-faire economy, and most importantly, one in which migrant worker populations vastly exceed the number of nationals. Under these conditions, the sponsorship system has been instituted as part of a broader dynamic generated by oil revenue alongside administrative policies aimed at separating and controlling expatriates. As it is currently configured, the system produces highly unequal relationships of control by employers over workers that create strong incentives for irregularisation.

Although labour laws throughout the Gulf States do not distinguish between expatriates and migrants, or documented versus undocumented workers, in practice becoming undocumented puts workers in an extremely weak legal position. They have little or no recourse to any protection from the law. Any complaint about mistreatment by an employer or recruiter could result in removal, so most undocumented migrants avoid contact with the state. This means that in practice, they have few rights as workers, and their employers can exploit them with impunity. Despite the vulnerabilities, these constraints are why many migrants opt to seek more autonomy by becoming undocumented.

The current policy tools used by governments in the region to tackle the problem of irregularisation involve short-term amnesties that are usually followed by crackdowns involving detention and deportation. These approaches ignore the factors that drive workers to become undocumented in the first place. They focus on punishing irregularity, both in fact and rhetorically, over the public policy interest of enforcing labour laws. An alternative would be for states to take steps to ensure that all workers, regardless of their migration status, have full access to legal remedies and protection against exploitation from employers. A firewalling strategy, or a bifurcated approach to legal jurisdiction separating matters concerning migration status from employment, would address the legal void vis-à-vis undocumented work that currently exists. This would guarantee undocumented workers the rights they are currently promised under existing labour legislation. The effect would be to raise the costs of hiring undocumented workers for employers, thus decreasing demand. The current situation of undocumented migrants is broadly favourable to

the prevailing power structures. Adopting a strategy that would penalise employers of undocumented migrants would threaten the interests of those who already yield power and influence in Gulf societies. Achieving this under the current political conditions would be difficult. But a firewalling approach has enormous potential, and unlike many law enforcement approaches currently deployed by states, it does not involve "managing" or "controlling" flows of undocumented migrants in ways that infringe their rights. This is important in a context of global wage inequalities, where people will continue to migrate to redress the balance despite the narrowing of legal migration channels to do so.

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V

Irregular Migration in Bahrain: Legislations, Policies, and Practices

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Abstract: Irregular migration is a phenomenon widely observable in the six member states of the Gulf Cooperation Council (GCC), although information concerning its size, causes and the success of policy measures designed to address it remains scarce. This chapter attempts to close part of the knowledge gap that exists on the topic in Bahrain through an in-depth review of publicly available information and interviews. While irregular migration is naturally difficult to quantify, the task of doing so is even more daunting in the Gulf where a lack of transparency has created a shortage of reliable and official data on both the population and the workforce. Inevitably, this complicates any attempt at evaluating the effectiveness of policy measures implemented by the GCC states in order to address the issue. This is the case even in Bahrain where data tends to be more readily available by comparison. By compiling estimates produced by a variety of sources such as government officials, embassies of sending countries, local NGOs, international organisations and others, this chapter will seek to provide some understanding as to the size and composition of the cohort of irregular migrants. Like other GCC states, Bahrain has deployed a host of policy instruments aimed at identifying irregular migrants and more often deporting them. Amnesties, in which up

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to hundreds of irregular migrants at a time may be identified and deported without facing criminal prosecution, have occasionally been announced. Laws have been amended to include tougher penalties against visa traders. There is little evidence however to suggest that any of these policies had any significant impact on curbing the problem. This chapter will seek to trace the evolution of the legislative framework that addresses irregular migration. It will also attempt to evaluate the effectiveness of the reforms to the labour market in preventing individuals from becoming irregular migrants in the first place. Moreover, it will critically discuss the national framework put in place to protect irregular migrants from human trafficking and physical abuse and will explore whether channels for regularisation exist and their accessibility. Ultimately, the overall objective of this chapter is to better define the phenomenon in terms of its size, trends, and causes and trace the evolution and effectiveness of the legislative and policy framework adopted by the state to address it.

Introduction

Irregular migration has been a persistent feature of Bahrain's labour market since at least the 1970s. The pool of irregular migrants – South Asian workers, for the most part – has expanded hand-in-hand with the growth of the economy. The government estimated early on that irregular migration has had a negative impact on the employment of Bahrainis within the labour market.[1] While the government has implemented several measures to separate irregular migrants from the local population and limit the stock of irregular migrants residing in the country, it has done little to curb their flow into the black market. Although the government enjoys the legal prerogatives necessary to crack down on visa traders and employers of irregular migrants, seldom has it exercised its right to do so.

Several factors can be said to account for the government's reluctance to bring about structural change in the irregular labour market. First, the government is not under significant pressure from the citizenry to crackdown on the practice. Citizens

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1. "Wazîr al-'amal al-Bahraini: na/hnu bi-/hâja li-binâ' al-thiqa bayn al-'ummâl wa al-qi/tâ' al-khâ/s li-/hal mushkilat al-ba/tâla," *Asharq Al-Awsat,* February 3, 2003, http://archive. aawsat.com/details.asp?section=6&article=150425&issueno=8833#.VZf7vEaFGro; Shah suggests that GCC states began to put policies in place to restrict irregular migration in the 1990s (see Shah 2008). These restrictive policies were not motivated by economic considerations alone; however, as the overall discourse on migration refers to perceptions of cultural and political threat too, see Louer 2008.

do not perceive irregular migrants to be a threat to their livelihoods due to Bahrain's dual labour market: citizens prefer employment in the public sector, which tends to be largely reserved for them, while migrants take on blue-collar jobs that attract only a relatively small portion of the citizenry (Shah 2009: 4).[2]

Second, citizens are often the biggest beneficiaries of irregular migration. Consumers rely on such migrants to bring down the prices of services, while employers often view them as a source of cheap, temporary labour. A sizeable number of Bahrainis are implicated in illegal visa trading, charging irregular migrants a certain amount of money in return for allowing them to continue to reside in the country under their sponsorship. Collectively, these factors inform the political context within which the government has chosen to mobilise its policy instruments to address the phenomenon of irregular migration.

In order to assess government policy, we first need to quantify and draw up a profile of irregular migration in Bahrain, including the main channels through which migrants cross over into irregularity. Then, it is important to summarise the legal framework surrounding irregular migration and survey the legal instruments at the government's disposal. Finally, we can begin to conceptualise government policy toward the issue, including measures to separate irregular migrants from local residents in response to popular demand, tools to control and limit the stock of irregular migrants, and initiatives to curb the flow of migrant workers into the black market.

Irregular Migration in Bahrain: A Profile

Stock Size and Composition

By its very nature, irregular migration is a phenomenon that is difficult to quantify with much precision. Neither the Labour Market Regulatory Authority (LMRA) nor the Ministry of Labour publish readily available data on the size and composition of the stock. Data released by the LMRA through a handful of press releases over the past decade provide very little insight into the trends and patterns that characterise the phenomenon.

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2.   For an expanded discussion of labour market segmentation in the GCC, see Hertog 2012.

Table 5.1: Estimated population of irregular migrant workers relative to the total population of migrant workers in Bahrain, 2010-2014

	Irregular Migrant Workers Population[3]	Total Migrant Workers Population[4]	%
2010	34,000[5]	458,709	7.4
2011	40,000[6]	458,060	8.7
2012	44,000[7]	488,978	9.0
2013	51,000[8]	514,156	9.9
2014	60,700[9]	530,809	11.8

These figures likely represent a lower bound. While the LMRA is able to account for irregular migrants whose employers have reported them as escaped or have had their visas expire or cancelled by their sponsors without them leaving the country, it is very difficult for the LMRA to account for the "free visa" workers, i.e., those whose sponsors continue to pay their visa fees on time, but are in fact working in violation of their work permits. That is because unless they are caught in an inspection or a raid, "free visa" workers appear to have a regular or legitimate status on the books. The LMRA therefore only provides an estimate of their numbers based on its inspections.[10]

The majority of irregular migrants would be nationals of Bangladesh, India, and Pakistan, although there is a minority of Arab nationals, primarily from Egypt and Syria.[11] Bangladeshis constitute 66% of all irregular migrants in the

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3. Figures quoted were collected from statements and press articles made towards the end of the year where possible.

4. Q4 data was quoted. Source: Bahrain Labour Market Indicators, Table A. Estimated total employment by citizenship and sector: 2004-2015, http://blmi.lmra.bh/2015/03/data/lmr/Table_A.pdf.

5. "Number of Illegal Workers Drops to 34,000," *Daily Tribune,* August 18, 2010. http://blog.lmra.bh/en/2010/08/18/number-of-illegal-workers-drops-to-34000/

6. Safi, *Al-Bilad,* November 22, 2011.

7. Al-Sabbagh, *Al-Ayam,* August 10, 2012.

8. Al-Wasati, *Al-Wasat,* March 4, 2015.

9. *Al-Wasat,* March 4, 2015.

10. Safi, *Al-Bilad,* November 22, 2011.

11. This is more or less reflective of the broader migration patterns to Bahrain, although Bangladeshis are significantly overrepresented. For an expanded discussion of the broader trends, see De Bel-Air 2015. For a broader discussion of the prevalence of Arab vs. Asian migrant workers in GCC labour markets, see Kapiszewski 2006.

country.[12] While many of them perform a range of jobs including as cleaners, electricians, and so on, many of them tend to be concentrated within the construction sector.

Avenues to Irregular Migration[13]

Figure 5.1. Irregular migrants, breakdown by type[14]
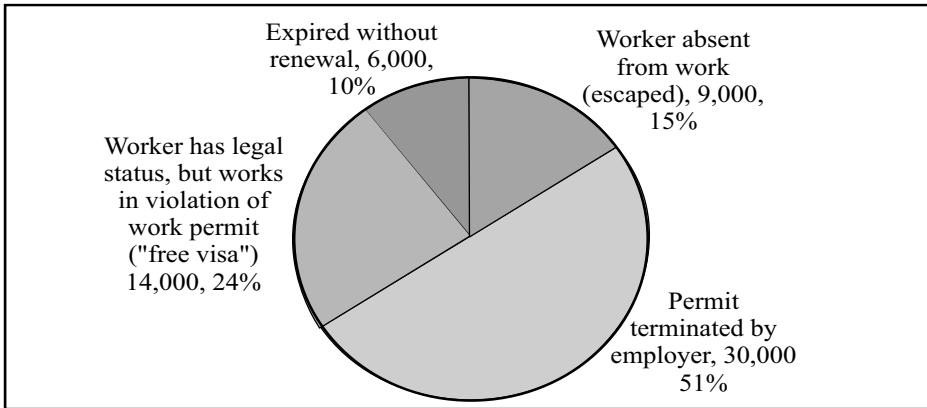
- *Illegal entry* – This involves smuggling people illicitly across the border. Illegal entry accounts for a negligible portion of irregular migrants in Bahrain, unlike in Saudi Arabia, which sees Yemenis illicitly cross the land border, and Oman and the UAE, where South Asians attempt to arrive by boat (Shah 2009: 9). Bahrain, an island, shares no land borders with the exception of a bridge connecting it to Saudi Arabia and is sufficiently far inside the Gulf to prevent South Asians from attempting to access it by sea.

- *"Free visa"* – The main method of visa trading, the "free visa" practice involves sponsors bringing migrant workers into the country on a valid visa and work permit. Once inside, sponsors – in violation of the work permit – fail to provide the migrant workers with employment or remuneration,

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12. Bangladeshis make up roughly 39,000 of 59,000 irregular migrants, as of July 1, 2015. Source: Personal interview with Mr. Aussamah Al-Absi, CEO of LMRA, October 1, 2015. By contrast, the Bangladeshi ambassador to Bahrain put the figure at 80%, although how he arrived at this estimate is unclear. See Grewal, *Gulf Daily News,* April 26, 2015.

13. For a further discussion on the definition of irregular migration, see Shah 2009, 3.

14. Figures approximate, as of July 1, 2015. Source: Personal interview with Mr. Aussamah Al-Absi, CEO of LMRA, October 1, 2015.

leaving them to their own devices to find work and generate income. Sponsors continue to renew their migrant workers' visas and work permits and pay any fees that are due to the LMRA. In return, migrant workers pay their sponsors an annual sum. The fact that "free visa" workers have valid visas that are legitimate "on the books" makes them much harder to detect. In the past, sponsors paid BD200 once every two years to renew their sponsored workers' visas and received BD1,000-1,200 once every two years from the latter to uphold their end of the bargain. In 2008, however, the LMRA raised the two-year cost of sponsoring a foreigner to BD440 via a BD10 monthly levy. As a result, the black market rate payable by the "free visa" workers to their sponsors shot up to BD1,800-BD2,000, rendering the model largely unfeasible.[15] Whereas the "free visa" arrangement was responsible for the majority of irregular migrants before these reforms, it now accounts for only a quarter of them.

• *Termination of work permit* – This practice has taken over as the most popular method of visa trading. Migrant workers pay their sponsors a fee through intermediaries to bring them into the country in a legal manner. Once inside, the sponsor cancels the permit and visa in order to avoid paying visa renewal and labour fees. According to Bahraini law, unless the migrant worker can find employment elsewhere within a month, he or she must leave the country or become an irregular migrant. Many migrant workers continue to reside in the country irregularly with no valid visa or work permit, however. Visa cancellation accounts for roughly 51% of all irregular migration, as migrants fail to leave.[16] Visa cancellation has gained in popularity since 2008 as the main method of visa trading as a result of the LMRA's raising of visa renewal fees and imposition of monthly labour fees. Visa cancellation is presumably used by sponsors to circumvent the law; once they cancel their sponsored workers' visas, they presumably can no longer be held accountable for their actions. To combat this phenomenon, Law No. 40 of 2014 amending certain provisions of Law No. 19 of 2006 Regulating the Labour Market was passed, making it illegal for sponsors to bring migrant workers into the country and have work permits issued for them without an actual need for doing so.[17]

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15. Personal interview with Mr. Aussamah Al-Absi, CEO of LMRA, October 1, 2015.

16. "60 alf 'âmil "free visa" fî al-Bahrain," *Al-Ayam*, March 4, 2015.

17. See Table 5.2.

- *Expiry of work permit* – Employers often neglect or choose not to pay the annual fees required to renew their workers' permits and visas, allowing them to expire. When this happens, the status of the migrant worker automatically becomes irregular, sometimes without the migrant's knowledge.

- *Workers absent from work ("escaped")* – By law, this includes workers who fail to show up for work for a period of at least 15 days with no legitimate cause. Their employers report them to the LMRA as "escaped." The LMRA publishes their names and allows them a 30-day grace period to dispute the claim. Failure to do so renders them irregular.[18] According to LMRA data, escaped workers account for roughly 15% of all irregular migrants in the country.[19]

Legislation and Policy

Legal Framework for Irregular Migration

Bahraini legislation outlines a number of prohibitions and penalties in relation to irregular migration. These affect the migrants, their employers, and visa traders.

Three main pieces of legislation, in particular, are noteworthy:

- *Aliens Immigration and Residence Act of 1965* – This is the main piece of legislation that governs the entry, exit, and residence of foreign nationals into Bahrain. In the context of irregular migration, the act criminalises clandestine entry and residence of foreign nationals without a valid visa.

- *Law No. 19 of 2006 Regulating the Labour Market* – This law created the LMRA and invested in it many regulatory prerogatives that were hitherto invested in the Ministry of Labour. It mandates the LMRA with the management of all issues regarding foreign workers active within the labour market, including the issuance of work permits and the collection of fees and fines.

- *Law No. 36 of 2012 issuing the Labour Law for the Private Sector* – This law replaced the 1976 labour code. It sets out the legal conditions that relate to the employer-employee relationship. The law was welcomed as a

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18. "Expatriate Employee Absence from Work," http://lmra.bh/portal/en/absent_reported#.VZUcoEaFF7w.

19. Escaped workers make up approximately 9,000 of 59,176 irregular migrants, as of July 1, 2015. Source: Personal interview with Mr. Aussamah Al-Absi, CEO of LMRA, October 1, 2015.

progressive piece of legislation for extending protection to domestic maids for the first time and prolonging maternity leave for female employees, although certain provisions relating to collective labour negotiations and strikes were a matter of concern.[20]

The penalties can be summarised as follows:[21]

Table 5.2: Legal penalties on labour-related violations as per Bahraini law

Category	Violation	Penalty
Migrant	Illegal entry	• At least 6 months in prison and confiscation of vehicle[22]
	Overstaying visa	• No more than 6 months in prison, and no more than BD500 fine, or either one[23]
	Working without valid work permit	• Fine of no more than BD100, and permanent expulsion or temporary expulsion for at least 3 years[24]
Employer	Employing foreign worker without valid work permit	• Between 3 months and 1 year in prison, and a fine between BD1,000 and BD2,000, or either one; for repeat offenders, between 6 months and 2 years in prison, and a fine between BD2,000 and BD4,000[25] • Halt the commercial activity or close shop for no more than 1 year, and in case of repetition, revoke commercial registration[26] • Administrative closure of no more than 6 months[27] • Settlement[28]

20. The new law requires employers to provide written contracts to domestic workers, stipulates that workers must be paid at least once a month, imposes financial penalties on employers for late payments, etc. See: Law no. 36 of 2012 issuing the Labour Law within the Private Sector, http://www.legalaffairs.gov.bh/LegislationSearchDetails.aspx?id=2045#.ViOFiCu-FEUI; Alhasan 2012.

21. As of June 29, 2015. A similar summary prepared by the LMRA can be found here: http://www.legalaffairs.gov.bh/Media/LegalPDF/RLAB7207.pdf.

22. Decree Law No. 21 of 1980 amending the Aliens Immigration and Residence Act of 1965, Art. 1.

23. *Ibid.*

24. Law No. 19 of 2006 Regulating the Labour Market, Art. 36 (B).

25. Law No. 19 of 2006 Regulating the Labour Market, Art. 36 (A).

26. *Ibid.*

27. *Ibid.,* Art. 38.

28. Decision No. 75 of 2008 regarding the rules and procedures for settlement of crimes in violation of the provisions of the Law Regulating the Labour Market, Art. 2.

Table 5.2, continued

	Charging money from worker in exchange for issuing him a work permit	• Between 3 months and 1 year in prison, and a fine between BD1,000 and BD2,000, or either one; for repeat offenders, between 6 months and 2 years in prison, and a fine between BD2,000 and BD4,000[29] • Halt the commercial activity or close shop for no more than 1 year, and in case of repetition, revoke commercial registration[30] • Administrative closure of no more than 6 months[31] • Settlement[32]
	Employing worker without contract	• Fine between BD200 and BD500[33]
Visa Trader	Obtaining or maintaining work permit without needing it[34]	• Between 3 months and 1 year in prison, and a fine between BD1,000 and BD2,000, or either one; for repeat offenders, between 6 months and 2 years, and a fine between BD2,000 and BD4,000[35] • Administrative closure of no more than 6 months[36] • Settlement[37]

Government Policy toward Irregular Migration

Separate

If the text of the cabinet decision on February 23, 2015 to set up a ministerial committee on irregular migration is any indication of official policy, it is clear that the government's primary focus appears to center on isolating irregular migrants from locals, particularly in residential areas.[38] Three of the committee's four goals represented measures to implement the separation. Local residents, concerned in part with the downward pressure on property value that the presence of these migrants tends to generate, have repeatedly asked the government to prevent irregular migrants from relocating to their neighbourhoods.

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29. Law No. 19 of 2006 Regulating the Labour Market, Art. 36 (A).

30. *Ibid.*

31. *Ibid.*, Art. 38.

32. Decision No. 75 of 2008 regarding the rules and procedures for settlement of crimes in violation of the provisions of the Law Regulating the Labour Market, Art. 2.

33. Law No. 36 of 2012 issuing the Labour Law for the Private Sector, Art. 185.

34. Law No. 40 of 2014 amending certain provisions of Law No. 19 of 2006 Regulating the Labour Market, Art. 1.

35. Law No. 19 of 2006 Regulating the Labour Market, Art. 36.

36. *Ibid.*, Art. 38.

37. Decision No. 75 of 2008 regarding the rules and procedures for settlement of crimes in violation of the provisions of the Law Regulating the Labour Market, Art. 2.

38. Bahrain News Agency, February 2015.

As it stands however, the government is far from achieving a state of social separation. One challenge is to distinguish irregular migrants from regular low-skilled workers who often live in the same areas. However, both the press and the government tend to conflate the two categories and frame the policy of social separation as being addressed toward irregular migrants alone. That said, the overwhelming majority of migrant workers live in Manama and Muharraq, which house many Bahraini nationals as well.[39] A new law has been put before parliament that would allow companies to build labour camps for their workers near new industrial zones, thereby isolating them from local communities.[40] The law would also impose minimum standards and safety features for labour camps.[41]

Due to their low incomes and poor backgrounds, many migrants tend to live in relatively large numbers in downtrodden houses and ill-adapted buildings. This often results in fire and safety hazards, in addition to poor hygiene standards. According to the Ministry of Labour, only a minority of migrant workers – 150,000 approximately – live in any of the 3,000 registered labour camps. By contrast, 80% of all accommodation used by migrant workers are unregistered and plagued with building violations, according to the Ministry of Municipalities, often with devastating consequences for the health and safety of their residents. Twenty-six Bangladeshi workers were killed between 2012 and 2014 when buildings in which they were housed caught fire on three separate occasions.[42]

Control

Beyond a policy of social separation, the government has implemented remedial measures to limit or control the stock of irregular migrants present in the country at any given time. Measures have included

- *Biometrics* – In 2007, the LMRA introduced a biometrics system and began recording fingerprints of all migrant workers. Migrant workers' fingerprints are now recorded upon entry at the border and stored in a central database accessible to both the LMRA and the Ministry of Interior. The LMRA estimates that fingerprints for over 90 per cent of all migrant workers in the country have been recorded.[43]

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39. Al-Halwâji, *Al-Wasat,* January 16, 2013.

40. *Ibid.*

41. Townsend, Arabian Business, April 1, 2015.

42. *Gulf Daily News*, March 1, 2014.

43. Al-Dîn, *Al-Ayam,* February 19, 2011. The remaining 10% likely include irregular migrants

The use of biometric data at the border allows the authorities to detect with greater accuracy whether or not a migrant worker has entered the country before, and, more importantly, whether or not he has been expelled, especially since irregular migrants often attempt to reenter the country on a different identity. The LMRA also uses mobile fingerprint devices during its inspections, which pulls up the migrant's information on the spot. This allows inspectors to identify irregular migrants more effectively.[44]

- *Amnesty schemes*[45] – In vogue since the 1990s, amnesty schemes are widely used throughout the member states of the Gulf Cooperation Council (GCC) to encourage irregular migrants to leave willingly without facing criminal prosecution or paying the entirety of outstanding fees (Shah 2008, 7-8). The prior-to-last amnesty scheme to enter into effect, called the Easy Exit scheme, took place in 2010, with up to 8,000 irregular migrants coming forward to register.

  Outstanding fines on irregular migrants were waived, and irregular migrants were charged a nominal fee instead. The overwhelming majority of those who registered were Bangladeshis.[46] The most recent amnesty began on July 1, 2015 and lasted until December 31, 2015. It ended with more than 10,000 migrant workers in irregular situation leaving the country and 30,000 others regularizing their situation.[47]

- *Mass expulsion campaigns* – Mass expulsion campaigns are used by the government to maintain a cap on the number of irregular migrants present in the country at any given time, particularly those that decide against taking part in the Easy Exit schemes. This was the case in January 2011 when the LMRA launched a mass expulsion campaign and promised harsh penalties directly following the end of the 2010 Easy Exit scheme, adding to the amnesty programme's attractiveness.[48] In 2013, Bahrain launched another

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who have been in the country for a long time. Source: Personal interview with Mr. Aussamah Al-Absi, CEO of LMRA, October 1, 2015.

44. *Akhbar Al-Khaleej,* November 2, 2013.

45. For a further discussion on Kuwait's and Saudi Arabia's experience with amnesty programmes, see Shah 2014.

46. *Daily Tribune,* December 31, 2010.

47. ArabianBusiness.com.

48. Grewal, *Gulf Daily News,* January 1, 2011.

crackdown against irregular migrants, whose numbers were perceived as too high.[49] These campaigns were held before the LMRA was set up.[50]

Table 5.3: Number of deportations per year relative to the total population of migrant workers in Bahrain, 2011-2014

Year	Number of deportations[51]	Total Migrant Workers Population[52]	%
2011	13,560	458,060	3.0
2012	14,077	488,978	2.9
2013	15,954	514,156	3.1
2014	19,130	530,809	3.6

- *Regular inspections* – Over the past few years, the LMRA has significantly increased its inspection capacity and has doubled the number of inspectors at its disposal from 35 in 2011 to 72 in 2014. The LMRA reported roughly 20,000 inspections in 2013 and 2014.[53]

- *Companies' verification* – The LMRA and the Ministry of Industry and Commerce (MOIC) have cracked down on companies found to be employing irregular workers or unnecessarily maintaining work permits. In 2009, the LMRA and MOIC halted the activity of 12,000 commercial registrations out of 54,000 for failing to renew their workers' permits and visa (which puts them in an irregular situation).[54] The LMRA stated that 89 per cent of companies responsible for violations were SMEs, although this may require nuance.[55]

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49. Grewal, *Gulf Daily News,* June 6, 2013.

50. Mahdi, *Gulf News,* May 26, 2004.

51. Source: Ministry of Interior. Also see *Al-Wasat,* March 4, 2015.

52. Q4 data was quoted. Source: Bahrain Labour Market Indicators, Table A. Estimated total employment by citizenship and sector: 2004-2015. http://blmi.lmra.bh/2015/03/data/lmr/Table_A.pdf.

53. *Al-Ayam,* December 20, 2011; *Al-Wasat,* August 10, 2014, http://www.alwasatnews.com/4355/news/read/910617/1.html; Al-Ayam, March 4, 2015.

54. *Al-Ayam,* April 19, 2009.

55. *Al-Ayam,* March 4, 2015. Note: SMEs make up 99% of all registered companies in Bahrain, so compared to the baseline average, they are underrepresented when it comes to companies responsible for labour violations. Moreover, while SMEs may constitute the majority of violators, there is no indication as to whether they are responsible for the majority of

Prevent

While the government has mobilized a range of policy instruments aimed at controlling the stock of irregular migrants in Bahrain, it has so far failed to take meaningful steps to alter their flow.

- *Police and judicial action* – One way to do this is to enforce police and judicial action against violators, providing a disincentive against irregular migration. So far, however, it has failed to pursue "visa traders" who sponsor tens, if not hundreds of irregular migrants to enter the country and work illegally in a variety of jobs. It has also avoided targeting individuals and homeowners who, comprising a large portion of Bahraini citizens, hire irregular migrants on a temporary basis to perform a variety of tasks – doing so would prove politically challenging in practice. While the law imposes strict penalties against visa traders and employers of irregular workers, including time in prison, enforcement is difficult to assess.[56] The US State Department's *Trafficking in Persons Report* 2015 states that the Ministry of Labour handled 600 cases relating to labour law violations, although none were reported to pertain to visa trading or hiring irregular workers.[57]

  Several members of parliament and politicians have claimed that visa traders comprise highly influential businessmen and officials. This, they argue, explains the government's supposed reluctance to enforce the law against them.[58] In reality, it appears as though the only category of actors within the market of irregular migration targeted by police and judicial action on any significant scale are the irregular migrants themselves.

- *Market dynamics* – Another perhaps more effective mechanism to curb the flow of irregular migrants consists of altering the feasibility of irregular migration. The introduction of the LMRA significantly altered the dynamics of the irregular labour market. As discussed, it helped decrease the popularity of the "free visa" arrangement and prompted employers to terminate their employees' work permits instead.

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violations. See "SMEs Make up 99% of Bahrain-registered Companies," Bahrain News Agency, February 25, 2015.

56. See Table 5.2.

57. http://bahrain.usembassy.gov/news_from_washington/bahrain-trafficking-in-persons-report.html.

58. *Al-Wasat,* March 4, 2015.

Conclusion

Given the poor track record so far of separation and control policies in downsizing irregular migration in Bahrain, it becomes apparent that the government would have to deploy a serious set of preventive policies in order to curb the flows and alter the fundamentals of the market for irregular migration.

As far as visa traders, employers, and intermediaries are concerned, the government could provide a muscular disincentive against their bringing irregular migrants into the labour market, using targeted police and judicial action. When it comes to the irregular migrants themselves, the government could seek to render the arrangement financially unfeasible, mainly by raising visa fees beyond the workers' break-even point.

Some of Bahrain's top labour officials, specifically Mr. Aussamah Al-Absi, CEO of LMRA, envision fundamental changes to the labour market in the future. Emulating the model of most North American and Western European countries, Bahrain would impose strict border and entry controls, subjecting incoming migrants to stringent criteria and evaluation. Once migrants obtain legal residency and enter the country, however, they will integrate in a fully flexible labour market where they are free to switch employers and jobs, in a manner similar to nationals. Such a model, the argument goes, would eliminate migrants' dependence on their employers, afford them greater bargaining power, and decrease their level of precariousness, all key ingredients for irregular migration in Bahrain.[59] Admittedly, however, such a transformation of Bahrain's labour market remains quite farfetched.

Ultimately, the direction that government policy takes toward the labour market – and by extension irregular migration –depends on the government's interaction with private interest groups that hold a stake in the status quo. Beyond pure economic policymaking rationale, private interest groups have the ability to help shape government policy. The government's appetite to dispense the political capital necessary to manage and overcome these groups' resistance to shifts in policy could impact its ability to implement them successfully. To identify and understand these forces, and how economic gains from any policy shift would be distributed among them, it is important to analyse irregular migration and the labour market from a political economy perspective. This task is left for further research into the topic.

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59. Personal interview with Mr. Aussamah Al-Absi, CEO of LMRA, October 1, 2015.

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VI

Irregular Migration to and within Kuwait: Enabling and Sustaining Factors

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Nasra M. Shah and Lubna Al-Kazi*

Abstract: Kuwait has formulated a series of laws aimed at banning irregular migration, in terms of entering the country illegally, overstaying one's legal residency permit, or buying a residency permit to work for someone other than the employer. At the end of 2014, Kuwait was home to 103,154 non-Kuwaitis who had overstayed their valid residency permits. About half of the overstayers were domestic workers, mostly females. There were several "runaway" workers who had sought shelter at their embassies or in the government facility set up for females. There were also several persons – their numbers were unknown – employed by someone other than the sponsor. Interviews with 18 irregular migrants provided insights into the factors that lead to the emergence and prolonged stay of such workers in the country. First, informal networks are pivotal facilitators that initiate, protect and sustain irregular migration. Second, irregular employment reduces the recruitment cost for employers. Third, irregular migrants have very specific goals to be achieved prior to return. Four, irregular migrants are highly resilient and willing to take risks. Five, irregular status in some cases provides higher remuneration, combined with flexible arrangements for employers.

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Six, longer duration of residence in Kuwait provides social and linguistic tools to survive. A wide array of actors benefit economically and socially from the existence and perpetuation of the irregular migration phenomenon, including those who sell visas, intermediaries who arrange them, those who provide rental accommodation and family members who fulfill social obligations. This makes the implementation of existing laws very difficult.

Introduction

To map irregular migration in Kuwait, this chapter has three objectives: First, to provide a numerical estimate of the residents of Kuwait who may be defined as "irregular" according to various criteria, such as the validity of their residence permits and employment conditions; second, to outline the legal framework within which irregular migration may occur, highlighting the legislative and executive orders that define and regulate legal residence in the country; third, to discuss the experiences of several irregular residents who are in violation of the various laws and could be deported or jailed, if caught. The chapter is organised into two main sections. The first section outlines the major types of irregular migration within the context of laws and regulations designed to manage each type. The second section narrates the experiences of 18 migrant workers in irregular situations and identifies several common features that underlie the processes leading to irregular migration as well as the multi-faceted factors that enable the protracted stay of such migrants in the country.

Defining and Measuring Irregular Residents in Kuwait, and the Related Legislative Context

In mid-2015, Kuwait had a total population of 4,183,658 of whom about 69% were non-citizens (PACI 2015). The main reason for the large number of foreigners in the country centres on its labour force needs. Non-citizens comprise, primarily, migrant workers and the families of those workers earning a minimum specified salary. According to Article 1, Ministerial decree 2/1992, workers in the government sector must earn no less than KD450 and those in the private sector must earn no less than KD650 for being entitled to bring their wife and children with them. In actual practice, however, anyone earning a minimum salary of KD250 can obtain a visa for his wife and children. Employed women are generally not entitled to bring their spouses and children. Moreover, there is a limitation on the number of children (up to three) who can join the worker without the payment of a yearly residence fee.

At the end of 2012, of the 2,299,691 non-Kuwaitis with residency permits *(iqama),* 475,688 (20.7%) were residing in Kuwait on dependent visas (GLMM, Kuwait, Table MOV 2.3).

A non-Kuwaiti may enter Kuwait for the following specific purposes: visit, transit, work, to accompany a family member, or study. A total of 48 nationalities, mostly from developed Western countries, are granted visit visas on arrival at the Kuwait airport. Visitors from all other countries must be sponsored by a relative, friend, or a company. Any person who comes to Kuwait for employment must arrive with a work visa sent by the employer, who acts as the sponsor or *kafeel* for that person. Dependents of a worker are sponsored by the worker. Domestic workers are sponsored by the Kuwaiti (or non-Kuwaiti) employer who hires them. Thus, other than visitors from some countries, every non-Kuwaiti resident must have a sponsor, in the form of a company, an institution, or an individual. Once in the country, all non-visitors must obtain an *iqama,* which is generally issued for two years and is renewable, depending on the mutual agreement of the employer and employee. Once hired, the employee may change his job after a specified number of years and after getting a release letter from the previous employer. Detailed laws, rules and regulations are in place to manage the various forms of migrants.

Given this apparently well-defined system, how does a non-Kuwaiti become an "irregular" resident of the country? Four main types of irregular migrants may be identified: illegal entrants; overstayers; those in irregular employment situations; and runaways or absconders.

Illegal Entrants: In terms of illegal entrants into the country, no published data are available. However, this type of irregular migration is likely to be negligible in view of the generally non-porous and well-guarded borders that Kuwait shares with Saudi Arabia and Iraq. However, migrants may be cheated or trafficked in terms of being brought in legally but then being used for certain types of criminal or illegal activities, such as prostitution. Kuwait has formulated laws regarding Trafficking in Persons and Smuggling of Migrants to punish anyone involved in such activity. It states that "anyone who has committed the crime of trafficking in persons shall be sentenced to 15 years in prison" or lifetime imprisonment in cases such as when the smuggled person is a child or a woman (Law No. 91 of 2013). In response to some incidents of trafficking of women in the early 1980s, the Bangladesh government requested the Kuwait government to prohibit the issuance of work permits for Bangladeshi female workers, with the exception of doctors, engineers and teachers (Ministerial Order 83/1984). The extent to which the law on trafficking is being

implemented is unknown. As assessed by the 2014 Trafficking in Persons report for Kuwait, "The (Kuwait) government did not demonstrate efforts to prosecute nor convict trafficking offenders using the 2013 anti-trafficking law or other laws that address trafficking crimes" (US State Department 2014).

Overstayers: The legal system does not contain any provision for a non-visitor to remain in the country without a valid *iqama*. Doing so results in residency violation due to an expired *iqama*. Once a worker's employment is concluded, the employer (sponsor) must "cancel the work permit" and "bear the cost of the employee's repatriation" (Ministerial order 106/1994, article 16). The worker must cancel the residence permits of any dependents under his sponsorship. In some cases, an expatriate may be granted a temporary residence for up to one year for personal emergencies such as illness, or to settle a disputed court case. Also, a person may sponsor himself and obtain residence for up to five years if he fulfills several conditions such as having worked in Kuwait for at least 25 years, owning a minimum capital of KD10,000, producing a certificate of good conduct, effectively residing with his family, etc. Apart from these exceptions, a worker and his family must leave the country within one month after cancellation (or expiry) of the work permit.

If the *iqama* is not renewed prior to expiry date, the person immediately becomes an irregular resident and each day of overstay is subject to a fine of KD2 ($7). Periodic amnesties have been held to allow residents in an irregular situation to either regularise their status or leave the country without paying any fine. The last such amnesty was held from March 1 to June 30, 2011. According to the Ministry of Interior database, the country had 124,142 overstayers at the time that amnesty was declared. Of these, 45,689 (36.8%) either regularised their stay or left the country; almost 63% maintained their irregular status (Shah 2014a). In a previous amnesty held in 1998, 15,842 were regularised and 4,458 were repatriated (Shah 2009). Recently, a partial amnesty was declared for more than 33,000 residency violators who are registered with suspended companies. Such visa violators were granted a grace period from June 1 to August 1, 2015 to either transfer their work permits to other sponsors or cancel them to leave (*Kuwait Times,* May 26, 2015, Page 1).

Tables 6.1 and 6.2 show the number of residency violators (i.e., overstayers) for the years 2011, 2012, and 2013, according to nationality groups and type of residency permit, respectively. During each year from 2011-2013, the number of residency violators showed an upward trend from 5,695 in 2011 to 16,288 in 2013. In terms of the nationality group, Asians constituted about 76% in 2011 but declined to 65% in 2013. The percentage of Africans more than doubled from

about 9% to 21% from 2011 to 2013. More than half of the violators were domestic workers, their percentage increasing from 52% to 61% in the period 2011-2013. The second largest group comprised those working in the private sector.

Tables 6.1 and 6.2 also show the cumulative number of residency violators at the end of 2014 (including all previous years), amounting to a total of 103,154 persons. Almost three-fourths were Asians and about 16% were Arabs. In terms of the type of permit, about half (51.2%) of all violators were on a domestic service visa, 27.9% were engaged in the private sector and 13.8% had entered on temporary visas.

The concerned authorities conduct regular raids and checks of necessary documents at public places where expatriates gather, and in selected residential areas, especially where low-skilled workers reside. In 2011, 16,315 residency law violators were apprehended (GLMM Table IRR.1.2). Newspaper articles periodically report the number of those apprehended.

Table 6.1: Residency violators according to nationality group and year, 2011-2014 (Percentage)

Nationality groups	2011	2012	2013	2014*
Arabs	14.2	12.8	14.3	15.7
Asians	76.2	73.6	64.7	72.9
Africans	8.5	13.2	20.6	10.4
Europeans	0.2	0.1	0.1	0.3
North Americans	0.5	0.4	0.2	0.6
South Americans	0.0	0.1	0.1	0.1
Australians Oceanians	0.3	0.0	0.1	0.1
Other	0.0	0.0	0.0	0.0
Total (%)	100.0	100.0	100.0	100.0
Number	5,695	9,859	16,288	103,154

Source: Ministry of Interior, Kuwait.

* Total number of residency violators at the end of 2014, including 2011-2013, as well as all previous years.

Table 6.2: Residency violators according to type of residence permit and year, 2011-2014 (Percentage)

Type of permit (#)	2011	2012	2013	2014*
Temporary (# 14)	16.7	13.1	11.8	13.8
Government sector (# 17)	0.9	0.6	0.4	0.9
Private sector (# 18)	24.3	21.3	20.8	27.9
Business (# 19)	0.0	0.0	0.0	0.0
Domestic help (# 20)	52.2	59.2	61.4	51.2
Dependent (# 22)	5.8	5.6	5.5	6.0
Study (# 23)	0.0	0.0	0.0	0.0
Self-residence (# 24)	0.2	0.3	0.1	0.3
Total (%)	100.0	100.0	100.0	100.0
Number	5,695	9,859	16,288	103,154

Source: Ministry of Interior, Kuwait.

* Total number of residency violators at the end of 2014, including 2011-2013, as well as all previous years.

Those in Irregular Employment Situations: A probably much larger group of irregular workers consists of those persons who are employed by someone other than their sponsor, which is illegal. According to the 2010 Labour Law for the private sector, Article 10, "The employer shall be prohibited from employing foreign manpower unless the competent authority has granted them a permit to work for him." Also, "Employers shall not bring workers from outside the country or hire workers from inside the country, then fail to provide them employment at his own entity, or subsequently be found not to have an actual need for them." Furthermore, providing residence or work to anyone in an irregular status is illegal according to the Nationality Law of 1959, amended in Law number 6 of 2011, which prohibits "providing residence to or employing a foreign national whose residence in Kuwait is illegal. It also prohibits employing a foreign national sponsored by another employer for the duration of his contract."

In violation of the above laws, a sponsor may in fact arrange a residence permit for a worker not needed by him, in return for a fee. A Kuwaiti sponsor may "sell" a work visa (# 18 for the private sector) or domestic service visa (# 20) to a prospective worker, who is not really needed by him. A tacit understanding exists between the Kuwaiti sponsor and the non-Kuwaiti worker that the sponsor allows him/her

to work for someone else. This understanding has led to the prospective migrant considering this as a "free" or "transferable" or *azad* visa. Interviews with several such workers, reported in the next section, provide insights into the dynamics that are employed to obtain and renew such visas.

No one arranging employment for a foreigner is allowed to charge any money. This is true not only for individual sponsors but also for employment agencies. "Anyone licensed to operate an employment agency for private help or anyone working for him may not charge the employee any amount of money for his/her recruitment and may not retain him/her either directly or indirectly" (Ministerial order, 40/1992, Article 2). Art. 3 sets the penalties for violating the provisions of the order.

No published data are available on workers who may be employed illegally in terms of working for someone other than the sponsor and may have bought the visa from a Kuwaiti sponsor, or his/her intermediaries. Observation and experience suggests that this type of employment is rampant. In a survey of Asian male migrants in Kuwait conducted in late 1995, 14.6% said that they had come on a "free visa;" the percentage being 33.8% among the ones who came through friends and relatives (Shah 1998). In a small pilot survey to estimate the recruitment costs paid by migrants to Kuwait conducted for the World Bank in 2014, a question was asked about whether the interviewee was working for the same person who sponsored him. It was found that 22 of the 105 (21%) low-skilled workers reported that they were employed by someone other than the sponsor (Abella and Martin 2014; Shah 2014b). If this survey is reflective of the current situation in the country, the number of such workers in Kuwait might be fairly substantial, probably ranging between 15-20% of all workers, especially among the relatively low-skilled.

Absconders and Runaways: Another group of irregular residents results from absconding or running away from the employer. Although most runaway workers are female domestic workers escaping difficult situations, some male workers also abandon their jobs without the permission of their sponsor, resulting in an irregular status. Although the number of runaway workers is not known, such incidents have caught a great deal of media attention as well as vehement criticism from human rights agencies (Human Rights Watch 2008; Harroff-Tavel and Nasri 2013; US State Department 2014). Embassies of several countries, such as Sri Lanka, India, Philippines, and Nepal have been playing an active role in providing protection to runaway domestic workers by providing them shelter, mediating in conflicts, and arranging their return to the home countries.

The Kuwait government has also set up a shelter designed to assist up to 700 female workers in distress. The shelter provides accommodation, food, and health care and has arranged the repatriation of several workers. The shelter accepts a worker only if referred by an embassy or an international agency. Since the shelter was opened in April 2013, it has provided shelter and assistance to 1,970 migrant women (US State Department 2014).

A final group of persons who are defined as "illegal" residents by the government consists of the *bidun* (stateless persons without a nationality), estimated currently at about 100,000. Stateless persons have been a part of Kuwait's population since the country's independence in 1961. Until 1989, they were counted as Kuwaiti nationals and benefitted from many of the same privileges as Kuwaitis, e.g., free access to educational and health facilities provided by the government. Since 1989, the *biduns* have been designated as non-Kuwaitis for political as well as statistical purposes and have lost access to the various facilities provided free of charge to them earlier. The government contends that the *biduns* are in fact nationals of other, mostly neighbouring countries, who should reveal their original nationalities instead of trying to claim any rights of citizenship as Kuwaitis. The decision on the eventual status of this group is likely to emerge from political forces within the country, the discussion of which is beyond the scope of this chapter.

Case Studies of Irregular Workers in Various Situations

In order to gain insights into the multi-pronged dimensions that lead to an irregular status, we interviewed 18 non-Kuwaitis living in Kuwait in an irregular situation, in a language they could understand and speak comfortably (English, Hindi, or Arabic). A gender and nationality breakdown of our respondents according to type of irregular status is given in Table 6.3. The interviews were generally conducted at the home or office of the authors after due assurance about anonymity and safety of the respondents. Irregular workers were found through our networks. The real names of our interviewees are not revealed here.

Table 6.3: Gender and nationality of irregular workers interviewed in Kuwait, according to type of irregular status

Type	Name (not real)	Gender	Nationality
Overstayers			
1	Amir	Male	Bangladeshi
2	Umar	Male	Bangladeshi
3	Amina	Female	Bangladeshi
4	Lisa	Female	Filipina
5	Norma	Female	Filipina
6	Sara	Female	Somali
7	Abdulaziz	Male	Egyptian
***Kafeel* other than employer**			
8	Kamla	Female	Indian
9	Hari	Male	Indian
10	Kumar	Male	Indian
11	Maria	Female	Indian
12	Zeenat	Female	Bangladeshi
13	Nasser	Male	Egyptian
14	Nina	Female	Sri Lankan
Runaways/Absconding			
15	Mansi	Female	Indian
16	Sunali	Female	Nepali
17	Hassan	Male	Bangladeshi
18 Illegal second job	Emad	Male	Bangladeshi

Our interviewees were from different countries and included both males and females. A striking point gleaned from the interviews was the existence of several commonalities in their migration experiences. Several similar threads seem to typify their varied experiences and enable us to highlight some commonalities that characterise irregular migration in Kuwait. At least six such commonalities are worth noting and are elaborated here.

Commonality 1: Informal Networks Play a Pivotal Role in Initiating, Facilitating, Protecting and Sustaining Irregular Migration

Apart from the formal licensed agents who act as intermediaries in arranging the recruitment of many workers, the role of informal networks consisting of family and friends is pivotal in the irregular migration situation. Among our interviewees, migration to Kuwait was arranged and paid for by a close relative in at least six of

the 18 cases. Visas were arranged by a brother, sister, aunt, or uncle, all living in Kuwait, and buying the visa for a fee paid from their own pockets. The experience of Kamla, an Indian freelance worker who has been in Kuwait for the last 14 years, illustrates the role of networks very vividly.

> "My aunty (my father's sister) arranged for my visa and job in Kuwait. I was married and had two children but my husband was not good. My father pleaded with my aunty to arrange a job for me so that I could take care of myself and the future of my children. My aunty bought a visa from a Kuwaiti. I paid her back of course. I came after my younger son's second birthday. I was so sad. I lived with my aunty and worked at a parlour in the beginning. I have had the same sponsor for the last 14 years. I pay my Kuwaiti *kafeel* KD200 per year, plus KD10 for stamp. My aunty also arranged the visa for her sons and other relatives; five of my family members are sponsored by the same *kafeel's* family members; my *kafeel* is very good."

Amina, a Bangladeshi domestic worker, got her visa through her brother-in-law. But her brother-in-law left Kuwait and she did not know the *kafeel* to renew her visa. She came to Kuwait 20 years ago, when she was 18 years old and worked in the first house for five years. By this time her visa had expired and to get a sponsor she would have to pay a fine for the three years. Therefore she began to work without *iqama*. She has been working for a household for the past 10 years but they cannot arrange a visa for her without paying the fines. She sends all her income to her handicapped brother and is waiting to find a *kafeel* as she has not gone home for 20 years.

Hassan, also a Bangladeshi, came to work for a company through his uncle, who works there too. The employer made him work after office hours in his house so he ran away. Now for two years, Hassan has been working in a farm in Wafra and keeps enquiring if anyone can sponsor him. But he is afraid to pay in case the person cheats him. He even asked someone in the Ministry of Social Affairs and they said that visas for Bangladeshis are now no longer given.

Informal networks can also arrange employment for overstayers without valid *iqama* and can provide residential space. In the case of Umar, who came from Bangladesh nine years ago and worked in a Kuwaiti's home as a gardener and outdoor cleaner, he lost his job when the Kuwaiti hired someone else. He did not find another *kafeel* and overstayed his valid visa. In the meantime, Umar's relative, a foreman in a cleaning company, found him a job with his own company to work as a cleaner in a mosque in a walled compound. Umar has been living in the mosque

along with another compatriot who has a legal residence permit. Umar's relative gives him salary in cash (KD60 per month) from the company. Umar has not left the compound since he started working there. His friends help him with buying foodstuff and other necessities, as well as sending money home to his dependents.

Another overstayer, Amir, has been living in the apartment of a professional inside a walled compound for the last nine years. Amir came to Kuwait in 2005 on a visa that his brother bought and worked first as a helper and then as cleaner in a company. He had a disagreement and was fired by his company. Since then, he has been living in the walled compound in the maid's room provided in the professional's apartment. He not only works in the professional's house but cleans several cars inside the compound earning about KD150 per month. Amir has not left the compound in the last nine years. His friends help him by sending money to his family, buying him clothes and other necessities.

Sunali, a Nepalese runaway domestic worker, lives with her distant cousin in a partitioned apartment rented by some Indians. Like Sunali, another runaway domestic worker from Andhra Pradesh in India, Mansi, is living in a rented space with some people she knows from her hometown. They both work, illegally, in a private school as cleaners. Sunali came to Kuwait about four years ago and describes her transition into an irregular status as follows:

> "After two years instead of sending me home as agreed, my employer sold me to another Kuwaiti, who was a 'harami' (i.e., person with a bad character). He tried to grab me and abuse me sexually. I worked in that house for one month and left. I begged a taxi driver to take me to the Nepalese embassy since I was in great difficulty. I paid KD5 to the taxi driver. I stayed in the embassy for two months and then I left. There were 150-200 runaways at the embassy, both men and women. I left because the embassy could neither send me back nor do anything else. I left the embassy 9-10 months ago."

Abdelaziz, an Egyptian overstayer, came to work for a company in 2007. In just three months, the company closed down and the owners disappeared. He had some Egyptian friends, and since his visa was still valid they helped him find work as an office boy. But when his visa expired, the employer fired him. Since 2009, he has been working without an *iqama* as a Haris (for KD70) in a building along with one of his friends. He hides when inspectors from the Ministry of Social Affairs come.

Sara's story is sad and unusual. She could not have survived without network support from her family who also live in Kuwait. She was a nurse in the Kuwait

health ministry for 20 years starting from the 1970s. During the invasion, Sara and her husband, both Somalis, went back to Somalia. He wanted to live in Somalia, but life was too difficult for her so her sister in Kuwait arranged a visa for her in 1995 and she returned to work. Separation as well as stress caused by her husband led to a nervous breakdown and she locked herself at home. Both her passport and visa expired while her family got her psychiatric help. Now they are seeking mercy exemption for her on psychological grounds to get her a visa again as a dependent of her brother who also lives in Kuwait.

Lisa and Norma, both Filipino overstayers, live in a rented room and work for a man who is their friend. He is a partner with a Kuwaiti who sends them to serve guests at parties and funeral gatherings. He is paid KD10 per woman for the party and gives the women only KD5 each per event. The friend takes them to and from events, and as these events are usually in people's houses they do not get caught. The work is seasonal and they make the most money during Ramadan when women have parties. They get tips especially if it is a wedding or a funeral gathering. But they cannot go out in case the police stop them and deport them.

Commonality 2: Irregular Migration Reduces the Cost of Recruitment for the Employer

Networks can be used in a structured manner where an intermediary can, in fact, act as an informal agent on behalf of a company that wishes to hire foreign workers, reducing the cost of such recruitment. This is illustrated by the experience of Hari, who has worked in Kuwait for the last eight years. Currently, he works as a salesman in a company, but his visa is not sponsored by his company. He bought a "transferable" visa for KD530 and believes that he will be able to get release from his sponsor whenever he wants. On the side, he arranges the migration of workers from Andhra Pradesh, India, where he has links with several recruitment agents. Hari describes his role as follows:

> "An insider employee (agent) within the company (X) tells me how many workers of each kind are needed, on the basis of work visas that the company has obtained from the government. The company insider employee charges KD100 for this service from each prospective migrant. In addition, the employee charges KD80 for the ticket. The ticket money is, in fact, paid by the company, but the insider employee charges this amount to the prospective migrant. Once a match is found in India, I send them the work visa. I charge KD150 per migrant for this service. The money for me and the company insider is paid through "hundi" whereby the prospective migrant gives the

money in rupees in India and a trusted source gives me the money in dinars in Kuwait. The whole system works on trust and reputation. I have a very good reputation with agents in India."

When asked why the company hires the services of Hari, who is not licensed for such work, rather than a licensed recruitment agency, he explained that the company would have to pay KD350-450 per worker to the licensed recruitment agency and that can be saved by working with him. Also, the company insider cannot earn any money from transactions through licensed agents.

Kumar is a South Indian and works in a company where the sponsor is not his *kafeel.* On the side, he helps Kuwaitis get male workers for farms for KD100. He is reliable and so many Kuwaitis have got workers through him as it is quicker and less costly than going to an agent.

Similarly, by hiring Mansi and Sunali as cleaners, the school saves the cost of paying for their housing, health insurance, *iqamas,* and other expenses. Since these workers do not have a contract, the school would not acknowledge them as employees and would not protect them in case of a police raid.

Commonality 3: Irregular Migrants Have Very Specific Goals They Wish to Achieve Prior to Their Return

Most of our interviewees were able to specify in detail what they wish to accomplish as a result of their sacrifice and hard work in Kuwait. Educating their children was a common goal among men as well as women from different countries. Building a house was another common goal. However, prior to their return to their home country, they wanted to put in place plans to secure their own future. For example, Kamla clearly describes her vision of her future life in India:

> "I will live and work in Kuwait for another four years. As soon as my children's education is completed, I will go back to India. I have saved one lakh rupees in my NRI account and will use 50,000 to open a parlor and 50,000 to buy readymade clothes to sell in the parlour as a side business. My main aim is to get a good education for my children. I will not stay in Kuwait even if I have citizenship. How can I live without my children and relatives? India now has good work opportunities. So I will go back."

Similarly, Hari wishes to establish a dairy farm with 10-15 cows, which he estimates will cost 10 lakh Indian rupees. And, Amir is already buying land for orchards that he wants to own when he returns.

Zeenat, a Bangladeshi, works as a cleaner in a school but is not on the school's sponsorship. She pays KD600 every two years and has been with same *kafeel* for seven years. She says he is very nice and does not delay getting her papers done. Her daughter is now in a technical college and her son is in his last year of school. She plans to work till they finish their education and then go back home. Zeenat describes her situation as follows:

> "My husband, who was with me, cannot see and therefore went back; so my salary is paying for my children's education. I don't want them to be like me with no degree."

Despite the relatively clear vision for the future and a timeline that appeared quite firm at the time of our interview, it also seemed that this timeline could shift forward quite easily as the plans of migrant workers became more expansive. In some cases, such postponement was motivated by unforeseen circumstances, such as Kamla's son getting admitted to a Doctor of Pharmacy programme that will take another six years to complete, or the wastage of some of the money that Amir sent home for buying the orchards that was used up by his brother.

Commonality 4: Irregular Migrants Are Highly Resilient and Are Willing to Take Serious Risks

We found that our respondents were generally willing to work for very long hours with the common goal of earning (and saving) as much money as possible prior to their return. Female domestic workers were willing to take up any tasks ranging from cleaning floors and windows to cooking, massaging, babysitting, and parlour-related work such as waxing, threading, and facials. Consequently, a worker may have up to 20 or more employers engaging her for specific tasks and paying her on an hourly basis for each task performed. Those cleaning cars (usually males) may spend many hours cleaning as many cars as they are able to get.

Engaging in a second job after 8-12 hours of duty by some workers is a vivid example of the resilience of some of these workers. Emad, a Bangladeshi worker with a cleaning company, held a regular job involving 12 hours of duty from 5 am to 5 pm. He then worked at a second job in a from 8 pm to 5 am the next morning. He took only one day off. The second factory job was illegal since he was not certified to work in that factory and could be deported, if caught. However, he was able to double his salary by working at the second job.

The risk of deportation is a real and serious danger that irregular workers face. Thus, the overstayers are careful to avoid public spaces. The continued residence of

Amir in an irregular capacity despite the last amnesty declared in 2011 illustrates the degree of risk that these workers are willing to take to fulfill their life plans. When asked why he did not regularise his status or leave, Amir responded that he was in Kuwait to earn more money to enable his future settlement in Bangladesh. However, Amir had a clear plan about what he would do when he was ready to return, based on information and experiences of friends and relatives he trusts.

> "Once I decide to go back I will buy a ticket, go to the police and tell them I want to go. They will put me in jail for 15 days, or one to two months, and then they will deport me. I cannot come back for five years once I am deported. However, that does not matter since visas for Bangladeshis are banned anyhow. I will not have to pay a fine if I am deported."

Commonality 5: Irregular Status Provides More Lucrative Remuneration than Regular Status for Some and Flexible Terms for Employers

Since the primary motivation of most workers, especially low-skilled ones, is to earn the largest amount of money in the shortest possible time, several of them opt for irregular employment. For example, Nana, a Sri Lankan domestic worker is employed in four different homes and earns KD200-210 per month. If she were employed in a private home with legal sponsorship, she would earn only KD60-70. Thus, the risk of being defined as illegal by the authorities is worth the financial benefit accruing from this. Kamla, who performs more varied activities and works in more homes than Nana, earns about KD250-300 per month, equivalent to the salary of a mid-level clerical or sales worker.

Maria came from Goa, India, on a visa she bought from a *kafeel* 15 years ago. She has been working as a babysitter for a British family, from 7 am-2 pm; the employer is a teacher. She works as a cleaner in the house of another expatriate in the afternoons. Maria prefers her working and visa arrangements and said:

> "This way I earn KD150 and I can go home and rest in my room. I am in control of my life. I see my *kafeel* every two years for visa renewal, and I have no problems with him and I give him no problems."

In addition to the benefits for the worker, the availability of part-time freelance workers provides an efficient and convenient source of finding help, especially for non-Kuwaitis who usually live in flats that do not have space to house a domestic worker, or the requisite income to sponsor a domestic worker. By using a freelance worker, the employer saves a considerable amount of fees (usually KD800-1,000)

that he would have to pay to bring in a live-in worker through a recruitment agency. The employer can also maintain the privacy of his living space and avoid the responsibilities he would have had if he had a live-in worker. Thus, the incentives for hiring part-time workers are very attractive.

Commonality 6: Longer Duration of Stay Provides Social and Linguistic Tools to Negotiate the Host Country Environment

A majority of the irregular workers we interviewed had been living in Kuwait for more than five years. Most had learnt some basic Arabic to converse with their employers and others and had developed extensive social networks that could be relied upon in many different situations. For example, despite his own irregular status and confinement to the compound, Amir has built enough network resources to have recently arranged a visa for his brother to come and work in a cleaning company. Amir has spent more than KD1,000 on buying the visa and bringing his brother to Kuwait where he will initially earn KD60 per month. He accomplished this through a relative who works as an unlicensed agent and is able to arrange visas for those seeking one.

With a longer duration of stay, migrants develop friendships that make the absence of their own family less painful. They also engage in religious and social activities centering around the church or mosque and become comfortable with the physical environment of the country. They usually learn enough Arabic to get around and communicate with (potential) employers and others, as needed. Several feel that Kuwait is home and they miss it when they go on a holiday.

Conclusion: The Laws, the Regulations, and the Reality

In an earlier section, we highlighted various laws and Ministerial Orders designed to prevent and punish irregular migrants. However, our interviews with 18 irregular migrants clearly indicated that such laws are being commonly violated. Friends, relatives and countrymen find ways to employ, house and feed those who had overstayed their valid visas, in violation of Law No. 6 of 2011. The authorities in charge of nabbing and deporting irregular workers have been able to do so only in a minority of cases. *Kafeels* and informal agents, acting as middlemen, were charging money for issuance and renewal of *iqamas* in violation of Ministerial order, 40/1992, Article 2. Migrant workers were either working as freelance workers or were employed in various capacities by employers who were not their sponsors in violation of Article 10 of the Labour Law, 2010. The following general conclusions may be drawn from the insights we gathered in this study.

First, our interviews with many different types of irregular workers vividly highlight the complexity that underlies the social relations that enable the origin, growth and sustenance of irregular migration. These social relations hinge around many familial efforts to secure a better future, perhaps a brother or sister helping his/her sibling, a mother striving to educate her children, a worker trying to build a house, arrange for his sisters' marriage, or support his aging parents. Migrants who have dreams to secure and maintain such a future are willing to pay a price both in terms of money to secure employment and endure hardships in Kuwait. On the other hand, the profit motives of the middlemen (in Kuwait as well as in the home countries) and the Kuwaiti sponsors, keep on fuelling the demand for this market in view of the abundant supply of workers in relatively less affluent countries.

Second, this study reaffirms the difficulty that irregular migration poses for the agencies responsible for eliminating it. The six commonalities that we highlighted from our interviews show that several irregular migrants are not helpless victims. They choose certain alternatives, such as working on a freelance basis rather than for a single employer, to maximise the gains from their move. They have fairly well defined goals that they wish to accomplish and are willing to take the risks this involves. A whole range of actors attain financial benefits by facilitating irregular migration: Kuwaiti sponsors by selling visas; apartment dwellers by sub-letting rental space; intermediaries by charging recruitment assistance fees; employers by a reduced cost of hiring workers, etc. At the same time, social and familial benefits are gained by aiding the migration of kin and countrymen. Thus, a wide-ranging system of mutual benefits constituting win-win situations exists. Several of our respondents with valid *iqamas* they had bought from Kuwaiti sponsors were very happy with the arrangement (and treatment by) with their sponsors. Thus, in circumstances where the migrant worker and his sponsor/facilitator/sustainer/protector are of one mind in terms of enabling the irregular situation, policies to eliminate this are indeed hard to formulate and implement.

Third, the runaways and overstayers appear to be faced with more vulnerable circumstances than the ones with *iqamas* from a sponsor other than the employer. The former group frequently transition from a regular status to an irregular one, a situation where they have little or no negotiating power in most spheres of life. The "free visa" holders are probably better informed and have relatively more flexible work and life conditions. The runaways and overstayers do not have any valid papers, are highly restricted in terms of physical as well as income mobility, and are always in fear of being apprehended by the police. In addition, many of the runaways are likely to be female domestic workers. As shown in this chapter, about half of

the 103,154 residency violators in 2014 were domestic workers. Only a handful of these violators are being provided shelter and assistance by their embassies, or the government shelter, while the rest are likely to be faced with situations similar to Amir, Sunali, Mansi or others in our study.

Finally, it is clear that any simple policy based on apprehending and deporting irregular migrants is likely to barely skim the surface of the problem, as shown by the disappointing response to the last amnesty in 2011. There is an urgent need to analyse and comprehend the mechanisms and pathways that result in the transition of a migrant in a regular situation to an irregular one and address the root causes that underlie such a transition. Policy measures should also recognise the differences between the various categories of irregular migrants such as runaways and "free visa" workers. Formulation and implementation of a labour law for domestic workers would also be an important part of these efforts. In the case of "free visa" workers, a more flexible management of the labour market may help in curbing irregularities. For example, if freelance work in selected sectors was legally allowed, people like Kamla would not have to live in fear of being apprehended while on her way to attend church services or to the home of an employer who is not her sponsor. There is a need to reduce the worker's vulnerabilities in the workplace by ensuring safe and humane working conditions and regular payment of wages and to provide protection against abuse, when needed. Thus, a deeper and objective understanding of the reasons for the existence of irregular migration is necessary for meaningful policies to address this problem and eventually minimise its prevalence.

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VII

Irregular Migration in Oman: Policies, Their Effects and Interaction with India

*Jihan Safar and Mélissa Levaillant**

Abstract: Omani newspapers regularly report cases of undocumented migrants being caught or deported by the police during crackdowns: these crackdowns have been ongoing since the social unrest of 2011 and were intensified by April 2014. In 2015, following several raids, conducted by the Ministry of Manpower's joint inspection team with the Royal Oman Police (ROP), a period of general amnesty was announced. It was implemented from May 3 till October 28. The issue of irregular migration has, therefore, raised serious concerns among Omani decision-makers, especially in the context of the nationalisation process, which has been active in Oman since the early 1990s. Yet, strangely, there has been no study so far on this issue in Oman. This chapter will fill this gap to some extent by examining the evolution and efficiency of the policies and measures adopted in Oman and the interactions with the sending countries, with particular reference to India. The study will first describe the possible complexity of irregular situations in Oman, which relate to a variety of statuses. It will then highlight the structural factors in Oman and India that contribute to the persistent irregularities among migrants. Lastly, it will give an overview of how Omanis and Indians

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cooperate on irregular migration by analysing the 2015 amnesty in Oman. The empirical portion of this chapter is based on twelve qualitative interviews conducted mainly in Muscat in May-July 2015. Interviews were conducted with key representatives at the Omani Ministry of Manpower and the Indian embassy who were likely to provide information on the migration system and the amnesty programme as well as with key Indian informants who knew about the amnesty's implementation and evaluation (which took place during the authors' stay in Oman).

Patterns of Irregular Migration in Oman

Composite Categories of Migrants in an Irregular Situation

The notion of irregularity relates to ill-matched public perceptions. In official terms, undocumented workers are, indeed, designated as "non legal labour" [*al 'umâlaghayr al shar'iyyîn*] or as "violators of the Labour Law" [*mukhâlifîn li qanûn al 'amal*]. Other expressions are also negatively tinged, such as the word for foreign manpower *"al sâ-i-ba",* meaning those "persons released out of nowhere, who celebrate and have fun [*tafrahwatamrah*] without a *kafeel.*"[1]

Beyond this negative view of foreign workers, it is important to stress the complexity of irregular situations in Oman and the many ways in which a migrant may acquire an irregular status.

Infiltrators [**mutasalilîn**]**:** Most migrants smuggled into Oman enter via the north and south coasts of Al Batinah. The increasing presence of security authorities, especially in industrial areas and farms, brought down the number of infiltrators by 43.3%, from 8,619 in 2013 to 4,884 in 2014.[2]

Violations of Visa Status: Overstaying the valid visa period is one way of falling into irregularity.[3] The fine imposed on a person who overstays is OMR20 per month, paid to the Immigration Department. After 25 months of delay, the fines rise to OMR500, and they remain at this level immaterial of how long the person has stayed in the country. Undocumented workers need to pay OMR19 to the Ministry of Manpower for every month of delay. As a consequence, all workers who become undocumented would prefer to stay in Oman and wait for an amnesty, as

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1. Interview 1.

2. *Gulf News,* May 24, 2015.

3. Visa validity for a worker is two years.

> "They know that at least every two or four years, an amnesty will take place and they will go back home. By this time, they will have the opportunity to extend the working period and earn additional money."[4]

Irregular situations may also arise when the sponsor fails to renew the labour card or visa of his worker and to pay the required fees. In normal cases, the employer has to pay OMR200 for the visa renewal every two years and a fee of OMR50 per month in case of non-payment. Finally, other cases of violation of the Labour Law relate to migrants working with a tourist visa, a dependent (family) visa or a "short visa," along with other residency law violators.

Absconding workers: Workers often abscond because of exploitation, unfair treatment and abuse, or simply because they want or have been offered better working conditions elsewhere. The sponsor also might not have met the rules of the contract: salary specified in the contract, working hours, and provision of proper shelter or food, for example. As the *kafala* system makes it difficult for workers to legally change employers during the contract period, exploited migrants (or opportunists) have little choice but to escape. Runaway migrants usually go to areas like Hamriya (a street in Muscat), where they can find a "free visa" job through their personal networks, typically paid on a daily basis.[5]

Absconding workers are usually reported to the police by their sponsors who fill out an absconding file [*balâghhurûb*]. An absconding worker is punishable under Omani law and has to pay OMR400, even if he or she absconds only for a week. In the case of an amnesty, the worker has simply to arrange a return ticket which would cost around OMR100.

The "free visa" system: Other undocumented workers include those who come to Oman with a "free visa." In such a case, the worker pays regular fees to his sponsor (who only takes care of the residency and employment visa). However, the worker might at the same time choose to work for another employer, and not the one who hired him legally. Many migrants do not actually realise that these visas are illegal. Sponsors might, in fact, bring workers to Oman without having definite jobs to offer.

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4. Interview 2.
5. In the "free visa" system, the expat gives a monthly payment to his sponsor who then allows him to work for another employer.

"Interestingly, if a sponsor has 10 labourers who are paying him monthly 20 rials each, he will then earn 200 rials per month and he does not have to provide them with any facility or service, like medical care, shelter, food… nothing, he is just making 200 rials monthly."[6]

While sponsors who sell "free visas" to migrant workers are rarely held accountable, the workers concerned are considered to be illegal and face the risk of being jailed for a month, in addition to paying a fine of OMR400-800. In some cases, an employer may also compel his employee to work in another job for him so as to get some extra profit. A journalist records, in a metaphorical way, the story of workers employed in jobs different from the ones mentioned on their labour card:

"A lion was brought to Dubai and put in a cage there. The manager would give the lion some bananas in the morning and in the evening; he would give him the same food every day. So the lion got upset and called the manager: 'I am the king of the jungle, you are serving me bananas and apples, don't you know I eat meat.' The manager answered: 'You might be the king of the jungle, but you are here on a monkey visa, so you are supposed to be served only bananas and apples!"[7]

Workers with a "free visa" also run away when they cannot afford to pay a monthly fee of OMR20-30 to their sponsor, and this usually happens when a worker does not find a job. As the worker has to renew this "free visa" every two years, he (or she) thus becomes undocumented when he ends the relationship with the official sponsor and is not able to renew his visa. Most runaway workers, therefore, wait for an amnesty, knowing that "it is impossible to find another sponsor" and as they are unable to pay the required fees to regularise their situation.

In addition to "voluntary" runaways, "fictive" runaway are subterfuges from the *kafeel*. There are other practices that reveal the complexity of defining the situation of irregular migration. In order to avoid paying the OMR2,000 fine for the violation of the worker's license, a sponsor might declare to the authorities that his worker has run away. When the moment comes for the renewal of the worker's visa, he will declare again that his worker just came back.

A former inspector reported another case of subterfuge, explaining how the *kafeel* might transfer a monthly salary to his worker's bank account[8] to prove that

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6. Interview 2.

7. Interview 2.

8. Interview 3.

the migrant actually works for him and not under a "free visa" for another employer, while the debit card would be kept by the sponsor, thus preventing the worker from debiting his account.

Data on Undocumented Migrants

Foreign Population in Oman: General Remarks

The number of foreign workers in the Sultanate reached 1,631,560 in July 2015,[9] with the largest portion of expatriates working in the private sector. Most were male and Indians[10] were the most numerous nationality (Table 7.1).

Expatriate workers are concentrated in the construction sector: 38% of all expatriate labourers work in construction.[11] As for their education level, most expat workers had preparatory school certificates. Most of the expatriate workforce is to be found in the Muscat Governorate, Al Batinah North and Dhofar (Table 7.1).

Table 7.1: Characteristics of the expatriate population

		Total	Male	Female	Changes% June/July 2015
by Nationality	Indians	641,225	606,499	34,726	1.0
	Bangladeshis	561,301	532,869	28,432	0.3
	Pakistanis	216,167	215,001	1,166	0.3
	Ethiopian	28,099	258	27,841	-3.3
	Indonesian	37,264	620	36,644	-2
	Filipinos	32,482	10,795	21,687	0.6
	Egyptians	22,810	18,186	4,624	
	Nepalese	12,892	9,507	3,385	0.5
	Sri Lankans	14,252	6,839	7,413	1.4
	Other Nationalities	65,068	41,603	23,465	0.8
by Sector	Government	59,466	38,891	20,575	-0.2
	Private	1,318,760	1,288,649	30,111	0.6
	Family	253,334	114,637	138,697	0.2

9. The total population in the Sultanate reached 4,170,556 in July 2015 (2,350,860 Omani and 1,819,696 expatriates) (NSCI 2015). Expatriates constitute around 44% of the total population.

10. Historically, most Indian expatriates in the Gulf come from the state of Kerala, followed by the southern states of Tamil Nadu, Karnataka and Andhra Pradesh. Nevertheless, in the last decade, there has been a rise in emigration from Bihar, Madhya Pradesh, Rajasthan and Uttar Pradesh. Bihar has been, since 2012, the leading source state of emigration from India.

11. In July 2015, 618,820 expatriates were employed in the construction sector (NSCI 2015).

Table 7.1, continued

by Governorate					
	Muscat	734,970	655,323	79,647	0.8
	Dhofar	177,965	162,568	15,397	0.3
	Musandam	13,910	12,740	1,170	0.9
	Al Buraymi	47,835	40,527	7,308	-0.2
	Ad-Dakhiliyah	91,061	77,987	13,074	0.2
	Al Batinah North	209,643	183,007	26,636	0.1
	Al Batinah South	920,38	79,389	12,649	0.7
	Al Sharqiyah North	84,619	73,293	11,326	0.2
	Al Sharqiyah South	84,318	76,305	8,013	-0.1
	Ad Dhahirah	48,001	41,094	6,907	0.1
	Al Wusta	17,888	16,933	955	-0.3
	Not Stated	29,312	23,011	6301	0.8
by Educational level	Illiterate	21,538	19,260	2,278	0.6
	Reads and Writes	426,816	376,881	49,935	0.4
	Primary	148,012	128,382	19,630	0.9
	Preparatory	599,831	532,873	66,958	0.5
	Secondary	248,123	230,919	17,204	0.9
	Diploma	52,876	43,851	9,025	0.0
	University	91,58	76,015	15,565	-0.3
	HigherDiploma	4,86	4,106	754	-0.7
	Master degree	5,816	4,725	1,091	-0.5
	PhD	2,748	2,109	639	-0.3
	Not stated	29,36	23,056	6,304	-0.8
	TOTAL	**1,631,560**	**1,442,177**	**189,383**	**0.5**

Source: Monthly Bulletin August 2015, NSCI.

Data on Undocumented Workers

Data on undocumented workers are difficult to obtain, as local authorities do not publish accurate and updated information. Though incomplete and underestimated, recent data on arrested, deported and absconded workers have been published by the Ministry of Manpower. These data do not take into account other types of undocumented migrants: e.g., migrants who are not arrested but take advantage of the amnesty to get regularised. During the amnesty period, foreign embassies also produced data on undocumented workers who were registered for an amnesty.

Number of Arrested and Deported Migrants

Crackdowns on irregular migrants have intensified since 2012 (Figure 7.1), leading to an increase in the number of arrested workers and deported migrants. This has been accompanied by an increase in inspection teams since 2007 and especially in 2012, when more than 100 new labour inspectors [*mufatishîn*] were recruited. In addition, the Ministry of Manpower has recruited more inspectors, as "this is inevitable in view of the economic growth and the call for more foreigners in the country."[12] Also, as part of the Ministry of Manpower's policy, inspection visits and re-visits to companies are regularly carried out to check and organise the labour market, in addition to the organisation of "awareness workshops" [*wirashtaw'iya*].[13] These measures help establish a "sentiment of fear" and increase the responsibility of employers and employees.[14]

Figure 7.1: Number of arrested and deported workers
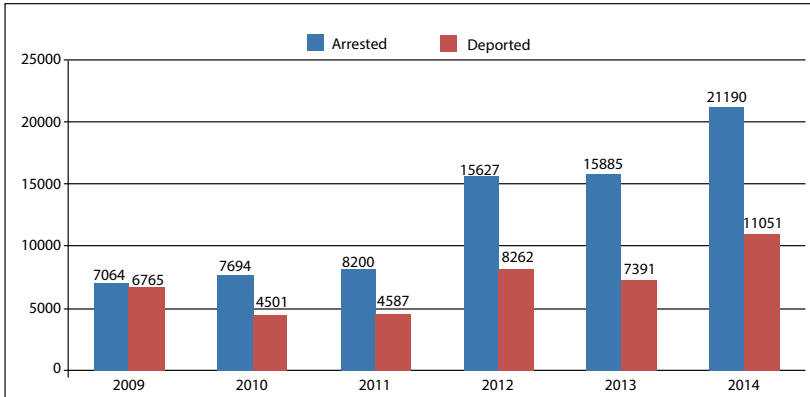
Source: Ministry of Manpower, Annual Report, 2014.

In 2014, out of 21,190 arrested migrants, Muscat saw a total of 10,111 migrants arrested, followed by the Al Batinah governorates (North and South) (Figure 7.2). Despite the fact that each region has its own directorate and team of inspectors, the number of inspections is actually less than in Muscat and "some time will be needed to have well established structures in the other regions."[15]

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12. Interview 5.
13. Interview 3.
14. Interviews 3 and 4.
15. Interview 7.

Figure 7.2: Percentage of arrested migrants by governorates
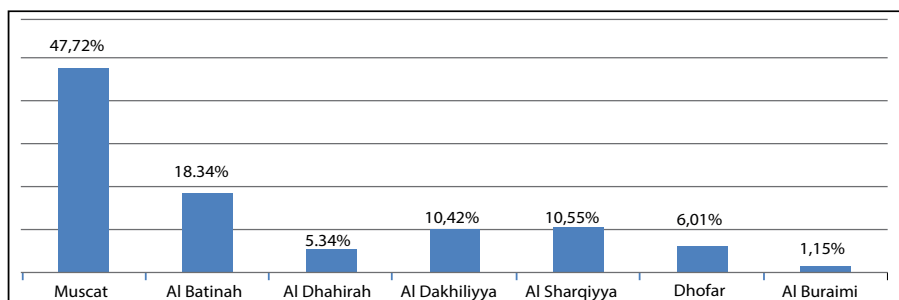
Source: Ministry of Manpower, Annual Report, 2014.

In terms of nationality, 59% of arrested foreign workers were from Bangladesh, 20.8% from Pakistan, 12.5% from India and 7.7% from other countries (Figure 7.3).

Figure 7.3: Number of arrested workers by nationality
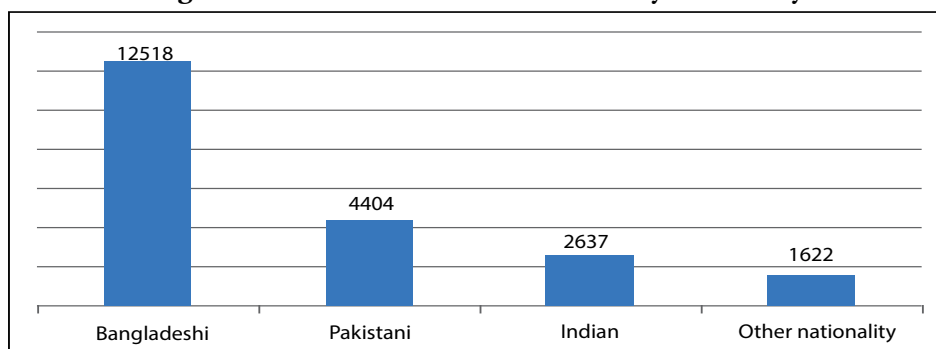
Source: Ministry of Manpower, Annual Report, 2014.

The percentage of Indians arrested in Oman has decreased from 17.5% of the total arrested expatriates in 2012 to 12.5% in 2014. By contrast, there has been an increase in illegal workers of other nationalities, especially Bangladesh. The percentage of arrested Bangladeshis grew from 45.2% in 2013 to 59% in 2014. The experience, the maturity and the high level of organisation of the Indian community are some of the reasons that explain the decrease in irregular migrants. We might, indeed, note a change in the attitudes and the behaviour of Indian workers, particularly regarding "visa trading." Indians are now increasingly refusing to buy a visa (around OMR700-1,000) through brokers, as they are aware that this is not a guarantee for obtaining a job and that this would force them into irregularity. For this reason, visa trading is used more by Bangladeshis, who have less experience in such affairs.[16]

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16. Interview 7.

In 2014, of the arrested workers, 17,546 were commercial workers in first to fourth grade companies.[17] Only 3,644 were private service workers (housemaids, farm workers, etc.) (Figure 7.4).

Figure 7.4: Percentage of arrested by work type
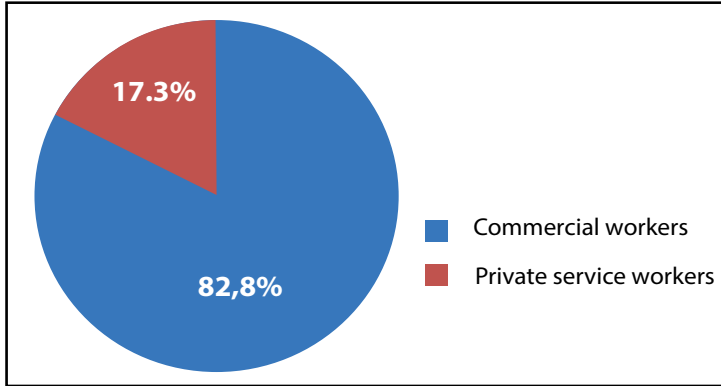
Source: Ministry of Manpower, Annual Report, 2014.

Among the illegal workers arrested in 2014, 9,158 were runaways, 9,022 were absconding workers and 3,010 were workers without a labour card (for e.g., on a tourist visa) (Figure 7.4).

Figure 7.5: Categories of arrested workers
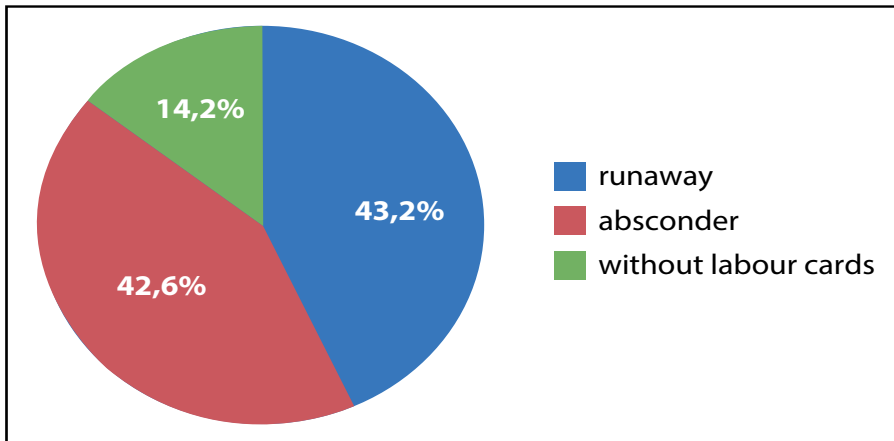
Source: Ministry of Manpower, Annual Report, 2014.

17. The registered companies are classified into 1) "Big companies" (International; Consultancy; Excellent; and First Grade), which employ 95% of the Omani workforce; and 2) "Small and Medium Enterprises" (Second, Third and Fourth Grade). The number of expatriate workers allowed depends on the grade of the company: 15 workers (Fourth grade); 30 workers (Third grade); 45 workers (Second grade) and 60 workers (First grade).

Data on Absconding Workers

In the first six months of 2015, official data showed "an alarming figure" of 57,420 workers who had absconded from their employers.[18] Absconding workers made up 8% of the foreign workforce and 3% of the expatriate population in the country.

A recent study showed that out of the 42,900 absconders (registered during 2010, 2011 and 2012), 63% were commercial workers and 37% were private workers.[19] More than half of the sample was between 26 and 35 years old, and 41.1% were low-skilled workers. Among the commercial workers, 72.8% ran away because of low salaries and for a better income. For 71.3% of the employers, their workers ran away because they found a more profitable job. Also, 45.7% had been working for their employer for less than one month.

The Unintended Effects of Regulations on Migration to Oman

We must now look at two structural factors that explain the growing irregularities in the Omani labour market, both in terms of the host and the sending countries. While analysing the case of India's emigration governance, we will also show the failures of national regulations in the management of irregular migration on both sides of the system.

Structural Issues in Oman

Though it relies on a foreign workforce, Oman faces a high rate of national unemployment, particularly among the young. This issue was one of the main triggers of the political uprisings in 2011-2012, which puts some light on the negative perception of expatriates among the Omani population. In fact, the growing flow of foreign workers to Oman has generated among the locals a "fear of becoming a minority like other Gulf countries."[20] Popular resentment is particularly oriented towards irregular workers, who are considered as being responsible for several socio-economic issues and are increasingly being criminalised. As a consequence, the integration of national citizens into the labour market is an important social, economic and political challenge for Oman.

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18. *Times of Oman*, July 20, 2015.
19. Ministry of Manpower 2013.
20. Despite all the steps taken by the state, the proportion of foreigners did not decrease. "The number of Indians, Bangladeshis and Pakistanis, the three main nationalities in Oman, has increased, whereas the number of Europeans and skilled Asiatic did not increase in the same way. This situation is not contributing to real economic growth" (Interview 8).

Since the 1990s, the Omani government has tried to expand the proportion of national labour, both in the private and public sectors.[21] The government has imposed several restrictions on the recruitment of foreign workers in certain sectors,[22] through the implementation of quotas and the reservation of jobs, while at the same time trying to create market incentives for nationals.[23] The Omanisation policy was quite successful in the 2000s as it led to increasing the number of Omanis employed in the private sector by 138%, from 2003 to 2010.[24] This policy has, nevertheless, stalled since 2011, mainly due to the opening of new posts in the public sector in early 2011 and the creation of an unemployment benefit for nationals. Due to the better conditions of work offered in the public sector, the young have shown a strong preference for government jobs. The year 2014 saw a very high turnover among the national workforce, with around 89,301 nationals leaving their jobs.[25] At the end of that year, Omanis made up only 13.1% of the workforce in the private sector.[26] At the same time, the employment of foreign workers in the private sector has continued to rise and the number of undocumented migrants has increased as well.

The interventionist policies of nationalisation adopted by the government of Oman have been constrained by this imbalance between nationals and expatriates in the private sector, combined with a migration regime that provides the employers with access to cheap international labour. In this context, the private sector companies are willing to bypass the mandatory hiring of Omani nationals that has been imposed on them. This is illustrated in the many cases of phantom employment of nationals and the informal hiring of expatriates. In addition, a recent study reveals that Omanis are unlikely to take up the 88.5% of the jobs held by the expatriates, mainly in the construction and service sectors.[27] As a consequence, bans imposed in these sectors can lead to an increase of workers in an irregular situation.

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21. De Bel-Air 2015.

22. Several professions and occupations have been reserved exclusively for Omani citizens: cashier, security official, lawyer, accountant, TV cameraman, typist, electrician, taxi driver, director of human resources, marketing or customer service, etc.

23. For example, the government has increased the minimum wage for nationals in the private sector from OMR120 to 324 since 2013.

24. Oman faces a high rate of unemployment among locals. This issue has significantly contributed to locals' negative perception of migrants in an irregular situation.

25. Ministry of Manpower, 2014, p.37.

26. *Times of Oman,* July 11, 2015.

27. *Times of Oman,* June 20, 2015.

A recent incident at Muscat International Airport offers an example. More than 1,000 Bangladeshis were caught working for a construction sector company that was not mentioned on their card.[28] The majority of these arrested workers had been recruited by sub-contracting agencies.

Finally, "masked" or hidden commerce [*al tijâra al muqana'aor al mustatira*] represents another obstacle in the regulation of the labour market. This refers to an irregular situation in which the foreign employees are the ones who run the companies instead of the Omanis. As reported by four interviewees, this is a widespread phenomenon within companies where the number of foreigners stands at some 600,000 workers.

> "Omani employers leave the company to foreigners, and they know nothing of what is happening inside the company (…) we don't know who is responsible, and this foreign employer does not hesitate to bring members of his family to integrate them into this business."[29]

In order to tackle this issue, the Ministry of Manpower has implemented new measures for small and medium enterprises. Companies are allowed to employ a certain number of foreign workers, but only with the provision that the Omanis are actually "dedicated to their activities" and that they do not combine this activity with a governmental job.[30]

Structural Failures in Indian Emigration Governance

India also exemplifies the failure of sending-country institutions to protect its unskilled and low-skilled workers in the Gulf and to regulate overseas employment. In particular, the over-reliance of the Indian state on private Recruiting Agencies (RA) that act as brokers between employers in the Gulf and the Indian workforce has been a crucial factor in the rise of irregular migration. Under the 1983 Emigration Act, all RAs must register with the government before recruiting for employment. These agencies are supposed to ensure that employers protect their employees. Nevertheless, the proliferation of illegal RAs, subagents, visa merchants and the resort to informal links by workers has increased the opacity of the emigration process.[31] The failure to monitor the practices of registered RAs and to punish the illegal ones creates a fertile ground for the development of irregularities once the

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28. *Times of Oman,* May 25, 2015.
29. Interview 8.
30. Interview 8.
31. Rajan, Varghese, Jayakumar, 2011, p. 57.

workers reach the Gulf. Following the ban implemented since May 2007 on the emigration of Indian female workers, younger than 30, to the Gulf and other listed countries, this special category of workers is particularly vulnerable to informal recruitment networks.

In order to fight against bad recruitment practices, the Indian embassy in Muscat recently set up an "eMigrate System" in coordination with the Indian Ministry of Overseas Indian Affairs.[32] Since June 2015, Indian workers can only be recruited through online registration with the Indian government's overseas affairs office. This new device should help to streamline the recruitment procedure and thereby diminish the risks of irregularities.

In addition, India signed a Memorandum of Understanding with the Sultanate of Oman on November 8, 2008 and the two countries then planned the creation of a joint committee in order to exchange information that will prevent illegal recruitment and human trafficking. Nevertheless, this MoU is not binding and its role in the regulation of Indian migration has been very limited. Indian diplomats have been extremely cautious in their negotiations with GCC governments on labour-related issues. They fear that too much activism might lead to a temporary ban on their workers.[33] There is also a shared feeling among Indian officials that "At the end of the day, migration is based on an individual choice, and (that) these people should take their own responsibilities."[34]

The embassy, nevertheless, has recently been more active in helping irregular migrants in need, especially those imprisoned, in cooperation with the Ministry of Manpower.[35] Yet, no general policy has been defined and actions are taken on a case-by-case basis. The effectiveness of the negotiations between diplomats and sponsors is also questionable, as not a single sponsor has yet been put on the embassy's black list. And yet, an Indian official recognised that it would be the "only good option that could ensure the protection of the workers."[36]

To conclude, India was until recently largely indifferent towards the issue of irregular migration. Notably, neither the ministries in India nor Indian missions in the Gulf have an accurate knowledge of the number of undocumented workers

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32. MOIA was merged with the Ministry of External Affairs in January 2016.

33. Ilias 2011.

34. Interviews 10, 11. Informally set up in 2008, it was officially institutionalised and registered at the Oman Ministry for Social Development in 2012.

35. Interview 2.

36. Interview 9.

present there.[37] This might change as the issue of expatriate workers takes priority in India's diplomatic agenda, especially during periods of amnesty in the Gulf countries.

Ambiguous Effects of "Good Practices": The Amnesty

Announced in April 2015 by the Ministry of Manpower, the amnesty ran from May 3 till July 30, and was then extended by three months. This is the fourth amnesty that has been implemented in Oman.[38] The amnesty (also called "outpass") is a period that gives migrants with an irregular status the opportunity of returning to their homeland or of regularising their situation in Oman. Undocumented workers are exempted from the payment of a fine and only have to pay for their return ticket.[39] Infiltrators and workers who have pending judicial cases are not included in this measure. The analysis of the implementation of the amnesty process by both Oman and India shows the ambiguous dimensions of this policy. Despite an improvement in the coordination, transparency and efficiency of the procedure, it did not yield the expected results in terms of the registration of irregular migrants.

Improving Practices, from Registration to Departure

The succession of amnesty periods shows significant improvements, both from the Omani and Indian sides, in the process of the registration and deportation of irregular migrants. While the first amnesties in the region were characterised by a lot of confusion in procedures, the 2010 amnesty implemented in Oman marked a turning point in terms of better communication and transparency throughout the process.[40] In 2015, new steps were adopted to improve coordination between institutions. For the first time, the Omani Ministry of Manpower issued guidelines about the amnesty procedure. Labour attaches of the relevant foreign embassies in Muscat gathered together to discuss how registration would work, which gave some space for the improvement of practices.[41] The procedure took almost a month and involved several steps:[42]

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37. Interview 9.
38. Previous amnesties had been granted in 2005, 2007, and at the end of 2009 – it lasted until the start of 2011.
39. Shah 2014.
40. Interview 7.
41. Interviews 9, 10.
42. Interviews 9, 10.

First, the irregular migrants had to register at their embassy. They got a receipt as well as a file, a blue coloured one for India. On the same day, they had to go to an official typing centre in order to translate it into Arabic.

The second step was the registration of the migrant at the Ministry of Manpower. The day allotted for Indians was Sunday and a maximum of 500 people were allowed to come every week. After registering, the migrants had to go to the emigration police for clearance. Those who had a criminal record were not allowed to leave the country.

The following week, the migrants had to go back to the Ministry of Manpower and get registered on a website. If after one more week, no employer put forward any claims for the registered irregular worker, the latter was allowed to leave the country. Should an employer put out a claim, negotiations were held between the embassy, the sponsor and the Ministry of Manpower. According to an official of the Indian embassy, this rarely happens.

Overall, interviews conducted at the Indian embassy as well as at the Ministry of Manpower during the Indian registration days show that the 2015 amnesty was much more efficient than prior amnesties.

> "Since 2010, and especially 2015, the procedures and services are more organised. There is less waiting time and more efficiency. Omani authorities have even agreed to have an 'officer from the embassy' in the room during the procedures to help Indians."[43]

Nevertheless, the Indian embassy still faces a shortage of staff and facilities that impedes the process. This is to some extent counterbalanced by the Indian Social Club's Charity Wing,[44] which unofficially takes care of workers in an irregular situation and helps in the organisation of the amnesty. Since 2010, Indian social workers have arranged a shelter dedicated to distressed undocumented women waiting for their case to be solved by the Omani authorities.[45] In May 2015, fifteen women, mainly from the state of Andhra Pradesh, were at the shelter. Among them, eight were to be returned to India under the amnesty scheme and the others were waiting for their situation to be regularised. In addition to the shelter, the Indian community also funds the return tickets of absconded workers.[46]

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43. Interview 12.

44. Interview 7.

45. Although it was set up by the Indian Embassy in 2010, the shelter only functions with the presence and resources of the Indian Charity Wing's volunteers. Interview 11.

46. Interview 11.

The embassies of all sending countries have been involved in the process. In fact, being economically dependent on the remittances received from the Gulf, sending countries need to ensure the regular flow of their workers to Oman. Therefore, they have a strong interest in the reduction of undocumented workers, which would help them promote a good image for their nationals in Oman. Nevertheless, interviews conducted with Indian officials show that they do not have much leverage in discussing with Omani officials some of the causes that contribute to the rise of irregular workers, such as mistreatment by sponsors. The return of absconding or undocumented workers to their home countries is seen as a new job opportunity for workers, as the employers can then get clearance to hire a new foreign worker.

Mitigated Results

While around 50,000 undocumented and overstaying expatriates were expected to register for the 2015 amnesty, according to official sources, only 14,254 made use of it (7,382 workers had been deported and 6,872 cases were still under study for deportation).[47]

Looking at India, we observe a decrease in the registration of undocumented migrants, with only 800 Indians turning up in the first weeks. Eventually, 3,240 migrants made use of the amnesty.[48] By contrast during the previous 2010 amnesty, 22,000 Indians registered and 15,000 made use of the opportunity. Multiple economic reasons might explain why, despite the fear of detention, migrants would decide to stay in Oman illegally: the lack of job opportunities in their home countries, combined with the need to send money to their families back home and/or of reimbursing debts; the belief that another amnesty process might happen later and, therefore, it is worth extending their stay in Oman; the fear that they might not be able to come back to Oman, if there is a visa ban on their nationality. Lastly, the absence of a comprehensive repatriation programme offered by the home government is a strong incentive for workers to remain in an irregular situation.

Apart from these economic reasons, two other social factors contribute to explain the limited results of the amnesty. Perhaps workers staying in remote areas had not received accurate information about the amnesty. On the other hand, workers who had been residing in the country for a long time and had a good social network might have the resources that help them to survive in Oman in an irregular status.

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47. *Uman (Al Iqtisâdi)*, July 15, 2015.

48. Interview 7.

Overall, the disappointing results of the 2015 amnesty hint again at the complexity involved in the regulation of irregular migration, beyond crackdowns. Despite improvement in the state's practices, the amnesties might paradoxically contribute to the persistence of irregularities, as many undocumented workers simply wait for the next amnesty to regularise their situation.

Conclusion

This chapter provides an analysis of the evolution of policies initiated by host and sending countries to curb irregular migration, taking India as a case study and the amnesty as one measure of institutional cooperation. While pointing out the main structural factors and policies that explain the continuance of the irregular situation of migrants, it also shows the efforts that have been made by both Oman and India to curb this issue. Nevertheless, the implemented legislation remains insufficient, and the measures are too sporadic. This reveals the absence, on both sides, of a holistic approach that would deal both with the socio-economic causes of irregular migration to Oman and labour force rights.

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Interview 1: Omani Journalist, Muscat, May 2015.

Interview 2: Indian journalist, Muscat, June 2015.

Interview 3: Representative at the Ministry of Manpower, Safety Department, Muscat, July 2015.

Interview 4: Representative at the Ministry of Manpower, Planning Department, Muscat, July 2015.

Interview 5: Official at the Ministry of Manpower, Muscat, July 2015.

Interview 6: Official at the Ministry of Manpower (directorate), Sohar, July 2015.

Interview 7: Indian social worker, Muscat, June 2015.

Interview 8: Shura member, Muscat, June 2015.

Interview 9: Indian official, Indian embassy, Muscat, May 2015.

Interview 10: Indian official, Indian embassy, Muscat, May 2015.

Interview 11: Member of the Indian Social Club, May 2015.

Interview 12: Member of the Indian Social Club, May 2015.

VIII

Irregular Migration in Qatar:
The Role of Legislation, Policies, and Practices

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Abstract: Little is understood about the extent and circumstances of irregular migrant workers in Qatar. The system and means of entry into Qatar is highly securitised by land, sea, and air and there is no evidence that foreigners (seeking work or asylum) enter illegally, or are smuggled into the country in surreptitious ways – neither from its shores on the Arabian Sea, nor through Saudi Arabia, its only land border. Although statistics are unavailable, qualitative evidence shows that irregular migration does exist, mainly through visa trading, of so-called "free visas" that originate through the corporate visa quota system. Other forms of irregularity arise from "absconding" from employers, a breach of the Sponsorship Law; being left stranded by an employer/sponsor due to business failure or cancelling of contracts. It is also a violation when there is a mismatch between the job

specification on the visa and the actual work being undertaken, although this is very common and generally undetected. The chapter provides a brief overview of the laws regarding expatriates and the current policies in policing these laws. It also gives case examples that highlight the various circumstances which migrant workers experience as they reside and work illegally in Qatar. It will be argued that the workers themselves are not always hapless victims of deception, fraud, and exploitation, although this certainly occurs. Others may be well informed but willing to take risks to find work and an income that can support their families at home.

Introduction

> The status of migrants as irregular is a function of protectionist policies that restrict entry into a country, administrative requirements that restrict access to residency and employment and the criminalization of those who do not or cannot comply. (Düvell 2012: 78)

In terms of purchasing power parity, Qatari citizens currently have the highest GDP per capita in the world (IMF 2015). At the same time, the population and workforce of Qatar has the largest proportion of foreigners in the GCC and the world. As of 2013, Qatari nationals comprised 9.6% of the population (1.8 million), and this is declining as more and more migrant workers enter the country for the construction and infrastructure projects for the 2022 Football World Cup as well as the social and economic development plans of the Qatar National Vision 2030. According to the Ministry of Development Planning and Statistics, as of May 31, 2015, the population had risen to 2.38 million, with a male-female ratio of 8:1 and the large majority of males alone (IMF 2015), without family members (De Bel-Air 2014). In 2013, Qatari nationals were only 6% of the workforce (1.5 million), with Qatari males at 4% of the total male workforce. Nationals are employed primarily in the public sector and comprise only 1% of the private sector workforce.

The Qatar Statistics Authority Labour Force Survey of 2013 identified the main industry sectors of employment as: Construction (37%), Wholesale & Retail Trades (13%), Household Domestic Work (10%), Manufacturing (8%), Mining & Quarrying (6%), Public Administration & Defence (6%; with 51% Qatari nationals), Administration & Support Services (3%) and Transport & Storage (3%). Low-skill occupational categories such as "Craft & Related Trade Workers" to "Elementary Occupations" account for 72% of non-nationals (De Bel-Air 2014).

There are no official statistics providing a breakdown of nationalities in the workforce. However, from a 2012 survey of low-income (less than $550 per month) workers in Qatar, the largest numbers came from Nepal (39%), India (29%), Sri Lanka (9%), Bangladesh (9%), Philippines (5%), Pakistan (3%), Egypt (3%), and Others (2%) (Gardner, et al. 2013). From data supplied by embassies, those from India (particularly Kerala) are the most numerous in the overall workforce, followed by Nepal and Philippines. Non-Gulf Arabs are significant in higher income supervisory, managerial, and entrepreneur positions. In 2002-04, the proportion of non-Gulf Arab expatriates was around 19%, down from 33% in 1975 (Kapiszewski 2006).

Since the awarding of the 2022 World Cup, relentless criticism has been directed at Qatar from the United Nations, human rights organizations, and the mass media (see Human Rights Watch 2012; Amnesty International 2013a; Amnesty International 2014a; Amnesty International 2014b; International Labour Organisation 2013; International Trade Union Confederation 2014; Crepeau 2014; DLA Piper 2014; Jureidini 2014; Booth 2013). All of these reports focus upon the abuses of the *kafala* system of sponsorship as well as corruption in migrant labour recruitment, wages, excessive working hours, sub-standard accommodation facilities, health and safety, and call for radical reform. Very little attention is given in these reports to irregular or undocumented workers and none provide estimations of the possible number of irregular workers in Qatar.

Qatar's wealth and reputation as a source of lucrative employment is a major pull factor for people from the poorer countries of Asia, the Middle East, and Africa. According to the IMF and World Bank, in 2014, remittances from Qatar reached $9.5 billion (AFP 2013; Global Research 2015). This attraction felt by individuals and their states of origin also feeds greed and corruption by middlemen brokering employment opportunities and, coupled with the labour restrictions of private sponsorship, leads to irregular conditions and a culture of fear and trepidation against complaints and legal remedies, although some reforms are underway and more are promised. The stringent restrictions on migrant labour that lead to irregularity are discussed later.

In considering how foreign labour is identified and treated as being in an irregular situation, this chapter begins with the legal framework that focuses primarily on the Law of Sponsorship and, to a lesser extent, the Labour Law. These laws define the conditions of control over the entry, exit, and movement of foreign labour in the country. The second section considers government policies towards irregularity through the government departments dedicated to implement these

laws. In the third section detailing the practices, I identify eight circumstances that lead to irregularity. Not all of these are serious, for some are temporary and some are not of concern to the authorities. Qualitative data and case studies are provided on the more important categories of visa trading and absconding. The main objective in the chapter is to show how migrant workers arrive into Qatar in a regular condition and how they may become irregular once they are in the state.

Original data was obtained from interviews with individuals in irregular circumstances and with interlocutors who are actively trying to assist them, including members of the NHRC and community representatives. Actual names have not been used as requested by the interviewees.

The term "migrant worker" is used here as "a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national" (UN Migrant Workers' Convention, 1990/2003, Art. 2).[2] However, the terms "migrant worker" or "migrant labour" are considered unacceptable by Qatari authorities because they are perceived to imply permanent migration (immigration). They prefer the term "temporary contract worker."

The Legal Framework

In Qatar, irregular migrants include:

1. Foreign nationals without residence status, but who are in regular employment – usually when the employers do not renew the residency permit because they do not want to pay, or through negligence. Companies who do this can be blacklisted and banned from further recruitment.

2. Foreign nationals who entered on tourist visas and are employed in unregistered jobs. These are often those who find a job, commence work, but are in the process of regularising their status with a work visa. These will more likely be white-collar, managerial, or technical professionals. Overstay on tourist visas is not thought to be a particularly significant issue in Qatar. Tourist visas are strictly controlled and for most countries require pre-arrangement through an embassy. Nationals from 38 mainly developed countries can obtain a one-month visa on arrival, but require a credit card

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2. Note that Qatar as well as the other GCC states and generally migrant destination countries have not ratified this convention and thus are not bound by its coverage, in particular the rights conferred upon irregular migrant workers.

to pay the visa charge (QAR50-100).[3] None of the low-skilled labour origin country nationals can obtain a visa on arrival, including Muslim majority countries such as Indonesia, Pakistan, and Bangladesh.

3. Foreign nationals who may have residency status, but are working without permission in unregistered jobs, namely those who are working for an employer who is not their sponsor, or a resident spouse or offspring who does not have a work visa.[4]

4. Foreign nationals who may have residency status and work visa, but are working in unregistered jobs. This may be with informal, unregistered permission from their sponsor (who expects payment in return for renewal) or because they have absconded from the sponsor and are working for another employer, that is, "freelancing."

5. Foreign nationals who have left their employer without permission (absconded), who may or may not be working, but are still resident.

6. Foreign nationals who may have a work visa but no residency status. This happens usually after the first three months' probationary period where the employee has not been processed for a residency ID card.

7. A foreign national whose occupation is not commensurate with the classification on the work visa is also going against the law. However, because of a non-transparent quota system based upon nationality and occupation, this is very common, but not recognised in practice as conferring an irregular status, perhaps partly because of the difficulty in monitoring. It is, however, a major means by which recruitment agents and traffickers in origin countries and their collaborators in Qatar are able to deceive prospective workers who expect jobs that are more lucrative and prestigious than what is stated on the visa. The occupation on the work visa is presented as a minor bureaucratic problem that can be ignored. For example, they may promise a position

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3. Andorra, Australia, Austria, Belarus, Belgium, Brunei, Canada, Cyprus, Denmark, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland (Rep.), Italy, Japan, Republic of Korea, Liechtenstein, Luxembourg, Malaysia, Monaco, Netherlands, New Zealand, Norway, Poland, Portugal, San Marino, Singapore, Spain, Sweden, Switzerland, Turkey, UK, USA, and Vatican City.

4. Penalties for employing workers not under their sponsorship can be "imprisonment not exceeding 3 years and/or a fine of not more than QAR50,000 and in case of repetition an imprisonment for a period not less than 15 days, and not exceeding three years and a fine of not less than QAR20,000 and not more than QAR100,000."

as a soccer player, but the worker may be asked to accept a work visa for a labourer or security guard (see the case of Togolese workers in Jureidini 2014).

8. There are also those who become irregular if their employing company ceases operations, goes bankrupt, or is blacklisted without making provisions for the employees. Often employees go unpaid and the sponsor is not accessible to return the passports, sign an exit visa, and pay their return airfares.

The multiple differences of these irregular circumstances suggest that we should move away from a binary conceptualisation of regular versus irregular. Although in cases 1, 2, 3 6 & 7, irregularity may be temporary or may not be of immediate concern to the authorities, it is important to identify them as gradations of irregularity in accordance with the law and which may or may not be policed.

The status of non-nationals in Qatar is administered by Law No. 4 of 2009, "Regulating the Entry and Exit of Expatriates in Qatar and their Residence and Sponsorship." This is the result a number of amendments since the original Law No. 3 was enacted in 1963. It is generally referred to as the Sponsorship Law and is the legal foundation of the *kafala* system, although there is no mention of *kafala* in the law itself.

Much has been written about the *kafala* system as having honourable, religious-based historical functions for loan guarantees, guardianship of orphans, and security guarantees of strangers, but which has become a means of exploitation of labour in modern times (Frantz 2011). More than a system of administration where responsibility and authority over foreigners is delegated to private citizens, the *kafala* also "cements" the relationship between the state and its citizens as an efficient alternative for the state's lack of capacity to manage an excessive foreign population. It also acts as a means for government wealth distribution among the citizens in both public and private industry sectors, minimising the competition between elite families and the maintenance of socio-political power structures, to the exclusion of foreigners (Dito 2014). It has been argued that the difference between pre-oil and post-oil employment relations was the conscious exclusion of foreign employees because they could not be trusted, as they had previously trusted members of the same community (Longva 1997).

By way of summary, under the contemporary *kafala* system of sponsorship, all foreign nationals who wish to work or establish a business require a Qatari citizen, foreign resident or company to sponsor them (Sponsorship Law, Article 19).[5] In the

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5. The Sponsorship Law distinguishes between a "residence sponsor" and an "exit sponsor,"

case of businesses, a Qatari sponsor (*kafeel*) must have 51% controlling partnership of the company (Commercial Companies Law No. 5, 2002; Latham & Watkins, n.d.).[6] In the case of an employee, the sponsor must also be the employer (Article 15 and Article 25: 3 of the Labour Law). The employee requires the permission of the sponsor to leave the country (Article 18) or to change employers (Article 22). The employee must be engaged in the work as classified on the work permit (Article 48). The work visa and residency ID (*iqama*) contains the name of the sponsor as well as the job classification. Thus, the sponsor/employer (or *kafeel*) controls the entry, exit, and employment transfer of all employees. These provisions have been challenged as constituting violations of international labour conventions and the right of freedom of movement for foreigners in the country.[7] They are also part of the legal restraints that result in placing migrant workers, willingly or unwillingly, into an irregular status.

The requirement for all foreigners in Qatar to obtain an exit visa from their employer/sponsor to leave the country is a particularly vexed issue. Article 18 of the Sponsorship Law states:

> Other than women sponsored by the father and the minors and visitors visiting the state for no longer than 30 days, expatriates may not leave the state temporarily or permanently unless they provide an exit permit issued by the Residence Sponsor.

This has been a highly controversial regulation that is only operative in Qatar and Saudi Arabia and has led to many cases of foreign workers as well as high profile professional expatriates being unable to leave the country (see, for example, Parry 2010; Hope 2009; Amnesty International 2013a).

They are usually the same person or entity, but both roles can be delegated for administrative purposes.

6. See: Commercial Companies Law No. 5, 2002, Article 68; Article 2(1) of the Foreign Investment Law restricts foreign ownership to a maximum of 49% of a company's capital. However, Article 2(2) provides that foreign investors can own up to 100% of the capital if: a. the entity operates in the agriculture, industry, healthcare, education, tourism, exploitation and development of natural resources, and energy or mining sectors; and b. the project contributes to Qatar's development plans. The Minister of Business and Trade is officially responsible for determination of the percentage of foreign ownership. See: Latham & Watkins LLP *Doing Business in Qatar,* n.d. p.3. http://www.lw.com/upload/pubContent/_pdf/pub2782_1.PDF (accessed June 16, 2015).

7. To this it may be added that, contrary to Article 9, it is also common practice for employers to hold the passports of their employees. Employers argue that it is voluntary and for their safekeeping, but it is a violation of the law.

However, there is a clause in Article 47 of the Sponsorship Law that allows selected foreign residents to exit without permission:

> A person who has a residence permit may exit from the State during its validity period without obtaining permission or authorisation.

This provision is related to Article 43 and offers an exemption to the exit visa requirement for investors, owners, and benefactors of real estates and any other categories decided by a ruling of the council of ministers.

More importantly, Article 15 of the Sponsorship Law states:

> No natural or corporate person may permit expatriates brought to the state for work to be employed by other entities or employ any workers not sponsored by such person.[8]

Thus, foreign nationals must be employed by their sponsor and a person who has absconded from a sponsor cannot be employed by anyone else, unless they have a valid case against the sponsor/employer, in which case, the sponsorship can be transferred by the authorities (Article 12).

However, Article 15 goes on to state:

> Notwithstanding the above, the competent authority may authorise a sponsor to lend his Expatriate workers to another employer to work for such employer for no later than six months, which may be renewed for similar terms.

This "lending" provision facilitates the use of outsource labour (or manpower) suppliers, who obtain work visas and employ migrant workers only to hire them out to others. They provide accommodation, food (or food allowances) and pay their wages and are, in turn, paid by contractors or subcontractors who use the workers without having to hire them directly. The contracting of outsource labour suppliers has been increasing but is seen as highly problematic. This is because of a lack of transparency and oversight, creating a "corporate veil" where actual employers do not check or monitor whether the outsourced employees are irregular or have been trafficked (Jureidini 2014). With professional or white-collar expatriates, "lending" is referred to as "secondment" when a contractor, for example, may second an engineer to a subcontractor. In this provision, the law is quite liberal, as long as the sponsor grants approval (Zahra 2014).

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8. Violators of this law to receive a jail period "not exceeding 3 years and shall pay a penalty not exceeding QAR50,000 or either one of them." Repeat violators will be jailed for "a period not less than 15 days and not more than 3 years and shall pay a penalty not less than QAR20,000 and not more than QAR100,000" (Article 51).

The other important legislation relating to irregular status is the Labour Law State of Qatar No. 14 of 2004, administered by the Ministry of Administrative Development and Labour and Social Affairs. Provisions of the Labour Law relate primarily to employment relations in the private sector, covering the rights, obligations, and limitations of employees, employers, and workers' committees; minimum standards on working hours; vacation and public holidays; safety standards; workers' committees; and termination of employment. With regard to issues such as entry and exit, sponsorship, and visas, the Labour Law defers to the Sponsorship Law.

The Labour Law (Article 25) on "absconding," a major cause of irregular status, states that a work permit may be cancelled "[i]f the worker discontinues the employment for a cause related to him without acceptable excuse for more than three months." However, Article 51 allows, among other conditions, that if the employer breaches the obligations of the contract or the Labour Law, or if the employer or his representative has misled the worker, the worker may terminate the contract "and retains his full right to obtain the end of service gratuity." However, Article 49 requires that notice of termination must be given, which varies from one week to two months, depending on the duration of the contract. The dilemma that employees face in terminating their contracts is that they may not be able to prove the employer's violation of the contract or have access to the courts to do so (see Gardner, et al. 2014) and they may not be in a financial position to be repatriated home and may want to remain in the country to work. Thus, "absconding" and becoming irregular, rather than resigning may be seen as the only option.

Major Policies

With the extraordinary demographic imbalance between nationals and non-nationals in the state, a major burden on the authorities is the management and control of foreigners.

There is a clear policy that permanent immigration for citizenship is not an option. Foreigners are to remain temporary. The Qatar National Vision 2030 makes it clear that the country's objective is to develop a knowledge-based economy, "highly qualified persons and specialists," and reduce the dependency on low-skilled foreign nationals (Permanent Population Committee 2011).

In reality, with the development plans, particularly for the 2022 World Cup, the dependence on strictly temporary foreign labour, both highly skilled and low skilled, will be maintained (Babar 2013).

The administration of the Sponsorship Law is overseen and policed by the Search and Follow Up Department (SFUD) under the General Directorate of Border Passports and Expatriates Affairs at the Ministry of Interior. According to its website, the functions of SFUD include:

- To follow up violators of the laws and decisions that organise the entry and exit of expatriates and the regulations of their sponsorship and residence

- To search and investigate in the cases and complaints related to violation of laws and decisions regulating the entry and exit of expatriates and the regulations of their sponsorship and residence and to take legal action on violators and offer reconciliation in the crimes that allow reconciliation legally

- To carry out inspection campaigns with the aim of enforcing the laws, regulations and decisions that organise the entry and exit of expatriates and the regulations of their sponsorship and residence in coordination with concerned authorities

- To take necessary procedures to implement the legal decisions of deportation for expatriates and the decisions issued for cancellation of residence permit and deporting from the country in coordination with concerned authorities

- To manage the deportation reserve and supervise it

- To organise and keep the data of those sentenced for deportation and leaving the country and to take necessary measures to ensure they are not entering the country violating the law and systems followed

- To take executive procedures for temporary and permanent sponsorship transfer decisions in case of abuse or public interest in accordance with concerned law and in coordination with involved authorities.

The SFUD also maintains a detention centre for the custody of irregular workers and others who have been sentenced to deportation. The number of foreign nationals detained in the deportation centre is not an indicator of the number of apprehended irregular workers in the country. Most are not detained, but are required to report to the Criminal Investigation Department (CID) on a daily basis. At any one time, the deportation centre may contain 1,000-1,600 men and 300-500 women who may be there under a thirty-day deportation order that is renewable under the Sponsorship Law (Article 38). The women are mainly domestic workers

who have absconded from abusive employers. Some can remain there for a year or more when they are unable to pay fines, or acquire their passport, exit permit and airfare, the latter being required from their sponsor. The Sponsorship Law (Article 24) states that the sponsor must pay all deportation expenses of the absconded worker, unless they cannot be found after a month following official notification. If someone other than the sponsor employs a foreign national, that employer must pay the deportation expenses. The SFUD facilitates these payments, but if the sponsor cannot be found, or if there are long delays, the department may obtain a ticket for them. Despite claims by the SFUD that the detention facilities are hospitable and humane, a UN investigation found otherwise (Crepeau 2014). However, in 2014, the SFUD did provide air tickets to more than 5,000 expatriates who were in detention but whose financial arrangements could not be finalised with their sponsors (Qatar Ministry of Interior 2015a).

Migrant Domestic Workers

As in most other Arab states, migrant domestic workers are excluded from the protection of the Labour Law (along with drivers, nurses, cooks, and gardeners of the household).[9] With an estimated 132,000 migrant domestic workers, the Qatari Advisory Council approved legislation in 2010 specifically to cover domestic work, but it was never implemented (Human Rights Watch 2012a). The exclusion of migrant domestic workers from the Labour Law means that they are unable to seek assistance from the Ministry of Labour and Social Affairs (Amnesty International 2014b).

Article 12 of the Sponsorship Law allows the Ministry of Interior to transfer sponsorship if domestic workers are abused (for workers who are not governed by the Labour Law). This is rarely used, for victims are more likely to abscond and seek illegal freelance work or attempt to return home, depending upon the severity of the abuse. The detention of absconding domestic workers has added dimensions compared with other migrant workers. For example:

> Too often, instead, domestic workers are treated as the offenders themselves, detained for "absconding" or otherwise breaching the Sponsorship Law. In March 2013 over 90% of the women detained by the authorities awaiting deportation were former domestic workers. And when domestic workers report rape or sexual assault, they risk being charged, instead, with consensual

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9.   Exclusions also include employees of Qatar Petroleum and its subsidiaries, ministries, public institutions such as the armed forces and police, workers at sea, casual workers and members of the employer's family (Labour Law No. 14 2004, Article 3.)

sex, under the charge of "illicit relations" [under Law no. 11 of 2004, the Penal Code, Article 281]. (Amnesty International 2014b: 8)

In 2009, the Qatari Population Policy sought to reduce non-national employment in manufacturing to 50% by 2020. One of the sub-objectives of "Qatarization" (giving preference to Qatari employees)[10] was to "dispose of surplus labour, particularly household labour, and work to change some of the habits that require increased numbers of domestic workers and personal services" (Permanent Population Committee 2011: 19). However, as evidence of the continuing dependency, the government has been continually engaged in negotiating increased supplies of migrant domestic workers. In November 2012, negotiations with the Philippines to supply domestic workers broke down when Qatar refused to accept their mandatory minimum $400 monthly salary. Consequently, in April 2013, they reached out to Bangladesh, coming to an agreement for the supply 30,000 Bangladeshi women for domestic work and other services (Jureidini 2014: 15, 20).

Absconding Workers

If an employee, whether a construction worker or domestic worker, leaves employment without permission from his sponsor/employer, he or she is deemed to have "absconded," and he or she after three months becomes a criminal offender as an irregular, unauthorised resident. When an employee leaves without permission, the sponsor is obliged to report the case to the SFUD and the employee can be arrested, detained, fined, and deported.

The absconded employee has a further restriction in that s/he is unable to leave the country without an exit visa signed by the sponsor or someone authorised by the sponsor to sign on his/her behalf (exit sponsor).

Absconding workers are a major concern for the Qatari authorities who emphasise not only the illegality of absconding, but also the illegality of those who employ them. Both face prosecution and workers face deportation. This provision in the Sponsorship as well as the Labour Law (Article 25) is often used as a threat against employees, and particularly irregular workers, who are being employed illegally. While there are provisions for workers who have absconded to provide valid reasons for leaving their employer without permission, there are no public reports that detail how many have had their complaints accepted and

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10. The Labour Law (Article 23) states that a work permit is subject to: "The non-availability of a qualified Qatari worker registered in the registers of the [Labour] Department and to carry out the work in respect of which the work permit is applied for."

been allowed to remain in the country. In 2013, there were 1,046 complaints by workers of human rights abuses by their sponsors. In the first four months of 2014, there were 877 complaints (Walker 2014). According to the embassies in Qatar, the main complaints by workers concern non-payment, under-payment, and delayed payment of wages, as well as excessive working hours and lack of freedom of movement (Human Rights Watch 2014; Jureidini 2014). Curiously, it may be noted that the Ministry of Interior considers that preventing employees from changing employers without permission is a means to deter trafficking (Qatar Ministry of Interior 2015b), but it is more likely that it prevents "poaching" of employees, rather than "trafficking."

There is no doubt that the law and policy that accepts the notion of "absconding" or "runaway" workers has undertones of forced labour. Instead of acceptance of an employee "resigning" without permission from the employer/sponsor, the law facilitates workers becoming irregular and thus criminalised. Night patrols check identification papers of suspected irregular workers.

> We conduct the inspection campaign in a very secret manner all over Qatar, and round the clock. We advise expatriates to always carry the necessary documents with them, not necessarily the original, but at least a copy. Now we are using a handheld device during the inspections. Using fingerprints, the device can give all data about a person in 20 seconds and we can know if he has a valid RP or he has run away from his sponsor. (*Doha News,* April 3, 2013)

It has been argued that the CID is rarely sympathetic to the reasons a worker may have absconded or is in the country without a valid visa or residency permit (Crepeau 2014).

Major Practices

Non-renewal of Residency

Employers are required to renew residency and work permits within 90 days of expiry. Administrative data from the Qatar authorities could show the number of non-renewals of employees who have not left the country, which would indicate the number of irregular workers in this category. Unfortunately, this data has not been made available. However, in 2013, 2,442 companies were blacklisted for various violations, including the failure to renew residence permits of their employees, employing absconding workers, non-payment of salaries, and other violations of the

labour and residency laws. At the same time, 1,263 individuals who allowed their employees to work for others were banned from being able to recruit or sponsor workers for a period of one year (Qatar Ministry of Interior 2013a).

According to the embassy of Nepal in Qatar, in 2014, out of a migrant worker population of around 400,000, approximately 5,000 Nepalese workers were "stranded" or in distress. In an interview with the author in March 2015, the labour attaché at the embassy explained that their problems included non-payment of salary, no ID card, no exit visa, or no proper jobs. Embassy data, however, is usually only indicative and not always reliable, for many cases may not be heard or a file opened. Thus, the number may be higher. In one recorded case, six Nepalese construction workers arrived in February 2011 with five-year work visas, but by September 2012 they were stranded because their company, a sub-contractor, had gone out of business. The employees' telephone calls to their sponsor went unanswered and they were left sleeping in the street because they were evicted from their labour camp in the industrial area. Money was raised to assist them, and their case was given to the National Human Rights Committee (NHRC) at the end of December 2012 which threatened legal action against the sponsor. Within a few days, the sponsor provided tickets for them to return to Nepal. However, three months' unpaid salaries owed prior to the company closing down were still not paid. Once out of the country, it was unlikely that their salary claims could be followed up.

Visa Trading

Visa trading of "free visas," mainly by small and medium sized companies, is a major source of irregularity in Qatar. "Free visas" are well known in the labour origin countries. They are not free in the monetary sense, but free of an employer or job. Many migrant workers pay exorbitant amounts of money to obtain the "free visas." However, where "normal" recruitment charges can vary from $600-5,000, "free visas" may sometimes cost less because there is no job on arrival. The critical question is whether the migrant worker knows there is no actual job before departure. Irregular workers under these circumstances may or may not be victims of deception, fraud, and, possibly, trafficking.

Many sponsors in Qatar, whether nationals or non-national residents, use the *kafala* system as a business by using multiple visas as an easy means of generating an income, initially from recruitment agents who, in turn, charge the migrant workers and, subsequently, through annual rent for residency renewal while in an irregular situation (Migrant Rights.Org. 2015). For example, Halli (not her real name), an Asian woman in her early forties, who came to Qatar seven years ago to work in a

hairdressing salon, went into debt to pay the recruitment agent before departure. On arrival, her passport was taken from her and she was told there was no job for her. They placed her in an accommodation with a number of other women and told her to pay a rent of QAR17,000 ($4,650) per year for her visa renewal. She was threatened that if she did not pay, she would be reported to the police as having absconded. She was not well educated and ended up in prostitution in order to be able to pay such a large amount. After seven years, her passport has still not been returned, but she has found someone who is willing to regularise her residency and provide her with legitimate employment.

All companies that register in Qatar are given a quota for work and residency visas, based upon their stated needs for managers, supervisors, drivers, construction workers, clerks, shop assistants, cleaners, etc. These can sometimes be "fake" companies designed specifically to trade in visas. A company may apply for its quota of visas, even if there are no positions available. Once the visas are obtained, the company can sell them to other companies, including outsource labour suppliers. The company (or personnel within the company) can offer the visa freely to a friend or relative who has to merely pay the government charge for the visa (QAR250, approx. $68), pay for his passage to Qatar, stay with the relative or friend, and try to find a job with another company. On the other hand, the company (or an individual within the company) may sell the visa, which typically would bring in QAR2,500-3,000 ($685-822) but could be more if there are other intermediaries involved, such as a recruitment agent/s.

Acknowledging the sale of visas where there may be no actual employment on arrival in Qatar, the Director of the SFUD, Col. Nasser Muhammad Al Syed, argued that the "large presence" of victims of visa trading "poses a serious threat to social security in the country" (Walker 2014). To address this, in 2013, 51 companies were prosecuted by the SFUD for illegal visa trading.

> More than 40 executives of private companies, including Qataris, were given prison terms for fraudulent visa trade. A total of 50 companies were referred to the Public Prosecution and 84 cases were registered for their alleged involvement in 'visa trading'. The Qatari and expatriate executives will undergo jail terms of one year to three years. The individuals and companies were charged a total of QAR4.27 million [$1.17 million] in fines. (*The Peninsula,* April 3, 2014)

A company selling "free visas" must offer guarantees to the purchaser who falls into an irregular condition, because he or she does not have an employer. The

company must guarantee that when an employer is found, which must be in the first three months after arrival (probation period), it will provide an NOC (No Objection Certificate) to allow the transfer to another employer. If no employer is found within the first three months, there are only two alternatives. The first is that the company will proceed to obtain an ID and residency permit for the irregular worker, but the migrant worker will have to pay for the charges of approximately QAR1,200 ($330). This allows the worker to continue to search for an employer, at his/her own expense. Thus, the worker must arrive with some financial resources to cope with such exigencies. Second, if the worker cannot pay for the residency permit and ID, he must borrow from friends or relatives, or must return home – again, at his own expense. In such cases the effort may result in a devastating financial loss. The level of difficulty will also depend upon whether the loan/s was taken from friends, relatives, recruitment agent, bank or a loan shark. The inability to pay may elicit threats or retaliation against the person and his family.

Visa trading and deception of prospective migrant workers who arrive without jobs is not necessarily "trafficking." Although there is exploitation in the form of exorbitant payments required by brokers in the origin country, there may not be ongoing involvement or exploitation after they arrive, so it is unclear. Brigadier Nasser Mohammed Al Sayed, Director of the MOI's SFUD argued, "The trading of illegal workers' visas in Qatar is at the heart of the country's problem with human trafficking" (Walker 2014). At the same time, Ibrahim Abdullah al-Qubaisi, Solicitor General in the Public Prosecution Office, explained:

> Based on the legal definition of human trafficking crimes, no such offences were recorded in Qatar in 2013. Crimes such as visa trade could be considered as fraud, deception, and greed rather than human trafficking. The crime usually happens outside the borders of Qatar, where the victim pays money for people to get them into the country. Our local legislation applies only to the country. (ibid)

It is a curious assumption that the crime is perpetrated outside Qatar, because the visa and its sale originate from Qatar.

In many countries, particularly those with precarious employment and insecurity, Qatar is viewed as a wealthy labour destination that promises high salaries, not only for low skilled workers in construction, services, and domestic work, but also for skilled professionals and white-collar workers. As people search for circumstances to better their lives, Qatar is characterised (in the media, on the Internet and through word of mouth) as a strong emerging economy with many

opportunities for those looking for more lucrative employment and a means to utilise and enhance their skills and work experience. Since Qatar was awarded the soccer World Cup for 2022, many young men, particularly from African countries, have been deceived by promises that they could come to Qatar to play professional soccer, only to arrive and find some demeaning position waiting for them with much less salary than expected or no job at all. Thousands of educated irregular African migrants –from Nigeria, Cameroon, Uganda, Kenya, Senegal, Togo and elsewhere– with university degrees in building technology, civil and mechanical engineering, geology, accounting, and other professions have arrived in Qatar to face similar situations. From 2011, over 5,000 Nigerians (almost all Christians) came to Qatar having paid up to $15,000 to an agency at home for a work visa, but there was no job waiting for them on arrival.

The Qatar authorities claim they are well aware of visa trading and its consequences (*Doha News,* April 3, 2013), but the fear of being reported to the authorities and deportation is strong because the victim still has a large debt to repay and does not want to return home with the shame of failure. At the same time, and perhaps unknown to most, the NHRC argues that if the sponsor's date of notification of absconding is later than the complaint by a worker, the sponsor can be prosecuted for false accusation (NHRC community representatives meeting, May 2015).

The *kafala* system prevents a local domestic labour market from operating because of the stringent control and restrictions in changing employers and exiting the country as well as on the formation of trade unions and strike action. However, if victims in an irregular situation are looking for work, it means there is an "underground" informal labour market operating for irregular workers who are unwilling or unable to leave because they need to earn enough money before returning home. One of these is located in an area of the furniture market. Here, day labourers wait in the hope of being picked up in cars, trucks, or vans to get work. Several irregular African men reported sexual harassment when picked up by men who promised them a job. Quite often, because of the clandestine nature of such operations, the migrant may not be paid and is not in a position to complain. One frightened worker has not left his room for a year after he was beaten and threatened by a gang of his countrymen when he dared to complain. Another interviewee, an African engineer in his mid-forties, finally found work, but after six months the company laid him off and refused to pay his salary. After several months agitating for the money, he was given a cheque for the full amount, but there were no funds in the bank account. He presented the cheque through a friend's bank account and

reported the case to the NHRC. Their lawyers retrieved the money. However, the long ordeal and humiliation affected his mental health and he has returned home, as one respondent put it, "a broken man."

Irregular migration with "free visas" also operates through social networks between workers in Qatar and may not always be sinister. For example, PJ, a young Bangladeshi man (27 years) has been working in Qatar for three years. Under pressure from his family, he decided to find a way to bring his brother (25 years, with accounting qualifications) to Qatar as he had been out of work for over six months in Dhaka. Having made friends with a Bangladesh civil engineer working in middle management for a trading company (established by an Indian entrepreneur from Kerala), PJ asked him for a work visa (he refused to call it a "free visa") for his brother. The engineer dutifully arranged a visa for a clerical officer through his company's quota arrangement. A bogus job offer was drawn up, sent to the Ministry of Labour and passed through the Chamber of Commerce and the Bangladesh embassy. According to PJ, he only paid the government charges for procuring the work visa ($80), the pre-departure medical examination ($25), a welfare fund ($10) that will pay for repatriation of the body if he dies abroad, and a death insurance policy ($20). The airfare was approximately $330. In all the cost to PJ was $485. When he arrived, PJ fed and sheltered his brother and tried to help him find a job within three months. When a position is found, he will readily obtain an NOC from the trading company and his brother's stay will be regularised.

Regularisation

Article 12 of the Sponsorship Law makes provision for the SFUD in conjunction with the MLSA to transfer sponsorship of a worker to another employer without permission of the original sponsor, including on a temporary basis if there is a lawsuit between the employee and employer. Regularisation of migrant workers with a work visa but no employer is usually at the discretion of the CID in conjunction with the SFUD and Ministry of Immigration. In early 2014, during a crackdown on irregular migrant workers, the SFUD announced it had transferred the sponsorship of over 1,000 workers to other sponsors (*Marhaba*, April 23, 2014). The Nigerian and other African cases suggest it was a much larger number than this between 2013-2014.

A prospective employer who is willing to take over sponsorship can process this independently, or through the NHRC. One philanthropic company has undertaken many such "rescues" of stranded workers, either providing them with work, or

helping to regularise their residency while they look for a job, and providing an NOC when they find one.

If the original sponsor cannot be found, the CID is approached with a request for sponsorship transfer. The CID checks the passport and visa number in its database to determine if the worker is in the country legally. For example, they can immediately determine if the sponsor (whether Qatari or non-Qatari) is blacklisted or inoperative. If the CID is able to contact the sponsor, arrangements are made to obtain an NOC to transfer sponsorship. Depending upon the difficulty of the case, the CID may immediately detain the worker and a decision could be made for deportation. However, if the CID is sympathetic, particularly if the foreign worker has an advocate in the company willing to employ him/her, it is more likely to be approved. The original visa is cancelled and through the Department of Immigration an application is made for a new visa with the new sponsor with a labour demand letter from the company.

At this point, there are fines to pay for overstay (QAR200 per day: $55), in addition to QAR2,100 ($575) for the application and another QAR1,200 ($330) for the new ID card. There is a mutual interest here in that the company does not have to pay middlemen for recruitment costs as the worker has already paid these. Paying the above transfer costs and fines may well be considerably less than recruitment costs.

Employees who have been blacklisted because they have absconded are required to pay QAR6,500 to expunge their name from the list, as long as there is no criminal or sordid issue behind the blacklisting. Those who have absconded and turned themselves in to the authorities giving a valid reason for having left their employer must still pay the fine, but their ban will be lifted for a period of time to allow them to apply for a new work visa under a new sponsor.

Reforms

There has been some effort to facilitate complaints about sponsors that include opportunities for irregular workers to seek assistance. For example, hotlines have been established by the Qatar Foundation for Combating Human Trafficking (QFCHT), the NHRC, and the Qatar Foundation (still in its inception), but historically these have not been particularly effective. The Ministry of Labour is also planning a special hotline for domestic workers. At a new government website (Hukoomi e-Government Services), there is a distinction between employment-relations complaints (workplace disputes) and human rights complaints. For rights

complaints, the website transfers to the NHRC website where it explains that complaints must be submitted by fax, telephone, email, or personal attendance. The Human Rights Department of the Ministry of Interior is mentioned on the website portal "Qatar Living," but there is no reference to it at the e-government website (Hukoomi).

Under the "Karama" (dignity) initiative, the Qatar Foundation Mandatory Standards for Worker Welfare for contractors and sub-contractors was launched in April 2013, introducing comprehensive ethical and legal standards to be followed in labour recruitment, accommodation, transport, health and safety, and contracts. The standards include the principle of ethical recruitment where migrant workers are not to pay any recruitment charges. The Labour Law (Article 33) prohibits workers being charged for recruitment, but the standards made it clear that this should be applied whether in Qatar or in their countries of origin. These standards were also adopted by the Supreme Committee for the 2022 World Cup in January 2014 and adopted by other clients of the state, including Q-Rail, Rasgas, and other major construction contractors. All corporate tenders for projects are required to adopt these standards, and various organisational welfare teams have been established to monitor and evaluate compliance, including in the Ministry of Labour and Social Affairs. These reforms were designed without any demands for legislative change, but to be implemented at a commercial level.

Following from the standards, in 2014, seven main legislative changes were promised for early 2015 but have been postponed to late 2015. They include: reform of the *kafala* system from private to public sponsorship; a bank transfer wage protection scheme; abolition of the exit visa; abolition of the need for the employer's permission to change employers on the completion of a work contract; reduction from 2 years to 6 months for former migrant workers wanting to return to Qatar with another employer; stricter standards for worker transportation; and significantly increased fines for withholding employee passports. The reform legislation has been passed by the Shura Council and is waiting for the Amir's signature. A one-year grace period will be given for compliance with the changes.

While these proposals did not meet the standards recommended by various international rights organisations, they have been seen as a major step forward.

The implementation of the reforms may increase the liberalisation of workers in the country and reduce the incidence of irregularity through visa trading and absconding, but this remains to be seen. The move to allow transfer of employers after the completion of a contract will more likely prompt employers to increase the contractual period.

Conclusion

The several different types of irregularity that exist mean that there cannot be one undifferentiated category of irregular migration. The nuances are important because they can have different repercussions for the individuals affected. Irregularity, as we have seen, may or may not be a condition imposed upon the recipients by a situation beyond their control. Many may be fully aware of the risks they are taking, but are undeterred by the promise of higher incomes than they would receive at home.

The two main sources of irregular migrant labour in Qatar result from trading of "free visas" besides employees' absconding from their sponsors. An additional aspect to this is the payment made by workers for the visas, whether resulting in irregular status or not. Those who are irregular from absconding because of abusive treatment may still need to remain in the country and work to pay off debts and support their families back home. With some evidence presented in this chapter, there are indications that the Qatari authorities are more sympathetic to the regularisation of visas, if an alternative employer can be found. The "free visas" are themselves a function of the labour quota arrangements provided to registered companies that can be manipulated by sponsors or their representatives and treated as a business in itself. When workers pay large amounts for work visas, they become trapped in a form of forced labour until they can recoup the money by working under whatever regular or irregular conditions they find themselves in. In this sense, the risks of migration do not always register with people in poorer countries desperate for work, particularly for those who are blinded by the promise of riches by unscrupulous labour brokers, even if they read about it (Gardner 2012).

While reform is underway in Qatar at the commercial level, serious reform in the current labour recruitment system can be achieved only by international bilateral or multilateral agreements. Simultaneously, there is a need to establish an accreditation programme for "ethical" labour recruitment agencies as preferred or exclusive labour suppliers throughout the labour supply chains of all organisations doing business in Qatar. Ethical recruitment agents will not take money from workers. This will assist with corporate due diligence requirements both within Qatar and abroad. For example, following a meeting of the ministers of labour of Nepal and Qatar in Kathmandu, it was stated unequivocally that future Nepalese workers deployed to Qatar would not pay fees and charges. These statements, however, were met by considerable scepticism by the Nepalese press where it was argued that such promises had been articulated many times over the past decade (*The Peninsula*, April 6, 2015; Khatri 2015; Rai 2015; Editorial 2015; Sehai 2015). Indeed, largely

because of pressure from the Nepal Association of Foreign Employment Agencies (NAFEA), the agreement between the two countries was never signed.

Despite the delays in the reform of the Sponsorship and Labour Laws, the NHRC and other philanthropic individuals and organisations have been working for the cause of irregular workers and seeking to have their cases brought to the courts, avoiding further victimisation, which gives cause for some optimism. In the past year or so, there continues to be improvement in terms of job availability and how CID and SFUD are processing people if they are found to have defective documentation. There is evidence of more flexibility toward regularisation via an administrative "repair" of work visas. This is important for "free visa" recipients who may have found themselves with blacklisted sponsors or with no sponsorship at all and perhaps also for those who have absconded from their employers for valid reasons.

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IX

Calculated Risks, Agonies, and Hopes: A Comparative Case Study of the Undocumented Yemeni and Filipino Migrant Communities in Jeddah

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Abstract: In the last few decades, Saudi Arabia, and Jeddah in particular, has experienced a massive flow of undocumented migrants. This is particularly interesting because it involves migrants from different continents and countries offering the opportunity for a cross-sectional analysis of their communities. This chapter focuses on Jeddah as a case study for the whole country. For the first time, using both quantitative and qualitative analysis, a researcher has been able to access some of the undocumented migrant communities in the city in their own environment and through face-to-face interviews gather accounts of their lives as part of the undocumented. In particular, this chapter analyses two Yemenis and a Filipino. These two communities make for an interesting comparative study because of their differences and similarities. Despite sharing the common experience of living as undocumented migrants in Saudi Arabia, their relationship with the members of their communities,

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other communities, and with the Saudi society are as different as their backgrounds. This chapter also discusses the immigration policies adopted by Saudi Arabia and their failure in tackling the problems of the undocumented migrants in the country.

Push and Pull Factors

Prior to analysing the data collected from the interviews, it is important to discuss the push factors which lie behind the migrants coming from Yemen and the Philippines and the pull factors in Jeddah.

Yemen, with one of the highest rates of population growth in the world (3.45%) is a demographic time bomb. Nearly 50% of its population of 24 million is under the age of 16 and the country has the highest unemployment rate (35%) in the Arab region. The individual average Gross National Income (GNI) is under $1,000. More than half of the Yemenis are illiterate. Yemen is politically unstable, with shaky regimes. Besides, in addition, to generating many migrants, Yemen is also a transit country for undocumented migrants from various parts of Africa making their way to Saudi Arabia (Thiollet 2007).

The Philippines shares some of Yemen's economic characteristics. The country has a large population of 96.5 million (UN 2012) and GNI per capita of $2,210 (World Bank 2011), which is higher than that of Yemen but still among the world's lowest. Unemployment is nearly 20%. At least 40% of those employed work in the informal sector and poverty afflicts about a quarter of the population.[1] The Philippines differs from Yemen in having a much better education system and a literacy rate of 95%. The vast majority of Yemenis are Muslims, while the Filipinos are predominantly Catholic with a Muslim minority.[2] Regardless of the differences in some demographic variables, the previously mentioned issues provide strong push factors for migration from both communities, some of which is undocumented.

Jeddah began shifting from an economy centered on the Haj and Umrah to one with a more diversified base after oil was discovered in Saudi Arabia in the 1930s. The sudden increase in oil prices in the 1970s brought huge revenues for Saudi Arabia and allowed it to embark on ambitious infrastructure and other economic development plans. Many of these government projects were carried out by the private sector that started to make huge profits, which eventually trickled down to the ordinary Saudi household. All these factors increased the demand for

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1. https://www.cia.gov/library/publications/the-world-factbook/geos/rp.html.
2. http://www.bbc.co.uk/news/world-asia-15578948, accessed July 1, 2013.

skilled and semi-skilled foreign labour to meet the requirements of the economy's growing sectors.

Saudi Migration Policies

The Saudi *kafala* (sponsorship) system has expanded to meet the increasing demand for workers in both the public and the private sectors. It includes all types of foreign professional expatriates, including engineers for construction projects, and doctors and nurses for private hospitals and clinics, not to mention, of course, a vast number of semi-skilled and low-skilled workers.

When unemployment rose among Saudi citizens, policy makers adopted "Saudization" as a national policy to employ Saudis in the private sector with the aim of reducing the number of foreign migrants in the country. This government policy achieved its goals only to a small degree, resulting in yet another policy, the Nitaqat system, as an effective tool to enforce Saudization. The word *nitaqat* means "areas" or "zones" in Arabic. This programme was introduced by the Ministry of Labour in June 2011.

The Ministry of Labour teamed up with the Ministry of Interior, employing 1,000 inspectors to enforce the new laws. The government established jail terms and fines for Saudi citizens who do not comply with the laws and it promised to deport any foreign guest worker who violated the new policy. As a consequence of the deportation policy, many undocumented migrants were pressured to go into hiding in order to avoid being deported. From 2012 to 2014, more than one million expatriates were deported under the two new laws. Parallel to the deportation policy, amnesty policies were adopted to address international human rights concerns about migrant conditions in Saudi Arabia.

The standard procedure for the amnesty initiative is to provide the migrants with a grace period in which to rectify their legal status or face a fine or jail, and deportation. Very often, after the deadline, the Saudi authorities would launch a crackdown and round up thousands of undocumented workers: this crackdown could last from a few weeks to a few months. Different government agencies carry out raids on all types of local markets, restaurants, mini-grocery stores, shopping centres, and residential areas.[3]

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3.   Reuters, March 27, 2013.

Methodology

The researcher used qualitative methods, particularly a face-to-face semi-structured anonymous interview questionnaire with closed and open-ended probing questions.[4] Migrants were interviewed while they were free (i.e., not under arrest, or under threat of arrest), living and working in the city. They were, thus, able to respond freely, without fear, to questions about their real experience in the city.[5] Using the snowball sampling technique, the researcher interviewed 55 undocumented females and males from the Yemeni and Filipino communities[6] based on one or more of the following four criteria:

- Entered the country without obtaining an official visa, for example, smuggled into the country by land or by sea;

- Entered the country legally with Umrah or Haj visas but overstayed;

- Entered legally with a work permit visa, but left the Saudi employers without consent;

- Born in the city to undocumented parents.

Twenty nine undocumented Yemeni migrants and 26 undocumented Filipinos were chosen. The interviewees agreed to talk in detail about their plight and experiences with regard to their legal status.[7]

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4. The confidentiality of the interviewees was protected and care was also taken not to flout standard norms and rules of professional ethics in fieldwork research.

5. See, for example, the work of al-U'thman (2002), Ba Eshin (2002), Sultan (1984), Assaf (1987), Al-Azim (1992). It should be noted that a recent exception to this approach is Ahsan Ullah (in this volume). The author conducted face-to-face interviews with members of the Bangladeshi community in the city.

6. It should be noted that we use the word "communities" in this chapter to differentiate the two groups of migrant labour under study. In other words, we used the snowball sampling technique to study these hidden populations of undocumented migrants. They were not a representative sample.

7. The author managed to interview all the Filipino men and women himself; however, many of the female Yemeni women were interviewed by a female research assistant, who had been trained to do these interviews. This was done to maintain sensitivity to Yemeni traditions.

Data Analysis of Undocumented Yemeni and Filipino Migrants in Jeddah

The demographic data collected from interviewing the two communities in Table 9.1 reflects an average age of 29 for the Yemenis and 26 for the Filipinos. The average Yemeni migrant had four children, twice the average number of children in the Filipino community. All the 29 interviewees from Yemen were Muslims. Twenty four interviewees from the Filipino community were Catholics and two were Muslims. The education level in the Yemeni community ranged from no formal education to a university degree. The average years of education for the Yemeni interviewees was 5.6, which equals the years of school between grade five and grade six. The average education level for Filipinos was twice as high, corresponding to grade 11.[8]

Table 9.1: General overview of the demographic characteristics

Nationality	Yemeni		Filipino		Total	
	f	%	f	%	f	%
Gender						
Female	14	48	16	61.5	30	54.5
Male	15	52	10	38.5	25	45.5
Total	**29**	**100**	**26**	**100**	**55**	**100%**
Average age	28		32		30	
Level of education	5.5		11		8.1	
Marital status						
Married	13	45	10	38	23	42
Single	15	52	16	62	31	56
Divorced	0	0	0	0	0	0
Widows	1	3	0	0	1	2
Total	**29**	**100**	**26**	**100**	**55**	**100**
Average number of children	4	100	2	100	3.05	**100**
Religion						
Muslims	29	100	2	8	31	56
Christians	0	0	24	92	24	44
Total	**29**	**100**	**26**	**100**	**55**	**100**

8. We used the American high school system where grade 1 stands for the first year of school and grade 12 is the final year prior to entering university.

The Migration Process

As noted previously, we identified four types of undocumented migrants in Jeddah. This section will discuss these four types with emphasis on Yemeni migrants.

Table 9.2: Issues related to illegal migration to Saudi Arabia

Way of becoming undocumented	Nationality					
	Yemeni		Filipino		Total	
	f	%	f	%	f	%
Smuggled	13	44.80	0	0.00	13	23.63
Overstay	11	37.90	2	7.70	13	23.63
Run away from Sponsor	0	0.00	24	92.30	24	43.64
Born in the city with no documents	5	17.20	0	0.00	5	9.10
Total	**29**	**100.00**	**26**	**100.00**	**55**	**100.00**
Reasons of mig ation	f	%	f	%	f	%
Economic	20	69.00	26	100.00	46	83.60
Social to join family or friends	4	14.00	0	0.00	4	7.30
Religious	0	0.00	0	0.00	0	0.00
Born in the city with no documents	5	17.00	0	0.00	5	9.10
War & Famine	0	0.00	0	0.00	0	0.00
Total	**29**	**100.00**	**26**	**100.00**	**55**	**100.00**
Worthiness of migration	f	%	f	%	f	%
Yes	24	82.75	26	100.00	50	90.90
No	0	0.00	0	0.00	0	0.00
Born	5	17.25	0	0.00	5	9.10
Total	**29**	**100.00**	**26**	**100.00**	**55**	**100.00**
Issues related to migration	Yemeni		Filipino		Average	
Cost of migration in $	560		0		N/A	
Average age at arrival	20		25		22.36	
Average years as an undocumented	3		4		3.47	
Average number of deportations	0.79		0.076		0.45	

Undocumented Entry, Smuggling

It is important to note that Yemen shares a border with Saudi Arabia making it is easy for Yemenis to enter clandestinely. Regardless of the technologically advanced surveillance equipment that the Saudi authorities use, the border cannot be fully watched or protected. Of all the arrests that were made at the Saudi borders at various times from 1978 to 2008, an overwhelming majority was that of Yemeni nationals: 3,419,207 out of 3,464,492 (or 98.7%). No Filipinos were arrested clandestinely entering the country.

In our study, all the undocumented Filipino migrants are persons who entered the country with a work contract but who, then, overstayed their visa. The Philippines does not share a border with Saudi Arabia, which makes the clandestine entry of Filipinos practically impossible. However, the long Saudi-Yemeni border is porous, and Yemenis can enter illegally without a visa. Thirteen of the 29 undocumented Yemeni migrants were smuggled into Jeddah using different routes from Yemen: simply crossing the 1,100 mile long Yemeni-Saudi border on foot, or getting a lift from a Yemeni or Saudi driver, or paying a smuggler to guide them across the border.

The cost of smuggling declared by Yemeni interviewees was on average $560. Most interviewees noted that both Saudi and Yemeni nationals are involved in the smuggling of undocumented migrants of many different nationalities into Saudi Arabia. The average cost of this trip for the smuggled interviewees varied over the years but, most recently, it stood at between $507 and $614. A typical example was provided by interviewee number 11: "I paid a Saudi or a Yemeni national approximately $26 from Taiz to Harad (also known as Hardh, Wadi Suleiman) and from Harad we were smuggled to Jeddah for around $500."[9]

Overstaying Umrah and Haj Visas

Table 9.2 indicates that eleven of the 29 Yemeni migrants used Umrah visas to get to Jeddah and, then, overstayed their visa. From the interviews, it is evident that most of those who arrived in Jeddah using an Umrah visa were female relatives of a documented Yemeni migrant who already worked in the city. In this case, they obtained Umrah visas to enter the country by using their husband's proper

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9. Many Yemenis noted that a large number of individuals, who could not afford the cost of being smuggled to Jeddah, smuggle themselves all the way to Jeddah on foot and many of them were subject to arrest once they crossed the border or while in the desert on their way to Jeddah.

iqama (residency permit) and then overstayed their visa period in violation of Saudi migration laws.

Interviewee number 3 was an undocumented Yemeni wife who had overstayed her Umrah visa by eight months. Her husband, interviewee number 4, was 34 years old and had a *kafeel* (sponsor). The undocumented wife has one daughter from her present husband, and at the time of the interview she was pregnant. She had formerly been married and was now divorced. She has two girls from her previous marriage who live in Yemen with their grandparents. She was brought to Jeddah by her husband, who noted:

> I had to bring my wife here to Jeddah even if I have to smuggle her across the border…I was born in Jeddah and I feel I am more a Saudi than a Yemeni. Why can't I get an *iqama* for my wife? I am afraid to drive around Jeddah or even take her to Makkah for Umrah because if I was stopped by the police for a minor traffic violation or at a road block, they might ask for my wife's *iqama*. Then both of us will be subject to arrest and deportation.

He also wonders if he remains in Jeddah – and he plans to stay – how his children will receive an education without proper documents. He is trying to save money to buy visas for his wife and children.

Breaking Work Contract

These are the migrants who entered the country legally on a work visa, but who left their Saudi employers without their employers' consent: i.e., they ran away from their sponsors. Twenty-four (92.3%) Filipino migrants in our sample found themselves in this category while none of the Yemenis were "runaways."

Born in the City with no Proper Documents

Another important group constituted of those undocumented migrants born in the city. Five of the interviewed Yemeni migrants (17%) were born in Jeddah to undocumented parents, who either entered the country with proper documents to work for a *kafeel* or were smuggled across the border. For example, two of the females, aged 14 and 17, were born in Jeddah to an undocumented father and a mother from, respectively, Yemen and Myanmar. In this regard, the older female, interviewee number 27, noted:

> We were born in Jeddah with no proper documents which made our lives a disaster. I don't understand why my parents married in this country without being documented migrants first. This kind of marriage has made it difficult

for my sister and me to live a normal life like other children and have an opportunity for proper education. How we are going to get married? Should we get smuggled back to Yemen? We do not even know the address of our father or his family in Yemen. Or should we marry another undocumented migrant? We have lived in secrecy all of our lives and we do not know what to do. Our parents got divorced ten years ago when we were little children….we live with our mother and work as beggars…

Individuals who were born in Jeddah but who do not have proper residency or Saudi nationality cannot enrol their children in public school or university. This particular group are the victims of their parents' circumstances. There are possibly thousands of them across the Makkah region especially in its three major cities: Makkah, Madinah, and Jeddah.

Table 9.3: Issues related to working conditions

Issues related to work	Nationality					
	Yemeni		Filipino		Total Average	
	f	%	f	%	f	%
Average number of jobs per year	3	100	3.3	100	3.1	100
Is it easy to find a job?						
Yes	23	79.31	23	88.46	46	83.6
No	6	20.69	3	11.54	9	16.4
Total	29	100	26	100	55	100
Average # of working hours per day	11		9		10	
Average income per month in $	328		750		527	
Average rent per month in $	62		100		80	
Standard of living since coming to Jeddah						
Improved	24	82.75	24	92.3	48	87.3
Same	5	17.25	2	7.7	7	12.7
Declined	0	0	0	0	0	0
Total	29	100	26	100	55	100

The average income of all the interviewees from Yemen is $328 a month in exchange for twelve hour-long working days and they change jobs more frequently than Filipinos. Filipinos change job less frequently, and their average working hours are less than the Yemenis at nine hours. The average Filipino monthly income in our sample is more than double that of the Yemenis and stands at around $750. It should be noted that, unlike most other communities, the undocumented Filipino migrants in Jeddah never have problems getting a job in the city. There is both an ever increasing demand for their services, and they have a reputation for being outstanding housemaids, nurses, etc. Like other undocumented migrants in Jeddah, Filipino migrants receive their salaries in cash. More specifically, the monthly income of a Filipina housemaid is around $500. Those who work in healthcare make on average $1,000; a hairdresser would make $1,300. Males from both communities who work as private taxi drivers for other undocumented or documented migrants from their communities earn up to $2,000 per month. In Jeddah, both Yemenis and Filipinos make more money than other undocumented migrant communities, e.g., Ethiopians and Nigerians (Alsharif 2015).

The rate of job change is related, for both communities, to the number of years spent in Jeddah. Migrants change jobs for many reasons, the vast majority of our interviewees indicated that they did so for better pay.

Even though the majority of interviewees from the Yemeni community did not have a *kafeel,* and their opinions are based on what they have heard from others, they have their own views and attitudes towards the *kafala* system. In this case, 22 (76%), of the interviewees from Yemen believe that the *kafala* system is unfair and should be abolished because it resembles a modern form of slavery. Furthermore, many of them noted that they do not need a *kafeel,* even if they were provided with one. They strongly believe that they can make more money working in an undocumented fashion because they do not have to deal with the Saudi *kafeel* who will control their life and pay them less money.

Interviewee number 25 said:

> I think it is not fair. The *kafeel* always takes advantage of you. When my father was alive, he was always complaining. And yes, it is like modern slavery. Many Saudis get so many visas and sell it to anyone who pays more. And always ask for more money when it is time to renew the *iqama.*

Interviewee number 26 noted: "Some *kafeels* ask for monthly payments if they allow you to work for yourself." In general, the interviewees noted that they do not need a *kafeel* to enter Saudi Arabia, for the simple reason that they have come into

the country illegally. As such they do not have to renew their *iqama* or pay a Saudi *kafeel* part of their earnings.

As interviewee number 15 revealed:

> I am freer to work or not…. The *kafeel* controls your life and very often pays me little money compared to what I earn from my job now. The problem that most of us face without a *kafeel* is the threat of the Baladiyyah (a local police authority)… Also, without legal documents, we are subject to raids by the Jawazat authority (Office of Passports and Naturalisation) here in Al-Hindawiya.

This shows that most of the temporary migrants consider this system to be a social problem that should be abolished. The Filipino reaction to the question was almost the same.

When the researcher asked the interviewees about whether they will take advantage of the most recent amnesty initiative by the Saudi government, 25 (86%) of the 29 Yemeni interviewees said they will not take advantage of the amnesty. The majority of the men noted that they do not need it to go back to Yemen, as they can smuggle themselves easily between the two countries. None of the 26 Filipino migrants intended to sign up for the amnesty.

There was also a probing question about whether living standards had improved, stayed the same, or not improved since they came to Jeddah. Forty-eight (87.3%) interviewees from both undocumented communities noted that their standard of living had improved. Only two (7.7%) Filipino interviewees claimed that it had stayed the same, while five (17.3%) Yemeni migrants who were born in the city with no documents stated that it stayed the same. In this connection, they could not compare it to a different place due to their special circumstances.

Employment and Income

It is difficult to list all the types of work that undocumented migrants from the Yemeni and Filipino communities undertake while living in Jeddah. In general, Yemeni migrants work in minimum wage jobs, but quite a few worked in more complex construction-related jobs. They also work in interior decoration, car repair, car bodywork (known as panel beating in the UK) and painting, and tailoring. Many also worked selling near-expired goods, as house painters, cooks in restaurants, and porters. Some, meanwhile, are forced to beg. Filipino males worked in different jobs as tailors, private taxi drivers, waiters or cooks in oriental restaurants, medical technicians, electricians, painting cars (detailing), and mechanics.

Fourteen of the female Filipino interviewees worked as housemaids or nannies for Saudi or non-Saudi families. The remaining two females were unemployed at the time of the interview, but explained that they were receiving training in women's cosmetics and hairstyling from an undocumented Filipino hairdresser in the city.

The income of the undocumented migrants in the city seems to depend on supply and demand conditions. For example, in the case of housemaids or cooks, the supply of female maids from the Philippines as well as of other females from other nationalities goes down in Ramadan. This pushes up the average wages for their services. Filipino housemaids are also subject to wage fluctuations because of negotiations with their own government and the Saudi Ministry of Labour regarding their contract details, i.e., salary and living conditions. During these extended periods of labour negotiations, the salary of undocumented Filipina maids rises due to their scarcity.

Legal Issues Facing Undocumented Labourers in Saudi Arabia

It was important to ask about the interviewees' concerns regarding their legal status because each community has a different way of relating to the Saudi authorities or to their own representatives in the country. For most Yemenis, in contrast with the undocumented migrants of other communities, the fear of deportation is mitigated by the fact that most of them know they can easily re-enter the country.

Years as an Undocumented Migrant

In this study, the time spent in Jeddah as an undocumented migrant varied for our Yemeni and Filipino sample between one year (only one migrant) and twenty years (three migrants). The average time spent in Jeddah without documents for the Yemeni migrants was approximately three years, while for the Filipinos it was four years. It should be noted at this juncture that we did not include five interviewees from Yemen, who were born in Jeddah, in the calculation of the average time spent in Jeddah with no documents. The mode (i.e., the most repeated numbers of years) was twelve years, as reported by five Yemeni migrants.

The number of times an individual was deported from the two communities varied from no deportation to being deported four times. In total, the 29 Yemeni interviewees experienced 23 deportations: i.e., each Yemeni had been deported an average of 0.7 times. In the case of Filipino migrants, only two males had experienced deportation, and only once. The average number of deportations of an undocumented Filipino was significantly lower, then, just 0.08 as set out in table 9.2.

Some Aspects of Undocumented Migrant Life

Communication

Modern technology, for example, the mobile phone, seems to play a big part in the interviewees' lives in terms of communicating with their family members and friends inside and outside Jeddah. Most of the interviewees socialise mainly with their own community members, with a few exceptions. This socialisation pattern with their own communities also runs across all communities in the city. When asked about the number of times they call their families while living and working in Jeddah, the frequency varied between twice a week and once a month for the Yemeni migrants. The average number of contacts per month for the 29 Yemeni migrants is four. Many interviewees actually sneak back to Yemen to visit their family. For instance, seven of the male subjects interviewed were married and all noted that they, like many other married Yemenis, migrate across the borders from Saudi Arabia to Yemen to visit their wives and children and come back: all this without documentation. For the Filipino migrants, the number of contacts with family ranged between 30 and 60 contacts per month with an average of 50 per month. The number of contacts with family members by the undocumented Filipinos in the sample is very high compared to the Yemeni and other communities of undocumented migrants in the city. The Filipinos use, in addition to mobile phones, more free communication media such as Skype, Lines, Tango, etc. perhaps because of their higher education level, higher salaries and better English.

Social Life

Most of the Yemenis socialised largely within their own community. Many of them noted that they are open to socialising with other communities, but they admitted that the bulk of their social gatherings or "hanging out" is with Yemeni friends and relatives. In this regard, twenty interviewees (68.9%) said they only participate in social life with their own Yemeni community. Nine (31%) of the interviewees indicated that they participate socially with all other communities. The great majority of Filipinos also socialise mainly with their own community. It should be noted that the average number of friends and relatives reported by the Yemeni undocumented migrants is more than double that of the Filipino migrants. For example, table 9.5 indicates that the average number of relatives for the 29 Yemenis interviewed for this study was twelve, while those for the 26 Filipinos was only six. In addition, the average number of friends for the Yemeni interviewees was 31 versus 17 for the Filipinos. Overall, these 55 interviewees have a total of 1,845 relatives and friends, documented and undocumented labour migrants, who live and work in the city of Jeddah.

Table 9.4: Social ties

Family and Social Ties	Nationality					
	Yemeni		Filipino		Total	
	f	%	f	%	f	%
Do you remit?						
Yes	23	79.31	23	88.46	46	83.6
No	6	20.69	3	11.54	9	16.4
Total	**29**	**100**	**26**	**100**	**55**	**100**
Percentage of remittance	40.0%		50.0%		46.14%	
Average # of people in the same residence	8		4.5		6.34	
Average # of contact with family per month	4		50		25.74	
Average # of relatives in Jeddah	12		6		9.16	
Average # of friends in Jeddah	31		17		24.38	

Remitting

Fourteen (48%) of the interviewees noted that they were the only breadwinner for their families. Fifteen (52%) indicated that they were not the only breadwinner for their family. Only two females (7%) indicated that they were the only breadwinner for their families.

Twenty three of the Yemeni interviewees (79%) noted that they regularly (usually on a monthly basis) remit part of their income to relatives in their native countries. Six interviewees do not remit money. The ratio of remittances to income varied from 0% to 70%. As far as remittance from females is concerned, on average 16% of their income was remitted, while the males' average was 52%.

The average percentage of remittances for both female and male interviewees stands at 40%. Most of their remittances are for paying a previous debt or to assist families. The vast majority of the Yemeni migrants, like other undocumented

migrants, remit funds by giving it to someone of their own nationality who has connections with the communities of origin.

In the Filipino case, the ratio of remittances to income varied between 0% and 55% of their monthly income. Ten (38.4%) of the interviewees noted that they are the only breadwinners for their families, sixteen (61.5%) indicated that they were not the only breadwinners for their families. Twenty three interviewees (88%) from the Filipino community noted that they regularly (usually on a monthly basis) remit part of their income to relatives in their native country. Only three interviewees said that they did not remit money. Overall, Filipino males remit more than their female counterparts, respectively, about 55% and 50%. The average monthly remittances rate for both female and males is 50%.

Medical Needs

In the case of undocumented Yemeni migrants, all the interviewees (100%) noted that, in case of a medical emergency, they have no access to public hospitals in Jeddah and that their only possible option, if they can afford it, is to go to a private hospital or clinic. However, Yemeni interviewees often receive medical care in the various districts in which they live. For example, in the Al-Hindawyia district where some of them reside, there is a small clinic that functions in the early morning where minor illness and injuries are treated.[10] The cost is around eight dollars. In addition, if there is no access to medical care, the vast majority noted that they would seek consultation with the nearest pharmacist, or see one of the local Attar (traditional medical/herbal practitioners) for medical advice. In the case of pharmacies, pharmacists provide all types of medical advice and can sell any type of medication, except those that are usually prescribed by psychiatrists. In emergencies, according to the interviewees, private hospitals are accessible because they do not ask for identification cards.

Medical access is, on the basis of our sample, rather different for Filipino migrants. Eighteen (69.2%) of the Filipino interviewees noted that in case of a medical emergency, they have access to private hospitals and medical clinics in Jeddah. In this regard, interviewee number 32, a 28-year-old female Filipino hairdresser said:

> I have many female and male Filipino friends who work in private hospitals or clinics who help me receive medical treatment without asking me to provide *iqama* … sometimes free of charge.

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10. All the doctors and nurses are foreign professionals from India and Pakistan.

Eight (30.85%) of the interviewees said they do not have access to hospitals and that they would seek the advice of a pharmacist.

Hopes and Plans for the Future

This section deals with the hopes and plans of these two undocumented migrant groups in Jeddah based on a few questions listed below.

Table 9.5: Hopes and plans for the future

Future plans	Nationality					
	Yemeni		Filipino		Total	
	f	%	f	%	f	%
Are you satisfied with living in Jeddah?						
Yes	26	89.70	15	57.70	41	74.5
No	3	10.30	11	42.30	14	25.5
Total	29	100	26	100	55	100
Does living in Jeddah with no documents bother you?						
Yes	10	34.48	26	100	36	65.5
N o	19	65.52	0	0	19	34.5
Total	29	100	26	100	55	100
Are you going to use the amnesty issued by the Saudi government?						
Yes	3	10.30	3	11.54	6	10.9
No	26	89.70	23	88.46	49	89.1
Total	29	100	26	100	55	100

Are you satisfied with how you live and work in Jeddah?

Regardless of the difficult lives of these undocumented migrants in the city of Jeddah, the vast majority of Yemeni migrants, almost 26 (90%) are content with their lives in the city and only three (10%) are not happy. Fifteen (57.6%) of the Filipino interviewees (eight males and seven females) said they were satisfied. Eleven (42.4%) of the interviewees (two males and nine females) said they were not satisfied.

Does living in Jeddah with no documents bother you? Please give details.

Only ten Yemeni interviewees (34%) admitted that it bothers them to be in the city undocumented; seventeen (59%) interviewees noted that having no documents did

not bother them; and two (7%) did not answer. Most agreed that the city provided them with the opportunity to make a living, while sending money to loved ones back home, but that happiness is not a permanent condition. The majority admitted that the harsh labour conditions, the long hours they spend every day at work, and the continuous threat of deportation does not favour a normal life. Many of the Muslim interviewees noted that living close to the two holy cities of Makkah and Madinah, with the possibility of performing Haj and Umrah, gives them a sense of spiritual satisfaction. This assists many of them in easing their difficulties. On the other hand, all (100%) of the Filipino migrants, men and women, noted that it bothered them not to have proper documents.

What are your long-range goals and objectives in terms of work and or living in Jeddah? How do you plan to achieve your expected goals?

Ninety per cent said that their objective is to stay in Jeddah to save as much money as possible in case they are deported. In particular, the youngest ones hope that they can regularise their status. The major concern for Filipino migrants is to save enough money to allow them to go back and get married, if they are single, or to buy a home or a small business, if married. Many of the females want to go back with enough money to go to a nursing school or get a university degree. Many of the males will attempt to stay as long as possible in Jeddah in order to save money so that they can open small businesses in various industries such as, for instance, garages.

If you were pressured to leave Saudi Arabia for any reason, would you attempt to re-enter the country with a permit or without?

In response to this question, many Yemeni interviewees' answers were similar to these words:

> I was deported three times from Jeddah and came back twice in the same week I was deported and, on the third occasion, I stayed with my family for a whole month. I was caught by the Jawazat (police) at the work site twice and at the place where I lived once. I was deported because I have no permit to work in Saudi Arabia.

Of the Yemenis, 25 (86%) said that if pressured to leave Jeddah they would definitely try to come back. Four of them (14%), three women, said they would not come back. One can safely assume that the undocumented Yemeni migrants in Jeddah have calculated all the risks involved in being smuggled to Saudi Arabia,

taking into account variables such as the possibility of being arrested and deported. They have, then, balanced this against the benefits that they can gain if they live and work in Jeddah. The undocumented Filipino migrants' response differs. Twenty four of them (92.3%) noted they would not attempt to re-enter Saudi Arabia. In this case, they said that the new fingerprinting system would stop them from entering the country. Only one Muslim female (7.7%) said she would try to re-enter using a Haj or Umrah visa, if she could.

Conclusion

It is important to note that the Yemenis outnumber all other communities in Saudi Arabia. One of the main reasons for this is the geographical and cultural proximity to the country. Most of the undocumented Yemenis have relatives or friends already living in the Kingdom and, due to the lack of any language barrier, they can circulate more easily in the country. This allows them to enjoy relative freedom in comparison with members of other communities, such as Filipinos. Yemeni migration to Jeddah is circular. For many undocumented migrants, it is a continuous circular round trip from Yemen to Jeddah. Yemeni migration goes back in history, when compared to the Filipinos who began arriving after the 1970s.

Both Yemen and the Philippines face domestic and external problems. Over the years, many migrants from Yemen[11] have fled to Jeddah to seek better incomes that allow them to save money to invest in a better future once they return to their country. In addition, due to the historical links between the two countries, Jeddah in Saudi Arabia has always been the primary destination for Yemeni migrants not least because of the many Saudi nationals there who are of Yemeni origin.

Most undocumented Yemeni migrants are young with an average age of 28. They are physically fit and able to smuggle themselves into Saudi Arabia regardless of the harsh conditions of the journey. Despite the fact that the way they became undocumented resembles other communities' experiences, it is important to note that most of them are aware of the fact that they can come and go from the country at will without being caught. This is an important point that distinguishes them from the Filipinos and other undocumented communities in Jeddah.

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11. During 2014, we witnessed major political developments in Yemen, as the Houthi Movement – also referred to as Ansar Allah – solidified control over the capital, Sanaa and the central government collapsed. This will, likely, result in more migrants seeking safety and economic stability in Saudi Arabia.

All this suggests that, for our sample, many variables contribute to the presence in Jeddah of these two communities. As can be gauged from the interviews the main reason is economic, but in the case of Yemeni migrants, the presence of family and friends in the city contributes greatly to their migration in addition to the ease of arrival through a long and porous border.

Filipinos' personal narratives sound less dramatic than those of Yemeni migrants. This is due to the fact that the Filipinos enter Saudi Arabia with a work visa and, at least at the beginning of their lives in Jeddah, they enjoy a legal status. However, their working contracts sometimes subject them to a long working day and, for many of them, the option of clandestine work is attractive because of the higher wages they can earn.

Accusations of rape and mistreatment have been put forward by housemaids as a reason for breaking a work contract before the three months granted by the authorities. However, our interviews with undocumented Filipino migrants did not pick up any such problem. It is sometimes claimed that the real reason for the accusations is so that the worker can enter an underground economy, which enables the women in question to earn more money than in a household. In addition, they can move more freely in the country and change jobs more frequently.

In addition, the Filipino migrants arrive in Saudi Arabia better prepared to work in more skilful jobs. Compared with Yemeni migrants, they are more educated, and most of those in our sample work in the health services mainly as nurses. This gives them the possibility of living in more organised and integrated communities even if they share, with the other groups of migrants, the status of being undocumented. Their internal organisation is also evident from the way they teach each other the skills they need for their jobs, for example, hairdressing.

Obviously, this situation which is almost privileged has an impact on the way the members of the Filipino community live and imagine the future. For example, most of them are aware that in case of a forced deportation they cannot return easily, due to the distance of Saudi Arabia from their country. This is why their hope is to save a sufficient amount of money in order to open a business back home. Living as undocumented migrants in this way makes them more flexible and less vulnerable to the many challenges documentation poses. It is evident from the interviews and fieldwork that the Filipinos have a better relationship with the city and, together with the Yemenis, manage to construct a better life for themselves and their families back home. This can be deduced from the high remittances that they send to their home countries.

There is no magic or quick-fix remedy that will totally eliminate the phenomena of the undocumented migrant community in Saudi Arabia, either now or in the future. This chapter contends that if the issue of undocumented migrants is not resolved creatively, especially for those born in the city who have no access to Saudi documentation, then the country, in general, and the city of Jeddah, more specifically, is sitting on a ticking time bomb which is set to explode.

The undocumented who have no access to good education and healthcare will continue to live in an underground, unregulated economy, which can only lead to future problems. The following are some recommendations that could guide those Saudi government bodies concerned with the issue of undocumented migrants and help them determine reasonable steps to solve this serious problem:

1. Expose those who are involved in illegal, underground activities such as selling work visas to poor foreign workers

2. Impose fines on recruitment agencies and Haj and Umrah travel agencies for each individual who violates the requirement of departure after the pilgrimage season or overstays his/her residency permit.

3. Establish Economic Free Zones straddling the Saudi-Yemeni border and encourage Saudi companies to construct factories that will employ both Saudis and Yemenis and provide them with the appropriate training. This will serve two purposes: it will reduce the flow of Yemeni migration to Saudi Arabia while limiting rural-urban migration within Saudi Arabia. Constructing infrastructure such as schools, hospitals and vocational training facilities within these zones will benefit both the Yemeni and Saudi communities. Once the current conflict between Yemen and Saudi Arabia ends, the GCC should draw up a long-term plan to have Yemen join the regional bloc.

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X

Producing Irregular Migration: Living and Labouring under Laws in the United Arab Emirates

Pardis Mahdavi*

Abstract: This chapter focuses on the ways that policies designed to counteract the perils of "human trafficking" as well as the structure of the guest worker (*kafala*) programme in the United Arab Emirates (UAE) has created a situation wherein more migrants to the UAE are relegated to or choosing irregular migratory routes or irregular employment in-country. This research is based on over ten years of ethnographic fieldwork with migrants, survivors, activists, law enforcement officials and employers in the Emirates of Dubai, Abu Dhabi, Sharjah, and Ras Al-Khaimah from 2004 until the present. This chapter juxtaposes the lived experiences of migrants who either migrated or now work irregularly in the UAE with policies about gendered migration, human trafficking, and the guest worker programme. Through a close examination of the guest worker programme and the recent slew of anti-trafficking laws since 2005, it shows how the construct of exclusionary labour laws creates a situation wherein irregular migration becomes the only option and the informal economy is preferable to working under the harsh contours of *kafala*. It argues that the disconnect between migrants' lived experiences

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and policies on trafficking, migration and guest work occur because migrants are typically seen only through the lens of their circumstances or labour. The chapter concludes with an assessment of the challenges and opportunities present in the UAE for the protection of irregular migrants and their families.

Introduction

This chapter chronicles the trajectories of migrant women who, in increasing numbers, enter into migratory status and journeys that could be considered "irregular" due to movements and employment outside of the legal sphere. As one of the largest migrant receiving countries in the world, the United Arab Emirates (UAE) currently has a growing number of migrants who either migrate outside of formal channels, work in spheres that would be considered informal (unregulated, untaxed) economies, live as undocumented persons in the UAE, or are a combination of the above. Interestingly, many of these migrants have deliberately chosen to work, stay, or migrate irregularly in response to migration policies that are overly stringent and seek to restrict the movement of certain categories based on gender, race and age. These policies were framed in the last decade with the intention of decreasing the numbers of irregular migrants and increasing migrants' rights. Paradoxically, the opposite has occurred.

Policies and discourses about migration, particularly gendered migration, in the UAE tend to fall into one of three categories. The first are local policies pertaining to the *kafala* or sponsorship system regulating migration in the Gulf. The *kafala* system, which is widely practiced throughout the Gulf Cooperation Council (GCC) countries, tethers all migrants to a citizen sponsor or *kafeel*, who effectively controls their movements and legality in-country. Most notably, the *kafala* system subjects migrant workers to a long list of responsibilities but does not afford them the necessary protection of rights.[1] This particularly affects domestic workers and agricultural workers who make up a large percentage of migrants in the UAE.[2] The second set of policies both originates and operates at the local level

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1. United Arab Emirates, *Federal Law No. 8 for 1980 Regarding the Organization of Labour Relations,* issued on April 20, 1980. English translation available at: http://www.gulftalent.com/repository/ext/UAE_Labour_Law.pdf. See also Human Rights Watch, "UAE: Draft Labor Law Violates International Standards," *Human Rights Watch,* March 26, 2007, http://www.hrw.org/news/2007/03/24/uae-draft-labor-law-violates-international-standards/. For further information on the status of domestic workers in the UAE, please see Mahdavi (2011).

2. Data on migrant labour is limited, particularly as official records largely do not take into account irregular migration. In addition, countries do not always provide complete statistics.

and includes policies and discourses around the somewhat nebulous category of "human trafficking." Policies to address human trafficking create some of the largest obstacles facing migrant workers in the Gulf because they seek to place migrants into artificial categories that erase their lived realities. The official definition of trafficking as stated in Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons prepared by the United Nations Office of Drug Control (note the disjuncture in the UN agency designated to monitor human trafficking – an agency dedicated to organised crime and the movement of drugs rather than the human rights arm of the UN) is as follows:

> The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

That this policy has been constructed within a framework of criminalisation (rather than a framework of rights) is just one aspect of the problem. Perhaps one of the most striking issues with the interpretation of the definition of human trafficking has been the exclusive focus on the sex industry, as well as the construction of one archetypal "victim": a young woman. This narrative eclipses instances of abuse experienced by men or women outside the sex industry. As anthropologist Carole Vance has expertly noted, a moral panic (Cohen 1972) over movement into the sex industry is not new, nor localised to the US. Indeed, panic over the movement of female bodies, particularly into the sex industry, undergirded much of the panic over "white slavery," which began at the turn of the 18th century in England (Vance 2011). Current political initiatives to fight human trafficking are also markedly focused on sex, while the moral panic about human trafficking remains suffused with racial undertones.

Beyond this reductive focus on sex, the discourse on human trafficking oversimplifies complex decision-making processes. The ideal "victim" cannot (and must not) have had any agency in her circumstances. Either she was forced, and

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Based on a report by Martin Baldwin-Edwards, we can estimate that 4% of migrant labourers work in agricultural sector and that about 15% of migrant labourers work in households. See Baldwin-Edwards 2011.

therefore trafficked, or she (or he) chose to migrate and therefore is not trafficked. But this simplification extends further. "Victims" are typically women who have been forced by a particular trafficker. In some forms of legislature, such as the provision of trafficking or t-visas in the United States, the awarding of a t-visa is predicated on the "victim's" willingness and ability to testify against her trafficker.

The third category of policies originates and operates at both local and global levels and includes laws pertaining to citizenship transfer and familial reunification. Recognising, as policies fail to do, that migrants are not "disembodied individuals (or by default men) but are adults or children traveling with or leaving family members behind," as Bhaba and Benhabib note, we need to understand that "the mobility of some has consequences for or corresponds to the immobility of others."[3] Many migrants wish to reunite with or form families throughout their migratory journey. However, citizenship and reunification laws in the UAE make this increasingly challenging. Many migrants get caught in the unfortunate crossfire of incongruent local and global laws (on parental citizenship transfer, for example), thus producing irregular migration as the comparatively desirable option.

In this chapter, I seek to explore some of these policies in order to highlight their shortcomings in capturing the realities of the lived experiences of migrants' journeys and intimate lives. By understanding the stark disconnections between policy and lived experience, the route to irregular migration and employment can be better highlighted. In understanding the realities of migrant experiences, we can also see how irregular migration can often be experienced as more lucrative, empowering, and safer for many migrants and their loved ones. Though undesirable from the perspective of the state or international community, it is important that policy makers recognise both their roles in producing irregularity and the comparatively desirable space that irregular migration and employment offer. Policies and discourses are disconnected from lived experiences because they fail to see the migrant in the context of their lives, or as human beings with intimate lives, desires, and subjectivities. Recognising the intimate lives of migrants allows for a foregrounding of the multidimensionality of lived experience, which also highlights decision-making processes, risk calculation, and preferences for types of migration and employment in various industries.

Throughout this chapter, I try to pay special, etymological attention to the use of words and the artificial nature of categories embedded within language. Most importantly, investigating and unpacking falsely dichotomised binaries around the

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3.   Benhabib and Resnik, 2009: 4.

economies or migratory schemes within which migrants operate leads to a more comprehensive understanding of the structures surrounding migrants and how they negotiate these structures. These binaries, reified as a result of the moral panic that colours conversations about migration and underwrites perceptions of trafficking, have become objects of concern and query. Two frequently used binaries are legal/illegal and formal/informal, neither of which captures the grey areas of lived experience. Many of my interlocutors migrated legally (i.e., through legal visa entry processes), but then worked in the informal (or unregulated, untaxed) economies of care work or sex work. Others came illegally (were smuggled or engaged in the ever popular visa trading) but work for companies in the formal economy. Still others migrated legally but then overstayed their visas or absconded from their employers, thus rendering them illegal in their visa status. What it means to migrate or work legally or illegally, and where the formal economy ends and the informal economy begins encompass many shades of grey. The terms "illegal" and "informal" carry with them some pejorative weight, especially when used to describe real people, and it is for this reason that many scholars – myself included – have used the terms regular and irregular migration, not to dichotomise the two, but in an attempt to find more neutral terminology. When I write about irregular migration or employment, I refer to movement or work that takes place outside the spheres governed by formal legal and economic structures.

This chapter draws on ethnographic research conducted in Dubai and Abu Dhabi between 2008 and 2014. In 2008, I began by conducting fieldwork in the UAE with domestic workers, sex workers, care providers, and service workers. This led me to interviews with state officials and embassy personnel in the UAE and also back home in the United States. Between 2008 and 2014, I made annual extended field trips to the UAE for periods ranging from one to three months. During this time, I interviewed 213 female intimate labourers, 89 state and embassy officials, and 57 male migrant workers. I also interviewed 14 stateless children of varying ages and 33 employers. The fieldwork entailed participant observation at detention centers, hospitals, NGO offices, courtrooms, employment locales, orphanages, shelters, and informal shelters at embassies in addition to my interviews. I conducted participant observation and in-depth interviews with migrant women from several major sending countries including Ethiopia, India, Pakistan, the Philippines, Indonesia, Madagascar, and Nepal. I also conducted media analysis of articles appearing in the UAE and in the US about migrant labour in the Middle East. Finally, a review of policies on human trafficking, domestic work, migration, the *kafala* system in the Gulf, and citizenship transfer laws supplemented the ethnographic fieldwork.

Labour and Law

Current statistical estimates show a dramatic increase in numbers of female migrants in the last three decades.[4] It is believed that "fifty to seventy-five percent of the legal migrants leaving Indonesia, the Philippines, and Sri Lanka are women, most of them hoping to earn money as domestic workers in the Middle East and other parts of Asia."[5] Statistics and numbers about female migrants in particular and the industries into which they migrate suffer from a lack of accuracy and transparency but nevertheless provide evidence for the increasing feminisation of migration.

Migrant labour in Dubai is structured by a *kafala,* or labour sponsorship system. Those migrating into the formal economy must operate on the basis of their contracts and work with a sponsor. This system is unique to the GCC countries and structures the lived experience of migrant work in the formal economy. Under the *kafala* system, each migrant worker is tied to a sponsor, or *kafeel,* who also functions as his/her employer. Residence and legal working papers for the migrant depend on the relationship with the sponsor. In the case of disputes with the sponsor-employer, migrant workers can be left without legal permits to remain in the UAE.[6]

As Andrew Gardner has noted in his thorough study of male migrant workers in Bahrain, and later Qatar, the *kafala* system renders extreme variability in the experiences of workers in that the governance of the individual depends entirely on the sponsor. Migrant workers describe sponsors as ranging from accommodating and vested in protecting their labourers to exploitative and abusive.[7] Even when tied to sponsors who are sympathetic and take their concerns seriously, migrant workers often report difficulty in communicating with them, particularly as middlemen can present barriers in accessing help from the sponsors. Within the *kafala* system, sponsors often confiscate employees' passports (though this is now technically against UAE law, my interviews revealed that it is still a common practice), effectively restricting employees' mobility and their ability to pursue other employment opportunities. Many workers who choose to break employment contracts attempt to stay in the country as illegal aliens – a better option for them than returning home empty-handed. Certain labour laws allow workers to take employers to court for the violation of labour contracts, yet during the proceedings workers become and remain undocumented and are often forced into the informal economy to make

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4. See Parreñas (2011), Benhabib and Resnik (2009), and Ehrenreich and Hochschild (2003).
5. See Varia 2007.
6. Longva 1999.
7. Gardner 2010.

ends meet.[8] Additionally, according to the 1959 Residency Law, an alien can be deported as a result of a judicial or administrative decision if "the alien has been convicted and the court has recommended deportation, if he/she has no means of sustenance, (or) if the Ministry of the Interior objects to his or her presence on national territory for 'security or moral reasons.'"[9] Indeed, collapsing employer and sponsor into a single category may be the root of the problem. Migrants have no place to turn to because the law is written to protect the employers rather than migrant workers.

While I argue that the articles of the law outlined previously need serious revision, there are, in fact, a series of articles that in theory protect labourers' rights; however, these are rarely enforced. Articles 65-73 outline appropriate working hours and the need to give workers time off at regular intervals. Similarly, Articles 80-90 outline a long list of occupational hazards and diseases that the employer must provide treatment for, both in the short and long term. These laws protect migrants' time and health, but are often not adhered to due to the lack of inspectors. According to a Human Rights Watch Report, "though a decree in 2006 asked for at least 2000 new labor inspectors, the number currently stands at just 48."[10]

Laws pertaining to citizenship transfer and family reunification, yet another set of laws at the national level, can often seduce migrants into work in the informal or irregular economies. It is important to recognise that many migrant women move to the UAE during their most fertile years; however, those women who migrate formally under the *kafala* system are contractually sterilised. These women are banned from any engagement in sexual activities, and evidence of such transgressions in the form of pregnancy (even if it results from rape by an employer or other person) is grounds for termination, incarceration, and deportation – often without the child. Two dozen of my interlocutors had found themselves in such a situation. They had migrated to the UAE and become pregnant; eighteen of them had engaged in consensual sex and were involved in long term relationships, while the remaining six were raped (four by employers, two by policemen). They had all been incarcerated for a period of time, and all but one deported without their babies. Unfortunately, incongruences between citizenship laws in sending countries and the UAE both confined their children to the UAE and left them stateless, unable to migrate to join their mothers. With glaring fatefulness, these children

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8.   Ibid., 22.
9.   See Nagy (1998), Longva (1999), Sabban (2004), Garnder (2010), Mahdavi (2011), and Ahmad (2012).
10.   Human Rights Watch, Human Rights Watch 2007.

will be working irregularly because they do not and will never have access to formal working papers. And so labour systems that are particularly restrictive of women, incarceration, and incongruent citizenship laws actually contribute to the irregular labour force.

Citizenship laws define the rights and obligations of citizens and the manner in which citizenship is acquired and lost. Typically, citizenship can be attained through *jus sanguinis* (blood-based transfer) wherein the parent – and sometimes the gender of the parent is significant here – can transfer their citizenship to their offspring, or *jus solis* (soil-based transfer) which refers to acquiring birthright citizenship by being born in a particular country, or naturalisation. The UAE does not allow *jus solis,* and naturalisation is very difficult. *Jus sanguinis,* the primary mode of citizenship transfer, was typically passed only through the father in the UAE, which had led to much controversy. Today, however, children of citizen mothers are allowed to obtain citizenship as of 2011.[11]

In the UAE, citizenship laws are based upon Federal Law No. 17 for 1972 and amendments made by Federal Law No. 10 for 1975. Citizenship can be gained by residing in the Emirates from 1925 or before, by being born to a male or female citizen whether abroad or in the country, or by being born in the country to unknown parents. Citizenship by naturalisation requires migrant labourers from non-Arab states to reside in the country for at least thirty years, with at least twenty of those years after the citizenship law of 1972 entered into force. Migrants are able to become citizens through the extension of marriage and naturalisation according to the laws stated under the first chapter of the citizenship law. Children, regardless of their country of birth, are able to gain citizenship given they are born to a father citizen, or, as of 2011, born to a mother citizen. Anyone born in-country to unknown parents is also able to gain Emirati citizenship, but it must be established, legally, that neither parent is known.

While some migrants sought out irregular journeys or employment in order to circumvent punishment or contractual sterilisation, others migrated irregularly to join family members and loved ones who could not afford to formally bring family members from home. In the UAE, family reunification laws vary depending on the relation between the migrant worker and the family member accompanying them. When it comes to family sponsorship, a migrant worker must either be a spouse or a first affinity relative to the person accompanying them in order to qualify as a sponsor. For example, if a child, son-in-law, or daughter-in-law meets a

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11. Issa 2011; also see, US Department of State, Bureau of Democracy 2012.

minimum salary requirement, holds a valid residency visa, and can provide sufficient accommodation supported by appropriate documentation, they are able to sponsor their parents and parents-in-law.[12] Sponsors must receive a monthly salary of at least Dh3,000 plus accommodation allowances or a monthly salary of Dh4,000 without any accommodation allowances.[13]

Children born in the UAE to foreigners do not have rights of local citizenship and automatically assume the nationality of the parents. Up until 2011, according to the Ministry of Interior, Emirati mothers married to non-UAE citizens were not able to obtain citizenship for their children if the children were born before the fathers became citizens. However, in a new law passed in 2011, an Emirati citizen – regardless of gender – married to a non-Emirati may obtain citizenship for her child, and this has been successfully implemented since the passage of this law.

At the global level, a number of policies and legal categories created to address and combat what is loosely defined as "trafficking" have rendered the term opaque and led many to question the utility of the category or term as a whole. For migrants and labourers, not only is the discourse perpetuated about trafficking problematic, but so too are the overwhelmingly negative effects of migration policies and the resulting response strategies that take a "raid and rescue" approach. Several of my interlocutors had become irregular migrants or employees specifically because they were trying to circumvent anti-trafficking legislature and outreach. Paradoxically, laws instated to help migrants are actually placing increasing numbers of them in situations of precariousness.

The UAE is a member of the International Labour Organisation and the Arab Labour Organisation and has ratified the Convention of the Rights of the Child, CEDAW, and the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. While the UAE is working towards improved labour standards, human trafficking, with a focus on sex work, has taken centrestage. In a statement responding to the 2009 *Trafficking in Persons* (TIP) *Report,* Minister Anwar Gargash, who is the head of the UAE's National Committee to Combat Human Trafficking (NCCHT) formed in 2007, said "it is incongruous to equate alleged labour rights violations, which are critical but a separate issue, to the coercive and unacceptable sexual exploitation of women for profit. This report lumps all of these issues together in a manner that is generalized

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12. Immigration Specialist 2012.
13. Suter 2005.

and unconstructive."[14] One official within this NCCHT task force emphasised that anti-prostitution activists from the US had played a large role in re-focusing the UAE's efforts on sex trafficking. Responses to the TIP have included the establishment of the NCCHT (which is made up primarily of public prosecutors and law enforcement officials) as well as a human rights task force within the police sector whose mandate is to arrest people deemed as trafficked persons. In addition, the NCCHT has worked to create the Dubai Foundation for Women and Children, which has admitted 43 cases of trafficking (all women), and a shelter in Abu Dhabi which has admitted 15 women since its inception in 2009. In 2009, there were 20 registered cases of trafficking (all related to the sex industry), up from 10 in 2008, and in 2008, six persons were convicted. While these are important and impressive measures of progress, one activist who has been working to reform the *kafala* system expressed frustration and felt that some officials were using the hyperscrutiny on women in the sex industry to get away from the larger issue of labour laws in need of reform.

Lived Experiences – Between Labour and the Law

"I used to see my cousins and girlfriends come back to Ethiopia with lots of money, and nice magazines and nicer clothes," Dorna said, reflecting on her decision to migrate to Dubai to work as a domestic worker. When I met her, she was working illegally as a nanny for three different families and occasionally engaged in sex work on the side. She had been in Dubai for almost five years and, in that time, had borne a son from an Emirati man with whom she lived for two years. She was very eager to return to Ethiopia to reunite with her family but was afraid of the heavy fines she would incur upon her departure. Migrants who overstay their visas or work illegally must pay heavy fines ($25) for each day they remain beyond their assigned departure date. The trouble for Dorna was that she did not have her passport or visa. Her previous employers had retained her documents and refused to return them to her.

Dorna's trajectory from migrating to work in the formal sphere of domestic work to working in the informal economy of the sex industry and living as an "illegal alien" in Dubai was similar to at least seven other women with whom I spoke. After her father died, Dorna's mother and siblings were left in high debt. Worried about her family's future, she decided to ask her friends about possible

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14. http://www.wam.ae/servlet/Satellite?c=WamLocEnews&cid=1241072976464&pagename= WAM/WAM_E_Layout.

avenues of migration to the Gulf. In recent years, the Ethiopian government – in response to moral panic about human trafficking – has passed a series of measures designed to regulate the flow of Ethiopians migrating for work, particularly to the Middle East.[15] The state has imposed rules on licensing for recruiters and has been working towards a system of employee training (similar to that in the Philippines) and contract monitoring. This increased bureaucracy has resulted in many women looking for other ways to leave Ethiopia, ways that are seen as simpler and faster routes for securing transnational employment.

Dorna's friend put her in touch with an illegal recruiter who asked for a high fee, equivalent to $2,000, for securing her passage to Dubai (via boat through Yemen) and for drawing up a contract for her to work as a domestic worker. Dorna never saw the contract, but was told she would be met by another recruiter upon her arrival in Dubai.

When she arrived in Dubai after a long journey she was met by a recruiter and then taken to the home of her new employers, a Lebanese family who had moved to Dubai a few years earlier. The family took Dorna's passport and few personal belongings that she had brought with her, and she never saw them again. The family made Dorna work up to 18-hour days, often locked her in the house when they left, and did not provide her dinner on a majority of weeknights. "But I don't know where to go. I'm illegal lady, coming illegally, so I'm not going to embassy or police. But where to go?" she asked rhetorically. When she complained, she was beaten, and the male head of household would make further advances toward her, making sexual threats that he would rape her one night while she was asleep. She was very afraid of these threats, so one afternoon she ran away from the apartment where she had been sequestered for the last six months without pay.

That day, Dorna jumped from the window of her room on the third story of an apartment building. When she jumped, she injured her right leg badly, but instead of going to the hospital or police, Dorna decided to go to the church that she had been permitted to attend once a month. "I know other Ethiopians at the church, I know if I can get there, I can get help," she said. However, she did not know her way around town, and her injured leg severely restricted her mobility. After a few days of living on the street she met a young Emirati man who wanted to help her. After a few weeks, Dorna became romantically involved with this man and eventually became pregnant. The man was very happy to hear that she was pregnant and showered her with gifts and attention. He also promised her to get her a legal

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15. de Regt 2010.

visa and be her sponsor and potentially her husband. Dorna was overjoyed. During this period, she converted to Islam and became very involved at the local mosque that her Emirati boyfriend attended. After their son was born, however, things changed. The young man, who had not yet succeeded in retrieving her working papers or passport, suddenly became agitated with Dorna and ordered her to leave the house with the baby. He told her his family had heard about their situation and did not approve of his decision to live with Dorna for those two years. He gave her some money for the child and sent her away. Though Dorna did not know it at the time, her son was undocumented because the boy's father had never acknowledged paternity. If caught, Dorna would likely be deported, but her son would remain, stateless, in the UAE, according to UAE law. Technically, Dorna might be able to seek out Ethiopian citizenship for the young boy; however, even a suspicion that the child may have Emirati paternity would be enough to hold the child in-country until paternity could be established.

When she faced troubles with her boyfriend, Dorna and her son moved in with some of her friends from the mosque while she tried to look for any possible type of work to earn enough money to pay off the fines she incurred having overstayed her visa and to procure an outpass to return to Ethiopia with her son. Limited by not having legal working papers, Dorna began by working in a restaurant in the Ethiopian neighbourhood in town. After a few months working at this job, however, she was not getting paid. One evening, she met a group of women at the restaurant who worked as sex workers in a bar called Fantasia. They told her what her earning potential could be and she decided to join them that evening. This marked the beginning of Dorna's work in the informal economy of sex work. After a few months working at Fantasia, Dorna was arrested one night in a raid. She was put in jail for three weeks and not permitted to see her son, who was still at the home of her friends with whom she had been living.

Elham was born in a local hospital in Ras Al-Khaimah, UAE. Now twenty years old, Elham has returned to work as a volunteer in the same hospital in which she was born. She has never left the tiny Emirate of Ras Al-Khaimah, not even to visit Dubai. From the little that Elham knows, her mother was a Nepali woman who had a "love case," according to the prison wardens who narrated her story to Elham. Her mother had migrated to Dubai initially to work as a domestic worker. There she had met another Nepali young man working as a security guard at a local business. When he was transferred to Ras Al-Khaimah, he persuaded Elham's mother to join him, which she did, absconding from her sponsor in Dubai, thus rendering her illegal. Elham's father and mother had moved in with each other

in Ras Al-Khaimah and before long, Elham's mother became pregnant. At some point, her mother was arrested, but Elham was not clear on this aspect of the story, as different jail wardens, including the one who informally adopted her and had raised her thus far, had told her different versions.

Elham's mother was arrested and tried for the crime of *zina,* like many other women who become pregnant outside of wedlock.[16] The wardens were unclear about whether her mother had been initially picked up because she was without working papers or whether someone had seen her swollen belly and brought her in. Either way, she was arrested and sent to jail after giving birth to Elham in a hospital. As soon as she was born, Elham was sent to live in the prison with her mother, who remained staunchly by her side for two years, refusing to go back to Nepal without her.

When Elham was just over two years old, her mother was informed that she was going to be deported, but that the child could not come with her. Distraught, she begged Amira, one of the prison guards with whom she had grown close, to take Elham in and to take good care of her. Amira had grown quite close to Elham; she had been working tirelessly to get her travel documents in order so that she could return with her mother. Many of the wardens were able to successfully help the women in their charge, and Amira noted that she alone had seen over a dozen babies return home with their mothers.

For the first few years that Elham lived with Amira, the latter continued to work to procure travel documents, citizenship papers, or some type of documentation for Elham. Frustrated at the seemingly never-ending series of closing doors, Amira finally accepted that Elham was likely to live with her, stateless, in Ras Al-Khaimah for many years to come. Elham and Amira grew closer as time passed, and Amira was able to talk with friends of hers at a local school to allow Elham to enroll in classes, despite her undocumented status. After graduating from high school, Elham began volunteering at the hospital in which she was born. Elham is now twenty years old and has never left the borders of the UAE. She remains, stateless, for the forseeable future, in Ras-Al-Khaimah.

As these stories show, migrants may end up moving, working, or living outside of the formal contours of the "legal" or "regular" economy for a variety of reasons. For many of my interlocutors, a combination of having to be creative in the face

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16. *Zina* is the act of unlawful sex outside of marriage. Within secular law in the UAE, *zina* appears in the Federal Penal Code (FPC, Law No. 3 of 1987). The Penal Code includes Sharia Law.

of ever-changing and harsh laws about migration, employment (through *kafala*), and citizenship, as well as a desire to mobilise their intimate lives led them to the irregular economy. Someone like Dorna chose (from among a series of limited options) to migrate irregularly because formal migratory routes were not available to her due to anti-trafficking legislature seeking to restrict the out migration of women in particular. Having begun the journey in an irregular fashion, it became increasingly preferable for her to choose not just irregular migration but also irregular employment. For people like Dorna, they chose the space of the irregular economy because it afforded them more freedoms, rights, and empowerment and also allowed them to fulfill their intimate lives. They do, however, experience some vulnerability in the spaces of the irregular economy, and this vulnerability also plays out in their intimate lives. Children of migrants, such as Elham or Dorna's son are, in a sense, born into a situation of irregularity. Produced by laws about gendered employment as well as citizenship laws, these children's situations and lives seem somewhat bleak. Though Elham – and at least seventeen other young people in similar situations with whom I spoke – was able to mobilise through her irregular status and work informally, her situation in the UAE remains precarious. Thus, it is important to recognise at least three aspects of irregular migration, employment, or status, which are eclipsed by policies that do not take into account lived experience. The first is that irregularity is most often produced by policies seeking to curb (gendered) migration and citizenship as can be seen in the cases of all three women introduced previously. The second is that irregular migration or working status can be seen and experienced as a more lucrative and empowering strategy and one that can afford migrants with limited mobility and many options for economic, social, class, physical, and intimate mobility.[17] Finally, it is also important to highlight that while living, moving, and working irregularly may be attributed to weak laws and policies and may be seen as the comparatively desirable option, migrants encounter vulnerabilities when living and moving in these spaces. These include the possibilities for arrest or deportation – what Nicholas DeGenova has termed "deportability"[18] – as well as precarious living and working situations wherein migrants are regularly abused, not paid their wages, and subject to difficult working conditions.

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17. For an in-depth discussion of what I mean by "intimate mobility," please see Mahdavi (forthcoming).
18. De Genova 2002.

Irregularity and Intimacy – Intimate Migrations and Their Contents

Some migrants prefer the space of irregular migration and employment and are emphatic that they do not desire the opportunity to change their status. Several of my interlocutors indicated that it was only because their work was outside the sphere of the formal economy that it was lucrative, and they would not want their industries regulated by state laws. Other interviewees said that they did not "trust" their home countries or receiving countries and instead preferred to seek out irregular migratory routes (which seemed more expedient with less bureaucracy) or employment rather than having to "entangle" with the "state."

Migrants often make decisions that are best for themselves and their loved ones, not necessarily in accordance with laws or formal migratory and labour trajectories. It is often the case that migrating or working irregularly is the more desirable option due to financial opportunities and available avenues for increased mobility – be that physical, economic, or emotional. Policies designed to address gendered migration do not take into account the lived realities of migrants and, in so doing, eclipse the multidimensionality of migrant subjectivities. A focus on the intimate lives of migrant labourers allows for a more robust understanding of irregular migration and employment while also foregrounding migrant subjectivity and the needs of their loved ones. Current policies, including those contouring the *kafala* system, citizenship, and reunification laws, and anti-trafficking legislation need to be assessed from the perspectives of migrant experiences, allowing migrants themselves to have a voice in policies that most affect their lives. In re-thinking these policies, migrants and their experiences can be foregrounded in such a way that narratives which demonise those in situations of irregularity will celebrate the creativity and outlaw inventiveness that migrants employ in their quests for vertical and horizontal mobility.

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XI

Irregular Migration from Bangladesh to the Gulf: Is Combatting It a Governance Challenge?

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Abstract: Bangladeshis constitute a significant number of the pool of irregular migrants in Saudi Arabia. The Kingdom has been experiencing exponential growth in the number of irregular migrants, which has become a source of major concern for the government. The harsh policy in place and cooperation from sending country governments appears insufficient to combat the phenomenon. In fact, poor governance in the sending countries has contributed to the irregular migration. This chapter is based on a qualitative study conducted in Bangladesh between 2011 and 2014 of government departments and ministries and registered travel agents who send migrant workers abroad. Interviews were conducted with a select group of 10 officials and 45 Bangladeshi irregular migrants in Saudi Arabia by administering a well-designed checklist. No precise data on the number of irregular migrants is available. There are a significant number of irregular migrants who went to Saudi Arabia on Umrah and Haj visas and overstayed; some of them were left in the Kingdom by some government officials; some were left by some music bands and some overstayed their tourist visa. Others absconded and yet others abandoned abusive employers who withheld or confiscated their travel

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documents. The sending government's poor oversight and reluctance to combat irregular migration in dealing with this issue is evident. Irregular migration has crucial policy implications for both origin and destination countries and exposes migrants themselves to insecurity, abuse, and exploitation.

Background

No country in the world is untouched by, or immune to the effects of international migration — particularly the undocumented form of it (Papademetriou 2005; Ullah 2011; 2012). Irregular migration goes hand in hand with regular migration though the extent of this varies depending on how migration regulations in host and sending countries are implemented. No country in the world can claim that they send or receive regular/documented migrants only. Some countries are lenient and tolerant toward them, and some are harsh. Some countries send irregular migrants, some countries receive them, and some countries are traversed by them. In recent years, in Asia, the Pacific, the Middle East and North Africa (MENA), Africa and the Gulf Cooperation Council (GCC) region, irregular migration has become the subject of widespread public debate (Morehouse and Michael 2011; Ullah, Hossain and Islam 2015). Globally, this issue has assumed much public prominence in recent times, with daily reports of potential migrants and asylum seekers trying to reach the Mediterranean shores or floating on the Indian Ocean, with some of them tragically losing their lives in the process.

South Asia has undergone different phases of migration since the British colonial rule came to an end in 1947. In the 1971 liberation war, Bangladesh alone experienced displacement of 30 million people (20 million Internally Displaced Persons [IDPs] and 10 million who crossed the border) who moved to neighbouring countries (Dawson and Farber July 2012; Kelley 2009). Bangladesh, home to 158.5 million people (UNFPA, November 18, 2014), ranks as the world's eighth-most populous country. As of 2007, 50% of its urban population was living in squatters and slums (Duncan 2007). Bangladesh is prone to natural disasters, including cyclones, tornadoes, storm surges, floods, drought, earthquakes, riverbank erosion, and landslides (RRCAP 2001). Around two decades of political instability and political repression perpetrated by governments and continuous natural disasters have thwarted economic growth and, as a result, poverty levels have remained almost the same as they were two decades ago while economic disparity has widened (Ullah and Routray 2003). Bangladesh's parliamentary democracy came to an end in 1975 with three coups, after which military dictators periodically governed the

country from 1975 to 1990. From 2007 until 2015, unelected governments ruled the country. These circumstances have contributed to the migration flows from Bangladesh. Widespread poverty, unemployment, underemployment, and pervasive corruption, in addition to the fact that youth account for one-third of the total population of Bangladesh (Ara and Tanha 2010), have contributed to the migration flows.

Migration flows from Bangladesh have been determined by factors such as religious belief, demand for labour, and emergencies (Ullah 2015). The liberation war forced a few millions to cross the border to India. On the other hand, in the early 70s, the Gulf oil boom sparked a different type (i.e., migration based on religious emotion) of labour mobility from South Asia, especially from Bangladesh to the Middle East, and Saudi Arabia in particular. Though foreign workers were a significant part of the workforce starting from the inception of the Kingdom's oil industry in the 1930s, large scale inflows of workers began in the wake of the oil boom in the early 1970s. Since then, South Asian countries, including Bangladesh, have sent a significant number of temporary labour migrants to work in the Gulf (Doherty et al. 2014), as local labour supply often could not meet the demands of the booming construction sector. There are also claims that Saudi Arabia preferred South Asians, especially Bangladeshis, to Arab expat workers, because they would be less likely to settle and more easy to control (Pakkiasamy 2004).

Saudi Arabia ranked as the second top remittance-sending country and was among the top five migrant destination countries worldwide (De Bel-Air 2014). Of the total migrants from Bangladesh, about one-third live in Saudi Arabia. From 1976 until 2007, the number of outgoing migrants to Saudi Arabia kept growing, though there has been a sudden drop from 2008 (BMET 2014). Two sets of explanations are offered for the steep drop. One set argues that this drop is a result of deteriorated diplomatic relations with the Kingdom, while the other set claims that the economic slowdown, rise in the number of local workers, and increasing competition from other labour-exporting countries have contributed to this (Miah, Khan and Rahman 2013). Though the government of Bangladesh does not track return migration, it is estimated that over a 10-year period, from 2000 to 2010, return migration from the GCC countries was approximately half of regular migrant outflows (Islam 2010).

Figure 11.1: Migration trend from Bangladesh

Number of migrants from Bangladesh to Saudi Arabia from 1976 to 2014
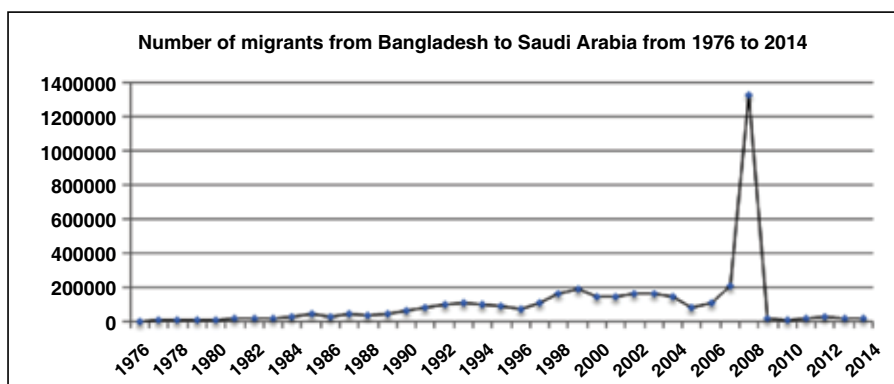
Source: BMET 2015.

The desire to visit Makkah and Medina for pilgrimage has played an important role in increasing migration from Bangladesh to Saudi Arabia. During the 1970s and 80s, Bangladeshis used to pay visits to a returnee from pilgrimage to Saudi Arabia. They considered it as a religious responsibility. This is not to say that religion alone explains the Bangladesh-Saudi Arabia migration flow, but it seems to have been a contributory factor. The strained relationship between the governments of Bangladesh and Saudi Arabia have played negatively in the migration landscape. As a result, for the last few years, migration flows from Bangladesh to Saudi Arabia have come to a halt. In the wake of this development, potential migrants have sought to find alternatives i.e., irregular avenues. Getting to Saudi Arabia illegally from Bangladesh is not easy primarily because of its location. Saudi Arabia has practically impermeable borders (except for the one with Yemen). UAE and Oman are not considered a threat to the security of the Kingdom. Eritrea and Sudan are separated from Saudi Arabia by the Red Sea. Saudi Arabia and Iraq are separated by a 965 km wall which consists of twin fences and a ditch, and extends from near Turaif, where Saudi Arabia meets Iraq and Jordan, to Hafar al-Batin, on the Kingdom's border with Iraq and Kuwait.

This chapter is based on a qualitative study conducted between 2012 and 2014 in the relevant government departments and among registered travel agents involved in exporting manpower. Interviews of 10 selected officials and 45 Bangladeshi irregular migrants in Saudi Arabia were conducted by administering a well-designed checklist. Irregular migrants from both locations (Bangladesh and Saudi Arabia) were selected on a snowball basis: They considered themselves irregular (in their own words, "illegal") and they remained in Saudi Arabia as irregular migrants

at least for six months. Government officials were selected purposively. This research went through the American University in Cairo (AUC) ethical review process since this involves human subjects.

Table 11.1: Distribution of respondents

Irregular migrants	Locations of interview		*f*	%
	Saudi Arabia		14	31
	Bangladesh		31	69
Total			45	100
Officials	**Locations of interview**			
	Saudi Arabia	Government official plus 1 travel agency owner	2	20
	Bangladesh	Government officials, 3 travel agency personnel and 3 brokers	8	80
Total			10	100

Governance and Irregularity

In literature various terminologies are used indifferently to denote irregularity in the migration process such as illegal, irregular, undocumented, clandestine, and unauthorized. "Illegal" is against the law, and "irregular" is against the regulations. While an act may be illegal, a person is not. Irregular migrants are persons who contravene regulations related to migration in their host country (Fargues 2009). The Kingdom of Saudi Arabia has been experiencing exponential growth in the number of irregular migrants, which has become a cause for major concern. Bangladeshis constitute a significant number of the pool of irregular migrants in the Kingdom. Existing policies and sending country government measures have proved insufficient to combat irregular migration. Poor governance in the sending countries has also contributed to this phenomenon.

This chapter looks into the issue of governance failure in combatting the growing irregular migration phenomenon. It asks a few pertinent questions related to the flow of irregular migrants. The IOM (2010) had the same type of questions related to irregular migrants who are susceptible to falling into the hands of smugglers. For example, does the specific country have specific laws that make migrant smuggling and trafficking in persons crimes? Does the administration investigate irregular migration and prosecute those guilty of offences? And to what extent do the policies and related legislation respond to the need to address irregular migration at the international and national levels?

Figure 11.2: Migration path migrants go through
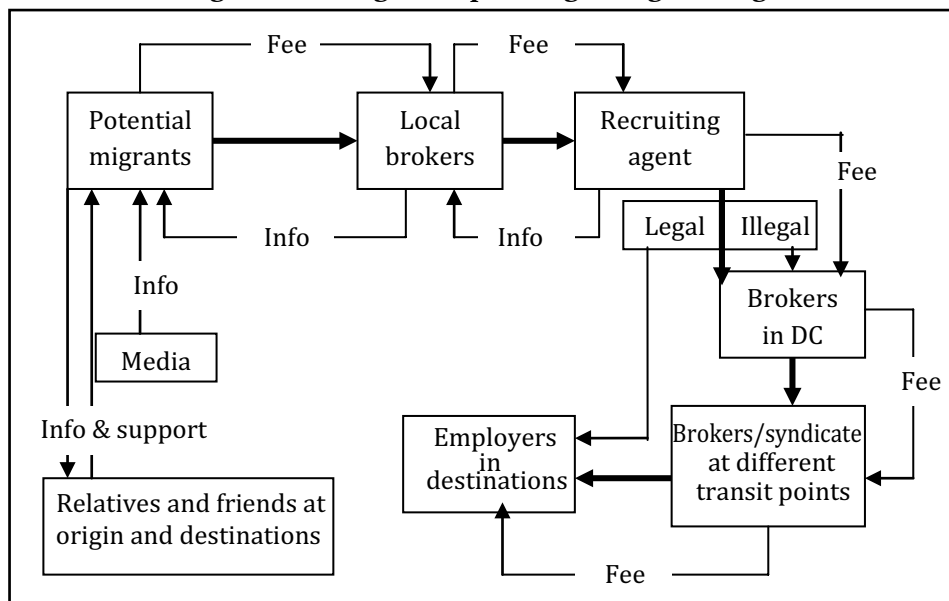
Source: Adapted from Rahman 2004:382; Ullah 2010.

Irregularity implies that a certain set of regulations have not been complied with or respected in the move to migrate. This may sound like it is the fault of the migrants. However, making potential migrants abide by rules is the responsibility of the government. The failure to do so is a failure of governance. Hence, lately policy attention has shifted from the political economy of migration (Freeman 1994) to the legal system.

For the recipient countries, this is an unwanted, undesired, unexpected or unaccepted phenomena while for the sending country it is necessary for a variety of reasons such as increasing dependency on remittances and easing unemployment. The current failure in developing an adequate understanding of irregular migration has resulted in various terminologies being used to denote irregularity, such as irregular, illegal, undocumented, unauthorised, clandestine, unsafe and backdoor migration.

Table 11.2: Existing policies, acts and ordinances related to migration

Name	Category
Expatriates' Welfare Bank (2010 number - 55 Rules)	Act
Special facilities for remittance sender nonresident Bangladeshi - 2008	Policy
Foreign Employment Policy - 2006	Policy
CIP Selection Policy - 2006	Policy
Recruitment Agency And License - 2002	Policy
Wage Earners Welfare Fund Rules 2002	Rule
Emigration Ordinance 1982	Ordinance
Bangladesh Entry Control Act 1952	Act
Bangladesh Passport Act 1920	Act
Bangladesh Immigration Act	Act

Source: Ministry of Expatriates' Welfare and Overseas Employment (MEWOE), 2011; Ullah, Hossain and Islam, 2015.

Irregular migration is an area of investigation under broader migration management that concerns governments of sending, transit, and receiving countries (IOM 2010). The outcome of irregular migration may be detrimental to the migrants themselves as well as both sending and receiving countries. Bangladesh evidently has failed to combat irregular migration. As a result, it is facing an embargo in sending migrants to certain countries and stricter regulations than ever. The decision made by the Saudi government on March 22, 2015 to suspend Umrah visas for Bangladeshis is an example. The government expressed serious concerns about the Bangladeshi travel agencies that deal with Umrah visas. It claimed that thousands of Bangladeshis did not return after their Umrah was performed. The allegation has been that these travel agencies are involved in human smuggling in the name of Umrah (Khan 2015).

In the last four decades, Bangladesh has undergone a number of phases of migration. The many changes in the political system, difficult economic situation, and natural climatic emergencies since the liberation war in 1971 created conditions that have contributed directly or indirectly to the current migration scenario. The following table demonstrates the interplay between migration and governance and shows how the role of government becomes trivial during different time periods. In the table, facilitators are placed in order of significance of the role they played in different phases. Often brokers and government (in government managed migration) appear as competing agents.

Table 11.3: Timeline: migration and role of government

Years	Status	Facilitators / intermediaries	Major destinations	Major factors contributing to status
1971-73	Refugees IDPs	Self; International organisations; Networks	India Pakistan	Liberation war and post-war crisis
1974-76	IDPs Forced Migration Refugees Economic	Self; Networks International Organisations Governments	India Middle East and other countries	Famine and post-famine crisis
1977-80	Economic Students	Government; Self Agents	Middle East Southeast Asia	Economic Better future Studies
1981-90	Economic Highly skilled Temporary Students	Government; Agents; Networks; Self	Middle East Southeast Asia East Asia Europe, North America	Economic Studies Pilgrimage
1991-2006	Economic Highly skilled Desperate Temporary Students	Brokers; Agents; Networks; Self; Government	Southeast Asia Middle East East Asia North America and Europe	Desperate Economic Political Umrah/pilgrimage Studies
2007-2015	Economic Highly skilled Political asylum Temporary Students Female/DH Business	Brokers; Agents; Networks; Self; Government	Middle East Southeast Asia East Asia North America, Europe and Africa	Desperate Economic Political suppression Umrah/pilgrimage Choice Studies

Source: Author.

In practice, three legal and regulatory frameworks relating to migration exist in Bangladesh: international instruments; the domestic laws of both the destination countries and Bangladesh; and the bilateral agreements between Bangladesh and the receiving countries. There are several relevant laws focusing on the two main elements of migration that are within the mandate and scope of the government, i.e., maximisation of labour migration and the protection and welfare of the migrants working abroad. An interview with a relevant government official reveals

that sufficient efforts have been made to consolidate the laws and update them so as to address contemporary migration issues. Despite these advances, positive results are rarely visible at any level of migration process (Ullah, Hossain and Islam 2015; Siddiqui 2003).

The Bureau of Manpower, Employment, and Training (BMET) of Bangladesh operates 42 District Employment and Manpower Offices (DEMOs) to provide business and entrepreneurial training to potential migrants and returnees to encourage best use of resources (and remittances). However, lack of sufficient funds and widespread corruption in fund management thwart the services of the DEMO (ILO 2013). Additionally, a new Welfare Branch of the BMET has been established to assist in the repatriation of stranded migrant workers and the remains of workers who die overseas, as well as to assist families in the collection of owed salaries or remittances (Ullah, Hossain and Islam 2015; Mian, Khan and Rahman 2013). One travel agency official complained to me that the expansion of BMET's scope will only widen the scope for corruption. However, when the interviewer asked what the best policy would be for the government to combat irregular migration, an official responded that the government had every intention to manage migration in the most efficient manner. When his attention was drawn to incidents of migrants floating on unseaworthy boats, the official's response was not encouraging. His replies reminded me of the statement made by the Prime Minister of Bangladesh Sheikh Hasina on May 23, 2015, in which she criticised migrants leaving the country, many of whom were stranded in dire conditions at sea, as "mentally sick" and accused them of hurting the country's image. She warned that punishment would have to be given to those who are moving out of the country "illegally." The prime minister's statement was a signal that the government was not going to work on improving the conditions of the migration process, and the corrupt travel agents would go unpunished.

Our interview with a travel agent broker clearly points to the state of affairs.

Travel agent broker: Our responsibility is to collect clients. We get commission on every client.

Question: Would you please tell me more about where you meet them, how do you convince them?

Answer: (Yelling at the interviewer): Oh everyone is desperately wanting to go abroad. Only that they have no means. We offer them better options.

Q: Like?

A: Payment in instalments. We help in selling their assets, if any, to secure sufficient funds for their migration. They may not be in a position to do so. We do that on their behalf.

Q: If, at the end, they decline to migrate or pay?

A: No problem, we deduct an amount from their deposit.

Q: Deposits?

A: Yes, they have to deposit a certain amount when they express their intention to go abroad.

Q: Do you have any idea whether your clients would be migrating in a legal way?

A: That is not our job to look at. Our company is good and it takes care of those legal issues.

The irregular status of migrants is linked to their vulnerability to a wide range of abuses. Types of abuse range from exploitative employment and pay practices to physical and sexual abuse. Many of these problems can be traced to the dysfunctional dynamics of the recruitment system for Bangladeshi workers, especially the high levels of corruption at play within it. The recruitment process begins with potential overseas sponsors stepping forward (Kibria 2011:3). Recruiting agencies in Bangladesh that belong to BAIRA are in a position to act as intermediaries to arrange recruiting issues with overseas employers and Bangladeshi workers.

Another interviewee said:

I never knew that life would be so difficult here. I spent so much money to come here. I could have gone to America rather. But I was cheated.

Q: Who cheated?

A: I was made a member of a government delegation six years ago to come to Saudi Arabia. I was told I would be given a high salaried job.

Q: Please tell me more what made you believe them?

A: I believed because I was told that this was not the first time, many people before were brought to many countries, including Saudi Arabia, and managed to obtain good jobs. They are respectable persons. I never thought they could cheat me.

Q: How much money did you pay?

> A: It was about 8 lac taka (about $10,000). I felt good at the airport because there was no hassle at the airport. Everyone saw us off respectfully.

> Q: How did you manage to stay back in Saudi Arabia?

> A: They just left me! They went out of the room and said that they would be back. They never did. I knew a Bangladeshi staying close to my hotel. I told him about the story. He helped me to secure a job. I was planning to go to our embassy but I knew that would result in repatriation. I did not want that at that time because I did not have any money left to repay the loan I made to finance my migration.

As long as high-level corruption in government and neglect on the part of the highest echelons of the government continue, no policy can make any difference in combatting such irregular migration.

Irregular Migrants in the Kingdom

Irregularity may result from a deliberate breach of the law by the migrant, or from a change in the law itself that affects the migrant's status. Irregular migrants are not a homogenous group but belong to three distinct categories: labour migrants, refugees and transit migrants (Fargues 2009:6).

Clearly, the economic landscape of the GCC countries has been shaped by migrant populations. This region is the most popular destination for temporary labour migrants from South and Southeast Asian countries. The biggest employer of foreign workers in the Gulf is Saudi Arabia with almost 7 million legal foreign workers who constitute around two-thirds of the total workforce (Pakkiasamy 2004). Anecdotes suggest that another two to three million migrants are staying and working without any proper documents. Of about 8 million Bangladeshi migrants worldwide, one-third (or about 2.58 million) joined the labour market in Saudi Arabia. It is notoriously difficult to estimate how many of them are working in the Kingdom without proper documents. However, from the number of deportees from a country, we can make a guessestimate. For example, Saudi Arabia deports about 700,000 per year (Shah 2008). This does not necessarily mean that all irregular migrants are deported or all deportees are irregular. Some recent news provides us with an idea about the magnitude of the problem of irregular migration in Saudi Arabia. For example, Islam (2013) says that around 750,000 Bangladeshi migrant workers have benefited from an amnesty offer for illegal workers by Saudi authorities. The Bangladesh embassy in Saudi Arabia reports that of the beneficiaries, about 400,000 undocumented workers' passports were renewed and issued while around

350,000 workers, who were at the risk of becoming undocumented, were able to change their professions. I have argued in another publication that the number of migrants in Saudi Arabia could be even higher due to the fact that Bangladesh does not have a net account of migrants (see Ullah 2013).

I attempt to describe the category of irregular migration that may encompass Bangladeshis. For this, I use the concept of irregular status of migrants as presented by Jandl (2004), Ullah (2010), Zohry (2011) and Tapinos (1999). The categories of irregularity used by these authors present a few practical problems. This starts with the fact that a particular person may change his/her status over time, sometimes more than once. Therefore, persons may enter a country legally but then overstay their visa. First the person's presence is legal, then it turns illegal. The person may later be regularised, thus becoming legal again, and still later fall back into irregularity. In some instances, some peoples' stay turns irregular due to changes of laws and regulations. They may enter with legal documents and possess a legal residence permit, but the laws that regulate residence may undergo a change affecting a proportion of legal migrants and making them illegal migrants, usually with a deadline to legalise their status or leave the country (Zohry 2011).

Another interview provided an insight into the avenues of becoming an irregular migrant:

> "I have been trying to go out of the country since long and was exploring the avenues. A friend sent me to his friend, an actor, saying, 'Meet him, he will help to materialise your dream.' I met him. He gave me startling information. He said their group was going to the Middle East to perform on the occasion of the Bangladesh independence day (It is a regular practice for expatriates to invite artists from Bangladesh). In such cases, obtaining a visa is easy. I may join them if I wish. I calculated the potential risks. I was given two weeks' time to collect the required amount of money. I collected about 6 lac (about $8,000) and handed it over to the actor."

> Q: Did you ask or think what are you going to do there, if you can successfully get to the destination?

> A: No.

> Q: Why? How were you sure you could secure a job or if you can get to the destination at all?

> A: They are respectable people. I was sure they would not throw me in the ocean.

Q: Ok, did you think why they asked for 6 lac taka? It is a huge amount of money for getting you to Saudi Arabia.

A: He asked for this amount. I did not think about anything. I thought that was a golden opportunity for me. My family members also did not stop me.

Q: Then what happened?

A: Once I got to the destination, his colleagues explained that finding a job is not their responsibility. I was not sure what to do and say. I tried to see the actor. I failed because he seemed to be very busy. Later I came to know that three others in the same group were also smuggled into the country like I was. They left me. I was arrested in (perhaps) the second week of my stay. It was a difficult time without Arabic language skills. After more than a year I was released.

The outcome of irregular migration varies from person to person and from destination to destination. It could be damaging, horrific, and dangerous to migrants themselves. They remain invisible and, as a result, cannot be traced easily to be helped. The potential outcome of irregular migration could be: frequent arrest or detention en route, in transit and destination countries; deprival of basic rights, life-threatening risks; and repatriation. This study found a number of factors that explain the large number of Bangladeshi irregular migrants in Saudi Arabia. For example, there are a significant number of irregular migrants who went on the Umrah and Haj visas and stayed put; others were left in the Kingdom by government officials, or by some music bands, and some overstayed their work visa. Some absconded abusive employers who withheld or confiscated their travel documents (Table 11.4).

One respondent was very open in his interview.

Q: You said you did not return after performing your Haj. Would you add a bit more on why you did so?

A: Haj was my secondary aim, I wanted to stay in Nabiji's soil (in the land of the Prophet), work there, and die there. After I was arrested, I tried to make the police understand my intention. They did not pay heed to me.

Q: Did you know it was not legal and safe?

A: Yes, but I did not want to stay there to do bad things.

Q: Did the travel agency know your intention?

A: Yes, this happens with their knowledge.

Q: How do you know that?

A: Those who express such intention to them have to add extra money to the rate fixed for normal cases.

Table 11.4 shows that about one-third of the sample resorted to Umrah visa to move to Saudi Arabia and stay back and about 29% overstayed their work visa. Sixteen per cent came to Saudi Arabia with a music band and did not leave. One respondent who returned after being released from a prison in Saudi Arabia said: "I stayed in Saudi Arabia for about a year without any documents."

Q: Why did you not have any document?

A: The company I used to work for was very repressive. There were no fixed working hours. I used to work almost 24 hours. Salary was very low and was paid irregularly. I was not able to send money home when I needed to. So, my debt in the home country was growing bigger. I thought some more years of stay whether legally and illegally would help recoup the money I spent on financing migration.

Q: Did you face any problem?

A: Many.

Q: Like?

A: Salary was reduced by half. They became more repressive because they knew I had no legal documents. I had no way for redressal. I was scared of going out for my groceries and for other needs. Police there are very bad.

Q: How did you manage to leave the country?

A: I was arrested and was in jail for a few weeks. Then the government declared amnesty for those who wished to go back and on travel pass I was able to leave.

Q: Does this mean you had a work visa initially?

A: Yes.

Table 11.4: How migrants become irregular – Pathways

	f	%
Umrah	15	33
Haj	4	9
Government officials	6	13
Music band/cultural organisations	7	16
Overstayed work visa	13	29
Total	45	100

Source: Field data 2012-2014.

Travel agents and brokers explained how difficult it is to obtain manpower export licenses without bribing. A few travel agency owners are relatives of ministers and MPs. Our interview further revealed that a sitting MP is allegedly directly involved in human smuggling. This is endorsed by media reports (such as Prime News 2015).

Q: Did you initially plan to stay back in Saudi Arabia?

A: Yes, because I thought this was the best way to enter the country.

Q: Umrah is something religiously very sensitive. So why did you decide to use this method to enter?

A: The broker in fact gave me ideas that this would be the best for me and there was no other option to go there.

Q: Do you mean to say that the travel agency knew about your plans?

A: Yes, of course.

About 40,000 pilgrims went to perform Umrah facilitated by 50 travel agents from Bangladesh last year. The government of Saudi Arabia accused the agencies of involvement in human trafficking under the pretext of arranging Umrah/Haj visas (Karim 2015). The authorities claimed that 11,483 pilgrims on Umrah visa did not return to Bangladesh in the last few years. The Saudi government alleged that that they were trafficked to the country and has suspended issuing Umrah visas for Bangladeshis for an indefinite period of time and blacklisted those 50 travel agencies (*Dhaka Tribune* 2015). These irregularities have also led the government to bring about changes in the policy on Umrah visas (Al-Amin 2015).

Under the new rule, Umrah pilgrims can stay in Saudi Arabia for a maximum of 14 days, and the travel agencies cannot bring in large batches of pilgrims at one time, especially during Ramadan. Also, visa applicants for Umrah will soon have to record their biometrics before travelling to the Kingdom. More stringent rules await aspirant Bangladeshi Umrah/Haj pilgrims. Severe weaknesses in the migration governance system in Bangladesh have been detected. A newspaper reported that some dishonest officials from the Bangladesh passports office issue "official or government passports" in exchange for bribes to people who try to sneak out of the country (*Daily Aamardesh* 2015).

Conclusion

Bangladesh boasts growing remittances from overseas migrants and their contribution to the country's GDP is significant. About one-third of the total remittances the country receives come from Saudi Arabia. Yet, migration governance in Bangladesh remains fragile. It is as though the government is reaping the fruit without sowing the seed. No meaningful efforts have been made by the government to improve the migration process, though it never fails to take credit for the growing remittances. It is frustrating when the head of the government makes statements that are derogatory of migrants leaving the country through illegal means, member of parliaments and government officials are involved in human smuggling, and some government officials take bribes to issue certificates to illicit travel agencies. No effective actions to counter these are visible. Understandably, migration through legal channels is time consuming due to its highly bureaucratic nature. As a result, potential migrants pay exorbitant amounts of money to finance their migration (Ullah 2008; 2010). This study offers an important finding that potential migrants accept the fact that in future they are going to be irregular, meaning that a significant number of them become irregular by intention. The role of government is getting weaker and more recruiting agencies are getting licenses for manpower export.

Irregular migration, a variant of international migration, concerns both the less developed and developed countries, though the magnitude and dynamics of the problems are different. Receiving countries are concerned about the perceived threats to security, social unrest, and stiffer job competition, while sending countries are concerned about migrants' rights and welfare, and salary issues, and the fundamental rights of those who enter the unauthorised migration stream (Papademetriou 2005). As both receiving and sending countries are affected by the migration process, the effective management of it rests on governments on both sides.

Bangladesh is not a signatory to the United Nations Convention against Transnational Organized Crime adopted by the General Assembly Resolution 55/25 on November 15, 2000. This has perhaps contributed to the government's reluctance to take strong action to bring human trafficking to an end. Widespread corruption, cronyism, and near absent transparency in the government have complicated issues. Poorly managed migration and an absence of a sound and comprehensive immigration policy in Bangladesh have largely contributed to an unabated flow of irregular migrants. The neglect and denial by the government of Bangladesh has only aggravated the gravity of this longstanding problem.

According to the US Department of State (2014), Saudi Arabia failed to fully comply with the minimum standards for the elimination of trafficking and to make significant efforts to do so. In 2013, Saudi Arabia did not prosecute any trafficking offenders. To combat irregular migration, sending, transit and receiving countries have to work in coordinated manner. Blaming each other or punishing sending countries alone may prove shortsighted and harmful for all. The sponsorship system, including the exit visa requirement, continues to restrict the freedom of movement of migrant workers; the withholding or confiscating of the travel documents of the workers remains widespread because legislation prohibiting the practice is not enforced; officials continue to arrest, detain, deport, and sometimes prosecute trafficking victims for unlawful acts committed as a direct result of being trafficked and have been receiving serious criticism from many governments and many human rights organisations (US Department of State 2014). There is no denying that both sending and receiving parties have downplayed the issues of irregular migration.

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XII

Egyptian Irregular Migration
in the GCC Countries

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Abstract: The Gulf Cooperation Council (GCC) region is a major destination for Egyptian workers who seek "temporary" employment opportunities and higher standards of living. While the vast majority of Egyptian migrant workers in the Gulf are regular migrants, a minority stays in the GCC countries in irregular situations. This chapter looks at the causes of irregular migration at destination and origin. It briefly discusses the *kafala* system and its consequences, which can bring about irregular migration. It, then, analyses the functioning of the Egyptian labour market, especially for the young, and examines the operation of the institutional system of labour migration in Egypt. It is the assumption of the chapter that the interaction between causes at destination and origin generates irregular migration. The chapter, then, reviews, to the extent that our sparse data allows, the dimensions of Egyptian irregular migration in the second largest external labour market for Egyptian workers, Saudi Arabia, as well as in another of its main GCC destinations, namely, Kuwait. It is unfortunate that available information is scant. In Egypt, information on deported Egyptian migrants is supposed to

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be accurately documented by the Interior Ministry. However, the data is not made available to the public, which makes field work with deported migrants difficult. We have employed scarce data published by Saudi Arabia and Kuwait on the numbers of deportees and on some specific cases of deportation.

Introduction

Migration in an irregular situation, known in short as irregular migration, takes many different forms. According to Article 5 of the 1990 International Convention on Migrant Workers, migrant workers are considered to be documented or in a regular situation "if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party."[1] When these conditions do not apply, they are considered irregular. Access to the territory without official authorisation and overstaying the authorised period are among these forms. But informal employment, even when access to and stay in the territory are legal, is also considered in this category. In other words, using legal access for purposes other than those for which entry was authorised is irregular migration.

The members of the Gulf Cooperation Council (GCC) do not use the term "migrants" to designate foreign nationals staying in their territories and employed in their economies. Migration is, thus, not part of the lexicon of GCC countries. Foreign workers are designated as "temporary contractual workers." Immediately, then, there is the sense that workers should not expect to reside in any of the GCC countries permanently. Once the contracts under which they were brought in have expired, temporary contractual workers are expected to leave. Nevertheless, this chapter will use the terms "irregular migration" and "migrants in an irregular situation." It will do so for three reasons. First, this volume is about "irregular migration in the Gulf." Second, and more importantly, the chapter considers that the term "migration" does not imply any expectation on the parts of migrants as to permanence of stay or any other entitlements. If entitlements or rights exist they will be derived from the employment of foreign workers and extended stay, not from their designation as "migrants." Third, "migrant" as a concept is only considered from a statistical point of view: any person staying in a country other than his/her country of birth for twelve months plus one day is a migrant.

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1. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990.

The overwhelming majority of migrant workers enter the GCC countries through airports or, in a few cases, maritime ports: the only significant exceptions here are Yemenis and, more rarely, Jordanians (for Saudi Arabia). Controlled airports and ports make it next to impossible to illegally access GCC countries. Therefore, irregular migration in the GCC countries takes two forms: overstay and informal employment; and employment for purposes other than those for which entry was authorised. Causes for irregular migration in the GCC are similar to those in other countries but they also have their specifics. First, as everywhere else, migration policies of countries of destination are the main cause for the irregular situation of migrants. Undoubtedly, migrants would like to migrate regularly. However, the restrictive nature of policies or the working and living conditions deriving from them may result in matching supply and demand of migrant labour both informally and irregularly. In the GCC, restrictiveness cannot be argued given the high rates of migration growth. Between 2010 and 2015, migrants in the GCC grew by 32%, from 20.45 million[2] to 27 million.[3] In contrast, working and living conditions and other consequences of the GCC migration policies are causes of irregular migration. These policies are epitomised by the *kafala* system. For reasons of poor terms and conditions of employment resulting from the actual functioning of the *kafala* system, migrant workers may abscond, abandoning the jobs for which they were contracted. They either informally work for other employers or become "loose labour,"[4] working on their own account. Migrant workers may also have been brought in for fictitious jobs, a result of "visa trading." These workers may equally become "loose labour" in order to recoup their investment in migration. In Saudi Arabia, persons accessing the territory of this country for pilgrimage purposes may overstay and informally join the labour market.

Second, the causes of irregular Egyptian migration in the GCC countries are also to be found in Egypt itself. Unemployment, low-quality employment and informal employment in their own country, especially among the young, push Egyptians to seek employment in external labour markets, even if it means working in an irregular situation. Thus, the functioning of the Egyptian labour market may be considered one cause of irregular migration. The regulatory framework may equally have something to do with this situation. In other words, institutions responsible for labour migration, whose primary function is to protect Egyptian migrant workers,

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2. Al-Khouri 2012.

3. Forstenlechner and Rutledge 2011.

4. Emala saeba ‏عمالة سايبة‎.

may be unable to effectively carry out their role. Approved employment contracts may later turn out to be fake or are changed causing workers to abandon their jobs. *In situ*, representatives of the Egyptian administration, i.e. labour counsellors and consulates, are not necessarily able to follow up on employers' respect for approved employment contracts. This can, also, result in irregular migration.

This chapter will take up the causes of irregular migration at destination and origin. It will examine the *kafala* system and its consequences, a system that can generate irregular migration. The chapter will, then, briefly analyse the functioning of the Egyptian labour market, especially for the young and examine, too, the operation of the institutional system of labour migration in Egypt. It is the assumption of the chapter that the interaction between causes at destination and at origin both generates irregular migration and explains it. To the extent of our available information, the chapter will then review Egyptian irregular migration in the second largest external labour market for Egyptian workers, Saudi Arabia, as well in another of its main destinations in the GCC, Kuwait. It is unfortunate that available information is so scant. In Egypt, deported Egyptian migrants are supposedly well known to the Interior Ministry. However, information is not made available to the public, which makes field work with deported migrants difficult: we lack then a first-hand record of irregular migration in the GCC countries as a control on assumptions made in the chapter. Some thin information published by Saudi Arabia and Kuwait on deportee numbers and specifics on some cases of the deportation of migrants who were staying in irregular situations will be the basis of this chapter.

Causes of Irregular Migration in the GCC Countries: The *Kafala* System

The functioning of the *kafala* system and its consequences may be at the origin of irregular migration in the GCC for all migrant workers. The *kafala* system governs the entry, stay and work of foreign nationals in the Gulf countries. It was first introduced in the 1930s by the British in Kuwait in response to complaints by Kuwaiti merchants about competition from Indian nationals. The British authorities decided that no foreign national would be allowed to enter or work in Kuwait without a local partner. According to the system which developed and was adopted by all countries of the Gulf, a foreign worker cannot enter and work in any GCC country without a local *kafeel* (sponsor). The *kafeel* can be a public authority, a private firm or an individual.

Under the system, the worker is tied to the *kafeel*. He/she cannot change jobs or employers without the agreement of the *kafeel*.[5] The *kafala* system also gives rise to an oversupply of labour. The "system" is designed to ensure that visas are only issued to migrant workers to meet the specific labour needs of employers. Once the employment relationship is terminated, the *kafeel* is responsible for the repatriation of workers. The unemployment of migrant workers, therefore, could not exist if the recruitment procedures worked well. The reality is, however, that unscrupulous *kafeels* may obtain visas for more workers than they actually need. Workers are set free in the labour market to find jobs in the informal economy as casual labour. If they do not find jobs, they become unemployed. There are consequences too. In Kuwait, in October 1999, unemployed Egyptian migrant workers rioted over their employment situation.[6]

Working and living conditions stand equally behind irregular migration. In low-skilled jobs, wages vary according to whether workers are employed by large or small enterprises, but they are generally low. Low-skilled workers may be made to work in arduous conditions for longer hours than envisaged by the law. For low-skilled workers, living conditions in collective densely-inhabited abodes are often trying and unsafe.[7]

Policies aimed at restricting the inflow of foreign migrant workers and curbing irregular migration has emerged in the last two decades. In the mid-1990s, Saudi Arabia formulated the "Saudization" policy, to substitute Saudi citizens for migrant workers. The objective was to promote the Saudis' employment and thus fight unemployment, especially among the young.[8] In 2014, Saudi Arabia put a ban on visa issuance to new companies and to those who employed fewer than ten workers. Because small enterprises are large employers of migrant workers, this measure can in itself generate irregular migration.

Causes in Egypt of Irregular Migration to the GCC

The working of the Egyptian labour market and of the institutional framework of labour migration to the GCC countries may result in irregular migration.

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5. Al Najjar, unpublished.

6. Ibid.

7. Fares 2007.

8. "The Letter of the Law: Regular and Irregular Migration in Saudi Arabia in a Context of Rapid Change," Mixed Migration Research Series: Explaining People on the Move, Regional Mixed Migration Secretariat, 2014.

In the functioning of the labour market, labour supply clearly exceeds demand, which results in unemployment and both low-quality employment and informal employment. High unemployment and low-quality and informal employment is particularly prevalent in the age categories where migrant workers are concentrated. Faced with unemployment and informal employment if they return to Egypt, it is not surprising that Egyptian workers would join the informal labour market in the GCC countries. At least, payments for informal jobs are higher in the GCC than in Egypt.[9] The actual operation of the institutional framework may either not detect fake employment contracts or it may be unable to support Egyptian migrant workers in the GCC countries if their contracts are infringed upon or if jobs turn out to be fictitious. In both cases, in order to improve returns on their investment in migration, workers may abscond, overstay or join the informal economy.

The Functioning of the Labour Market

Egypt has been a major country of origin since the early 1970s. Unemployment, underemployment, low wage levels and poverty became push factors for Egyptian workers. A 2013 labour market analysis using data of the Labour Force Sample Survey (LFSS), from 2007 to 2011, reveals just how serious unemployment is in Egypt. The official figures for unemployment and poverty published in 2012 and 2013 confirmed this and showed how the economic slowdown after the popular uprising in January 2011 had compounded the problem.[10]

The information review generated by successive rounds of the LFSS reveals a consistently lower rate of growth for employment than for the labour force since 2008, save for 2009-10. With a backlog in jobseekers, this meant persistently higher unemployment rates. The sharp economic downturn that followed the January 2011 uprising greatly affected the unemployment rate, which increased by 29.7% between 2010 and 2011. Statistical information published by CAPMAS in 2013 shows that the unemployment rate continued to increase, albeit at a slower pace, in 2012 and in early 2013. The unemployment rate for men and women reached, respectively, 13.2% and 25% in the first quarter of 2013. Their higher unemployment rates do not mean that women are particularly affected by migration, be that migration regular or irregular. One explanation of high female unemployment rates is low mobility

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9.   In their chapter in this volume, Shah and Al-Kazi quote an Egyptian worker in Kuwait who says that with earnings from his informal employment: "he can send money to feed his family as jobs in Egypt are difficult and the salary is low."

10.   This subsection draws on the labour market analysis in Amer and Fargues 2014.

in the domestic labour market, let alone external ones.[11] However, unemployment, in general, exerts pressures on the terms and conditions of employment, which is a cause for workers to seek and accept employment in external labour markets, including in informal jobs.

Unemployment particularly affects those aged 15 to 29 years. The unemployment rate is, indeed, negatively correlated with age. It reaches a peak in the 20-24 years age group and then gradually decreases. Young people seeking their first jobs after completing their studies or dropping out of school are particularly vulnerable. A specific characteristic of labour market outcomes in Egypt, shared by other countries in the MENA region, is that unemployment particularly affects the best educated. This does not imply that the highly-educated are more likely than other workers to find themselves in an irregular migration situation. Again, unemployment and lower terms and conditions of employment for all workers push those at the lower end of the labour market to accept informal jobs.

The distribution of the unemployed by duration of unemployment reveals that, in 2010, the vast majority of those affected were long-term unemployed. With the above extended situation of unemployment that is of long duration and especially hits the young and the educated, it should not be surprising that a considerable number of Egyptians choose to migrate for employment, either legally or irregularly. And it is not unemployment alone that pushes Egyptians to migrate. Low-quality and informal employment at home also takes its toll. The interplay between low quality and informal employment in the Egyptian labour market may explain the readiness of Egyptian migrant workers to engage in informal employment in external labour markets where, at least, pay is higher.[12] To illustrate this, take the following estimates of wage differentials between Qatar and Egypt in 2004. In Qatar wages, relative to Egypt, stood at 750% in tourism, 569% in tourism, 859% in transportation, 927% and 1,484% in construction.[13]

The findings of a school-to-work transition survey (SWTS) carried out in 2012 by the International Labour Office (ILO) give a good idea of the quality of work available to young Egyptians.[14] In 2012, a majority of young employees

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11.   Assaad and Arntz 2005.

12.   In interviews conducted with Egyptian migrant workers in Kuwait, unfavourable treatment and discrimination over low pay and poverty was repeatedly reported; see Taylor, Soudy and Martin 2015.

13.   El Nozahy 2007, as quoted in Awad 2007.

14.   Barsoum et al., 2014. While in most contexts, a young person is defined as a person aged between 15 and 24 years, for the purpose of the SWTS and related reports, the upper age

in Egypt (75.7%) had no contract, leaving them vulnerable. The absence of an employment contract is a key sign of informality.[15] Paid work, without a contract, concerned 80.9% of young male workers and 53.5% of young female workers. Only 9.8% of male workers and 26.8% of female workers had permanent contracts.[16] The corollary of the absence of contracts is that 91.1%, or almost all young workers in Egypt, were classified in informal employment. Informal employment is made up of two subdivisions: workers in the informal (unregistered) sector and paid employees holding informal jobs in the formal sector.

Wages are obviously a good indicator of job quality. One quarter of young wage and salaried workers reported a below-average monthly wage. About one-half of young employees were within the EGP500–999 per month pay range.[17] Professionals made up the highest percentage of young workers in the highest wage bracket of EGP3,000 and above (2.6%).[18] Conversely, agricultural workers, clerks and the young in elementary occupations were those most likely to be in the lowest wage range (less than EGP300 per month).[19] With such low wage levels it should come as no surprise that young Egyptian workers engage in informal employment in the Gulf. When it is remembered that agricultural workers get low wages and that most Egyptian migrant workers are from rural areas, the causes of informal employment and irregular migration become clear.

A further indicator of employment quality is job satisfaction, the opposite of which is the desire to change jobs, presumably to find better ones. The SWTS brought out how one-half (50.1%) of young workers indicated they would like to change their current jobs. As many as 50.1% of young working males expressed willingness to migrate for employment purposes with 15.8% stating they would move to another country. The attraction – whether push or pull – towards migration seems to have existed only among young males. Only 2.8% of young female workers indicated they would consider moving abroad.[20] This latter finding confirms the overwhelmingly male character of international Egyptian migration.

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limit was extended to 29 years of age.

15. Awad 2007.
16. Barsoum et al., p.23.
17. Roughly equivalent to $70 to 140.
18. Equivalent to some $420.
19. Barsoum et al., p.26, equivalent to some $42.
20. Barsoum et al., p.28.

The Operation of the Institutional Framework of Labour Migration in Egypt[21]

At the Ministry of Manpower and Migration (MOMM), the General Department of External Employment and Representation (GEDEER) has mandate over external employment. It encompasses two departments: External Representation (DER) and External Employment (DEE). Together, these two departments exercise the protection functions of Egyptian labour migration. Irregular migration has been partially caused by their failure to carry out their functions effectively. The two departments do not recruit most workers. However, DEE has the function of checking the contracts of all workers, including those recruited through their own efforts. As previously indicated, failures include: the inability to detect unfavourable terms and conditions of employment, fake contracts, unscrupulous *kafeels* and failing recruitment agencies. The functions of these two departments are reviewed below.

The Department of External Employment

In GEDEER, the Department of External Employment performs several functions:

1. Licensing and renewal of licenses of Recruitment Agencies for external employment;

2. Approving contracts for foreign employment whether they are directly submitted by individual workers or by recruitment agencies;

3. Matching supply and external demand for Egyptian labour: workers who register at the Central Department for Information are included in the database for external employment. When DEE receives direct demands for Egyptian labour from external employers or from labour counsellors posted in countries of destination, it tries to match them with workers in the database.

4. Matching supply and Saudi seasonal demand for labour during the Haj season, the time of the yearly Islamic pilgrimage to Makkah.[22] Workers know that the Haj season is one of high demand for labour; they gather at the Ministry in expectation of being called for interviews with Saudi

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21. The section on the operation of the institutional framework draws on Center for Migration and Refugee Studies (CMRS), "Labour Migration Governance in Egypt and Tunisia: The Case of Egypt," Cairo, 2014 (FIERI/CMRS project on labour migration governance in Tunisia and Egypt after the Arab Spring).

22. The annual Islamic pilgrimage brings millions of Muslims to Makkah. To carry out services for pilgrims, there is substantial seasonal demand for labour. Egyptian workers contribute to meeting this demand.

employers and their representatives. The procedures are the same as with recruitment in normal times;

5. Examining complaints submitted by migrant workers after their return to Egypt and finding solutions for them.

External Representation for the Support of Egyptian Migrant Workers

The objective of external labour representation is to support Egyptian migrant workers in their countries of employment. For this purpose, Egypt deploys fourteen labour counsellors, including in each GCC country except Bahrain. Two counsellors are posted in Saudi Arabia, one in Jeddah and another in Riyadh. Labour counsellors report to the DER.

Both offices in Saudi Arabia are staffed, in addition to the labour counsellors, with an attaché and a local secretary. Over one million Egyptian migrant workers in Saudi Arabia are serviced by four professionals. MOMM officials recognise that these professionals are far from being enough. The need to open a new office in northern Saudi Arabia could not be met presumably because of the unavailability of funds. There is only one labour counsellor in Kuwait for 500,000 Egyptian migrants there. In the countries where they are posted, labour counsellors maintain relations with Ministries of Labour, especially their units responsible for migrant workers. In cases of disputes between Egyptian workers and their employers, counsellors try to settle disputes. Their attempts are not always successful: employers, particularly, but also, at times, workers can be rigid. The labour counsellors deal with Ministries of Interior for residence permits as well as for migrant workers in an irregular situation.

The performance of labour counsellors depends on their personal initiative. Some may set up simple computerised information systems where the characteristics of Egyptian workers and problems they encounter are entered. However, these systems, when they exist, are not designed in the light of policy needs. Their sustainability is not ensured. More importantly, they neither form a network nor are linked to MOMM headquarters in a manner that would allow them to deal with the problems of Egyptian migrant workers.

The relations of labour counsellors with government ministries in countries of destination centres on the problems of migrant workers. They are, essentially, about the terms and conditions of employment, resident permits and irregular migration. The terms and conditions of employment and residence permits, as such, are closely related to irregular migration. If they are fair, they prevent it; if they are not, they may trigger it. Egyptian migrant workers in Saudi Arabia and Qatar have had experiences that support this assumption. Issues revolve around the

kafala system. They include changing the terms of the contracts upon arrival in the country of destination, discovering that no real jobs exist and the inability to change employers. Egyptian officials have reported that such issues were rare when demand for jobs was directly intermediated by the Ministry. They were more frequent when intermediation was made by private recruitment agencies and especially by informal recruiters.

In Saudi Arabia, when Egyptian workers find employment with more favourable conditions than the jobs which they were initially recruited for, original *kafeels* often refuse the transfer of their sponsorships to the new employers/*kafeels*. Other complaints include withholding final payment and a refusal to end the employment relationship, which is necessary for authorisation to leave the country. This is considered to be, at times, tactics on the part of the *kafeel* to bargain over the final payment. It was reported that loopholes in the *kafala* system allow some fraudulent *kafeels* to bring in workers for whom there are no real jobs. These *kafeels* make profits out of permits for fake jobs, and they set recruited workers loose in the informal Saudi labour market. A number of pilgrims and especially workers recruited at the time of pilgrimage can stay behind and also join the informal economy. Likewise, regularly-recruited workers at times abscond. They abandon the jobs for which they were recruited and join the informal labour market, thus becoming migrants in an irregular situation. When they are arrested, runaway workers are imprisoned. They are released only with the agreement of their original sponsors. These workers obviously need legal assistance. Organs for the settlement of labour disputes are reported to be generally fair, helpful and intent on solutions. However, they can resort at times to procrastination in order to weaken the position of workers and to force them to forgo some of their entitlements. *Mutatis mutandis,* problems in the Saudi labour market also apply in other GCC countries. A notable difference is pilgrimage, which allows relatively easy seasonal access to Saudi Arabia, and the much larger volume of the Saudi labour market.

In Qatar, the *kafala* system is unsurprisingly also reported to be the cause of problems faced by Egyptian workers. *Kafeels* at times surrender workers' passports they have retained to the authorities pretending they had run away in order to avoid payments or to bargain over how much they will pay. Contract changes or changes in employment conditions and disputes over wages are reported to be common. The financial resources that the labour counsellor sometimes has to solve migrant problems are limited. The labour counsellor may have to turn to wealthy members of the Egyptian community to mobilise resources for such workers.

Another example of ineffectiveness in the protective institutional framework is the actual implementation of a ban on external employment in 24 occupations, pursuant to a Ministerial decree. The ban is a means to protect workers from abuse. Most of these occupations are carried out by women: e.g., house managers and private nurses. Consequent on the failure for employment contracts, which are necessary to obtaining the external employment permits from the Ministry of Interior, female workers who suffer from unemployment or low income may be tempted to travel to a country for which they do not need visas, from there flying to their final destinations. Workers risk abuse in their determination to earn. Here again, the Egyptian labour market outcomes combine with the ineffective protective institutional framework to produce migrant worker vulnerability.

Expressions of Egyptian Irregular Migration in the GCC Countries

As indicated previously, irregular migration in the GCC countries is a result of the interplay between causes at both destination and origin. Very little to no information that is useful for analysis is accessible in destination countries or, for that matter, in Egypt. The scant information available about deportations will be used here to review some expressions of Egyptian irregular migration in the GCC countries.

In one estimate, in 2013, there were approximately 6.5 million Egyptian migrant workers abroad, 75% of whom were in Arab countries, including member states of the GCC.[23] The reported estimates for the GCC were as follows: 1,300,000 in Saudi Arabia; 450,000 in Kuwait; 260,000 in the United Arab Emirates (UAE); 88,500 in Qatar; 45,000 in Oman; and 12,000 in Bahrain. Migrants in Saudi Arabia account for about 20% of all Egyptian migration, while those in Kuwait represent around 7.4%.[24]

While most Egyptian migrant workers in the GCC are regular migrants, the existence of irregular migration has been clearly exposed by the increasingly systematic crackdown on migrants in an irregular situation, especially in Saudi Arabia, Kuwait and the UAE. The first two are the largest host countries of Egyptian migrant workers in the sub-region. Even though the number of Egyptian migrants in an irregular situation are unknown, reported cases of migrant deportation for those in an irregular situation from the GCC back to Egypt provides an insight into the scale, forms, and patterns of Egyptian irregular migration in the GCC countries.

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23. Zohry, Migration for Development, 2009.
24. "Migration Profile: Egypt" 2013.

In March 2013, Saudi Arabia adopted a new immigration policy that included targeting migrants in an irregular situation.[25] This involved a heavy crackdown on businesses who hire migrants in irregular situation and on the migrants themselves. The Saudi authorities estimated that around one to two million migrants were working illegally. Hundreds of thousands of migrants in an irregular situation were deported or compelled to leave. According to the new labour restrictions, foreign workers are only allowed to work for their *kafeels*. They are not authorised to work independently or to work for another employer. The Saudi authority gave its entire foreign irregular migrant workforce an amnesty period to legalise their stay and to conform to the new rules.

In May 2013, two months after the enactment of the new law, the deportation of six Egyptians following a disagreement with their *kafeels* over monthly salaries and the recovering of their passports stirred fears of repatriation in the Egyptian migrant community. More than 6,000 Egyptian migrant workers, who considered themselves in situations similar to those of the deportees, stormed the consulate in Jeddah. They were seeking the consulate's support in finding solutions for their status under the new rules.[26]

At the expiry of the amnesty in November 2013, Egyptian migrant workers were among the major nationalities affected by the large-scale systematic raids at labour sites by the Saudi Ministry of Labour and police operations.[27] Around 300,000 Egyptians were returned to Egypt at the expiry of the amnesty period in November 2013: this number corresponded to 23% of the total Egyptian workforce in Saudi Arabia. As a result, towards the end of 2013 the number of Egyptian migrant workers in Saudi Arabia dropped from 1,300,000 to under a million.[28] According to the Saudi Labour Department report for 2014, the number of Egyptian migrant workers was estimated at 968,000 at the end of 2013. They represented around 40% of Arab migrants in Saudi Arabia.[29] It is more than probable that after the 300,000 repatriations, a number of Egyptian migrants in an irregular situation are still present in Saudi Arabia.[30]

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25. Ahram Online, May 27, 2013.

26. Ibid.

27. De Bel-Air 2014.

28. *The Cairo Post*, May 31, 2015.

29. Ibid.

30. Ibid.

In 2014 and 2015, Egyptian migrants continued to be deported for breaching residence laws: i.e., for irregular migration. According to the Saudi Passport Department, migrants overstaying their residence permits were detained for two weeks before deportation, when their *kafeels* refused to renew their residence permits.[31]

Kuwait, the home of the second largest Egyptian community in the Gulf, has also adopted stricter immigration measures with a view to reducing the volume of its foreign workforce. Migrants in Kuwait currently make up around 69% of the population. The Egyptian community is the second largest in Kuwait after the Indian. In Kuwait, Egyptians are to be found both in highly-skilled occupations, such as managers, physicians and engineers as well as in low-skilled jobs: they are labourers, waiters, guards and drivers. Of course, the low-skilled are more exposed to irregular migration but the highly-skilled can also suffer. Irregularity typically takes the form of overstaying, but for both the low- and highly-skilled there is the practice of buying stay permits *(iqama),* or visa trading.[32]

According to the local media, the Interior Ministry Assistant Undersecretary for National and Passport Affairs justified, in 2015, the deportations by explicitly referring to irregular migrant workers who violate or overstay the terms of their visas. According to his estimates, around 7,000 Egyptian migrants in an irregular situation were going to be affected by Kuwait's crackdown on migrants in an irregular situation.[33]

Irregular migration, including that of Egyptians, is persistent in Kuwait. In 2011, official estimates had put the number of Egyptian law violators at 24,433 as of February of that year, equivalent to around 5% of the Egyptian migrant community. From among the violators, 2,664 (10.9%) individuals regularised their status, 9,585 (39.2%) departed, while 12,184 (49.9%) remained in Kuwait in an irregular situation.[34]

Conclusion

Research on irregular migration is arduous, especially when the data on volumes and characteristics is so hard to come by. It is particularly so when destination and origin countries of migration guard data as confidential. This is the case with irregular Egyptian migration in the GCC countries.

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31. Ibid.
32. See chapter by Shah and Al-Kazi and Taylor, Soudy and Martin, op.cit.
33. Ibid.
34. Shah 2014.

As with all irregular migration, its causes exist at both ends of the migration process. In the case at hand, the specific employment and immigration policies of the GCC countries, known as the *kafala* system, can generate living and working conditions that cause irregular migration through overstay or absconding. The temporary character of migration and the difficulties of changing employers under the system all compound this situation. At other times, the *kafala* system causes foreign labour in excess of supply, which also results in irregular migration, the workers brought in working in jobs other than those they were recruited for.

Labour market outcomes in Egypt, in terms of unemployment and employment quality, especially for the young, are obvious causes of irregular migration whether to GCC countries or to other destinations. That these causes interact with the policies of the GCC countries to produce irregular migration is natural. These are the dynamics of irregular migration everywhere. Egyptian irregular migration in the GCC countries stands out for its large flows and stocks. The consequence is that Egyptian irregular migration is also quite large, at least according to the little good data we have. The reported repatriation of 300,000 Egyptians from Saudi Arabia, between 2013 and 2015, means that it affected almost one quarter of all Egyptian migrants in the largest of the GCC countries. This is a very high proportion that reveals significant loopholes in the Saudi governance of migration. The new Saudi policy announced in 2013 must have wanted to close these loopholes as an objective.

The repatriation of 300,000 Egyptians, over two years, compounds the challenges of employment creation for Egypt. The repatriated represent an addition of some 20% new entrants to the labour market over two years, for whom there was already too little employment. The solutions are clear: demand must be created for labour in Egypt; and the Egyptian government needs to upgrade migration protection policy measures.

This needs to be done through the better application of these measures. Effective protection both at recruitment and in the countries of employment aimed at ensuring fair and favourable working and living terms and conditions should obviate reasons for absconding or overstaying. This requires sophisticated and better financed labour migration policy and institutions.

Irregular migration exposes workers to exploitation and deprives them of many forms of protection. For countries of both destination and origin, this means the failure of their migration and labour market policies. Responsibility for these failures lies primarily with these countries, not with those migrants who find themselves in an irregular situation. Coordination of policy measures at destination and origin should contribute to improving their design and to increasing their effectiveness.

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XIII

Irregular Migration from Ethiopia to the Gulf States

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Abstract: Migrants from Ethiopia to the Gulf States become irregular in five ways: entry through unauthorised border crossings, "overstayers" on temporary or tourist visas, entry through "free visas," through irregular employment, and at birth, when children are born to irregular migrants. This chapter seeks to critically examine recent policy developments that have impacted irregular migration from Ethiopia to the Gulf States, particularly Saudi Arabia. In October 2013, the Ethiopian government instituted a "temporary" ban on all migration to the Middle East, a ban that continues to date. This was widely considered a pre-emptive response to the imminent expulsion of over 163,000 undocumented Ethiopian migrants from Saudi Arabia in November 2013, after the expiry of an amnesty for undocumented labour migrants to correct their status. While the Ethiopian government ban and the Saudi crackdown had the effect of temporarily stemming the flow of irregular migrants across the Horn of African to Yemen during the early months of 2014, by the end of the year, there was a 40% increase in the number of irregular migrants reaching Yemen by boat, with the probable intention of moving on to Saudi Arabia to seek work. Around 80% (72,000) of these migrants are Ethiopian, and a significant number of them are circular migrants, including those

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who are returning after being deported. This chapter argues that the trends observed here are similar to patterns observed in other parts of the world; Ethiopian and Saudi Arabian policies intended to curb irregular migration have clearly had converse effects, and this is at the cost of migrants' journeys becoming more dangerous and expensive. The chapter calls for a new politics of migration that protects rather than illegalises and endangers the lives of migrants.

Introduction

Within the Gulf region, the phenomenon of migrant "illegality," "irregular" or "undocumented" status has recently attracted academic and policy attention (Shah 2009, 2014; RMMS 2014b) in line with increasing attention to the phenomenon at other global "fault lines," particularly in the US, the EU, and Australia (Cameron 2013, Fekete 2003, Guerette and Clarke 2005, Cornelius 2005, Monzini 2007). The heightened visibility of the phenomenon is a by-product of, on the one hand, increasing cross-border mobilities in the "age of migration" (Castles and Miller 1998) and on the other, the tightening of border controls particularly for "undesirable" migrants in the Global North. "Irregularity" is produced by bordering practices of states, and unauthorised border crossings have become deeply politicised. As Anderson and Ruhs observe, "The contested nature of the adjectives attached to migrants ... undocumented, irregular, clandestine, non-compliant, unauthorized, trafficked, sans papières, etc. – is an indication of the intensely politicised nature of claims to knowledge and analysis" (Anderson and Ruhs 2009: 175). In this chapter, I follow the use of "irregular" as the "least worst" of terms that are problematic in different ways (for extended discussions, see Schrover et al. 2008 and Koser 2010).

The construction of irregular migrants as a "problem" that needs to be "managed" emerged in the twentieth century as a feature of the nation-state based organisation of citizenship, in contrast to city based, or even empire based models of citizenship (Schrover et al. 2008, Mongia 2003, Torpey 2001). The primary state objectives for the "management" of irregular migration are control of the domestic labour market and welfare, and control over national security (particularly in the post 9/11 global anti-terrorist environment of increased surveillance). Framed through these objectives, borders are not just "lines crossed in the sand," but inscribed through processes of documentation and surveillance. State border control is visible not only at the physical border crossing, but also in access to the labour market, services, and mobility within the state. A secondary stated objective of "managing" irregular migration is to prosecute traffickers and smugglers, and protect their victims.

Following de Genova (2002), this chapter is situated within a perspective that is critical of such stated aims of the law and seeks to denaturalise their nationalist assumptions. De Genova proposes the socio-historical analysis of the law as instrumental in the production of migrant "illegality." Viewed through this perspective, we observe that while state laws controlling the entry of "undesirable" non-citizens to their territories may not achieve their stated objective of reducing the numbers of irregular migrants, they do achieve other desired consequences. One such useful and profitable consequence that has long been well-documented particularly in the context of Mexican irregular migration to the US is the creation of a legally vulnerable and therefore cheap and exploitable pool of labour (Bustamente 1972, Portes 1978, Sassen 1988). Moreover, state prerogatives and capacities to control the entry of non-citizens to their territories are increasingly a mode of signalling state authority, indeed their very "stateness." However, these stated and unstated consequences of border controls are achieved at the cost of irregular migrants: increasingly restrictive border policies and practices around the globe have led to the increasing stigmatisation and criminalisation of irregular migrants (Lee 2005, Gerard and Pickering 2012), which has resulted in their exposure to greater costs, risks, and higher fatalities as they attempt ever more perilous border crossings (Carling 2007, Weber and Pickering 2011).

This chapter discusses the irregular migration of Ethiopians to the Gulf, with a specific focus on Saudi Arabia. It argues that the trends observed along this migration trajectory are similar to patterns observed at other global flashpoints of irregular migration, such as between the US and Mexico, on the maritime borders of the EU in the Mediterranean, and on the maritime borders of Australia. The Ethiopian and Saudi Arabian policies intended to curb irregular migration have had converse effects, and this is at the cost of migrants' journeys becoming more dangerous and expensive. The chapter calls for a new politics of the border that protects rather than endangers the lives of the people crossing borders. The chapter draws on empirical research I have been conducting since 2009 on Ethiopian migrant domestic workers to the Middle East. The research methods included qualitative, semi-structured interviews with migrants, government and NGO representatives, brokers and agents in Ethiopia, in Kuwait, and in Lebanon. Cumulatively, I have conducted over 100 interviews in different phases of this ongoing research. Irregular migration was a topic of the interviews, as a large number of initially regular Ethiopian migrants experience some form of irregularity at later stages of their migration trajectory; I draw on some of these accounts in this chapter. I also draw considerably on secondary reports monitoring Ethiopian migration conducted by

international organisations such as the International Organisation for Migration (IOM) and the Regional Mixed Migration Secretariat (RMMS).[1]

The chapter proceeds as follows: the next section outlines the primary modes of irregularity that are observable in the trajectory of Ethiopian migration. In the third section, I assess the calculus of risk, i.e., the balance of factors that influence Ethiopian migrants' decisions to become irregular migrants. Specifically, I examine the drivers of Ethiopian irregular migration to the Gulf using Cvajner and Sciortino's (2009) typology of irregular migration. The next two factors discussed within the calculus of risk are the dangers and the risks of deportation irregular migrants face. The fourth section examines the Ethiopian and Saudi Arabian governments' stated policies of "managing" migration and the unstated consequences of these policies. This is followed by the conclusion.

Modes of Ethiopian Irregular Migration to the Gulf

Since the late1990s, there has been a rising stream of migration from Ethiopia to the Gulf countries. The majority of regular labour migrants from Ethiopia are women employed as domestic workers. The primary destinations in the first decade of the 21st century were Saudi Arabia and Kuwait, although there was a steady stream of migrants that made their way to other Gulf countries, particularly the UAE. Since 2011, an agreement between Ethiopia and Saudi Arabia resulted in a steep increase in the number of legal migrants to Saudi Arabia. In part, this increased demand from Saudi Arabia was a consequence of the ban on migration to Saudi Arabia imposed by the Philippines and Indonesian governments, following cases of abuse of workers from these countries. Thus, according to the Ethiopian Ministry of Labour and Social Affairs (MoLSA), the number of Ethiopian migrant workers that legally migrated to Saudi Arabia increased dramatically from 3,478 between July 2009 and July 2010 to over 100,000 in 2011, and in 2012 again to over 160,000 (RMMS 2014a). MoLSA further estimates that the regular labour migrants represent only 30%-40% of all Ethiopians in the Gulf, suggesting that the remaining 60%-70% (300,000-350,000) of Ethiopians in the Gulf countries have irregular status (ibid).

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1. The RMMS is a consortium of organisations operating in North Africa, including the International Organisation of Migration (IOM), United Nations High Commissioner for Refugees (UNHCR), International Labour Organisation (ILO), Danish Refugee Council, and others. Since 2011, RMMS has been monitoring the movements of peoples in the region - of refugees, asylum seekers, and economic migrants.

Irregular status can occur in a number of ways, and does not necessarily imply irregular entry. First, many Muslim Ethiopians travel to Saudi Arabia on Haj or Umrah pilgrimage visas. They enter legally, but overstay their visas and become irregular. Habiba, for instance, recounts that this was how she travelled to Saudi Arabia to join her sister, uncle and cousins who were already working there:

> When you go out from here [Ethiopia] you will get a [Umrah] visa for one month and when you finish that month you can pay and add another month. I went there and I saw Makkah and Medina. Then I came to Jeddah, where I have a sister. Then all you have to do is not show your passport, and hide from the police... We went for Umrah and stayed illegally. My uncle is there legally but all the others who went with me are illegal (Interview, Addis Ababa, 2010).

Habiba was from the Wollo region of Ethiopia, and not from a poor family – her family owned two shops. Her reason for leaving at the age of 18 was that her family was pressuring her to get married. She worked in Jeddah for three years and said that her employment conditions were satisfactory. According to her, abuse and exploitation occurred "when you go on a [contract work] visa; but I could change my job any time I wanted and move. So they treated me well." When she wanted to return to Ethiopia, she used the strategy that many irregular workers in Saudi Arabia use of giving herself up to the police. She spent 10 days in a detention centre and was deported back to Ethiopia. I interviewed her five years after her return, when she was processing a regular work contract for Kuwait, through a Private Employment Agency (PEA).

The second mode through which irregular status occurs is when migrants enter on legal work contracts, but become irregular if they exit their employment contract either to escape abuse or to seek better opportunities. Some women who exit their contracts regularise their status by getting their next employers to arrange for a transfer of sponsorship. Many, however, remain irregular, living and working as freelancers either as domestic workers, or taking up jobs in the service sector (hotels, restaurants, beauty parlours and shops). Although accurate figures for the numbers of migrant domestic workers who exit their contracts and remain irregular are difficult to ascertain, informal estimates suggest that 25%-30% of women exit their employment contracts for varied reasons and thus become irregular.

The third category of irregular workers is of those who enter on what is colloquially known as a "free visa." This is the term that covers the ubiquitous practice of "visa trading" in the Gulf countries, where migrant workers pay rent

to a *kafeel* (sponsor) for sponsorship papers, but are "free" to work for any other employer. Technically, this is an irregularity, and if the migrant worker is caught, they can be deported. Although there are no reliable figures, my research suggests a large number of Ethiopians working in the Gulf do so on "free visas" which is corroborated by quantitative research in Qatar that also shows a high density of Ethiopians on "free visas" (Pessoa, Harkness and Gardner 2014). Ayesha, a young Muslim woman I interviewed in Addis Ababa went to Saudi Arabia first on a "free visa" that was organised for her by her husband and his relatives who were already living and working there. Ayesha worked freelance in a part-time job as domestic worker for three years, but was finally deported because the irregularity in her documents was discovered: "My husband had tried to cover for his friend's wife. My husband's and my papers were together, but when they checked they found out it was not me so they deported us" (Interview, Addis Ababa, 2010). Given the widespread practice of visa trading, "free visas" have not (until recently) been subject to high levels of monitoring, and this case of deportation was primarily because the documents were being used not just for one but for two women rather than because it was a "free visa." At the time of interview in Addis Ababa in 2010, Ayesha had obtained a regular work contract and was ready to return to Saudi Arabia; it was unlikely that she intended to stay in this contract, rather the aim was to rejoin her husband who had already returned there through the overland, irregular route via Yemen.

A fourth mode of irregularity occurs when children are born to irregular and regular domestic workers. Pregnancy is prohibited under the regular domestic worker contract, and if a woman becomes pregnant, her employer may terminate her contract. Thus, even regular domestic workers who become pregnant (voluntarily, or as a consequence of rape) often choose to become irregular to avoid deportation. The children born under such conditions are without documentation of nationality and therefore often cannot access formal medical services or education. I have discussed elsewhere in greater detail the predicament of the women who find themselves with children, unable to leave the country, yet constrained in their ability to take on regular employment (Fernandez 2014).

The sea and land route via Yemen is the fifth mode of irregularity through physical border crossing. Irregular migrants from Ethiopia and the Horn of Africa who make border crossings follow the pattern of step-wise migration observed among migrants in other parts of Africa (Schapendonk and Moppes 2007; Cross 2009), travelling in stages over land from Ethiopia to the coast of Djibouti or Somalia, then crossing the sea to Yemen. From Yemen, many attempt to cross the

land border with Saudi Arabia or travel to other Gulf States.

While here too, estimates of the numbers of irregular migrants entering Saudi Arabia through these routes lack accuracy, three clear trends are discernible: the numbers of migrants from the Horn of Africa (Ethiopia, Eritrea, and Somalia) are increasing; Ethiopians constitute the majority of these flows; and third, men are more likely to embark on this trajectory. In 2012, 107,532 crossed the Arabian and Red Sea to Yemen, of whom 78% were Ethiopians. Cumulatively, between 2006 and January 2014, over 500,000 migrants from the Horn of Africa have made the crossing, and the number of Ethiopians who arrived in Yemen in this period was at least 334,000 (RMMS 2014b:34). According to UNHCR figures, the number of migrants irregularly arriving in Yemen from the Horn of Africa in 2014 stood at 82,000, as against 65,000 in 2013.

Estimates of the number of arrivals and Ethiopian arrivals in Yemen are illustrated in Figure 13.1. The majority of these arrivals do not intend to stay in Yemen, but aim to cross the land border between Yemen and Saudi Arabia, or to travel to other Gulf countries, where wages are higher. Yet, as de Regt (2008) shows, Ethiopian migrants may stay on and seek work in Yemen too and may find multiple creative modes of manoeuvring around their irregular status.

The Calculus of Risk: Drivers, Dangers, and Deportation

Migrants' entry into irregular status is almost always an exercise of agency, one that makes a considered calculus of risk. Weighing in the calculus are three sets of factors: the drivers specifically of irregular migration, the dangers of undertaking irregular status, and the ever present possibility of deportation. Overall, given the high numbers of Ethiopians that are irregular migrants, for the majority, it would seem that the drivers would appear to outweigh the dangers and the threat of deportation, both en route and at the destination. I outline the multiple influences within each of these three sets of factors.

The general drivers of irregular migration are similar to those of regular migration: people migrate to improve their lives and the lives of their families. As I have discussed elsewhere, the majority of young unmarried Ethiopian women who migrate as domestic workers are imbued with a very strong sense of responsibility for the economic welfare of their natal families which propels them to seek opportunities outside Ethiopia (Fernandez 2011). Families too put pressure on their children to migrate, given the ecological and demographic pressures on the land and the lack of local employment opportunities (Bezu and Holden 2014; Jones et al. 2014).

The visible migration success of friends, neighbours, and peers is another strong driver of migration. Other reasons for migration are varied: some seek to rejoin families (as in the case of Ayesha mentioned earlier), while a few may be political dissidents who seek to escape government surveillance. Overall, these drivers have produced and re-inforced a "culture of migration" where "migration is associated with personal, social and material success, and where migrating has become the norm rather than the exception. In this vein staying at home is associated with failure" (RMMS 2014: 21; quoting de Haas 2006: 5-6).

More specifically, the drivers of irregular migration systems can be usefully analysed using the typology of three trajectories identified by Cvajner and Ciortino (2009): atomistic, volume-based, and structural migration careers. They view these three systems as emerging along a (often overlapping) developmental continuum as migration trajectories consolidate. Atomistic careers are individual trajectories that are catalysed by unique combinations of contingent factors and are often descriptive of the experiences of migrant pioneers. More relevant for the analysis of Ethiopian irregular migration to Saudi Arabia are the two models of "volume-based" and "structural" migration described by Cvajner and Ciortino (2009). In the volume-based model, large-scale flows of irregular migration develop within a short period in response to three pre-conditions, all observable in the trajectory of the Ethiopian irregular migrant to Saudi Arabia. The first pre-condition is the existence of a large pool of potential migrants in the sending country. This pre-condition is met in Ethiopia which is the second most populous country in sub-Saharan Africa (estimated population of almost 93 million in 2013), with high levels of youth unemployment. Youth unemployment is estimated at 40% for the 15-24 age bracket and 22% for those above 25 (IOM figures based on the 1999 and 2005 Labour Force Surveys and the 1994 and 2007 Censuses). As discussed previously, this lack of employment opportunities increasingly pushes the youth to migrate (Bezu and Holden 2014; Piper et.al 2014).

The second pre-condition is the opening of employment opportunities in the receiving country. This is evident in Saudi Arabia and other Gulf countries, where there is a strong structural demand for the kinds of low-skilled labour that Ethiopian men and women undertake. This demand allows for the rapid absorption of newly arrived irregular migrants into employment within weeks or often even days.

The third pre-condition for Ethiopian volume-based irregular migration is the relatively greater difficulty of access to other potential destinations. Other migration destinations for Ethiopians are the US, Europe, and South Africa. However, each

of these destinations is fraught with greater barriers to entry, higher costs, and/or longer, more difficult journeys. In comparison, Saudi Arabia and other destinations in the Gulf are more accessible through overstaying short stay visas, but also through clandestine border crossing.

The Ethiopian irregular migration trajectory also shows characteristics of the "structured migration career" described by Cvajner and Sciortino (2009). They differentiate the structured career from volume-based systems on three criteria: a well-established migration infrastructure, the existence of relatively strong social network ties, and linkages with legal flows of migrants. All three criteria are also observable in the trajectories of Ethiopian irregular migrants to Saudi Arabia and other Gulf countries. The migration system of the *kafala* and its attendant system of "free visas" are a well-developed infrastructure of migration that regulate the entry, residence, and exit of both regular and irregular migrants. Social networks are essential to obtain these "free visas." Anecdotal qualitative evidence from my research as well as quantitative research in Qatar (Pessoa, Harkness and Gardner 2014) indicates a high density of Ethiopians who obtain such "free visas," suggesting that these are facilitated through the existing strong social ties and networks. The regular and irregular migration systems between Ethiopia and the countries are strongly inter-connected through the "legal" and "illegal" operations of intermediaries and social networks at both the origin and destination points (Fernandez 2013; see also Hertog 2010).

Another specific set of drivers influence the decision to undertake irregular migrant status, depending on the mode of irregularity. Ethiopians who entered Saudi Arabia with the required documentation but subsequently became irregular (either through lapsed visa status, or through exiting their work contracts) and those who entered through "free visas" often do so because they have better opportunities to earn higher incomes working in the informal economy. For instance, "freelance" domestic workers can work in multiple households or even informally in the service sector and earn between 2-3 times what they earn as contract domestic workers. This higher income is, of course, partially offset by the living costs they incur. An additional attraction is the greater personal freedom and mobility they attain. Unlike contract workers (both male and female) under the *kafala* in Saudi Arabia, the irregular migrant worker is not bound to a single employer and can change jobs. Particularly for women who were formerly contract domestic workers, it means basic freedom to move outside the four walls of their employer's house, which they would have been prevented from doing previously. Paradoxically however, this relative freedom of mobility is offset by the increased vulnerability to exploitation (Pessoa,

Harkness and Gardner 2014) as well as by the condition described by Mahdavi of being an "immobilised migrant" (Mahdavi 2014): a condition of insecurity and fear of being reported, arrested, and deported.

In addition to the factors outlined, the drivers for irregular migrants who make the journey over land and sea are first, people who embark on the irregular route often do so because of the widespread belief that the brokers who facilitated irregular travel were cheaper and quicker. However, an RMMS survey found that both the cost and time taken to travel via the irregular route was often much higher than prospective migrants expected (RMMS 2014a). Survey responses of returnee migrants indicated that it took between two weeks to two months to reach their destination countries. The cost of travel can also be higher than anticipated, particularly for those who are new, or those who do not have pre-established contacts with brokers along the routes.

Finally, a gendered driver of irregular migration is that the opportunities for regular migration are very limited for men; consequently, the majority of irregular Ethiopian migrants to Saudi Arabia are men. Although the majority of women migrate through regular channels or through Haj/Umrah visas, a few women do travel the irregular route over land and sea. This is because until 2011, the government of Ethiopia restricted the operation of Private Employment Agencies to Addis Ababa. This meant that women from other parts of the country who wanted to travel through the regular route had to first go to Addis Ababa to arrange their paper work, which increased the time and expense of migration. It is therefore often more convenient for prospective migrants to arrange their travel through the socially embedded networks of brokers that operate to facilitate a steady stream of irregular migration via Yemen to Saudi Arabia (Fernandez 2013).

The dangers of irregular migration that migrants must weigh up in their calculus of risk are most evident in the fourth mode of irregularity – i.e., during the journey over sea and land via Yemen. Migrant support agencies operating in the region have documented the many dangers faced by Ethiopian migrants who travel to Saudi Arabia via Yemen: physical exhaustion, dehydration, sleep deprivation, starvation, death by drowning, degrading treatment and verbal abuse, sexual and gender based violence, moderate or extreme physical violence including torture, organ removal, and criminal kidnapping for ransom (Yitna 2006; RMMS 2014a; RMMS 2014c). Along the journey from Ethiopia overland to the coast of Somaliland or Djibouti, migrants risk physical exhaustion, starvation, and dehydration as they often walk long distances through the desert. Once they reach the coast, the next stage is a perilous sea journey to Yemen. Departures to Yemen used to be from Bossasso

in Somaliland, but are now more frequently from Obock in Djibouti due to the shorter sea journey. Capsized boats and drowning are a risk at this stage. Once they reach Yemen, migrants need to make their way overland to Haradh in North Yemen. At all stages, they are at risk of abuse and exploitation from the brokers and people smugglers; however, increasingly in the past five years, abduction and torture of migrants for ransom while they transit through Yemen has become widespread. There are reports of migrants' families being forced to pay up to $2,000 for the release of their relatives.

An overview of the more severe dangers faced by migrants from the Horn of Africa, drawing on data from RMMS Monthly Reports (2011-2015) include deaths, torture, rape and sexual assault, kidnapping, and abduction. The cumulative number of deaths RMMS reported between 2011-2015 is 371; however, this may be an underestimate, as according to UNHCR, in 2013 and 2014 alone, the verified deaths were 179 and 223, respectively. Although the data are not always disaggregated by nationality, this reporting shows that deaths due to drowning are less frequent than the marked rising trend of high levels of torture, abduction, and sexual violence. An explanation for the lower level of migrant deaths suggested by RMMS is that

> "a migrant's life has increased in value ('commoditization'), due to the evolving practice of kidnapping migrants for ransom, as well as subjecting them to extortion. Reports from migrants themselves suggest that significant numbers of (mainly Ethiopian) female 'new arrivals' in mixed migration flows are separated, abducted and often sold on to other criminals or directly to private 'buyers.' Some of these women are never heard of again, according to those who crossed to Yemen with them" (RMMS 2014a:11).

The third factor Ethiopian irregular migrants consider in their calculus of risk is deportation. Deportation is highly contingent on the administrative capacity and the economic and political imperatives of states to implement the expulsion of "unwanted" irregular migrants. Irregular Ethiopian migrants face deportation not only from the destination, Saudi Arabia, but also from the countries they may pass through en route – i.e., Djibouti, Somaliland, and Yemen. Although these are transit countries for the majority of Ethiopians, they periodically authorise deportations of Ethiopians (along with Somalis and Eritreans) if the numbers of irregular migrants are viewed as a local law and order problem and/or if the countries need to demonstrate control over border security and smugglers. Although data on deportations is patchy, Figure 13.2 represents an indicative listing of deportations since September 2011, showing that the numbers are large and frequent.

The deportation figures show that the single largest deportation of over 163,000 Ethiopians occurred from Saudi Arabia during the period November 2013-February 2014. Previously, periodic amnesties and deportations of Ethiopians from Saudi Arabia were relatively common, but smaller in number. While Ethiopians with irregular status faced the constant risk of imprisonment and deportation, like many irregular migrants in Saudi Arabia, they occasionally used these amnesties and deportations as an opportunity for a "free ticket" home (as in the case of Habiba mentioned previously).

However, since 2012 there has been a shift in the typical Saudi practice of deporting irregular migrants directly to their home countries. There were reports that Saudi authorities left irregular migrants stranded in the desert a few kilometres from the border with Yemen (RMMS 2014b: 49). These deportees were then forced to travel through the desert without food or water, and there have been many reported deaths in this border zone. Many Ethiopian irregular migrants became stranded in Haradh, a town in Hajja governorate of Northern Yemen, on the border of Saudi Arabia – either because Saudi Arabian authorities had deported them to the border and they were unable to make their way back home from there, or because they were seeking to enter but were unable to cross into Saudi Arabia. Assisted repatriation for such stranded migrants has been facilitated with the support of IOM and UNHCR, contingent on the availability of funds. In 2010, IOM set up the Haradh Migration Response Centre, and in 2011, its voluntary return programme helped 7,000 mainly Ethiopian migrants to return home (Zelalem 2012). Despite the ongoing needs of stranded migrants for assistance, the IOM programme was temporarily suspended due to lack of funds. The programme resumed in 2015 with financial support from the Dutch government, after the escalation of conflict in Yemen rendered large numbers of migrants vulnerable. In June and July 2015, nearly 900 Ethiopian migrants have been assisted to return (IOM 2015).

In contrast to previous deportations, the 2013-4 deportation signalled a major shift in the scale of operations to regularise the migrant population in Saudi Arabia. Under the Nitaqat programme, the Saudi Arabian government announced that all irregular migrants had to regularise their documentation or face expulsion. The initial deadline of May 2013 was extended to October 2013. Before the deadline, according to Saudi Arabian news reports, thousands of irregular migrants handed themselves in for voluntary deportation. After the deadline, by mid-November on average 20-80 Ethiopians were deported per day, and in December and January, these numbers increased dramatically. By the end of February 2014, 163,018 Ethiopians (100,688

male, 53,732 female and 8,598 children including unaccompanied minors) had been deported to Addis Ababa (IOM 2015).

Despite the dangers and the risk of deportation, a survey conducted by the RMMS (2014a) regarding the knowledge and attitudes of irregular Ethiopian migrants showed that prospective migrants are well aware of the risks of irregular migration. For example, more than 90% knew the risks of serious physical hardship, arrest, exhortation and robbery, and about 80% were aware of the risks of sexual abuse, including rape.

Thus, the calculus of risk is weighted towards the very strong drivers that encourage migrants to become irregular. Although the intensification of dangers to which migrants are exposed and the increased rate of deportation suggest the need for a different calculus of risk, clearly this has not produced any significant reduction in the numbers that continue to arrive irregularly in Yemen (Figure 13.1).

Figure 13.1: Estimated number of Ethiopian arrivals at Yemen's coast
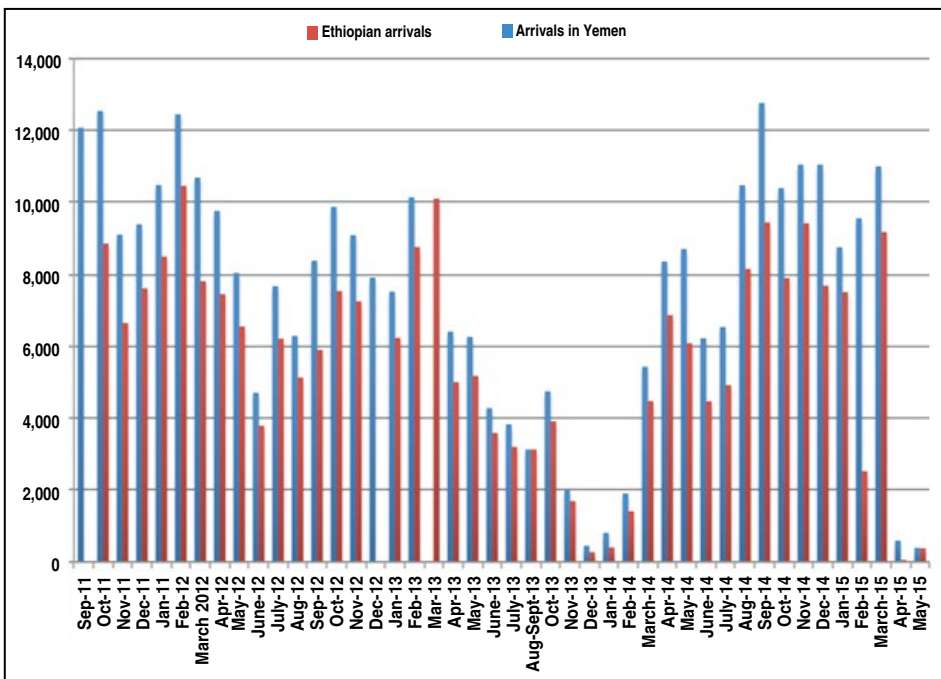
Source: Based on data from RMMS monthly monitoring reports.

Figure 13.2: Deportations of Ethiopians

Month	Forced Repatriations
September 11	Somaliland government announced forced expulsion of 80,000 Ethiopians. UNHCR estimates 20,000 actual deportations.
October 11	150 Ethiopian Oromo migrants were deported from Somaliland back to Ethiopia
December 11 January 12	20 Ethiopians were forcibly returned from Somaliland
March 12	277 Ethiopians to be returned from Yemen to Ethiopia via air evacuation
June 12	27 Ethiopians were forcibly repatriated by Somaliland authorities; 400 Africans (mainly Ethiopians) expelled by Yemeni authorities
September 12	Forcible deportation of Ethiopians (numbers unknown) from Somaliland
October 12	4,000 Ethiopians deported from North Yemen
May 13	4,329 Ethiopians deported from Yemen
July 13	137 unaccompanied minors returned from Yemen to Ethipoia
November 13 February 14	Continued expulsion of over 163,000 Ethiopians from Saudi Arabia
July 14	97 people (mainly Ethiopians) deported from Somaliland
December 14 - January 15	50 Ethiopians repatriated from Djibouti

Source: Data compiled from RMMS Monthly Reports.

The Politics of 'Managing' Irregular Ethiopian Migrants

Ethiopia

The Ethiopian government's regulatory framework to manage the movements of its nationals out of the country is fragmented, operationalised through criminal laws against smuggling and trafficking, as well as labour proclamations regulating the activities of Private Employment Agencies. As I have discussed elsewhere, there is a blurring of distinctions between smuggling and trafficking in the prosecution of the law, and the government has weak enforcement capabilities against people-smugglers (Fernandez 2013). Paradoxically, amendments to the legislation regulating PEAs have been punitive and resulted not in improved "management" but an increase in the irregular flows of migrants.

Until recently, the Ethiopian government usually turned a tacit blind eye to the flows of irregular migration to the Gulf and other destinations, despite

pressure from Europe, the US, and international organisations to control smuggling (often ex-post relabelled trafficking) from Ethiopia. The government's strong dual incentive to ignore irregular migration is because it offers an alternative to the high levels of unemployment and because migrant remittances are a boost to local economies (Andersson 2014; Reinart 2007; Fernandez 2010); both incentives have the additional effect of easing the pressure of potential political discontent within the country.

The first ban issued by the Ethiopian government in May 2008 prohibited Ethiopians from travelling to Lebanon to work as contract domestic workers (*The Daily Star,* May 8, 2008). The ban was implemented due to the high numbers of reported deaths, suicides, and cases of physical and sexual abuse of Ethiopian women in Lebanon. Although regular migration was prohibited, the flow of irregular migrants to Lebanon continued, as women travelled to Lebanon via Sudan, Dubai, or Egypt.

The next and more drastic all-encompassing ban on migration from Ethiopia was put into force by the government in November 2013, a few days preceding the (expected) Saudi Arabian expulsion of irregular Ethiopian workers. Although the government initially expected around 30,000-50,000 Ethiopian deportees, it was completely unprepared for the unprecedented numbers of repatriated Ethiopians from Saudi Arabia. Many of the deportees arrived with possessions or funds, and some were physically and mentally ill (IOM 2014a). Resources for the deportees were mobilised with the support of the IOM, ILO, UNHCR, and other international and domestic NGOs. Six transit centres were established in Addis Ababa to receive the returnees who were provided with temporary accommodation, meals, medical services, and a $50 transportation allowance to help them return home (ibid).

At the time of writing, the blanket ban on migration continues to be in force, and in a press release in October 2014, the Ethiopian National Taskforce Council for Illegal Migration announced that permanent jobs had been created for 54.1% of the 163,000 repatriates from Saudi Arabia and that the government plan was to encourage its youth to find employment within the country. The Deputy Prime Minister and head of the National Task Force Demeke Mekonen said: "Since the main pillar of this plan is to bring attitudinal change, we have to come up with society based mechanisms against the problem. So, if the society stands against illegal migration, we can have [a]strong force that can deter the problem" (Mohamedsani 2014).

As part of its plan, after the initial relief provided to the deportees, the Ethiopian government announced that it aimed to create alternate employment

opportunities locally, in the regions they came from. However, during fieldwork in the two villages of Assela and Debra Birhan in October 2014, it was apparent that the actual support was largely limited to awareness raising and facilitating credit linkage support for the deportees and other prospective migrant youth.

In support of the Ethiopian government's efforts to raise awareness about the dangers of irregular migration, in 2014 the IOM organised a travelling street theatre production of a play tilted *Mutach* (meaning "The Last One") that toured rural areas in migrant sending areas of Wollo, Tigray, Jimma, and Oromia. IOM Ethiopia, in partnership with the government and civil society, has also launched an initiative to engage Ethiopians in discussions on the dangers of irregular migration besides local alternatives to migration through "community conversations" in five high-risk migration regions, including Oromia, Tigray, Amhara, SNNPR National Regional States and Addis Ababa City Administration (IOM 2014).

Further, the Ethiopian government has entered into dialogue with the Saudi Arabian government on managing labour migration. In an effort to engage in bilateral discussions on labour migration (and other key issues such as investment), an Ethiopian delegation was invited by the Shura Council (legislative institution) of Saudi Arabia to visit between December 26, 2014 and January 2, 2015 (Ministry of Foreign Affairs, 2015). The Ethiopian Speaker of the House of People's Representatives, Abadula Gemeda, told the Shura Council that the Ethiopian government

> aimed to create a nation-wide movement against illegal migration through various educational and sensitization programs. He said Ethiopia had banned the recruitment of workers to the Middle East for the time being to thoroughly analyze the problems of illegal migration and curb human trafficking. He stressed Ethiopia's resolve to make the process of foreign employment free of intermediaries who had actually been responsible for human trafficking under the guise of legal migration. He said the Ethiopian Government had identified poverty and unemployment as main push factors for illegal migration and therefore it believed that job creation in Ethiopia had become a major step in preventing human trafficking and illegal migration, adding that "Ethiopia is witnessing positive changes; we are creating more than two million jobs every year." The two sides also discussed the rights of Ethiopian workers in Saudi Arabia. [Saudi Arabian] Minister Adil Faqih noted that a draft labor agreement had been drawn up between the two ministries of labour. He stressed the need to speed up the signing and ratification process

to put in place effective mechanisms to safeguard workers' rights. (Ministry of Foreign Affairs, 2015)

Notwithstanding the ban, the awareness raising measures, and bilateral negotiations, my field research in two migrant sending regions of rural Ethiopia (Kormageffia in the Debre Birhan region and Oda Dawata in the Oromia region) conducted in October-November 2014 showed that although the public and official discourse indicated people's awareness of the ban, there was tacit acknowledgement that people were continuing to migrate irregularly. Indeed, as we see in Figure 13.1, the ban clearly had only a temporary dampening effect (between November 2013 and February 2014) on the numbers of Ethiopians arriving in Yemen irregularly. At the time of writing, the escalation of the conflict in Yemen has resulted in an almost total halt to the numbers of irregular Ethiopian migrants making the sea crossing to Yemen. Indeed, the flows of people are in reverse, as Yemeni refugees are crossing over to the coast of Africa, fleeing the conflict in Yemen.

Saudi Arabia

Migration systems in Saudi Arabia (like elsewhere in the Gulf) are recognised for the restrictive system of migrant sponsorship known as the *kafala,* high ratios of migrants to nationals, and restrictive barriers to the long-term settlement of migrants. Migrant workers predominantly from Asia and Africa and the MENA countries constitute over one-third of the Saudi national population, and Bel Air's review of news reports suggest that up to 5 million of these are irregular migrants (Bel Air 2015:7). The high level of irregular migrants in Saudi Arabia is largely due to visa trading and the ""free visa" system. The degree to which "free visas" prevail is indicated by the estimate that over seven million migrant workers (nearly all the regular migrants) corrected their status during the amnesty period and more than one and a half million changed their status entirely (Walker 2013).

The analysis of the situation of irregular migrants in Saudi Arabia is necessarily linked to the examination of policies affecting the labour market for regular migrants and nationals. The Saudi Arabian labour market is characterised by a dual, segmented structure, with the majority of nationals concentrated in the public sector, while migrants (regular and irregular) are concentrated in the private sector. Following the Arab Spring, the Saudi government initiated the policy of "Saudization," to redress the burgeoning problem of high youth unemployment in the country, which was viewed as a potential political tinderbox (de Bel Air 2015; Ramady 2013). The government began to implement Saudization in 2013 through

the instrument of the "Nitaqat." The aim of Nitaqat is to create more jobs for young Saudi nationals, through a combination of inducements and punishments that force companies in the private sector to comply with strict quotas for the employment of Saudis.

Achieving the Saudization objectives are a formidable challenge, for multiple reasons (detailed in Ramady 2013, Sadi 2013 and other commentators); most relevant to the situation of irregular migrants is the relatively rigid and segmented structure of the labour market. As Shah (2008) has argued for the Gulf more generally, the consequence of this segmented structure is that Saudi nationals prefer to work in the public sector because of the higher wages, greater security of employment, and lower work demands. A major shift in the cultural expectations and sense of entitlement of Saudi nationals would be necessary for genuine Saudization to occur (Sadi 2013), failing which there would be a negative impact on productivity (Ramady 2013). Third, even if private sector jobs become more desirable to them, Saudi nationals are extremely unlikely to accept triple-D ("dirty, difficult and demeaning") labour – typically in the agriculture, construction, and personal and household services sectors. Thus, notwithstanding the policies of Saudization or similar policies of nationalisation of the labour force in other Gulf receiving countries, the unwillingness of nationals to undertake such labour leads to a persistent structural demand for expatriate labour in these sectors.

The structural demand for and unsustainability of the mass deportation of unskilled labour is evident in the ensuing unskilled labour shortage that necessitated a halt in the expulsions. Tirunesh was a young Ethiopian woman who had been living and working in Saudi Arabia for 12 years without papers. She had entered initially on an Umrah visa, and overstayed. When the deportations in Saudi Arabia began, she voluntarily gave herself up, as she wanted to return to Ethiopia on a "free ticket" as others had. However, she said that by the time she gave herself up, there was an acute shortage of domestic workers as a result of the mass deportations, and the Saudi authorities were unwilling to deport her:

> We asked them to send us back home, but they refused and told us to go back to work, they said domestic workers are needed in the country. So I paid for myself [to return to Ethiopia]. When we came back, we were too many (Interview, Debre Birhan, October 2014).

Conclusion

Ethiopian regular and irregular migration to Saudi Arabia and the Gulf is characterised by circular migration. There are strong drivers for this trajectory on both the Ethiopian and Saudi Arabian ends, but the absence of any possibility for settlement in these countries pushes the migratory system into a high volume, circular organisation. When regular migrants complete their contracts, they often seek to return on another contract. Irregular migrants who are deported will also seek to return – either to another Gulf destination, or to the same country, but through irregular entry. Over the past two decades, a significant formal and informal infrastructure to facilitate regular and irregular migration has developed in Ethiopia that is plugged into the (longer-established) apparatus organising migrants in the Gulf. Strongly socially embedded networks of migrants and migrant intermediaries are critical to the functioning of these networks. Here, it is useful to draw on Cvajner and Sciortino's argument that:

> …different types of social networks will react to policy changes in different ways. It is consequently the interaction of networks and policies that help determine their respective roles in activating further inflows. Changes in immigration controls interact with network strategies, creating an environment where some possibilities are positively selected while others are discouraged. As well as the specific contents of policies, it is likely that the timing of policies and also the anticipation by the migrants of their medium-term stability will also prove to be important factors (Cvajner and Sciortino 2009: 222).

I have shown in this case how state policies to "manage" or "control" migration have complex and often contradictory goals. We saw this with the Ethiopian government responses which were a mix of protection of its citizens, responding to international pressure to control trafficking and smuggling, encouragement of remittances by its nationals abroad, and the tacit acknowledgement that migration provides an important economic alternative as well as a political safety valve in a context of high unemployment. While the prohibition on migration currently in force is sustained by a nationalistic rhetoric of creating sufficient domestic employment, there is a mismatch with reality, and consequently, the numbers of Ethiopians exiting the country through the irregular route has seen no significant decline post the ban.

A similar mismatch is observable in the context of the Saudi Arabian government's Nitaqat policy. Ostensibly the goal is to create employment for Saudi nationals and curb visa trading, with the consequent expulsion of irregular migrants. However, given the likelihood of a continued structural demand for the low-skilled labour performed by Ethiopians and other irregular migrants in Saudi Arabia, how then do we account for the fact they were a large proportion of the over 800,000 migrants who were deported from Saudi Arabia after the expiry of the amnesty period in 2013? Although only preliminary assessments of the impact of Nitaqat are available (Ramady 2013, Sadi 2013, Alsheikh 2015, de Bel Air 2015), drawing on Hertog's (2010) incisive sociological analysis of mechanisms through which rents of visa trading are distributed in the Saudi economy, it is likely that in addition to Saudization, an unstated underlying objective of the Nitaqat is the re-structuring of the states' informal channels for the distribution of resources from rents. The ultimate beneficiaries of this high-stakes re-ordering of the Saudi economy are perhaps not yet identifiable. However, for the purposes of this chapter, the immediate, stringent by-product consequence of Nitaqat for irregular migrants is likely to be the exacerbation of their vulnerablity to exploitation by employers, rather than any real reduction in the demand for the unskilled labour typically engaged in by Ethiopian irregular migrants.

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XIV

Migration (In)flux: Impact of Legislation on Patterns and Quantum of Irregular Mobility between India and Saudi Arabia

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Abstract: Despite policies of highly regulated entry and recent regularisation drives, Gulf States have a sizeable share of irregular workers who live and work in irregular conditions (RMMS 2014). Rigid sponsorship systems, nationalisation policies, and limited quotas for foreign workers in the receiving countries, coupled with the operation of transnational networks and migration intermediaries in countries of origin and destination, perpetuate a parallel labour market for irregular entrants. Despite their economic and political salience, there are few recent estimates of irregular migration in the region. This chapter delivers new estimates and quantitative information based on field research, analysis of administrative data (arrests and regularisation statistics), expert opinions, and published data sources. Drawing on four Kerala Migration Surveys (KMS) and data made available through the Gulf Labour Markets and Migration (GLMM) programme, the chapter presents estimates and analysis of irregular migratory movements from India to

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Saudi Arabia with a view to elucidate the structural frameworks that create conditions of irregular migration in the region.

Introduction

In the past year, coverage of Europe's "Mediterranean migration crisis" and "Syrian refugee crisis" has catapulted the issue of irregular migration and its human costs to global attention. Despite increasing incidence of irregular migration and its far-reaching implications, there remains much to be learnt about the phenomenon. Put simply, irregular migration can be defined as what it is not – population movements that take place outside the regulatory norms and policies of the sending, transit, and receiving countries. This includes instances of unauthorized entry, residence or work, as well as crossing of international borders without valid documentation or fulfillment of formal administrative requirements. This chapter presents a case study and estimates of irregular migratory movements between India and Saudi Arabia with a view to elucidate the structural frameworks that create conditions of irregular migration in this key migration corridor. In doing so, it challenges conceptions of irregularity as a category of migrants, instead examining irregularity as a socio-political condition produced by social, administrative, legal and political processes (Goldring et al. 2009; Squire 2011).

In the given context, those deemed irregular migrants comprise persons who willingly or unwittingly engage in irregular migration, work and/or residence. In Saudi Arabia, individuals who (a) enter the country unofficially, are trafficked or smuggled; (b) enter the country through official channels and overstay the length of visas and/or work permits [Articles 20, 21- Saudi Arabia Labour Law]; (c) engage in informal employment, work in a profession other than that officially stated on the permit, work for someone other than their official sponsor (*kafeel*) [Article 11- SA LL], work in a Red zone company below Saudisation threshold or run away from the Saudi employer; (d) work on non-work visas such as Haj, Umrah or family visas [Article 12- SA LL]; or (e) are born to or are dependents of undocumented migrants are deemed irregular migrants.

Irregularity is not a fixed status; it is complex, dynamic, and fluid. Many migrants weave in and out of legal and administrative compliance at different points of their migration cycle. In order to develop estimates, it is important to consider pathways into irregularity. Figure 14.1, based on the CLANDESTINO (2012) project definitions of irregular migration, points to the different ways of *becoming* and *being* irregular in the Indo-Saudi Arabian context. Typologies of migrant irregularity are not exhaustive and, indeed, not mutually exclusive. The

shaded areas denote the overlap between irregular migration, work, and residence. Due to its many manifestations and clandestine nature, irregular migration is nearly impossible to quantify accurately, the cells bordered by dotted lines denote the grey areas that generally do not figure in estimates of irregular migrants.

Figure 14.1: Avenues to irregularity in Saudi Arabia

Irregular Employment

Migrants with residence status but no work permit in informal employment
Migrants with residence status and work permit in informal employment
Migrants with valid non-working visas engaged in employment (tourists, pilgrims, dependents)
Migrants working for an employer different from sanctioned sponsor
Migrants working in professions not listed on work permit
Migrants working for Red zone companies

Irregular Migration

Trafficked persons engaged in forms of forced labour
Migrants with falsified documents
Lack of comprehensive migration management framework
Restrictive Migration Policies in sending and receiving context
Protective Legislation - Female Domestic Workers
Migration Intermediaries and Recruitment Agents
Debt bondage and exortion by Agents/Brokers
Corrupt, complicit Government and Border officials
Lack of information of Fraudulent RAs, Employers
Misinformation and lack of Pre-Departure training
Operation of Informal Social Networks
Border Crossing and Migrant Smuggling (land, air, sea)
Informal Visa Trading/"Free Visa"

(center column, overlapping Employment & Migration)

Trafficked persons engaged in forms of forced labour.
Migrants with falsified documents
Tourists with expired visas engaged in employment (overstayers)
Pilgrims with expired visas engaged in employment (overstayers)
Migrants without valid residence status or work permit in informal employment
Migrants without residence status and with work permit in informal employment
Migrants workers wrongfully charged with absconding *(huroob)*
Migrants without residence status engaged in formal employment

Irregular Residence

Trafficked persons engaged in forms of forced labour
Migrants with falsified documents
Tourists with expired visas engaged in employment (overstayers)
Pilgrims with expired visas engaged in employment (overstayers)
Migrants without valid residence status or work permit in informal employment.
Migration without residence status and with work permit in informal employment.
Migrant workers wrongfully charged with absconding *(huroob)*.
Migrants without residence status engaged in formal employment
Runway Migrants charged with absconding from work *(huroob)*.
Unemployed Migrants without residence status.
Unemployed Migrants whose employer closed operations without repatriation
Children and dependents of undocumented migrants.
Migrants with fabricated documentation whose residence status appears legal on paper.

Source: Prepared by authors (2015).

Incidence of Irregular Migration Flows between India and Saudi Arabia: Our Estimates

The Gulf represents a strong magnet for historic and contemporary migration flows. The 1973 oil boom and attendant flurry in the construction sector enhanced the demand for foreign labour. This oil-led infrastructural development was fuelled by large-scale labour importation primarily from South and Southeast Asia. Today, the Gulf countries host the largest share of migrants in proportion to their population. To better understand the scope and scale of irregular Indian migratory movements to Saudi Arabia, it is important to understand the broader context in which these flows occur.

Migrants account for nearly half the total population in the GCC countries, ranging from 32.7% in Saudi Arabia to 88.5 and 85.7% in the United Arab Emirates (UAE) and Qatar, respectively (GLMM 2014a). The proportion of migrants to labour force ranges between 56% in Saudi Arabia to 93.9% in Qatar (GLMM 2014b). South Asians constitute the principal migrant populace across the GCC, constituting over half the total migrant stock in each GCC country (Rajan and Narayana 2011). World Bank estimates (2014) peg the stock of Indian migrants in the Gulf at 6.5 million (Table 14.1). Based on extensive experience working on migration in the Gulf, discussions with Indian ambassadors/labour attaches, media reports, and press releases by Indian missions, this chapter intends to extend current estimates of Indian migrants in the Gulf.

According to our estimates, based on extrapolations from World Bank estimates and current and previous Kerala Migration Surveys, there are currently 9 million Indians in the Gulf, of whom 3 million live in Saudi Arabia and 3.2 million in the UAE. Based on data made available through the Gulf Labour Markets and Migration (GLMM) database, Shah (2014) notes that migrants in the Gulf are currently estimated at between 23-24 million. Correspondingly, it can be inferred from our India-specific estimates that 40% of all migrants in the Gulf are Indians.

Table 14.1: Estimated Indians in the Gulf, 2015

Country	Keralites (2014) a	Indians (2013) b	Our Estimates (2015) c
Saudi Arabia	522,282	2,000,000	3,039,681
UAE	898,962	2,268,200	3,164,346
Oman	189,224	644,704	834,478
Kuwait	183,329	739,558	912,978
Qatar	106,107	545,000	650,000
Bahrain	149,729	262,855	413,252
Gulf	2,049,633	6,451,317	9,015,172
Gulf (Total Migrants) quoted in Shah (2014) based on GLMM Database			23,000,000

Sources: (a) The stock of Keralities for 2014 comes from the sixth round of Kerala Migration Survey conducted by the Centre for Development Studies, Thiruvananthapuram, funded by the State Planning Board, Government of Kerala and Ministry of Overseas Indian Affairs, Government of India; (b) The 2013 numbers are from the World Bank estimates of migrant stock; (c) Total number of Indian migrants across the GCC, estimated by the authors.

With respect to Saudi Arabia, Indians are the largest migrant community, and the Kingdom hosts among the biggest concentrations of Indian passport holders globally. According to Saudi Ambassador Saud Mohammed Alsati, the Saudi Embassy in India issued 1.2 million visas in 2014, a global record for Saudi missions.[1] Based on our estimates, a third of Saudi Arabia's 9 million immigrant population is Indian. This 3 million strong Indian contingent (Table 14.1) remits upwards of $10 billion annually (World Bank 2014). India is the top recipient of Saudi Arabia's foreign remittances, accounting for 25% of total outward flows from the Kingdom. Low-wage workers, deemed unskilled or semi-skilled, constitute a significant element (85%) of Indo-Saudi Arabian labour flows. Daily, approximately 1,000 low-wage Indian migrant workers are provided with emigration clearances to travel to Saudi Arabia (MOIA 2013). In this category, there is a strong observable preference for Saudi Arabia as a destination. Data from the Ministry of Overseas Indian Affairs (MOIA) indicate that over the past five years, roughly 50% of all workers who obtained emigration clearances from India were destined for Saudi Arabia (Table 14.2). A majority of Indian migrants in the Gulf hail from the state of Kerala (Table 14.1). KMS 2014 emigration estimates point to 2.4 million Kerala emigrants, 85% (2 million) of whom reside in the Gulf, with the UAE accommodating nearly 40% (0.9 million) and Saudi Arabia 20% (0.5 million).

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1. IANS, *Business Standard,* February 21, 2015.

Table 14.2: Number of emigration clearances granted, 2011-2015

	April 2011 - March 2012	April 2012 - March 2013	April 2013 - March 2014	April 2014 - February 2015
Saudi Arabia	299,276	377,494	339,857	299,560
Total	649,794	776,672	820,947	738,327

Source: Lok Sabha Starred Question No. 309 answered on 18/03/2015 by Sushma Swaraj, MOIA.

Despite the increasing programmatic, policy, and media attention to irregular migration, there are few firm estimates available on the quantum of irregular migrants in the Gulf countries. Indeed, the most common working estimate for the region goes back to Kapiszewski's 2001 assessment that "illegal immigrants in each GCC country make up at least 10% of the total population or 15% of the workforce" with numbers as high as 700,000 in Saudi Arabia. Based on information from field research, secondary analysis of administrative data (local crime and police detection statistics, border enforcement data, regularisation and deportation data, census data), and expert and official opinions, we now provide an updated rough minimum and maximum range of irregular migration in the region. While data shortcomings and biases may dilute the degree of exactness, it is nevertheless integral to have a reference point of the incidence of irregular migration for policy-making and institutional strengthening and to make more refined and rigorous calculations.

Saudi Arabia hosts the largest number of migrants in the Gulf region, a vast yet unrecorded number of who remain irregular (Fargues 2006, 14-15). According to Shah (2014), a total of 5.3 million regularisation procedures were undertaken during the first four months of the 2013 amnesty in Saudi Arabia. This, however, is not representative of the total number of individuals who corrected their irregular status since persons may have undergone more than one form of regularisation. Reportedly, the final number of regularisation procedures conducted during the April-November 2013 amnesty period was over 11 million (Table 14.3). Based on media reports,[2] De Bel-Air (2014) infers that just 4.7 million workers corrected their status during this period, while another 1 million were either expelled from the country or left voluntarily by availing the amnesty, totaling about 5.7 million as undocumented. Both Shah's (2014) and De Bel-Air's (2014) accounts indirectly put the incidence of irregular migration at between 50-60% of the

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2. *Arab News,* November 11, 2012.

non-national workforce. This is in stark contrast to media reports[3] in the wake of the Saudi correction drive that estimated a fringe population of 1.5 million migrants – about 16% of the total 9 million non-Saudi workforce – as having violated residency, work, and visa regulations.

**Table 14.3: Number of work status corrections in
Saudi Arabia during Amnesty 2013**

Regularisation operation / document/Worker's final exit	Total no. of corrections April 3-Nov. 3, 2013	No. of corrections among Indian migrants April 3-Nov. 3, 2013
Change of profession	2,423,779	481,233
Recruitment visas granted	935,441	n.a
Labour permits granted	3,890,916	470,000
Workers registered	1.086,593	n.a
Transfer of services	2,615,280	434,667
Final exits	713,524	141,301
Total	**11,665,533**	**1,527,201**

Source: Compiled by authors from GLMM Database, Saudi Arabia, IRR 1.1 Table 1 and Lok Sabha Starred Question No. 89 answered on 11/12/2013 by Vayalar Ravi, MOIA.

According to Indian government estimates in 2013, over 1.4 million of the 3 million Indians[4] (and 4.7 million total migrants who corrected their status) in Saudi Arabia regularised their stay over the six month amnesty period by transferring their services to new employers, changing job titles, or renewing job permits (Table 14.3).[5] Another 140,000 were deported and approximately 250-500 Indians were granted exit shortly after the grace period.[6] Accordingly, over 1.5 million Indian migrants in Saudi Arabia were found in some iteration of irregular status during the period under question, while many more continued to live and work invisibly in the country, some choosing not to avail concessions while others were ineligible owing to pending legal cases. Given that half of the 3 million Indian migrants in Saudi Arabia (who constitute a third of the Kingdom's labour force) were affected by the regularisation drive, the total potential pool of irregularised migrants appears to be closer to 4.5 million migrants, or half the total migrant stock of Saudi Arabia.

3. Al Jazeera America, November 5, 2013.
4. IANS, January 18, 2014.
5. *The Indian Express,* November 4, 2013.
6. Embassy of India Riyadh Press Release, March 3, 2014.

Hence, all available indicators suggest that around 50% of migrants in Saudi Arabia hold irregular status.

With half of the total Indian migrant workers in Saudi Arabia availing amnesty to correct their administrative situation, this reflects an ever-bigger incidence of irregularity among Indians in Saudi Arabia. Taken together, Indian migrants who were identified as irregular during the last amnesty represent over 16% of the Saudi Arabian workforce. From this figure, it is apparent that the regional press and authorities severely underestimated the magnitude of irregular migration in the Kingdom. This can partially be attributed to enumeration difficulties that make it tough to gauge the extent of clandestine flows; however, it was most likely a strategic sleight of hand to dissuade public anxiety over demographic imbalances and persistent unemployment.

To further enumerate the scale of irregular migration in the Gulf, and Saudi Arabia in particular, we utilise results of surveys conducted at various points of time in Kerala. Four surveys were consulted for this purpose: (i) Return Migrant Survey (RMS) conducted in 2007 among 378 persons who worked in the Gulf (ii) Emigrant Households Survey (EHS) carried out in 2007 among 529 emigrant households (iii) RMS 2008 conducted along with Kerala Migration Survey (KMS) 2008 covering 2,037 return migrants from the Gulf (iv) Survey on returnee professionals (RPS 2012) among 1,106 highly skilled professionals who had returned both voluntarily and forcibly from the Gulf to India during the period 2006-2011.

First, we focus on the visa category under which respondents migrated to the GCC (see Table 14.4). All four surveys included a common question: "With what type of visa have you gone to the Gulf?"[7] The answer options were as follows: (a) employment visa (b) visit visa (c) tourist visa (d) pilgrimage visa and (e) "free visa." While it is true that individuals who hold valid visas and enter the country legally can become irregular through multiple avenues, Shah (2014) notes that it is primarily those persons who migrate without valid employment visas that are most susceptible to irregularisation.

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7. With the exception of the EHS 2007, all the surveys were answered by migrants themselves with respect to their visa position when they left to the Gulf.

**Table14.4: Percentage of Kerala emigrants who travelled to the
Gulf without valid employment visa, 2006-2011**

Country	EHS 2007	RMS 2007	RMS 2008	RPS 2012
Saudi Arabia	21.7	27.2	17.4	31.6
UAE	21.5	38.7	22.0	47.4
Oman	33.3	24.2	23.5	37.1
Kuwait	30.2	14.3	17.0	25.0
Qatar	23.8	21.1	21.8	22.9
Bahrain	5.6	20.7	20.6	32.3
Gulf	23.1	29.8	19.9	39.3

Source: Special tabulations by the authors from Emigrant Household Survey 2007, Return
Migrant Survey 2007, Return Migration Survey 2008 and Return Professional Survey 2012.

According to the four surveys, between 20 to 40% of Kerala migrants travel
to the Gulf without an official employment visa (see Table 14.4). Non-work visit
visas and "free visa" function as informal gateways that are misused in the countries
of destination. The "free visa" is an unauthorised category of informal visa that
purportedly allows migrants to freely seek employment without being tied to a
sponsor – leaving them outside the legal employment relationship. The burgeoning
black markets of visa trading agents ensnare potential migrants seeking to bypass
the stringent sponsorship system in Saudi Arabia, resulting in steady streams
of irregular and precarious migrant workers. Furthermore, RPS 2012 reported
that about 22% of return migrants came back to Kerala due to expiration of
contracts and at least 10% of these migrants became irregular in the Gulf due to
overstaying.

Based on this analysis of workers who migrate without adequate papers
and permits, we conclude that a conservative estimate of irregular migration in
the Gulf ranges from 20 to 40% of the total migrants in the region. For countries
with a relatively lower stock of migrants (Oman, Kuwait, Qatar, and Bahrain) our
estimate ranges from about 20% to 30%. However, in the leading regional migrant
destinations, the UAE and Saudi Arabia, our lowest estimate is about 30% and the
higher estimate is about 40%. From our calculations, based on recent population
figures from the GLMM database, Saudi Arabia is the primary destination for
irregular migrants in the GCC, hosting between 3 million and 4 million of them.
The UAE also hosts a large number of irregular migrants ranging from 2.2 million

to 3 million. We estimate that irregular migrants in the Gulf range between 6.5 million to 9 million, i.e., approximately a third (and potentially half) of all migrants in the GCC are irregular.

Table14.5: Irregular migrants in the Gulf, 2015

Country	IM-lower range (Indians)	IM-upper range (Indians)	IM-lower range (Keralites)	IM-upper range (Keralites)	IM-lower range (Total Mig)*	IM- upper Range (Total Mig)*
Saudi Arabia	913,471	1,217,962	104,456	130,571	3,020,352	4,027,136
UAE	949,304	1,265,738	179,792	224,741	2,194,822	2,926,429
Oman	166,896	250,343	37,845	47,306	365,118	547,677
Kuwait	182,596	279,894	36,666	45,832	575,536	863,303
Qatar	109,078	163,617	21,221	26,527	291,283	436,925
Bahrain	82,650	123,976	29,946	37,432	136,764	205,145
Gulf	2,403,995	3,295,530	409,927	512,408	6,583,875	9,006,615

Source: Estimated by the authors based on EHS 2007, RMS 2007, RMS 2008, RPS 2012 and *GLMM, GCC, POP 1.1

Accordingly, the rolling stock of irregular Indian migrants in the Gulf can be pegged between 2.4 and 3.3 million. Our estimates for Saudi Arabia range between 0.9 and 1.2 million (Table 14.5), reflecting a moderate decline that can be traced to the Kingdom's ongoing efforts to curb irregular migration. These estimates indicate that over a third of Indians in the Gulf remain irregular with the numbers approaching close to half the Indian populations in some GCC countries.

Table 14.6: Irregular Migrants in the Gulf as a percentage of GCC labour force and total population

Country	Labour Force*	IM-lower range (% of labour force)	IM-upper range (% of labour force)	Total Population**	IM-lower range (% of population)	IM-upper range (% of population)
Saudi Arabia	11,232,277	26.9	35.9	30,770,375	9.8	13.1
UAE	6,325,502	34.71	46.3	8,264,070	26.6	35.4
Oman	1,809,462	20.2	30.3	4,161,404	13.8	20.7
Kuwait	1,733,184	33.2	49.8	4,161,404	13.8	20.7
Qatar	1,624,057	17.9	26.9	1,699,435	17.1	25.7
Bahain	738,890	18.5	27.8	1,314,562	10.4	15.6
Total	23,463,372	28.1	38.4	50,359,763	13.1	18

Source: Estimated by authors based on *World Bank Labour Force database (2010-2014) and ** GLMM, GCC, POP 1.1

With respect to the share of irregular migrants in GCC populations and labour force, Kapiszewski (2001) estimates that irregular migrants comprise, at a minimum, 10% of the total population or 15% of the workforce in GCC countries, with numbers as high as 700,000 in Saudi Arabia. Correspondingly, our estimates indicate that irregular migrants comprise between 20-40% of the labour force in the GCC countries, and up to 50% in some countries (UAE, Kuwait). The proportion of irregular migrants in the total population of GCC countries lies between 10-20%, constituting up to 25-35% of UAE's population, with numbers as high as 4 million in Saudi Arabia.

Social and Structural Determinants of Irregular Migration

There are a host of policies and practices that induce irregular migration from India. Acknowledging the systemic production of irregularity (Goldring et al. 2009, 241) shifts the responsibility of irregularity from individual migrants towards structural processes that situate persons in positions of precariousness, irregularity, or illegality (Bauder 2014). Gosh (1998) suggests that irregular migration principally results from a mismatch between the number of people who aspire to leave the country and opportunities for safe, legal migration. Low economic opportunity, lack of information, a culture of migration, transnational migrant networks and the operation of unregulated intermediaries, organised racketeers and trafficking rings are among the key determinants of irregular migration from India (Rajan et al. 2011:134).

The institutional framework of emigration governance in India includes the Emigration Act of 1983 and offices of the Protector of Emigrants (PoE). Critics of the Act allege that it is one-sided, outdated and largely ineffective (Sasikumar and Hussain 2008). Currently in its thirty-second year of operation, and having seen several amendments, the archaic Act has yet to provide a comprehensive legal framework to manage the emigration of Indian nationals. Tellingly, Kumar and Rajan (2014) quip that the framework managing 21st century migration from India is a vestige of a 19th century mindset imbued in 20th century law. Under its purview, the key instrument of emigration management is the designation of "emigration clearance required" (ECR) status based on educational status. ECR passport holders seeking to migrate to any of the 17 ECR countries must obtain clearance from PoE offices.[8] Low and semi-skilled workers (who constitute the bulk of GCC migrants) seeking to work/move legally are forced to navigate mounting formalities that disincentivise formal registration.

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8.   MOIA Press Information Bureau, August 9, 2012.

Specific gender-based regulatory controls on Indian women migrants are a compelling illustration of the paradoxical effects of protective legislation. The Emigration Act provides that "no [unmarried/unskilled] female below the age of thirty years shall be granted Emigration Clearance." State-imposed minimum age requirements are wielded as protections for women's welfare and safeguards against trafficking (Oishi 2005). However, in practice, they restrict women's right to mobility (Kodoth and Varghese 2012) and drive potential migrants to illegal conduits that render them especially vulnerable to trafficking and conditions of forced labour. Furthermore, restrictive regulations in this context are in direct violation of the terms of the MoU on Labour Cooperation for Domestic Service Workers Recruitment signed between India and Saudi Arabia in 2014 outlining that India will "[e]ndeavour to put in place procedures/mechanism[s] to allow and ease departure of prospective Indian Domestic Service Workers for Kingdom of Saudi Arabia" (Article 5: vi).

In the face of bolstered bureaucratic burdens, some migrants resort to the "informed informality" (Rajan et al. 2011, 133) of facilitated irregular migration through organised smuggling rings, while others are trafficked into Saudi Arabia and coerced into exploitation (Occhipinti 2014, 436). Imperfect regulation of migration intermediaries perpetuates a network of fraudulent recruitment agents operating with virtual impunity. A 2012 CARIM-India report outlines the modus operandi of duplicitous agents including passport and photo tampering, contract substitution, forging and stealing visas and work permits, switching of boarding cards and encouraging overstay on tourist visas, resulting in deception and entrapment of migrant workers. Government officials are not exempt from recruitment fraud, and some are even involved in facilitating the unfettered flow of irregular migrants.[9] The Kochi Protector of Emigrants (PoE), a top emigration official, was arrested in June 2015 for collusion with unlicensed, fraudulent recruitment agencies and abetting the extortion of money from nursing recruits.[10] The arrest came only months after an Amnesty International (2014, 12) report called out the PoE Kochi office for its lack of institutional and regulatory capacities. In light of the arrest, it is evident that the exploitation and deception of emigrants is not only an informal practice of rogue recruiters but an implicitly institutionalised feature of the Indian emigration regime.

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9. Minister of External Affairs Smt. Sushma Swaraj's answer to parts (c) & (d) of question in Indian Parliament (Lok Sabha Unstarred Question No. 1558 on July 29, 2015).

10. http://www.thehindu.com/news/cities/Kochi/cbi-arrests-protector-of-emigrants/article7320459.ece.

Aside from the web of recruitment agents and brokers, networked communities of Indians also operate as informal intermediaries supporting the movement of irregular migrants. While legal channels are perceived as cumbersome and non-transparent, the use of personal linkages incorporates elements of intimacy and trust (Rajan et al. 2010). Activating transnational social capital is a key strategy employed by irregular migrants to migrate, secure employment, and avoid detection. Additionally, Rajan et al. (2011) note that migrants embarking on informal chain migration report observably lower overheads and fees. The results of their Kerala survey among intending migrants, emigrant households, and return emigrants indicate that over 70% of emigrants utilise networks of friends and relatives as their preferred emigration channel, and most of these flows fall outside the purview of legal stipulations.

Among the defining dynamics of GCC economies is the proliferation of irregular or non-standard employment. In the Saudi Arabian context, pervasive irregular migration is an outgrowth of restrictive migration policies and labour practices aimed at reducing reliance on foreign workers. According to economist and journalist Hassan al-Sobhi,[11] "red tape, the expensive process to get expatriates, the limited quotas of visas for foreign workers that are largely secured by well-connected companies" combined with the operation of informal economies and ineffective monitoring allows irregular flows of migration to Saudi Arabia to continue relatively unhindered.

The labour migration system to Saudi Arabia is designed exclusively for temporary migration, with built-in controls on residency and duration of stay. Saudi Arabia shares with other GCC countries a strong reluctance to use terms such as "immigrant" or "migration" preferring "temporary labour mobility" (Thiollet 2011). The overarching policy focus is on import of "short-term contract workers" to ensure turnover of the labour force. Since the early 1990s, Saudi government initiatives toward labour nationalisation, such as Saudization and Nitaqat, have had some degree of success while simultaneously generating irregularity (Alsheikh 2015). Continued private sector dependence on foreign workers ultimately outweighs bureaucratic controls on visa procurement that drive thousands of migrant workers underground. Despite (or perhaps owing to) labour localisation initiatives and the rigid sponsorship system (*kafala*), there exists a robust black market for visa trade and irregular work. Mismanagement of the sponsorship system is rife, with fraudulent sponsors peddling visas or setting up illegal cover-up businesses (*tasattur*). An

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11. BBC News Middle East, November 29, 2013.

established nexus between manpower companies and visa merchants organises this informal trade in visas, enabling migrants to subvert the mounting costs of formal migration. Agents broker the employment of freelance migrants to other employers or extract payments to release them to informal self-employment (Hertog 2014), leaving them outside formal sponsorship and vulnerable to arrest and deportation. The visa trade industry is so widespread that in 2004 the Saudi Minister of Labour reported that 70 % of the visas issued by the government were sold on the black market.[12] The latest battery of measures is unlikely to staunch irregular migration from India as long as demand exists in Saudi Arabia's shadow economy, owing to expansive underground networks and the acute shortage of Saudi nationals willing and able to carry out a number of private sector jobs.

Saudi Arabia's Efforts to Curb Irregular Migration

The proliferation of irregular migration to Saudi Arabia has been linked to an escalation of socio-political anxieties and heightened security concerns.[13] The Saudi government places irregular migration high on its political agenda, deploying deeply politicised rhetoric[14] that criminalises and stigmatises irregular workers as threats to state sovereignty, autonomy, and cultural identity (Longva 1999, 22). This framing of irregular migration as a socio-political and security concern has resulted in increased societal securitisation, criminalisation and reinforcement of the nation's borders. According to the GLMM database, 0.6 million "infiltrators" were apprehended by authorities as they attempted to unlawfully enter Saudi Arabia (GLMM 2014c). The expansion of border controls and adoption of multiple deterrents (biometric, detention, police coercion) further amplifies the risks and costs associated with irregular border crossing.

The Gulf States enact periodic amnesties to flush out irregular migrants, convicted criminals, and other "undesirables." The Saudi government in 2013 declared an amnesty to encourage the departure/regularisation of irregular migrants during which migrants would be absolved of any fines. The Kingdom intensified efforts to issue identity documents and permits to all migrants and ensure that all migrants were accounted for on a public database. This grace period offered a "path to legality" but due to bureaucratic delays many were unable to regularise their status. According to 2013 government estimates, 4.7 million migrants (of

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12. *Ibid.*

13. *Arab News,* September 11, 2012.

14. Al Jazeera, November 5, 2013.

whom 1.4 million were Indians)[15] regularised their status over the amnesty period by transferring their services to new employers, correcting job titles, or renewing permits.

Over 2 million immigrants have since been deported, after failing to legalise their status during the amnesty. In contrast to previous incentive-based approaches, the government in 2013 launched a sweeping national campaign to detect, detain, and deport migrants working and residing in the country illegally, and to dismantle the structures or networks supporting and/or exploiting them. Enforcement measures intended to repatriate irregular migrants include indiscriminate and indefinite detention and "voluntary" [assisted] returns. According to the Ministry of Interior, there were 675,952 deportations from Saudi Arabia in 2013, averaging 2,000 daily deportations (HRW 2015), and a cumulative total of 2.2 million between the years 2011 and 2014. One million migrants were either forcibly expelled or allowed to avail amnesty (RMMS 2014) with an additional one million slated for deportation in 2014.[16]

Table 14.7: Preliminary figures of Indian workers arrested and deported by Saudi authorities for residency and visa violations and issued Emergency Certificates by the Indian Consulate (2014)

Year	ECs issued
2011	10,456
2012	11,769
2013	4,030

Source: Lok Sabha, Unstarred Question No. 1625 answered on 03/12/2014 by V.K. Singh, MOIA.

The Saudi government crackdown on irregular migrants included arbitrary police inspections, raids on companies, residences and labour camps, and a special Ministry of Labour taskforce to conduct identity checks to determine migrants' legal status.[17] This included the hiring of 1,000 inspectors in early 2013 and an additional 1,000 later.[18] In November 2013, a total of 20,703 inspection raids were conducted across the Kingdom.[19] These internal checks and controls pushed scores of irregular migrants into hiding against the constant pursuit of the state,

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15. IANS, NDTV, January 18, 2014.

16. *The Guardian,* November 29, 2013.

17. Al Jazeera, November 5, 2013.

18. *Gulf News,* April 17, 2013.

19. *Arab News,* December 11, 2013.

culminating in commercial disruptions and work stoppages in sectors manned primarily by migrants. It also compelled migrants to take up sponsored jobs with lower salaries to avoid hefty fines and deportation. The resultant undercutting of migrants' reservation wages saved local businesses an estimated $4 billion in the first three months of the amnesty alone.[20] In a move to comprehensively curb opportunities for informal, unregistered work, Saudi Arabia has extended the imposition of fines and jail time from migrant workers to employers, recruitment agencies, and anyone found sheltering, aiding, or abetting irregular migrants. The new clause ensures that the crackdown on irregular workers does not unintentionally generate profits for local companies. In November 2013, the Saudi Labour Ministry penalised 5,640 firms for violating labour and residency laws and failing to provide proper addresses for all employees ensuring that employers and recruitment agents remain accountable.

Saudi Arabia recently announced the rollout of the third phase of the Nitaqat programme.[21] Although the implementation slated for April 2015 has been postponed, the adjusted programme ostensibly outlines a system to identify those authorised to work in Saudi Arabia, prevent identity theft/spurious visas, and address structural factors that sustain irregular migration. More recently, a specific Nitaqat programme for recruitment firms was announced on June 15, 2015.[22] The enhanced programme aspires to set recruitment standards such as a cost-ceilings and turnaround times and has the potential to introduce much-needed adjustments to enhance the efficiency of Saudi Arabia's labour brokerage system.

India's Efforts to Curb Irregular Migration

Until recently, policies, legislation, and institutional architecture governing Indian emigration at federal and state levels did little to ensure swift, safe, and secure legal migration from the country. The establishment of a dedicated Ministry of Overseas Indian Affairs in May 2004 was the first step towards recognising the needs of overseas Indians. Since then, a number of targeted measures intending to impede irregular migration and promote formal emigration have been implemented.[23]

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20. Quartz, June 24, 2013.

21. *Gulf Business, April 9, 2015.*

22. *Migration News,* June 15, 2015.

23. These measures are detailed in the Minister of Overseas Indian Affairs' answer to a question in the Indian Parliament (Lok Sabha Starred Question No. 309) on March 18, 2015.

A number of MoUs and bilateral Labour Agreements have been signed with key destination countries to organise safe, legal recruitment of workers and Joint Working Groups (JWGs) have been constituted to ensure their effective implementation. Although India had inked labour MoUs with other GCC countries, the signing of the Agreement on Labour Cooperation for Domestic Service Worker Recruitment in September 2014 marked the first time that India entered into a labour agreement with Saudi Arabia. The agreement is widely considered the first step towards a comprehensive labour agreement covering the wide spectrum of Indian workers in the Kingdom.

In 2009, the MOIA constituted a high-level Inter-ministerial Core Group (IMCG) to combat "illegal" migration from India and coordinate state government strategies (Arokkiaraj 2015). The MOIA launched the Overseas Workers Resource Centre (OWRC) in 2014, which operates a toll-free 24x7 helpline in 11 languages to provide information and assistance to prospective emigrants and enable emigrants to file complaints against recruiters and foreign employers.[24] However, to date, the international helpline is only made available for calls from the UAE. Three Migrant Resources Centres (MRCs) have been established for information dissemination and counselling of potential migrants. The government of Kerala, through the Department of Non-Resident Keralites Affairs, has launched awareness campaigns and job portals for prospective migrants. National and state publicity campaigns are also periodically undertaken to create wider awareness on the risks associated with irregular migration and unauthorised intermediaries.

The Emigration Act, 1983 (Section 10) stipulates mandatory registration of all Recruiting Agents (RA) with the PoE. The Emigration (Amendment) Rules 2009 stipulate further conditions on recruitment agents including a Bachelor's degree requirement and a bank guarantee of $30,000 valid for thirteen years.[25] The amendment also mandates that RAs must provide details of employment conditions to the intending emigrant before recruitment and ensure proper reception of the emigrant, timely renewal of documents and emigrants' custody of travel and employment documents. Complaints of exploitation against registered and unregistered Recruiting Agents are investigated at the national level and state level, respectively, and if found valid, penal action initiated to suspend or cancel RA registration. Complaints received from overseas workers are handled by the concerned Indian mission, which contacts the foreign employer/RA for grievance

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24. MOIA Press Information Bureau, January 5, 2015.

25. *The Times of India,* June 17, 2011.

redressal. If resolution is unviable, proceedings for blacklisting of the RA/employer are initiated, and they are placed on the Prior Approval Category (PAC) and not allowed to recruit new workers.

Table 14.8: Complaints received and legal action taken against Unregistered Recruitment Agents at State level

Year	No. of complaints	Cases referred to State Government/ PoE for action	Prosecution sanction sought	Prosecution sanction issued
2012	254	254	16	16
2013	272	272	05	05
2014	198	175	12	11

Source: Compiled from annexure in reply to part (c) of Lok Sabha Starred Question No. 309 on 18/03/2015 and parts (a) and (b) of Unstarred Question No. 430 on 22/07/2015.

Central and state governments and Indian missions have implemented several initiatives to extend logistical and financial support to Indian migrants in distress, including food, accommodation, and shelters for runaway and irregular workers besides the establishment of the Indian Community Welfare Fund (ICWF). For migrants in the ECR category, the employment contract is required to be signed by the foreign employer and intending emigrant and produced before the PoE before emigration clearance is granted. Attestation of work contracts by Indian missions has been made mandatory in all cases of women workers holding ECR passports migrating to ECR countries. Further, to ensure timely assistance and grievance redressal, the Indian Embassy in Riyadh, Saudi Arabia reportedly operates on an open house policy and deploys its Arabic speaking officials to detention centres (*tarheel*) and Passport Offices (*jawazat*). The embassy issues air tickets to deserving cases.

Despite multi-pronged control and containment efforts, irregular Indian migration to Saudi Arabia persists. This is not unexpected, given the complexity and ubiquity of the issue and the socio-political tensions it generates. We hope that our estimates encourage other alternative estimates to emerge, so as to build a more robust assessment of the scope, scale, and solutions to irregular migration in the region.

Conclusion

At the turn of the century, Kapiszewski (2001) estimated that irregular workers across the GCC countries accounted for about 10 % of the total population or 15% of

the workforce with numbers as high as 700,000 in Saudi Arabia. Our estimates peg the labour force share of irregular migrants between 20-40% in the GCC countries, and up to 50% in UAE and Kuwait. The proportion of irregular migrants to the total population of GCC countries lies between 10-20%, constituting up to 25-35% of UAE's population, with numbers as high as 4 million in Saudi Arabia. In terms of irregular migrants as a proportion of the total non-national population, we ascertain that in Saudi Arabia and across the Gulf region, this ranges between 20-40% of total migrants. From our assessments, Saudi Arabia is the primary destination for irregular migrants in the GCC, hosting between 3-4 million irregular migrants. We estimate that the numbers of irregular migrants in the Gulf range between 6.5-9 million, i.e., approximately a third (and potentially half) of all migrants in the GCC. The number of irregular Indian migrants in the GCC can be pegged between 2.4-3.3 million with 0.9-1.2 million in Saudi Arabia alone. Given their vast numbers, the position of the irregular Indian migrant is of strategic importance to understanding state processes and structures in Saudi Arabia.

The 2013 announcement of renewed initiatives to stem the influx of irregular migrants and reduce foreign workers in Saudi Arabia sparked fear of a massive exodus; however, the projected departures did not occur. Thousands of workers were able to validate their visas and Saudi estimates suggest the number of Indians has, in fact, expanded by about 100,000 during this period.[26] The Indian embassy in Saudi Arabia noted that augmentation of the Indian community during the grace period was indicative of the resilience of Indians in the Gulf and the broader benefits reaped from regularisation processes.

Overall, Nitaqat labour reforms and allied measures of expulsion/regularisation resulted in the decline of irregular migrants from several source countries. In the case of India, however, these curtailment measures led to an increase of migrants in the Kingdom to the tune of 100,000.[27] Several thousand workers were able to validate their visas, while thousands were simultaneously expelled. The unwavering persistence of irregular migratory movements adds a potentially destabilising dimension to the interdependencies that have long bound Saudi Arabia to India. Nevertheless, current trends indicate that the India-Saudi Arabia migration corridor will remain a vital component of South Asia-Gulf strategic relations for the foreseeable future. Within this context, the fraught politics of irregular migration is likely to remain a potent political issue.

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26. *The Indian Express,* November 4, 2013.

27. *Ibid.*

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XV

Irregular Migration to the Gulf: An Analysis of the Status of Pakistani Migrant Workers

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Abstract: Since the 1970s Pakistan has been a major supplier of labour to the Gulf region. This across-the-border movement, which is temporary in nature, requires not only recruitment of labour at origin but also their placement in the overseas job market, following the rules and procedures set for their legal entry and employment. Pakistan has made all institutional arrangements and legislations necessary for the recruitment and placement of its labour in an the overseas labour market. However, despite these arrangements, irregular migration is not uncommon among Pakistani workers in the Gulf - the cases of deportation of irregular migrants from the region and human trafficking/ smuggling have often been reported in the press. However, there is a dearth of information about the magnitude of irregular migration, types of irregularity, reasons for it and the adequacy of legislations and policies for its control. This chapter aims to fill this knowledge gap by using an historical approach, based on a conceptual framework that irregular migration takes place because of a mismatch between the number of persons wishing to work in the Gulf region and available opportunities for legal migration as well as continuity in overseas jobs. Opportunity-seeking migrants may take the risk of overstaying, switch their employers/sponsors, or run away to maximise the benefits of overseas

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employment, while survival migrants, because of the high cost involved in legal emigration, are vulnerable to human trafficking and smuggling. Rationalisation and reduction in the cost of migration, implementation of recruitment rules and protection of migrants' rights in the overseas job market can play a key role in controlling irregular migration in the Gulf region.

Introduction

Since the 1970s, Pakistan has been a major supplier of labour to the Gulf region. This across-the-border movement, which is temporary in nature, requires not only the recruitment of labour at origin but also their placement in the overseas job market, in accordance with the rules and procedures set for their legal entry and employment. Pakistan has made institutional arrangements and legislations necessary for the recruitment and placement of its workers in an overseas labour market. Despite these arrangements, irregular migration is not uncommon among Pakistani workers in the Gulf – the cases of deportation of irregular migrants from the region have often been reported in the media (*Dawn,* April 13, 2015). Irregular and illegal migration is a source of mounting concern for all states in the Gulf region because of high unemployment among the citizens as well as security issues. The governments of the Gulf countries have started taking strict action against irregular migrant workers; of late, Saudi Arabia, where about half of the Pakistanis working in the region are employed, has been one of the most active countries in implementing policies to restrict migration (RMMS 2014).

Irregular migration in the Gulf takes place because of a mismatch between the number of persons wishing to work in the region and available opportunities for legal migration as well as continuity in overseas jobs. Suter (2005) divided irregular migrants into two categories: survival migrants and opportunity-seeking migrants. Poverty, unemployment, and economic hardship serve as the principal push factors for survival migrants, while lack of opportunities to enhance economic welfare is a pull factor for opportunity-seeking migration. The former are more driven by economic despair; risks of punishment and discomfort are less likely to keep them from moving. They are vulnerable to human trafficking and smuggling. The latter are more cautious about potential risk and rewards of irregular migration and are more willing to stay in the country of origin if the risk and punishment of migrating are too high. However, opportunity-seeking migrants, if employed overseas, may take the risk of becoming irregular by overstaying or switching their employers/ sponsors to maximise benefits of overseas employment (Suter 2005).

As a consequence of the concern among Gulf labour-importing countries regarding irregular migration, there is a growing interest in the analysis of the phenomenon. For example, the Gulf Labour Markets and Migration (GLMM) programme, which is a joint venture of the Gulf Research Center and the Migration Policy Centre at the European University Institute, and the Regional Mixed Migration Secretariat (RMMS 2014) have produced some good work on irregular migration in the Gulf region (Shah 2014; RMMS 2014).

Based on newspaper reports, the incidence of illegal immigration in each Gulf Cooperation Council (GCC) country was estimated by Kapiszewski (2001) as being at least 10% of the total population or 15% of the labour force. Suter (2005) has also examined both regular and irregular migration in Dubai. Pakistan, as a major labour-sending country to the Gulf labour market, has been part of all these analyses. The information thus gathered is very useful to understand the phenomenon of irregular migration in the GCC countries, but it is insufficient to know where each labour-sending country, like Pakistan, stands in it.

The issue of human trafficking and smuggling of migrants across the Pakistani border has also been addressed in annual reports of the United Nations Office for Drugs and Crime (UNODC) and the International Centre for Migration Policy Development (ICMPD), but their focus is largely on illegal migration to Europe (UNODC 2012, 2013; ICMPD 2013). There is a dearth of information about the magnitude of irregular migration among Pakistani workers in the Gulf countries, types of irregularity, reasons for irregularity, and the adequacy of legislations and policies for its control. This chapter aims to fill this knowledge gap based on the conceptual framework that irregular migration is the result of a mismatch between the number of persons wishing to work abroad and available opportunities for legal migration and continuity in overseas jobs.

Concept Clarification and Methodology

Irregular migration is a broad concept which includes violations of legal and documented entry, illegal or unrecognised stay, as well as absolutely illegal entry and stay. However, there is no clear or universally accepted definition of irregular migration. The RMMS defines it as a "movement that takes place outside the regulatory norms of the sending, transit and receiving countries" (RMMS 2014). So, from the perspective of destination countries it is illegal entry, stay, or work in these countries, meaning that a migrant does not have the necessary authorisation or documents required under immigration regulations to enter, reside, or work

in a given country. From the perspective of Gulf labour-receiving countries, Shah (2014) identifies four types of irregular migration: human trafficking and smuggling; overstaying on work, tourist, dependent or specific purpose visa (Haj or Umrah); change of sponsor or visa trading; and running away from employer or absconding. From the perspective of the sending country, irregularity happens when a person crosses its international boundary without a valid passport or other travel documents, or does not fulfill the administrative requirements for leaving the country.

Pakistan's emigration rules not only make unlawful emigration punishable but also impose a fine on those migrant workers who violate the terms of the agreement with their foreign employers by abandoning employment (BEOE 2012). By taking into account the perspective of both sending and receiving countries, for this study, an irregular migrant is defined as one who crosses the international border illegally or one who has crossed the border legally, but is residing or working in the host country in violation of the rules and regulations there. So, irregular migration includes human trafficking and smuggling, illegal entry to a foreign country, all types of overstaying at the country of destination, and taking up employment for a person/firm other than the sponsor without permission.

A close look at the information available from media, official documents, and international reports reveals that examples of all types of irregular migration can be found among Pakistanis working or living in the Gulf region. Apprehension of illegal workers and deportation to Pakistan is recorded in these reports and documents. Despite this, there is no information on the magnitude of irregular migration among Pakistanis presently working in the six GCC countries except for the number of deportees from the region. A comprehensive analysis of irregular migration requires access to data on illegal entry (without documents or with forged documents), human trafficking and smuggling of migrants, overstaying, and abandoning the employer/sponsor. However, the required data are not readily available, making the analysis of irregular migration difficult.

With respect to the methodology used, this study views that all types of irregularity among Pakistanis working in the GCC countries, except human trafficking and smuggling, happens at the destination. Cases for temporary employment in these countries are processed by the relevant Pakistani authorities in accordance with the rules and procedures set by both the GCC countries and Pakistan. But, some of the migrants fall into an irregular situation because of the violation of the rules and regulations of the host country. In this context, irregular migration among Pakistanis in the GCC countries can be better understood

through the examination of migration management in Pakistan. Therefore, the analysis in this study is carried out in three steps: firstly, legal placement of Pakistani workers in the GCC countries is examined by focusing on the methods used for labour recruitment and the regional arrangements for processing cases of overseas migration. Secondly, human trafficking and smuggling of migrants across borders is analysed; and thirdly, an in-depth analysis of deportation of Pakistanis from the GCC countries is carried out by linking it with regular or legal flows of workers to the GCC countries. The analyses are supported by the data generated through recent small (not representative) household surveys.

Legal Placement of Pakistanis in the Gulf Labour Market

The government of Pakistan has taken numerous steps to control and regulate the country's labour recruitment process. In the 1970s when labour migration to the Middle East began on a large scale, three organisations, National Manpower Council, Directorate of Seamen's Welfare, and Protectorate of Emigrants were amalgamated into a Bureau of Emigration and Overseas Employment (BEOE). The Emigration Act of 1922 and the Emigration Rules of 1959 were replaced by the Emigration Ordinance, 1979 (BEOE 2012). The BEOE as a regulatory body/authority controls, regulates, facilitates, and monitors the emigration process through the seven regional offices of the Protector of Emigrants in: Lahore, Rawalpindi, and Multan in Punjab; Karachi in Sindh; Peshawar and Malakand in Khyber Pakhtunkhwa (KP); and Quetta in Balochistan, with areas (districts) of their jurisdiction (Appendix Table 15.6).

Between 1971 and 2015, the BEOE processed the placement of 8.365 million Pakistani workers in overseas labour markets. Ninety six per cent of them found employment in the GCC countries, including in Saudi Arabia (50%) and UAE (33%). Oman is the destination country for about 8% of Pakistani workers who went abroad through the BEOE. Bahrain, Kuwait, and Qatar have a relatively small share of 1.7, 2.2 and 1.4% respectively (Table 15.1). Pakistani workers, like other guest workers, know that their overseas jobs are temporary, and they have to return home when their contracts expire. In fact, this is happening. The current stock of Pakistanis in the Middle East is estimated at around 3 million (Amjad et al. 2012; ILO 2015), suggesting that more than 5 million workers have returned home during the last four decades, although repeat migration cannot be ruled out.

Table 15.1: Total placement of Pakistani workers abroad by the country of destination (1971-2015)

Country of destination	Total placement of Pakistani workers abroad (1971-2015)	% distribution
UAE	2,757,436	33.0
Saudi Arabia	4,190,282	50.1
Bahrain	140,421	1.7
Kuwait	181,383	2.2
Oman	631,921	7.5
Qatar	119,845	1.4
Other	344,053	4.1
All	**8,365,341**	**100**

Source: BEOE 2015.
Note: Data for 2015 covers the January to October period.

Legally, Pakistanis can procure overseas employment through the public or private sector. The Overseas Employment Corporation (OEC) is the only agency in the public sector which recruits workers for overseas employers, but its role as a recruiting agency has gradually declined. In the early 1980s, about 9% of the total workers placed abroad were recruited by the OEC, while more recent data shows that its share in the total placement of workers is very low, less than 1% (Figure 15.1). In the private sector, the recruitment is primarily conducted through the licensed Overseas Employment Promoters (OEPs), besides direct employment by which an individual is legally allowed to procure foreign employment either through his own efforts or through friends and relatives working abroad. At present, there are more than 1,100 licensed OEPs in the country (BEOE 2015b). It is mandatory for workers going abroad for employment to register with the BEOE irrespective of the method used to secure such employment. For registration or legal placement of Pakistanis abroad, the BEOE has laid down separate procedures or steps to be followed for workers recruited through OEPs and for those who secure visa through direct sources.[1]

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1. Seven to eight steps have been given in the official documents, including submission of documents, such as passport, CNIC, Visa, contract or foreign employment letter, air tickets, payment of fee, and attendance of briefing at a regional office of the Protector of Emigrants (BEOE 2015a).

Figure 15.1: Distribution (%) of Pakistani workers placed abroad for employment by the mode of recruitment, 1980-2014
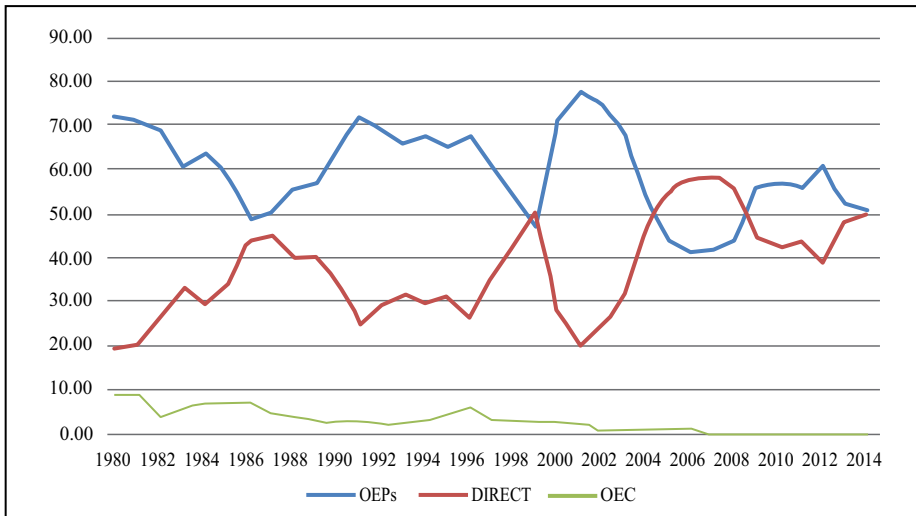
Source: BEOE 2015.

The registration data of the BEOE for the last four decades shows that half the Pakistani workers went abroad through OEPs while the remaining half secured employment through direct contacts with overseas employers. Social networks in the form of friends/relatives already working in the GCC countries and direct contacts of employers with potential migrants have played a major role in workers securing employment visas without the involvement of a recruiting agency. The magnitude and pattern of irregular migration may vary depending on the method used to recruit workers; however, data is not available to examine this association.

To understand the dynamics of legal migration from Pakistan to the Gulf, there is a need to examine how and where legal recruitment takes place. As mentioned earlier, the BEOE manages overseas migration for employment through its seven regional offices in the four provinces of the country (Appendix Table 15.6). Punjab has three regional offices of the Protector of Emigrants located in Lahore, Rawalpindi, and Multan, covering central, northern, and southern districts of the province. The share of Punjab in the total population is about 55%, and it has almost retained its share, 51.8%, in total placement of workers abroad (Table 15.2), primarily through these three regional offices.

Table 15.2: Total placement of Pakistanis abroad for temporary employment as processed by the Bureau of Emigration and Overseas Employment, 1981-2015

Region of Origin	Share in total population (2015)	Share in total number of migrants processed by BEOE	Protectorate-wise share
Punjab	54.93*	51.8	59.6 [Lahore (23.9%); Rawalpindi 29.6%; Multan 6.1%]
Sindh	23.98	9.4	19.1 (Karachi)
Khyber Pakhtunkhwa	13.47	25.7	20.6 [Peshawar (14.6%; Malakand 6.0%)]
Balochistan	5.18	1.2	0.6 (Quetta)
AJK, Northern areas,	2.41 (FATA only)	11.9	-
Total (%)	100	100	100
Total (number)	199.708 million	7,757,248 (1981 - 2015)	7,757,248
Total (number)	-	8,365,341 (1971 - 2015)	-

Source: Government of Pakistan 2015; BEOE 2015.

The share of Sindh in total annual placement, at 9.4%, is two and half times lower than its share in the total population (23.98%). Mobility among the Sindhi population is in general lower than that of other ethnic groups, particularly Punjabis and Pashtuns. Karachi, the largest coastal city of the country and capital of Sindh, attracts migrants from all parts of the country, but the movement of the Sindhi population to Karachi remains low. Poverty, high cost of migration, and inadequate infrastructure are the other core factors behind low participation in overseas migration from Sindh. In this province, there is only one regional office of the Protector of Emigrants, located in Karachi, from where approximately one-fifth of the total outflows were processed.

Although the coverage of the Karachi office extends officially to some coastal districts of Balochistan (see Table 15.1), many migrants from other provinces, particularly Khyber Pakhtunkhwa (KP), it has been seen, were likely to have been processed through the Karachi office during the last four decades. This is clear from the KP share in overseas migration (25.7%) and the proportion of emigration cases (20%) processed through the two regional offices of the Protector of Emigrants, located in Peshawar and Malakand. Table 15.2 shows that only a small number of overseas employment contracts are processed from the Multan (Punjab) and Quetta (Balochistan) regional offices of the Protector of Emigrants. So, the bulk of cases are processed from the remaining five offices. Except the one in Karachi, the

other four cover the central-north belt of Punjab and the KP province. Irregular migration is found to be relatively higher among migrants originated from Punjab, particularly central Punjab.

It appears that the recruitment of workers for employment in the GCC countries in the past has been primarily carried out in the central-north belt of Punjab, KP, and Karachi. These, except Karachi, are also high-migration areas in terms of both the incidence of emigration and the amount received as remittances from a household member working abroad. The standard of living of the population in the high-migration areas is much better than the standard of living in Sindh, Balochistan, and Southern Punjab, characterised as poverty stricken areas. Thus, emigration activities are concentrated in relatively better-off regions where people have the capacity to finance costly overseas migration. In this context, the migration of Pakistani workers for overseas employment can be viewed as opportunity-seeking migration or a livelihood strategy of the participating households to diversify their sources of income. Depending on the destination country in the GCC and the recruitment channel used for finding a job abroad, a migrant pays, on average, more than Rs. 200,000 per overseas job. He also bears the opportunity cost in the form of giving up his local employment and earning opportunities.

Magnitude of Irregular Migration

It is evident from the earlier discussion that Pakistan has established the necessary institutions and put in place procedures and mechanisms for legal and regular placement of its workers in overseas labour markets. Pakistan has followed these procedures to place more than eight million workers abroad during the last four decades. However, deportation of Pakistanis from abroad because of their illegal or irregular status has been reported frequently in the media. Therefore, this study examines the phenomenon of human trafficking and smuggling of migrants across borders and follows it up with an analysis of the reasons for the deportation of Pakistanis from the GCC countries.

Human Trafficking and Smuggling of Migrants

The reported cases of human trafficking and smuggling of migrants are often based on the data in the annual reports of international organisations such as UNODC and ICMPD and reports on the arrest of human smugglers by the Federal Investigation Agency (FIA). The series of annual reports of UNODC in particular provides updates about human trafficking across borders. The US Department of State has

also recently released a report on human trafficking in Pakistan. Two conclusions are commonly drawn in all these reports. First, Pakistan is a source, transit, and destination country for trafficking in human beings and migrant smuggling, and second, the problem manifests itself within the country and across borders. Estimates shows that 3.351 million irregular migrants were present in Pakistan in 2004 (UNODC 2012). Afghanistan, Bangladesh, and Myanmar are the three major source countries for these irregular migrants in Pakistan (Table 15.3).

Table 15.3: Estimated numbers of irregular migrants in Pakistan (2004)

Afghanistan	2,210,000
Bangladesh	1,030,000
Burma (Myanmar)	100,000
Nigeria	2,000
Somalia	2,000
Others	6,000
Total	**3,350,000**

Source: UNODC 2012.

The common methodology used for estimating the phenomenon of human trafficking and smuggling of migrants from Pakistan to other countries is as follows. Firstly, three major routes have been identified through which the trafficking takes place: (i) Pakistan-Iran-Oman, (ii) Pakistan-Iran-Turkey-Greece, and (iii) Pakistan-Middle East-West Africa-Spain. Some other routes leading to Malaysia, Indonesia and Australia have also been identified in the ICMPD migration report on Pakistan (ICMPD 2013). Secondly, Pakistanis who used these routes to illegally reach countries such as Iran, Turkey, Oman, Greece, and Spain, and were subsequently deported, are considered trafficked human beings or smuggled migrants (UNODC 2011). The deportation of Pakistani nationals from these five countries increased from 12,343 in 2007 to 14,546 in 2013; in between, the number of deportees jumped to more than 20,000 in 2011 and 2012 (Figure 15.2). Iran and Oman consistently deported the maximum number of Pakistanis during these years. The largest number of deportees who are sent back by the sea route arrive from Oman while those sent back by air largely return from Spain and Turkey.

But, this methodology has several flaws. For example, the assumption that all deportees were smuggled or trafficked may not reflect the real situation. A wide range of reasons for deportation are given by officials including forged visa, lost

passport, illegal stay, entry refused, violation of emigration laws, illegally working on student visa, asylum refused, overstay, and visa cancelled.[2] A large number of Pakistanis are working in Oman. Their stay in Oman can be considered illegal or irregular if they are staying without securing extension of their contracts. Their deportation because of illegal stay cannot be categorised as human trafficking or smuggling. Similarly, the deportation of visitors from the five countries Iran, Turkey, Oman, Greece, and Spain for staying beyond the permitted time is likely to be counted as human trafficking or smuggling of migrants. However, despite these limitations, available information reveals the existence of networks of human traffickers and smugglers in the country (*Dawn*, November 10, 2015).

Figure 15.2: Deportees from five countries (Iran, Turkey, Oman, Spain and Greece) 2007-2014
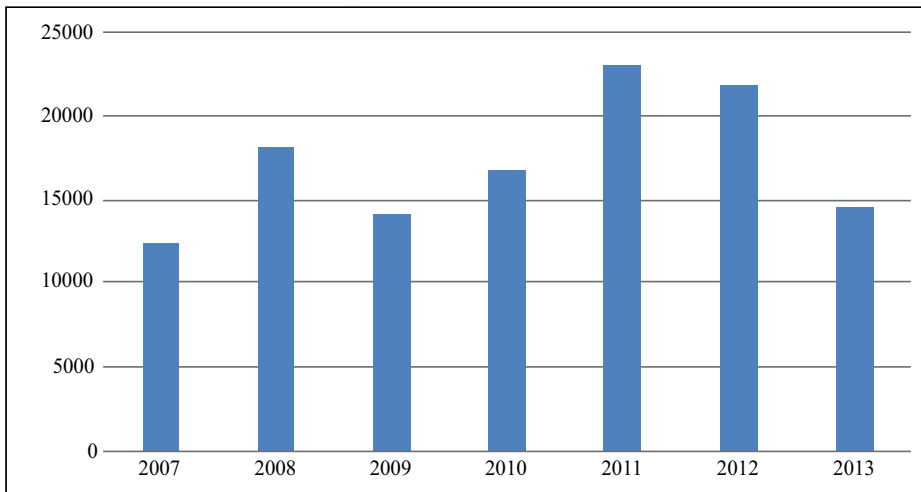
Source: UNODC 2014.

The government of Pakistan has taken serious steps to develop strategies to combat these crimes and protect the rights of victims. In 2002, the Prevention and Control of Human Trafficking Ordinance (PACHTO) was enacted (UNODC 2013). The PACHTO makes it illegal to be involved in the process of human trafficking, directly and/or indirectly (ICMPD 2013). This was followed by the development of a National Action Plan for Combating Human Trafficking and establishment of Anti-Human Trafficking Units and Circles under the jurisdiction

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2. http://www.baliprocess.net/files/Bali%20Process%20Ad%20Hoc%20Group%20Immigra-tion%20Intelligence%20Best%20Practice%20Workshop%20-%20Outcomes%20State-ment%20ENDORSED.pdf.

of the FIA. A liaison office has also been established in Muscat, Oman by FIA in order to help identify and protect victims of human trafficking in the Middle East[3] (ICMPD 2013). In 2014, the FIA also established a research and analysis center responsible for collecting and analysing data and trends related to human trafficking and smuggling. The FIA and police also began to use standard operating procedures for the identification and referral of trafficking victims to protective services (US Department of State 2015).

Regarding human trafficking and smuggling, this discussion, therefore, leads to three broad conclusions. First, the number of deportees from Iran, Turkey, Oman, Greece, and Spain may not necessarily reflect the magnitude of human trafficking and smuggling of migrants because the deportation could be linked to many other factors which made the stay of deportees at their destinations illegal. Second, Oman is the only country, among the GCC countries, for which human trafficking and smuggling of migrants is regularly reported in the form of number of deportees. There is hardly any evidence of trafficking to Saudi Arabia, though several cases in the UAE have been reported in the media. Third, while the government of Pakistan has made serious efforts to eliminate human trafficking and smuggling, the real worry is about the existence of networks involved in these criminal activities and the persistence of trafficking and smuggling. More legal and administrative efforts are required to control these illegal activities.

Deportation of Pakistani Workers from GCC Countries

Over 250,000 illegal Pakistani immigrants have been deported back between 2009 and 2014, according to reports in the media (Table 15.4). Three-quarters of these illegal migrants were deported from the GCC countries, with the highest numbers coming from Saudi Arabia, followed by UAE and Oman. These statistics on deportation are used in this study to determine the magnitude of irregular migration among Pakistanis in the GCC countries. Table 15.4 provides data on the total number of Pakistanis placed in the six GCC countries between 2009 and 2014 as well as the number of deportees from these countries during the respective period, as reported in the newspapers (*Dawn*, April 13, 2015). The share of deported migrants from Saudi Arabia was 64% while the country's share in the placement of workers during the period 2009-2014 was 50%. The same was the case of migrants deported from Oman.

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3. FIA has also negotiated for the establishment of similar offices in Turkey, Greece, Iran, and UK (ICMPD 2013).

The last column of Table 15.4 shows deportees as a percentage of total Pakistani workers placed in the respective GCC country during 2009-2014. The deportees from Saudi Arabia constitute 8% of the total placement in the Kingdom during this period while the ratio goes up to about 11% in the case of Oman. It is 3% for the UAE; however, some sources put the number of deportees from the UAE at more than 60,000, which increases the ratio from 3% to more than 5%. Outflows to Kuwait during 2009-2014 were quite low, and only 2,234 persons were admitted for temporary employment (Table 15.4). The main reason for the large number of deportees from Kuwait (1,908) shown in Table 15.4 hinges on the fact that new visas (work, visit, as well as family) for Pakistanis were almost banned starting in 2010, although there was no written notification of such a ban. That situation generally continues until today, with a few exceptions. Thus, the deportees during 2009-14 are probably the ones who were in the country prior to 2009, and not necessarily a subset of those placed in 2009-14.

Table 15.4: Number of Pakistanis deported from the Gulf countries between 2009 and 2014 as a proportion (%) of workers placed in the region by the BEOE during this period

Country of employment	Workers placed 2009-2014	Number of deportees 2009 -2014	Deportees as % of total workers
Saudi Arabia	1,555,502 (49.6)	123,527 (64.1)	7.94
UAE	1,216,940 (38.7)	36,371 (18.9)	3.00 (5.18)
Bahrain	52,961 (1.7)	438 (0.2)	0.82
Kuwait	2,234 (0.1)	1,908 (1.0)	-*
Oman	282,486 (9.0)	29,945 (15.5)	10.60
Qatar	28,702 (0.9)	618 (0.3)	2.15
All in GCC (%) (all countries - number)	3,138,825 (100) (3,237,092)	192,807 (100) (253,894)	6.09 - -

Source: BEOE 2015; *Dawn* 2015.

* Deportees as a percentage of total Pakistani workers in Kuwait is reported not because new visas for Pakistanis have not been given since 2010, the deportees probably were in the country prior to 2009 (see text for details)

Table 15.4 shows that, overall, the Pakistanis who were deported from the GCC countries during the 2009-2014 period were 6% of the total placement of Pakistani workers in the region during this period. A small survey of 200 return migrants in Jhelum, a high-migration district in Punjab, was carried out in 2014. The migrants were those who had worked in Europe and the Middle East (Iqbal 2015).

The study analysed post return entrepreneurial activities undertaken by the return migrants. A return migrant is defined as "a Pakistani citizen, who had migrated abroad and returned to Pakistan after staying at destination at least for one year either voluntarily or involuntarily, and has started any business or participated in any income generating activity after return." According to this study, 6% of migrants who had returned from the Middle East reported deportation as their reason for return, while the corresponding percentage for migrants who returned from Europe was 25% (Table 15.5). Jhelum is among those districts which have sent its labour force to all regions: Middle East, Europe, and North America.

Table 15.5: Reasons for return as reported by migrants who returned from overseas employment in District Jhelum (Punjab)

Reasons for return	Middle East	Europe	All
Work permit expired	52.0	26.0	39.0
Factory/work closed	15.0	16.0	15.5
Deportation	6.0	25.0	15.5
Health problem/retired	15.0	11.0	13.0
Family reasons	12.0	22.0	17.0

Source: Iqbal 2015.

It may be a coincidence that the findings of a small survey and ratio of deportees to total placement of workers between 2009 and 2014 show the same figure of 6%. Several questions that need further investigation arise: Why were these workers deported? Did they enter the GCC countries illegally, without legal documents? Were they overstayers? Did they abandon their sponsors/employers? The available information does not provide answers to these questions. It is, however, argued that undocumented migration, crossing the border illegally, of Pakistani workers is not a common phenomenon except to Oman, which is used as a base for illegal movement or human trafficking to Europe, according to reports produced by UNODC and ICMPD (UNODC 2014; ICMPD 2013;). The Pakistan-Iran border is also used by some migrants to work in UAE and Europe (ICMPD 2013; UNODC 2014). Most often, the deportation of Pakistanis from the GCC countries, particularly Saudi Arabia and UAE, happens because workers fall into the category of over-stayers or change their employers/sponsors without permission. If this argument is accepted, the magnitude of irregular migration among Pakistanis could be around 6% assuming that the overstayers and those who changed their sponsors are the same persons.[4]

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4. If the total stock of Pakistani workers in GCC countries is used in the denominator for the

If they are treated separately, then the incidence of irregular migration ratio can go up. Based on a small survey of returned migrants from the Middle East, Arif (2009) reported that 5% of them changed their employers during overseas employment. Such a change would not be irregular or illegal if the change occurred with the permission of the previous sponsors. Assuming that the change occurred without the permission of the workers' previous employers, the magnitude of irregular migration among Pakistanis, based on available statistics on the number of deportees and those who changed their sponsors/employers may then vary between 6 and 11%. However, emigration rules in Oman allow workers to change their employers after a certain duration of employment. During the recent amnesty in Saudi Arabia, an estimated 4.7 million foreign workers corrected their status, including the transfer of sponsors (Shah 2014). This study thus estimates that 6-8% of Pakistani workers in the GCC countries could be irregular because of overstaying or changing of employers without permission.

A relevant question is: have all irregular Pakistanis in the GCC countries been deported? There is no straightforward answer to this question. However, the strong possibility is that the current stock of irregular migrants in the GCC countries could be very low. Although Shah (2014) has reported that if the experience of Kuwait during its last amnesty period is reflective of the usual response of irregular migrants in other GCC countries, the amnesty programmes have been only partially successful in facilitating the regularisation of irregular workers. A majority of them were still in the country at the end of the last amnesty period in Kuwait. However, she also states that the latest amnesty in Saudi Arabia appears to have been relatively more successful, although irregular workers are still found on the streets. Since half of the Pakistanis in the GCC countries are employed in Saudi Arabia, the relative success of this latest amnesty is likely to have reduced the phenomenon of irregular migration among Pakistani workers in the country. However, the current situation of irregular migration among Pakistanis in the UAE remains unclear.

It is argued that some estimates of irregular migration, as given in the reports of international organisations, are not credible. For example, the ICMPD country report on migration in Pakistan says with reference to Colombo Process, Country Information that "it is estimated that 300,000 people have been migrating from Pakistan each year by using one of the irregular channels including the existing wide network of migrant smuggling and human trafficking in the country" (ICMPD 2013, pp. 38). During the forty-year history of labour migration to the

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calculation of irregular migration, the result may not be very different either.

Middle East, Pakistan has only recently been able to place in the region more than 300,000 workers annually, with its strong legal network of more than 1,100 OEPs, seven regional offices of the Protector of Emigrants and social networks. The BEOE data show that between 1971 and 2007, Pakistani labour export did not exceed the 300,000 per year figure. Moreover, all Pakistanis deported between 2009 and 2014 from different parts of the world, including the GCC countries, were less than 300,000 (Table 15.4). In this context, a very high estimate of annual irregular migration from Pakistan by the ICMPD report not only exaggerates the situation but also undermines the institutional arrangements and legal framework functioning in the country for four decades to recruit workers through legal and regular channels.[5]

Root Causes that Generate and Sustain Irregular Migration in GCC Countries

This chapter is based on a conceptual framework that irregular migration is the result of a mismatch between the number of persons wishing to work abroad and available opportunities for legal migration as well as continuity in overseas jobs. The literature divides migrants into two broad categories: survival migrants and opportunity-seeking migrants. The survival migrants, because of poverty, are considered to be vulnerable to human trafficking and smuggling. The Pakistan National Action Plan for Combating Human Trafficking also views poverty as the main root cause for human trafficking and seeks "to institute poverty mitigation measures and safety nets to promote economic development and social inclusion with a view to ameliorate the situation with regard to supply/push factors" (Government of Pakistan 2015a).[6] However, as reported earlier, it is worth noting that the bulk of illegal immigration to Europe, according to the ICMPD (2013) report, occurs from Punjab, particularly from the Gujrat, Gujranwala, Mandi Bhauddin, Sialkot, D.G. Khan and Multan districts. All these districts, except Multan, are among the high-migration districts in terms of outflow of workers as well as inflow of foreign remittances. Gujrat, Gujranwala and Sialkot are among the prosperous or better-off districts of the country. It appears, as the UNODC (2014) report shows, that illegal immigration

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5. In fact, the ICMPD report has summed up key institutional actors involved in migrant management and diaspora affairs, and it has also presented an overview of the key domestic legislation related to migration management (ICMPD 2013). In addition to ministries of Interior, OP & HD and departments, special cells, circles and task force have been created for migration management.

6. http://www.fia.gov.pk/HUMAN.htm.

from high-migration areas is a function of legal immigration. Regions with large traffic flows have a higher risk of exploitation by illegal networks. Survival migrants, who cannot afford the high cost of migration through legal sources, are probably the victims of illegal networks. In addition to poverty mitigation measures, reduction in the cost of legal migration can help to move the survival migrants away from the use of illegal networks.

With the focus on irregular migration among Pakistanis working in the GCC countries, this study takes the position that Pakistani workers in the GCC countries are primarily opportunity-seeking migrants, who are less likely to cross borders illegally; however, they may take the risk of overstaying or switching of employers/ sponsors to maximise the benefits of overseas employment. Pakistan is currently passing through a demographic transition, which has resulted in a youth bulge and an increase in the working age population. Migration to the Gulf region has provided opportunities for productive and remunerative employment for the young workforce (Amjad 2013). The results of a small survey of return migrants in district Jhelum show that more than one-third of the young migrants in the Middle East were unemployed in Pakistan before migration, and upon their return, they have started new businesses from the amount saved during overseas employment (Iqbal 2015). As Shah (2014) has reported based on interviews of those workers who did not take the benefit of amnesty in Kuwait, and preferred to live and work as irregular migrants to achieve their specific goals in terms of ensuring that they established a sound financial base before return, Pakistani migrants working in other parts of the region may also take this risk to maximise the benefits of overseas employment.

Moreover, the contemporary labour migration system in the Middle East may itself be a root cause for irregular migration. The contract period of two years normally given to an expatriate worker is too short to achieve the goals set by opportunity-seeking migrants. Similarly, a restriction on changing the employer undermines the workers' efforts to achieve their financial goals in the shortest possible time. The rigidity of the temporary labour migration system probably generates irregular migration.

The high cost of overseas migration affects migrants in several ways. It may push potential migrants to illegal networks. It could also be the root cause for the generation of irregular migration in the form of overstaying or switching employers among opportunity-seeking workers, who could not achieve their financial goals because of the short duration of the contract and low wages at destination. The weak implementation of recruitment rules in Pakistan as well as abroad and lack of protection of migrants' rights in overseas job markets may push them to switch

to irregular status. Finally, the support of social networks at destination probably enables irregular migrants to sustain themselves and feel comfortable (Shah 2014).

Irregular Migration and Policy Challenges

The government of Pakistan has not neglected its regulatory role, as mentioned earlier; a specific agency, BEOE, and seven regional offices of Protector of Emigrants are in place as the principal regulatory bodies. Rules exist to regulate and control the recruitment process. The official costs of recruitment have been kept very low. However, questions remain as to whether these procedures are followed in practice by the concerned stakeholders, whether official fees and charges are respected, and whether the government is effectively able to control illegal and undocumented migration, particularly human trafficking and smuggling of migrants which remains a major policy challenge.

A major policy question is how Pakistan can contribute to controlling irregular migration in the GCC countries which may be traced primarily to overstaying and switching of sponsors/employers. Pakistan can contribute in three ways. First, it should work with other Asian labour-sending countries to negotiate with the major labour-importing countries of the Gulf region to revise their policies regarding the renewal of workers' contract and allow them to change employers after a certain period. In view of the high costs involved in migration to the GCC countries and the financial goals of participating households, workers may legally be given a chance to work for four to five years. Oman has relaxed the rules regarding the change of employers after a certain period of time; other countries, particularly Saudi Arabia and UAE, may also be persuaded to consider this relaxation. Second, several recent studies have pointed to the highly exploitative market for visas which enhances the cost of finding a job in the GCC countries. There is need to set up a fair market to enhance the capacity of migrant workers to earn, save, and sent a considerable amount of money back home during the legal period of stay abroad. Third, a briefing at the office of the Protector of Emigrants must be made mandatory for outgoing workers, where they are given directions to follow the rules and regulations of the country of employment. This type of counselling should be continuous; community welfare officers in the Pakistan embassies in the GCC countries can play a role in this counselling. Violators of the rules and regulations of the host country may be punished according to the 1979 Emigration Ordinance if they are deported back.

Conclusion

The estimation of the incidence of irregular migration among Pakistanis working in the GCC countries is not easy because the data required for such estimation is not available in either the labour-sending or -receiving countries. Data on amnesty programmes and deportation are commonly used for the estimation of irregular migration at destination. However, the high estimates by some international organisations of irregular migration from Pakistan through different illegal channels are not credible. Based on the number of deportees between 2009 and 2014, this study has estimated that the incidence of irregular migration among Pakistanis working in the GCC countries is likely to be around 6 to 8% of the outflows during this period. This estimate is based on the number of deportees and the result of a small survey showing the proportion of workers in the GCC countries who changed their sponsors/employers without the permission of their previous sponsors. With the recent amnesty in Saudi Arabia, the magnitude of irregular migration is likely to have declined considerably.

On the one hand, the decline in irregular migration indicates the effectiveness of Pakistan's institutions in placing workers in the GCC countries on a large scale through legal channels. On the other hand, overstaying and switching of employers by some migrants not only violates the rules of destination countries but is also against the Pakistani rules as laid out in the 1979 Emigration Ordinance. Therefore, efforts to control both overstaying and switching of sponsors by Pakistani workers in the GCC countries need to be enhanced. Labour migration rules are rigid regarding the renewal of contracts, which are usually just for two years, and do not permit workers to easily switch their employers for better wages and working conditions. As a result of the high costs involved in migration to the Gulf region, and the consequent financial expectations of migrants and their families, a relatively longer stay of workers at their destination with decent working conditions is required. Visa costs need to be brought under control as well.

No doubt, the dependence of GCC countries on foreign labour is very high, and their concerns about the irregularities in immigration are justified, but regular return flows of workers to their home communities at the expiry of their contracts is a matter of satisfaction. It also shows the success of the labour migration systems in the Middle East. Careful handling of irregular migration by involving both labour-sending and -receiving countries will make the systems more beneficial for all stakeholders.

Appendix

Table 15.6: Regional Offices of Protector of Emigrants
with areas (districts) of jurisdiction

No.	Name of Protector Office	Areas (Districts) of jurisdiction
1	Protector of Emigration, Lahore	District Lahore, Kasur, Okara, Sheikhpura, Faisalabad, Jhang, T.T. Singh, Gujranwala, Sialkot, Narowal, Hafizabad, Sargodha, Mianwali, Jhang, Khushab, Bhakar and Pak Pattan
2.	Protector of Emigrants	Districts Rawalpindi, Attock, Jhelum, Chakwal, Gujrat, Mandi Bhauddin, Islamabad and Territory of State of Azad Jammu and Kashmir.
3.	Protector of Emigrants, Multan	Districts Multan, D.G. Khan, Bahawalpur, Bahawalnagar, Layyah, Lodheran, Muzafargarh, Sahiwal, Rahimyar Khan, Vehari and Rajanpur and Khanewal.
4.	Protector of Emigration, Karachi	Province of Sindh including Districts Lasbela, Khuzdar, Gawadar, Pasni, Jiwani and Oramara of Baluchistan.
5.	Protector of Emigrants, Peshawar	Province of NWFP and FATA excluding Districts Dir, Swat and Malakand Agency, Kohistan Buner, Chitral Bajopre Agency and Shangla.
6.	Protector of Emigrants, Malakand	Districts of Dir, Swat and Malakand Agency, Kohistan Buner Chitral, Bajore Agency and Shangla.
7.	Protector of Emigrants, Quetta	Province of Baluchistan excluding Districts Lasbela, Khuzdar, Gawadar, Pasni, Jiwani and Ormara.

Source: Arif 2009.

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XVI

Stemming Irregular Migration at the Source: The Philippine Experience

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Abstract: The Philippines has developed an elaborate legal and institutional framework to govern the different aspects and phases of international labour migration. The institutionalisation of labour migration started in the 1970s, ushered by the country's first experience with state-organised labour migration in response to the need for workers in the Gulf countries. Although other destination countries have entered the scene, the Gulf countries continue to be major destinations for Filipino workers. Flow data on the annual deployment of overseas Filipino workers point to the enduring importance of the Gulf countries, with Saudi Arabia, the United Arab Emirates (UAE), Qatar, Kuwait and Bahrain figuring among the top ten destinations. Despite the regulatory mechanisms that have been in place for decades in the Philippines (and in the Gulf countries as well), irregular migration takes place. Of the stock estimate of 10.4 million overseas Filipinos as of 2012, 47% are permanent migrants, 40% are temporary migrants (largely workers), and 12.8% are migrants in an irregular situation. In West Asia, of the 2.8 million Filipinos in the region, the overwhelming majority are temporary migrants

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(86.4%), less than 1 percent (0.26%) are permanent migrants, and 13.3% are migrants in an irregular situation. Some country variations are notable: the UAE has the largest share, 22.2%, while it is relatively smaller in Saudi Arabia, 8.5%. Reports of stranded workers, absconding workers, distressed workers in Filipino Workers Resource Centers, passengers being offloaded from flights to Gulf destinations, and workers transiting through Gulf countries bound for other destinations provide some indication of the scale and facets of irregular movements. Overall, the picture of irregular migration from the Philippines to the Gulf countries is very patchy and is based mostly on media reports. In an attempt to understand this phenomenon, this chapter will review the literature, media reports, data, and policies and actions taken by the Philippine government to address the following questions: (1) what is the level of irregular migration from the Philippines to the Gulf countries? (2) What are the types of irregular migration in the Philippines-Gulf region corridor? What are the characteristics of migrants who are caught in an irregular migration situation? Related to this, how does irregular migration to the Gulf countries compare with irregular migration to other regions? (3) What are the policies and actions developed by the Philippine government to curb irregular migration and to support migrant workers? Efforts will be expended to interview labour attaches, welfare officers, recruitment agencies, and overseas Filipino workers concerning their experiences of and views about irregular migration in the Gulf region.

Introduction

Irregular migration has been one of the major concerns of policymakers, advocates for migrants' rights, and other stakeholders. Although irregular migration has been the object of research scrutiny (Battistella and Asis 2003; Bogusz et al. 2004; Levinson 2005; Battistella 2008; Koser 2010; Morehouse and Blomfield 2011; Haroff-Tavel and Nasri 2013; Shah 2013 and 2014, among others), it eludes generalisations, and research findings to date provide limited guidance on how to effectively reduce it. The emergence of different forms of irregular migration, their links with regular migration, and their intermingling with smuggling and trafficking in persons obfuscate the usefulness of traditional concepts and require a rethinking of anti-irregular migration policies.

Over ten years ago, based on a four-country study of irregular migration in Southeast Asia, we suggested that regular and irregular migration must be studied together because the root factors as well as the intermediate factors that lead to irregular migration are the same (Battistella and Asis 2003). To some extent,

the migrants are also the same; the main difference between legal migrants and those in an irregular situation is their access to legal or irregular channels. It is also important to underscore that legal and irregular status can be fluid – i.e., migrants can go from legal to irregular status (e.g., when a migrant worker runs away from his or her employer), and those in an irregular situation can become legal when a regularisation programme is offered.

Against this backdrop, this chapter intends to examine the approach of a country of origin like the Philippines toward stemming irregular migration to the Gulf Cooperation Council (GCC) countries, motivated by the view that irregularity often originates in the home country. The chapter concludes that, although inspired by the objective to protect migrants, policies aimed at curbing irregular migration are to some extent ineffective because of the lack of compliance of different stakeholders, the lack of or inadequate incentives (or the many requirements) to comply with legal migration, and the need for cooperation between origin and destination countries.

Data for the chapter were mostly drawn from existing academic literature and reports and data generated by relevant government agencies in the Philippines.[1] An interview was conducted with a consul who was previously assigned to Saudi Arabia, and a focus group discussion was held with eight labour attaches and welfare officers who were posted in various GCC countries to gather information on the experiences of Philippine foreign missions in dealing with irregular migration.

Filipino Migrants in the GCC Countries: Flows, Profiles, and Stocks

Flows

From the beginning of the overseas labour programme launched under the Marcos administration in the early 1970s, the GCC countries have been the main destination of labour migration from the Philippines. In 2014, the overall deployment to the GCC countries was 60.7% of the total, but the share of the new hires[2] was 67% of the total. The higher overall proportion of new hires from the Philippines going to the Gulf countries compared to other regions indicates that the demand for labour in the GCC countries remains strong (Table 16.1).

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1. We would like to thank the Philippine Overseas Employment Administration for making available unpublished data on the numbers and profiles of overseas Filipino workers deployed to the GCC region.
2. The statistical reports of the POEA distinguish between "new hires" (workers who go abroad for the first time or with a new contract or to a new country) and "rehires" (workers who are renewing their contract to go abroad).

Table 16.1: Overseas Filipino workers (OFWs) deployed to the GCC countries (new hires and rehires), 2014

	New Hires	Rehires	Total	% of New Hires
Saudi Arabia	193,457	209,380	402,837	48.0
United Arab Emirates	56,589	189,642	246,231	23.0
Qatar	26,831	87,680	114,511	23.4
Kuwait	36,731	33,367	70,098	52.4
Bahrain	8,641	10,317	18,958	45.6
Oman	5,935	9,945	15,880	37.4
Total GCC	328,184	540,331	868,515	37.8
Percentage of total deployment	67.4	57.3	60.7	
Total deployment	**487,176**	**943,666**	**1,430,842**	**34.0**

Source: POEA 2014 Overseas Employment Statistics.

Profiles

The annual flows of Filipino migrants (new hires) to the GCC countries concentrate mainly in Saudi Arabia and the United Arab Emirates (UAE) (Table 16.2). Variations over the years mostly reflect the deployment of domestic workers. Controversies or tensions between the Philippines and countries of destination (such as those with Saudi Arabia in 2011 and 2012, and the UAE in 2014, as discussed later) affect the overall deployment of overseas Filipino workers (OFWs) to those countries.

Table 16.2: Deployment of OFWs (new hires) to GCC countries, 2011-2014

	2011	2012	2013	2014
Bahrain	2.5	3.4	2.9	2.7
Kuwait	13.3	14.5	10.7	11.1
Oman	1.8	1.7	1.7	1.8
Qatar	16	15.5	8.4	7.8
Saudi Arabia	41.9	38.4	51.6	59.2
United Arab Emirates	24.4	26.4	24.6	17.4
Total	**100**	**100**	**100**	**100**

Source: Unpublished POEA data (deployment through the regional offices are not included).

The gender distribution is skewed in favour of females in the UAE, Kuwait, Bahrain, and Oman. On the other hand, males and females are about in equal numbers in Saudi Arabia and in Qatar (Figure 16.1).

Figure 16.1: Deployed OFWs to GCC countries by gender, 2014
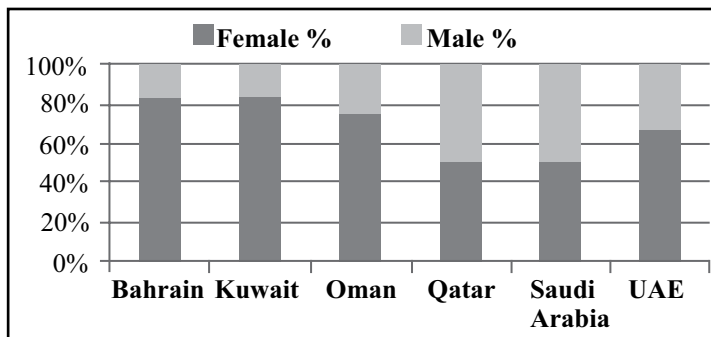
Source: Unpublished POEA data (deployment through the regional offices not included).

The occupations of migrants largely determine the gender distribution of the migrant population. Table 16.3 shows that Bahrain, Kuwait, Oman and the UAE absorb mostly service workers, who are predominantly female domestic workers. On the other hand, Saudi Arabia and Qatar hire a large share of workers employed in production, transportation and as equipment operators and labourers, who are mostly male.

Table 16.3: Deployment of OFWs (new hires) to the GCC countries by occupation, 2014

	Bahrain	Kuwait	Oman	Qatar	Saudi Arabia	UAE	Total
Administrative and managerial	0.5	0.1	0.1	0.6	0.1	0.2	0.2
Agricultural and related	0.1	0.1	0.1	0	0.4	0.2	0.3
Clerical and related	4	1.8	1.4	5.3	1.3	8.8	3.1
Production and labourers	6.2	7.1	9.5	28.3	32.3	16.9	25.4
Professional and technical	5.4	2.5	17.9	12.1	14.3	6.8	11.3
Sales	3.6	1.1	2.4	3.8	0.9	6.8	2.3
Service	80.2	87.3	68.6	49.9	50.7	60.3	57.4
Total	**100**	**100**	**100**	**100**	**100**	**100**	**100**

Source: Unpublished POEA data (deployments trough regional offices are not included).

The occupational profile of OFWs for individual GCC countries is somehow similar, in the sense that migrants are employed mostly in services, production, and professional and technical occupations. The differences are in the share of the occupational categories in the different countries (Table 16.3). In the UAE, for example, sales and clerical workers are a significant component. Overall, the top five occupations across the GCC are domestic workers (42%), professional nurses (4%), waiters and bartenders (3.5%), charworkers and cleaners (3.5%), and labourers in general (3.3%). However, some specifics vary in the ranking of the top five occupations – Bahrain lists hairdressers and cooks among the top five; Kuwait has cooks, supervisors, and ship ratings; Qatar includes plumbers and fitters and wiremen (electrical); while the UAE has salesmen and hairdressers.

Overall, 42% of OFWs are married and 57% are single. The share of singles is higher in Kuwait, Saudi Arabia, and the UAE; overall, differences in the marital status of OFWs do not appear to have relevant significance.

As noted earlier, domestic workers constitute the great majority of service workers deployed to the GCC countries. They include people performing domestic work as well as babysitting and driving. They are almost exclusively females (98% in 2014). In the past few years, the flow of domestic workers to the GCC countries has remained rather stable, except to Saudi Arabia and the UAE. When the Philippine government implemented the minimum monthly salary ($400) for domestic workers (which was part of the 2006 Household Service Workers reform package),[3] Saudi Arabia decided to stop the granting of visas to Filipino domestic workers. Negotiations between the two governments led to the adoption of a bilateral agreement on domestic workers in 2013, which explains the sharp increase in deployment to that country (Figure 16.2). On the other hand, the UAE has yet to accept the Philippine required minimum salary for domestic workers, which explains the decline in their numbers in 2014. According to unpublished POEA data, almost all domestic workers are reported to be earning $400 per month. It is not possible to ascertain whether this is simply a contractual compliance or whether it is the real salary received by domestic workers, since a study assessing the impact of the household service workers reforms suggested that recruitment agencies, employers, and migrants were nominally complying with requirements, but disregarding them in reality. Workers are aware of the scheme and agree to a lower salary so that they can leave and work abroad (Battistella and Asis 2011).

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3.   For details, see Battistella and Asis (2011).

Figure 16.2: Deployment of Filipino domestic workers to GCC countries, 2011-2014
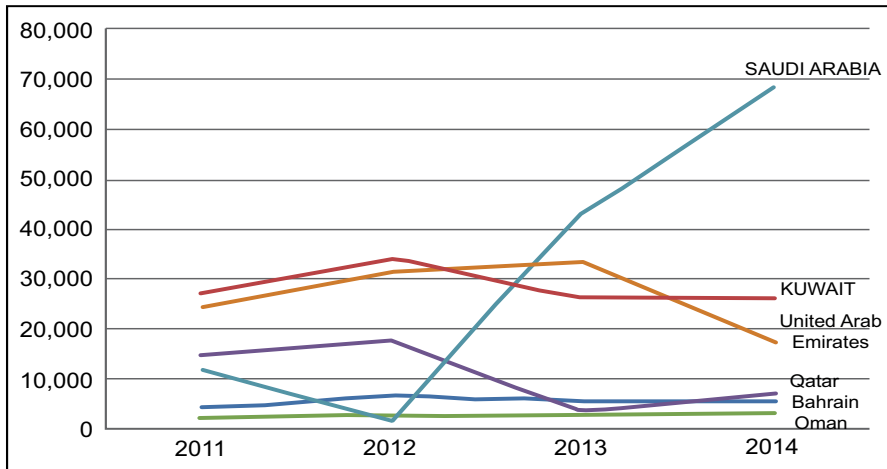
Source: Unpublished POEA data (deployment through the regional offices are not included).

Professional workers include a variety of occupations. The most numerous is that of nurses (39%) who are deployed overwhelmingly to Saudi Arabia (82%). Engineers in the various diversifications (electronic, electric, mechanical, civil etc.) are the second category of professionals. The median salary for new hire nurses is $715.

Stocks

Stock estimates give a glimpse of the Filipino community living and working in the GCC countries. Table 16.4 reports data from two different sources. The Commission on Filipinos Overseas (CFO) gathers stock data from the periodical reports that foreign posts provide to Congress as mandated by law. Data are disaggregated by permanent and temporary status and even venture to estimate the irregular population in the destination country. The accuracy of estimates depends on the sources utilised. Sometimes destination countries provide such estimates, sometimes they do not. Obviously, most Filipinos in the GCC countries are in a temporary status, as contract workers with a two- or three-year contract.[4] According

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4. If contracts lasted strictly for two years, the estimate of the number of temporary workers abroad would be: $P = NH_i + NH_{i-1} + RH_i$, where NH are New Hires and RH are Rehires. Also RH_i should equal NH_{i-2}. However, RH_i is always higher than NH_{i-2} (the number of the new hires of two years before), which indicates that contracts can last more than two years and that some workers might return abroad more than once within a year.

to CFO data, the largest community is in Saudi Arabia, followed by the UAE. To help assess the accuracy of CFO estimates, we have also included the UN-DESA estimates of the total number of Filipinos in the Gulf countries. For most countries, the UN-DESA estimate is much lower than the CFO estimate, except for Saudi Arabia, where it is exactly the same.

Table 16.4: Stock estimate of Filipinos in the GCC countries, 2013

	Permanent	Temporary	Irregular	Total	UN-DESA
Bahrain	91	69,307	2,685	72,083	43,971
Kuwait	502	191,787	6,000	198,289	122,214
Oman	140	53,360	2,090	55,590	21,669
Qatar	16	189,534	15,000	204,550	96,487
Saudi Arabia	264	948,038	80,500	1,028,802	1,028,802
UAE	1,711	777,894	42,805	822,410	477,139
Total	2,724	2,229,920	149,080	2,381,724	1,790,282

Source: Commission on Filipinos Overseas, 2013; UN-DESA 2013.

Irregular Migration from the Philippines to the GCC Countries: Literature, Estimates and Typology

Insights from Research

Although international migration has been well-studied in the Philippines, only a few studies have focused on irregular migration. The information gap has been filled to some extent by media reports which provide some information on numbers, policy developments, and personal accounts of migrants in an irregular situation. One of the few studies that focused on irregular migration was the Southeast Asian study cited earlier, which covered the Philippines, Indonesia, Malaysia, and Thailand. The study found that compared with Indonesia, irregular migration from the Philippines is smaller but more widely distributed; the latter trend further suggests how irregular migration and legal migration are intertwined (Battistella and Asis 2003). Findings from the said study concerning the factors contributing to irregular migration, types of irregular migration, and the fluid legal status of migrants are similar to what has been suggested about irregular migration in the GCC countries (e.g., Shah 2009; Baldwin-Edwards 2011; Suter 2005; Rahman 2011) and in African, Caribbean and Pacific (ACP) countries (ACP Observatory on Migration 2014).[5] Interestingly,

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5.   The study of Sarausad and Archavanitkul (2014) on Filipino migrants in Thailand reveals that in addition to legal migrants (those with work permits) and irregular migrants (those without work permit), there is a third category of those in a "semi-regular status" which refers to those

in the survey of irregular migration across selected ACP countries, the following conclusion was reached:

> " . . . despite the existing differences among African, Caribbean and Pacific countries, a series of common trends and challenges related to irregular migration exist, as irregularity and lack of documentation often prevent migrants from benefitting of the advantages of migration, exposing them to a wide range of vulnerability and abusive situations both at the psychological and physical level" (ACP Observatory on Migration 2014: 19).

An element that is distinctive about migration to the GCC countries is the sponsorship or *kafala* system (for details, see Baldwin-Edwards 2011; see also Khan and Haroff-Tavell 2011). Introduced as a regulatory mechanism, in practice and as it evolved, the system generated irregularities which render migrant workers vulnerable to exploitation. It has also become a lucrative business for GCC nationals, which makes it resistant to reform. The highly profitable visa trading is linked to many problems for migrants, including leaving migrant workers stranded (for details, see MFA n.d.). Another reason why it is difficult to dismantle the *kafala* system relates to how it contributes to making labour migration flexible.

An issue that has come to light is the case of children born to women outside of marriage. Under the strictly temporary migration regime in Asia, women migrant workers who become pregnant are repatriated.[6] In the GCC, the situation of women migrant workers who become pregnant outside of marriage is more complicated. Such situations are called "love cases" by Philippine missions. In the UAE, it may be possible for women to return home and to give birth in their home countries. Those who deliver their babies in the GCC countries face a jail sentence; for those who run away, the mothers become irregular and their children inherit the irregular status of their mothers.

Estimates of Irregular Migration

As mentioned earlier, the CFO stock estimate also includes estimates of the irregular Filipino migrants in the various countries where Filipinos are present (Table 16.4). Estimating the irregular population is notoriously difficult because

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who move from legal to irregular or vice-versa. It also includes those who have moved in or out of legal or irregular status due to employment transitions (Sarausad and Archavanikul 2014: 57-58).

6. Nicole Constable (2014) has interrogated this issue in Hong Kong, which is a different context compared to the GCC countries.

by definition irregular migrants escape the administrative procedures from which migration data are culled (Massey and Capoferro 2004). CFO uses the Reports to Congress in which sometimes estimates of irregular migrants are missing. The basis for the estimate, thus, is not clear. In the FGD with labour attaches, it emerged that they first try to contact the competent local ministry to obtain information on the number of Filipinos in that country. When such information is not available or is not released, they rely on information from the field, i.e., from the actual cases of irregular migrants handled at the foreign post and from the contacts they have with the Filipino migrant associations. Estimates also have to consider that numbers can vary through the years or according to the time of the year. For instance, the number of runaways in the UAE is currently lower than before – this reflects the lower deployment of domestic workers due to UAE's refusal of the Philippine Embassy request regarding contract verification. In Saudi Arabia, the number of irregular migrants may increase after the Haj to Makkah, when some pilgrims tend to overstay to look for an employment opportunity. A comparison of entry and exit data would provide reliable information on irregular migration. However, it is not known whether and/or how efficiently this procedure is conducted. Considering the methodological weaknesses behind the estimations, data on irregular migrants must be taken as an approximation.

A different glimpse of the irregular migration of Filipinos in the GCC countries comes from data on Filipinos in distress sheltered at the Filipino Workers Resource Centers or similar institutions. They comprise Filipinos who escape from their employers and those who have been in an irregular status for some time and have approached the Philippine authorities to be repatriated.

Table 16.5: Filipinos in distress sheltered at FWRC or similar institutions or repatriated, January to June 2013

	Sheltered		Repatriated	
	Male	**Female**	**Male**	**Female**
Bahrain	2	280	15	157
Kuwait (2012)	1	2,258	36	1,112
Oman		203	8	120
Qatar		1,188	116	833
Saudi Arabia	489	344	1,957	1,175
UAE	1	1,259	209	1,258

Source: Department of Foreign Affairs, Office of the Undersecretary of Migrant Workers' Affairs, Report to Congress, January to June 2013.

Two aspects stand out: the overwhelming number of female migrants in distress including those who have been repatriated; and the distinctive situation in Saudi Arabia, where many male workers are also hosted in rented places or tents prior to repatriation. In regard to the requirement of the no-objection certificate from the employer/*kafeel* for repatriation cases, the labour attaches have reported that the procedures have been streamlined and if the migrant reports immediately to the embassy or consulate, he or she is then presented to immigration authorities within 48 hours.

Typology of Irregular Migration to the GCC Countries

Irregular migration from the Philippines to the GCC countries occurs in a variety of forms.[7] From the Philippines' point of view, a distinction is made between being irregular according to the legislation of the country of destination and being irregular according to the rules and regulations of the Philippines. We will draw a typology on the second aspect, keeping in mind that complying with Philippine rules means that legally deployed OFWs are covered by the welfare and protection programmes extended by the Philippine government. Such benefits derive from membership in the Overseas Workers Welfare Administration, in the Social Security System, and in PhilHealth (health insurance).[8]

Many irregularities can be committed against the regulation of overseas labour in the Philippines. The following are specifically those which render a migrant in an irregular situation.

Avoiding Philippines procedures. According to Philippine laws and regulations, every migrant must register with the Philippine Overseas Employment Administration. Migrants who avoid this procedure and all its requirements are considered irregular migrants. This is done particularly when workers cannot comply with the rules, such as the minimum age (23) for domestic workers. Even if they bypass Philippine procedures, it is still possible for migrants to be admitted and obtain employment in the GCC countries, thanks to the connivance of smugglers and officials at the ports of exit and the cooperation of intermediaries in the destination country. Often the migrant is required first to go to a transit country before arriving at destination,

7. This typology is reconstructed from the information gathered at the FGD with labour attaches, conducted at the Overseas Workers Welfare Administration on April 23, 2015.

8. However, by law, Philippine foreign missions cannot withhold assistance to migrants in an irregular situation. In crisis situations, for example, repatriation assistance extends to all Filipino nationals regardless of legal status.

as it is easier to enter as a tourist in a neighbouring Association of Southeast Asian Nations (ASEAN) country, for which a visa is not required.

Overstaying the Haj. Some Muslim Filipinos utilise the traditional pilgrimage to Makkah as a way of being admitted to Saudi Arabia and thereafter remain to find work. Many pilgrims from other countries also use the Haj to look for employment in Saudi Arabia.

Migrating through illegal recruitment. RA10022 and the POEA Rules and Regulations for landbased workers provide a long list of possible cases of illegal recruitment. The most common violations which render the migrant irregular are:

– *Contract substitution.* The migrant signs a contract to comply with the Philippine regulation and another contract, sometimes in Arabic only, which is enforced and which usually has less favourable conditions for the migrant. In this case, the migrant is legally employed in the GCC country, but cannot seek redress in the Philippines if something goes wrong as he or she is working under the wrong contract;

– *Re-processing of visas.* The agent sells unused visas for which he has the power of attorney to another agent, who uses them to deploy workers who will engage in an occupation different from the one stated in the visa.

Freelancing. Migrants with experience of working in a GCC country and with the right connections find an employer or sponsor who has a job opportunity but does not have the visa. The migrant then buys the visa directly from another sponsor, uses an agency in the Philippines to process the papers, and is able to find employment for himself/herself or for another migrant (often a relative).

Transferring to another country. A less known form of irregularity takes place through transfers within the GCC countries or to other countries in the Middle East. In the first case, the migrant is admitted to a country and hired by the employer, but then either moves to another country with the employer (which is typical of domestic workers) or is handed to another employer in a different country. In the second case, the migrant is admitted to a GCC country, but is then transferred by the agent to another country in the region, where the migrant could not have been deployed because that country is under a ban from the Philippine government. This was how the ban to Lebanon, Jordan, or Syria was circumvented. It is also possible that migrants are temporarily sent to another Middle East country while arranging a visa to return to a GCC country. Such transfers are handled legally by the agents or employers, but do not correspond to the initial authorisation received to go abroad. Similar procedures might involve cooperation among agents in the Philippines and in the GCC countries as well as the consensus of the migrants involved.

The typology illustrates that irregular migration is often undertaken with the migrant's knowledge and consent. At the same time, it shows that migrants rarely engage in irregular migration without the participation of someone else: in most cases, this involves recruitment agencies and government officials; in other cases, the social networks of relatives and friends are the facilitators.

Philippine Policies against Irregular Migration

Philippine policies address irregular migration in direct and indirect ways. Direct policies consist in preparing migrants, making it difficult to forge documents, requiring compliance with the standard employment contracts, and combating illegal recruitment. Indirect policies consist in the overall regulations and institutions to govern migration created to ensure that migrants are protected (IOM and SMC 2013).

Preparing Migrants

To prevent irregular migration, the government has instituted an orientation system that takes place in stages. At the beginning of the process, the migrant is invited to attend the pre-employment orientation seminar (PEOS), which is provided at the local level and which aims at equipping aspiring migrant workers with adequate information and warns them against illegal recruitment and trafficking. Since 1983, the government has instituted a mandatory one-day pre-departure orientation seminar (PDOS) focused on working and living overseas. Besides, some Philippine foreign missions have taken the initiative to provide post-arrival orientation seminars (PAOS) as a follow-up education programme.

Making it Difficult to Forge Travel Documents

Many stories were reported in the past of migrants forging data (like the date of birth) or even identity to obtain a passport. RA 8329, known as the "Philippine Passport Act of 1996," established the requirements to obtain a passport. The introduction of the electronic passport with the biometric data of the holder in 2010 reinforced the security of the document.

Establishing the Standard Employment Contract

The standard employment contract for OFWs consists of minimum provisions in regard to salary and working conditions that a Filipino going abroad should be granted. A Filipino worker is allowed to go abroad only if his/her contract complies

with the minimum conditions stated in the standard employment contract. Various standard employment contracts have been formalised by occupation. This policy has been useful but not completely successful. Sometimes the migrants themselves agree to have a different contract once they are abroad; sometimes contract substitution happens against their will. To avoid this, the Philippine Overseas Labour Offices (POLOs) are tasked to verify contracts. This is difficult to implement because, among others, the destination country sees this practice as a form of interference by the origin country.

Combating Illegal Recruitment

Labour migration from the Philippines is largely mediated by employment agencies. Presently, there are 1,255 licensed recruitment agencies (850 in the land-based sector; 405 in the sea-based sector).[9] Although instrumental for placing thousands of migrants abroad, agencies are also involved in illegal practices. Anti-illegal recruitment policies have been the centerpiece of the Philippine government's fight against irregular migration.

Licensing employment agencies. Only agencies properly licensed by the POEA can engage in recruitment. The licensing procedure ensures that agencies operate according to the provisions codified in the 2002 and 2003 rules and regulations issued by POEA for the land-based and sea-based sectors, respectively.[10] Unfortunately, unlicensed operators still prosper, particularly in the provinces, and sometimes operate in connivance with licensed agencies. The effectiveness of the licensing procedure is also undermined by the practice of licensed principals functioning as cover for foreign agencies, which are not allowed to operate in the Philippines. The main tool in the hands of the POEA against illegal recruiters is license revocation. The POEA website lists agencies in good standing and recommends migrants to deal only with licensed recruiters.

The Anti-Illegal Recruitment Branch (AIR). A specific bureau, the Anti-Illegal Recruitment Branch, was created in POEA to crack down on illegal recruitment actors and activities. The Presidential Task Force on Anti-Illegal Recruitment (PTFAIR) was reactivated in 2011 "to sustain a more focused, coordinated and

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9. Status of recruitment agencies as of June 29, 2015—http://www.poea.gov.ph/cgi-bin/agList. asp?mode=actSB.

10. To balance the proscriptive approach, in 1984 the POEA introduced an incentive system to acknowledge performing agencies. Award recipients enjoy benefits, largely in the form of facilitation of transactions undertaken with POEA (for details, see Asis and Go 2014).

effective programme of action to curb illegal recruitment." It carries out both preventive (e.g., runs information campaigns about illegal recruitment and human trafficking, produces information materials, etc.) and remedial (e.g., surveillance, closure of establishments, assistance to victims, etc.) activities.[11]

Prosecuting illegal recruiters. Illegal recruitment is a crime which carries stiff penalties, according to the law. Victims can lodge a case with PTFAIR at POEA for prosecution. Fifty six cases were lodged in 2013 and 40 in 2014. Of the cases in 2013, ten were dropped, fourteen were terminated, five were endorsed for prosecution, thirteen were submitted for resolution with the Department of Justice, and eight warrants of arrest were issued. Thirty were cases of simple illegal recruitment, nine of large-scale illegal recruitment, five of syndicated illegal recruitment, while 38 were cases of *estafa*.

Anti-trafficking Initiatives

The Philippines ratified the Palermo Protocol in 2003, passed the Anti-Trafficking Act in 2003 (RA 9208), and amended it into the Expanded Anti-Trafficking Act in 2012 (RA 10064). As part of preventive measures, in 2011, the Bureau of Immigration (Memorandum Order No. 2011-011) took on the task of offloading passengers who were found with "fraudulent travel documents" or those who had "doubtful purpose of travel."[12] Persons who had been identified as victims of trafficking can access specific support and assistance to ease their post-trafficking reintegration process. Those who had been trafficked overseas and were accurately determined as victims of trafficking can access support provided by the Migrant Workers and Overseas Filipinos Act.

Assessing Philippine Anti-Irregular Migration Policies

There are no studies which make a formal evaluation of the effectiveness of Philippine anti-irregular migration policies. To some extent, all migration policies are partially ineffective and for various reasons (Teitelbaum 2002; Castles 2004; Thielemann 2004). Migration policies of countries of origin have even lower efficacy in determining migration than policies of countries of destination, which control admission, stay, and repatriation. Nevertheless, some observations can be advanced in comparing the results of these policies.

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11. For more details, see http://www.poea.gov.ph/ptfair/about.htm.

12. This action raised concerns about the constitutional right to travel.

Orienting migrants through seminars conducted at various stages is certainly helpful to the majority of migrants, but it does not eliminate some migrants' recourse to irregular migration channels because migrants differ in terms of needs and possibilities to plan and fulfill the migration project. Financial pressure, family demands, and the opportunity to reach results by cutting corners can lead to the choice of irregularity. Document verification has improved in regard to passport, but it remains inadequate in other areas. The efficacy of the standard employment contract rests on the possibility of contract verification in the country of destination, which also requires international cooperation. Documents submitted for non-working visas must also be authentic. For instance, in an attempt to reduce the abuse of the social visit pass, those going to Dubai, UAE are required to provide affidavits that they have sufficient financial resources and that they will return to the Philippines. However, many such affidavits have been found to be fake. Determining the integrity of documents could be made more effective with tighter coordination among government agencies.

Anti-illegal recruitment initiatives are not fully effective because of many reasons. The lucrative industry of job recruitment has enticed many players, who are now in stiff competition against each other. Competition should serve the interest of migrants, instead it reduces the costs for employers. Also, those who cannot compete might decide to earn through irregular practices. The distinction between recruiters and *kafeels* is often blurred and Philippine agents might sometimes be stand-ins or dummies, when in fact, the agency is owned or controlled by the *kafeel*. The recruitment industry is often depicted as lacking solid ethics in its procedures. This cannot be generalised and efforts have been made to establish codes of conduct and reform the sector, also in cooperation with other countries of origin.[13] To date, the results of such efforts are far from satisfactory.

In addition to inherent deficiencies, the inefficacy of anti-irregular migration policies at the origin also depends on three general factors. The first is that policies, although well formulated, are poorly implemented. Proper implementation requires a prepared, adequately paid and efficient bureaucracy. The number of personnel in the migration agencies has remained about the same although the number of Filipino migrants has doubled or tripled. Labour attaches in foreign posts have lamented that they are too few for the number of migrants abroad. A more adequate and prepared personnel would ensure better monitoring of law enforcement.

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13. The Alliance of Asian Associations of Overseas Employment Service Providers (AAA-OESP) is engaged in furthering ethical recruitment.

The second is that migrants are sometimes victims and sometimes partners in irregular migration. To ensure compliance, there should be a premium to legality. Such premium could consist of welfare benefits that regular migrants are entitled to while the costs of irregular migration should be steep. However, welfare benefits for regular migrants are not sufficient to discourage some migrants from resorting to illegal channels. And the costs of irregular migration do not dissuade migrants because ultimately the government comes to the rescue. The public outcry against the execution of Flor Contemplacion, a domestic worker in Singapore in 1995, contributed to strengthening the protection base of the Philippines' labour migration policy, which may have had the unintended consequence of encouraging risk-taking in migration decisions.

Finally, stemming irregular migration at the source cannot be achieved solely by the origin country as migration is a transnational phenomenon. The intractability of irregular migration is in part the result of insufficient coordination and cooperation among countries. Employment agencies, intermediaries, and migrants can find ways to exploit conflicting interests of national policies. Irregular migration has an inherently international dimension; reducing it requires international cooperation.

Conclusion

This chapter has illustrated the importance of the GCC countries as destination of migration from the Philippines, the profile of Filipinos working in those countries, the typology of irregular migration based on Philippines laws and regulations, and the policies against irregular migration adopted by the Philippines and provided an assessment of such policies. The impressive menu of initiatives would suggest that the Philippines is in control of migration and irregularities are minimal. In fact, many stories of Filipino migrants in distress are reported by the media, and often such stories concern migrants who left as regular migrants and became irregular migrants. We have indicated several reasons why irregular migration persists: migration pressure, inadequate implementation and monitoring of policies, the difficulty to reduce unethical practices in the recruitment industry, the insufficient incentive for migrants to avoid irregular migration, and inadequate international cooperation.

Ultimately, there are some questions that persist in efforts addressing irregular migration.

Migration is an attempt to overcome the unequal distribution of opportunities, but migrants do not get a fair share of the wealth created by migration. Irregular migration can be considered as an attempt by migrants to get a larger share of the

pie. Is it possible that a better distribution of migration benefits (beginning with reducing migration costs) might be more effective in reducing irregular migration than increasing regulation and penalties?

Irregular migration disproportionately affects women, in particular domestic workers, both in the disregard of policies in the country of origin as well as in the disregard of their rights in the countries of destination. The international community has provided a legal framework for the protection of the rights of domestic workers (ILO Convention No. 189). However, ratification of international instruments is not very popular in the region. Can complementary solutions, such as professionalising the sector and providing orientation to employers, contribute to reducing irregularities by and against domestic workers?

Migration policies in the country of origin are designed for the protection of the most vulnerable migrants, those with a deficit in negotiating power. What are the costs of protection and who pays for them? Can the costs of protection be distributed to ensure that protection does not encourage risk-taking?

Irregular migration will not go away soon. While it is possible that countries can accept or tolerate some level of irregular migration, tolerance should not be allowed for irregularities against migrants. No safe and sound migration can take place without respect for the human rights of migrants – and yes, irregular migrants have rights too.

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XVII

Conclusion:
Irregular Migration - Has It a Future in the Gulf?

Philippe Fargues*

The year 2015 and the few years preceding will be remembered as those of the first global migration crisis. It is not that the number of migrants and refugees has suddenly exploded. Globally, migrants and refugees represent, as usual, a tiny drop compared with the immense waves of back-and-forth travellers who find no obstacles in crossing borders for business or leisure. The real novelty in the 2010s was not the fact of migration so much as its rejection by governments and public opinion. As a result of increased difficulties in obtaining visas or extending expiring permits of stay, irregular migration became one of the top issues on the global agenda. The detection, detention and deportation of migrants in an irregular situation became common practice in the Gulf as elsewhere.

Human beings are intrinsically mobile. Whether they move for issues of survival or prosperity, people find reasons to sustain their quest for safer and better lives when their homelands do not meet their needs or aspirations or when citizens are put at serious risk. Once on the move, people are not easy to deter. States, meanwhile, challenged by globalisation and exploding communication and connectivity between places and people, tend to hang on to sovereignty: borders,

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flags, identity and the containment of otherness. The more the planet shrinks, the more states erect barriers. As these two trends collide — on the one hand, people's need for circulation and, on the other, states' concerns about openness — international migrants, all too often, find themselves in an irregular situation.

The Gulf States are among the most sought-after destinations by global migrants. Migrants in the GCC remitted $105 billion to their home countries in 2015, representing 18% of the $581 billion remitted worldwide. From South Asia to East Africa and from the Mediterranean to the Indian Ocean, tens of millions of people are living off money sent by members of their household or their community, who left their homes to work in the Gulf. Labour mobility has been, over the last half a century, the royal avenue by which part of the gigantic oil wealth could spread beyond Gulf citizens and reach the working classes of the developing world. Money earned in the Gulf is essential for scores of Asian, Arab and African families to build houses, to educate their children, and to set up businesses. In brief, migrants have pressing reasons for going to the Gulf and staying there: no matter what hurdles must be overcome, and what risks are taken.

The Gulf States, meanwhile, need migrant workers to address acute imbalances between economy and demography, between enormous incomes and scarce local working population. Migration, however, is subject to policy tensions that are specific to these states. Their oil wealth has grown much faster than their native population, and they have called in massive numbers of foreign workers. At the same time, they have always adamantly kept a strict separation between nationals and non-nationals. They have, in effect, refused a classical immigration process under open markets by which part of the newcomers and their children gradually become full members of the host society. The Gulf States have set up rules to make sure that the foreign nationals they employ will not overstay their work contract and end up settling permanently. They have designed policies for reducing their dependency upon migrant workers by nationalising the workforce.

But facts have resisted policies and the proportion of foreign nationals has continuously grown in the labour force and in the population over the last fifty years. There is a strong feeling in the Gulf that there are too many foreign nationals and that states are helpless to curb the trend. Moreover, the Gulf States have all maintained a traditional sponsorship rule (*kafala*) which delegates to citizens the surveillance of non-citizens and individually binds each foreign national to a national sponsor. But the formal *kafala* rule grates against other, informal rules: those of market economies which require labour mobility, and those of free individuals intent on deciding for themselves and ready to do whatever it takes

to escape exploitative or abusive sponsors. Throughout this volume, evidence was gathered to show how in all six GCC states the *kafala* system is one of the root causes resulting in some migrants falling into an irregular situation, and leaving one's sponsor is in certain cases the best option in terms of agency and income, even though it is contrary to the law. An additional major cause for irregular migration is specific to Saudi Arabia: the pilgrimage to Makkah that brings millions of believers and a number of clandestine migrants who vanish into the country every year.

While the exact magnitude of irregular migration in the Gulf States is difficult to estimate, two facts emerge. First, the proportion of migrants in an irregular situation varies enormously from country to country. Saudi Arabia, in addition to the factors shared by all GCC countries, is exposed to unauthorised entries across a long land border with non-GCC states and to a unique sort of visa overstayers because of the presence of the holiest places of Islam. The country also has the highest numbers of migrants in irregular situation in absolute and relative terms. Second, the GCC states are no exception. They just fall into the wide spectrum of situations observed across the world. In none of them is irregular migration the overwhelming issue it has become in the USA where 27% of the 42.4 million immigrants, i.e., 11.3 million people are believed to live and work with an unlawful status: though it is estimated in this volume that up to one third of the three million Indians in Saudi Arabia would have some kind of irregular status. Moreover, in none of the Gulf States has the detention and deportation system become as large as in the USA.

More than numbers, it is the treatment reserved for migrants in an irregular situation that seems to mark out the Gulf States. Arrest and detention are, in the Gulf, 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. Because domestic workers, most of whom are women, are employed by private households and therefore not protected by labour laws, which in the Gulf apply only to businesses, they are particularly vulnerable to arbitrary sanctions and jail. This is true even when they are the victims (in particular of sexual exploitation) and their sponsors the culprits. It must be noted that the International Labour Organisation's convention of 2011 concerning decent work for domestic workers (ILO Convention No. 189) has been, to date, ratified by only 22 countries, none of them in the region relevant to Gulf migration except the Philippines.

Five main causes of irregular migration were identified in this volume, acting in isolation or in combination: entering without a proper visa; overstaying once a visa or residence permit has expired; being employed by someone who is not the sponsor; absconding from a sponsor; and less significant in statistical than in ethical terms, being born in the Gulf to parents with an irregular status. How could foreseeable developments in the Gulf, in migrants' origin countries and at international level affect these various causes and what do future trends of irregular migration to the Gulf States look like?

The current oil crisis – with Brent oil price falling from over $100 per barrel in the early 2010s to below $50 since mid-2014 – sets the stage for deep changes in the political economy of the region and consequently both regular and irregular migration. Oil revenues are likely to play a decisive role in triggering long-awaited economic transitions across the region. At the time of writing, falling oil prices are driving governments in the Gulf to overhaul economic policies and to speed up the move towards diversified post-oil activities. Large construction companies have already started to drastically cut their workforces, and it is likely that a number of labour-intensive projects will be cancelled. Because the vast majority of workers in private firms are foreign nationals, project cancellations will translate into job losses for migrant workers. Low-skilled activities, which are those with the highest prevalence of irregular status, will likely be the most affected, and depleting demand in labour-intensive sectors may eventually curb job opportunities that support informal employment and irregular migration.

Moreover, making better use of the enormous investment that states and households have made on education and fully employing their natives' skills is a priority in all the Gulf States. Falling oil revenues will be seized upon by governments as an opportunity for stepping up the nationalisation of labour force policies. Fewer and fewer are able to rely on governments for finding jobs in the public sector: young generations of nationals will, meanwhile, turn to the private sector, something their fathers (and mothers) avoided. Substituting nationals for foreign nationals in private firms will mostly happen at mid- or highly-skilled levels where irregularity is uncommon. Nationalisation policies can, then, be expected to have little impact on irregular migration. Conversely, irregular migration does not create unfair competition with citizens and, therefore, is not a matter of concern for them.

However, other responses to the current economic setbacks could go in the opposite direction. Non-oil dependent options that might make Gulf economies more competitive at the world level include the establishment of free trade zones and

incentives for direct foreign investment. If the newly-created industries follow the pattern of current industries and mostly hire migrant workers, then the remarkable dependency on a foreign workforce will not fall off. In either case – if fewer migrants are brought in or if reliance on migration continues – irregular migration will likely rise. This would be, first, because of the resilience of workers deprived of their jobs and, second, from the already noted contradiction that migrants might be unwelcome to governments, but they are sought after by employers.

Additional responses to persistently falling oil revenues include fiscal adjustments and reform of the *kafala*. Taxing labour incomes (of migrants only or of nationals as well?), taxing migrant workers' remittances and raising fees on residence permits are among the many measures currently under discussion. They would all make migration to the Gulf less attractive and possibly deter some migrants from staying irregularly in spite of the risks this entails. Abolishing or reforming the *kafala* – a critical change, long-discussed but never really begun – could also be part of a package to move away from migration-driven economies. By the same token, it would remove one of the main causes for migrants falling into irregularity in the Gulf. Indeed, if the obligation of a sponsor was lifted, the widespread, lucrative practice of sponsoring foreign workers without employing them (visa trading) would become irrelevant, and labour mobility would no longer be impeded by a rigid bond between a worker and a sponsor. The shift from a private to a public sponsor as contemplated in Qatar would produce a comparable result. In brief, the Gulf States may be on the verge of great changes brought about by the oil crisis. Novelties such as nationals' full employment, including in the private sector, income taxation or amendment of the *kafala* would all mean that a shift in political culture, from a rentier to a productive model, was underway in the Gulf.

Irregular migration was also found in this volume to be linked with migrants' origin countries. First, failures in the homeland's labour market can be drivers of irregular migration. In a number of countries, prevailing informal employment with no contract has developed a culture of unregistered and volatile work which predisposes the migrant to leave a job and a sponsor once they are abused and exploited, no matter what the consequences are for their contract and legal status. Moreover, the unavailability of jobs in the origin country discourages the workers whose visa expires from returning to their homeland, thereby encouraging them to overstay in the Gulf. Second, failures in the institutional framework of emigration at origin can trigger irregular situations at destination. It might be that institutions in charge of placing their citizens on foreign labour markets lack the means to monitor their actual terms of employment, or, indeed, the bargaining power to

defend their workers abroad. It can also work the other way around when states of origin have set minimum standards to allow migration (in terms of age, salary and benefits at destination, etc.) that the migrants did not respect thereby losing their state's protection. There is a growing tendency among migrant-sending countries to "lay claim" to their expatriates: encouraging migrant ties with the homeland and defending their position in the host country are common policies today. Promoting bilateralism in the governance of migration, and closer cooperation between the Gulf States and migrant workers' origin countries in matters related to migration and employment, could indirectly help in curbing irregular migration.[1]

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1. Philippe Fargues, Françoise De Bel-Air, Nasra M. Shah "Addressing Irregular Migration in the Gulf States," GLMM Policy Brief No. 1/2015, Gulf Labour Market and Migration (GLMM) Programme of the Migration Policy Center (MPC) and the Gulf Research Center (GRC) - http://gulfmigration.eu/media/pubs/briefs/GLMM%20Policy%20Brief%20-%20 No.%201%20-%202015%20-%20Gulf%20Irregular%20Migration%20-%20Final.pdf.

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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.