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

Üstübici Önay, A.E.

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Chapter 1: Introduction

André (42, from Cameroon) came to Morocco in May 2011, with the intention of going to Europe. After entering through Oujda, André spent several months in Tangier and in the forest near Ceuta and made several attempts to cross: “When you make several attempts and when it does not work, you need to reflect on it... I have attempted several times in Tangier, several times in Ceuta. It did not work... We could organise among ourselves, buy a zodiac and attempt.”... “I told myself, I need to change, I would not say change tactic, but my idea to go to Europe. I have decided that I can make my life here and in 2013, the King has given his discourse for the integration”. Since the summer of 2012, he has been involved with a migrants’ solidarity association. The association was founded to raise awareness against racist attacks in poor neighbourhoods of Rabat. André has been doing voluntary jobs in collaboration with Moroccan associations and has actively worked to raise migrants’ demands for rights and for regularisation. While still dreaming of going to Europe, he is waiting to be regularised.

Harun left Afghanistan at the age of 17, in October 2009, with the son of his uncle and another two friends from his village, intending to join his brother who was living and working in Istanbul. After a three-week stay in Iran, they found a smuggler to take them to Istanbul where his elder brother was living and working with other young men from his town. After crossing the border by foot, the smuggler first took them to the UNHCR (UN High Commission for Refugees) office in Van, one of the cities at Iranian border. Harun went to the office to register without any knowledge of the asylum process in Turkey. “I wanted to come to Istanbul, did not want to stay there. I never told them this.” During the application process, he explained that he came to Turkey to work and never mentioned his relatives in Istanbul or the smuggler. After leaving Van, Harun never followed his asylum file. He arrived Istanbul and settled in a flat with his brother and other Afghan single men. In the last three years, he has been living and working in Istanbul, moving from one workplace to another. “Then, in 2009, the work was scarce in Turkey. I had no jobs for the first two months. Then, I went to work in leather.[...]When the leather season was over, I left the job and went into the bag atelier”. He was later joined by his family members who also crossed the border without documents. As of August 2013, the family had a pending residence permit application through their relatives who were among the Afghan Uzbeks settled and naturalised in Turkey, back in early 1980s.

Juxtaposing the story of André and Harun, one immediately thinks about fragmented and dangerous journeys migrants have to go through because of the mere existence of borders. Conditions of André’s and Harun’s journeys to the West are similar in the sense that they risk their lives to cross borders, get help from smugglers,

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1 All names are pseudonyms, unless indicated otherwise.
face the threat of detention and deportation, to generate better opportunities in life. While there is a growing literature on borders and border crossings, this study is about experiences of settlement beyond the borders of the European Union (EU). Next to discussing the changing politico-legal environment, I incorporate migrant perspectives to help us grasp processes through which André has become a political activist for migrant rights in Rabat, and Harun a textile worker in the informal sector in Istanbul. Interestingly, both had prospects on legalizing their illegal status but through different means. In a broader discussion, I will also shed light how their common feature -- their “uncertain legal status” (Menjivar, 2006) within national territories they reside -- has been produced by law, practiced and negotiated by the state, by civil society actors, and by migrants themselves. Against the backdrop of ever-changing European migration policies, my research questions what migrant illegality “generates or enables and for whom” as well as how and whom it excludes (Menjivar and Coutin, 2014: 329).

1.1 Researching migrant illegality beyond EU borders

Concerns over stopping irregular migration within the context of declining economic growth and the securitisation of immigration led to a more restrictive approach towards immigration and asylum in the developed world (Sassen, 1999). Particularly in the European migration system, emerging norms of EU migration controls has led to the expansion of security measures towards the external borders of the EU. This research has been motivated in the first place by the conviction that it is critical to explore that we acknowledge what is happening beyond the EU borders in terms of the production of migrant illegality and migrants’ access to rights. This study does not only conceptualise irregular migration in the Mediterranean as an externalised EU border problem, but it also looks at different ways in which irregular migration becomes an issue of governance at the periphery of the EU. It is necessary for research to explore the implications of the rising concern with stopping irregular crossings at the EU borders for the wider region and particularly for the people who suffer from policies and practices aiming at curtailing human mobility into the EU.

This study analyses the production of illegality through emerging immigration policies and practices from a comparative perspective. In fact, comparative studies on migrant illegality are rare and rather new (Garcés-Mascareñas, 2012; Lentin and Moreo, 2015). Furthermore, few studies frame migrant illegality within an international context in which illegality has resulted from interacting control and border regimes (Menjivar, 2014). Also, I look at how migrant illegality influences migrants’ participation in economic, social and political life and how migrants challenge their illegal legal status at individual and communal levels. Given the recent and radical changes on migration policies within the EU and restricting controls along the EU borders, the thesis promises to explore how migrant illegality has been translated into these rather marginal spaces of immigration, beyond these borders, into what I refer to as new countries of immigration. Morocco and Turkey, where
immigration has become a subject of governance only recently and have been subjected to geopolitical pressures to stop irregular border crossings into the EU, provide underexplored ground for re-thinking the processes through which migrant illegality has been produced, experienced, negotiated and contested.

Turkey and Morocco, as two countries at the periphery of the EU, have been subjected to the externalisation of EU migration policies. In this context, a growing body of literature on EU migration controls (on critical border studies) has focused on the external borders of the EU (Wunderlich, 2010; Carling, 2007; Collyer, 2007; Mountz and Loyd, 2014; Tsianos and Karakayali, 2010; Pallister-Wilkins, 2015). Turkey and Morocco are increasingly hosting immigrants who are either on their way to Europe or who have crossed borders to look for opportunities to work, study and/or settle in relatively more developed countries in the region (İçduygu and Yükseker, 2012; De Haas, 2014). Despite this general observation on changing mobility patterns, less research has looked at the incorporation experiences that migrants and asylum seekers2 have before they pass to Europe (Collyer, 2007; Suter, 2012; Danış, Taraghi and Pérouse, 2009). Even less research has explored emerging forms of the governance of irregular migration at the periphery of Europe and migrants’ experiences of informal incorporation from a comparative perspective. By focusing on Turkey and Morocco as new immigration countries, the research brings these two levels of analysis together. These are institutional, policy-oriented analyses on the impact of external dimensions of EU migration control policies and socio-legal analyses on the legal production of migrant illegality.

1.2 Research questions

The research questions address the link between migration governance and migrants’ incorporation at the periphery of the EU to understand how irregular migrants seek legitimacy, as border closures extending into the external borders of the EU make them illegal.

- How has irregular migration become a new subject of governance and impacting irregular migrants’ access to rights and legal status?

The main research question is divided into interlinked three sub-questions, reflecting the multiple level of analysis I embraced in addressing the question of migrant illegality:

• How have changing policies and practices regarding the rights of irregular migrants produced migrant illegality in Turkey and Morocco as de facto immigration contexts?

2 While the research does not directly deal with asylum and refugee issues as it is a specific area of international law, references are given to asylum issues especially when the issues pertaining to asylum and irregular migration are intermingled.
• How do migrants experience their illegality and negotiate their presence in society in general, and their access to rights and to legal status in particular?
• Under what circumstances do irregular migrants mobilise to claim their rights and legal status?

1.3 Terminology and situating questions in the literature

I use the concept of governance to refer to a multiplicity of actors and to policies as processes rather than end products. The use of the term indicates that the focus is “on processes of rule and not only on institutions” or on formal rules, but also on informal practices (Lemke, 2007: 53). The term as I use it also refers to the fact that, in the realm of international migration, decisions and practices are contested by a variety of state and non-state actors, and as a result, governments are not the only authorities of rule-making (Betts, 2011: 4). Meanwhile, the distribution of power and resources amongst these actors is unequal (Grugel and Piper, 2011). The research suggests that changing migration policies and their enforcement in Turkey and Morocco have given rise to distinct forms of governance. While existing research has explored changes in the legal framework and the emergence of rudimentary immigration regimes in both Turkey and Morocco (Elmadmad, 2011; Kirişci, 2009), little has been written on how non-state actors such as civil society negotiate state policies and practices and how migrants themselves have been influenced by this governance and have become part of it. While I use the term governance, it is beyond the scope of this research to offer a critical approach to the thriving literature on governance. My focus is on empirical and multi-level manifestations of policies and practices.

Given the permeability among different categories, I use irregular migrant as a generic term to refer to foreigners who cross the border without authorisation and stay and work in a nation-state territory. Given the permeability between the categories of irregular migration and asylum and the malfunctioning of the asylum system in both contexts, migrants fluctuate between different legal and policy categories such as transit migrant, irregular migrant or asylum seeker (Collyer and de Haas, 2012). Therefore, migrants’ and asylum seekers’ experiences in the urban labour market, their relations with the police and the strategies they use to obtain access to rights and legal status are comparable in both contexts.

Migrant illegality as the central concept of my inquiry relies on Willen’s (2007) conceptualisation of the term. For Willen, migrant illegality is conceptualised: “first, as a form of juridical status; second, as a sociopolitical condition; and third, as a mode of being-in-the-world” (Willen, 2007: 8). In particular, I explore the implications of the first two components of migrant illegality on the third. Following this tripartite definition, the research deals with three bodies of literatures informing irregular migration research in general and migrant illegality research in particular to solve the
puzzle of irregular migrants’ access to rights and legal status. These include socio-legal studies on the legal production of migrant illegality, sociological research on irregular migrants’ subordinate forms of participation in society and social movements literature that particularly focuses on cases of migrant mobilisation despite their lack of political recognition.

Relying on socio-legal studies on the legal production of migrant illegality, I transpose the question of the production of migrant illegality as a “juridical status” onto new immigration countries where migrant illegality has resulted from external border relations. The EU has largely impacted both Morocco’s and Turkey’s immigration policies, hence the governance of irregular migration. I suggest that irregular migration has become an issue of governance in Turkey and Morocco in the last decade. In these contexts, state policies are shaped through the interaction of external pressures, i.e the EU immigration regime and domestic dynamics. In other words, the interaction between EU and domestic factors have produced these transit spaces, which are unique spaces giving rise to particular forms of the production of migrant illegality.

What Willen labelled the “socio-political condition” widely refers to the labour market conditions that incorporate migrants (Calavita, 2005; Garcés-Mascareñas, 2012). Studies have shown that the reproduction of the category of irregular migrant may serve the purpose of producing cheap labour for the economy (Calavita, 2005). Therefore, several cases discussed in the literature focus more on labour demands. As implied above, the production of illegality in this research has been an outcome of external pressure that has occurred in the absence of or regardless of the state’s explicit demands for labour. Using sociological research on irregular migrants’ subordinate forms of participation in society, the research empirically questions how this external border closure interacts with labour market conditions in so-called transit spaces.

Regarding migrant illegality as a “mode of being-in-the-world”, I blend sociological literature on migrant incorporation into society and on contentious politics. The study questions the interactions between social and institutional mechanisms that give rise to very different styles of incorporation. As implied in the ethnographic vignettes juxtaposing the stories of Haran and of André, the thesis explores how migrants of irregular legal status in Morocco have managed to raise political demands for their entitlements for rights and legal status despite stigmatising and hostile contexts. Conversely, it questions how irregular migrants in Turkey have become de facto members of the society without political voices. By explicating the mechanisms of migrant incorporation styles, my empirical findings question if it is necessary for migrants to be political subjects in order to legitimise their presence. Furthermore, I question if the extent to which migrants’ political claims for legal status depends on their presence in the labour market.
An analysis of these three components of migrant illegality, that is juridical status, socio-economic conditions, way of being-in-the-world, requires a multi-level analysis of the legal framework and implementation on migration and settlement of foreigners, of migrants’ experiences of participation in both social and political spheres. Through qualitative research, I reveal policies and practices relating to irregular migrants’ access to legal status and rights that are enacted by diverse actors within the state and civil society and also amongst migrants. My focus, here, is on the following factors of governance that impact irregular migrants’ experiences of incorporation: i) laws (difficulties of legal incorporation) and their implementation (how migrant illegality is produced, and deportability is experienced in practice), ii) the labour market conditions (migrants’ experiences of economic incorporation), iii) the resources available for migrants’ access to rights and to institutions enabling these rights (the institutionalisation of bureaucracy and civil society), and iv) the political resources enabling migrants to seek rights and recognition. This study uses a comparative research design to shed light on the processes that give rise to different incorporation styles in different contexts, intending to contribute to the emerging literature and theorisation on forms of migrant illegality. The case selection is based on these countries’ similar emigration histories, directed towards Europe since the second half of the 20th Century, and on their similar geographical locations at the periphery of Europe, which is a factor that make them de facto lands of immigration. I use the terms de facto lands of immigration together with new immigration countries to underscore that these countries have become transit and destination points without their explicit political will or economic need for immigration. At the time of the field work, both contexts were at the eve of substantive legal changes concerning the governance of irregular migration. The volume of regular and irregular inflows of migrants to Turkey and Morocco is still relatively low (compared to established immigration countries). The research does not include the impact of the Syrian conflict, as it is a mass flow. Syrian refugees in Turkey are under temporary protection of the state. Yet, the mobilisation for the rights of irregular migrants is surprisingly more intense in Morocco in spite of the low numbers as also indicated in the story of André. Through the empirical discussion in the two contexts, I focus on the interrelatedness of the production of migrant illegality, the production of a quiescent labour force and mechanisms of migrant activism. The thesis aims to inform more general discussions and theories of how and through which mechanisms marginalised and legally excluded groups gain legitimacy.

3 However, there will be occasional references to the case of Syrian refugees to indicate the drastically changing scene of immigration in Turkey.
1.4 Structure of the thesis

Given the main theoretical, methodological and empirical motivations of my research, the thesis is structured in five chapters. In Chapter 2, I frame the conceptual and methodological tools that I used in my study. I sketch out the theoretical implications of the production of migrant illegality and migrants’ incorporation for new immigration countries. I raise theoretical and empirical questions to be resolved in later chapters: How do new laws and institutions, practices of state and non-state actors, as well as socio-economic structures shape migrants’ strategies to access rights and legal status? The second part of the chapter elaborates on the methodological approach. Here, I elaborate on the logic of a comparative research design, the multi-layered data collection process and the challenges of conducting similar fieldwork in two different contexts. I also discuss the ethical issues emerging from my fieldwork experience.

Chapter 3 explores how the international context contributes to the production of migrant illegality in new immigration countries and also reflects on domestic factors. This is a comparative chapter that describes the external and internal dynamics through which irregular migration has become a policy concern. The impact of the international context, mainly the EU policies leading to the emergence of transit spaces, is taken as a distinctive aspect of the production of migrant illegality in the contexts in question. In order to help the reader to follow the line of the argument in terms of practices of irregular migration in the following chapters, I provide background information on the context within which migrant illegality is produced. The emergence of Morocco and Turkey as transit spaces, the EU’s impact on the emergence of immigration and border policies and the political and institutional context within which policies and practices towards irregular migration have taken place are explained from a comparative perspective. Thus, this chapter contributes through its focus on the international and national dynamics that impact the production of migrant illegality, offering insight on the implications of this interaction from a comparative perspective.

Chapters 4 and 5 focus on practices that relate to the production of migrant illegality and migrants’ incorporation experiences in Morocco and Turkey, respectively, in the post-2000 period, introducing perspectives from migrants and civil society actors. Detailed analyses are provided on the practices of producing (reinforcing, tolerating) migrant illegality and on migrants’ access to the right to stay and to services. I discuss how migrants’ experiences of incorporation are shaped by state practices and policies as well as the structure of the labour market and the interventions of non-state actors. I suggest that individual and communal strategies are available for migrants to get access to rights and legal status. The chapters answer one major sub-question: “How do migrants seek legitimacy and access rights and legal status, as nation-state policies and practices make them illegal?” Chapters 4 and 5 are structured as mirror chapters to enable interested readers to cross-read sub-sections.
chose to explain each country case separately to enable the reader to follow the interaction amongst the production of migrant illegality, migrants’ experiences of incorporation and their strategies for accessing rights and legal status in each country case.

Building on the insights of Chapters 4 and 5, Chapter 6 is a systematic comparison of the production of migrant illegality and irregular migrants’ experiences of incorporation at the periphery of European borders. The chapter argues that the production of migrant illegality arguably gave rise to different styles of incorporation despite the similar international context that led to the production of migrant illegality at the edge of European borders. Thus, Chapter 6 refines the findings of my research by explaining the prevailing forms of economic, social, political and legal incorporation in both contexts. After sketching major differences in migrants’ experiences of incorporation (without overlooking similarities), the concluding chapter refers back to theoretical and empirical puzzles that were introduced in Chapter 2 on different aspects of migrant illegality. As discussed in the concluding chapter, findings of the research are prone to generate hypotheses for further studies of the incorporation of irregular migrants in new as well as old immigration countries.