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

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Chapter 6: Migrant illegality beyond the EU borders: Turkey and Morocco in a comparative perspective

How irregular migrants become legitimate subjects as laws make them illegal?

Introduction

This chapter frames migrant illegality and patterns of incorporation in Turkey and Morocco within a comparative perspective. Focusing on the link between practices of migration controls (governance), irregular migrants’ participation in society (migrant incorporation) and migrants’ access to rights and legal status, the comparison highlights two interlinked questions: First, how does the presence of irregular migrants, despite their lack of legal status, become legitimate within social, economic and bureaucratic interactions? Second, what underpins differences in mechanisms through which migrants gain legitimacy? As promised at the introduction of the thesis, the comparison aims at explaining why certain aspects of migrant illegality and of incorporation gain legitimacy over others in particular contexts.233 Before engaging with the findings of this comparison at a more theoretical level in Chapter 7, this chapter provides preliminary explanations of contrasting mechanisms between the production of day-to-day legitimacy in the absence of political voice in Turkey and the process of gaining political voice, hence legitimacy with very limited forms of daily inclusion in Morocco. In line with the structure followed in Chapters 4 and 5, the discussion in this chapter displays common and different features of migrant illegality in terms of perceptions of deportability, economic participation, access to rights, to institutions and of how mobilisation for legal status that have emerged in both field sites.

6.1 Deportations and perceptions of deportability

Interceptions and deportations have become major tools for controlling migration in the context of extended EU migration controls into neighbouring countries. Deportation related practices such as pushbacks by European border guards, removals to non-EU borders, detention conditions and denial of access to asylum procedure have undermined migrants’ human rights at the edge of the EU. Human rights advocates in both nation-state contexts have criticised such practices. A particularly contested aspect of deportation practices in Morocco has been the removal of migrants apprehended along the Morocco-Spain borderland to the

233 Chapter 7 will engage in theoretical reflections and on contributions to literature, based on these preliminary explanations.
Morocco-Algeria border. Deportations and removal to the border have constituted, until very recently, the main migration control policy by the Moroccan government. Similarly, the critiques in the Turkish case have focused on the widespread use of detention as an irregular migration control strategy, the unfavourable conditions of detention centres and detainees’ problematic access to a functioning asylum system.

In both cases, migrants have pushed back from EU borders; those waiting to plan their journeys to Europe have mingled with other groups of migrants that have settled in bigger cities. The blurring distinction amongst transit migrants with alleged aspirations to cross to Europe, asylum seekers and economic migrants is a common attribute of migrant incorporation, seen both in Rabat and in Istanbul where most of the interviews with migrants in urban space took place. Policies and practices aiming at stopping irregular border crossings into the EU have rendered migrant groups in both contexts, especially those without legal status, “deportable” regardless of their aspirations to go to Europe.

Despite similar critiques of Turkey and Morocco’s border and deportation policies and practices, the findings indicated a striking difference in irregular migrants’ perceptions of their deportability from the urban space. What was striking in the Moroccan context is that mass deportation practices are not limited to border areas. Migrants who are semi-settled in urban areas are also targets of removal by the border practices. In this sense, deportations are more than Morocco’s response to the force of the EU’s pressure to keep migrants away from the EU borders. Security forces have used removal to the border as a primary means of irregular migration control. Parallel with contestations of deportation practices along the EU border, stakeholders and undocumented migrants, alike, protested those practices of urban raids by the police, articulating that deportation has become part of the daily reality.

On the contrary, the feeling of being at ease with one’s illegal status in the urban space, despite a perpetual sense of deportability, has been widely raised by migrants in Istanbul. Surprisingly, migrants from nationalities that are most represented in deportation figures such as Afghans, expressed their perceptions of toleration by the police. Similarly, those from African countries who are one of the most marginalised groups in the socio-economic sphere because of their physical visibility, recent migration history and lack of ethnic and linguistic ties have expressed being at ease with security forces. Police raids in urban areas occasionally occur but mainly target drugs, human smuggling and prostitution related cases. “The police would not touch you if you are not doing anything illegal” is a commonly recited narrative by migrants. Civil society representatives confirm the observation that the police do not systematically inspect urban neighbourhoods and workplaces. Meanwhile, migrants have been subject to random checks, arbitrary practices and opportunistic types of abuses. In response, most migrants are acquiescent neighbourhood dwellers and workers, knowing that being otherwise may endanger their tolerated illegal status, hence the legitimacy of their presence.
The cases have revealed differences between deportability as part of the daily reality in Morocco and as a possibility in Turkey. Meanwhile, the comparative analysis should not imply that informal arrangements with security forces do not happen in Morocco. Indeed, migrants in the Moroccan context have also occasionally revealed their experiences of being tolerated by security forces despite their illegal or semi-legal status. In both cases, there are groups that are more tolerated than others. Migrants make conscious attempts to make their presence legitimate. The possession of certain identification papers, even though these are not required legal documents, may be used to avoid trouble when faced with the police and may lessen one’s perceptions of deportability. Despite similarities in the way illegality is negotiated at street level in both contexts, civil society, migrant activists and non-activist migrants in Morocco have complained about urban raids, police and neighbourhood violence much more than their counterparts in Turkey. This is telling in terms of the connection between migrant deportability and pro-migrant rights mobilization.

The connection between practices of deportability and politicisation is worth exploring in both cases. Peutz and De Genova (2010: 19) have suggested that deportability does not necessarily make migrants passive, in contrary it may also mobilise them towards collective action. However, the connection between deportability and collective action cannot be taken for granted. The situation giving rise to widespread mobilisation in the Moroccan case should be contextualised within the broader policy context. First, as explained in Chapter 3, the ongoing state-led politicisation has depicted irregular migration as a security threat since the early 2000s. In relation to this criminalisation of irregular migration by law, mass deportations are directly used to curtail irregular migrant presence on Moroccan soil. Such explicit critiques of police and border violence by pro-migrants’ rights group, including migrants’ associations themselves, have emerged as a response to this particular top down politicisation process.

Activists in Turkey also contested deportation and detention practices, albeit with a lesser intensity. One can fairly ask why such a mobilisation movement has been limited in scope, in Turkey. On the one hand, Turkey seems to display lower degrees of state-level politicisation of the presence of irregular migrants in the country. Irregular migration policies are seen within the technical aspects of the EU accession process. The rather low level of politicisation of the issue is coupled with law-enforcement officers turning a blind-eye to the presence of irregular migrants, especially to the ones who seem to take part in the informal urban labour market.

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234 According to the GADEM report, tolerance by security forces is more common in Southern Morocco where, most migrant overstay their visa and migrants have more opportunities in the labour market (GADEM et al., 2014).
6.2 Socio-economic participation and daily legitimacy

The connection between migrant deportability and migrant mobilisation can be better comprehended by looking at the functioning of migrant illegality in social and economic life (Coutin, 2000; De Genova, 2002; Calavita, 2005; Willen, 2007). As widely discussed in irregular migration literature, migrant illegality and deportability typically result in subordinated forms of inclusion of irregular migrants into the society rather than absolute exclusion (Chauvin and García-Mascareñas, 2012). This inclusion may happen as an unintended effect of the unprecedented irregular human mobility, or leaving the back door for the arrival of undocumented labour may be part of the specific political economic agenda. Regardless of whether it is intended or not, their participation in social and economic spheres may legitimise irregular migrants’ presence in a given territory, despite their perpetual perceptions and experiences of deportability.

Irregular migrants settling in disadvantaged areas of the city and working in the informal economy in a sporadic fashion is a general and common characteristic of subordinated inclusion in Rabat and Istanbul. Meanwhile, informal inclusion has given rise to different forms of violence and marginalisation in both contexts. Exploring different degrees of informal economic activities pursued by migrants in both contexts enables me to question how experiences of illegality in economic life have implications for the political presence and legalisation strategies of migrants.

Housing is an initial step of migrants’ economic participation in the receiving society. In Istanbul as well as in Rabat, migrants are concentrated in poorer areas of the city, and they are initially accommodated by informal reception mechanisms such as informal employment/real estate agencies, relatives and co-ethnics who are already settled in the area. Proximity to work opportunities is another factor that impacts migrant settlement in the urban space in Istanbul. Poor living conditions in terms of overcrowded rooms/flats that are mostly but not exclusively shared with co-ethnics and flats converted from basements that lack proper sanitary facilities are the main issues related to housing. Informal contracts with property owners, overpriced rents, in comparison to what locals pay and the quality of housing offered reveal crucial aspects of the economisation of the presence of irregular migrants in both contexts.235 Despite this common economisation through housing, there are differences in degrees to which the migrant labour force has become part of the informal economy in both contexts.

When compared to Rabat, the structure of the labour market and the scale of informal economic activities in Istanbul are more suitable for accommodating irregular migrants. Hence, there is widespread migrant participation in the already established informal economy, characterised by an unregistered workforce in sectors such as

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235 Reportedly, in Istanbul, the arrival of Syrians has increased rents even higher.
textiles, construction, domestic work, tourism and services, and this has been a distinctive aspect of their informal incorporation experience. Informal employment agencies and ethnic networks facilitate migrants’ inclusion into the labour market. In line with previous research, findings have underscored that the informal labour market in Istanbul does not necessarily distinguish between migrants with and without legal statuses. Similarly, not only migrants who came to Turkey to look for employment opportunities but also those with aspirations to cross to the EU and/or fleeing from conflict, have found, albeit precarious, positions in the labour market. Despite the recent history of irregular migration into Turkey in such scale from diverse locations and temporariness of migrant settlements, sectors such as domestic care have been widely employing migrant women from former Soviet Republics such as Moldova, Georgia and Turkic Republics. Women from these countries are also known to engage in the textile trade. Afghans have been widespread in leather and textile industries, whereas Western Africans are more associated with street vending and commodities, particularly textiles and trade.

Migrant deportability has also given rise to a young, exploitable migrant labour force in Morocco. However, the analysis of migrant economic participation in the case of Rabat has revealed that economic gain from irregular migrants in the housing market does not necessarily translate into migrant incorporation in the informal labour market. Unemployment or working sporadically (a few days per month) seems more common among migrants in Rabat than their counterparts in Istanbul. In the context of widespread exploitation and under-payment, wages fall short of the basic expenses of migrants, let alone savings to finance a further journey or to send back home, which is another factor. In construction, for instance, seemingly the most suitable sector for the young male migrants, the daily wages are half of the local wages, as migrants complained, which has also been discussed in other research (Pickerill, 2011). 236 This situation pushes migrants away from intense working conditions in the waged labour market towards daily income generating activities (street vending, hair styling, etc.). Some also engage in precarious activities such as begging or prostitution. Only a minority has stable jobs such as West African (mostly Senegalese) or Filipina women working for upper middle-class Moroccan or expat homes as domestic workers or carers for young, and some educated migrants (some are former students from Western and sub-Saharan African countries) working in call centres. However, even migrants with a legal entry and educational degrees have found it difficult to find a steady job and to legalise themselves through employment contracts.

Differences in scales of economic activities between Rabat and Istanbul may explain the striking difference in terms of access to labour market opportunities. In terms of GDP, Turkey’s economy is nearly eight times bigger than the Moroccan economy. Istanbul being the main economic hub with a widespread informal economy

236 As of 2012, wages for daily jobs in construction, for instance, were reportedly between 55 MAD and 80 MAD
attracts migrants seeking economic opportunities as well as those with explicit aspirations to go to Europe. It has been a particular time period for the urban economy of Istanbul, where certain sectors such as construction, textiles, etc. have been expanding. Since the 1980s, the economic growth has been dependent on lowering labour costs. This is also the period where labour unions are weaker when compared to the previous periods (Çelik, 2013) and are almost absent in certain sectors where sub-contracting and informal labour are widespread (Toksöz, Erdoğan and Kaşka, 2012: 23). The IOM report on irregular labour migration in Turkey indicates that net wages of irregular migrants are not necessarily lower than wages of locals (Toksöz, Erdoğan and Kaşka, 2012: 23). However, as employers avoid tax, social security expenses and ask for longer hours, employing irregular migrants significantly decreases labour costs.237

What was striking in the analysis was not the absolute exclusion from income generating activities but that migrants in Rabat are more inclined to express their marginalisation because of the lack of labour market opportunities. In comparison, despite their positive views on labour market opportunities in Istanbul, migrants largely complain about the exploitative character of the labour market. Temporary work arrangements, suitable for a young migrant profile, high turnover rates, moving from one workplace to another and from one sector to another, are common among migrant workers. In this sense, in similar terms to what is happening in Morocco, the labour market in Turkey offers few possibilities for social mobility or for legalisation through work contracts.

Despite differences in the intensity of available work opportunities and of labour market participation experiences in these two settings, the research has revealed that labour market incorporation is a selective process. Work is available for young, able bodies who can endure hard labour conditions. Pregnant women and women with younger children are the most marginalised groups in the labour market. In the absence of labour market possibilities, migrants considered as vulnerable rely on support by humanitarian organisations. In this sense, the legitimacy of their stay does not stem from their contribution to the economy but their vulnerability. Begging and marginal ways of generating income are widespread especially amongst these most marginalised communities. For instance, Nigerian women with babies in the case of Morocco are associated with begging and sex work. Recently, Syrian women and children suffer from the same stigma in the case of Turkey.

One implication of migrant labour concentration in Istanbul has been the blurring of the distinction amongst registered asylum seekers, people with asylum claims who are not registered with the authorities, and unregistered (so-called) economic migrants. The asylum system in Turkey does not provide prospects for

237 Based on media and a few reports on the subject, one can suggest that the arrival of Syrians has actually lowered wages particularly in sectors such as seasonal agricultural work, textiles and construction in certain regions. For initial analysis see Özden, 2013; Mazlumder, 2014).
permanent legal status in Turkey or for re-settlement to a third country in the near future. Consequently, asylum seekers may breach the asylum regulations requiring them to reside in their assigned province and come to Istanbul to generate income in the informal economy. Some with asylum claims amongst them do not even apply in the first place, knowing they would need to leave Istanbul, hence all economic opportunities the city brings. The implications of the specific asylum regime are the distinctive part of the production of migrant illegality in the labour market in Turkey. As already discussed in Chapter 3, the new law, LFIP, aims to reinforce the distinction between asylum seekers entitled to legal status and irregular migrants. Conversely, the distinction amongst legal and policy categories such as asylum seeker vs. irregular migrant or transit vs. economic migrant have continued to be blurry in practice. The spatial discrepancy between legal requirements and labour market has created a situation where migrants are pushed to trade off between asylum, that is a less precarious but “liminal legal status” (asylum) (Menjivar, 2006) that limits one’s mobility within the country and the precarious labour market opportunities concentrated in big cities without any legal status. In this sense, Turkey has been an example of how irregular migration regimes in interaction with asylum regimes produce deportable, flexible, cheap labour.

As discussed above, migrant illegality in the urban sphere is tolerated as long as the authorities are convinced of migrants’ economic endeavours outside of crime related activities such as human smuggling, prostitution, drug dealing, etc. The character of the widespread but precarious (temporary and low paid) employment reinforces the image of a docile migrant worker. Labour market participation provides a degree of protection from deportation, if not from police interventions and occasional harassments. Meanwhile, irregular migrants find themselves in a very vulnerable situation in terms of access to fundamental rights and legal status. As explained in the section 5.4, the particular (de-)politicisation of immigration related issues and the weak pro-immigrants’ rights movement in Turkey have been factors that have been contributing to the silencing of market violence in Turkey. As a consequence, another indirect implication of labour market incorporation in Turkey has been that migrants find no channels to raise a political voice to improve their labour market situation. However, this lack of mobilisation needs to be contextualised within the general silencing of labour related issues in Turkey.

In contrast, in Morocco, social and economic marginalisation, coupled with strict migration controls, have characterised the “origins of the suffering of irregular migrants”, hence “the objective context” leading to mobilisation by civil society but also by irregular migrants themselves (Chimienti, 2011: 1340). Chapter 4 already explained that the street violence against migrants from sub-Saharan countries and the backlash against such xenophobia are widespread. Experiences of exclusion happen not only through marginalisation in the labour market but also through racist street violence. Street violence, along with deportation practices, is also widely expressed by migrant groups and pro-migrant rights actors. In Morocco, exclusion
from the labour market and widespread racial aggression are prevalent in migrants’ daily perceptions of their illegality.

In comparison with the situation in Morocco, among migrants and stakeholders interviewed in Istanbul, street violence has not been a central theme in their narratives. Again, one should be careful not to imply that there is no street-level violence, racism or discrimination against migrants in Turkey. Even though cases of aggressions exist, they are not central to migrant experiences of illegality, unlike the case in Morocco. The intensity of this incorporation differs from one context to another and varies from one immigrant group to another in each case in question. Meanwhile, it is worth acknowledging that migrants’ participation in the labour market has given a degree of legitimacy to their presence. However, this form of daily legitimacy does not necessarily translate into political activism despite widespread forms of exploitation. As further elaborated in Section 6.4, factors underpinning the lack of mobilisation are the absence of high levels of politicisation that stigmatisate migrants at the policy level, of active repression mechanisms, irregular migrants’ lack of access to pro-migrant rights channels and the weakness and particular asylum focus thereof.

6.3 Access to rights through institutions and the role of street-level advocacy

Subordinate inclusion in the informal/secondary labour market is not the only mechanism legitimising the presence of irregular migrants in society. The formal political authority may also indirectly recognise the presence of irregular migrants by enabling their access to fundamental rights despite their lack of legal status. Along with economic incorporation, mechanisms of bureaucratic and political incorporation influence migrants’ access to rights and to legal status and may provide de facto recognition of their illegal but legitimate presence in a nation-state territory.

Migrants and pro-migrant rights actors negotiate illegality within the sphere of fundamental rights, beyond market relations, as discussed in the previous section. The access to fundamental rights provides a lens through which migrant illegality can be reversed by enabling their access to state institutions providing services, despite their exclusion from the sphere of legality, hence formal membership. Migrants usually need support from pro-migrant actors to surmount bureaucratic mechanisms excluding them from their fundamental rights, even when the law recognises these rights. Mechanisms, through which migrants can get access to rights differ from one context to another.

In both contexts, migrants’ needs for health care and education are at stake as an indirect result of enduring migrant illegality and because they are stranded. In

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238 On the one hand, the media only very marginally cover cases of aggression towards immigrant groups. On the other hand, there is also little account of cases of aggression against migrants in the existing body of literature.
urban areas, health problems stemming from poor living standards and lack of hygiene increase migrants’ needs for health care. Reports on Morocco underscored that such needs are even more urgent in informal camps along the borders between Morocco-Algeria and Morocco-Spain where living conditions are even harsher, and physical injuries are common because of clashes with security forces. Minors have been a minority of immigrant groups in both contexts. However, their numbers and visibility are increasing, as more families have settled in urban areas. Some families come with children, while others have children along the journey or during their stays in Turkey or Morocco. Thus, minors’ access to education has become a legitimate concern regardless of parents’ aspirations to cross into the EU or to settle in Turkey or in Morocco. Minors’ access to public education also has symbolic importance within discussions of the integration of immigrants and of membership, recently, albeit quietly, raised in both nation-state contexts.

Findings reveal that in Turkey and Morocco, irregular migrants’ access to fundamental rights is problematic at the legislative level (i.e. at the level of recognition) as well as at the level of enforcement. In terms of migrants’ access to rights, both states initially denied responsibility towards immigrants on their soil. Improvements in respective legal frameworks in both nation-state contexts have recognised irregular migrants’ access to fundamental rights, albeit in a very limited fashion. According to the Moroccan national legislation enacted in 2003, irregular migrants should have access to free primary consultations as a public health concern within the context of preventing epidemics. The asylum regulation in Turkey initially did not include provisions to cover the health care expenses of asylum seekers and refugees. Since 2008, free or subsidised public health care is possible with an official status (e.g. asylum applicants, asylum seekers, refugees, stateless people, foreigners with a residence permit) depending on one’s declared income. In this sense, irregular migrants have not even been part of the discussion of access to health care. Based on international conventions ratified by governments and on constitutional principles in both contexts, children have the right to public education regardless of legal status.

At the level of enforcement, migrants can only partially enjoy these rights due to bureaucratic obstacles. The access to basic services, even with an official status or when the law recognises these rights, is not straightforward. In both cases, civil society interventions have been instrumental towards making laws written on paper work in practice. NGOs also play a crucial role in day-to-day advocacy by negotiating bureaucratic obstacles and to a certain extent in surmounting migrants’ exclusion from the realm of rights.

The general observation is that in both contexts, migrants without legal papers (residence permit, asylum application or at least a passport with a legal entry) are not admitted to public hospitals, and at times, even to emergency rooms. In Turkey, when

239 Note that asylum applicants were included within this scheme only in 2013.
migrants are admitted to hospitals, it might happen that they are asked to pay higher fees, so-called tourist fees, if they are not registered within the general health insurance system. It is common for migrants to have to cover their own health expenses in Turkey, but also in Morocco, with respect to secondary level treatment such as diagnostic analysis or hospitalisation. In this sense, there is a concrete problem of access. The general (mal)functioning of national health care systems reinforces migrants’ bureaucratic exclusion from public health care.

Given the problems regarding the functioning of laws, interventions by civil society are aimed at meeting urgent humanitarian needs of migrant communities. NGOs play a complementary role in the sense that they provide basic health care and informal education in cases where access to public service is not possible. International funding for such activities has been available because of the urgency of the situation. Project-based civil society activities prioritise vulnerable groups such as pregnant women and unaccompanied migrants as well as problematic areas such as borderlands. Such projects surely have made a difference in meeting migrants’ urgent needs, in reaching vulnerable groups and in appeasing their sense of exclusion from public institutions. However, they are limited in their scope. Rather than formally recognising rights, these practices indicate the general trend whereby welfare state services are channelled towards civil society, generally with limited resources.

One should also consider the impact of these practices in terms of advocacy. Besides the direct provision of humanitarian aid and services, emerging civil society in both contexts has actively engaged in the cumulative creation of law (Coutin, 1998: 903). The cumulative creation of law may lead to informal or formal access to rights, hence to different levels of legitimacy. Civil society actors have worked towards enforcing rights that are recognised but are not properly implemented at the institutional level. To this end, they have engaged in daily negotiations with street-level bureaucrats such as school principals and head-doctors in particular hospital departments that admit migrants. What I call street-level advocacy may at times turn into informal agreements between civil society and state or private institutions. One common response to solve the problems of implementation regarding access to health care has been to make informal agreements with service providers. For instance, NGOs transfer those in need of medical care to hospitals they work together with, where there is more familiarity with receiving immigrants with no proper identity papers. This practice eventually aims at ensuring migrant access to these institutions without civil society intervention. However, what is called “autonomization of patients”\textsuperscript{240}, the idea that migrants, regardless of legal status, can reach these services by themselves, is not likely to happen in either Morocco or Turkey. Irregular migrants continue to rely on civil society connections to get access to public hospitals. NGOs have to re-negotiate their informal arrangements on a daily basis because of the non-standardised institutional behaviour and the changing legal framework.

\textsuperscript{240} Interview with MSF, Rabat, April 2012.
What we might call cumulative creation of law provides possible openings towards universal access. Yet, it may also unfold differences between migrants with no legal status and asylum seekers, legitimising the access of asylum seekers to fundamental rights at the expense of legitimate access for all. Because of the restricted legal framework in Turkey, migrants’ access to rights is only possible with an official status. The status of asylum applicant is the only official status that irregular migrants, especially those without legal entry and those who fit the profile of asylum seekers, can acquire in Turkey. In other words, the restricted legal framework in terms of access to fundamental rights and to legal status makes asylum the only option to get legal status, hence access to health care and education. In cases of urgency such as injuries or pregnancy, NGOs channel migrants into the fast asylum track using their connections to UNHCR and hospitals, as it is the only way to get access to public health care. Also, despite universal access embraced in the legal framework, only children of asylum seekers residing in their assigned satellite cities can get formal access to schooling. Others may be accepted as guest students depending on informal arrangements between school principals and civil society. The pre-requisite of an official status leaves migrants to choose between labour market opportunities in big cities and the right to health care and schooling in satellite cities where economic opportunities are scarce. In the absence of legal status, irregular migrants, left to their own faith, refrain from seeking health care unless necessary. In cases of urgent need, they resort to their community networks or the private market. In this sense, access to health care is no longer a form of bureaucratic incorporation but becomes another form of the economisation of irregular migration. Evidently, the market option is only possible if migrants can afford it.

Informal negotiations by civil society may lead to formal changes towards more inclusive practices that enable migrants to acquire legal access to rights. In such endeavours, claiming rights of asylum seekers may provide an opening for all migrants regardless of legal status. In contrast with the Turkish case, the case of schooling in Morocco is important to reveal how a semi-formal arrangement between UNHCR and the provincial public education directorate, concerning the children of recognised refugees and asylum seekers has been used to enrol all migrant children regardless of legal status. The access to public education has been possible through bureaucratic camouflage, mingling children of irregular migrants with those of asylum seekers. What is more interesting is that, following demands by civil society and by migrants themselves, the new regulation on the subject enabled children’s access to public schools regardless of parents’ legal status. The related regulation making requirements for school registration more flexible was one of the concrete steps of the new policy initiative in Morocco launched in November 2013. Meanwhile, a level of self-exclusion by migrants themselves has been visible. For instance, migrants from a Christian conviction refuse to send their children to public schools where Islamic education is an integral part of the curriculum. Parents’ aspirations to further their journeys to Europe are another reason for excluding their children from access to rights. The impact of this change is yet to be seen. However, reformist steps towards
recognising the right to access to education has been a case of opening towards the recognition of migrants’ fundamental rights regardless of legal status.

From the comparative perspective, the legislation coupled with civil society interventions at play in Turkey, reverse migrant illegality by turning irregular migrants into asylum seekers. This is an example of “legalising moves”. At the same time, this practice reinforces the distinction between the legitimate ground of asylum and the illegitimate presence of irregular migrants subject to deportation and very limited access to rights, already clearly put in the new legislation LFIP. In other words, NGOs subscribe to the limitations of the existing legislation rather than pushing for more inclusive practices for formal recognitions of migrants’ fundamental rights regardless of legal status. The mechanisms to get access to fundamental rights pull migrants into the system by turning them, first, into asylum seekers, and second, into clients with very marginal benefits within the welfare system. Conversely, in the case of Morocco, NGOs have mainly worked towards the enjoyment of fundamental rights by all migrants regardless of legal status. Such inclusive attitudes have arguably reinforced migrant mobilisation and their quest for legal status through collective action. In both contexts, there is an opening in terms of migrants’ access to fundamental rights, but these openings have arguably carved out different trajectories for political action in the two contexts.

6.4 Reversing illegality

In light of previous comparison of the analysis of practices and experiences of deportability, of labour market participation and of access to fundamental rights, this section discusses the political legitimacy of mobilisation for the rights of irregular migrants. It questions the circumstances under which irregular migrants’ rights have or have not constituted a legitimate sphere for civil society advocacy. How have irregular migrants, in return, become part of the mobilisation process and actively claimed rights and legal status in the context of Morocco but not in Turkey? Mapping civil society in a comparative perspective helps us to account for differences in mechanisms of access to fundamental rights discussed in the previous section, as well as for differences in advocacy. The activities and priorities of pro-migrant rights civil society in a comparative perspective explain differences in migrants’ strategies to get access to legal status.

Mobilisation for the rights of irregular migrants

Both in Morocco and Turkey, civil society interest in immigration issues emerged in the post-2005 period, as an indirect outcome of the externalisation of EU migration policies but also as a response to human rights violations and the urgent humanitarian needs of migrants. Violence by security forces in urban areas and at the borderlands around the time of Ceuta and Melilla events in 2005 has resulted in a turning point leading to the emergence of civil society actors interested in the
question of incoming migration to Morocco. In Turkey, the EU accession process brought legal changes on border, asylum and irregular migration issues on the floor, which triggered civil society activities. IOM and UNHCR entered the field of immigration in both counties in the post-2000 period. These organisations have been leading the ground for local civil society. In both contexts, several organisations have become service providers of UNHCR. For other advocacy and humanitarian organisations, international funding by the EU, as well as by other international funders has been available. Despite the similar political contexts in terms of strict regulations over NGOs, civil society working on immigration and asylum issues gradually expanded its expertise and activities on the subject.

Both contexts display a similar mapping of civil society actors. On the one side, there are international, church-based, national and more local organisations primarily concerned with providing humanitarian aid to migrants. On the other side, there are human rights organisations engaging in advocacy and providing legal aid. One significant difference in the Moroccan context has been the institutionalisation of irregular migrant associations around the same time as that of the Moroccan civil society. In fact, migrant associations, which already existed as mutual aid societies in the rural and urban areas, have gained political visibility in the post-2005 period.

Both countries also display commonalities regarding the civil society activities for migrants and also in civil society’s relations to state organisations. Civil society ensures migrants’ access to fundamental rights despite different sources that they rely on to ensure irregular migrants’ legitimate access to fundamental rights, as discussed in the previous section. In terms of advocacy activities, civil society has played an important watchdog role in revealing rights violations against migrants. The advocacy activities embraced by civil society have led to tense relations with the state, which have later evolved into limited forms of cooperation. Note that such cooperations, most of the time initiated by the state, have been welcomed but at the same time have been received with suspicion on the part of civil society.

The categorical separation between asylum seekers and irregular migrants, reinforced by most NGO practices in Turkey, as explained above, has direct implications for NGO advocacy. Advocacy activities by civil society in Turkey have emphasised problems related to asylum seekers. Human rights organisations have reported on asylum policies, malfunctioning in the asylum system and on conditions of detention. Through lawyers working on the subject, NGOs have asked the ECtHR to take interim measures to stop unlawful detentions and deportations. In this sense, the main references and sources of legitimacy for civil society’s critique of the state have been the ECHR and EU conditionality as well as the 1951 Convention, although Turkey does not grant refugee status to applicants from non-European countries. ECtHR decisions against Turkey concerning the treatment of detainees have worked as transnational advocacy mechanisms initiated by national civil society and have arguably accelerated the drafting of the law on Foreigners and International
Protection (LFIP) in Turkey. The process of law making and the establishment of the Bureau of Migration and Asylum under the Ministry of Interior provided the basis for rapprochement between civil society and state institutions since 2008.

In the case of Morocco, irregular migration and the right of irregular migrants to stay in the country have been at the centre of NGO activities. Interception and deportations of groups such as minors, pregnant women and asylum seekers that are protected within the existing legislation have been subject to critiques by national and international civil society actors including migrant associations themselves. Similarly, mass deportations (most of the time without access to judicial review or appeal) have provided grounds for contestations by civil society including migrant associations. Civil society has actively worked to raise awareness on xenophobic violence. Furthermore, the social and economic rights of irregular migrants have been at the centre of civil society activities. In this context, the 1990 Convention on the rights of all migrant workers and their families regardless of legal status has been the main reference. The unionisation of migrant workers has also become part of the mobilisation process in Morocco. Already existing demands for regularisation of irregular migrants have gained a formal character through the formation of a union for migrants under a worker’s union organised throughout Morocco, across different sectors. As a distinctive aspect of the Moroccan case, as I detail below, migrant associations in alliance with Moroccan associations have gained political recognition through the mobilisation process. Despite the continuation of tense relations, after the reform initiative in Morocco, the state institutions held regular meetings with civil society. The legal recognition of informal migrant associations has been on the agenda during these meetings.

Unlike in Morocco, civil society interest on issues pertaining to irregular migration did not go beyond humanitarian support and did not evolve into a radical discourse claiming rights and legal status for all regardless of legal status. In contrast with the case of Morocco, unions have not developed an interest in including irregular migrants into their membership base, despite the increase in labour migration into Turkey. The general lack of interest on the part of unions in Turkey is partially due to their absence in the informal sector. Unions consider informal market as a structural problem to fix through formalisation, rather as an integral character of the labour market that should be incorporated.

In the absence of civil society embracing irregular migration issues, such demands for regularisation are not in the agenda of NGOs in Turkey. An exceptional regulation, introduced in the summer of 2012 has enabled migrants overstaying their visa to regularise their legal situation. However, this legal intervention was a top down state initiative rather than a response to grassroots demands. Migrants had to pay high fees for the time they overstayed their visa in return for a short-term (six months) non-renewable residence permit. Beneficiaries of this regulation, who could not secure their longer-term residence permits, have fallen into irregularity at the end of
the period they were regularised. Therefore, they perceived this legal move not as recognition of their right to stay in Turkey but as another form of the economisation of irregular migration.

Regarding the divide between asylum and irregular migration amongst civil society actors, in Turkey and with the absence of such a divide in Morocco, there are exceptions in both contexts. Some civil society activities in Morocco have been exclusively limited to asylum seekers, whereas some organisations in Turkey have embraced more inclusive practices and demands. There are few network type organisations such as the Migrant Solidarity Network (GDA) that are explicitly refuting the divide between asylum seekers and refugees. Nonetheless, such initiatives have had a limited sphere of activity and influence compared to formally established NGOs. Recent protests on street violence and labour market violence towards immigrants, as detailed in Chapter 5, demonstrate the unprecedented involvement of actors such as groups working on labour issues or feminist groups. Although these groups do not necessarily work on immigration issues, they have gradually developed an interest in the vulnerable conditions that irregular migrants face in the labour market. Low levels of politicisation of irregular migration by the state, hence to the lack of public opinion formation processes on irregular migration and asylum issues may explain this belated interest by actors amongst civil society (Tolay, 2014). It is worth explaining the general pattern that how and why rights of irregular migrants have been the centre of the advocacy in the context of Morocco and side-lined in the context of Turkey.

A lower degree of politicisation of irregular migration by the state shapes civil society activities in Turkey. Differences in asylum tolls and the emergence of the question of irregular migration in the two contexts underpin this difference of the impact of UNHCR. As explained in Chapter 3, Turkey receives a much higher number of asylum seekers compared to Morocco. Plus, it should be noted that in Turkey, international migration came into the political agenda as an asylum issue with the arrival of asylum seekers fleeing Iran in the aftermath of the Islamic Revolution, pretty much around the same time with the closing down of European borders. These flows were coupled with asylum seekers fleeing post-military coup Turkey. In this sense, the dominance of refugee discussion was naturalised since the 1990s, even before the discussions of transit migration (Hess, 2012: 431). As a consequence, The UNHCR’s impact on civil society in Turkey has arguably reinforced the dichotomy between refugees “who are constructed as being in need of protection and whose cross-border movements are recognized as legitimate, and ‘illegal’ migrants, whose movements’ legitimacy is denied.” (Scheel and Ratfisch, 2013: 928).

NGOs active on asylum issues recognised the existence of irregular migrants in need of civil society support. However, the advocacy language embraced by NGOs in

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241 This situation has started to change with the arrival of Syrian refugees.

242 In this sense, my findings differ from that of Sens es (2012: 208) who has argued that civil society actors do not have an informed opinion on the question of irregular migration and a clear pro-migrant attitude.
Turkey has prioritised the storyline of asylum seekers rather than referring to migrants in general. Partly because of arbitrary tolerance towards irregular migrants explained in Section 6.1, civil society critiques have focused on the conditions of detention and access to asylum after apprehension rather than daily forms of abuse faced by irregular migrants in social and economic life. Given their limited resources, they consider it more legitimate to negotiate for the rights of asylum seekers who are, on paper, under international protection.

UNHCR in Morocco has endeavoured to proliferate its own discourse, amongst civil society actors in Morocco, on “mixed flows” and on the necessity to distinguish between those in need of genuine international protection and economic migrants. However, most NGOs resisted clear-cut definitions between asylum seekers/refugees and economic migrants (Alioua, 2009). Asylum seekers correspond with a small portion of the migrant population in Morocco. At the level of state practices, the legal distinction between refugees and irregular migrants was not operative. In terms of objective conditions, refugees and irregular migrants were subject to similar deportation and violations. Therefore, it would not make sense for civil society actors to focus on asylum issues, as UNHCR has prioritised.

Another important factor making irregular migrants the focus of civil society attention in Morocco has been the political framing of the issue. Trans-Saharan transit migration coupled with clandestine movements into Spain was highly politicised as a security issue. It has mostly been conceptualised in Moroccan policy discussion as an economic migration issue rather than an issue of asylum. All these factors, namely the profile of migrants, the experience of harsh controls by refugees and migrants alike and the framing of irregular migration as a security problem, have contributed to the emergence of irregular migration as a legitimate sphere for policy interventions by civil society. In comparison to the case of Turkey, the level of mobilisation for the rights of irregular migrants and the role played by migrants’ associations in these networks are much more visible in Morocco.

*Migrant mobilisation for legal status*

In response to different types of exclusionary practices and human rights violations, migrants in Morocco formed solidarity associations. The Ceuta and Melilla events, forming the “transition moments in migrants’ engagements” in Pero and Solomos’ words (2010: 11), pushed existing solidarity networks to become political organisations. Along with the politicking effects of experiences of illegality, subordinate incorporation and being stranded pushing migrants towards collective action and the support by Moroccan and international NGOs have been distinguishing aspects of migrant mobilisation in Morocco. As sub-Saharan migrant associations became more established and collaborated more frequently with Moroccan and transnational civil society actors, they amplified their visibility and their demands for the fundamental rights of migrants, the regularisation of undocumented migrants and
the formal recognition of their associations. While the mobilised groups also include asylum seekers and recognised refugees, coordinated demands for regularisation – i.e. the right to stay on Moroccan soil - proves that, in essence, mobilisation was mainly a movement of and for sans-papiers. Migrants have been actively taking part in street demonstrations, advocacy activities and eventually in policy-making. In this sense, migrant mobilisation in Morocco has been a process of gaining political legitimacy as opposed to continuing physical, social and economic exclusion towards sub-Saharan migrants in Morocco.

Migrants in irregular situations in Turkey do not display a similar level of mobilisation to claim rights and legal status as their counterparts in Morocco. The absence of collective action by irregular migrants is surprising given the similar experiences of being stranded because of the difficulty to cross to Europe and the experiences of marginalisation in social and economic life. Common experiences of illegality as well as the African identity and shared knowledge of French have enabled the mobilisation of migrants in Morocco. One can fairly suggest that such an identity-based mobilisation is less likely to happen in Turkey, where migrant profiles in terms of an ethnic, linguistic background have been more diverse, and a legal distinction between asylum and irregular migrants has been more clear cut. Meanwhile, even within same-language speaking and same national communities, political mobilisation has been limited. On the one hand, irregular migrants have formed solidarity communities, especially widespread among Africans. Self-organisations by irregular migrants in the form of informal solidarity networks are gathered based on national background, and they are short-lived and not visible in the public sphere (Suter, 2012: 205-7). On the other hand, ethnicity-based formal associations established by previous immigrants who later gained citizenship have partially included their newly arriving co-ethnics as informal members. However, the activities of such associations do not entail lobbying for the rights of irregular migrants. Social hierarchies between those with legal status and newly arrived undocumented migrants have inhibited irregular representation issues in these associations. In this sense, irregular migrants have not been able to use existing ethnic associations as a platform to raise a political voice.

As I already suggested, the lack of migrant mobilisation in Turkey has resulted from a process of de-politicisation produced at the intersection of socio-economic, institutional and legal fields. The factors that pushed for and enabled migrant mobilisation in Morocco have been absent in the case of Turkey. The controls and deportation practices leading to the politicisation of existing migrant solidarity communities in Morocco were not as harsh in the case of Turkey. Rather, irregular migrants in the urban context in Istanbul experience day-to-day legitimacy, mainly through their labour market participation. One can ask whether higher levels of economic incorporation may replace irregular migrants’ quests for recognition and political legitimacy. In other words, it is important to look at the precise conditions under which we can talk about a trade-off between political activism leading to political legitimacy and day-to-day legitimacy coupled with forms of arbitrary
toleration. This is where institutional factors come into play. Unlike Morocco, there is no civil society support for irregular migrant mobilisation in Turkey. NGOs conceptualise asylum seekers, and to a lesser extent irregular migrants, mainly as beneficiaries of their services, rather than as political actors. Public demonstrations on the subject are generally rare, and migrants in Turkey have only been part of such contestations of state practices on exceptional occasions.243

Direct references to the situation of Moroccan migrants in Europe provided a legitimate ground to explain why Moroccan civil society is interested in migrants in irregular situations in Morocco. Such references also enabled the transnationalisation and expansion of the movement within and beyond the country. Emigrant associations such as ATMF have revealed interest as well as state institutions, including semi-public institutions dealing with issues related to Moroccans abroad, such as CCME. Arguably, sans-papiers movement in France have had an influence on pro-migrants rights mobilization in Morocco. The linkages are salient in terms of repertoires of rights claims and of transnational actors involved in the struggle. In other words, some activists supporting migrant mobilization in Morocco have been part of the movement in France. French language made communication possible in forging such alliances. In the absence of a process of the politicisation of migrant mobilisation, such references enabling the support of transnational actors have also been absent in the case of Turkey. One reason that Turkey’s emigration history is almost never raised in the discussion of immigration related issues can be that labour outmigration from Turkey has been seen as passé, rather than an on-going reality of the country. Again, given the prevalence of asylum issues, stakeholders may find it hard to build connections between the vulnerable situation of incoming migrants and refugees and state coordinated economic out-migration to Europe in the 1960s and 1970s.

The empirical analysis has already acknowledged that only a minority of migrants are mobilised within associations in Morocco. I also refrain from implying that there is absolutely no mobilisation for the rights of irregular migrants in Turkey. However, the general trend of lower level mobilisation for the rights of irregular migrants in Turkey is striking. Rather than a political/activist migrant identity as was the case in Morocco, most migrants interviewed in Istanbul linked their prospects for legal status to individual legalising efforts. For those who fit the profile of asylum seekers, acquiring the asylum status is one way to get legal status, although the asylum status does not automatically lead to access to rights, as explained in Section 6.3. Most migrants, also aware of the functioning of the asylum system, do not consider asylum as a legalising move in Turkey. Marriage with a Turkish national and being from Turkish descent have been the most evoked ways through which migrants

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243 The hunger strike by Afghan refugees in Ankara was one of the exceptional protests where refugees themselves were at the frontline. However, the target of the protest was UNHCR, which suspended asylum applications from Afghan nationals, rather than the Turkish state.
acquire legal status. Rather than the recognition of migrants as rights-bearing subjects through institutional means, the legislation enables legal incorporation for some of these migrants as ethnic kin or legal kin when they marry a national.

Conclusion

This chapter has discussed the empirical findings of chapter 4 and 5 and explored patterns for hypothesis generating. It questioned how irregular migrants, rendered illegal and rightless, legitimise their right to stay in the territory. Answering this question, the comparison in particular, reveals how daily experiences of illegality and mechanisms of irregular migrant incorporation have given rise to different ways through which irregular migrants have gained legitimacy. While day-to-day legitimacy has been the distinctive aspect of migrant incorporation in Turkey (particularly in Istanbul), experiences of migrant illegality in the Moroccan case have given rise to a search for political legitimacy.

Despite abuses and discrimination, irregular migrants have been subject to day-to-day legitimacy, particularly through their labour market participation in the case of Turkey. Migrant illegality has been absorbed in the informal urban economy. Rather lax control regimes in the urban context of Turkey have reinforced the informal incorporation process. However, this form of incorporation does not necessarily entail the recognition of irregular migrants’ fundamental rights. The access to fundamental rights requires the possession of an official status. De facto recognition of the presence of irregular migrants was not coupled with an inclusive pro-migrant rights movement. As a consequence, rights of irregular migrants have not become a legitimate subject in political discussions.

In the case of Morocco, violence and discrimination characterise migrant illegality in daily interactions with security forces and within socio-economic life. Irregular migrants have had difficulties in finding employment opportunities and suffer from rights abuses by the police and street violence by the locals. Their fundamental rights have been denied despite efforts by civil society and recent improvements. In the absence of day-to-day legitimacy, for instance through migrant participation in the labour market, migrant solidarity organisations have aimed at mitigating exclusion in daily life. As civil society embraced the issue of rights violations of irregular migrants within Morocco, migrant organisations in collaboration with Moroccan and international civil society have gained a political voice. The result was increasing discussion of the vulnerable situation of irregular migrants in Morocco and increasing visibility of migrants and their associations claiming rights and legal status. For migrants, it has been a process of gaining visibility and legitimacy in the political sphere. Migrant associations, increasing the horizon of alliances with national, transnational civil society and semi-public institutions, publically demanded regularisation. Regardless of the outcomes of the regularisation campaign initiated by the government in 2013, irregular migrants raising their voices in the public sphere
and engaging in policy discussions with policy makers provide enough evidence to highlight migrant illegality in Morocco as a case of political legitimacy in the absence of economic incorporation.

The comparison highlights the contrast between the production of day-to-day legitimacy without political voice in Turkey and the process of gaining political legitimacy without daily forms of inclusion in Morocco. The case of Turkey shows that the mechanisms through which irregular migrants gain legitimacy do not necessarily entail migrants’ endeavours for political recognition. In other words, irregular migrants may not necessarily need to be political subjects to legitimise their presence. Meanwhile, daily forms of inclusion without political recognition reinforce their rightless condition.

At this point, one can question the role played by market forces vs. pro-migrant actors in civil society in providing legitimacy to the presence of irregular migrants in society. However, it would be too simplistic to conclude that there is a trade-off between these different forms of legitimacy. Instead, Chapter 7 questions, at a theoretical level, what kind of membership is envisaged by different mechanisms, providing legitimacy to the presence of irregular migrants in society in general and in new immigration contexts in particular.