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

Üstübici Önay, A.E.

Citation for published version (APA):
7.1 Researching migrant illegality at the edges of the EU

Shipwrecks in the Mediterranean resulting in the mass killings of migrants on their way to the EU have been covered in the news. Other migrants have been filmed various times “attacking” fences surrounding Ceuta and Melilla, Spanish enclaves surrounded by Morocco. Again others have been reported crossing to Bulgaria through the land border from Turkey, as Frontex operations are getting stricter at the Aegean Sea. The endless endeavour to stop irregular entry into the EU resulted in the outsourcing of EU border security regimes into regions peripheral to the EU, especially in the Mediterranean basin. Research has increasingly focused on technical investments to stop irregular border crossings in the Mediterranean, on human fatalities and on the role played by smuggler networks (FRA, 2013). Experts declared that the high death toll of migrants trying to cross the Mediterranean into the EU in the last decades (Tara and Frank, 2014) is a direct result of fight against irregular migration by the EU. As put by Hein de Haas: “Over two decades of costly, mounting investment into border controls and rapidly increased funding for Frontex (EU’s border agency) have not stopped migration, but increased the vulnerability of migrants, their reliance on smuggling and caused the deaths of an estimated number of at least 17,000 people over the past two decades”.


246 See for instance, Greece Unnerved by Bulgaria’s Schengen Prospect. Retrieved 14.05.2015 from http://www.novinite.com/articles/127902/Greece+Unnerved+by+Bulgaria%27s+Schengen+Prospect


248 De Haas, H., “Smuggling is a reaction to border controls, not the cause of migration”, 05.10.2013, Retrieved 10.10.2014, from http://heindehaas.blogspot.nl/
Against the backdrop of these dramatic international events, my research focuses on migrant illegality in Turkey and Morocco. The initial motivation of the study has been to explore how the closure along the EU borders impacts migrants’ experiences of illegality at the periphery of these borders. The research questions have gone further to explore how migrant illegality is produced, practiced and negotiated by state and non-state actors, migrants included. What are the implications of similar forms of governance of irregular migration - characterised by tight EU border controls and few recognised rights of irregular migrants - for migrant illegality, migrant incorporation and access to legal status? What is the impact of the new and external character of the production of migrant illegality on migrants’ experiences? Under what conditions have migrants staying without legal authorisation gained social/political legitimacy? At a more theoretical level, what does the comparison reveal about the interconnection between the governance of irregular migration (in terms of the production of migrant illegality) and access to rights and legal status?

Taking illegality as a constructed and thus reversible socio-legal condition, the main theoretical ambitions informing the research questions and methods that I employed concern unpacking the relationship between the production of migrant illegality, migrant incorporation and migrant mobilisation. To explore different aspects of migrant illegality as a juridical status, socio-political condition and mode of being-in-the-world (Willen, 2007), I engaged in three sets of research. These are: the legal production of migrant illegality research, taking a socio-legal perspective on the question of illegality; migrant incorporation research, drawing on the sociology of migration in general, with a specific focus on new comers, especially those without legal status; migrant mobilisation research, informed by the conceptual framework of social movements and contentious politics literature.

From the legal production of migrant illegality literature, I have borrowed the idea that the category of illegal migrant has been created by the law itself (De Genova, 2002; Calavita, 2005). The category of illegal has been sustained not only through immigration policy but also through certain techniques of governmentality whereby migrant illegality is associated with criminality, is racialized and represented as threat to national security. The production of migrant illegality making migrant bodies deportable, referring to the possibility of deportation rather than actual practice of it, has given rise to mechanisms disciplining the migrant body. In a similar vein, research on migrant incorporation in the case of irregular migrants has revealed processes of subordinate inclusion, into the society (Menjivar, 2006; Bommes and Sciortino, 2011). Conceptually and methodologically, I have modelled my research on their attention to socio-political and institutional conditions that enable migrants’ participation in society and their access to rights through the labour market, bureaucracy and/or civil society as well as the layers of exclusion that deny migrants’ access to socio-economic opportunities and rights. Migrant incorporation research has also addressed how migrants themselves negotiate these conditions of exclusion and subordinate inclusion through tactics of (in)visibility. Both migration and social movements scholars also
theoretically and empirically address how irregular migrants become political subjects, actively seeking right and claiming legal status (Coutin, 2003; Nicholls, 2013). I have used social movement research and its emphasis on the internal organisation of movement, repertoires of resistance and alliances amongst diverse groups (Chiementi, 2011; Taylor and Marciniak, 2013). Acknowledging these factors that underscore the importance of institutional context, I place equal emphasis on migrants’ lived experiences of illegality to explain processes that do or do not lead to migrant mobilisation.

Using these three interrelated research agendas, I have argued that what I have conceptualised as *irregular migrants’ incorporation styles* should be studied at multiple levels at the interactions between legal framework, deportability practices, labour market and social conditions, institutional context of bureaucracy and civil society. At the theoretical level, research questions aim to explore the relationship between state control, (il)legality and legitimacy. In exploring how migrants negotiate between *state controls* imposed upon them and their need for *formal recognition*, the findings have revealed different ways that migrants gain *legitimacy* and *political subjectivity* despite their lack of legal status.

The findings are based on data collected during fieldwork conducted at two research sites in the Mediterranean basin, Turkey and Morocco. These are two nation-states with similar transitions in their migration patterns, from sending labour migration to Europe to de facto lands of destinations, with borders that are most subjected to external dimensions of EU migration policies. A comparative research design is confined to the analysis of the emergence of different policies and practices in the governance of irregular migration between 2000 and 2014 in the two nation-state contexts. The analysis focuses on the post-2000 period because the two countries started to introduce new laws to manage asylum and immigration flows. This is the time period when both countries moved from no policy to rudimentary forms of governance in the realm of immigration, immigrants became more visible and civil society organisations developed an interest in improving the situation of migrants and asylum seekers.

Combining various methods such as collecting official documents and conducting expert interviews and in-depth interviews with migrants, the data has been collected at various levels. I have employed a qualitative methodology based on content analysis of major legal and official documents, interviews with state officials and civil society actors and interviews with migrants coupled with observations in their social milieu. I aimed to follow a similar data collection process across cases as required by a comparative research design. Differences in the data collected in the two contexts stemmed from differences in access to certain information and institutions. My subjectivity in the field as an insider in Turkey and an outsider in

---

249 The mass arrival of Syrians as a group granted temporary protection by the government has been intentionally deemed beyond the scope of this research.
Morocco at times facilitated and other times impeded my access to certain types of information. Beyond the issue of access, I had to make conscious methodological decisions to account for differences in contextual factors.

7.2 Linking migrant illegality, incorporation, mobilization

The main research of this study was: How has irregular migration become a new subject of governance and impacting irregular migrants’ access to rights and legal status? Motivated with the ambition to link processes of production of migrant illegality, both in legal framework and in practice, to processes of migrant incorporation into society and to processes conducive to their political mobilization, this study has asked three interrelated sub-question.250

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

Since 1990s, both Turkey and Morocco have become a land of destination for migrants from their wider regions coming to these countries to work, seek asylum, study or with the initial intention to cross into Europe. Despite differences in volume of incoming flows and migrant profiles in terms of source countries and migrant motivations, the similar and rather external emergence of irregular migration has made migrant illegality contexts comparable. This process that I have identified as the international production of migrant illegality refers to techniques of governance in both contexts. These are mainly EU initiated efforts such as increasing joint investments in border infrastructure along the external borders of the EU shared with third countries to stop irregular entries in the Union, increase in the visibility and activities of international/intergovernmental organisations, changes in the legal framework governing irregular migration. The label transit country has been used by the EU and by these countries to identify themselves, at the time when the term transit does not have a factual validity it is becoming more and more difficult for people to transit neither through Turkey nor through Morocco to the shores of the EU without proper documents. At the same time, the term transit has been internalized and instrumentalized by policy makers in Turkey and Morocco to deny the fact that they are becoming immigration countries and their obligations vis-a-vis foreign national on their soil. The first two aspects of international production of migrant illegality that is developments concerning border infrastructure and the role played by international/intergovernmental organizations have been similar in the two contexts. However, interlinked with domestic structures and EU demands, changes in the legal framework, motivations behind these changes as well as political representations of the issue, have differed from one context to another.

In both countries, the institutionalization of migrant illegality was infused within international and domestic demands. Turkey has been pressured by the EU to

250 See Annex 4 for an overview of findings.
cooperate to stop irregular migration into the EU. At the same time, lax visa policies have been criticized for leaving the back door open for the legal entry, overstay and further mobility of irregular migrants. Recent legal changes in Turkey indicate a shift in migrant illegality regime that is “nicer on asylum seekers and tougher on irregular migrants” (Tolay, 2012: 53). Morocco has not become a hub for irregular labour migration to the same extent that Turkey has become in the last two decades. Hence, the external dimension of migration governance has initially been more instrumental in the production of migrant illegality in Morocco. Moroccan state has also been pressured to introduce a functioning asylum system by UNHCR and by the EU, while regularization campaign under the initiative of the King had been an internal incentive rather than an EU demand.

Different levels of politicization of irregular migration by the state also indicate different technicalities of governance in the two contexts. Morocco displayed higher levels of criminalization and politicization of irregular migration. In Turkey, state did less efforts to create a (negative) public opinion on the later acknowledged fact that Turkey has become a hub for labour migration, asylum as well for those on attempting the journey to Europe. Keeping migration related matters low profile, legal and institutional changes are contextualized by policies and researchers alike within the technicalities of the EU accession process. Keeping in mind these findings, the following sub-questions address how these different levels of politicization of irregular migration, hence differences in the conceptualization of migrant illegality has had an impact on migrant incorporation styles.

**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?**

This study has acknowledged the EU’s role as a supra-national actor having an impact on the production of migrant illegality in its periphery. However, the emphasis is not on policies and practices produced by the EU but on the policies and practices by state and as negotiated by non-state actors including migrants themselves in the peripheral countries. These countries face similar pressures of immigration but I have further argued that differences in state and civil society responses to irregular migration, make a difference in migrants’ experiences of incorporation.

Following the discussion on the external and domestic production of migrant illegality in Morocco and Turkey, Chapter 4 and 5 have showed processes leading to different styles of migrant incorporation. In Morocco, the criminalization of irregular migration at policy level and at the level of public opinion went hand in hand with migrants’ daily experiences of deportability and other forms of exclusion, migrants face both in the informal settings along the border and in the urban space. Under what conditions migrants may still seek legitimacy in the absence of labour market incorporation has been addressed in the example of Morocco. Chapter 4 has already characterized migrant illegality in the sense of socio-political condition, in Morocco as
limited access to labour market opportunities, deprivation from sense of legitimate presence because of daily experiences of deportation, limited access to rights only through the intermediary of civil society. How these conditions influence migrants’ mode of being-in-the-world as political subjects is another hypothesis emerging from my research.

Conversely, Turkey has displayed a case of daily inclusion without access to political voice, especially for groups in the urban centre of Istanbul. In other words, lower levels of politicization of the presence of irregular migrants at the policy level resonate with lower levels of enforcement of internal controls upon irregular migrants in urban space. Interestingly enough, this situation of arbitrary tolerance resulting from a gap between law and implementation underscore migrants’ lack of recognition, neither as villain, nor as victims. Giving the deportation practices and precarious but inclusive labour market situation in Istanbul, lower levels of advocacy for rights of irregular migrants, migrant illegality, in the sense of way of being-in-the-world correspond to migrants’ invisibility in the political sphere despite their relatively widespread presence in the socio-economic sphere. As a result, irregular migrants are not considered as political subjects neither by policy makers, not by their potential allies amongst civil society.

**Under what circumstances do irregular migrants mobilise to claim their rights and legal status?**

Migrant political mobilization, both as a socio-economic condition but also as a mode of being-in-the-world, is an empirical question rather than an intrinsic aspect of migrant illegality. The research had started with the premise that migrants are not only victims of external conditions but active subjects even in contexts characterized by violent practices. They consciously endeavour to improve their living conditions within the political, social, institutional constraints and opportunities surrounding them. One central question of the thesis has been why there is no similar level of mobilization around the issue of irregular migration in the context of Turkey, despite the feeling of being stranded, the denial of rights and the violence also defining experiences of irregular migrants as their counterparts in Morocco.

Exclusion has created a situation where migrant rights have been denied, irregular migration has been criminalized and irregular migrants have been stigmatized in Morocco (arguably at higher levels than Turkey). As a response to stigmatization at different levels, irregular migrants’ mobilization has become part of their way-of-being in the world. Their common African identity and linguistic background has facilitated migrants’ communal quest for political recognition. Forging alliances with emerging pro-migrant rights civil society actors in the Moroccan context, irregular migrants have been partially successful in carving a political space where they contest their illegality. Chapter 5 has revealed that labour market coupled with somewhat tolerant deportation regimes does provide a source of legitimacy for the presence of irregular
migrants. Civil society underscored arbitrary and at times unlawful practices of detention and deportation by the Turkish police. Meanwhile, migrants interviewed, expressed lower concerns on being deported, especially when compared to their counterparts in Morocco, as long as they do not engage in conflict at workplace or in their neighbourhood. However, as revealed in the case of Turkey, migrants’ presence in the labour market does not necessarily provide a basis for their formal recognition. In other words, migrants gaining daily legitimacy through their economic participation and arbitrary tolerant practices of deportation, have not necessarily gained a political voice, hence formal recognition. Migrant illegality as a socio-political condition in Turkey has been characterized by subordinate forms of incorporation in the labour market, day-to-day legitimacy and very limited access to fundamental rights without official status.

Using political opportunity structures approach but not exclusively relying on them, I have connected migrants’ mode of being-in-the-world as political subjects in Morocco to their socio-economic conditions but also to wider institutional structures. Socio-political conditions of migrant illegality characterized by marginalization in the absence of day-to-day legitimacy, have arguably put irregular migrants in Morocco into a much more vulnerable position than their counterparts in Turkey. The main factor enabling migrants’ grievances transform into contentious politics in Morocco has been informal migrant associations’ alliances with Moroccan and international civil society. The conscious decision by Moroccan civil society actors, not to distinguish between asylum seekers vs. irregular migrants, has arguably carved out a wider political space for contentious politics. In the case of Turkey, migrants and asylum seekers have mobilized amongst themselves in sporadic ways. Apparently, in the Turkish case, most NGOs prefer to focus on asylum as a more legitimate ground for their advocacy activities, at the expense of sidelining rights violations and protection needs of irregular migrants.

In both contexts, discussions of irregular migration had initially been shaped in relations to clandestine outmigration of their own nationals. Emigration and the situation of migrants’ from Morocco has still high relevance in policy discussions in Morocco. As part of transnational opportunity structures (Pero and Solomos, 2010: 9-10), these discussions as well as institutions dealing with emigrants abroad have had an impact on ideas on how immigrants within Morocco should be treated (see Üstübici, 2015). Such a linkage between issues pertaining to emigration and immigration has so far been absent in Turkey, despite its quite similar emigration history. In this sense, the comparison reveals that the success of mobilization does not depend solely on the existence of allies supporting demands by marginalized, not formally recognized groups, but also on how these allies formulate their priorities, where they think they can find discursive opportunities (Bröer and Duyvendak, 2009).
7.3 Conceptual, empirical, methodological contributions and policy implications

In light of these findings, I reflect on the conceptual and theoretical contributions of this study. One area that this study contributes to is socio-legal studies on migrant illegality, by bringing the international into the analysis; but, it also indirectly contributes to studies on the external dimensions of EU migration policies, by introducing a fresh lens into their analysis, with the extended use of the concept of “production of migrant illegality”. The starting argument of the thesis has been that the production of migrant illegality in the periphery of the EU, defined as transit migration has been a product of the interaction between the international context and domestic politics. The comparison indicates that migrant illegality as a juridical status has been a consequence of interaction between international and domestic contexts.

One major implication of the EU pressure to stop, control and manage irregular migration for the contexts in question is the unprecedented occupation with categorising incoming flows. One should note that Turkey and Morocco, as well as other countries in the region facing similar transit conditions, are asked to stop people from transiting into their next destinations, but they are also criticised for undermining fundamental rights of migrants in their territories. Therefore, making transit spaces safe third countries by pushing them to introduce functioning international protection systems has been a priority by the EU. The downside of the increasing will to categorise incoming flows would be the discrepancy between asylum seekers, as groups with legitimate access to rights and protection and irregular migrants, although in practice both groups are enmeshed in one another, and migrants can easily move from one category to the other.

Meanwhile, in both contexts, the EU is not the only dynamic in shaping immigration policies. Such an approach would reify the idea of transit country and characterize countries at the EU’s periphery as passive victims of their geographies. Rather, examining the political, social and institutional conditions within the receiving contexts and migrant experiences of it better explains the production and implications of migrant illegality as an interaction between domestic socio-political factors and foreign policy. This is where empirical and methodological contributions of this study lie. This study has contributed to emerging literatures on irregular migration in the context of Turkey and Morocco by bringing migrant illegality approach into these studies. Empirical discussions aims to contribute academic research in Turkey and in Morocco as well as policy discussions, by bridging policy oriented macro level research on changing legal and institutional structures governing irregular migration with micro level sociological studies on migrant communities, their lived experiences.

The conceptual framework -- postulating that migrant incorporation styles manifest themselves at the interaction of different aspects of migrant illegality -- underpin my methodological choice of exploring migrant illegality at multiple levels. Therefore, one methodological contribution of the research is that it embraces a
“studying through” approach (Shore and Wright, 1997: 14; van der Leun, 2003; Tsianos and Karakayali, 2010) to link legal/institutional policy analysis on irregular migration and sociological/ethnographic methods on migrant livelihoods. Another methodological and empirical novelty of the research is to explore the conceptual linkage between migrant illegality, migrant incorporation and mobilization in comparative perspective, in contexts under-explored by previous research with similar conceptual framework (Calavita, 2005; Willen, 2007; Chimienti, 2011; Lauthenbal, 2007).

Both the studying-through approach and the comparative research design have enabled me to address a set of empirical questions emerging from migrant illegality and migrant incorporation literatures in a contextualized manner. One potential contribution to the literature at the intersection of irregular migration and social movements lies in the conviction that cases of mobilization are equally useful as those identified with lack of mobilization for generating hypothesis. Given the similar international dynamics in the production of migrant illegality in both contexts, one can ask under what conditions migrant illegality translates into cheap, flexible labour. The case of Turkey has already revealed that the availability and penetrability of the urban informal economy, size of the economy as well as existence of an already emerging ethnic economies which would welcome new coming (irregular) migrants are factors enabling the creating of inexpensive, vulnerable migrant labour force in Turkey. Surprisingly, access to precarious work has been the case even for those migrants who are allegedly on their way to Europe. More important for this research, the other puzzling question is under what conditions, irregular migrants’ subordinate incorporation into the labour market reinforces migrants’ quest for formal recognition?

7.4 Further research

More research on the creation and transformation of so-called transit spaces into migrant receiving lands is needed to follow up the findings of my research which are limited in terms of its engagement with legal, institutional framework and of generalizations of empirical findings. In other words, follow up research is needed first, to assess whether changing legislation in Morocco and Turkey, would provide necessary protection and rights and indeed, an incentive for migrants to stay in relatively better off countries in the region rather than venturing into the EU. One related policy implication of this further inquiry would be to include perspectives from migrants and pro-migrant rights actors into policy making through consistent consultations. This would be especially useful given the ongoing gap between the written law and practice regarding irregular migrants’ access to rights. Second, as immigration policies are becoming part of public policy agenda and given the rapidly changing legal, institutional, discursive contexts on irregular migration in both countries, I would be interested in exploring how these policies interact with other public policies on health, education, labour market. Plus, more emphasis on the
implementation of these policies is needed. Generating institutional ethnographic analysis revealing mechanisms of access to rights and the role played by street level bureaucrats would help us theorize on how vulnerable groups (including those without formal membership) access to institutions of nation-state. Third, the conceptual framework I proposed regarding the international and internal production of migrant illegality may be transposed to other cases emerging as de facto lands of immigration at the edge of conventional destinations to explore and further theorize what kind of incorporation styles, the transformation of migrant illegality regimes give rise to.

Regarding migrant mobilization in Morocco, my findings have only captured emergence of migrant mobilization and initial phases of its formal recognition by the authorities. At the end of first regularization campaign in Morocco, only limited number of irregular migrants has acquired an exceptional temporary residence permit and coercive practices along the EU border continued throughout 2014. Naturally, follow up research, as well as more comprehensive further research is needed on the evolution of migrant mobilization in Morocco. What inclusionary and exclusionary patterns will arise within the movement, as well as with similar movements in the country and in the wider region is yet to be seen and researched.

The research acknowledges that low levels of politicization of immigration issues, rather easy infiltration in to the labour market, daily forms tolerance have started to change in Turkey as in any society receiving nearly two million newcomers over a period of five years. On the one hand, migrant illegality framework would be inadequate to address Syrian refugees, who are under the temporary protection regime, hence not illegal. On the other hand, initial research has already revealed discrepancy between recognized legal status of Syrians and their lived experiences of incorporation displaying parallels with the findings of this study (see for instance Mazlumder, 2014; Özden, 2013). Thus, this study provides a basis for research on incorporation of Syrians, not only to help to show what has drastically changed from before, but also to reveal continuities in patterns of migrant incorporation in Turkey. The impact of mass arrival of Syrian refugees, as well as the increasing number of asylum seekers from other countries has put Turkey’s asylum system under stress. Whether increasing number, coupled with increasing visibility in political discussion will translate into a form of political mobilization in Turkey is yet to be seen. One speculative question would be whether an asylum-based mobilization would expand to include other categories of migrants making more radical membership claims and demands for free circulation.

In the last decades, drastic changes have occurred in the governance of irregular migration in the Mediterranean basin at the borders of the EU and beyond those borders. Consequences of restrictions over legal migration and expansion of border controls beyond the EU, is not limited to the closing of front doors for (wannabe) migrants from the developing world, aspiring better opportunities in life.
This study has revealed repercussions of these policy changes for migrant livelihoods at the periphery of Europe. Both Morocco and Turkey reflect how migrant illegality has been produced amongst interactions of EU priorities to curtail irregular migration, changing national legal framework and practices at multiple levels. Despite their formal exclusion from the sphere of citizenship and rights associated with it, migrants, albeit through different processes of incorporation, have carved out social and political spaces. This study has provided a glimpse into how people excluded from the body of citizenship explicitly or implicitly state their legitimate right to stay in the nation-state territory, despite their liminal legal status. Both in Morocco and in Turkey, as well as elsewhere, more changes are needed to ensure, migrants regardless of legal status would have access to their fundamental human rights. As repeatedly uttered by migrant activists I interviewed: “la lutte continue” [eng. “the struggle goes on”].