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Addressing Irregular Migration in the Gulf States

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Executive Summary

Irregular migration has great resonance in the Gulf, just as in the West. Migrants in irregular situation avoid state administrative procedures and so their numbers are unknown. The largest amnesty (Saudi Arabia 2013) would have affected more than 50 per cent of the migrants in the country.

Irregular migration is by definition a breach of legislations that regulate the migrant's status. In the Gulf States it is, in particular, a by-product of: the sponsorship (*kafâla*) system that hampers both a migrant's individual freedom of movement and the free functioning of the labour market; nationalisation policies that continue to extend the list of occupations reserved for nationals; and nationality laws that bar citizenship to all but a very few first- and second-generation migrants.

Irregular migration also results from contexts characterising some sending states (poverty, corruption, failing social contracts), which forces nationals from these countries to move to more dynamic labour markets. Moreover, leaving the recruitment of foreign workers to private brokers also creates conditions that lead to migrants' "merchandisation," and hence abuses, in many cases. Finally, irregularity also stems from migrants' extreme determination in pursuing their goals and ambitions, whatever their status in the destination country.

Efforts must be made by countries of origin and destination to curtail irregular migration. In the Gulf States, this may be addressed in several ways: by improving the working and living conditions of foreign workers; by amending sponsorship rules; by granting citizenship to select categories of migrants; and by disentangling migration laws from labour laws. Initiatives in this regard have been taken by some countries and need to be strengthened in the future.

* This Policy Brief benefitted from the 19 papers presented and the discussions in the workshop entitled "The Role of Legislation, Policies, and Practices in Irregular Migration to the Gulf" organised in the framework of the Sixth Gulf Research Meeting (GRM - www.gulfresearchmeeting.net - Cambridge 24-27 August 2015) and from anonymous reviewers. The authors thank both the participants and the reviewers. However, the responsibility for the contents of this Policy Brief rests exclusively with them. A selection of the papers will be published in an edited volume (summer 2016).

We read media stories, every day, about irregular migration and associated tragedies in many parts of the world. The global media seldom deals with irregular migration in the Gulf States, however. Indeed, migration to the Gulf is typically overlooked by the international media save on rare occasions: for example, the conditions of workers on the building sites of the 2022 Football World Cup. But individual stories told by migrants themselves as well as recurrent local news stories about police raids on migrants, deportations and amnesties demonstrate that irregular migration has just as much resonance in the Gulf, as in Europe, North America or Australia.

1. Which migrants are in irregular situation?

Migrants fall into an irregular situation as soon as their entry, stay or employment is unauthorised. Irregularity is a relative and transient situation, not an absolute and permanent status:

- It varies according to countries and their legal and institutional framework;
- It changes over time as the same person can be in a regular situation today and an irregular situation tomorrow (or the other way around);
- It depends upon the migrant's individual characteristics as laws deal differently with migrants according to nationality, age, gender and occupation. In the Gulf States, irregularity particularly threatens domestic workers because they are excluded from labour law provisions.

In the Gulf States, most migrants enter legally (for work, tourism, pilgrimage etc.) and only at a later stage do a number of them fall in an irregular situation in relation to residency and employment. Also, they may be in an irregular situation because they are employed by someone other than their sponsor or are working in an occupation inconsistent with their work permit. This happens when they enter on a 'free' or 'azad' visa, usually bought from a sponsor, often without the provision of a job.

2. How many migrants are in irregular situation?

We do not know. Migrants in irregular situation often live in limbo, hiding from the state administration that counts people. This is the case in all countries but particularly so in the Gulf.

From time to time, the Gulf States release figures on deportations, but these do not provide any reasonable sense of the overall scale of irregular migration. Amnesty programmes allow the return or regularisation of migrants in irregular situation and have been periodically launched by Gulf States since the mid-1990s, affecting from a few tens of thousands migrants to several millions migrants, depending on the country. Some 125,000 residency law violators (i.e., over-stayers) were counted in Kuwait during the most recent amnesty campaign (2011), which is fewer than 5 per cent of the 2.8 million foreign nationals residing in the country. In Saudi Arabia, an extremely high number of status corrections performed during the regularisation and assessment campaign of 2013 suggests an accordingly high proportion of migrants in irregular situation: 9.9 million corrections were made for an estimated 10.1 million foreign nationals, each migrant in irregular situation being susceptible to be corrected for more than one irregularity. Others may be regularised without official amnesties.

Sending states and their embassies cannot easily record their citizens abroad and often do not maintain accurate records of whether their status is regular or irregular. Estimates based on sample surveys in some source countries (e.g., India) suggest that irregular migrants may constitute 20-40 per cent of all migrants.

3. How do migrants fall into irregular situation?

In several cases, irregular status is determined after migrants have entered and stayed for some time in a Gulf country. Irregularity is an indirect consequence of specific laws and rules that apply to migrants in these countries.

First, nationality laws based on strict *jus sanguinis* (you are a citizen only if your parents are citizens) are themselves a cause of irregular migration. While the Gulf countries are, in per capita terms, the top recipients of global migrants, their laws bar the door of citizenship against not only migrants but also those born to migrants and still living in the country. Close to 50 per cent of the 50 million residents in the Gulf are non-citizens. Not only do non-citizens have fewer rights than citizens, but their very presence must be negotiated — and can be questioned — at any moment. Many are constantly at risk of falling into an irregular situation.

Second, the sponsorship (*kafâla*) rule in force in the Gulf States is perhaps the most important source of generating irregular status. By law, every migrant is put under the administrative and legal responsibility of a guarantor or sponsor (*kafeel*), generally the employer. Changing sponsor is not allowed unless the sponsor permits. This rule hampers both the migrant's freedom of movement and the free functioning of a labour market. The mobility of labour that markets require is hindered by sponsorship legislation. When the market prevails over law and the migrant changes job (without the permission of the sponsor), the migrant will often shift from a regular to an irregular status. The No Objection Certificate from the sponsor that is necessary for changing a job in most Gulf countries can force absconders to stay irregularly in the country – sometimes for years and years – rather than go home.

Sponsorship adds to migrants' risk of falling into irregularity in several ways. For example, sponsors often retain the passport of their migrant employees, who then automatically fall into an irregular situation if they leave their employer without permission. Indeed, the migrant worker can be punished and may face imprisonment or deportation. In fact, any disagreement with the *kafeel* (sponsor) can push the migrant into irregularity: as can the *kafeel*'s failure to perform his administrative and legal duties (renewal of residency and labour permits, for instance).

As avenues of complaint and defence are few, migrants have no means to fix their situation: only a very few measures of migrant protection have been implemented. Moreover, the exclusion of certain sectors (e.g., the domestic sector and agriculture) from labour laws allows for easy financial and physical abuses. These range from non-payment of wages to excessive working hours, beatings and rapes. Raped migrant domestic workers may also be accused as sex offenders. Foreign embassies are keen to maintain the flow of their migrants' remittances and many of them do not proactively advocate for the rights of their citizens in the Gulf. Thus the lack of other options compels abused migrants to run away. They are then criminalised as runaways, some of them seeking shelter in the embassies of their home countries or in the government shelters.

Third, Gulf nationalisation policies (e.g., the Nitaqat policy in Saudi Arabia) constituting attempts to reduce dependency on foreign labour may also result in pushing migrants towards irregularity. In a general move towards replacing migrant workers with nationals in a number of economic activities, governments regularly extend the list of ‘national’ occupations. If suitable national workers are not available, employers can be fined for hiring migrants, or, alternatively, migrants are held responsible and find themselves in irregular situations, subject to sanctions if apprehended.

Fourth, irregular migration is sometimes determined at the very beginning in the way migrants depart from their country of origin. Legal avenues for migration may be considered by some migrants to be:

- Too costly when a broker or agency is involved and heavy recruitment fees must be paid, beyond the limit set by the government;
- Too complicated when compared to informal networks of friends and relatives organising the journey;
- Too constraining when measures passed by origin countries to protect their citizens against abuse are viewed by would-be migrants as obstacles to their freedom of movement. Take, for example, the simple banning of migration to the Gulf in the case of domestic workers (Ethiopia, Indonesia), or of those younger than 30 (India). Another instance is the requirement of a minimum monthly salary of \$400 for domestic workers by the government of the Philippines, viewed by many as limiting job offers. It is certainly ignored by some workers who are prepared to work illegally for a lower salary.

Other causes of irregular migration in the origin states are:

- States’ delegation of overseas recruitment to private actors (agencies and brokers) who expect a large profit from the migration “business.” Brokers may arrange irregular visas, especially ‘free’ or ‘azad’ visas whereby the sponsor does not employ the prospective migrant, thus putting the migrant in an irregular situation as soon as he/she arrives. Some workers have found themselves stranded by unscrupulous agents without legal residency and labour permits.
- Restrictions on legal migration to the Gulf, resulting in migrant-smuggling networks operating through the borders of some countries, such as Saudi Arabia.

4. How is irregular migration perceived?

For employers, employees in irregular situation are often cheaper in the Gulf States as elsewhere. For migrants, irregularity can be a preferred option if they have to leave a sponsor (e.g., in case of abuse or exploitation) or a necessity (e.g., if the sponsor fails to renew their residency and work permits).

Migrants are often aware of the risks even before they leave for the Gulf. But pull factors are strong: Gulf States are perceived to be powerful economies needing all categories of labourers, from low-skilled to highly-skilled men and women. Difficulties, then, some of which are anticipated (absence of rights, harsh conditions, periods without employment), do not deter migrants. Migrants, indeed, show extreme resilience in pursuing their goals and ambitions. Irregularity is not perceived as a serious obstacle if the

expected financial benefits outweigh the financial investments and physical dangers incurred. In general, migrants are usually informed and conscious of the risks but drivers often weigh more strongly in their calculus.

Paradoxically, irregular employment is also considered by some freelance (hence, irregular) workers as more lucrative, empowering and safer: it usually allows considerable independence from the sponsor, permits freedom of movement and gives leverage with employers.

Amnesties have taken place regularly in every country of the region since the late 2000s. But some migrants have declared that they prefer to stay in irregular employment until they reach their goals, and they choose not to benefit from regularisation opportunities.

5. Possible ways forward

Improvement of the working and living conditions of foreign labourers in the Gulf countries is ongoing in some instances. There is a particularly pressing need to tackle the conditions of the low skilled, who are most dependent on their sponsors and who experience the worst conditions. While consultation takes place in the framework of regional initiatives linking sending and receiving states – e.g., the Colombo and Abu Dhabi processes – pressure primarily emanates from human rights groups.

The efficiency and appropriateness, if not the fairness, of the sponsorship system — a major cause of irregular migration — is increasingly being questioned. Part of this debate takes place among global human rights activists, but the debate also features in Gulf business circles and societies. While abolishing this system is unrealistic, at least for the present, amendments that would make it more flexible are starting to be discussed. For example, there is the possibility of allowing workers to change jobs without their sponsor's permission or ending the right of sponsors to cancel working visas. Moves in this direction are taking place in the UAE and Bahrain.

In the medium term, opening the doors of citizenship to select categories of migrants, whether first- or second-generation, will have to be considered. But for the time being, it is not a realistic option as it is firmly opposed by governments.

Promising initiatives have been launched at intra-state level. For example, the Qatar Foundation established, in 2013, a list of mandatory standards for worker welfare applicable to all its contractors and their sub-contractors. Standards fix ethical and legal procedures for labour recruitment, accommodation, transport, health and safety. These are intended to improve the working conditions of migrants and may be expected to indirectly tackle a number of the causes of irregularity.

Last but not least, laws and administrative procedures governing migrants' residence and legal status should be gradually disentangled from those governing employment rights. Actually, the interweaving of residence rights and employment rights that is specific to Gulf States is a key problem and a source of irregularity among migrants.

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GLMM Mission: The Gulf Labour Markets and Migration programme is an international independent, non-partisan, non-profit joint programme of a major Gulf think tank, the Gulf Research Center (GRC - Jeddah, Geneva, Cambridge, Tokyo), and a globally renowned academic migration centre, the Migration Policy Centre (MPC - Florence). The GLMM programme provides data, analyses, and recommendations contributing to the improvement of understanding and management of Gulf labour markets and migration, engaging with and respecting the viewpoints of all stakeholders.

GLMM Activities: The Gulf Labour Markets and Migration programme has a wide range of activities, including: Collecting and elaborating data and documents; Researching and analysing key issues; Publishing various types of papers; Providing a daily news service; Training; and Organising panels and workshops.

Further information: [http://gulfmigration.eu / info.glmm@grc.net](http://gulfmigration.eu/info.glmm@grc.net).