

## Programmes, networks and initiatives continued

# Illegal but licit: transnational flows and permissive polities in Asia

TRANSNATIONAL FLOWS are regularly studied in the social sciences 'from above', focusing on the power of states to regulate, facilitate or hinder the movement of people across borders. The research project 'Illegal but Licit', while sharing with other studies an emphasis on the changing role of states in shaping transnational flows, ventured into the exploration of these flows by prioritizing two important points of departure. First, the project treated the state, however important, as just one source of authority among many, to which mobile subjects potentially heed. Second, the project championed ethnographic methods for getting at a better understanding of the aggregated 'big picture' of state authorities and transnational flows.

Conducted over the course of five years, from 2006 to 2011, the project included four case studies of transnational movement in various societies across the vast continent of Asia. Two of the case studies examined a long distance migration: female domestic workers from Kerala to the Gulf States, and male construction workers from rural China to Israel; while two other case studies focused on movement in borderlands: between Bangladesh and Northeast India, and between Afghanistan-Northwest Pakistan. The insights that the 'Illegal but Licit' project generated have benefited, in addition, from close collaboration with many other scholars working in Asia on transnational movement.

The project resulted in a number of journal articles, an edited volume and a doctoral dissertation.<sup>1</sup> It also led to a policy dialogue, held in Katmandu, between academics, civil-society activists and policy makers from different countries in Asia. In what follows, I thematize and highlight some of the project's main empirical findings and analytical perceptivities.

### Thinking mobile, thinking multiple

Political order is commonly associated with the regulatory authority of states. This is not surprising in view of the fact that states do their utmost to project an image of exercising full authority within national territories. According to the formal model, states enjoy a monopoly over the use of violence, the right to tax the population and the power to sanction offenders. Staying close to such a formal understanding, it is easy to conceptualise state authority in a binary fashion: either there is state law and order, or there is a lack of authority and thus anarchy.

Our empirical evidence shows that the sway of formal state authority is never complete and, crucially, that we should not understand this as a 'lack' of authority or as being detrimental to the establishment of order. Our findings point to the necessary ubiquity of *multiple* authorities that complement (or compete with) the regulatory authority of states. For example, time-honoured ways of doing things can be more powerful in shaping people's practices than new regulations drafted in a government ministry. Religious, ethnic or commercial elites can exercise as much, or more, regulatory power than state officials. State authority is thus often pitted against a more socially accepted authority among regional or traditional communities.

The real-life states that we have studied bear little resemblance to the 'model state' used in much social theory. Looking at states from the perspective of people involved in (illegal) transnational flows, our findings show that many mobile people do not experience the state as a stable centre of authority. Authoritarian, controlling states (such as China) are not capable of regulating behaviour and eliminating illegal practices any more than permissive, disorganised ones (such as Bangladesh). Our studies have demonstrated that these states suffer from a persistent 'implementation deficiency' – an inability to put their policies into practice. On the one hand, policies are often overambitious and the state lacks the manpower and legitimacy to push them through. On the other hand, officials may actively obstruct policies handed down from higher levels within the state. There are many reasons why they may do so: they may disagree with the policies (a lack of 'political will' within the state), they may feel the policies run counter to their personal interests or career prospects, or they may be out to divert state resources to their own coffers. Our studies show that despite elaborate performances of sovereignty, states are not able to imprint a unified normative project onto every subject, including those manning the state itself.

### Fashioning licitness

Millions of mobile people live their lives in the dim interface between legality and illegality. Rather than seeing this as a failure of the state system to assert itself, we advance that the 'failure' is systemic because it is part of ongoing practical negotiations to establish social order. State categories and rules are never straightforward, let alone set in stone. States make many rules only to break (or forget) these, either routinely or in specific circumstances. Examples from states as unique as Israel, Pakistan and India show that we must conceptualise states as entities habitually straddling the legal-illegal divide – a divide of their own making.

Our case studies highlight how transnational flows generate zones of licitness that are located between the realms of state authority (*legal vs. illegal* behaviour) and social regulation (*licit vs. illicit* behaviour). Their creation – not as exceptions or surreptitious hideaways, but as everyday spaces – is predicated on political negotiations for which the state is one partner among others, resulting in state agents being routinely and profitably embedded in wide-ranging networks of informal transnational brokerage. States are often important partners in these networks and active players in the ensuing politics of licitness.

Political organisations such as states and interstate associations need categories and rules. They cannot govern without abstracting the representations of lived realities to create these categories. As our findings show, however, state categories often fail to capture the very phenomena they manifestly aim to order. For example, in both Israel and the Gulf States the category of 'guest workers,' which is supposed to describe a secure relationship of employment under standardised working and living conditions during an agreed period, turns out to be something else entirely. In practice it describes a relationship in which employers enslave workers and which does not provide even basic legal protection against employer violations of signed contracts. For these migrants, paradoxically, legality turns into a liability. Indian domestic workers in Dubai, and Chinese construction workers in Tel Aviv, who deliberately opt to become 'runaway' workers or undocumented labourers, find themselves in a surprising position. They are better off than their 'legal' counterparts who are tied to binding contracts, excessive exploitation and extreme social isolation. Under these circumstances, absconding or fleeing a legal contract becomes a means of 'countering subjugation' rather than 'subjugation itself'.

### Permissive borders

Geographic proximity and trade links generate further transnational regimes of licitness. For example, in the border between India and Bangladesh, customary pathways and historic trade routes may persist in spite of more recently erected state borders. The habitual practices of inhabitants in borderlands lead them to perceive the crossing of state borders, on a daily basis and without formal permits, as unproblematic. State officials, on the other hand, may well consider such practices



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to be a dangerous subversion of state sovereignty, economic insubordination, or a potential security threat. But formal roles and stereotypical images may be negotiable, for example when state actors become deeply involved in facilitating unauthorised cross-border trade, or when they legalise 'smuggling'.

Our studies advance that borderlands accommodate a vast range of informal flows; for example, in the Bangladesh-India borderland, the gendered nature of the local regime of permissiveness is pronounced. Here women traders and commuters easily navigate the high-security borderland amidst the construction of a new fence and increased patrolling, while men have to purchase a passage. State agents do not consider women traders, and the small quantities of goods that they carry, as a risk to either state. The presence of these women as permissible foreigners, illustrates how certain categories of mobile people may partially escape territorial and exclusionist discourses.

Finally, to people engaged in transnational flows in borderlands and beyond, authority does not radiate outwards from centres of power: strong at the centre and weakening towards the periphery. The findings of our contributors do not support that view. It shows that to mobile people, authority is embedded in persons and objects and therefore is movable. Authority is not restricted to a particular territory and may materialise in unexpected places. For example, there is no necessary link between being territorially peripheral or geographically isolated and being free from state regulation (or, put differently, being excluded from the state). To people who are mobile, regulatory authority appears as a fluid property that can move about, expand and retract.

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### Notes

<sup>1</sup> Kalir, B & M. Sur. 2012. *Transnational Flows and Permissive Polities: Ethnographies of Human Mobilities in Asia*, Amsterdam: Amsterdam University Press.

Above: Thai/Lao Border, Chong Mek Courtesy Rich Hintz on flickr. Below: Military checkpoint on the China-Tibet border Courtesy Desmond Kavanagh on flickr. Both images reproduced under a creative commons license.

