

Mechanisms for the Prevention and Combating of Irregular Migration in the Maghreb Countries: Reality and Aspirations

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Abstract:

The subject of the study aims to shed light on one of the most important current issues in Algeria and the Maghreb region, which is irregular migration, the aspects of which are numerous. However, on the occasion of this study, we will focus on the 'legal mechanisms' that are characterized by a repressive and punitive nature. We will also address some of the preventive mechanisms that are more flexible compared to the former, with the aim of determining the effectiveness of the mechanisms allocated to confronting the phenomenon of 'irregular migration' and finding solutions that would curb the rates of migration and push them towards decline. All of this will be the subject of discussion in the study titled 'Mechanisms for the Prevention and Combating of Irregular Migration in the Maghreb Countries: Reality and Aspirations.'

key words:

Irregular migration- irregular migrants- Maghreb countries- repressive mechanisms- preventive mechanisms.

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introduction:

The topic of 'irregular migration' has taken an upward trend in recent years, as everyone from the general public to researchers and politicians is talking about this phenomenon. The issue of 'irregular migration' is a matter of concern due to its connection with many fields, whether political, social, legal, or economic. Herein lies the importance of this topic, through the search for effective solutions that work to combat this phenomenon at the Maghreb level.

Among the solutions allocated to confront this phenomenon, we find the 'legislative' solution, which is intended to achieve the desired goals by establishing legal mechanisms in a 'repressive and punitive' framework, by tightening penalties for the parties organizing this type of travel. The second type of mechanism is in a 'preventive framework' through which the protection of the most vulnerable group to 'irregular migration' is targeted. All of this is in order to eliminate the causes that led to the spread of this phenomenon at the level of the Arab Maghreb region.

Based on the foregoing, we formulate the problem as follows:

Are the mechanisms allocated to confront irregular migration in the countries of the Arab Maghreb capable of limiting the rise in its rates?

To answer the problem raised, **the 'content analysis' method** was relied upon by analyzing the content of the legal texts dealing with the phenomenon of irregular migration in a fundamental way. **The comparative method** was also relied upon to present the position of the Maghreb legislations in this field.

The study was divided as follows:

Initially, we will work to highlight the legal treatment of irregular migration adopted in the Maghreb legislations, focusing on some of the countries that record high rates of irregular migration, while working to reveal the effectiveness of this legislation, or lack

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thereof, with the proposal of solutions in this regard. This aspect is titled: The mechanisms allocated in the context of combating (**section I**).

Secondly: In this part of the study, we will work to highlight those 'preventive mechanisms' after we have worked in the first part of the study on the mechanisms allocated in the context of combating. The prevention of 'irregular migration' is manifested by the establishment of mechanisms of a different nature (economic, educational, cultural, religious), which would reduce the rates of 'irregular migration'. All of this is in the part entitled: The mechanisms allocated in the context of prevention (**section two**).

Section I: Mechanisms Allocated in the Context of Combating

It is evident that Algeria, like other Maghreb countries, strives to address the phenomenon of "**irregular migration**"⁽¹⁾, which has spread significantly in recent decades. We have witnessed alarming figures of thousands of individuals and groups attempting to reach the northern shore of Europe by all means, necessitating the search for effective solutions to combat this phenomenon.

A): Combating the Phenomenon of Irregular Migration in Algerian Penal Law

It is noteworthy that Algeria has addressed the legislative vacuum concerning the criminalization of irregular migration, especially in light of the rising rates of "irregular migration" during the period 2005-2008. This came after the ratification of the United

⁽¹⁾- As we previously mentioned, the issue of irregular migration is a complex topic, starting with the term itself and extending to the mechanisms adopted to combat this phenomenon. Within the framework of the adopted terminology, a debate arises regarding the most accurate term between "irregular migration" and "illegal migration." However, in the context of our study, we believe that the most precise term, whose content varies, is "irregular migration," which is represented by "the individual's non-compliance with the organizational and legal forms in force for entering a foreign country." This term is also adopted by official international bodies. For more information on this topic, refer to: <https://www.aljazeera.net/encyclopedia/> 7/5/2015, accessed on 15-08-2025 at 11:04.

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Nations Convention against Transnational Organized Crime⁽¹⁾. The position of the Algerian penal legislator was varied, encompassing both deterrence and incentive.

1. Provisions Related to Irregular Migrants:

Initially, we will address the provisions related to individuals known as irregular migrants, to examine the penalties prescribed in this chapter, which the penal legislator organized in the eighth section under the title "**Crimes Committed Against Regulations and Laws Related to Leaving the National Territory**"⁽¹⁾."

Article 175 bis (2) states that "any Algerian or foreign resident who leaves the national territory illegally, during his passage through one of the land, air, or sea border centers, or by using forged documents, impersonating another identity, or any other fraudulent means to evade presenting the necessary official documents or performing the procedures required by the laws and regulations in force, shall be punished with imprisonment from two months to six months and a fine from 20,000 DZD to 60,000 DZD, or one of these two penalties." The same penalty applies to any person who leaves the national territory "through areas or outlets other than border centers."

It is noticeable that the Algerian legislator in this chapter prescribed the same penalty for the Algerian or foreigner who wishes to leave the national territory by illegal means. Therefore, is this penalty prescribed by the Algerian penal legislator capable of undermining the causes of irregular migration?

In reality, we believe that the rates of the phenomenon of "irregular migration" decreased at one point in Algeria, but not due to legislative reasons, but for other reasons that we will clarify in the

⁽¹⁾-Order No. 66-156, dated 08 June, 1966, **related to the Penal Code**, Official Journal of the People's Democratic Republic of Algeria, No. 49, issued on 11 June, 1966, **amended and supplemented, especially by Law No. 09-01**, dated February 25, 2009, Official Journal. No. 15, Issued on June 08, 2009.

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subsequent parts of the study. However, we are currently witnessing an increase in cases of irregular migration (1), which indicates the ineffectiveness of these punitive mechanisms in combating the phenomenon. Therefore, it is necessary to search for other solutions that work to combat irregular migration.

2. Provisions Related to Migrant Smugglers:

The Algerian legislator has termed the organizers of "irregular migration" journeys as "smugglers," as they represent the main actors and the second link in the completion of the crime and the exacerbation of this phenomenon. So, what are the penalties prescribed for irregular migrant smugglers?

Article 303 bis (30) of the Penal Code states that "smuggling is the act of arranging the illegal departure of one or more persons from the national territory, directly or indirectly, in order to obtain a financial benefit or any other unlawful benefit." Smuggling is punishable by imprisonment from three to five years and a fine from 30,000 DZD to 500,000 DZD. The duration of the penalty increases in the presence of the following circumstances, which are regulated by Article 303 bis (31) of the Penal Code:

- The presence of a minor among the smuggled persons.
- Endangering the safety or life of the smuggled migrants or exposing them to danger.
- Treating smuggled migrants in a humiliating or inhumane manner.

The penalty can also be doubled to become a felony punishable by imprisonment from 10 to 20 years and a financial fine from 1,000,000 DZD to 2,000,000 DZD in the event of the following circumstances:

- If the perpetrator's position facilitated the commission of the crime.
- If the crime was committed by more than one person.

- If the crime was committed with the threat or carrying of a weapon.
- If the crime was committed by an organized criminal group.

In addition to the application of the aforementioned penalties, the perpetrator is also punished with supplementary penalties mentioned in Article 09 of the Penal Code.

3. Exempting Excuses and Mitigating Circumstances:

We find that the Algerian legislator did not limit itself to a policy of deterrence by tightening penalties and not tolerating the perpetrators of these criminal acts. Rather, it provided a way for the state to contribute to or prevent their commission through a policy of incentive, by mitigating or exempting from punishment in specific cases, by way of example and not limitation.

. Mitigating Circumstances:

The person accused of committing criminal acts related to smuggling migrants benefits from the mitigating circumstances mentioned in Article 53 of the Penal Code.

. Exempting Circumstances:

Unlike mitigating circumstances, from which the smuggler does not benefit, we find that exemption from the prescribed penalty is granted to anyone who informs the judicial or administrative authorities about the crime of migrant smuggling before its execution or initiation. The penalty is also reduced by half if the notification occurs after the completion or initiation of the crime, but before the public prosecution is initiated, or if it is possible to arrest the original perpetrator or partners in the same crime after the public prosecution is initiated.

Failure to report migrant smuggling is punishable by imprisonment from one to five years and a fine from 100,000 DZD to 500,000 DZD. However, failure to report the commission of migrant

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smuggling does not apply to the relatives and in-laws of the perpetrator up to the fourth degree, unless the irregular migrants include a minor who has been abused has been abused. The Algerian legislator has taken into account...It is clear that the Algerian legislator has taken into account the family relationship, in addition to the protection of minors, if the irregular migrants include a minor whose not age exceeds 13 years ⁽¹⁾.

B) In Comparative Maghreb Legislations

In this element of the study, we will try to limit the study geographically to only some of the Maghreb countries that share and resemble Algeria in the exacerbation of the phenomenon of "irregular migration," namely Tunisia and Morocco. All of these countries are considered a starting point for these journeys. For this, we will examine the legislative treatment of irregular migration in these countries.

1: In Moroccan Legislation

Morocco is considered one of the Maghreb countries most affected by this phenomenon, due to several factors, including its geographical nature close to the European coast, especially Spain, in addition to the influx of thousands of migrants from African coastal countries. Among the solutions allocated in this chapter is the legal solution.

The Moroccan legislator addressed the issue of "irregular migration" in the law related to the entry and residence of foreigners in the Kingdom of Morocco and irregular migration. Article 40 of this law stipulates the punishment of "any traveler who transports or attempts to transport an alien coming from another country to the Moroccan territory without possessing a travel document, or when acquiring a visa required by law or by virtue of an international

⁽¹⁾- Articles 303 bis (33) to 303 bis (37) of the Penal Code, **previous source**.

agreement applicable to his nationality, with a fine ranging from 5,000 to 10,000 dirhams" ⁽¹⁾.

From the above text, we conclude that the Moroccan legislator focuses on the financial fine without the penalty of deprivation of liberty for the person who enters the Moroccan territory illegally. However, the issue of a Moroccan leaving the territory illegally was addressed by Article 50 of the aforementioned law, which states that he shall be punished with a fine ranging from 3,000 to 10,000 dirhams and imprisonment from 1 month to 6 months, or one of these two penalties only.

Without prejudice to the provisions of the criminal law applicable in these cases, any person who leaves the Moroccan territory secretly, during his passage through one of the land, air, or sea border centers, or by using a fraudulent means to evade presenting the necessary official documents or performing the procedures required by the laws and regulations in force, or by using forged documents, or by impersonating another identity, and any person who infiltrates the Moroccan territory or leaves it through areas or outlets other than the border centers specifically prepared for that.

It is noteworthy that the Moroccan legislator focused heavily on financial fines, while the irregular migration that leads to deprivation of liberty is represented in acts committed by those with the status of "public officials".

2: In Tunisian Legislation

The legislative treatment of the phenomenon of irregular migration that we find in the Tunisian model is worthy of attention, as the Tunisian legislator did not overlook any actor in the commission of these operations, expanding the circle of criminalization to include

⁽¹⁾-Dahir No. 1.03.196 issued on November 11, 2003, related to the implementation of Law No. 02-03 **related to the entry and residence of foreigners in the Kingdom of Morocco and irregular migration**. Official journal, No. 5160, issued on November 13, 2003.

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everything that could contribute to the occurrence of the crime of "burning", as the Tunisian legislator termed it. The punishment was not limited to the perpetrator, but extended to accomplices and anyone who assists in the commission of this crime, including owners of places that shelter irregular migrants, and even those who guide the organizers of these journeys.

Chapter 38 of the "Basic Law related to travel documents and passports" states: "Anyone who organizes, mediates, assists, facilitates, guides, or plans, by any means, the entry of a person into Tunisian territory or their departure from it, in exchange for a consideration or not, whether by land, sea, or air, or through points of passage other than those designated for that purpose, shall be punished with imprisonment for three years and a fine of eight thousand dinars"⁽¹⁾.

As for the organizers of "irregular migration journeys," the Tunisian legislator has intensified the punishment, as they are punished with imprisonment for six years and a fine of 20,000 dinars. If the agreement is to organize the journey, meaning it is organized, the penalty reaches imprisonment for 10 years and a fine of 30,000 Tunisian dinars ⁽²⁾.

The Tunisian legislator chose the repressive and punitive path by intensifying the punishment compared to the Moroccan and Algerian legislators, which led to a decrease in the rates of the phenomenon in Tunisia to some extent, compared to what Algeria and Morocco are witnessing.

Section II: Mechanisms Allocated in the Context of Prevention

Anyone who examines and studies the issue of irregular migration in Algeria and the Maghreb countries in general will realize

⁽¹⁾- Basic Law No. 06 of 2004, dated February 03, 2004, related to the amendment and completion of Law No. 40 of 1975, dated May 14, 1975, **related to travel documents and passports**. Official journal, No. 11, issued on February 06, 2004.

⁽²⁾-Chapters 40-41, **same source**.

the magnitude of the crisis that has become a concern for these countries, casting its shadow over authorities and families alike. The lack of effective action to confront this phenomenon will expose these countries to the loss of the most important element in the field of renaissance and development, which is represented by youth. Therefore, it is imperative to find solutions that work to curb the rising rates of "irregular migration".

It is true that repressive mechanisms of a punitive nature are capable of achieving deterrence in some aspects. However, in the context of "irregular migration," their limitations have become apparent in light of the recorded statistics, which show a significant increase in irregular migration rates. This indicates the legislator's inability and limitations in confronting this phenomenon. When an irregular migrant is arrested and punished, does that mean we have suppressed the idea driving irregular migration?

In light of the aforementioned situation, legislation with a punitive nature cannot be the most effective way in this regard. Therefore, it is necessary to search for other ways that work to undermine the causes of irregular migration. These mechanisms, when mentioned, we will focus on "Algeria" as a sample for the study, but they can be adopted in many of the Maghreb countries due to the great similarity and commonalities in characteristics.

A): Mechanisms of an Economic Nature

Among the models that we will cite in this chapter, and which are adopted at the level of Algeria, we mention the program initiated by the Algerian authorities in the framework of supporting youth through the National Agency for Youth Support, established in 1996. (Just for reference, its name was later changed to the "National Agency for the Development of Entrepreneurship and Youth Support" ⁽¹⁾. Its content allowed youth to embody and activate their projects

⁽¹⁾- Selma Chiheb, " **The National Agency for Support Youth Employment as a mechanism to support and escort SME's – case agency of Guelma** The Added

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within the framework of small enterprises by benefiting from loans aimed at combating unemployment. These mechanisms, over a period of time, led to a decline in irregular migration rates compared to before.

It is true that this policy contributed, to some extent, to curbing irregular migration rates, as employment became available. However, with the passage of time, it became clear that these mechanisms were somewhat limited due to the failure of a large number of institutions, with the exception of a few successful ones. The reasons for this failure are that there were no objective studies for these projects regarding their compatibility and economic viability with national needs ⁽¹⁾.

As we mentioned earlier, the policy of youth support was a temporary or circumstantial solution. However, in recent times, we are witnessing an escalation in irregular migration rates. Although it was a good mechanism that contributed to rationalizing irregular migration during that period.

This leads us to say that it is necessary to revive these projects through avoiding the mistakes made at the beginning, and this is by relying on objective studies that take into account national needs and economic viability, which makes youth more fortunate in their

Value of Business Economics, Université Hassiba Ben Bouali de Chlef, Vol. (1), No. (1), 2019. p. 109.

-Regarding the name change, it came by virtue of Executive Decree No. 20-329, dated November 22, 2020, amending and supplementing Executive Decree No. 96-296, **which includes "the establishment of the National Agency for Youth Employment Support and the definition of its basic law and the change of its name."** Official journal, No. 70, issued on November 25, 2020.

⁽¹⁾- Cherif Ghait, Abdelmalek Mahri, " **the Analysis of the causes and dimensions of the failure of the financial performance of the investment projects and prediction using analysis and forecasting models an empirical study on some of the projects proposed at the level of the National Agency to Support Youth Employment in Algeria**", Roa Iktissadia review, University of El Oued, Vol. (5), No. (9), December 2015, p. 162.

countries. The economic solution, therefore, is capable of contributing significantly to eradicating this phenomenon from its roots.

When talking at the Maghreb level, the Maghreb countries, which represent a transit and departure region with the participation of European countries, represent a point of arrival. Cooperation within the framework of international efforts through the creation of economic projects in the regions of departure and the African coast⁽¹⁾, which represent a preventive mechanism. The efforts made in the framework of guarding the coasts and borders and deporting irregular migrants consume huge financial resources and great efforts⁽²⁾. Therefore, it is necessary to search for solutions of an economic nature that seek to achieve the desired goal, which is a "win-win" relationship for all parties, and which is represented in curbing "irregular migration" in the long term.

B) Mechanisms of a Social Nature

The economic solution alone may not be the most effective in combating "irregular migration." Rather, it is necessary to refer to the role of social mechanisms that work to take into account psychological aspects, and spiritual and cultural aspects. This is what will be addressed in the first axis, which covers the mechanisms mentioned in the study.

1. The Housing Crisis:

Among the social problems that societies and countries suffer from, especially Algeria, which is not immune from them, is the "housing crisis," which is considered a concomitant result of other

⁽¹⁾-Amel Agabi, "The role of the European Union in addressing the phenomenon of illegal immigration", *The Journal of Legal and Economic Studies*, University Center Barika Vol. (5), No. (3), 2023, pp. 418-419.

⁽²⁾- Manel Boukourou, "The Role of the Legal and Institutional Framework in Combating illegal immigration To Algeria", *Academic Review of social and human studies*, University of Hassiba Ben Bouali, Chlef, Vol. (13), No. (1), 2021, p. 293.

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crises, such as unemployment and the deterioration of living standards⁽¹⁾. It is considered one of the most prominent problems

that exposes youth, especially at the "Algerian level," which pushes them to choose the path of irregular migration⁽²⁾, despite the state's efforts in this field. However, the demand is increasing significantly. So, if this goal is achieved, along with other goals, this can be done through:

. Activating the National Spatial Planning Scheme:

Activating the "National Spatial Planning Scheme"⁽³⁾, which focuses on three major foundations and entitlements that Algeria must confront: the economic challenge, the ecological challenge, and the demographic challenge⁽⁴⁾. This is not only about solving housing and employment problems, but also about addressing the housing crisis that Algeria has long suffered from, which is represented in the concentration of population. Official statistics indicate a serious imbalance in population distribution, where there is a high

⁽¹⁾Hind rim, "**The Housing Crisis in the Algerian City Between Reality and hope- Sociological Approach**, *Tributaries journal For studies and scientific research in social and human sciences* , University of Belhadj Bouchaib - Ain Temouchent, Vol. (6), No. (3), 2022, p. 752.

⁽²⁾-Redouane Bouab, Fatiha Hank , "**illegal immigration of Algerian Youth: Diagnosis of Causes, implications, Solutions**", *Academic Journal for Research in Social Sciences*, University Center of Sheikh Amoud Ben Mokhtar - Illizi, Vol. (1), No. (2), 2020, p. 396.

⁽³⁾-Law No. 01-20, dated December 12, 2001, **related to spatial planning and sustainable development**. Official journal, No. 77, issued on December 15, 2001, **ratified by Law No. 10-02**, dated June 29, 2010. Official journal, No. 61, issued on October 21, 2010.

⁽⁴⁾-Hadjar Chenikhar, "**Territorial Planning Strategy to Achieve Sustainable Development and Economic Effectiveness: The National Spatial Master Plan (SNAT) as a Model**," *Review of Human Sciences, University of Larbi Ben M'hidi - Oum El Bouaghi*, Vol. (7), No. (3), 2020, p. 203.

concentration of population in coastal areas, then it decreases in the plateaus, while it is almost non-existent in the south ⁽¹⁾.

The issue of urbanizing the Algerian south within the framework of what is known as modern sustainable cities may push youth today towards internal migration to the south. Moreover, this mechanism achieves other advantages, perhaps the most prominent of

which is the protection of the vast border strip and the support of the national economy ⁽²⁾.

. The Family Institution:

The bet is on the family institution through working on its accompaniment and promotion, and its legislations and institutions, which would limit the increase in irregular migration rates.

The statistics indicate that youth are reluctant to marry from one side, and the rising divorce rates from the other, which pushes youth towards alienation from establishing their own family, which is a major reason for youth to remain in their homeland. Therefore, it is necessary to embrace the family and organize it by establishing national bodies at the national level that are concerned with improving family life through opening national workshops that work on promoting the Algerian family, which would achieve many social advantages ⁽³⁾.

It is also possible, when talking about institutional mechanisms, to refer to the role of the "mosque institution" through

⁽¹⁾Jawida Amira, "**The Problem of Population Distribution in Algeria,**" *AL-BAHITH*, Higher School of Professors Bouzareah, Vol. (3), No. (1), 2011, pp. 185-186

⁽²⁾Nouha Boutekouk, Hamza Baali, "**Smart Oases: A Strategic Scenario for Achieving Sustainable Agricultural Development at the Level of Algerian desert Regions**", *AL-Manhel Economie*, University of El Oued, Vol. (5), No. (1), 2022, pp. 276-277.

⁽³⁾-Samir grid, Wiza Djalala, " **Family Environment and its Relationship to illegal immigration**", *Afaq for Sciences Journal*, Ziane Achour University - Djelfa, Vol. (7), No. (3), 2022, p. 311.

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betting on the religious discourse, which is capable of achieving the desired goal of curbing irregular migration ⁽¹⁾. Similarly, it is possible to bet on educational and pedagogical institutions by providing awareness activities among students, given that this group needs greater attention, as it is the most susceptible to ideas encouraging irregular migration ⁽²⁾. The media and communication sector also has a significant role through betting on media content that counters the idea of "irregular migration," which has become widely promoted on social media platforms ⁽³⁾.

Conclusion

The issue of searching for solutions to combat and prevent "irregular migration" passes through a sound diagnosis, and the issue of diagnosis is not an easy matter, given the intertwining of many factors that have contributed to and influenced the spread and formation of this idea among our youth. Through this study, we have tried to address the repressive mechanisms allocated in the context of combating, and to ascertain their effectiveness in achieving the goal.

Therefore, it is necessary to rely on preventive mechanisms of a proactive nature, through working on supporting and promoting youth and improving their living standards, which is indispensable in the current time until the desired goal is achieved.

Therefore, we **propose**:

⁽¹⁾This is what Algeria has done through the demand of the Minister of Religious Affairs and Endowments through unifying Friday sermons for awareness of the dangers of irregular migration throughout the republic. For more details, see: <https://www.alarabiya.net/north-afr9> , accessed on 11- 09-2025 at (08:25).

⁽²⁾Hadjar Ziada, " **illegal immigration and its Impact on the Citizenship Values of the schooled teenager (A Field Study on Secondary School pupils)**, *Tatwir Journal*, University of Abdelhamid Mehri - Constantine," , Vol. (8), No. (1), 2021, pp. 222-223.

⁽³⁾Zineb Lemmouchi, " **The Role of Algerian Media in Combating Irregular Migration and its Contribution to Security Stability in Mediterranean Countries**," *Journal of Legal and Political Research*, University of August 20, 1955 - Skikda, Vol. (3), No. (2), 2018, pp. 13-14..

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- Betting on local development, as local communities are the first cell in society. Achieving renaissance at the local level is an issue that can contribute to rationalizing irregular migration.
- Social development, and not limiting it only to material aspects, but expanding to touch spiritual aspects through the involvement of religious institutions in this chapter, as a mechanism that can counter and undermine the idea encouraging irregular migration.
- Intensifying penalties for the organizers of these journeys, especially in cases of recidivism.
- Joint international action between transit, departure, and arrival countries through the creation of joint programs of an economic, educational, pedagogical, and social nature. This can create a new environment that allows for improving living conditions for individuals in the first regions, which can contribute to curbing irregular migration.

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