

The Human rights situation of irregular migrants at international borders

واقع حقوق الإنسان للمهاجرين غير الشرعيين على الحدود الدولية

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Received: 19/01/2025

Published : 13/05/2025

Accepted : June/2025

المخلص:

تكتسي مسألة الهجرة غير الشرعية أهمية كبيرة على الصعيدين الوطني والدولي، وذلك بالنظر إلى تداعياتها الأمنية، السياسية، والاقتصادية، والاجتماعية وغيرها. كما أن تزايد تدفق المهاجرين غير الشرعيين أدى إلى تبني سياسات أمنية صارمة للتعامل مع هذه الظاهرة، في ظل تزايد الضغوط الداخلية على الدول المستقبلية. إلا أن هذه السياسات المتشددة غالبا ما تؤدي إلى ارتكاب انتهاكات وتجاوزات جسيمة ضد حقوق الإنسان للمهاجرين غير الشرعيين خاصة على الحدود الدولية. وتعالج هذه المقالة واقع حقوق الإنسان للمهاجرين غير الشرعيين في ظل سياسات أمن الحدود المعتمدة من قبل الدول، سواء على المستوى الداخلي أو في إطار آليات التعاون والتنسيق الأمني الإقليمي، والتي أصبحت ضرورية لمواجهة التهديدات الأمنية الجديدة العابرة للحدود، ليخلص في الختام لجملة من التوصيات التي تطالب بها المنظمات الدولية والهيئات غير الحكومية التي تعنى بحقوق الإنسان في سبيل تحقيق نوع من التوازن بين سيادة الدول في تأمين حدودها من جهة، وتوفير الحماية للمهاجرين غير الشرعيين وصون كرامتهم، من جهة أخرى.

الكلمات المفتاحية: الهجرة غير الشرعية، سياسات تأمين الحدود الدولية، حقوق الإنسان، التهديدات الأمنية العابرة للحدود.

Abstract:

The issue of illegal immigration is highly significant on both national and international scales due to its security, political, economic, social and other implications. The increase in illegal migration has prompted receiving countries, particularly in light of growing domestic pressures, to implement strict border security policies, often leading to serious human rights violations and abuses against irregular migrants, especially at international borders.

This article examines these policies at both national and regional levels and their impact on the human rights of irregular migrants. It concludes with a series of recommendations from international and non-governmental human rights organizations, calling for a balance between states' sovereignty in securing their borders and the protection of migrants' dignity and rights.

Key words: Illegal immigration, border security policies, human rights, transnational security threats

Introduction:

The phenomenon of irregular migration has intensified in recent years, driven by a complex interplay of political instability, security challenges, socio-economic disparities, humanitarian crises, environmental degradation, and other structural factors¹. These pressures have compelled countless individuals to leave their home countries in pursuit of safety, stability, and the prospect of a dignified life elsewhere.

Although international legal frameworks distinguish between migrants, irregular migrants, and refugees, they uniformly affirm the fundamental principle of protecting the rights and dignity of all individuals, irrespective of the causes of their displacement or their legal status in host countries.

The growing scale of irregular migration, often intertwined with transnational crimes such as drug trafficking, terrorism, human trafficking, money laundering, and arms smuggling, has prompted many destination countries to adopt robust legal frameworks and implement national and regional security measures to address the resulting challenges².

While states pursue targeted policies to regulate legal or "selective" migration based on their economic priorities and national interests, they are increasingly confronted with the realities of irregular migration and refugee flows, which demand responses grounded in both border security and humanitarian responsibility.

Though countries retain sovereign authority over immigration policy, including the right to control entry and residence and to legislate against unauthorized migration, they are equally bound by their international human rights obligations. These include ensuring protection and humane treatment for all migrants, regardless of their legal status.

In the absence of a dedicated international convention specifically safeguarding the rights of irregular migrants, international organizations, civil society, and human rights defenders are working alongside states to reconcile security-driven migration control policies with the imperative to uphold migrants' fundamental rights. Their collective efforts aim to strike a necessary balance between combating irregular migration and transnational crime, and safeguarding the human dignity and legal protections owed to all individuals in migration contexts.

In light of the current global context marked by serious human rights violations stemming from the anti-irregular migration policies adopted by numerous states, particularly at their borders, this study seeks to explore a critical question: **How do national and regional border security policies impact human rights in the context of combating irregular migration?** Furthermore, **what international mechanisms and initiatives exist to ensure the protection of migrants in irregular situations?** To answer these questions, our analysis is structured as follows:

I. State border security policies on irregular migration

1. Border control in irregular migration policies
2. European Union's approach for combating irregular migration

II. Human rights in Border Security systems

1. Irregular migrants' rights at international borders
2. Evaluating border security through a Human rights lens.

I. State border security policies on irregular migration

States adopt a range of legal and security strategies to manage border control and address irregular migration. These include heightened surveillance, the use of advanced technologies, physical barriers, and interception and detention operations. The core objective is to regulate cross-border movement and combat organized crime linked to irregular migration, such as human trafficking, smuggling, or any form of activities that jeopardize the stability of the domestic order.

1. Border control in irregular migration Policies:

Irregular migration has emerged as a major security concern, prompting states to overhaul their migration policies. While borders were once relatively open, especially before the 20th century, the increasing scale of migration has led to stricter laws and reinforced surveillance in many destination countries. Perceiving migration through a security lens has legitimized tightened controls and affirmed states' sovereign rights³.

1.1 Construction of physical border barriers:

Despite the globalizing trend of open borders for capital and information⁴, countries are simultaneously reasserting control over human mobility⁵. In reaction to growing migrant flows, many countries have erected physical barriers, such as Hungary's fence with Serbia, Bulgaria's and Greece's fences with Turkey, and the U.S. wall along its border with Mexico, highlighting a global shift toward securitized migration management⁶.

1.2 Use of Technology in Border Security:

As border threats evolve, many countries have turned to high-tech solutions. Outlined below are the principal technological means employed in the context of migration, with a particular focus on irregular movements:

- **Border Surveillance Technologies:** Tools like biometrics, identity verification systems, and large-scale databases (e.g., the EU's Schengen Information System and Visa Information

- System⁷) are used by countries to facilitate real-time information sharing and identity checks. Replacing traditional ID methods with technology can help detect forgeries and prevent fraud.

- **Virtual Border Security:** Programs like the U.S. Secure Borders Initiative⁸ and Spain's SIVE system⁹ deploy drones, thermal cameras, and remote sensors for continuous monitoring. Major investments, such as the UK-France partnership¹⁰, reflect a growing reliance on digital infrastructure to secure borders.

However, not all countries have access to advanced technologies within their migration management systems, which can lead to significant disparities. While some states are able to integrate cutting-edge tools such as AI to streamline procedures and improve efficiency, others, particularly those with limited resources, struggle to implement even basic digital infrastructure. This technological gap risks reinforcing existing inequalities between countries and may hinder fair and effective migration governance on a global scale¹¹.

2. European Union's approach for combating irregular migration

The emergence of transnational security threats, such as terrorism, organized crime, irregular migration, arms and energy smuggling, has underscored the necessity for international and regional cooperation. The European Union (EU) provides a valuable model for analyzing these dynamics, given its extensive legal and operational measures addressing irregular migration.

2.1. European Cooperation Mechanisms

In the EU, irregular migration has evolved from a social issue to a perceived threat to national identity and public security¹². Post 9/11 and after attacks like those in Madrid (2004), public discourse shaped by media and political elites, increasingly associated migration with terrorism and crime¹³. This securitization narrative, aligned with Ole Wæver's theory, has allowed for extraordinary policy responses outside normal political channels¹⁴.

Reflecting this securitization, the 2003 European Security Strategy included irregular migration among the major threats facing the EU, alongside terrorism and organized crime¹⁵. As a result, the EU implemented various institutional and policy mechanisms:

- **FRONTEX Agency:** Created in October 2004 to enhance surveillance of EU borders, especially in the Mediterranean, and facilitate cross-border cooperation in tackling crime and irregular migration¹⁶.

- **EUROSUR (European Border Surveillance System):** Launched in 2013, it coordinates information exchange between FRONTEX and national authorities through National Coordination Centers (NCCs), enabling a real-time overview of border conditions¹⁷.

- **European Pact on Migration and Asylum:** Initiated under France's EU presidency, in 2008, the EU Pact on Migration and Asylum was designed to balance legal migration management with the fight against irregular migration. Its latest version, which entered into force on 11 June 2024¹⁸, marks a major evolution by introducing stricter border control procedures, including identity checks, biometric data collection, and mandatory screening for high-risk applicants. It expands the Eurodac database¹⁹, streamlines return processes with reintegration support, and strengthens cooperation with non-EU countries to prevent irregular departures and combat migrant smuggling. The Pact also promotes legal pathways through new Talent Partnerships and an EU-wide talent pool. Full implementation is expected by mid-2026.

- **Detention Centers:** EU states operate detention centers for apprehended irregular migrants, pending deportation. However, plans to externalize such centers to North Africa proposed by Germany and the UK, faced criticism from Amnesty International and were ultimately rejected²⁰.

This initiative aligns with broader European efforts to externalize border control measures. The EU has been exploring similar offshore processing concepts, such as "return hubs", to manage deportations more effectively. These discussions gained prominence following significant electoral successes by far-right parties, prompting leaders like European Commission President Ursula Von der Leyen to advocate for pragmatic solutions, including offshore processing.

It is also worth noting that, despite growing EU-level integration in migration management, certain national prerogatives, such as setting migration quotas, remain under the control of individual member states.

2.2. EU cooperation with southern Mediterranean countries

Given the persistent rise in irregular migration, the EU has increasingly sought partnerships beyond its borders, particularly with countries in the Southern Mediterranean, which are primary sources or transit points for migrants. Unilateral efforts having proven insufficient, the EU adopted a more regional, cooperative approach to address root causes and enhance border security.

2.2.1 The 5+5 Dialogue (1990): This cooperation framework between five Northern Mediterranean (EU) countries and five Maghreb states focused on enhancing security collaboration. The agreement led to the establishment of joint security teams and advanced border monitoring system²¹. Though suspended in 1992 due to sanctions against Libya, it was revived in 2001²².

2.2.2 The Euro-Mediterranean Partnership (Barcelona Process): Launched to support broader cooperation with 12 Southern Mediterranean countries, this initiative expanded upon the 5+5 Dialogue. It addressed irregular migration through joint efforts to combat organized crime while offering development aid (via MEDA I and II) and investments to create local job opportunities, particularly for youth, in countries of origin. More recently, the EU has signed targeted agreements with countries such as Mauritania, Tunisia, and Egypt, offering financial support and technical assistance to manage

migration flows and bolster regional security, particularly in light of increasing pressures stemming from regional conflicts²³.

II. Human rights in border security systems

While the primary goal of border security systems is to curb migration at any cost, they have often failed to manage migration effectively. Instead, these systems have aggravated the situation, contributing to serious human rights violations.

As a result, human rights organizations have urged states to reconsider and revoke bilateral or multilateral agreements that are not aligned with international human rights standards. They advocate for cooperation frameworks that are both lawful and humane, emphasizing immigration management strategies that are rooted in respect for fundamental rights. Such approaches would enhance states' capacity to secure borders without compromising human dignity.

1. Rights of irregular migrants at international borders

Migration is increasingly recognized as a fundamental human right under international law. The Universal Declaration of Human Rights (1948) enshrines this in Article 14, which affirms the right to seek asylum, and Article 13, which guarantees the freedom of movement and residence within state borders.

However, this right is not absolute. Its application is constrained by national laws regulating emigration and the admission of foreign nationals²⁴. Accordingly, when these laws are violated, through forged documents, unauthorized crossings by land, sea, or air, or evading customs controls, the act becomes unlawful²⁵.

Beyond the Universal Declaration, other international instruments reaffirm the right to movement, such as:

- International Covenant on Civil and Political Rights (Article 12),
- European Convention on Human Rights (Article 5),
- American Declaration of the Rights and Duties of Man (Article 22),
- African Charter on Human and Peoples' Rights (Article 12).

Nevertheless, a comprehensive international framework specifically safeguarding the rights of irregular migrants is lacking. The notable exception is the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which includes Article 68, a provision addressing the rights of migrants in irregular situations and urging cooperation among states to prevent exploitation and violence²⁶.

In light of widespread violations, especially against vulnerable groups such as women, children, and persons with disabilities, international organizations, including the United Nations and its specialized agencies, have called for the activation of protective clauses within existing human rights treaties. These provisions should be extended and applied explicitly to irregular migrants to mitigate abuses and ensure humanitarian protection at borders.

1.1 International legal framework for the Human rights of irregular migrants:

International institutions dedicated to human rights and migration seek to guarantee the protection of all migrants, regardless of their legal status. While no single international convention focuses exclusively on irregular migration, numerous legal instruments address the issue from various perspectives, offering protections grounded in broader human rights principles.

These legal frameworks are founded on the universal, indivisible, and interdependent nature of human rights, which apply equally to all individuals, irrespective of nationality, gender, religion, or legal status.

The key international legal instruments protecting irregular migrants are outlined below:

- **The Universal Declaration of Human Rights (1948):** This foundational document guarantees fundamental rights for all individuals, including the rights to life, liberty, and personal security. Article 14 specifically affirms the right to seek asylum from persecution.
- **The International Covenant on Civil and Political Rights (1966):** This covenant reaffirms core human dignity rights that must be upheld under all circumstances. Article 6 protects the right to life, while Article 9 prohibits arbitrary detention and ensures the right to legal representation and a fair trial for all individuals, including irregular migrants.
- **The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984):** States are obligated to prevent torture and cruel, inhuman, or degrading treatment, including in the context of immigration detention. Importantly, this convention prohibits returning individuals to countries where they are at risk of torture, regardless of their immigration status.
- **The Protocol against the Smuggling of Migrants by Land, Sea, and Air (2000):** Supplementing the UN Convention against Transnational Organized Crime, this protocol aims to combat migrant smuggling, promote international cooperation, and protect smuggled migrants. Articles 4 and 5 focus on victim protection, while Article 6 criminalizes the act of smuggling.
- **The Refugee Convention (1951):** This convention offers protection to refugees, including those without legal documentation. Article 31 protects irregularly entering refugees from penalties, while the

- principle of non-refoulement prohibits their expulsion to countries where they may face persecution.

It is worth noting that some irregular migrants invoke asylum claims as a legal pathway to regularize their status, highlighting the often blurred lines between refugee and migrant classifications.

In addition to international treaties, several regional conventions also protect the rights of migrants, including those in an irregular situation, such as:

- **The European Convention on Human Rights (1950):** Protects against torture (Article 3), guarantees the right to a fair trial, and ensures respect for family life (Article 8).
- **The American Convention on Human Rights (1969):** Prohibits arbitrary detention and collective expulsion (Article 22), and affirms access to justice for all individuals.
- **The African Charter on Human and Peoples' Rights (1981):** Grants the right to freedom of movement (Article 12), the right to seek asylum, and prohibits mass expulsions.

All States, whether countries of origin, transit, or destination are legally bound, under international law, to uphold the Human rights of irregular migrants. In addressing migration challenges, it is essential that national security measures do not override these internationally recognized protections.

1.1 The role of International Organizations in protecting irregular migrants

International human rights bodies call on States to uphold their obligations under international law when implementing migration policies. This includes ensuring full respect for the human rights of all migrants, regardless of legal status or the motivations behind their migration, in accordance with the Universal Declaration of Human Rights and related instruments.

In the absence of a dedicated international convention focused exclusively on irregular migrants, various UN entities, including the General Assembly, ECOSOC, the Security Council, the Human Rights Council, and the International Court of Justice, have issued reports and recommendations aimed at safeguarding the rights of this vulnerable population.

1.1.1 The Mandate of the Special Rapporteur on the Human Rights of Migrants:

Established in 1999 by Resolution 44/1999 of the Human Rights Committee and later extended by the Human Rights Council²⁷, the Special Rapporteur plays a key role in:

- Promoting the protection of migrant rights, particularly for vulnerable groups;
- Gathering information on the conditions faced by migrants;
- Recommending practical measures for the effective implementation of human rights standards;
- And submitting regular reports to the Human Rights Council.

He also conducts country visits and receives complaints related to human rights violations against migrants, offering a direct channel for monitoring and advocacy.

1.1.2 OHCHR Guidelines on Human Rights at International Borders:

The Office of the High Commissioner for Human Rights (OHCHR), in cooperation with other institutions, has issued recommended principles and guidelines for safeguarding the rights of migrants at international borders²⁸. These highlight the severe risks irregular migrants face, ranging from arbitrary detention and profiling to torture, sexual violence, and denial of essential services.

To address these concerns, OHCHR has proposed the following core principles for States, international organizations, civil society actors, and all stakeholders involved in border management²⁹:

1. Primacy of Human rights: This requires that Human rights must be the foundation of all border management measures, whether legal, security-related, or administrative. Authorities must ensure that procedures such as interception, identification, detention, and return are carried out with full respect for human dignity and fundamental rights.

2. Elimination of all form of Discrimination: Border authorities must treat all migrants equally, without discrimination based on race, religion, gender, language, or other factors. Both public and private actors must be held accountable for discriminatory practices, with binding codes of conduct recommended for border personnel³⁰.

3. Protection and Assistance: States must consider the specific needs of vulnerable groups, including minors, persons with disabilities, pregnant women, and others, during border procedures. This includes providing basic necessities such as food, water, medical care, shelter, and clothing, regardless of legal status.

4. The principle also emphasizes:

- Strict adherence to the principle of non-refoulement (no forced return to danger).
- Prohibition of collective expulsions.
- Preference for voluntary return over forced deportations.
- Access to justice and remedies for victims of human rights violations.
- Accountability for perpetrators of such violations.

Additionally, the protection of migrants' personal data, particularly biometric data, is crucial. Any data collection and restrictions on entry must comply with international human rights standards, safeguarding privacy irrespective of legal status.

2. Evaluating border security through a Human rights Lens

While States retain sovereign authority over migration control and the right to determine who

The Human rights situation of irregular migrants at international borders

Samira BOUSTILA

may enter their territories, international human rights law imposes an obligation to uphold and protect the fundamental rights of all individuals, including migrants, regardless of their legal status, especially at international borders.

Because borders are subject to national legislation and enforcement, States are bound to ensure that actions taken in the name of national security, combating transnational crime, or migration deterrence are fully compliant with international human rights norms. This raises a key question: **How can States reconcile their sovereign right to regulate migration with their binding duty to respect and protect the rights of irregular migrants?**

On the one hand, international human rights organizations perceive irregular migrants primarily as victims of systemic injustice. On the other, many domestic legal systems criminalize irregular migration, casting these individuals as offenders. **This dual perception reflects a deep tension in international migration governance: Should irregular migrants be viewed as criminals or as victims?**

Despite the global proliferation of restrictive security measures intended to deter irregular migration, these efforts have largely failed to reduce migration flows. Instead, they have aggravated the humanitarian crisis, exposing migrants to widespread abuses, degrading their dignity, and endangering their lives.

2.1 Human rights violations at international borders

In a report presented to the United Nations General Assembly, the Special Rapporteur on the human rights of migrants, Felipe González Morales, expressed grave concern over the systemic human rights violations facing irregular migrants at international borders. The report underscores the tragic loss of life and profound suffering experienced by migrants on land and sea routes, often treated as expendable rather than as rights-bearing individuals³¹.

The Special Rapporteur also criticized the deployment of emerging surveillance technologies without adequate safeguards, and the increasing reliance on deterrence-based practices such as pushbacks, expedited returns, and denial of asylum access. These practices, he noted, not only fail to stem migration but also deepen migrants' vulnerability. Additional concerns were raised regarding the criminalization of migrants and human rights defenders.

The key human rights violations documented in this report include:

1. Excessive use of force and inhumane treatment: According to the report pushback operations often involve violent or degrading treatment. In 2021 alone, thousands of migrants perished or disappeared while attempting to cross the Mediterranean, the Atlantic, or land borders such as Belarus–Poland, Turkey–Greece, and Mexico–United States. The normalization of pushback practices, often through national laws or executive orders, was strongly condemned by the Special Rapporteur as incompatible with international human rights standards.

2. Discrimination and unequal treatment: Migrants frequently face discrimination based on race, religion, or nationality. In many instances, they are denied access to essential services such as food, shelter, and medical aid. Hate speech and xenophobia, sometimes echoed by official rhetoric, further compound their marginalization³². Notably, the deportation of thousands of migrants from the Dominican Republic to Haiti in 2021, including pregnant women, exemplifies this pattern of discriminatory treatment.

3. Arbitrary detention: Many irregular migrants are subjected to prolonged detention under inadequate and degrading conditions, often without due process. The detention of minors alongside adults has raised serious concerns, especially when conditions threaten physical and mental health. Such practices often contravene the Convention against Torture, which mandates that detention must be lawful, necessary, and respectful of human dignity.

4. Mass expulsions and violations of the non-refoulement principle: The principle of non-refoulement, prohibiting the return of individuals to countries where they face serious harm, has been routinely disregarded. For instance, Poland, Latvia, and Lithuania temporarily suspended this obligation during 2021 border emergencies. In the United States, over 1.6 million migrants were expelled in 2020 under COVID-19 emergency provisions, often without individual assessment or procedural safeguards, in clear violation of international norms.

2.2 International efforts to enhance the protection of Human rights at international borders

As States have increased their efforts to tighten border security; numerous International Organizations have emphasized the critical need to safeguard the human rights of irregular migrants within these policies and operations. Leading bodies, such as the Special Rapporteur on the Human Rights of Migrants and the United Nations High Commissioner for Human Rights, have issued a series of recommendations designed to ensure that the rights of migrants are upheld during border enforcement activities. Some of the most essential recommendations include:

1. Adopting a Human rights-based approach to migration and border Governance: States are urged to implement border governance policies that prioritize human rights. These policies should be sensitive to the vulnerabilities of specific groups, such as women, children, and other at-risk individuals. National legislation should also refrain from criminalizing irregular migration and must ensure that migration laws do not punish individuals for crossing borders without authorization.

2. Ending pushback practices: Pushbacks, operations that forcibly return migrants to their countries of origin or transit, are viewed as illegal by human rights organizations. These practices often expose migrants to serious risks, including violence, exploitation, and detention in unsafe conditions. The organizations advocate for the abolition of pushbacks and recommend replacing them with rescue operations that respect migrants' fundamental rights.

3. Preventing arbitrary detention: States should reform national laws to prevent the arbitrary detention of migrants, especially irregular migrants, and ensure that detention is used only in exceptional cases³³. Moreover, alternative measures to detention should be considered, in line with human rights standards. Migrants in detention should have the right to contact consular authorities and access support from human rights defenders³⁴.

4. Respecting the ban on mass expulsions and upholding the principle of non-refoulement: States must comply with international norms prohibiting mass expulsions and uphold the principle of non-refoulement (i.e., the prohibition of deporting individuals to countries where they face a risk of persecution, torture, or inhuman treatment). Irregular migrants must also be guaranteed access to legal remedies and the ability to seek justice in cases of human rights violations.

5. Accountability and sanctions for border security violations: Border security personnel, who engage in human rights violations, including the excessive use of force, should be held accountable for their actions. Victims of such violations must be provided with appropriate remedies, including compensation for harm suffered, and those responsible should face legal sanctions to prevent further abuses³⁵.

6. Responding to humanitarian emergencies with full respect for Human rights: In times of humanitarian emergencies, states must ensure that the rights of all individuals, regardless of nationality, race, legal migration status, or origin, are fully respected. This includes ensuring non-discrimination in the provision of humanitarian aid and protection.

On the other hand, it is worth emphasizing that, the Special Rapporteur has lauded the actions of countries that have successfully provided refuge and support during crises. For instance, the European Union facilitated the safe travel of nearly 40,000 Afghan refugees after the Taliban's takeover of Afghanistan in 2021. Similarly, Brazil's decision to grant humanitarian visas to people fleeing conflict and environmental disasters from countries such as Afghanistan and Haiti in 2021 was commended.

7. Encouraging independent Human rights monitoring at borders: The independent monitoring of human rights at borders is crucial to ensure accountability and transparency. Regular reporting of violations should be a priority, enabling greater scrutiny of border enforcement practices and identifying areas where human rights protections need to be strengthened.

8. Enhancing cooperation between states: To effectively address irregular migration in a human rights-respecting manner, States should strengthen their cooperation, not only in border management but also in promoting development in migrants' countries of origin. This cooperation should aim to address the root causes of migration and ensure that measures to combat irregular migration are aligned with human rights principles.

Conclusion

Despite the increasing tendency of transit and destination countries to tighten border controls through the adoption of strict policies and surveillance measures, the phenomenon of irregular migration continues to rise. This can be attributed to the complex web of security, political, social, economic, and environmental challenges faced by many countries, which push migrants to resort to illegal means in search of better living conditions.

In this context, it is evident that the growing emphasis on stringent border security measures often comes at a significant cost to human rights protection. Irregular migrants find themselves increasingly exposed to risks, violence, and various violations of their fundamental rights at international borders. These human rights violations are compounded by the use of advanced technologies that, while aimed at controlling migration, may lack adequate safeguards to prevent harm to vulnerable groups.

Given these challenges, it becomes essential for States to align their migration laws and practices with international human rights standards. Efforts must be intensified to ensure that human rights are embedded in migration management strategies. This would involve adopting policies that guarantee fair and humane treatment for all migrants, irrespective of their legal status, while ensuring that national security measures do not come at the expense of human dignity.

In this context, it is crucial for States to balance their security objectives with their obligations to uphold migrants' rights under international law. This includes refraining from practices that undermine the fundamental rights and dignity of migrants, such as pushbacks, arbitrary detention, and discriminatory treatment.

Furthermore, prioritizing development initiatives in migrants' countries of origin, alongside establishing secure and lawful migration channels, is essential for safeguarding the rights of migrants, particularly those with irregular status. Such strategies not only address the underlying factors prompting migration but also mitigate the vulnerabilities faced during perilous journeys. The international Organization for Migration emphasizes that facilitating regular migration pathways can significantly reduce irregular migration and protect migrants from exploitation and abuse.

Citations:

1- See Report overview: "Migration continues to be part of the solution in rapidly changing world, but key challenges remain", p.1, World Migration Report 2024 webpage.

2- For instance, the term « fortress Europe » is commonly used in pejorative way to describe the EU immigration policies, reflecting Europe's strict stance towards migrants, see Messaoud ROMDHANI, "High fences do not make good neighbours", SUR (International Journal on Human Rights), v. 13 n° 23, 2016, p 46.

3- سعيد الصديقي، تشديد الرقابة على الحدود وبناء الأسوار لمحاربة الهجرة: مقارنة بين السياستين الأمريكية والاسبانية، مجلة رؤى الاستراتيجية، العدد 23، جوان 2013، ص 91.

4 -See Kenichi OHMAE, The Borderless World: Power and Strategy in an Interlinked Economy (New York: Harper Business, 1999), p. xiv.

5- According to Saskia SASSEN, in Losing Control? Sovereignty in an Age of Globalization (New York: Columbia University Press, 1996), p. 59, "Economic globalization denationalizes national economies; in contrast, immigration is renationalizing politics. There is a growing consensus in the community of states to lift border controls for the flow of capital, information and services and, more broadly, to further globalization. But when it comes to immigrants and refugees, whether in North America, Western Europe, or Japan, the national state claims all its old splendor in asserting its sovereign right to control its border."

6- See UN General Assembly Document A/HRC/50/31, dated 26.04.2022, p.9

7- Following the abolition of internal border controls within the EU, Schengen Area countries established the Schengen Information System (SIS) in 1988 as a cornerstone of shared immigration and border management. SIS enables national authorities to exchange real-time data on individuals involved in criminal activities or deemed inadmissible to the EU, ensuring coordinated enforcement across all member states. Complementing this, the Visa Information System (VIS) was developed to centralize biometric and visa-related data, facilitating secure, electronic access and updates by national authorities. VIS enhances identity verification and streamlines visa procedures through efficient inter-state data sharing. For further information see European Commission, Schengen information system (SIS) webpage.

8 -See Rey KOSLOWSKI, "Immigration Reforms and Border Security Technologies", Border Battles: The U.S. Immigration Debates) New York: The Social Science Research Council, 2006. (<https://items.ssrc.org/border-battles/immigration-reforms-and-border-security-technologies>) and Julia

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9- سعيد الصديقي، المرجع السابق، ص 106.

10- See UK-France joint statement: next phase of collaboration on tackling illegal migration – 20 July 2021 - GOV.UK (www.gov.uk).

11 -For more details see World Migration Report 2024, p 2.

12- د. توفيق بوستي، أمننة الهجرة غير الشرعية في سياسات الاتحاد الأوروبي، مجلة العلاقات الدولية، أكاديمية العلاقات الدولية (IRA)، تركيا، ص14.

13- هشام داود الغنجة، جميلة سرنيج، الإسلاموفوبيا والإرهاب، جدلية التأثير والتأثر، في: د. بوستي توفيق، د. بوقنور إسماعيل، د. حميداني سليم (محررون)، الإسلاموفوبيا في أوروبا: الخطاب والممارسة، برلين، ألمانيا، المركز الديمقراطي العربي، 2019، ص 86.

14 - مرسى مشري، أمننة الهجرة غير الشرعية في السياسات الأوروبية: الدوافع والانعكاسات، مجلة سياسات عربية، قطر، المركز العربي للأبحاث ودراسة السياسات، العدد 15، جويلية 2015، ص 63.

15- المرجع نفسه، ص 67.

16- سفيان بولسان، الهجرة غير شرعية والاتحاد الأوروبي: قراءة في أمننة الظاهرة، مجلة العلوم السياسية، كلية العلوم السياسية جامعة بغداد، العراق، عدد 55، 2018، ص 222.

17- See European Commission, Migration and Home Affairs, EUROSUR, https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/border-crossing/eurosur_en.

18- The document (Pact on Migration and Asylum, April 2024) can be accessed via the European Union's official website.

19- Eurodac is the EU's centralised biometric database, designed to assist with management of asylum applications and support efforts to detect, investigate, and prevent terrorism and serious crime. See following link: <https://www.eulisa.europa.eu/activities/large-scale-it-systems/eurodac>.

20- اللواء د. حمدي شعبان، الهجرة غير المشروعة (الضرورة والحاجة)، مركز الإعلام الأمني، أكاديمية الشرطة، جمهورية مصر العربية، ص 18.

21- ماهر عبد الملا، التشريع الأوروبي إزاء الهجرة السرية المغاربية: آليات الردع والتحفيز، مجلة العلوم القانونية، جامعة الوادي، العدد 02، جانفي 2011، ص 59-60.

22 - المنذر الرزقي، "من التقارب المتوسطي إلى الحوار +5 +5"، مجلة البرلمان العربي، العدد 102، سبتمبر 2007، ص 197.

23- For instance, in March 2023, the EU signed a cooperation agreement with Mauritania to combat irregular migration, including provisions for financial assistance and joint border management with FRONTEX. Similarly, in July 2023, an agreement with Tunisia aimed to reduce migrant arrivals in Italy by offering substantial financial aid. In March 2024, the EU also reached an agreement with Egypt, providing financial support to address migration pressures exacerbated by regional conflicts.

24- In line with the approach adopted by the Algerian legislator in Law No. 08-11 of June 25, 2008, regarding the conditions for the entry, residence, and movement of foreigners in Algeria (Official journal No. 36 dated July 2, 2008).

25- فايزة بركان، آليات التصدي للهجرة غير الشرعية، الملتقى الوطني الرابع "الهجرة غير الشرعية إشكالية جديدة للقانون"، المنعقد أيام 19 و 20 أفريل 2009، بجامعة أم البواقي، ص 16.

26 -Article 68 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted in 1990, outlines a series of measures within the framework of cooperation between States, including transit countries, to prevent the exploitation of workers in an irregular situation and to punish groups involved in smuggling them or using violence, threats, or intimidation against them.

27- The Human Rights Council extended the mandate of the Special Rapporteur on the human rights of migrants through resolutions 10/8, 12/17, 19/26, 21/34, and most recently 6/43, each extension also lasting three years.

28 -See OHCHR Report entitled «recommended principles and guidelines on Human rights at International borders», October 2014.

29 -See A trainer's guide on "Human rights at international borders", OHCHR & UNCCT, 2021.

30- The Commission recommends, in the aforementioned document, the establishment of "**binding codes of conduct for border authorities**," which include border guards, immigration officials, border police, detention center staff at borders, immigration officers at airports, coast guards, frontline workers, and other personnel involved in border management. This is an attempt to obligate authorities to respect the principle of non-discrimination during their tasks.

31- This can be illustrated by a passage taken from Messaoud ROMDHANI, op.cit, p 46: "The consequence of continuing to restrict legal access will only result in an increase in smuggling activity. And while dismantling smuggling and trafficking networks forms, rightly, part of the equation, the focus on such a convenient scapegoat diverts attention from the EU's own responsibility for deaths at sea".

32- As noted by the author in Meindert FENNEMA's some theoretical problems and issues in comparison of anti-immigrant parties in Western Europe" (working paper n.115, University of

Amsterdam, Barcelona 1996), political parties have made immigration their main issue, using immigrants as scapegoats for their countries' social problems. The author also argued that, although racist violence has recently gained media attention, it is definitely not a recent phenomenon.

33 -In this context, the European Court of Human Rights interpreted Article 5 of the European Convention on Human Rights, considering the detention of irregular migrants to be lawful if it aims to prevent unauthorized entry or to take measures against an individual for deportation purposes (as stated in the report of the Special Rapporteur on the Human Rights of Migrants, document code A/HRC/20/24, dated 02/04/2012, p. 5).

34- See the JRS report, entitled "detained and unprotected: Acces to Justice and Legal aid in immigration detention across Europe". This report emphasized the numerous human rights violations experienced by individuals with irregular status who held in detention across Europe.

35-The Commission recommends, in the aforementioned document, the establishment of "**binding codes of conduct for border authorities**," which include border guards, immigration officials, border police, detention center staff at borders, immigration officers at airports, coast guards, frontline workers, and other personnel involved in border management. This is an attempt to obligate authorities to respect the principle of non-discrimination during their tasks.