

The Algerian legislator's criminal policy in combating illegal immigration

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Received: 17/05/2025

Accepted: 26/08/2025

Abstract:

Illegal immigration is a pressing global concern impacting destination countries' security and fostering crimes like smuggling and terrorism. Despite international efforts, it persists due to dire economic and security conditions in source countries, demanding a policy reassessment focused on root causes.

This study evaluates the effectiveness of Algeria's criminal and security policy against illegal immigration and its adequacy. It's structured in two sections.

The first section explores the legal framework and preventive measures. The second analyzes the legal mechanisms to combat this crime.

The study uses descriptive methods to detail the issue and its controls, combined with analytical methods to examine Algerian laws criminalizing illegal immigration and their punishments.

Keywords: algerian legislator ; combating ; criminal policy ; illegal immigration ; international law ; Legal mechanisms.

INTRODUCTION

Migration is a phenomenon as old as humanity itself, accompanying human development across centuries. Historically, people have migrated in search of better livelihoods and opportunities to fulfil basic needs. Although advancements in civilization and modern subsistence methods have reduced the necessity for migration, it continues to grow. This trend is especially evident with the advent of advanced transportation and communication technologies, which have made movement more accessible than ever.

The 20th century is often referred to as the "century of migration," as nearly every country either sends or receives migrants. Millions of individuals move globally, driven by disparities in opportunities and resources. People migrate to fulfil ambitions and dreams, often seeking better living conditions. Historically, migration has largely been from the Global South to the Global North. This trend began with exploratory expeditions and later expanded into political and military migrations, as European powers sought resources and territories in regions like the Mediterranean and Africa.

Illegal migration carries profound negative consequences for all parties involved, impacting source and destination countries, as well as undocumented migrants themselves. These repercussions span political, economic, social, and security domains. While there may be incidental positive outcomes, they are rarely intrinsic to the phenomenon.

Like many other countries, Algeria has not been immune to the phenomenon of illegal migration, especially in recent years. This issue has become a major concern for the authorities, who fear the growing aspirations among segments of the youth. In this study, we will examine the legal and security mechanisms implemented by the Algerian state to address this crime. We will answer the following question: To what extent has the criminal and security policy pursued by the Algerian legislator been effective in combating illegal immigration? Is this policy sufficient to eradicate the problem? The study is divided into two main sections:

- **Section 1:** The legal framework for the crime and preventive measures to combat it.
- **Section 2:** Legal mechanisms to combat the crime of illegal immigration.

Section 1: The Legal Framework for the Crime and Preventive Mechanisms to Combat It

Crime is a multifaceted social phenomenon that demands coordinated efforts for effective prevention and mitigation. The legal framework serves as the cornerstone in this endeavour, defining crimes, outlining penalties, and regulating criminal procedures. Simultaneously, preventive measures are essential for reducing crime rates and safeguarding societal stability.

1. The Concept of Crime in Law The Algerian legislator does not explicitly define illegal immigration. However, an interpretation of Article 75 bis of Law 01-09, which amends the Penal Code, suggests that illegal immigration encompasses the act of leaving Algerian territory using fraudulent methods to facilitate unauthorized departure from the state.

The Algerian legislator focuses solely on illegal departure, without addressing illegal entry. Consequently, illegal immigration can be broadly defined as the unauthorized entry, transit, or departure of individuals across a state's borders, or their presence in circumstances deemed unlawful under the respective state's legal framework (Bouaziz, 2018, p 27).

- The Algerian Penal Code outlines illegal immigration based on the following elements:
- **Legal Element:** Adhering to the principle of legality, which asserts that no crime, penalty, or security measure exists without a law. Article 175 bis of the Penal Code specifically addresses this crime, focusing on violations of regulations governing departure from national territory. This includes acts such as:
 - Unauthorized departure from national borders—be it land, sea, or air—using fraudulent means, such as impersonation, forged documents, or other methods designed to bypass legal requirements.
 - Departing from national territory through outlets or places other than border crossings; Based on the foregoing, Article 175 bis complements the provisions of Law 11-08 concerning the conditions for the entry, residence, and movement of foreigners in Algeria. This is evident from the phrase "without prejudice to other applicable provisions" with which the legislator began the drafting of this article, indicating that this drafting did not resolve the conflict and overlap between Laws 11-08 and 01-09 (Mesri & Cheroun, 2020).
- **Material Element:** A crime cannot exist without a material element, which represents the external manifestation of the crime and the infringement on a legally protected interest. Thus, establishing the material element is crucial to determine whether a crime has occurred.

Interpreting Article 175 bis reveals two components of the material element for this crime:

1. Departure from national territory through official border crossings (as per the first paragraph of the article).
2. Departure from national territory through unauthorized points (as indicated in the second paragraph).

First Component: Passage through Official Border Crossings

This component involves using designated border crossings to exit national territory and enter foreign territory. It encompasses three methods:

1. **Impersonation:** Assuming the identity, name, or other identifying details of another person. Article 247 of the Algerian Penal Code criminalizes impersonation, which includes the adoption of both real and fictitious identities.
2. **Use of Forged Documents:** The legislator broadly defines forged documents, without specifying their types. In the context of border crossings, these likely include passports, visas, and tickets, as these are the primary documents required by border control authorities for verification.
2. **Use of Fraudulent Means:** The phrase "any other fraudulent means" allows judges to interpret and address new strategies developed by migrants or smuggling networks to enable unauthorized departures (Kamini, 2013, p 15).

The Second Element: Departure Through Unauthorized Points

The second element of the crime involves departing from national territory through points other than designated border crossings. In this case, it is irrelevant whether the individual possesses the necessary travel documents or not.

The Mental Element:

This element consists of the intent to leave the national territory with the aim of violating the laws and regulations related to departing from national territory, i.e., the existence of criminal intent on the part of the person to enter or leave the Algerian territory in one of the illegal ways stipulated in Article 175 bis of the Penal Code. This also includes the intent to enter or leave the national territory towards another state, as simply leaving the state where the offender resides is not sufficient to constitute this crime, because it may be for the purpose of navigation or fishing within the territorial waters. Sometimes, a person may accidentally reach the border area and thus cross it unintentionally, and this crossing would not be a crime because it is unintentional.

Therefore, illegal immigration is an intentional crime that requires the presence of general intent, which arises as soon as the migrant intends to leave the territory of their state with the knowledge that they have not obtained all the necessary travel documents and with the knowledge of the danger of the act to the legally protected interest and the seriousness of the criminal behavior, as well as the knowledge of the subject of the right infringed upon, represented by the laws related to leaving the national territory (Majdoub, 2020).

Types of Migration:

Migration can take several forms, which can be classified as follows:

- **External migration:** This occurs when a number of individuals from a society move to another society, crossing the political borders of the society, seeking work or fleeing persecution in search of better opportunities in life.
- **Internal migration:** This is the migration of people from one region to another within the same state, such as migration from rural areas to cities.
- **Permanent migration:** The individual or group migrates to a new homeland without returning, and permanent migration is more dangerous.
- **Temporary migration:** The individual or group migrates to a new homeland temporarily for the purpose of studying, improving living conditions, or for health reasons, but returns to their homeland in the end.
- **Voluntary migration:** This is usually done on an individual initiative and the desire to move to a new homeland for the better.
- **Forced migration or displacement:** This is done by an external force imposed on the will of individuals or groups and is active during periods of war.
- **Illegal migration:** This is the movement of individuals or persons from the sending country to the receiving country for work across the state's borders in an illegal manner for the purpose of residence, work, and improving living standards.
- **Legal migration:** This is an individual decision to move from the sending country to the receiving country for work in a legal and lawful manner across the state's borders and with official documents for the purpose of settlement or residence (Saïd, 2012).
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Second: Preventive Mechanisms to Combat Crime We will address the preventive and remedial measures for the crime of illegal immigration, which we have divided into pre-crime preventive measures and post-crime measures, the punitive and legal containment of the criminal after punishment.

1. Preventive Measures: Most countries bordering Algeria face challenges such as political instability, widespread corruption, resource mismanagement, and frequent regional conflicts. Consequently, Algeria perceives immigration from these countries as a significant burden, primarily due to its association with security concerns. Civil wars, in particular, are a major driver of migratory movements, compelling individuals to flee unsafe regions in search of safety.

Economic and social factors also play a pivotal role in accelerating illegal immigration. Key drivers include economic disparities, high unemployment rates, lack of job opportunities, and low living standards.

Preventive measures can be categorized into two types:

1. **Indirect Measures:** These involve adopting a comprehensive development approach to address the root causes of migration.
2. **Direct Measures:** These focus on implementing legal provisions designed to prevent acts of illegal migration.

Adopting a Comprehensive Development Approach: Algeria has implemented policies aimed at fostering citizens' attachment to their homeland by improving living conditions and addressing the root causes of illegal immigration. These policies emphasize economic, social, cultural, and political development to enhance the population's well-being through active participation in development processes. The objectives include:

- Ensuring access to a healthy life.
- Providing resources for a decent standard of living.
- Securing adequate housing.
- Simplifying access to essential services by reducing bureaucratic hurdles.

The Algerian legislator has been quick to update its legal texts by adopting a legislative policy based on preventive measures to ensure the security of travel documents on the one hand, and the regulation of the ownership and movement of sea vessels on the other, as well as the activation of immunity from punishment in the event of reporting illegal immigration (Kamini, 2013 , p 34) .

Regarding the security of travel documents, the Algerian legislator has adopted a system of machine-readable passports aimed at eliminating the risks of forgery or counterfeiting of passports. As for the control of ownership and movement of sea vessels, Article 11 of the Protocol against the Smuggling of Migrants by Land, Sea and Air requires the strengthening of border controls to the extent necessary to prevent and detect the smuggling of migrants in order to address the threats to national security and economy.

Section 2: Remedial Measures

The Algerian legislator categorizes illegal immigration as a misdemeanour, prescribing two main types of penalties: imprisonment and fines. These penalties are detailed in specific articles of the Penal Code (to be referenced explicitly)

Section 3: Post-Crime Prevention

Penalties play a crucial role in deterring offenders and safeguarding society from the proliferation and escalation of crimes related to illegal immigration. In response to this issue, the Algerian legislator introduced Law 01-09, which criminalizes violations of regulations governing departure from national territory. Before this law, the Penal Code lacked specific provisions addressing illegal immigration. However, the increasing prevalence and serious consequences of the phenomenon necessitated the implementation of targeted security measures.

The second axis: Legal Mechanisms for Combating Illegal Immigration

Illegal immigration presents a multifaceted global challenge, affecting numerous countries, including Algeria. To combat this phenomenon, Algeria has implemented a range of legal and security measures. This section offers a detailed analysis of the mechanisms employed by the country to address illegal immigration.

First: The National Legal Framework for Combating Illegal Immigration

1. Legal Texts

The Algerian Penal Code and related special laws criminalize illegal immigration. For example, under Maritime Law No. 98-05, the offense involves clandestinely stowing away on a ship to embark on a voyage. "Clandestine stowing" refers to unauthorized and surreptitious entry onto a vessel. Offenders typically employ illicit methods to evade inspection, bypass documentation, and circumvent lawful boarding procedures. Notably, the legislator does not specify the exact methods used for clandestine boarding, leaving room for broader interpretation (Bakhouch, 2023) .

Thus, the material element of this crime is fulfilled by any act that leads to the criminal result of boarding the ship secretly; The Crime of Illegal Immigration According to Law No. 08-11: The Migrant's Lack of an Entry Visa or Residence Permit:

Law No. 08-11 specifies the conditions for the entry, residence, and movement of foreigners within Algerian territory, taking into account international agreements and reciprocal agreements, for security, economic, social, or political reasons. The Algerian legislator has thus sought to link the entry of a foreigner into Algerian territory and their residence therein to their possession of a valid travel document and visa, as well as administrative permits where necessary (Rahman, 2018) .

However, there are certain cases where a foreigner is exempt from the visa requirement if they are in the situations stipulated in Article 11 of this law. It is also stipulated that this non-resident foreigner must be transiting through Algerian territory and does not intend to reside there for more than 3 months, and that they shall not engage in any remunerative professional activity during their stay. This is inferred from the provisions of Article 10 of the aforementioned law .

Nevertheless, this foreigner may, exceptionally, apply to the competent administrative authorities for an extension of the visa beyond the initial entry visa period of 90 days, provided that there is no intention on the part of this foreigner to establish their residence in Algeria. This is in accordance with the provisions of Article 13 of Law 08-11.

This is the act of leaving the national territory in an illegal manner. This description means that the person crosses the borders, whether land, sea, or air.

Crossing borders illegally means crossing from the designated centers for leaving the national territory and entering foreign territory, but by impersonating someone else or using forged travel documents or any other means devised by the person concerned. The legislator has used the term "any other fraudulent means" to leave the field open for the judge to address any new developments that may arise regarding how to leave the national territory (Abdelmalek, 2011) .

It is noteworthy that the Algerian legislator has not punished individuals who migrate using fraud or forgery because both are considered separate crimes, each with its own penalty that exceeds the penalty stipulated for crossing official border crossings illegally by using a false identity or forged travel documents. Therefore, there is no need to draft special provisions for the first scenario mentioned above, since there are already penalties stipulated for both crimes that exceed those stipulated in Article 175 bis.

Furthermore, not entering or leaving the territory of a state through official border crossings is done from areas and points not designated for the movement of persons, or what are known as border centers. In this case, it does not matter whether the person does not have the necessary travel documents or has them. Moreover, the legislator has not differentiated in this case between an Algerian or a foreigner residing in Algeria.

Border crossings are the official, internationally recognized gateways through which individuals leave or return to the territory of a state by land, sea, or air. The entry or exit of any person, whether a citizen or a foreigner, through points other than these centers is considered illegal. Border crossings are points where the state, by virtue of a legal text, concentrates its efforts to regulate the movement of individuals to and from its territory, enabling it to monitor these movements and prevent the entry or exit of those who do not meet the legal requirements (Bakhouch, 2023) .

Security Agencies

- **Coast Guards:** As a service affiliated with the Ministry of National Defense, the Coast Guards are primarily responsible, in coordination with maritime border police units, for guarding Algerian coasts and protecting them from all attempts at maritime smuggling, especially in the fight against illegal immigration. Regarding controlling this phenomenon, the Coast Guards have begun implementing the content of the surveillance and rescue plan, whereby it was decided to allocate all the necessary means and equipment to combat illegal immigration, such as intensifying surveillance patrols. This has made it very difficult to infiltrate Algerian coasts and evade surveillance.
- **Border Guards:** A service affiliated with the National Gendarmerie Command, the Border Guards operate along the Algerian land borders and the coastal border strip. They ensure constant vigilance against any attempt to undermine state security, including the risks of illegal immigration. The Border Guards were established under Presidential Decree 1977 and were attached to the National Gendarmerie Command in

2009. In this context, Border Guard units are tasked with operational defense missions and are closely linked to the fight against illegal immigration through monitoring and guarding borders, providing military authorities with information, and thwarting any breach of national borders, as well as combating and preventing organized crime, especially the crime of illegal immigration (Rahman, 2018) .

- **Security Guards:** The main tasks entrusted to security services are to implement the instructions governing the movement of persons and goods across borders, to ensure the security of facilities within airports and ports, and to focus on the investigative and intelligence aspects of border security. There are also auxiliary security services involved in combating illegal immigration, including:
 - **Central Office for Combating Illegal Immigration (OCLCIC):** This is a central service affiliated with the Border Police Directorate, established in 2022 for organizational and administrative purposes. It is a body for the command, planning, organization, activation, and coordination of the fight against the phenomenon of illegal immigration. It was created by the General Directorate of National Security due to the deteriorating situation and the influx of many foreigners into Algeria (Bouaziz, 2018) .
 - **Regional Investigation Teams for Illegal Immigration (BRIC):** Regional investigation teams for illegal immigration have been established, with teams being set up in Illizi and Maghnia as the first teams due to the presence of migrants from these states. This is a service affiliated with the National Security, tasked with combating illegal immigration by identifying, searching for, and arresting members of networks transporting illegal migrants; identifying, searching for, and arresting and monitoring individuals who forge travel documents for illegal migrants; and identifying, searching for, and monitoring foreign employees who are in an irregular situation; as well as identifying illegal crossing points for foreigners and determining the modus operandi related to illegal entry into the national territory (Khloufi, 2016) .

Secondly: International Mechanisms for Combating Illegal Immigration and Their Impact on Algeria

1. **Formation of the Eurofor Force** The Eurofor Force is a specialized unit authorized to address security and humanitarian issues both on land and at sea, based on directives from its general command. Established in 1995 by four Mediterranean-bordering European nations—France, Italy, Spain, and Portugal—the force combines naval and ground units. Its primary objective is to safeguard European security and stability by protecting the continent's southern borders. Aligned with the principles of joint European defence, Eurofor actively works to manage and reduce illegal immigration flows into Europe.
2. **The European Border and Coast Guard Agency (FRONTEX)** FRONTEX is an EU agency dedicated to overseeing the external borders of the Union's member states. Headquartered in Warsaw, Poland, it plays a critical role in monitoring the European Schengen area's borders. FRONTEX coordinates the activities of national border guards, ensuring the security of EU borders against unauthorized entry from non-member states.

It began operations on October 22, 2016, and was the first agency in the European Union to be headquartered in a new member state. The agency prepares reports and strategic analyses on the risks of illegal immigration and migrant smuggling, focusing on their flows and managing operational cooperation at the external borders of the

European Union member states with the aim of returning illegal migrants to their countries of origin or the coasts of transit countries from which they departed and concluding security agreements with those countries to stop the movement of illegal migrants and forming maritime patrols for surveillance and equipping them with technical equipment to detect movement (Sahnani & weld Sidiq, 2020).

3. **Europol** Europol serves as the EU's primary law enforcement agency, tasked with facilitating the exchange of information and intelligence on criminal networks, their operations, and locations. Initially focused on combating drug trafficking and money laundering, its mandate has expanded to include counterterrorism, organized crime, and illegal immigration. Europol now plays a pivotal role in coordinating efforts against migrant smuggling and related offenses across the European Union.

In the field of combating illegal immigration, it is responsible for coordinating movements and investigations at the level of the European Union and providing assistance to joint investigation teams, without carrying out executive actions such as arrest, search, and pursuit. These remain the prerogatives of national security agencies in each member state.

Based on this, Europol has focused on migrant smuggling networks, particularly in Vietnam, Iraq, Afghanistan, Iran, and North Africa, using forged documents, in addition to paying attention to cases of sham marriages since 2002. However, its efforts are more apparent through support operations. In the same year, it participated in and oversaw six (6) operations related to migrant smuggling that resulted in the arrest of 22 smugglers (Kamini, 2013).

CONCLUSION

Combatting crime is a continuous challenge that necessitates collaborative efforts from multiple stakeholders, with the legal framework serving as a critical foundation. Nonetheless, addressing the root causes of crime requires complementary preventive mechanisms.

Algeria's criminal and security policies represent significant progress in combating illegal immigration.

However, they remain insufficient to eliminate fully the phenomenon. Continued efforts are essential, particularly in tackling the root causes of migration and enhancing international cooperation.

Results and Recommendations

Based on the analysis presented, several key conclusions can be drawn:

- Economic and social factors, including low living standards and unemployment, are primary drivers of illegal immigration.
- Illegal immigration imposes a substantial economic burden on the Algerian state.
- The phenomenon poses significant threats to national security and stability.
- A troubling link exists between terrorist groups and smuggling networks, exacerbating risks to national security.

To combat effectively illegal immigration, the following recommendations are proposed:

- **Legislative Reform:** Update and amend existing laws to address emerging developments in illegal immigration.
- **Strengthening International Cooperation:** Enhance collaboration with neighbouring and European countries to tackle the issue comprehensively.
- **Addressing Root Causes:** Prioritize economic and social development in countries of origin to create job opportunities and reduce migration pressures.
- **Migrant Rights Protection:** Safeguard the rights of migrants, particularly vulnerable groups, and ensure access to humanitarian assistance.
- **Border Control Enhancements:** Modernize border control mechanisms and adopt advanced technologies for surveillance and monitoring.
- **Crackdown on Smuggling Networks:** Intensify efforts to combat smuggling as a critical step in addressing illegal immigration.
- **Raising Awareness:** Launch awareness campaigns to educate the public about the risks of illegal immigration and its role in sustaining smuggling networks

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