

Combating Irregular Migration in Algeria: A Legal Approach to Strengthening the Rule of Law

مواجهة الهجرة غير الشرعية " غير النظامية " في الجزائر: مقاربة قانونية لتعزيز سيادة القانون

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Date of submission:07/04/2025 Date of final acceptance:17/09/2025 Date of publication :september

Abstract:

The preamble of the United Nations Convention against Transnational Organized Crime, adopted by General Assembly Resolution 55/25 on November 15, 2000, includes the following statement: "...One of the starkest contrasts in our world today is the gulf that exists between the civil and the uncivil...". This phrase refers to the deep gap between developed societies and those suffering from poverty, conflicts, and weak rule of law. This gap is one of the main drivers of irregular migration, as individuals seek to escape harsh conditions in pursuit of a better life in developed countries. Irregular migration is a global issue that has burdened the international community due to its direct impact on security and stability in both destination and source countries. The Protocol against the Smuggling of Migrants by Land, Sea, and Air, supplementing the United Nations Convention against Transnational Organized Crime, serves as an international commitment to addressing this global challenge. This study explores the issue of irregular migration by assessing the measures and policies implemented by Algeria, a country greatly impacted by this phenomenon. The central research question is: To what extent has the Algerian legislator succeeded in addressing the risks of irregular 'illegal' migration?

Keywords: irregular 'Illegal' migration; Transnational organized crime; United Nations Convention; Security and stability.

ملخص:

احتوت ديباجة اتفاقية الأمم المتحدة لمكافحة الجريمة المنظمة عبر الوطنية التي اعتمدت بموجب قرار الجمعية العامة للأمم المتحدة 25/55 المؤرخ في 15 تشرين الثاني/نوفمبر 2000، العبارة التالية: "...أشد أوجه التباين الصارخ في عالمنا اليوم هي الفجوة التي تفصل بين الحضرة وعدم الحضرة..."، التي تشير إلى الفجوة العميقة بين المجتمعات المتقدمة والمجتمعات التي تعاني من الفقر، النزاعات، وضعف سيادة القانون. هذه الفجوة هي أحد المحركات الرئيسية للهجرة غير الشرعية، حيث يسعى الأفراد إلى الهروب من الظروف القاسية بحثًا عن حياة أفضل في الدول المتقدمة. فالهجرة غير الشرعية من القضايا العالمية التي أرهقت المجتمع الدولي لتأثيرها المباشر على الأمن والاستقرار في الدول المستقبلة والمصدرة للمهاجرين على حد سواء، ويعد بروتوكول مكافحة تهريب المهاجرين عن طريق البر والبحر والجو الملحق باتفاقية الأمم المتحدة لمكافحة الجريمة المنظمة عبر الوطنية، بمثابة التزام دولي للرد على هذا التحدي العالمي. تناقش الورقة مسألة الهجرة غير الشرعية من حيث التدابير والسياسات المتخذة من طرف الجزائر باعتبارها إحدى الدول التي تمسها هذه الظاهرة، تحت إشكالية رئيسية وهي: إلى أي مدى وفق المشرع الجزائري في التصدي لمخاطر الهجرة غير الشرعية "غير النظامية"؟

الكلمات المفتاحية: الهجرة غير الشرعية "غير النظامية"; الجريمة المنظمة عبر الوطنية; اتفاقية الأمم المتحدة; الأمن والاستقرار.

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Introduction:

Because of its direct effect on security and stability in both the receiving and sending nations of migrants, Irregular migration is regarded as one of the world problems that has weighed the international community. It is also worth mentioning, though, that many different names have been used to describe the phenomenon known as "Irregular migration," including Illegal migration, clandestine migration, and "harka" (a term used in certain areas). International human rights groups have expressed alarm over all of these since they go against Article 13 of the Universal Declaration of Human Rights, which reads: "Everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country, including his own, and to return to his country."

Although the term "*Irregular migration*" is widely used in human rights¹ discourse and in the rhetoric of states, for the purposes of this study—and in order to avoid conceptual overlap or contradiction—we have adopted the term "*Illegal migration*." This choice reflects our intent to describe the same phenomenon more accurately and in alignment with international standards, particularly the guidelines of the United Nations and the International Organization for Migration.

Still, human rights circles generally agree that this event violates national laws governing the crossing of national borders since it takes place outside the view of border monitors and authorities. It therefore shows the way in which migrants arrive in the destination country bypassing the procedures, policies, and laws of those nations for entering or leaving.

The United Nations Convention (UNC) against Transnational Organized Crime and its supplemental protocols, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea, and Air, were adopted by General Assembly resolution 55/25 on November 15, 2000. These protocols serve as an international tool that addresses the issue of Illegal migration, the protection provided to Illegal migrants, and international cooperation in this area.

One of the key motivators of Illegal migration mentioned in the preamble is people's striving to flee difficult circumstances in quest of a better life in industrialized nations. The following remark captures this: "... one of the most glaring contrasts in today's world is the gap that separates the civilized from the uncivilized...", which alludes to the great divide between developed societies and those suffering from poverty, conflicts, and weak rule of law.

At the national level, Algeria has adopted a legislative policy to confront and combat the phenomenon of Illegal migration and reduce its spread by means of its national laws such Law No. 08-11 dated June 25, 2008, concerning the conditions for the entry, residence, and movement of foreigners in Algeria, and Ordinance No. 09-01 dated February 25, 2009, amending and supplementing Ordinance No. 66-156 of June 8, 1966, which includes the Penal Code.

Studying the problem of Illegal migration is important since it helps one to understand the phenomenon and deal with it properly by means of scientific and knowledge-based relevance by means of knowledge of the causes of Illegal migration, whether economic, social, political, or environmental. It also includes examining its effects on the nations of origin, transit nations, and destination countries; then investigating the national and international legal systems governing Illegal migration; and finally assessing the present migration policies and their efficacy.

As for the objectives of the study, they can be summarized in identifying the legal gaps exploited by human trafficking networks and suggesting legal solutions that contribute to reducing and combating Illegal migration while considering the human rights that must be protected. It also aims to enhance international cooperation among states to combat the phenomenon more efficiently.

This paper addresses the problem of Illegal migration in relation to the actions and policies Algeria, one of the countries impacted by this phenomenon, has implemented. The main question it answers is: **To what degree has the Algerian legislator been able to face the dangers of Illegal migration?**

The following strategy was chosen to address this issue:

- First section: The theoretical framework of Illegal migration and its risks.
- Second section: The Legal Framework for Combating Illegal Migration at the International and National Levels.

Analytical and descriptive techniques were used to reach the main goal of this study since they are regarded as among the most efficient research tools in this area because of their capacity to offer a thorough and systematic view. By gathering pertinent data, the descriptive approach was used to show the phenomenon as it actually exists, so enabling a better knowledge of its several aspects. Conversely, the analytical approach was used to investigate the underlying reasons of the event, evaluate its consequences, and generate potential remedies.

Section I: Theoretical Framework of Illegal Migration and Its Risks

"Illegal migration" is a term that is strongly connected to the movement of people from settings marked by challenging living conditions to others thought to provide better possibilities and is closely related to several related ideas. But, the migrant could not discover what they want, which would cause them to always look for the wanted living conditions. In certain situations, this quest could lead to Illegal activity endangering the stability and security of host nations.

A) The Concept of Illegal Migration:

Different interpretations of Illegal migration have resulted from its varying definitions among academics in this discipline. Still, the idea could be usually understood as international migration linked to the desire of permanent residence or, at the very least, temporary stay.²

1- Juridical Definitions of Illegal Migration:

Professor Taha Hamadi Al-Hadithi defines "Illegal migration" as international migration, not internal migration, and emphasizes the idea of movement, which includes different kinds of human movement linked to the notion of permanent residence or at least temporary residence.³ Thus, it is defined as: "The movement of individuals from one country to another in an unlawful manner, either by departing from the Illegal exits of the country to which the migrant belongs, or from the country where the migrant holds nationality, or by violating the duration and purpose of stay as documented in the travel document for the receiving state."⁴

In another definition, Illegal migration is described as: "Migration that takes place outside the legal frameworks of the sending state, transit state, or receiving state of the migrants." From the viewpoint of the receiving nation, it means Illegal entry, stay, or job in the nation. From the viewpoint of the sending nation, it entails breaking rules and laws in situations including a person crossing international borders without a valid passport, travel records, or neglecting the administrative requirements for leaving the country.⁵

"Illegal migration" also refers to the abandonment of one's original homeland by either individuals or groups who then relocate Illegally beyond the legal borders of their nations in quest of a better quality of life.⁶

These legal definitions make clear that they mostly agree on viewing unlawful migration as an international movement involving moving and transitioning outside the legal boundaries of the sending or receiving country. Most notably human trafficking, which involves the exploitation of migrants by criminal organizations, therefore rendering them vulnerable to slavery or forced labor, has grave effects that endanger the security and stability of states. This also covers the exploitation of women and girls, who are pushed into prostitution, and sexual abuse of men.

2- Definition of Illegal Migration in International Law:

It's important to realize that there isn't a single, agreed-upon definition of Illegal migration. However, persons moving outside of legal migration frameworks may also be referred to by this term. The movement of persons outside of the laws, regulations, or international agreements controlling admission or departure from a country of origin, transit, or destination is referred to as unlawful or Illegal migration by the International Organization for Migration.⁷ It therefore shows movement and transition outside the legal (regular) frameworks between sending and receiving nations, or those nations that act as transit routes. Unlike regular migration, the migrant in this situation lacks the necessary entry visa or paperwork connected to immigration laws governing entry, labor, or residence in the receiving state.⁸ Though it does not give the right to enter a country Illegally or for a state to deny entry to migrants, international law does allow for lawful movement and migration across national borders.⁹

Article 2, Section 1, Paragraph A of the United Nations International Convention (UNIC) on the Protection of the Rights of Migrant Workers and Members of Their Families¹⁰ defines migrant workers as "persons who are working, or who will work, or who have worked in a remunerated activity in a country other than their own." Though this convention lacks a definition for Illegal migration, it distinguishes between migrant workers in a legal status and those in an Illegal status or breaking the law in terms of the rights granted to each worker. Despite their Illegal status, the convention acknowledges that Illegal migrant workers are entitled to the bare minimum of these rights.

Moreover, "Smuggling of migrants" is defined as "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit" in Article 3, Paragraph A of the Protocol against the Smuggling of Migrants by Land, Sea, and Air, which supplements the UNC against Transnational Organized Crime,¹¹ of someone who is neither a citizen or permanent resident of a State Party entering that State Illegally." According to the same protocol's Article 3, Paragraph B, "Illegal entry" is defined as "the crossing of borders without meeting the required conditions for legal entry into the receiving state."

At last, it should be emphasized that the circumstances of Illegal migrants vary, for which international law calls for the required protection, such for those fleeing persecution, wars, or general violence who turn to Illegal migration in order to save their lives via political asylum.

3- Definition of Illegal Migration in National Legislations:

The Illegal Immigration Reform and Immigrant Responsibility Act of the United States defines the "Illegal alien" in Section 1325, Title 8, as: "any person who enters the United States without legal authorization or who overstays the period permitted under their visa."¹² Section 1325 also specifies criminal offenses connected to the Illegal entrance of foreigners into the United States, including: entering into a marriage for the purpose of evading immigration laws and forming a business entity for the same goal.

Article 3 of Directive 2008/115/EC of the European Parliament on return, on the other hand, defines a "Illegal resident" as "any third-country national present on the territory of a Member State who does not fulfill, or no longer fulfills, the conditions for entry, stay, or permanent residence."¹³ The European Union deliberately altered the term "Illegal migrant" to "Illegal resident" for humanitarian reasons, which is important.

The Libyan law on combating Illegal migration considers the following actions as part of Illegal migration: the entry of Illegal migrants into the country or their exit by any means; transporting or facilitating the transportation of Illegal migrants within the country while knowing that their presence is Illegal; sheltering Illegal migrants or helping them exit, hide, or conceal their presence from the authorities; providing fraudulent travel records or identity papers for migrants, or possessing them; organizing, assisting, or guiding others to carry out any of the actions mentioned above.¹⁴ The Libyan legislator has therefore expanded the definition of Illegal migration to include a set of actions that would classify a person as an Illegal migrant should they participate in any of the aforementioned activities.

The Algerian law on the entry, stay, and movement of foreigners in Algeria defines an Illegal migrant as any foreigner who unlawfully enters, moves within, stays in, or exits the Algerian territory.¹⁵ Moreover, as changed by Order No. 09-01 dated February 25, 2009,¹⁶ Any individual, whether domestic or foreign, who uses fraudulent records, assumes a false identity, or employs any other deceptive means to avoid presenting the required official records or following the procedures required by the applicable laws and regulations in order to leave the country or remain Illegally when crossing any land, sea, or air border posts is considered to be engaging in Illegal migration, according to the Algerian Penal Code.

The Algerian legislator has not passed a particular law for Illegal migration; rather, it depends on the Penal Code and the Law on the Entry of Foreigners, which include provisions addressing particular actions penalized under the notion of Illegal migration, as well as the penalties set forth for this Illegal act, as already noted.

One should underline the many and several reasons for Illegal migration from the country of origin. They can, therefore, be grouped into a set of economic factors including poverty, unemployment, and the low standard of living and economic situation in the country of origin; social factors including demographic expansion and different kinds of discrimination and marginalization experienced by Illegal migrants in their home countries; political factors including political instability, human rights violations, weak rule of law, and pervasive corruption; and security factors including wars, armed conflicts, terrorism, and human trafficking.

B) The Risks of Illegal Migration

The significant flow of Illegal migrants can cause a challenging and hazardous scenario in the receiving or transit nation, so requiring coordinated action at the national, regional, and international levels to handle this grave issue.

1- Security Risks:

In many nations, Illegal migration is the most prevalent kind of security threat compromising national security. Among the main security concerns linked to Illegal immigration are:

1.1 Organized Crime:

Illegal migration creates a rich ground for hiding the operations of criminal organizations. Caravans of Illegal migrants let criminals penetrate and use them to promote Illegal goods or exploit Illegal migrants to move and traffic contraband in unlawful activities including drug trafficking, arms smuggling, and human trafficking.

Human trafficking is the act of moving victims across international borders for the purpose of smuggling and then exploiting them. Many human trafficking victims may qualify legally to enter target nations like records and money, which are seized from them upon arrival and exploited for great criminal gain. Sometimes, human trafficking involves smuggling people using force, deception, or both. Usually, the consent of trafficked people does not make them victims but rather participants in an unlawful transaction,¹⁷ which changes the legal standing of Illegal migrants from victims to accomplices in the crime.

One of the main types of organized crime closely connected to Illegal migration is drug and arms trafficking, which provides significant financial support for criminal organizations and drives their Illegal operations. Reports from the International Maritime Organization show that smuggling activities—especially those involving multi-route transportation like passenger ships—offer criminals chances to exploit ships and passengers' luggage whether or not their knowledge is involved or even with crew member cooperation. In such situations, forbidden goods are hidden inside the ship's structure or in passengers' bags.¹⁸

Containers are also used for smuggling; illicit items are concealed inside cargo in locations hard to find or in specially built container compartments. Sometimes, maritime pirates engage in smuggling activities in return for monetary reward. Furthermore, Illegal migrants can be used as instruments in smuggling operations, usually in return for modest amounts of money or perhaps under duress and threats.

1.2 Infiltration of Terrorist Groups:

Many people mistakenly believe that terrorist groups like ISIS and other equally harmful ones are mostly driven by ideological or doctrinal underpinnings. Actually, research points the other way. People who join these organizations are greatly influenced by personal reasons. Many members of terrorist groups are motivated by social isolation, alienation, and frustration. This explains why terrorist organizations want to exploit the flow of Illegal migrants for their subversive operations by recruiting them, enabling their migration routes to other countries, and then engaging them in acts of terrorism.

Research on the phenomenon of terrorism in Europe point to a notable correlation between those engaged in terrorist acts and migrants or asylum seekers whose applications have been denied.¹⁹ Often, this results from emotions of disappointment and hopelessness following denial of their asylum applications or failure to find work. Consequently, they become susceptible to recruitment by terrorist organizations exploiting their weakness and personal desire for retribution against the nations they

see as having rejected and forsaken them. They try to tell themselves that these nations have subjected them to social and political injustice,²⁰ which makes them simple targets for terrorist groups wanting to utilize them for retribution in pursuit of their criminal objectives.

A key sign of the decline of security in host countries is the great inflow of Illegal migrants, which also produces a difficult and hazardous environment there. Given their harsh living conditions in the host countries, the increase in criminal cases involving Illegal migrants—such as murder, vandalism, smuggling, theft, and drug trafficking—reflects the degree to which these individuals are ready to join criminal gangs in pursuit of money to satisfy their daily needs.

2. Economic, Political, and Social Risks:

Those who monitor Illegal migration say that the high numbers of Illegal migrants in these nations or transit countries causes economic, political, and social hazards in the receiving countries. These nations suffer in this situation because of their low and severe living conditions. Many studies point to the detrimental effects of Illegal migration on the economies of transit or receiving nations. Regular merchants are under great competition from Illegal labor and the informal market established by migrant workers, which can help tax evasion, the distribution of counterfeit products, and affect the buying power of the local population. Additionally, it leads to a decline in labor efficiency, an increase in money laundering crimes, and higher costs for transferring funds to other countries.

Regarding the social hazards, they may be found in a spectrum of ethical values and foreign cultures brought into the receiving or transit nations, therefore upsetting the social and psychological fabric of these societies. Moreover, the informal housing built by Illegal migrants in poor conditions lacking fundamental living standards distorts the look of cities. Apart from the decline of the health conditions of Illegal migrants caused by environmental pollution, these areas turn hotbeds for criminal activities including assault, theft, vice, sex trade, and drug trafficking.

By disseminating subversive propaganda to affect the security and stability of their home countries, Illegal migrants in destination countries can become an easy target for those purporting to be opponents of the regimes in their countries of origin. These actors could try to exploit Illegal migrant groups for their own disruptive purposes. Particularly if the migrants are under pressure or forbidden from participating in their Illegal activities,²¹ they may also use political propaganda to sway important positions inside the home country authorities, therefore influencing the political system of the destination state and generating turmoil and conflicts. Furthermore, particularly if the relationship between the two countries is strained, the security services of the destination countries may use them to get them ready for propaganda and preparatory activities against their country of origin.

A complicated phenomenon with several consequences—security, economic, political, and social—Illegal migration It not only endangers the lives of the migrants themselves but also exhausts the resources of the destination nations. These Illegal migrants could be used in hostile actions against their home countries. This calls for a coordinated effort to tackle the underlying reasons of Illegal migration and to create systems to minimize its spread.

Section II: The Legal Framework for Combating Illegal Migration at the International and National Levels.

Its consequences for national and international security and stability have drawn great notice both at home and abroad, making the phenomenon of Illegal migration one of great interest. Apart from national laws meant to fight it, this issue has spurred many international treaties and conventions as well.

A) Efforts of International Law in Combating Illegal Migration

The preamble of the 2020 Constitution states that the Algerian people are dedicated to the human rights enshrined in the Universal Declaration of Human Rights and the international treaties ratified by Algeria. This shows how much Algeria values international treaties and agreements as they are ratified by the President of the Republic and included into the national legal system,²² so superseding domestic laws.

Algeria's international policy in fighting Illegal migration is built on two main pillars: the first is the creation of an international legislative framework to foster global security and stability; the second is the safeguarding of human rights.

The United Nations Convention against Transnational Organized Crime (the Palermo Convention, 2000) is the primary international instrument for combating transnational organized crime. It is supplemented by two protocols on specific areas of organized crime related to Illegal migration: the Protocol against the Smuggling of Migrants by Land, Sea, and Air and the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children.²³

1- Combating Illegal Migration in the United Nations Convention against Transnational Organized Crime:

In order to differentiate Illegal migration from human trafficking, Article 3 of this agreement offers a legal definition of Illegal migration via the accompanying protocol on the smuggling of people by land, sea, and air. Smuggling is predicated on the migrant's permission, whereas trafficking depends on dishonesty, exploitation, and compulsion. The movement of individuals outside of the legal, regulatory, or international agreements that control admission or departure from the country of origin, transit, or destination is what makes "smuggling of migrants" so similar to "Illegal migration."²⁴ Using Illegal techniques or measures in exchange for financial or material gain, this is achieved by enabling the entrance of another person into a country not their nationality or permanent residence.²⁵ The range of the Protocol against the Smuggling of Migrants linked to the Palermo Convention covers:

1.1 Criminalizing the Act of Smuggling Migrants and Prosecuting Those Responsible:

Member states of the Convention are responsible for adopting legal measures to criminalize activities including organizing or carrying out smuggling operations, preparing or providing false travel records for the purpose of smuggling, and allowing any individual to remain Illegally in return for financial benefit.²⁶ All of these activities are connected to migrant smuggling. Thus, for humanitarian reasons the Convention has implemented a punitive policy aimed at the smugglers rather than the migrants in order to safeguard their rights and guarantee their dignity is not compromised. Articles 05 and 16 of the Protocol forbid the punishment of trafficked migrants and stress the need of giving them humanitarian protection, particularly for vulnerable populations including women and children.

1.2 Strengthening International Cooperation Among States in Combating Migrant Smuggling:

Articles 10 and 11 of the above-mentioned Protocol underline the need of information sharing between countries on smuggling networks and criminals in order to support the idea of international cooperation. The Protocol also urges countries to strengthen border control to stop the movement of Illegal migrants. The problem of international cooperation, meanwhile, raises practical and field-related questions. These include the inclination of receiving countries to concentrate on stopping the arrival of Illegal migrants without tackling the underlying reasons of migration or implementing efficient remedies for the situation. This has created an imbalance in how Illegal migration is handled between migrant-sending and receiving nations, so aggravating the problem and failing to control it as well as driving migrants to always look for new smuggling techniques.

1.3 Taking Measures to Prevent Illegal Migration by Addressing Its Root Causes:

The convention under Articles 07 and 08 gives nations the right to intercept and search suspicious vessels on the high seas, underlining international law when handling ships carrying migrants, so enabling a punitive policy meant to fight migrant smuggling by sea.

2- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990):²⁷

Algeria adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in 1990, in addition to the UNC against Transnational Organized Crime (the Palermo Convention, 2000),²⁸ Thus, it becomes the legal framework upon which Algeria relies in combating Illegal migration, in fulfillment of its international commitments to curtail this phenomenon at the global level.

This comprehensive international agreement aims to protect the rights of migrant workers and their families by highlighting the intimate connection between migration and human rights. The convention is an important step in defining migrant workers' rights and ensuring their respect and protection, building on more than three decades of discussions, including relevant UN debates and resolutions on migrant workers, expert recommendations, and United Nations studies on human rights.

Like other international human rights instruments, the convention sets the criteria that States Parties' laws and judicial and administrative procedures must reflect. Governments that ratify or accede to it are dedicated to carrying out its provisions by enacting laws and adopting suitable actions to guarantee the safeguarding of migrant workers' rights.

Algeria has worked in this regard to control migration patterns and handle problems connected to migrant workers by implementing policies consistent with its international obligations. It is also trying to improve the legal frameworks to fight Illegal migration and guarantee the rights of migrants, including cooperation with international and regional bodies to guarantee adherence to internationally accepted criteria. This is accomplished by:

- Protecting the rights of migrant workers, regardless of their legal status, and prohibiting the mass expulsion of undocumented migrants.
- Taking actions to prevent exploitation and abuse, while offering legal guarantees for them.

Implementation of this convention has, however, been hampered by certain nations' rerouting of ships carrying trafficked migrants and return to their home countries without regard for the migrants' asylum requests. Apart from the dangers experienced by migrants, which could lead to drowning at sea because of the absence of protective measures and mechanisms to rescue them in case of danger, this is a forced return of migrants and a breach of international law forbidding such behavior.

B) Algeria's Legislative Policy on Combating Illegal Migration:

Whether a sending or receiving country for Illegal migrants, the national legal system for fighting Illegal migration differs from one nation to another. One of the nations struggling more because of Illegal migration, Algeria has reacted by passing several laws and rules to fight and lower this problem.

1- The Pre-Legislation Period on the Conditions for the Entry and Exit of Foreigners to and from Algeria

Algeria, part of the international community, ratified the UNC against Transnational Organized Crime by means of Presidential Decree No. 02-55, dated 22 Dhi al-Qi'dah 1422 (February 5, 2002), which calls for the country to harmonize its national legislation with the provisions of this convention.

Some say that after the 1985 signing of the Schengen Agreement, which removed customs restrictions for the movement of nationals from member states, Illegal migration's influence on Algeria became more obvious. This opened the doors to an increase in the number of migrants, prompting targeted countries to acknowledge the gravity of the problem, especially with the rise of terrorism in the early 1990s.

Algeria's strategic location and closeness to European nations have made it a target for Illegal migration campaigns, particularly from people from the Sahel area and Sub-Saharan Africa. Usually, these immigrants travel to European nations instead of staying in Algeria. Without offering practical remedies to handle the situation, the European Union has described Algeria as both a source and transit country for Illegal migration and has therefore started pressure campaigns against it to limit the flows of Illegal migrants.

Algeria had a notable legislative void in the 1990s, especially given the country's declining security situation then. The judicial system in Algeria turned to particular laws, including maritime law, to handle Illegal immigration during this time given no laws controlling the entry of foreigners into Algerian territory, their residence, and movement inside the country and the Penal Code lacking penalties for Illegal migrants.²⁹ Relying on Article 545, which states: "Any person entering a ship unlawfully with the intention of undertaking a journey shall be punished by Incarceration for a period

ranging from six (6) months to five (5) years, and a fine ranging between 10,000 and 50,000 DZD," The Algerian courts could fight unlawful migration under this article legally.

This legal vacuum in dealing with the issue of Illegal migration produced weak and arbitrary court decisions based on analogy rather than certainty, which generated European anger, especially from France, and led to strong condemnation of Algeria. Algeria had to act and implement a particular law to remove this problem and handle the underlying factors of Illegal migration in reaction to this strong campaign against Algeria and to fill this legal void.

2- The Issuance of Law No. 08-11, Dated June 25, 2008:

Algeria, one of the nations facing growing difficulties from Illegal migration given its geographical position and closeness to Europe, whether as a transit country or a destination for migrants arriving from the Sahel and Sub-Saharan Africa. Introduced in reaction to these difficulties, Law No. 08-11 addresses the entry, stay, and movement of foreigners in Algeria, therefore matching its domestic laws with international criteria to fight Illegal migration.

The main legal framework governing the conditions for the entry of foreigners into Algerian territory, their stay, and movement inside the country is Law No. 08-11. Apart from following the necessary administrative processes during entry or departure from the nation, it mandates foreigners to have valid travel records and entry visas.

Law No. 08-11 says that any foreigner wishing to enter Algeria must have a valid passport or travel document and an entry visa, except in cases exempted by international agreements specified in the law.³⁰ Non-residents in Algeria may depart the national territory upon the end of their stay. Apart from particular criteria for participating in paid work, the law also specifies the terms for the stay of both non-resident and resident foreigners, as well as the requirements for acquiring a residence card for those wanting to legalize their stay.³¹

Law No. 08-11 specifies the terms of movement for foreigners living in Algeria with freedom of movement inside the Algerian territory; these movements must follow the terms of this law and the laws of the Republic. Authorized officials may ask them for papers or evidence of their status.³² Every legal or natural person is also required to inform the relevant authorities should they house or employ a foreigner.³³

Law No. 08-11 offers processes for the expulsion and removal of foreigners from Algerian territory should they fail to depart within the specified time or should it be found their presence in Algeria endangers public order and/or national security. This also holds true should a final court decision involving a prison term for felony or misdemeanor have been rendered against them. The Minister of the Interior expels under this law's terms.³⁴

Law No. 08-11 also provides fines and punishments for unlawful migrants, which could, in certain situations, result in jail time. A foreigner who Illegally enters or lives in Algeria may be fined between 50,000 and 200,000 Algerian dinars and may be expelled from the national territory. In the event of repeat offenses, the punishment could be increased. Any foreigner who contravenes the terms of Articles 4, 7, 8, and 9 of Law No. 08-11 is subject to Incarceration for a term ranging from six (6) months to two (2) years and a financial fine ranging from 10,000 DZD to 30,000 DZD. Penalties for helping foreigners Illegally enter the national territory have been raised by Algerian lawmakers. Therefore, anyone who directly or indirectly helps or tries to help a foreigner's unlawful entry, movement, residence, or exit from Algerian territory suffers Incarceration for two (2) to five (5) years as well as a fine between 60,000 DZD and 200,000 DZD.

Law No. 08-11 also punishes the use of marital ties to gain residency in Algeria or to get nationality. The penalty is Incarceration for two (2) to five (5) years, plus a fine from 50,000 DZD to 500,000 DZD, if a mixed marriage is only contracted to obtain a residence permit or to cause others to obtain it, or solely for the purpose of acquiring Algerian nationality or enabling others to acquire it.

Algeria's penal policy against Illegal migrants calls into question many aspects of migrant rights. Some see it as a breach of the rights and dignity of migrants, as described in Articles 5 and 16 of the Protocol to the Palermo Convention concerning the Smuggling of Migrants by Land, Sea, and Air.

These clauses underline the need to offer humanitarian protection for migrants, particularly vulnerable groups including women and children.

The same law penalizes businesses that employ foreigners in Illegal residency status in order to cut the exploitation of Illegal migrants in the informal labor market. Ranging from 200,000 DZD to 800,000 DZD, the penalties could lead to suspension of business operations or permanent closure of the site.³⁵ Legal corporations could also be held criminally liable for the infractions cited in Articles 38 to 41 and 46 of this legislation.

At last, one might point out that this law ignores the question of international cooperation in fighting Illegal migration, controlling the flows of Illegal migrants, fighting migrant smuggling networks, and sharing knowledge on their movements, save for the commitment to implement international agreements or agreements based on reciprocity, as well as international agreements concerning refugees and stateless people.

3- The Issuance of Ordinance No. 09-01 of February 25, 2009, Amending and Supplementing the Penal Code:

Introduced to strengthen Algeria's legislative framework to address the issue of Illegal migration, Ordinance No. 09-01 of February 25, 2009, Aiming to outlaw migrant smuggling and strengthen sanctions against smuggling networks and people supporting Illegal migration, it significantly changed the Algerian Penal Code.

Whether by an Algerian or a foreign resident, Article 175 bis 1 of Ordinance 09-01 addresses the penalties for unlawfully leaving national territory with a penalty ranging from two (2) to six (6) months of Incarceration and a fine ranging from 20,000 DZD to 60,000 DZD, or one of these penalties.

The expression “any Algerian national or resident foreigner who leaves the national territory unlawfully” as employed in Article 175 bis 1 is to be understood as Algerian or a foreign resident using fraudulent records or other deceptive means to avoid providing the required official records or follow the procedures mandated by relevant laws and regulations while crossing any of the country's land, sea, or air border checkpoints.

Articles 303 bis 30 to 303 bis 41, included in Section 5 bis 2 under the title "Migrant Smuggling," added clauses that brought fresh ideas into the Algerian Penal Code in the area of fighting migrant smuggling. These clauses seek to make migrant smuggling Illegal, strengthen punishments, and clarify the legal obligations of people and organizations engaged in this crime. According to the law, migrant smuggling is punishable by three to five years in prison and a fine between 300,000 DZD and 500,000 DZD. It also states that migrant smuggling is any action that enables one or more people to leave the national territory Illegally in order to obtain, either directly or indirectly, a financial or any other material benefit.³⁶

Moreover, Algerian law has increased penalties in cases of migrant smuggling under Law 09-01, which can vary from five (5) to ten (10) years in prison and a fine of 500,000 DZD to 1,000,000 DZD if the crime is committed under the following conditions: if a minor is among the trafficked persons, if the lives or safety of the migrants are endangered, or if they have been subjected to inhuman or degrading treatment.³⁷

If the migrant smuggling crime is committed under one of the following conditions: if the offender's position facilitated the commission of the crime (e.g., border police officers), if the crime is committed by more than one person, or if the smuggling operation involved a third party who assists or forces the migrant to participate using weapons or under the threat of using them, the penalty may be doubled to Incarceration from ten (10) to twenty (20) years and a fine from 1,000,000 DZD to 2,000,000 DZD.³⁸

Should a foreigner be found guilty of any of the offenses described in this section, they might be prohibited from living in the national territory either permanently or for a maximum of ten (10) years.³⁹

A natural person found guilty of migrant smuggling offenses, on the other hand, is subject to one or more of the additional punishments described in Article 9 of this legislation. The convicted individual

is not qualified for the mitigating conditions mentioned in Article 53 of this legislation.⁴⁰ Anyone who reports a migrant smuggling crime before it is executed or attempted will have their penalty cut by up to half, thus promoting cooperation with judicial and administrative authorities in fighting this issue. The penalty may also be lowered if the report is made after the crime has been committed or attempted but before the public prosecution starts, or if it results in the arrest of the main offender or accomplices following the prosecution start⁴¹.

Anyone who hides a migrant smuggling crime, even if they are bound by professional confidentiality, will be punished with Incarceration for a period ranging from one (1) to five (5) years and a fine of 100,000 DZD to 500,000 DZD.⁴² Should one be found guilty of human trafficking offenses, the court may direct the seizure of any Illegally acquired assets as well as the tools used to carry out the offense, bearing in mind the rights of third parties acting in good faith.⁴³

Ultimately, Algeria is among the nations most severely affected by Illegal migration, both as a transit country for migrants from Sub-Saharan Africa to Europe and as a source country for Illegal migrants, particularly young people who endanger their lives in "death boats" toward the northern shores of the Mediterranean. Algerian legislators have thus passed various legal policies to fight and lower the dangers of Illegal immigration. The social, economic, and geopolitical issues confronting the nation, however, call into question the efficacy of these policies.

Conclusion:

By implementing a number of policies and procedures meant to impose severe limits on the entry and stay of foreigners, amending and supplementing the Penal Code, Law No. 08-11 of 2008 and Order No. 09-01 have been instrumental in lowering the flow of Illegal migrants. They have also raised penalties for offenders and those connected to migrant smuggling, and coordinated deportation processes to speed the handling of violators and decide the relevant sanctions. The Algerian legislative system to fight Illegal migration reflects a shared vision: the need to preserve stability and security and eradicate the pattern of Illegal migration. This vision, however, is somewhat lacking since, despite the success of Laws 08-11 and 09-01 in offering a rigorous legal framework to fight Illegal migration, there are pragmatic issues that call for preserving security and stability while guaranteeing more human rights protection. Sustainable development policies are also required to handle this issue as well as enhanced international law enforcement cooperation and support of economic growth.

Based on this, the following conclusions were reached:

- Through the integration of legal frameworks regulating the entry and residence of foreigners, as well as the legal basis for the expulsion and deportation of Illegal migrants (Law 08-11), Algeria has adopted a legal-security approach that combines the regulation of legal migration with the punishment of offenders. This approach also includes legal frameworks strengthening the penal policy to combat smuggling networks and criminalize Illegal migration (Ordinance 09-01 amending and supplementing the Penal Code).
- Legal holes concerning the humanitarian side of the deterrence strategy exist especially in relation to the strengthening of penalties for migrant smuggling networks and the broadening of criminal responsibility to cover legal entities. But, especially for vulnerable populations like women and children, there are no assurances for the safeguarding of migrants' rights.
- Apart from the lack of a defined framework for the integration of regular migrants or granting asylum in line with international standards, the readmission and deportation of migrants still confront diplomatic and humanitarian challenges despite the efforts undertaken.

Therefore, we propose the following set of recommendations:

- Strengthening international cooperation to combat Illegal migration, which helps to sign readmission agreements and security cooperation with neighboring countries to stop Illegal migration flows from the Sahel countries. Adhering to international human rights criteria should help to guarantee legal protection for Illegal migrants and help to exchange information with international organizations including Interpol.

- Strengthening law enforcement systems by means of faster deportation processes and more efficient cooperation with nations of origin. This covers strengthening alliances with humanitarian organizations to guarantee the safe and dignified return of deported migrants and training judges and legal professionals to handle migrant smuggling cases following international standards.
- Focusing on improving economic development in border and desert regions, especially to lower human trafficking, helps to address the underlying causes of Illegal migration. Furthermore, helping developing institutions to generate employment possibilities for young Algerians would enable them to migrate Illegally less.
- Using contemporary technologies—including cameras and drones—to monitor the great desert borders efficiently helps to improve border surveillance systems.

Citations:

1- Ordinance No. 09-01 of 25 February 2009, amending and supplementing Ordinance No. 66-156 of 8 June 1966, constituting the Penal Code. See Article 175 bis 1 (Law No. 09-01 of 25 February 2009):

Without prejudice to other applicable legislative provisions, any Algerian national or resident foreigner who leaves the national territory unlawfully shall be punishable by imprisonment of two (2) to six (6) months and a fine ranging from 20,000 to 60,000 Algerian dinars, or by either of these penalties. This applies when the individual attempts to cross a land, sea, or air border post by assuming a false identity, using forged documents, or employing any other fraudulent means to evade the presentation of required official documents or the fulfillment of legal and regulatory procedures in force. The same penalty shall also apply to any person who exits the national territory through routes or places other than official border posts.

2- Assad Abdul Hussein Khanjar: *Illegal Migration and Its Impact on Political Systems in Europe*, Al-Arabi for Publishing and Distribution, Cairo, 2021, p. 13.

3- Taha Hamadi Al-Hadithi: *Population Geography*, Dar Al-Kutub for Printing and Publishing, Mosul, 2nd ed., 2000, p. 51.

4- Aied Mahmoud Mohamed Sabah: *The Supreme Constitutional Court and Its Role in Addressing the Causes of Illegal Migration: An Analytical Study of Its Rulings in This Area with Emphasis on International Conventions and Some Comparative Constitutions*, Egyptian Publishing and Distribution, Cairo, 2019, p. 62.

5- Official Website of the National Coordinating Committee for the Prevention and Combating of Illegal Migration and Human Trafficking of the Arab Republic of Egypt, available at: <https://www.nccpimandtip.gov.eg/ar/Questions/>, consulted on 14/02/2025 at 15:00.

6- Osama Bdeir Sami Mahmoud: *Europe and Unregulated Migration in Egypt: Between Responsibility and Duty*, Earth Center for Human Rights, Cairo, no. (68), 2009, p. 12.

7- International Organization for Migration: *Glossary on Migration*, published by IOM, Geneva, 2019, p. 116.

8- Assad Abdul Hussein Khanjar: *op cit.*, p. 16.

9- *Ibid.*, p. 26.

10- Article 158/45: Document Type (International Convention), UN General Assembly Resolution, adopted on 18/12/1990, entered into force on 01/07/2003.

11- Protocol against the Smuggling of Migrants by Land, Sea, and Air, supplementing the United Nations Convention against Transnational Organized Crime, adopted by the UN General Assembly on 15 November 2000.

- 12- U.S. Department of Justice Archives, consulted on 18/02/2025 at 19:45, available at: <https://2u.pw/yBNjC>
- 13- Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals, Official Journal of the European Union, N°348, 24/12/2008.
- 14- Article 2, Law No. (19) of 2010 on the Combat of Illegal Migration, issued on 28 January 2010.
- 15- Article 44, Law No. 08-11 dated 25 June 2008 concerning the conditions for the entry of foreigners into Algeria, their residence, and movement within the country, Official Gazette of the People's Democratic Republic of Algeria, Issue No. 36, 2 July 2008.
- 16- Article 175 bis 1 of Ordinance No. 66-156 dated 8 June 1966, which includes the Penal Code, as amended and supplemented, notably by Ordinance No. 09-01 dated 25 February 2009.
- 17- Faten Fayez Al-Saffati: Human Trafficking: An Evaluation of Anti-Trafficking Policies, Al-Arabi for Publishing and Distribution, Cairo, 2024, pp. 47-48.
- 18- Qamaz Leila: The Role of Containers in Impacting Maritime Security and Safety, Algerian Journal of Maritime and Transport Law, Issue No. 02, 2014, p. 77.
- ¹⁹¹⁹19- A List of Terrorist Attacks Carried Out by Irregular Migrants or Asylum Seekers in Europe from 2020 to 2024:
- Nice Attack, France (2020): An irregular Tunisian migrant named Brahim Aouissauoui carried out a terrorist attack inside the Notre-Dame Church in Nice.
 - Vienna Attack (2020): An Austrian asylum seeker of Chechen origin launched a terrorist attack using firearms in central Vienna.
 - Reading Attack, United Kingdom (2020): A Libyan asylum seeker named Khairi Saadallah carried out a stabbing attack in a park in central Reading, resulting in the deaths of three people.
 - Würzburg Attack, Germany (2021): In the German city of Würzburg, a Somali asylum seeker stabbed several individuals in a store, killing three people and injuring others.
 - Nuremberg Attack (2022): A Syrian asylum seeker carried out a mass stabbing at a train station in Nuremberg, Germany, seriously injuring four people.
 - Paris Attack (2023): An irregular Sudanese migrant conducted a knife attack at the Gare du Nord train station in Paris, injuring several individuals.
 - Stockholm Attack (2024): In early 2024, an Afghan-origin asylum seeker committed a knife attack in a central Stockholm market, resulting in two deaths and multiple injuries.
 - Brussels Attack (2024): An irregular migrant of North African origin opened fire in a café in Brussels, killing two people and injuring several others.
- 20- Official Website of the European Centre for Counterterrorism and Intelligence Studies, available at: <https://www.europarabct.com>, consulted on 20/02/2024 at 19:00.
- 21- Nada Jamal Harhour: Libya and Illegal Migration and Its Impact on National Security, Al-Arabi for Publishing and Distribution, Cairo, 2023, pp. 12-13.
- 22- Article 154 of the Constitution of the People's Democratic Republic of Algeria, 2020, Official Gazette of the People's Democratic Republic of Algeria, Issue No. 82, dated 30 December 2020.
- 23- The Convention and the Two Protocols Attached were adopted by UN General Assembly Resolution No. 55/25, dated 15 November 2000, and entered into force on 29 September 2003.
- 24- International Organization for Migration, op. cit., p. 116.
- 25- Article 03, Paragraph A of the Protocol against the Smuggling of Migrants by Land, Sea, and Air, op. cit.
- 26- Ibid., Article 06.
- 27- Adopted by UN General Assembly Resolution No. 45/158, dated 18 December 1990.
- 28- It was ratified by Algeria on April 21, 2005.

29- Law No. 76-80, dated 29 Shawwal 1396 (23 October 1976), concerning the Maritime Code, as amended and supplemented.

30- Article 06 of Law No. 08-11 concerning the conditions for the entry of foreigners into Algeria, their residence, and movement within the country, op. cit.

31- Articles 10 to 15 of Law No. 08-11, op. cit.

32- Ibid., Articles 24 to 27.

33- Ibid., Articles 28 and 29.

34- Ibid., Articles 30 to 34.

35- Ibid., Articles 39, 41, 45, 46.

36- Op. cit., Article 303 bis 30, Law No. 09-01 dated 25 February 2009, amending and supplementing the Penal Code.

37- Op. cit., Article 303 bis 31, Law No. 09-01.

38- Ibid., Article 303 bis 32.

39- Ibid., Article 303 bis 35.

40- Ibid., Articles 303 bis 33 and 303 bis 34.

41- Ibid., Article 303 bis 36.

42- Ibid., Article 303 bis 37.

43- Ibid., Article 303 bis 40.

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- U.S. Department of Justice Archives ‘available at: <https://2u.pw/yBNjC> (consulted on 18/02/2025).
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