

## ***From International Standards to National Action: Algeria's Approach to Illegal Migration***

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### **Abstract:**

Illegal migration has become a growing concern for the international community, presenting serious challenges to state security and stability. In response, governments, international organizations, NGOs, and regional security bodies have adopted various strategies to address this issue, including legal measures, institutional mechanisms, and cooperative frameworks.

This study aims to explore the international standards developed to combat illegal migration while focusing on Algeria's efforts in this context. It analyses international treaties, partnership agreements, bilateral cooperation frameworks, and Algeria's national legislation to address this phenomenon. Furthermore, the research investigates the challenges and obstacles that hinder the development of a comprehensive and effective solution to this pressing global issue. By shedding light on these complexities, the study seeks to contribute to a deeper understanding of illegal migration and to propose strategies that align with international standards and best practices for managing migration-related challenges.

**key words:** Irregular Migration – Harraga – Algeria – Frontex – Security – Human Rights.

### **Introduction:**

Irregular migration has emerged as a significant global challenge, posing profound security threats that deeply concern governments worldwide. It impacts multiple dimensions of security, most notably the societal dimension. This is particularly evident in the rhetoric of political elites in European nations grappling with the phenomenon, where narratives have escalated to include incitement to violence, propagation of hatred, and dehumanization of migrants. The issue has also contributed to political fractures within the European Union, exemplified by the United Kingdom's recent decision to exit the Union, motivated in part by a desire for greater autonomy in addressing migration and other policy concerns.

In response, the international community, led by the United Nations, has taken significant steps to address irregular migration. Through a series of

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conventions and declarations, global efforts have sought to curb this phenomenon while safeguarding the human rights of migrants. Meanwhile, European nations have intensified border security measures, fostering cooperative mechanisms both among themselves and with countries along the southern Mediterranean.

Approaches to managing irregular migration differ markedly, oscillating between stringent security-driven policies and more comprehensive, multidimensional strategies. The latter seeks to address the root causes and contextual factors that compel individuals to risk perilous journeys across borders, often aboard unsafe vessels, in pursuit of better opportunities.

Algeria's strategic geographic position renders it simultaneously a source, transit hub, and destination for irregular migrants. This dual role has placed Algeria at the heart of international and regional migration dynamics. Algeria has actively participated in global initiatives to tackle irregular migration, acceding to various international treaties and entering into partnership agreements. The nation has also undertaken substantial domestic reforms, establishing an extensive legislative and institutional framework to address this complex issue and fulfil its international commitments, particularly in the context of the Mediterranean basin.

Nevertheless, Algeria faces multifaceted challenges in managing irregular migration. On one hand, waves of migrants cross its expansive desert borders, with some aiming to settle in Algerian cities and others seeking passage to Europe. On the other hand, Algeria endures mounting pressure from Northern Mediterranean states, which demand stricter control over the flow and pace of irregular migration.

This complex scenario raises a critical question: How has Algeria navigated the delicate balance between its commitment to combating irregular migration and its obligation to uphold humanitarian principles for irregular migrants?

This study seeks to address this question through a two-pronged approach. The first section examines the treatment of irregular migration under international law, offering a comprehensive analysis of the legal frameworks that establish standards and impose obligations on states. The second section explores Algeria's multifaceted efforts to combat irregular migration, highlighting the nation's strategies to reconcile its security imperatives with its humanitarian responsibilities.

By engaging with these dimensions, this paper aims to contribute to the scholarly discourse on migration governance and Algeria's pivotal role within this global challenge.

## **I. Navigating Irregular Migration through International Legal**

### **Frameworks**

Algeria has played a crucial role in global efforts to address irregular migration, demonstrating its commitment through adherence to key international conventions and the establishment of strategic partnerships.

This commitment is evident in its active participation in foundational international frameworks and its engagement in collaborative initiatives at both the Mediterranean and bilateral levels, highlighting its integral contribution to addressing this pressing global challenge.

#### **1. The Legal Foundations of Irregular Migration Governance**

The international community has established a comprehensive legal architecture aimed at addressing irregular migration. This framework not only seeks to curb unauthorized movements but also prioritizes the protection of migrants' rights and dignity, particularly for those in vulnerable situations.

##### **1.1. A Milestone in Migration Law – The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**

Adopted by the United Nations General Assembly in Resolution 45/158 on December 18, 1990, the **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families** is a cornerstone of global migration governance. This landmark legal instrument emerged from decades of advocacy, led primarily by the International Labour Organization (ILO)<sup>1</sup>, to safeguard migrant workers' rights. Algeria ratified this convention in 2004, affirming its commitment to the international legal standards governing migration<sup>2</sup>.

The convention highlights the acute vulnerabilities of irregular migrants, who often face exploitation by unscrupulous employers and are at risk of falling victim to human trafficking networks<sup>3</sup>. It establishes key obligations for state parties, including:

- **Article 67** mandates the adoption of measures to facilitate the safe and dignified return of irregular migrant workers to their countries of origin.
- **Article 68** requires states to combat irregular migration through the identification of clandestine networks and the prosecution of entities or individuals facilitating unauthorized migration.
- **Article 69** obliges states to implement appropriate measures to address the presence of irregular migrants on their territory, aiming to resolve their status while safeguarding their rights.

To further clarify these commitments, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families issued General Comment No. 2<sup>4</sup>. This authoritative interpretation underscores states' responsibilities while reaffirming the rights of irregular migrant workers.

The General Comment establishes several critical safeguards, explicitly

prohibiting:

- Inhumane or degrading treatment.
- Collective expulsions that disregard individual circumstances.
- Acts of violence, arbitrary detention, forced labour, and child labour.
- Refoulement (forced return) to countries where the migrant is likely to face persecution or grave human rights abuses.

While prioritizing these protections, the General Comment also stresses the need to prevent irregular migration through robust enforcement measures and the regulation of unauthorized employment. It advocates for an integrated approach that reconciles strict border management with a firm commitment to human rights, aiming for a balanced, ethical response to migration challenges.

Algeria's adherence to this convention and its implementation of these principles underscores its dual focus: safeguarding its borders and addressing the root causes of irregular migration, while respecting the dignity and humanity of all individuals involved. This approach positions Algeria as both a key actor and a responsible stakeholder in the global discourse on migration governance.

## **1.2. Unveiling the Legal Framework: The UN Convention Against Transnational Organized Crime and its Migrant Smuggling Protocol**

The escalation of transnational organized crime has catalyzed international action, leading to the adoption of robust legal instruments. Among these, the **United Nations Convention against Transnational Organized Crime** (UNTOC), ratified under General Assembly Resolution 55/25 on November 15, 2000, stands as a cornerstone. This convention seeks to strengthen international collaboration in preventing and combating organized crime<sup>5</sup>, including the lucrative and exploitative industries of irregular migration and human trafficking, which generate an estimated \$32 billion annually<sup>6</sup>.

The UNTOC provides a comprehensive legal structure designed to target the perpetrators of transnational organized crime<sup>7</sup>. It emphasizes judicial cooperation and extradition for individuals involved in crimes such as money laundering, corruption, obstruction of justice, and other offenses associated with organized criminal groups<sup>8</sup>. Crucially, the convention recognizes migrant smuggling as a key area of focus, laying the groundwork for its complementary protocol.

Adopted as a supplement to the UNTOC through General Assembly Resolution 55/25, the **Protocol against the Smuggling of Migrants by Land, Sea, and Air** offers a targeted response to irregular migration networks. Algeria ratified this protocol in 2003, signifying its commitment to aligning national policies with international standards<sup>9</sup>.

The protocol introduces a critical distinction: migrants are victims of smuggling networks, not perpetrators of crime. This approach rejects the

criminalization of migrants and focuses on prosecuting facilitators of smuggling operations<sup>10</sup>. It obligates state parties to:

- Criminalize activities such as forging or facilitating access to fraudulent travel documents.
- Penalize those enabling migrants to remain in a state unlawfully<sup>11</sup>.

The protocol also provides detailed measures to address the maritime dimension of migrant smuggling. Article 8 allows state parties to seek assistance if a vessel flying their flag is suspected of smuggling. Additionally, it grants states the right to request permission from the flag state of a suspicious vessel to board, search, and take necessary action. Flag states are required to respond promptly to such requests, ensuring swift and cooperative enforcement.

The protocol's procedural mandates extend beyond enforcement, emphasizing the importance of collaboration and innovation. It urges states to:

- Share information and expertise to dismantle smuggling networks.
- Develop tamper-resistant travel documents to prevent forgery, counterfeiting, or unauthorized issuance.
- Impose obligations on transportation providers to verify travel document authenticity, with penalties for noncompliance<sup>12</sup>.

One of the protocol's key provisions involves the repatriation of smuggled migrants. State parties are required to agree without delay to return migrants who are their nationals or permanent residents<sup>13</sup>. This measure reflects a commitment to addressing irregular migration efficiently while adhering to international legal and humanitarian standards.

By ratifying the UNTOC and its Migrant Smuggling Protocol, Algeria has solidified its role as a key actor in the global fight against transnational organized crime. Its efforts underscore a nuanced approach that integrates legal enforcement, international collaboration, and the protection of migrants' fundamental rights. Algeria's engagement exemplifies the importance of state accountability in addressing complex migration challenges within a dynamic and cooperative international legal framework.

### **1.3. Reconceptualizing the European Approach to Irregular Migration: Policies, Challenges, and International Collaboration**

Irregular migration has emerged as a significant concern for European states, increasingly framed as a pressing security issue requiring robust and coordinated responses. To address this phenomenon, European countries have pursued collaborative frameworks and mechanisms, underpinned by a blend of treaties and institutional arrangements.

The **Schengen Agreement**, implemented on June 14, 1985, represents a cornerstone of European integration, aiming to dismantle internal border

controls and facilitate the free movement of individuals among member states. Alongside these freedoms, the treaty also established critical provisions for police and judicial cooperation, supported by the Schengen Information System (SIS).<sup>14</sup>

As irregular migration became a mounting concern, European states adopted on June 19, 1990 the convention on the implementation of Schengen agreement (CISA). This addendum expanded the Schengen Area and instituted additional measures to strengthen police cooperation, harmonize border surveillance protocols, and implement a unified data-sharing system across member states.<sup>15</sup>

Schengen's provisions differentiate between internal and external borders within the EU. For legal entry through external borders, individuals are required to present valid documentation, justify the purpose and duration of their stay, and meet the conditions for lawful residence<sup>16</sup>. Unauthorized entry is subject to stringent penalties, including denial of access if flagged as a security threat by any Schengen member state.<sup>17</sup>

In 2008, European nations sought to strengthen the Schengen framework through the adoption of the European Pact on migration and Asylum. This pact was introduced as a direct response to the inadequacy of previous measures in addressing irregular migration. It was presented as the foundation for common immigration and asylum policies within the European Union and its member states<sup>18</sup>. The relevance of this pact has grown significantly, particularly following the migration waves that affected Europe after the Arab Spring.

Among its initiatives, the pact introduced the Blue Card Program, designed to attract highly skilled professionals by granting temporary residency rights within the EU to cardholders and their families. Simultaneously, the pact intensified measures to curtail unauthorized migration, including provisions for the expedited repatriation of irregular migrants to their home countries. However, the pact has faced criticism for controversial measures, such as permitting detention of irregular migrants for up to 18 months and imposing a five-year ban on re-entry into EU territory<sup>19</sup>.

The European Union has augmented its legal frameworks with specialized agencies to combat irregular migration effectively. FRONTEX (the European Border and Coast Guard Agency) plays a pivotal preventive role, coordinating member states' operational efforts at external borders. The agency facilitates the development of shared border management standards, provides targeted training, and offers technical and operational support to member countries.<sup>20</sup>

Frontex has experienced a significant rise in its importance over the years. Its budget has grown substantially, from €143 million in 2015<sup>21</sup> to €922 million in 2024<sup>22</sup>, reflecting the increasing scope of its responsibilities and operational

needs. Moreover, the agency's staff is projected to reach 10,000 by 2027<sup>23</sup>, highlighting a substantial enhancement of its operational capacity to address the growing challenges in border surveillance and migration management.

In addition to Frontex, the European Union has developed various mechanisms that reflect its security-focused approach to managing irregular migration. One such mechanism is Europol, which plays a critical role in field operations aimed at dismantling migrant smuggling networks<sup>24</sup>. At the same time, the European Border Surveillance System (EUROSUR) employs advanced technological tools to ensure comprehensive monitoring of the EU's borders, thereby preventing the entry of irregular migrants. These tools include drones, reconnaissance aircraft, satellites, ship monitoring systems, and a range of sensors integrated into radar systems<sup>25</sup>.

Despite robust internal measures, Europe has recognized that a solely intra-regional approach is insufficient to address the root causes of irregular migration. Consequently, the EU has expanded its focus to include strategic partnerships with Southern Mediterranean nations, particularly Algeria. This collaboration aims to curb migration flows originating from sub-Saharan Africa, transiting through North African countries, and crossing the Mediterranean into Europe. This cross-regional approach underscores the need for deeper cooperative efforts, which will be explored further in subsequent sections.

## **2. Irregular Migration in the Framework of Partnership Agreements**

Algeria has actively engaged in a range of partnership agreements designed to tackle irregular migration. These agreements can be broadly categorized into two key areas: those formed within the framework of Euro-Mediterranean cooperation and those established through bilateral arrangements with individual countries, reflecting Algeria's commitment to addressing this global challenge through collaborative efforts.

### **2.1. Irregular Migration in Euro-Mediterranean Partnerships: A Tension Between Securitization and Humanitarianism**

The Euro-Mediterranean cooperation framework's cornerstone remains the Barcelona Declaration, adopted during the Euro-Mediterranean Conference on November 27-28, 1995. This landmark event brought together representatives from 27 countries, including Algeria's delegate, Mr. Mohamed Salah Dembri. The conference participants outlined three fundamental dimensions of collaboration :

- **Political and security partnership**, aimed at ensuring mutual stability and security.
- **Economic and financial partnership**, focused on fostering shared prosperity across the region.
- **Social, cultural, and human partnership**, emphasizing the development

*of human capital and advancing intercultural dialogue and civil society engagement.*<sup>26</sup>

Within this context, the Barcelona Process recognized irregular migration as a multifaceted challenge requiring an integrated approach. It highlighted security, economic, and social strategies as interconnected pillars. By prioritizing sustainable development, fostering solidarity, and promoting human rights, the initiative sought to address the root causes compelling individuals to undertake unauthorized migration to Europe.<sup>27</sup>

The Declaration underscored migration as a pressing issue necessitating transnational collaboration. It proposed practical measures, including training programs and economic aid, to stimulate job creation and facilitate the orderly repatriation of nationals residing irregularly abroad. Southern Mediterranean countries, however, were assigned a significant share of responsibility for managing and mitigating irregular migration flows<sup>28</sup>.

In subsequent years, European states intensified their demands. During the 2002 European Union Summit in Seville, the possibility of sanctioning countries unwilling to accept deported migrants was discussed. European nations simultaneously sought to incentivize states like Algeria, Tunisia, Morocco, Libya, and Egypt to readmit migrants deported from European territories<sup>29</sup>.

Although the Barcelona Declaration leaned heavily on a securitized approach—promoting coordination among police forces, judicial systems, and customs authorities to combat irregular migration—it also integrated a humanitarian perspective. This included providing technical and material support to Southern Mediterranean countries to curb outbound migration flows.

Despite the ambitious roadmap outlined by the Barcelona Process, the results were underwhelming, particularly from the perspective of European stakeholders. The advent of the Arab Spring further exacerbated the situation, triggering a dramatic surge in irregular migration toward Europe and exposing the limitations of the cooperative framework.

## **2.2. Strategic Alliances in Addressing Irregular Migration: Bilateral Frameworks**

Algeria has engaged in a series of bilateral agreements designed to tackle irregular migration, demonstrating its dedication to fulfilling international obligations and implementing the resolutions of Euro-Mediterranean conferences. Among the most prominent of these agreements are those established with Italy and France.

### **2.2.1. The Algeria-Italy Accord: A Multidimensional Partnership Against Irregular Migration**

On November 22, 1999, Algeria and Italy signed a comprehensive

cooperation agreement in Algiers, addressing key challenges such as counter-terrorism, organized crime, illicit drug trafficking, and irregular migration<sup>30</sup>.

Article 1 of the accord delineates its objectives as follows:

- Facilitating the exchange of critical intelligence on irregular migration flows, including the identification of criminal networks, their operational methods, and transit routes.
- Promoting mutual assistance and coordinated efforts to combat irregular migration effectively.

By this agreement, Italy repatriated Algerian nationals residing irregularly after confirming their citizenship. Moreover, Italy extended over 1,000 annual work visas to Algerians between 2008 and 2010, reflecting an effort to address migration pressures through legal pathways<sup>31</sup>.

### **2.2.2. The Algeria-France Pact: Enhancing Security Cooperation to Curb Irregular Migration**

In October 2003, Algeria and France forged a landmark agreement centered on security collaboration in migration management<sup>32</sup>. Article 1 emphasized the establishment of operational and technical cooperation in internal security, with a focus on combating irregular migration and related document forgery.

This partnership facilitated the provision of advanced border surveillance technologies to Algeria, including radars, helicopters, and high-speed patrol boats. The agreement's objectives were further solidified in 2005 through an additional accord between the Director General of the French Police and the Director General of Algeria's National Security. This subsequent agreement expanded the scope of cooperation to encompass organized crime and irregular migration control, strengthening the bilateral commitment to regional stability<sup>33</sup>.

## **II. Safeguarding Borders: Algeria's Preventive and Deterrent Measures Against Irregular Migration**

Irregular migration has emerged as a global phenomenon with profound implications for the internal security and socio-economic stability of nations, whether as origin, transit, or destination countries. Recognizing the critical need to safeguard its territorial integrity and uphold national security, Algeria has adopted a hybrid approach, combining preventive and deterrent measures to address the multifaceted challenges posed by irregular migration.

This section delves into Algeria's legislative and regulatory framework for addressing irregular migration, emphasizing three key dimensions: the governance of foreign nationals' entry and residency, the enforcement of rigorous restrictions on foreign employment and labor activities, and the enhancement of maritime surveillance systems to counter unlawful border crossings.

## 1. Preventive Strategies for Addressing Irregular Migration

The Algerian government has taken significant legislative and regulatory steps to address irregular migration, a challenge that impacts demographic stability and socio-economic resilience. This section outlines Algeria's primary strategies for tackling this issue.

### 1.1. Legal Framework Governing Entry and Residency of Foreign Nationals in Algeria

In recent years, Algeria has experienced a significant influx of migrants due to its strategic geographical location as a coastal state bordering the Mediterranean and its proximity to politically volatile regions in the African Sahel. These dynamics have intensified irregular migration flows, prompting Algerian lawmakers to introduce robust legal measures aimed at regulating the entry, movement, and residency of foreign nationals within its borders.

The cornerstone of this legal framework is Ordinance No. 08-11<sup>34</sup>, which establishes comprehensive provisions for the admission and residency of non-nationals in Algeria. This legislation aims to curtail irregular migration by enforcing strict legal compliance among foreign residents and ensuring the expulsion of individuals found in breach of residency regulations.

Article 3 of the Ordinance defines a "**foreigner**" in the Algerian context as "any individual not holding Algerian nationality as per the provisions of the Nationality Code". This definition adopts a negative taxonomy, distinguishing non-nationals by their lack of citizenship rather than their foreign status per se. Notably, the law does not account for cases of dual or multiple nationalities, a legal oversight that warrants further refinement.

Key legal prerequisites for foreign nationals entering Algeria, as stipulated in Articles 4, 7, and 8, include:

- **Valid Travel Documentation:** Possession of a passport or equivalent travel document with a validity of at least six months.
- **Entry Visas:** Procurement of an entry visa issued by Algerian consulates or diplomatic missions abroad, except for nationals of countries exempted under reciprocal agreements. In exceptional circumstances, border authorities may issue short-term transit visas.
- **Proof of Financial Means:** Demonstration of sufficient financial resources to sustain themselves during their stay in Algeria.
- **Health Certification:** Submission of an internationally recognized health record as part of entry requirements.

The Ordinance also delineates residency classifications for foreign nationals, distinguishing between short-term visitors, temporary residents, and permanent residents<sup>35</sup>. Temporary residency permits are issued based on the purpose of entry, such as education or employment, while permanent residency permits may be granted under stringent conditions, including a minimum of

seven years of continuous legal residency<sup>36</sup>.

A foreigner who enters Algeria legally is entitled to move freely within the country, provided that their movement does not compromise public security or order. Additionally, they are required to present the necessary documents and proof of their legal status upon request by authorized officials (Article 25 of Law 08/11), under the threat of criminal penalties as stipulated in Article 39 of the same law<sup>37</sup>.

Despite these rigorous measures, challenges persist in curbing irregular migration effectively. Instances of foreign nationals overstaying their visas or engaging in unauthorized employment highlight the need for enhanced enforcement mechanisms and legislative reforms. Algeria's legal framework thus represents a critical, albeit evolving, component of its broader strategy to manage migration flows and uphold the rule of law within its territory.

### **1.2. Regulation and Oversight of Foreign Labor**

In recent years, Algeria has experienced substantial policy liberalization, particularly following its recovery from the crisis known as the "Black Decade" and the subsequent reconfiguration of its national economy and foreign policy. This strategic shift has facilitated the establishment of significant partnerships with countries such as China<sup>38</sup>, Turkey<sup>39</sup>, and various African nations<sup>40</sup>, encompassing both economic and health sectors<sup>41</sup>.

The policy of openness adopted by Algeria has significantly transformed its labour market, attracting an unprecedented influx of foreign nationals, predominantly for employment and workforce development programs. Between 2005 and 2019<sup>42</sup>, the foreign labour force reportedly increased 10,000-fold, illustrating the scale of this phenomenon. By mid-2020, approximately 250,400 foreign nationals were present in Algeria<sup>43</sup>, including around 170,000 migrant workers. This latter figure, as highlighted by Mr. Lazhar Soualem, Deputy Director for Human Rights at the Algerian Ministry of Foreign Affairs and International Cooperation, was presented during Algeria's second periodic report examination before the Committee on Migrant Workers and Their Families in 2018<sup>44</sup>.

In light of this demographic shift and its attendant challenges, it became imperative for state intervention to regulate the influx of foreign labour. The primary objectives of such regulatory measures include mitigating unemployment, protecting the domestic labour market from excessive competition, and addressing irregular migration.

Algerian legislation provides for the admission of foreign workers under two principal conditions: bilateral agreements and work permits issued by the Ministry of Labor. These permits serve to control the influx of foreign labour and curb unauthorized migration, enabling foreign nationals to participate in employment or commercial activities in a lawful manner.

The legislative framework governing foreign employment comprises Law 81/10<sup>45</sup>, which stipulates the conditions for employing foreign workers, and Law 08/11, which amends provisions in Law 81/10, alongside relevant regulatory decrees such as Decree 82-510<sup>46</sup>, which outlines the procedures for granting work permits, and Presidential Decree 03-251, which pertains to the status of foreign nationals in Algeria<sup>47</sup>.

Article 21 of Law 90/11, which governs labour relations<sup>48</sup>, permits employers to hire foreign workers only when qualified domestic workers are unavailable. This employment is subject to numerous regulations, with one of the most critical being the requirement for a work permit issued by the Ministry of Labor.

Although the legislation does not formally define the term "work permit," it can be characterized as an official document issued by the relevant administrative authority, authorizing a foreigner to engage in either remunerative or non-remunerative work within the country. The permit is valid until its expiration, after which it may be renewed to facilitate the continuation of employment.

Article 17 of Law 08/11, amending Law 81/10, identifies two primary categories of work permits:

- **Work Permit** (previously known as the work passport)
- **Temporary Work Permit** (formerly known as temporary work authorization)

Article 28 of Law 08/11 mandates that all employers, whether individuals or corporate entities, report the employment of foreign workers within 48 hours to the relevant regional branch of the Ministry of Labor. In the absence of such a branch, the report must be made to the local municipality, police station, or regional gendarmerie. This reporting obligation also applies in cases of employee termination or when the employment relationship concludes.

While the requirement for reporting foreign workers contributes to enhanced regulatory oversight and assists in monitoring the status of foreign employees, it also serves as a preventative measure against unauthorized settlement or employment. However, the absence of stipulated penalties for non-compliance renders Article 28 incomplete and less effective, signaling the need for legislative refinement.

Employers must ensure that authorized officials have access to all necessary documentation and permits to facilitate the lawful employment of foreign workers<sup>49</sup>.

Despite these regulatory provisions, efforts to curtail the employment of irregular migrants remain limited and largely ineffective. The prevalence of irregular labor migration, particularly in the southern border regions of Adrar and Tamanrasset, continues to rise at an alarming rate, highlighting

significant challenges in enforcement and comprehensive policy implementation.

### **1.3. The Security Paradigm in Mitigating Illegal Migration**

In response to the emergence and escalation of illegal migration, an activity now driven by sophisticated criminal networks, Algeria has proactively reinforced its legal framework and intensified its border control mechanisms across its land, maritime, and aerial domains. Various specialized units have been designated to oversee the monitoring and regulation of border crossings. These entities include:

#### **1.3.1. The Border Guard Units**

The Algerian Border Guard was established through Presidential Decree No. 77-144 dated November 17, 1977, and subsequently integrated into the National Gendarmerie by Presidential Decree No. 91-04 dated January 8, 1991. The organizational structure encompasses multiple hierarchical levels: the central command of the Border Guard Units and the regional command structures, complemented by sub-units that operate through covert centers and border outposts (nine in total). These units are primarily tasked with securing and surveilling the nation's borders<sup>50</sup>.

#### **1.3.2. The Coast Guard**

The coastal migration route from Algeria to European territories has emerged as one of the most pervasive forms of illegal migration, involving both Algerian and foreign nationals. This phenomenon is accentuated by Algeria's strategic position as a gateway to the Mediterranean and its proximity to European nations, such as Italy and Spain. In light of this, Algeria has implemented robust measures to secure its maritime borders and enhance oversight.

The Coast Guard, an arm of the Ministry of National Defense, is principally responsible for safeguarding harbors and coastal regions against maritime smuggling operations. Its mandate, formalized by the decree of April 3, 1973, extends to intercepting and halting smuggling attempts, including the trafficking of persons and goods, while ensuring the security of foreign vessels<sup>51</sup>.

Since its inception, the Coast Guard has successfully thwarted numerous illegal migration attempts, apprehended vessels carrying clandestine migrants<sup>52</sup>, and conducted life-saving operations that have rescued individuals from drowning, while also locating and recovering numerous deceased bodies from open waters<sup>53</sup>.

#### **1.3.3. The Customs Authority**

Operating under the aegis of the Ministry of Finance, the Customs Authority is deployed at land, sea, and air border crossings, with mobile units and permanent checkpoints strategically positioned.

Land border posts are tasked with carrying out these responsibilities in accordance with the directives outlined in the decision dated October 22, 2005<sup>54</sup>. Beyond their traditional customs duties, these posts play a significant role in enhancing security along the border region, supporting search operations, combating smuggling, curbing the illegal drug trade, and addressing irregular migration.

Efforts to combat irregular migration are executed through 26 customs posts distributed as follows: 8 posts along the eastern borders, 14 posts along the southern borders, and 4 posts along the western borders<sup>55</sup>.

Customs officials have effectively detected and detained thousands of unauthorized migrants concealed within containers, ships, various vehicles, and trucks. These individuals are subsequently handed over to law enforcement agencies to complete the requisite legal procedures.

#### **1.3.4. The Border and Immigration Police Directorate**

The Border and Immigration Police constitutes one of the most crucial security apparatuses responsible for border protection. It performs its duties through a comprehensive regulatory framework that governs the entry and exit of individuals and goods. The Directorate is tasked with combating illegal migration, narcotics trafficking, and smuggling, while also ensuring the safety of ports, airports, railway networks, and monitoring stations. The police are also responsible for verifying travel documents, identifying individuals in fugitive status or unlawful conditions, and coordinating with other agencies for the deportation of foreign nationals<sup>56</sup>.

#### **1.3.5. The Regional Investigation Unit for Illegal Migration (BRIC)**

Established by the General Directorate of National Security, the BRIC specializes in tracking and documenting information on illegal migration. Its role extends to monitoring and disrupting smuggling networks, as well as identifying, investigating, and detaining foreign nationals in unauthorized situations, individuals involved in transporting illegal migrants, and document forgers who supply falsified travel documents. This unit is also charged with mapping unauthorized crossing points and the methodologies used in clandestine entry into Algeria<sup>57</sup>.

#### **1.3.6. The Central Office for Combating Illegal Migration (OCLCIC)**

In response to the intensification of illegal migration into organized crime, both inbound and outbound, the General Directorate of National Security established the Central Office for Combating Illegal Migration. This office acts as a leadership and coordination entity among regional investigative units and serves as an oversight body with a focus on curbing illegal migration. This office is responsible for coordinating four regional and five local investigation teams strategically located in key cities such as Oran, Constantine, Bechar, Ouargla, and Souk Ahras. It also manages thirty-nine research units embedded

within the national police services<sup>58</sup>.

The OCLCIC's responsibilities include dismantling networks that facilitate the unauthorized transit or sheltering of foreign nationals, combating employment and labour violations involving illegal migrants, and preventing document fraud related to migration and residence. The office is also tasked with developing strategic preventive and deterrent measures aimed at addressing the challenges of illegal migration comprehensively<sup>59</sup>.

## **2. Mechanisms of Deterrence Against Irregular Migration**

The intensification of irregular migration has precipitated profound humanitarian crises, substantial human and economic losses, and the proliferation of transnational organized crime, including terrorism, smuggling, narcotics trafficking, arms dealing, and human trafficking. In response to these escalating challenges, the Algerian state has adopted a robust and security-centric approach, employing deterrent mechanisms to curb irregular migration. This strategy includes both punitive measures and administrative sanctions aimed at discouraging individuals, particularly youth, from engaging in such unlawful activities.

Algerian legislation unequivocally criminalizes all manifestations of irregular migration, whether related to unlawful entry into or exit from the national territory. This *lex generalis* applies indiscriminately to both nationals and foreigners. The legal framework reflects the principle of *jus imperii*, underscoring the state's sovereign authority to regulate and secure its borders.

The legislature's approach has evolved in response to the alarming increase in irregular migration and the shift from isolated, individual attempts to highly organized collective movements orchestrated by sophisticated criminal networks. These networks, driven by lucrative financial incentives<sup>60</sup>, often operate with blatant disregard for the catastrophic human toll of their actions. To combat this, Algerian law criminalizes not only unauthorized entry or exit but also the facilitation thereof, targeting both perpetrators and accomplices involved in the smuggling of migrants.

Offenses related to irregular migration are addressed within a dispersed legal framework that encompasses provisions from the Penal Code, the Law on the Regulation of Entry and Stay of Foreigners, and Maritime Law<sup>61</sup>. Penalties include custodial sentences, monetary fines, and administrative sanctions. For foreign nationals, measures such as deportation and removal are imposed to ensure compliance with entry and residency regulations.

The legislative framework also differentiates between varying degrees of violations. Unauthorized entry or exit is met with strict criminal penalties, while facilitation of these acts attracts enhanced sanctions to reflect its role in perpetuating irregular migration networks. This tiered approach underscores the legislature's adherence to the principle of proportionality, ensuring that

penalties correspond to the gravity of each offense.

Through its reliance on both punitive and administrative measures, Algeria has developed a comprehensive deterrence model aimed at protecting national sovereignty and public security. This integration demonstrates a careful balance between the state's sovereign rights and its international legal obligations. This nuanced approach serves as a model for the relationship between domestic sovereignty and the global challenges of migration governance, which will be elaborated upon further.

## **2.1. Criminalization of Unauthorized Entry and Residence in Algerian Territory**

Algeria's legal framework meticulously delineates measures to address unauthorized entry and unlawful residence, reflecting a commitment to territorial sovereignty and legal rigor. Article 44 of Law No. 08/11 serves as a cornerstone in this regard, prescribing stringent penalties for violations. The provision stipulates that, notwithstanding the broader directives of Articles 30 and 36, breaches of Articles 04, 07, 08, and 09 are subject to imprisonment ranging from six months to two years, in addition to monetary fines between 10,000 and 30,000 Algerian Dinars (DZD).

### **2.1.1. The Offense of Unauthorized Entry**

The act of entering Algerian territory in contravention of the procedural and substantive requirements established in Articles 04, 07, 08, and 09 constitutes a criminal offense. These provisions govern fundamental entry conditions, including the possession of valid travel documents and entry visas. Violations encompass:

- **Entry without documentation** is often associated with irregular migration patterns observed among sub-Saharan migrants.
- **Use of falsified documents**, signalling the involvement of organized criminal networks.
- **Assumption of a fraudulent identity**, undermining immigration control mechanisms.

Foreign nationals found in breach of these provisions are subject to custodial sentences ranging from six months to two years, alongside financial penalties of 10,000 to 30,000 DZD. These punitive measures underscore Algeria's commitment to deterring unauthorized entry and preserving the integrity of its borders.

### **2.1.2. Administrative Infractions Pertaining to Residency**

In contrast to the criminalization of unauthorized entry, infractions related to residency status, such as the failure to obtain or renew a residence permit, are classified as administrative violations. Article 45 of Law No. 08/11 prescribes financial penalties ranging from 5,000 to 20,000 DZD for such non-compliance.

*This distinction reflects a proportional approach within Algeria's legislative framework, wherein administrative infractions are met with pecuniary sanctions rather than custodial measures. Such a calibrated response aligns with the principle of proportionality, a cornerstone of contemporary legal systems.*

### **2.1.3. The Sovereign Prerogative of Deportation: Managing the Removal of Foreign Nationals**

*Deportation represents a critical sovereign prerogative, enabling states to expel foreign nationals who are unlawfully present within their territory. This prerogative extends both to individuals who enter Algeria irregularly and to those who overstay their legal residence.*

*Deportation, in essence, is an administrative measure exercised by public authorities to safeguard national security and public order. It compels the foreign national to exit the territory within a prescribed timeframe, with enforcement measures applicable in cases of non-compliance. This prerogative is grounded in the principle of *ius excludendi alienos*, affirming the state's right to regulate the presence of non-citizens within its borders.*

*While deportation is generally executed on an individual basis, targeting specific persons identified as violating immigration laws, exceptional circumstances may warrant collective deportations. Such measures, though extraordinary, are sometimes necessitated by acute threats to national security or significant disruptions to public order.*

*The legislative basis for deportation in Algeria is articulated in Article 30 of Law No. 08/11, which mandates the removal of foreign nationals who fail to depart within the timeframe specified by the authorities. This provision not only reinforces the state's sovereignty but also aligns with international norms, requiring that deportation be carried out in adherence to procedural safeguards and respect for fundamental human rights.*

*While deportation remains a vital mechanism for maintaining territorial sovereignty, it must be exercised within the bounds of international legal obligations. Algeria's legislative framework reflects a commitment to upholding the rule of law, ensuring that deportation measures are procedurally fair and proportionate. This balance demonstrates Algeria's dual role as a sovereign actor and a participant in the international legal order.*

*Through its nuanced approach to the criminalization of unauthorized entry and residency, combined with its deportation policies, Algeria exemplifies a legal strategy that prioritizes national security while respecting international norms. This dual commitment underscores the state's adherence to both domestic imperatives and global standards, reinforcing its role in contemporary migration management.*

### **2.2. Legal Discourses on Irregular Migration: Algeria's Criminalization of**

### **Unauthorized Exit and Smuggling Practices**

Algeria's legal response to irregular migration is grounded in a stringent penal framework targeting two interconnected phenomena: the unauthorized exit of individuals from its national territory and the facilitation of migrant smuggling. The criminalization of these acts underscores Algeria's commitment to safeguarding its borders and upholding the rule of law. However, this approach raises critical questions about its effectiveness and alignment with international legal norms, particularly in light of the humanitarian and socio-economic contexts driving such migration.

#### **2.2.1. First subsection: The Criminalization of Unauthorized Departure: A Legal Paradox**

The criminalization of unauthorized departure is codified in Article 175 bis 1 of the Algerian Penal Code, introduced by Law No. 09-01 of February 25, 2009. This legislative provision situates irregular departure within the broader framework of offenses against national border regulations, reflecting a sovereign prerogative to safeguard territorial integrity. However, the legal and normative underpinnings of this measure have engendered significant debate in the parliament<sup>62</sup>, particularly in light of Algeria's obligations under Article 6 of the Protocol Against the Smuggling of Migrants by Land, Sea, and Air (Palermo Protocol), to which the state is a party<sup>63</sup>.

Article 175 bis 1 stipulates:

"Without prejudice to other applicable legislative provisions, any Algerian or resident foreigner who unlawfully departs the national territory through official or non-designated border points, using false identities, forged documents, or any other fraudulent means to evade compliance with prescribed procedures, shall be punished with imprisonment ranging from two (2) months to six (6) months and a fine of 20,000 to 60,000 Algerian dinars, or one of these penalties."

This provision establishes a dual framework of criminal liability, addressing unauthorized departures via both official and unofficial border points where fraudulent practices are employed. Notably, the offense materializes only upon the successful crossing of Algeria's national borders, thereby excluding inchoate attempts from its scope unless otherwise prescribed by law.

The criminalization of unauthorized departure invokes critical jurisprudential and ethical concerns. Proponents argue that such measures serve as a deterrent to irregular migration, thereby preserving national security and public order. Nonetheless, empirical data underscore the ineffectiveness of these punitive sanctions in mitigating the phenomenon; irregular migration attempts continue unabated, exposing the inadequacy of a purely repressive legal approach<sup>64</sup>.

Mohamed Saïb Musette, a sociologist and specialist in irregular migration, underscores in his research on the phenomenon of harraga (irregular migration attempts) that the state's deterrence-based approach has largely failed. He substantiates his findings with data from the European Border and Coast Guard Agency (Frontex), which recorded a 37% increase in thwarted irregular migration attempts from Algeria between 2020 and 2021.

Furthermore, Algeria's criminalization policy appears to contravene Article 5 of the Palermo Protocol, which unequivocally states that "Migrants shall not become liable to criminal prosecution under this Protocol for being the object of conduct set forth in Article 6 of this Protocol." By shifting the punitive focus onto migrants themselves rather than the facilitators of irregular migration, Algerian law risks deviating from international norms that prioritize the protection of migrants as victims of exploitation and coercion. This issue has been underscored by Amnesty International, which has called on Algeria to repeal Article 175 bis of the Penal Code. The organization argues that this provision contributes to the criminalization of migrants and undermines their human rights, further exacerbating their vulnerability<sup>65</sup>.

This legislative incongruity invites a critical reassessment of Algeria's compliance with its treaty obligations under the Palermo Protocol. It further necessitates a broader exploration of how national penal policies can be recalibrated to address irregular migration through measures that are both legally sound and ethically defensible, aligning with global principles of proportionality and human rights protection.

#### **2.2.2. The Criminalization of Migrant Smuggling: Balancing Deterrence and International Obligations**

The initial legislative response to irregular migration in Algeria was firmly anchored within its *lex maritima*, reflecting the phenomenon's nascent stage and relatively constrained scope. Early legislative measures targeted two primary forms of irregular migration: the clandestine departure from national territory via surreptitious boarding of a vessel and the facilitation of migrant smuggling. Both acts were criminalized under maritime law provisions, signifying a proactive yet context-specific approach to combating irregular migration.

Algerian maritime law addressed these offenses within Chapter Five of Title Five, Book Two, comprising Articles 857 to 859, along with supplementary provisions aimed at reinforcing legal deterrence. Central to this legislative framework was Article 545 of the Maritime Code, which served as an essential stopgap measure to bridge legislative gaps in the Penal Code. This article stated:

"Anyone who clandestinely boards a vessel with the intent to undertake a

voyage shall be punished with imprisonment ranging from six months to five years and a fine between 10,000 and 50,000 Algerian dinars. The same penalties apply to any crew member or employee who, on board or ashore, facilitates the boarding, disembarkation, concealment, or provision of supplies to a stowaway. This also extends to individuals who organize in any form to enable such clandestine acts."

Further bolstering these safeguards, Article 544 criminalized unauthorized boarding of vessels, thereby fortifying the regulatory landscape against irregular migration. Article 857 elaborated on the handling of stowaways, specifying provisions for disembarkation and repatriation. Under this regulation, stowaways were mandated to pay double the fare for the journey undertaken and compensate for any incurred damages, with enforcement applicable to Algerian nationals. For foreign nationals, the costs of deportation were to be borne by the vessel implicated in the violation, as articulated in Article 545.

Beyond maritime law, Algeria undertook substantial legislative reforms with the 2009 amendment to its Penal Code, marking a pivotal shift towards a more comprehensive approach to irregular migration. This amendment recognized migrant smuggling as a form of transnational organized crime, necessitating a more nuanced legal framework. While unauthorized departure from national territory was addressed through a singular provision, the crime of migrant smuggling was elaborated upon in a dedicated section comprising 12 articles, codified under Articles 303 bis 30 to 303 bis 41 of the Penal Code.

Notably, Article 303 bis 34 restricted the application of mitigating circumstances as outlined in Article 53 of the Penal Code, underscoring the legislature's intent to apply stricter deterrence measures. Conversely, Article 303 bis 36 provided a safeguard by granting immunity from prosecution to individuals who reported the crime to relevant administrative or judicial authorities either prior to its commission or during its initial stages. This legislative evolution signifies a shift towards more robust enforcement mechanisms aimed at curbing irregular migration while underscoring Algeria's alignment with international efforts to combat transnational crime.

#### **Conclusion:**

The complex and multifaceted phenomenon of irregular migration has garnered significant attention from both the international community and national governments. This is underscored by its regulation through various international conventions—both bilateral and multilateral—complemented by comprehensive national legislative measures. Algeria, acutely aware of the security and humanitarian ramifications of irregular migration, has actively engaged in international cooperation to address this issue. This commitment is exemplified by Algeria's participation in numerous international accords

and bilateral agreements with the European Union, as Mediterranean states collectively constitute un complexe régional de sécurité with shared security priorities, including the management of irregular migration. Consequently, Algeria has adapted its legislative framework to incorporate both preventive and deterrent measures aimed at combating this pressing challenge.

### **Findings**

- The challenges associated with irregular migration demand a concerted, multilateral approach, as it disrupts the balance of international order and threatens regional and global stability, particularly due to its intersection with transnational organized crime (*crimen transnationalis*), encompassing human trafficking (*traffico hominum*), arms smuggling, and modern slavery. Migrant groups and smuggling networks continue to refine their tactics to circumvent state enforcement and legal measures.
- Irregular migration is inherently a societal issue with economic, developmental, political, social, and cultural dimensions, making it a multifaceted and complex phenomenon.
- The pronounced economic disparities between Europe and Africa, along with the appeal of greater opportunities and personal freedoms, are primary drivers of irregular migration in the Mediterranean region. Thus, a comprehensive strategy that promotes economic development and personal freedom is imperative to mitigate the root causes of this migration.
- The recent increase in irregular migration flows can be attributed to a confluence of popular uprisings in Egypt, Tunisia, and Libya, coupled with security challenges in the Sahel region. Algeria has seen a marked increase in migrant influxes in recent years, underscoring the urgency of a robust response.
- Algeria's geographical position establishes it as a pivotal transit state, characterized by the dual flow of irregular migration both inward and outward. This necessitates the adoption of stringent legislative and operational measures, particularly under the sustained pressure from Northern Mediterranean states.
- Algerian legislation designates irregular migrants as violators of state sovereignty, subject to legal penalties. However, this punitive approach often fails to address the root motivations compelling individuals to undertake dangerous migration journeys in search of better opportunities.
- Algeria has adopted a multifaceted approach to curbing irregular migration, with an emphasis on enhanced border surveillance and legislative reforms. Nonetheless, the ongoing departure of vessels braving the Mediterranean toward Europe suggests that further targeted recommendations are needed to fortify these efforts.

### **Recommendations**

- Transitioning to a holistic approach that targets the root causes driving irregular migration is essential, as opposed to an overreliance on security-centric measures.
- Recognizing irregular migration as a global challenge is crucial, requiring the collective engagement of states to address the stark socio-economic divides between the global North and South that incentivize clandestine movement.
- Implementing effective maritime search and rescue operations, alongside incentivizing private vessels to assist distressed migrant ships, is imperative.
- Developmental initiatives must be accelerated, especially in transit countries that serve as migration corridors, to create employment opportunities and foster conditions that deter individuals from seeking irregular migration routes.
- The United Nations High Commissioner for Refugees (UNHCR) should play a more active role in monitoring the conditions of detained irregular migrants, ensuring they are not returned to regions where their safety would be compromised.
- Algeria's legislative framework should be realigned with international best practices, ensuring adherence to obligations stemming from international treaties and bilateral or multilateral agreements.
- Revisions to Article 175 bis 1 of the Penal Code should consider decriminalizing irregular migration, aligning with the principles of the Protocol against the Smuggling of Migrants by Land, Sea and Air (Palermo Protocol), which explicitly exempts irregular migrants from criminal liability.

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