Legal dimension of combating clandestine immigration of foreigners to Algeria

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Abstract:

Algeria has experienced a significant expansion of clandestine and illegal immigration of foreigners. This phenomenon is no longer limited to the economic and social causes and motivations of the search for well-being and the creation of the best opportunities for livelihood and employment, but is mainly due to the influx of growing demographic growth and the background of insecurity in many countries

There are many legal possibilities and means of dealing with this phenomenon at the national and international levels. Based on the method of deterrence and treatment in accordance with international norms for the extradition of refugees and migrants. Those responsible for dealing with their affairs

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1. INTRODUCTION

Migration is considered one of the social phenomena primarily attributable to population growth and the absence of political and security stability in any country. It is a phenomenon that leads to the emergence of movements of various segments of society towards countries and regions that enjoy this stability, known in some jurisprudence as illegal and forced migration (Atika, 2013, p. 44). What distinguishes this migration the most is its violation of international conventions and domestic laws in the receiving country. This phenomenon witnesses, among its motivations and reasons, the perilous adventure of children and women in its scenes and risks, making it a phenomenon that exacerbates its scope in many countries suffering from security instability, as it has become their people, of both genders and various ages, who are at the forefront.

By illegal migration or forced migration and illegal immigration, it means the departure of citizens of a country from its borders to the territory of another country clandestinely and secretly, without using the organized crossings and outlets for movement to and from abroad and without observing the procedures and laws prescribed for it, or their entry into another country with forged documents or entering with valid documents but staying there without residence permits.

Algeria has witnessed a remarkable influx of foreign migrants seeking security in recent years, especially from Syria, Niger, and Mali, due to the civil wars these countries have experienced shaking the security of their peoples. Thus, they have been seeking other countries to trust with their people, authorities, and legal systems. Algeria has become a haven for them, especially due to its geographical location and its political and economic security stability. The spread of peoples from countries suffering from security instability across the various provinces of Algerian territory did not occur within a framework reflecting the settlement of their situation according to Algerian law related to regulating the migration of foreigners to Algeria. In most cases, these refugees and migrants moved with their families or alone across maritime or land borders secretly, appearing in various streets, seeking sources of livelihood and living without shelter, personal protection, or safety in their lives or health.

The primary motive that drove these refugees and migrants to migrate to Algeria is the search for security and peace (Ladmia, 2013) (Rachid, 2018) (Atika, 2013, p. 43). However, the living conditions they have experienced may reflect a completely different aspect than what they were seeking. Spending most of their time in alleys, streets, and sometimes even on highways day and night may lead their lives to destruction and expose them to dangers threatening their safety and security, especially since among them are the most vulnerable, such as women and pregnant women. Their physical structure and immunity cannot withstand the degree of health risk posed by those living conditions and circumstances, in addition to their exposure to kidnapping, rape, exploitation of children in prostitution and pornography, and their murder for the sale of their organs and trafficking in them, considering that these criminal phenomena are present in every corner of the earth, regardless of the laws enacted by countries and the ratification of international conventions or the pursuit of strategies to combat these phenomena, as they are enduring phenomena for the existence of the human race on earth. This makes the category of migrants to Algeria under these circumstances threatened to their security and peace and devoid of their purpose for which they intended Algeria.

Another aspect generated by illegal migration of foreigners to Algeria is its impact on the country's internal security and the violation of the requirements of the internal public order, as the dire conditions these foreigners have reached after migrating to Algeria may drive them to commit thefts and looting of public and private properties. Also, the lack of regular medical care and treatment for them may lead to the spread and transmission of diseases due to their constant movement from one place to another, negatively affecting internal security, public health, and public tranquility in Algeria.

Thus, the conflicting interests of refugees and migrants secretly migrating to Algeria between the need for security when that was their motive for migration from their countries and the loss of security after migration emerge. Algeria, which seeks in its legislative policy to ensure protection for children through international conventions and agreements it has ratified in the context of its foreign relations or through the provisions of its internal

laws, especially Law No. 15-12 dated 15/07/2015 concerning the protection of children (Law No. 15/12 concerning the protection of the child, 2015), Law No. 08-11 dated 25/06/2008 concerning the entry and residence of foreigners and their movement within it (Law No. 08-11, relating to the conditions of entry, residence and movement of foreigners in Algeria,, 2008), and Law No. 09-01 dated 25/02/2009 amending the Penal Code (Law No. 09-01 amending Ordinance No. 66-156 of June 08 Containing the Penal Code amended and supplemented, 2009). This endeavor requires finding effective mechanisms to control the components of the internal public order. This situation prompts us to question:

the legal dimension of the increasing illegal migration to Algeria despite the variety of mechanisms and regulated methods to combat this phenomenon?

Consequently, the problem is addressed by researching the role expected to be adopted by law regarding the growing phenomenon of illegal migration to Algeria, which is terrifying and threatening to the public order with its various implications. This problem is tackled by relying on a descriptive-analytical method suitable for studying the reality and truth of the motivations and reasons leading to the expansion of illegal migration to Algeria and discussing the various legal mechanisms established to confront this phenomenon, with the aim of deducing the legal dimension of addressing this phenomenon and avoiding its risks at all levels: security, political, economic, social, and humanitarian.

The First Chapter: Report on the Reality of the Causes Leading to the Illegal Immigration of Foreigners to Algeria

Immigration is considered a human right recognized by international agreements and laws, most notably the United Nations Charter. It reflects a natural reality of human existence on Earth. However, exercising this right must occur within a regulated legal framework that outlines its conditions and procedures. Countries establish these frameworks to control the movement of people entering and leaving their territories. Immigration that complies with these conditions and legal frameworks is considered legal immigration. In contrast, immigration that violates this framework occurs secretly and without documentation. This constitutes a breach of legal

frameworks and poses security, economic, social, and health threats. This type of immigration is referred to as illegal immigration (Farida, 2022, p. 86).

Many countries around the world suffer from internal security instability due to civil wars or armed conflicts of an international nature. This negatively impacts their local development and foreign strategies. These countries may experience economic, social, cultural, and political collapse, leading to high living costs, economic stagnation, and the loss of scientific and cultural projects within society. Additionally, political relations between the state and its citizens, as well as with external relations, may become strained. Feeling unsafe and unprotected in their homelands, citizens of these countries may resort to illegal immigration to countries that offer a degree of security and legal protection. They may end up living in countries they don't belong to without documentation, having entered illegally or through human trafficking across international borders.

Algeria is one of the countries struggling with the influx of illegal immigrants into its territory. The reasons and motivations behind this immigration are numerous, primarily stemming from the negative realities that reflect the deteriorating political, security, economic, social, and environmental conditions in the countries these immigrants originate from. Additionally, other reasons and motivations are driven by the positive image immigrants have of Algeria, which becomes a destination for their immigration when the country's political, security, economic, social, and environmental conditions align with their aspirations in life (First demand).

The illegal immigration of foreigners to Algeria has consequences that threaten national security, social cohesion, and public health. This leads to repercussions that affect the country's development plan, the achievement of stability in various aspects of life in society, and aspirations for maintaining public order. This raises endless dangers, justifying the need to address this phenomenon and dedicate the means and resources necessary to maintain stability in all aspects that this phenomenon disrupts, restoring its purity and legal stability (Second demand).

The first demand: Identifying the Attracting Reasons for Foreigners' Illegal Immigration to Algeria.

Foreigners' illegal immigration to Algeria can occur either individually or collectively, with or without their families. They sneak across the country's borders to enter illegally and settle in various cities in Algeria (Atika, 2013, p. 44).

Foreigners may immigrate with their families due to the panic caused by the security, political, and legal situations in their home countries. They no longer feel safe living in their own country and decide to migrate as a family to a country where they feel secure. However, this migration may also occur without their families. In this case, migrants may accompany other individuals on boats across the sea or in vehicles crossing the land borders, along with some residents of their hometowns. They feel reassured by the presence of these companions during the migration, as they consider them a form of protection. They share a common fate and the risks of migration, which they perceive as safer than staying in their insecure home countries.

Dictatorship and oppression are factors driving people towards clandestine migration. Some countries have witnessed internal conflicts due to power struggles, with opposition parties overthrowing the ruling regime and demanding a more democratic system. This has led to a loss of internal security in these countries or at least made them vulnerable to internal insecurity. Consequently, the people living in such countries have felt fear and panic, prompting them to migrate to countries where they feel safer. Algeria has been one of the major destinations for citizens of these countries. In recent years, Algeria has demonstrated significant control over its internal security and increased its international influence due to its strategic diplomacy and positive contributions by its security intelligence elements. Notably, what distinguishes this migration is the large numbers of children, women, and elderly people crossing the Algerian land and sea borders, despite the dangerous conditions of this illegal migration, as it lacks adequate protection, peace, and security for these groups (Nasser, 2021, p. 469).

Analyzing the reality of the attracting reasons and motivations for foreigners towards Algeria based on security considerations reveals that destruction threatens families in the immigrants' countries. This threat to their

security compels them to embark on risky journeys by boat or vehicle, fearing the repercussions of the destruction. For them, the hope of survival in this adventure outweighs the uncertainty of staying amid destruction. Children, women, and the elderly are also driven to clandestine migration to Algeria due to the judicial persecution by their home country's authorities, as a result of their involvement in rebellious or opposition movements. Consequently, they are forced to leave their countries and migrate, escaping harsher and more severe measures and restrictions on their lives and freedoms. Additionally, the effects of war and conflict lead these individuals to lose their personal identification documents. Due to their desire to leave their countries because of these wars, they are deprived of following the legal immigration procedures and thus resort to clandestine and irregular means of migration because their security conditions do not allow them to obtain the required documents for legal migration.

One of the specific reasons explaining the tendency of children to clandestine migration to Algeria is related to their education and the concerns of their guardians about the loss of their academic and practical future. They seek the security and stability provided by the Algerian state as a destination that ensures this security and tranquility. They migrate to Algeria despite lacking the regulatory frameworks that legitimize their attraction to it and their residence for the sake of their stability and building their academic and practical future. The military conflicts, armed conflicts, and civil oppositions in society can also lead to the spread of crimes among citizens and ordinary people, due to the possibility of various forms of retaliation and assault within the society. This loss of security among citizens prompts them to migrate to overcome these conditions, especially as parents may seek to prevent their children or spouses from becoming victims of retaliation. This compels them to rush to migrate to safe countries where no hands are involved in such retribution.

Algeria is considered an attracting country for the citizens of countries that have suffered deteriorating security conditions. This is not only because Algeria is characterized by its internal and international security stability, but also because there are other factors that have increased the attraction of clandestine and illegal migration to it. Among these factors are the similarity

in customs, social traditions, language, religion, and common destiny compared to the situations of those countries during the Black Decade era. Additionally, the proper religious orientation, which is not extremist, contributes to the comfort of migrants towards Algeria. Algeria has become a country that transcends the center of acute economic crises experienced today by many countries exporting their populations, through a development program in which Algeria has increased the purchasing power and reduced unemployment rates, opening up investment opportunities in various fields and economic sectors. These are all advantages lacking in other countries, prompting their populations to flow towards clandestine migration to Algeria after their attempts at legal migration have failed.

Moreover, the environmental and climatic factors abundant in Algeria throughout the seasons are positive factors that many countries lack, and they are factors that deprive the people of these countries of food security on the one hand and environmental security on the other (Farida, 2022, p. 89) (Mekhadmi, 2006, p. 13).

The second demand: Reflections of Foreigners' Illegal Immigration to Algeria

The illegal immigration of foreigners to Algeria has several repercussions, primarily affecting the immigrants themselves, their security, health, and their social, economic, or livelihood goals that prompted them to choose the path of migration to Algeria. These repercussions also affect Algeria, which has embraced them and served as an attraction due to the available factors therein that they sought to achieve in their migration. This immigration brings with it various security threats, economic risks, and social risks to Algeria.

While illegal immigration of foreigners to Algeria provides them with what they lack in their countries in terms of food, political, economic, social, and environmental security, conflicts and disputes do not respect borders. Once these foreigners leave their homelands, they become vulnerable to the harm they felt before leaving. However, considering the grave risks associated with the migration of these foreigners, it becomes clear that they are not safe and secure as they initially believed when embarking on their clandestine journey via unsafe boats or vehicles. The paths they traverse are

fraught with all kinds of crimes and assaults, in addition to the possibility of contracting diseases that could have dire consequences for their health, as facing the challenges of nature throughout the migration journey is not easy. Many reports and studies have indicated that high proportions of migrants using clandestine and illegal routes perish before reaching their intended destination country, or they face health risks that preclude survival and recovery, as treatment becomes difficult (Ladmia, 2013, pp. 66-84) (Farid, 2013), confirming that the safe life these migrants demanded and sought in the adventure of illegal migration is more perilous than the life they had in their homelands.

When migrants clandestinely reach the borders of the national territory, they spread across various regions and engage in continuous wandering day and night, seeking livelihood opportunities through streets, alleys, and even highways, exposing themselves to real danger with their irregular movements, including the possibility of traffic accidents or sexual assaults and exploitation of children by criminal networks. They could also be subject to kidnapping and murder for organ trafficking and trafficking, further underscoring that these foreign migrants do not achieve the goals for which they migrated from their countries to Algeria, especially in terms of the security they seek. Crime knows no territorial boundaries, and the likelihood of its occurrence is high everywhere, particularly in the absence of vigilance in the circumstances where these illegal migrants proliferate.

Moreover, foreigners migrating clandestinely to Algeria, due to their spread across various regions and states of the country, pose a threat to internal security and may be utilized by terrorist groups to undermine the country's internal security by exploiting these clandestine routes in their migration to achieve their criminal goals, such as smuggling drugs and weapons, for instance. Organized crime is fundamentally linked to the factors of illegal migration, and its commission threatens the security of the country and disrupts international relations between Algeria and neighboring countries, especially if these migrants use Algerian territory to transit to those countries (Selim, 2014/2015, p. 222) (Al-Dulaimi, 2006, p. 218). Considering their lack of legal status in Algeria, most of them do not possess identity documents and do not engage in paid work because their legal status

does not allow them to work in Algeria, as their migration is clandestine and illegal, which does not recognize their affiliation with social security benefits. All of this increases their resentment and frustration, which may drive them to commit crimes such as theft, robbery, and trespassing on public and private property, causing panic among citizens exposed to such attacks and creating an atmosphere of fear and insecurity in the country.

On the health front, the living conditions experienced by foreign migrants clandestinely heading to Algeria make them vulnerable to deadly diseases due to the lack of continuous and regular healthcare, especially for pregnant women, children, and the elderly. This poses a burden on the healthcare organization, in addition to the fact that some diseases are highly likely to be transmitted from person to person, threatening public safety and health in the country, posing a serious indicator that affects the components of the three pillars of the public system: general security, public tranquility, and public health.

Thus, it becomes evident from the foregoing that the illegal immigration of foreigners to Algeria does not achieve their goals that prompted them to migrate, but rather contributes to their vulnerability due to the absence of legal security, as well as threatening the conditions in Algeria with the spread of this phenomenon at all security, social, economic, and health levels. This necessitates the imperative of confronting this phenomenon with multiple effective means and mechanisms to eliminate it.

The second topic: Legal Mechanisms to Combat Foreigners' Illegal Immigration to Algeria

Confronting the illegal immigration of foreigners to Algeria necessitates considering it a moral obligation and a legal commitment by national legislation and international conventions in order to combat this phenomenon, which threatens political, economic, social, environmental, and health security.

There are various legal mechanisms in place to combat illegal immigration and its risks, and what distinguishes these mechanisms is that they are not limited to a regional scope but are considered by governments, regional and international governmental and non-governmental organizations, and various units of the international community as a matter

of global concern due to the increasingly alarming effects it has on international security as a whole.

Efforts to combat this phenomenon have been highlighted in legal texts issued by the Algerian state to work on confronting it, controlling its repercussions, and managing it while respecting human rights (the first demand). Given that Algeria is strategically located for the countries of the African coast (Karim, 2018)and the European Union in the Mediterranean basin and possesses a developing economic environment, it has become a destination for the reception and export of illegal migrants increasingly. This underscores Algeria's activation of its international relations to raise awareness of the importance of cooperation in combating this phenomenon (the second demand).

The first demand: Activating Legal Means to Combat Illegal Immigration to Algeria

The Algerian legislator has taken a pioneering stance in establishing a legislative arsenal that addresses various regulations, standards, and principles required to confront the phenomenon of foreigners' illegal immigration to Algeria. The legislator introduced these measures with the aim of securing security at all levels through multiple texts, including Order No. 66-211 concerning the status of foreigners in Algeria (., 1966) . This legislation is considered the primary legal reference that witnessed the Algerian legal system regulating the status of foreigners, extending to the activation of legal means aimed at preventing and combating irregular migration to Algeria (Leila, 2022, p. 1085)، This law outlined the conditions required for foreigners to enter Algeria, emphasizing the state's sovereignty over its territory. Articles 2, 3, and 4 of this law stipulate that a foreign person is anyone who does not hold Algerian citizenship, and their entry into Algeria is subject to presenting a valid national passport or travel document with an entry visa from the consulate and a health certificate. They cannot enter Algeria without complying with all the procedures prescribed by law. Furthermore, Articles 23 and subsequent of this law state that violating these conditions subjects the foreign individual to judicial punishment, with penalties ranging from two months to six months in prison. Additionally, anyone who assists or facilitates their entry into Algeria or helps them move

or reside in Algeria illegally faces imprisonment ranging from two months to one year.

Moreover, the legislator added in Article 545 of the Maritime Law issued by Order No. 76-80 that any foreign person who clandestinely boards a ship for sailing and traveling without following the prescribed procedures is punishable by imprisonment ranging from six months to five years and a fine ranging from ten thousand to fifty thousand Algerian dinars. The same penalties apply to the ship's crew or any employee who assists a person in clandestinely boarding or disembarking from the ship for illegal migration purposes (Ordinance No. 76-80, 1976).

Furthermore, Law No. 08-11 concerning the conditions for the entry of foreigners into Algeria, mentioned above, detailed cases that embody situations of illegal migration and outlined punitive measures to address them, relying on deterrence by imposing penalties for violating immigration and residency conditions for foreigners in Algerian territory, especially through Articles 10, 35, 36, 37, 42, and 46 of this law.

Additionally, the Penal Code was amended under Law No. 09-01, mentioned above, reflecting legislative policy aimed at activating various legal means to combat illegal migration to Algeria. This includes imposing penalties on the judiciary for facing foreign migrants who enter Algeria clandestinely and unlawfully. The legislator considers criminalizing these acts and punishing them as an effective means to combat transnational organized crime, as clandestine migration targets the local and national security of Algeria and may be for purposes such as drug trafficking, arms smuggling, and money laundering. Thus, combating illegal immigration to Algeria serves as a fight against organized crime and a legal confrontation with terrorist groups that exploit migrants to execute their criminal plans.

On the other hand, regarding combating the phenomenon of illegal migration of foreign children, the Algerian legislator has been proactive in protecting the rights of children due to their mental and physical vulnerability within society. Law No. 15-12, issued on 15/08/2015, concerning the protection of children, applies its provisions to children present in Algeria, whether citizens or foreigners. This is because the vulnerability of children requires non-discrimination in their legal protection, regardless of whether

they are citizens or foreign migrants, as long as they are present in the national territory. However, the Algerian legislator did not address in the provisions of this law the protection required for the category of migrant children in light of the security conditions in their countries, necessitating expanding the scope of application of this law to create legislative integration that aligns with the requirements of international conventions ratified by Algeria internationally. The phenomenon of child migration to Algeria and their widespread presence throughout the cities necessitates increasing attention to protecting these children in a manner commensurate with their mental and physical vulnerability.

The second demand: Intensifying International Cooperation to Combat Illegal Immigration to Algeria

The phenomenon of illegal immigration of foreigners, with all its dimensions, effects, and repercussions, does not confine itself to one state but affects multiple countries. It is an international issue that has drawn the attention of international law and various international entities to seriously activate means to combat and cooperate in confronting it to eliminate it.

The interest of international law and the structures and institutions of the international community in exploring means to combat this phenomenon stems from considering it a matter related to the ethical duties arising from human values. It is a phenomenon that negatively impacts human rights before affecting the national security of any country, politically, economically, socially, or health-wise. Criminalizing this phenomenon is linked to the rules of international law because it constitutes a violation of the sovereignty of states over their territories.

In a field that draws more attention regarding the increasing spread of the phenomenon of foreigners' illegal migration to Algeria, it often involves migrations accompanied by children. This does not exclude the possibility of exploiting them in migration to execute criminal policies. Foreign children are victims of various considerations in illegal migration, whether they migrate with their guardians or alone. They are susceptible to exploitation by criminal networks within Algerian territory. Multiple international charters and agreements- (The Convention on the Rights of the Child,, 1989) (The African Charter on the Rights and Welfare of the Child,, 1990) (The Optional Protocol to the Convention on the Rights of the Child on the involvement of

children in armed conflict,, 2000) The Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, among others.- have stipulated several regulations to address child migration within the framework of reporting on human rights in general and children's rights specifically. All children are entitled to legal protection of their civil, political, economic, social, and cultural rights. There is no discrimination in recognizing these rights between migrant children and children involved in the migration phenomenon because the status of childhood, which indicates that these children are in a vulnerable position, requires compassion, care, mercy, and the provision of protection, even if their migration is clandestine and illegal. This makes this category distinctive in terms of protection according to international human rights treaties and the provisions of the Convention on the Rights of the Child, which has received the largest number of ratifications from countries worldwide.

The United Nations General Assembly adopted the Protocol against the Smuggling of Migrants in its fifty-fifth session on November 10, 2000, (Manar Sabrina, 2021, p. 67) (Nadia, 2014, p. 104)to enhance international cooperation in addressing the motivations for illegal migration, especially by preventing the smuggling of migrants by land, sea, and air. Each country has the right to take appropriate measures to combat this phenomenon, which constitutes an organized crime transcending national borders, with the obligation to treat migrants humanely (Mark, 2008, pp. 18-19).

Thus, the United Nations has provided a wide scope through this protocol for international cooperation in combating the illegal immigration of foreigners, particularly by taking serious and stringent measures against human traffickers, considering them criminal networks that exploit migrants and violate the rule of law[20].

The International Labor Organization has also called on states party to the Migrant Workers Convention of 1975 to cooperate in eliminating the effects of hidden migration for work purposes and the use of migrants through illegal means. The convention prohibits clandestine migration for work purposes in receiving countries and simultaneously prohibits the use of migrants in these conditions, considered illegal.

Therefore, combating the illegal immigration of foreigners to Algeria is a dilemma that the country faces, like all countries worldwide that have not been immune to this alarming phenomenon. It poses significant challenges even to advanced countries such as the United States and the European Union. This necessitates the imperative of cooperation between countries to intensify efforts aimed at combating it. What alleviates its severity is not only tightening surveillance and expanding the scope of deterrent trials before the judiciary but also discussing ways to expand the procedures and conditions for legal migration and securing it within legal frameworks to push for social progress, especially for migrants seeking security due to wars in their homelands or seeking work to escape from countries suffering from a lack of development resources or poverty.

Conclusion:

Illegal migration of foreigners to Algeria remains a growing phenomenon due to worsening reasons, especially with the deteriorating security and political stability in neighboring countries along the African coast and their weak economies. This imposes movements of migration towards Algeria, which is considered a haven of safety and security lacking in the countries exporting migrants.

Combating the phenomenon of illegal migration to Algeria poses a legal obstacle from the perspective of discussing human rights, especially in the face of foreign migrants to Algeria under security conditions and motives resulting from civil conflicts and armed wars in their countries.

International cooperation has become a significant aspect in combating illegal migration of foreigners, as it is the dimension that Algeria can invest in to confront the weight of this phenomenon, especially in terms of security, given the participation of all countries in the world in its effects. Therefore, it is necessary to address the root causes internationally rather than considering it solely as an internal or national issue, given the negative consequences it poses to international security before the internal security of the receiving country. This dimension makes the responsibility in confronting the phenomenon a collective responsibility for all units of the international community, rather than restricting it to the responsibility of the Algerian state alone in eliminating it

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