

ILLEGAL IMMIGRATION BETWEEN LEGAL CRIMINALIZATION AND THE PROBLEM OF LINGUISTIC COMMUNICATION

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Abstract:

There are various causes and manifestations of violations associated with illegal immigration. Many nations criminalize unauthorized entry into their territories. However, it is essential to view illegal immigrants as victims of extraordinary circumstances and conditions before considering their actions through a criminal lens. The study aims to underscore key strategies for shifting public perceptions concerning illegal immigration. This entails embracing a human rights-oriented approach and minimizing the reliance on security measures, surveillance, and punitive legal procedures. The findings advocate for governmental action. It emphasizes the imperative of aligning migrant rights with universal human rights principles, emphasizing their inherent inseparability. Furthermore, the study urges the decriminalization of illegal immigration, advocating for its treatment solely within the realm of civil and administrative violations.

Since illegal immigrants face many problems, the research had to raise the problem of linguistic communication, as most illegal immigrants do not speak the foreign languages of the countries they moved to.

To address these issues comprehensively, the study will employ a descriptive analytical approach, deemed most suitable for examining its overarching framework.

Keywords: Illegal immigration; human rights; International protection; immigrants; Human Trafficking; Haraga; Clandestine migration; Guarantees and rights; Linguistic communication; Living languages; Social media

INTRODUCTION:

Illegal immigration has garnered significant attention from the global community, posing challenges for countries of origin, transit, and destination alike. It has become an integral aspect of contemporary social and economic landscapes, necessitating collaboration among governments worldwide. In light of this reality, countries must strive to establish genuine cooperation to address the complexities of international migration effectively.

The Mediterranean region serves as an ideal locus for examining the phenomenon of illegal immigration, being a gateway from North Africa and the Sahel countries to Europe. Immigration roots in the Maghreb trace back to World War I, where the influx of Moroccans to Europe revitalized dormant factories and bolstered military ranks. Across historical epochs, this dynamic has evolved, culminating in a contemporary crisis of illegal immigration in Europe. Addressing and mitigating this substantial influx of immigrants may necessitate concerted and rigorous efforts.

The issue of immigration had not previously garnered such prominence within the realm of international community affairs, except in discussions pertaining to the rights of migrant workers and their families, or within the context of combating discrimination and persecution against foreigners and minorities. Historically, countries designated for immigration provided numerous incentives to attract labor for homeland reconstruction, particularly in the aftermath of the two world wars.

Following this era, receiving countries opted to regulate immigration according to their requirements, giving rise to selective immigration policies. However, irregular entry into national territories by



foreigners may not necessarily signify an intent to remain. For instance, France serves as both a destination and transit country, representing a stage in the journey for illegal immigrants seeking entry into other Western nations, notably the United Kingdom, the United States, and Canada.

While states indeed possess the inherent right to regulate border crossings, acknowledging this prerogative as essential for maintaining sovereignty and self-definition, it's equally crucial to recognize migrants' fundamental human rights. However, amidst this debate, it's essential not to overlook the critical dimensions of international legitimacy. This discourse should also duly acknowledge the collaborative endeavors aimed at regulating immigration in a manner that serves the mutual interests of both countries and immigrants.

Assertions advocating for unchecked governmental authority in immigration matters must be dismissed in light of existing legal norms, multilateral agreements, and bilateral accords that circumscribe state powers in this domain. It's important to reject the notion of an unbridled authority wielded by governments, particularly since these standards do not emanate from a centralized global authority dictating a universal plan for human mobility. Instead, they originate from the intricate web of relationships, negotiations, and customary practices between states.

The Special Rapporteur on Human Rights for Migrants has emphasized before the Human Rights Council that, although sovereign nations have the right to protect their borders and shape immigration policies within certain limits, they must ensure that these policies respect the human rights of migrants. This includes adherence to human rights laws during the formulation and implementation of immigration laws and regulations. ¹Countries must cooperate to encourage legal immigration and investment from migrants' countries of origin, providing better opportunities for migrant workers in their home countries. Instead of focusing solely on aspects they desire, which may not be achievable without access to the countries they aim to migrate to.

Particularly considering that other groups are also at the forefront of this issue and that it affects more than just men, and that the pattern of illegal immigration in the modern era has shifted dramatically from that of the movement of working-age males to that of women and children. People no longer simply migrate in pursuit of employment; there are now other, more potent, and significant reasons why people migrate, such as being uprooted or seeking asylum as a result of political unrest, conflicts, or persecution of particular minorities.

The study primarily focuses on shedding light on key challenges associated with the criminalization of illegal immigration. It identifies elements within responsible countries that hinder the protection of illegal immigrants. Moreover, it aims to underscore significant methods and tools intended to shift public perception of illegal immigration by emphasizing humanitarian principles over punitive measures. This entails adopting a human rights-oriented approach and mitigating the severity of security measures, surveillance, and punitive legal procedures commonly associated with addressing illegal immigration.

Emphasizing legality underscores a critical necessity and its beneficial influence, particularly in humanizing the issue of illegal immigration. This involves activating pertinent humanitarian principles and evaluating legal frameworks within international instruments, conventions, and the laws of certain destination or source countries. Additionally, the study endeavors to trace the historical context of illegal immigration regionally and locally, providing insight into its evolution over time.

The study underscores vital findings that advocate for governmental action. Primarily, it emphasizes the imperative of aligning immigrant rights with universal human rights principles, ensuring their inseparability. Fundamental rights like equality and non-discrimination must be integral to immigration policies, reflecting the integrated nature of human rights. Governments hold a comprehensive obligation to combat discrimination against immigrants through laws and policies, ensuring accountability and providing avenues for recourse in case of rights violations. Additionally, the study advocates against the blanket criminalization of illegal immigration, urging its treatment within the realm of civil and administrative violations.

The study focuses on the legislative framework controlling the protection and handling of illegal immigration, and its conclusions and recommendations are mainly aimed at government authorities. This study attempts to provide alternatives to harsh tactics by addressing the fundamental issue of



incorporating humanitarian considerations into the strategy against illegal immigration. In order to fully explore this problem, the study uses a descriptive analytical technique, which is thought to be the most appropriate for looking at its general structure and enabling a more in-depth comprehension of the topic.

The first topic: the frame General conceptualization of illegal immigration

Our world is defined by the movement of individuals and nations, encompassing a myriad of reasons for crossing borders: employment opportunities, family visits, seeking refuge from violence or disasters, educational pursuits, medical treatment, or returning home. While nations seek to regulate their borders to manage the flow of people, the focus here is on illegal immigration. Legal immigration, on the other hand, is recognized as a fundamental freedom safeguarded by constitutions and international agreements for citizens.² While the legislator may seek to balance legal immigration with national security interests, unjustified restrictions on this freedom would ultimately erode a fundamental aspect of personal liberty.³ In this section, we will delve into the essential definitions pertinent to illegal immigration and its diverse manifestations, particularly as outlined in international instruments and conventions, fulfilling our initial requirement. Subsequently, we will elucidate the primary motives and catalysts propelling such immigration, meeting our secondary objective.

First requirement: Definition of illegal immigration

The term "illegal immigration" has undergone conceptual evolution across various legal references. Initially referred to as "undocumented immigration," it transitioned to "illegal immigration" or "unlawful immigration." Subsequently, it became associated with the term "security," and later on, it became largely intertwined with the concept of "human trafficking" and "transnational crime." Another concept within transnational illegal immigration is the smuggling of immigrants. Consequently, the term encompasses various appellations, including clandestine immigration, irregular immigration, and unauthorized immigration. However, collectively, it denotes the movement of individuals or groups from one location to another through clandestine means, contravening immigration laws as recognized in international law.⁴

It should be mentioned that the 1994 International Conference on Population and Development recommended referring to them as "undocumented persons" rather than "illegal immigrants" because the latter term implies criminalization. Nonetheless, the 1999 International Forum on Migration in "Bangkok" feels that the phrase "illegal immigration" is used correctly in terminology.⁵ The term "illegal immigration" is often associated with criminal networks that specialize in smuggling immigrants. However, there is disagreement about the nature of illegal immigrants themselves. Are they criminals deserving punishment, or victims of exploitation by criminal networks? Their circumstances may warrant sympathy and protection.

Illegal immigration is typically defined as the movement from one country to another without a visa or residence permit, either before or after residing in the destination country, or staying there without authorization or by an illegal person,⁶ a person who holds the nationality of the country or who is not authorized to reside in the country sneaks into this country through its land, sea or air borders or enters the country through one of its legal ports with forged documents or visas. This migration is often collective and rarely individual.

A prevalent trend in Algeria among young people seeking to migrate to European countries by any means is referred to as "haraga." Those engaging in clandestine immigration, or "haraga," are commonly known as "haraga."⁷ The term "Haraga" refers to the act of destroying all documents and ties that link an individual to their roots and identity, with the hope of establishing a new identity in the destination country.⁸

The term "illegal immigration" typically refers to individuals crossing international borders without proper authorization. However, illegal immigration encompasses various forms of violations, including:⁹

Unauthorized or undocumented entry: Individuals clandestinely enter the state across its borders without the knowledge or detection of the state.



Entry using forged documents: Individuals entering the country are subject to inspection, but they use forged documents, such as false identities, to gain entry.

Violations related to the length of the visa: In this case, entry into the country is legal and done with proper documentation. However, if the individuals exceed the legal period recorded in the visa, their stay becomes illegal.

These immigrants enter the destination country through legal means, such as visiting relatives or for study purposes, with a specified deadline or period. However, when the prescribed period expires, they fail to renew their residence permits. The term illegal immigration can also apply to individuals who initially entered the destination country legally but fail to renew their residence cards due to various reasons, such as not meeting renewal conditions.¹⁰

Violations related to terms and conditions : In this scenario, individuals enter the country with legal documents, but they violate one of the conditions of entry visas, constituting one of the most common violations.

Countries around the world are currently classified based on their involvement in immigration into three main groups: firstly, countries that export immigrants, primarily situated in developing countries; secondly, transit countries located north of the desert or along the coast; and lastly, recipient countries for immigrants, which include Europe, the United States, and Canada.¹¹

The second requirement: The causes of illegal immigration and its challenges

Various scholarly disciplines offer diverse perspectives on the causes of illegal immigration. For instance, economists predominantly analyze it through an economic lens, focusing on factors such as labor market conditions and income differentials. Sociologists delve into the social dimensions, examining societal structures, inequalities, and networks that influence migration patterns. Political scientists explore the political aspects, considering policies, conflicts, and governance issues that drive or impede migration flows. Psychologists investigate individual and psychological motivations, exploring factors like risk perception, aspirations, and trauma that shape migrants' decisions.

There exists a complex interplay of factors associated with illegal immigration, encompassing political, economic, social, psychological, geographical, and demographic dimensions. Studies consistently highlight the role of push and pull factors in shaping migration patterns. Political factors often drive external migration, with individuals seeking freedom and refuge from persecution, particularly among religious minorities and victims of racism. Political dissidents and intellectuals also face persecution, prompting them to seek asylum abroad. Political instability in origin countries exacerbates the phenomenon, leading to deteriorating living conditions and heightened insecurity. Citizens are compelled to undertake risky journeys, both through legal and illegal means, in pursuit of stability, security, and respite from internal turmoil and escalating conflicts.¹²

Illegal immigration poses a multifaceted challenge, impacting both individuals and nations by undermining security and sovereignty. Researchers identify various factors driving illegal immigration, with political instability emerging as a prominent catalyst. Civil wars, conflicts, and human rights abuses stemming from ethnic, religious, or political divisions fuel migration flows. Additionally, social factors contribute significantly, particularly demographic pressures characterized by population growth outpacing national capacities to provide essential resources such as employment, housing, and social services. High levels of unemployment exacerbate these challenges, intensifying social and economic vulnerabilities within origin countries.

The allure of migration, often portrayed by the experiences of those who have successfully settled in Europe and later returned with improved socioeconomic status, has influenced the aspirations of many young individuals to seek emigration through various means. Additionally, the economic factor, particularly prevalent in African Sahel countries, contributes significantly to migration trends. Despite possessing substantial natural resources, these nations grapple with economic decline characterized by stagnant industrial production, widespread poverty, and escalating unemployment rates. Moreover, factors such as rapid population growth and declining levels of healthcare and education further exacerbate socioeconomic challenges, compelling individuals to seek opportunities abroad.¹³



Economic motives stand out as particularly influential factors driving immigration, as individuals seek to enhance their economic circumstances and address challenges such as poverty, famine, and limited job opportunities. This underscores the notion of immigration as a means to escape adverse socioeconomic conditions. Migration often results from the imbalance between economic resources in the migrants' countries of origin and the demands of their populations.

The pervasive unemployment and substandard living conditions fail to meet the essential needs of individuals and their families, prompting them to seek livelihood opportunities elsewhere. This pursuit often drives them to embark on immigration journeys in pursuit of their goals. Illegal immigration is not exclusive to Africa but extends globally, particularly to countries situated in the southern hemisphere, where many nations grapple with adverse economic and social conditions.

In these countries, job opportunities are scarce to the extent that many young people face frustration and despair due to the lack of employment prospects that can meet their basic needs. Consequently, they are compelled to seek any means available to them to access the affluent countries of the North, even if it means risking their lives by attempting perilous sea crossings to reach more economically advanced nations.¹⁴

Consequently, the factors promoting illegal immigration can be summed up as follows:

- High rates of poverty and unemployment in developing and poor countries ;
- Developmental disparities between the North and the South ;
- The low levels of human security in countries across the southern Mediterranean and Africa, for instance, act as a significant pressure on the conditions necessary for a safe and dignified life. This situation often drives individuals towards clandestine migration, which in turn poses a threat not only to the security of individuals but also to the security of states as a whole¹⁵, not to mention other reasons such as persecution and political oppression.

The second topic: Reducing security and penal measures in the face of illegal immigration (guarantees and rights)

In recent years, as part of efforts to curb illegal migration and address national security concerns, some states have implemented external mechanisms to control borders, particularly by engaging with countries of origin and transit. Through bilateral agreements and promises of aid, these states aim to transform these targeted countries into potential buffer zones, thereby alleviating migration pressure on receiving countries.

However, there are concerns regarding these policies. While they may legitimately aim to reduce illegal migration and provide aid to receiving countries, they often contribute to the criminalization of illegal migration. By treating migration-related violations as criminal offenses rather than administrative ones, they may fail to adequately protect the human rights of migrants during enforcement operations. This dualistic approach may have positive aspects for aid-receiving countries but raises questions about the rights and welfare of migrants affected by these policies.

Furthermore, these policies, sometimes accompanied by anti-immigration rhetoric, have in some cases fueled and justified a notable rise in institutional discrimination, leading to further unjust violations. Dealing with the phenomenon involves grappling with transnational gang networks, financial agreements, and the intricate legal frameworks used to combat them, posing a significant challenge. Hence, it is crucial to underscore the need for essential safeguards when addressing the issue. This includes providing protection for illegal immigrants as a primary requirement and narrowing the scope of criminalization associated with illegal immigration as a secondary demand.

The first requirement: providing protection for illegal immigrants

It is often overlooked amidst discussions of border crossings that the overwhelming majority of the global population desires to remain in their country of origin. The norm is to stay, while migration is the exception. There exists a recognized principle that individuals have a "right to remain" in their home country, yet this right remains jeopardized due to various human constraints and natural forces.¹⁶

The right to leave one's country is considered an "incomplete" right, as its exercise is contingent upon finding a state willing to accept the individual. In a world defined by nation-states and borders,



there is no inherent right to enter the territory of another state. Consequently, individuals who encounter closed borders or are unable to find a country willing to accept them cannot exercise their right to leave through unauthorized means.¹⁷ It is clear that regarding guarantees and rights, international standards are less clear or less comprehensive. Here some examples can be cited:

(1) While the right to family reunification is acknowledged in extensively ratified human rights agreements, it is challenging to assert a distinct right to migration solely for the purpose of family reunification, except in cases involving refugees. This implies the entitlement of individuals to reunite with their family members in another state.

(2) While the obligation to rescue persons at sea is clearly stated, there is no specific rule as to the place where such persons may be disembarked.

(3) States may impose certain restrictions on the basis of citizenship, but the standard that would limit the possibilities of a discriminatory decision on this issue is not well established.

In other domains, there is no clearly delineated legal criterion, nor is there one that we can anticipate materializing in the foreseeable future.¹⁸ Neither the matter of dual citizenship nor strategies for immigrant integration, for instance, have well-defined legal parameters. Furthermore, the plight of illegal immigrants does not conclude upon their arrival in host countries. Instead, they may encounter further forms of adversity in these nations, potentially infringing upon their fundamental rights, as guaranteed by international accords. Among these rights, pivotal ones include freedom, access to education, employment equality, and healthcare services. It is pertinent to acknowledge that most, if not all, of these rights were forfeited in their countries of origin.

The right to freedom :

One of the strategies adopted by European countries to address illegal immigration involves the establishment of detention centers specifically designated for this purpose. These facilities serve to detain immigrants, thereby curtailing their freedom. Functioning as vast holding areas or prisons, detention centers serve the dual purpose of restricting movement and bolstering state security policies aimed at combating illegal immigration.¹⁹ These practices, which encroach upon the freedom of irregular migrants, encompass short-term deprivation of liberty within the framework of administrative detention in recipient countries. States justify such actions in various manners, often by framing irregular migration as a national security concern and a punishable offense under the law. Consequently, they disregard human rights standards in their treatment of this demographic. This approach frequently results in the imposition of detention penalties on diverse groups of migrants, including irregular migrants, as well as other categories such as asylum seekers awaiting the outcome of their applications or those whose requests have been denied.

Right in equality in the job

The International Convention for the Protection of the Rights of All Migrant Workers emphasizes the fundamental rights of workers, which employers must uphold regardless of the worker's quality or status. Abuse against this category in the realm of employment manifests in diverse forms. Undocumented or irregular workers are frequently subject to employment conditions inferior to those of other workers. Certain employers exploit this situation to seek out such labor, aiming to gain advantages through unfair competition.²⁰

Furthermore, the escalating trend of criminalizing illegal migration, particularly in cases of economic mobility, fails to offer a rational approach or an effective solution to the issue. The primary driver of migration remains the pursuit of anticipated employment opportunities. Despite the interconnectedness of economies capable of absorbing additional immigrants and the movement of workers seeking work based on anticipated demand in host countries, it is the illegal migrant who bears the brunt of punitive measures. This may manifest in detention and subsequent deportation if the individual fails to attain regular status and contests during the process, or in the loss of employment and means of livelihood if the migration attempt proves (temporarily) successful.²¹

On this basis, there are legal rights that an illegal migrant worker should have:

- The right to receive wages according to the work ;
- The right to compensation in the event of an accident during work ;
- The right to resort to the judiciary to enforce his rights ²².



The right to health care :

Many recipient countries of illegal immigrants have established a requirement for accessing medical services, stipulating registration in the social security network as a prerequisite. This entitlement is restricted to individuals with legal status within the receiving state's territory. To avail medical assistance, individuals typically need to possess at least permanent residency status, even with the support of a recognized association. Such criteria align with the legislative frameworks adopted by most European countries.²³ Under the umbrella of immigrants' rights, there exists a collection of international institutional and procedural processes that work to safeguard the rights of undocumented immigrants. These mechanisms might be summed up as follows:

A - The Specified Decision on Human Rights for Immigrant Populations"

In 1999, a committee on human rights, as per Resolution 1999/44, outlined the primary objective of ensuring the protection of human rights for immigrants. This entails safeguarding their rights in decision-making processes concerning their status.

1-Examine strategies and mechanisms aimed at surmounting current challenges hindering the comprehensive and efficient safeguarding of migrants' human rights. Acknowledge the heightened vulnerability of women, children, and individuals without proper documentation or in irregular circumstances.

2-Seek and obtain data from diverse sources, including migrants directly, to gather information regarding human rights infringements against migrants and their families.

3-Formulate appropriate recommendations to prevent and address human rights violations of migrants wherever they occur.

4-Examine strategies and methods to address current barriers impeding the complete and robust defense of migrants' human rights. Acknowledge the acute vulnerability of women, children, and individuals lacking proper documentation or residing in irregular situations.

5-Request and receive information from all relevant sources, including migrants themselves, about human rights violations of migrants and their families.

6-Encouraging the effective application of appropriate international rules and standards in this regard.

7-Recommend actions and initiatives at the national, regional, and international levels to eradicate human rights violations against migrants. Consider a gender perspective when soliciting and assessing information, with particular emphasis on addressing instances of discrimination and violence targeting migrant women.

8-Place special emphasis on providing recommendations for practical solutions concerning the implementation of rights associated with the mandate. This includes identifying best practices and specific methods for international cooperation to effectively address migrant rights issues.

9-Submitting regular reports to the Human Rights Council, in accordance with its annual program of work, and to the General Assembly, at the request of the Council.

B - The committee concerned With protection rights Laborers immigrants And individuals Their families :

The implementation of the Convention from the side countries of the parties is managed by a panel of specialists. One of the committee's concerns was:

- It is crucial to implement measures aimed at aligning legislation with the provisions outlined in the Convention. Collecting comprehensive data is essential for informing the development of well-founded migration policies. Additionally, there's a pressing need to enhance and broaden training initiatives for all personnel involved in migration matters, ensuring they're well-versed in the rights articulated in the Convention.
- Guarantee that every migrant worker and their family members, regardless of their status, have access to essential care. This includes those in irregular situations, ensuring they have access to remedies and are protected from rights violations. Effective coordination among various agencies handling migration matters is crucial, along with implementing measures to prevent and combat both migrant smuggling and human trafficking.



- Encouraging nations to establish efficient and accessible channels that enable all immigrant workers to lodge complaints about rights violations without fear of retaliation or exposure.

C - United Nations Commission on Human Rights Activities

The United Nations High Commissioner for Human Rights Office is actively working to enhance the safeguarding of migrants' human rights, ensuring their consideration in ongoing migration discussions at national, regional, and global tiers. The Commission promotes the infusion of human rights principles into all facets of migration-related matters and endeavors to secure migrants' unrestricted access to human rights, free from discrimination.

The Office collaborates with states and relevant stakeholders to adopt a human rights-centered approach to migration, prioritizing migrants in policy formulation and management. It particularly addresses the challenges faced by marginalized and vulnerable immigrant groups. Several focal points guide the Commission's efforts in this area, including combating discrimination, racism, and xenophobia targeting migrants, promoting economic, social, and cultural rights for migrants, opposing the criminalization of irregular migration, and advocating for safeguards in immigration detention contexts.²⁴ During its involvement in the Global Group on Migration, the Commission emphasized the importance of promoting and integrating human rights considerations into the United Nations' approach to migration. As the Chair of the Global Group on Migration in 2010, the Commission prioritized discussions on the human rights of all migrants, with particular attention to those with irregular status.

The second demand: narrowing the scope of criminalization related to illegal immigration

The ongoing influx of migrants toward destination nations has resulted in the tightening of political borders, contrasting with the increasingly open economic borders facilitated by globalization. Conditions have become more stringent, with immigration restrictions toward Western countries doubling. This trend is driven by security concerns and the global economic crisis. In response, destination countries have adopted stricter immigration policies, including sanctions against violators of immigration laws, both domestically and in accordance with international agreements, notably the Convention against Transnational Organized Crime and its supplementary protocols.

This has been accompanied by mounting pressure on origin countries to engage in these agreements. For years, numerous nations have grappled with persistent illegal immigration by ramping up border enforcement. State measures to bolster border controls, combat trafficking, and regulate migration have varied widely, ranging from increased deployment of armed forces or military-style border policing to confiscating proceeds from trafficking operations and imposing harsher penalties on employers hiring undocumented migrants, individuals transporting migrants lacking proper documents, and commercial carriers bringing foreigners to borders without necessary documentation. Surveillance methods, including radar devices, have been employed, alongside strategies involving detention and deportation of undesirable foreigners.

Additionally, several measures have been implemented, such as fingerprinting operations, the construction of separation walls, and the deployment of military and paramilitary forces, along with military equipment, to deter migration via both land and sea routes.²⁵ In the context of enforcing legislation and regulations to tackle the issue, there has been a notable shift towards focusing on administrative law as the primary mechanism for addressing migration challenges. This approach has subsequently been embraced by constitutional law and international human rights law. However, there's another significant development in legislation and practice that has received relatively little attention in academia: the increasing use of criminal law terminology and provisions in managing immigration. This trend has led to the emergence of what can be described as a comprehensive criminal law framework specifically tailored for immigration issues.²⁶

Furthermore, criminal enforcement is no longer restricted solely to undocumented migrants but also encompasses other individuals or entities whose actions, whether deliberate or inadvertent, impede the efforts of public authorities in combating illegal immigration. Consequently, carriers facilitating unauthorized entry may face penalties, including administrative fines of up to 5,000 euros per undocumented passenger, even during transit²⁷.



The act of aiding, directly or indirectly, in facilitating the illegal entry, transit, or residence of a foreigner in France or in a Schengen Agreement country is commonly referred to as a "crime of solidarity" within advocacy circles. Furthermore, employing a foreigner without the required work permit or engaging the services of an employer who hires workers without proper authorization is considered a criminal offense. This offense carries a penalty of up to five years of imprisonment and a fine of 15,000 euros.²⁸

To prioritize international principles aimed at preventing the criminalization of immigration and to emphasize an administrative approach to addressing legal immigration challenges, the attention is directed towards the following aspects:

1 - Excluding the application of criminal law as a tool to confront illegal immigration:

The escalation in immigration violations undoubtedly correlates with harsher sanctions; however, the growing reliance on punitive measures also gives rise to unintended consequences. As administrative bodies increasingly employ restrictive mechanisms and punitive measures, there's a risk of blurring the lines between their authority and that of criminal courts.

This situation fosters confusion by utilizing criminal law and procedures for objectives beyond addressing irregular migration violations. Moreover, the systematic diversion of administrative restrictions and coercive measures from their preventive function towards punitive actions exacerbates the issue.²⁹

The Protocol against the Smuggling of Migrants, appended to the United Nations Convention against Transnational Organized Crime, explicitly excludes any form of criminal prosecution directed at illegal immigrants. Instead, it emphasizes measures of protection and assistance for these individuals, recognizing them as victims of crimes committed by organized smuggling gangs. Article 5, titled "Criminal Responsibility of Migrants," explicitly states that migrants shall not face criminal prosecution under this Protocol, given that they are the victims of actions outlined in Article 6. However, the Protocol does attribute penal consequences to acts of migrant smuggling or facilitating their smuggling, as outlined in Article 6, titled "Criminalization."³⁰

2 - Not attaching the measure to prevent entry into the territory of the (ITF) Interdiction du territoire français

Another example is the penalty of entry into the territory (ITF), which is implemented by certain countries like France. This aspect reflects a form of "double punishment," where the legislator permits judges to impose the ITF in addition to other penalties. Convictions often stem from violations related to residency or employment laws, irregular entry or stay in the territory, evading deportation procedures, aiding illegal entry and residency, sham or white marriages, employing unauthorized foreigners, among others, with the list being non-exhaustive. However, presently, this penalty can also be imposed for a wide range of "common law" offenses.³¹

When deportation primarily targets foreign individuals convicted of a crime or misdemeanor, the distinction between the functions of deportation and the ITF becomes less clear. The ITF serves as a judicial ruling and thus constitutes a penalty, whereas deportation is a police action aimed at averting threats to public order. However, these two procedures are neither mutually exclusive nor interchangeable; rather, they can be interconnected. It's not uncommon for a foreigner sentenced to the ITF to also face deportation, subjecting them to an expulsion order preventing their return to France upon completion of their sentence.

3- Reducing the misuse of police detention measures

Despite the recent decriminalization of illegal residence, police detention remains prevalent for foreigners suspected of lacking a valid residence permit. During this period, law enforcement agencies use the time to verify the identity and immigration status of the individual based on the misdemeanor of illegal residence.

Once the illegality of residence is confirmed, administrative decisions regarding deportation and placement under detention are prepared. Following the conclusion of the police detention period, charges are dropped by the prosecution, and the foreigner is promptly transferred



to a detention center. Consequently, a judicial police procedure is once again diverted from its original purpose and exploited in favor of the administrative deportation procedure.³²

However, this pattern of abuse of detention has been disrupted by the simultaneous emergence of two amendments. The first is the enactment of the law on April 14, 2011, which restricts police custody, even outside red-handed investigations, to crimes punishable by a definite prison sentence. The second occurred after a decision by the Court of Justice of the European Union (CJEU) on April 28, 2011, which was affirmed by another decision on December 6, 2011, following a preliminary question referred by the Court of Cassation. This ruling declared the instructions for "return" incompatible with national legislation that penalizes the mere illegal presence of an immigrant with a prison sentence.³³

Law 12/31/2012 reaffirmed the aforementioned measures and abolished procedures for criminalizing illegal residence. However, it introduced a special reservation procedure aimed at verifying the right to movement or residence in France for foreigners who couldn't justify this during monitoring. Consequently, the duration of detention is strictly limited to the necessary time for examining the foreigner's status and, if needed, for the procedures concerning deportation and detention decisions. Nonetheless, it may extend up to four hours.

In contrast to police detention, administrative detention serves a distinct administrative purpose. With no misuse of criminal procedures in this context, the new procedure aids in maintaining the overlap between the realms of criminal law and the management of immigration issues, on one hand, and the exercise of administrative powers, on the other hand, as highlighted and referenced previously.³⁴

The handling of border crossings, along with the criminalization of migrant smuggling, carries additional, less apparent but detrimental consequences due to the misuse of criminal law and procedures, diverting them from their intended purpose of addressing migration issues. Instead of reducing administrative arbitrariness, irregular conditions exacerbate it. The overlapping mechanisms and the increasing reliance on punitive tools blur the distinction between the administrative management of migration issues and the management of deviance, leading to their convergence.³⁵

It is important to recognize that the utilization of criminal law as a tool does not necessarily entail using its mechanisms for prosecution or obtaining criminal convictions. Rather, it involves apprehending foreigners who are in an illegal situation, holding them under the authority of provincial authorities, and facilitating their prompt removal from the territory. Additionally, punishment is not the ultimate objective in this penal procedure.³⁶

Article 13 of the International Covenant on Civil and Political Rights stipulates that a lawful resident alien within the territory of a State Party to the Covenant cannot be deported except pursuant to a decision made in accordance with the law. Furthermore, the individual must be afforded the opportunity to present reasons against their deportation, unless national security reasons dictate otherwise. This includes the right to present their case to the competent authority or a representative appointed for that purpose.

The preamble of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families of 1990 acknowledges that the humanitarian challenges associated with migration are most pronounced in the case of irregular migration. It underscores the importance of implementing suitable measures to prevent clandestine movements and trafficking in migrant workers, while simultaneously ensuring the protection of their fundamental human rights.

The rationale behind advocating for a reduction in the criminalization of illegal immigration, or even its allowance, has historical roots. Previously, destination countries, many of which are affluent, faced labor shortages and sometimes compelled individuals to migrate to address these shortages, particularly in the aftermath of World Wars. However, in the latter half of the last century, these countries shifted to selective immigration policies, primarily accepting skilled labor. This transition is often cited in connection with the Schengen Agreement and the European Charter³⁷ on Immigration³⁸, that is, targeted and highly qualified immigration. Thus, the plundering of "*African elites*" by the West was normalized in relation to the values of the European model.



4-The Linguistic Challenge of Irregular Migrants:

Irregular migration has not been the only terminological construct used to describe this forced form of migration. Scholars and practitioners working on this extralegal phenomenon have used several terms that allude to the legal, social and religious violations it entails, including: illegal migration, "haraga" (the act of irregular border crossing), clandestine migration, illegal migration, the adventure, the risky venture, etc.

The multiplicity of terms used to describe the movement of individuals to a prohibited geographical area or region (except for those who meet certain conditions) is linked to the different cultural and educational levels of these individuals. Typically, those with higher academic standing rarely resort to irregular migration, which would undermine their academic status, as they have other options that allow them to migrate to the desired countries through smooth legal channels, a phenomenon known as "brain drain".

However, the second tier or class of those willing to take the risk of irregular migration is commonly referred to as "haraga", meaning that the migrant becomes an anonymous individual, associated with the notion of "flight", implying concealment and an irreversible attitude³⁹. As a result, these "haraga" are forced to abandon their documents, which are perceived as an obstacle to their movement from one country to another.

It is also important to note that the category of "harraga" (illegal migrants) belongs to underdeveloped or developing countries, and this is what has made "harraga" a term used to refer to undocumented migrants from the Maghreb and African regions, as well as undocumented migrants from Asian countries⁴⁰.

It should be noted that the phenomenon of irregular migration has become an escalating crisis with negative consequences for the countries of origin of these migrants. Faced with these dangerous risks, which even reach the level of suicide, most migrants who have taken illegal routes have drowned and been found dead on the shores of the seas.

There are other unavoidable challenges that undocumented migrants face, such as the problem of linguistic communication, since most of them have a limited level of education, in addition to the fact that their illegal status prevents them from enrolling in language centres for foreigners, which makes their integration into foreign societies extremely difficult. For this type of migrant, language goes beyond social communication to achieve the economic well-being that they did not achieve in their home countries.

Accordingly, language has become a pillar and a challenge that undocumented migrants have courageously taken on, as it is closely linked to compensating for material deprivation. Therefore, the urgent desire to learn the foreign language as a source of livelihood has led the "harragas" to take on the challenges of language acquisition in a short period of time, and among the means and strategies that have helped and accelerated this process are mentioned:

Social media: it is an enormous and effective strategy that ensures the achievement of communication, since it is equipped with various audio and written programmes whose role is to stimulate the process of contextual translation, which improves the means of communication and facilitates the possibilities of language acquisition. Social media "allows its subscribers to create their own website and then connect it through an electronic social system with other members who have the same interests and identities"⁴¹.

Social media are widely used by illegal immigrants as they allow them to interact directly with different social classes through icons, symbols, sounds, images and videos... All these techniques contribute to language acquisition. Social media also do not require knowledge of the real identity of the participants, which helps illegal immigrants to hide their identity until their situation is regularised.

Furthermore, social media platforms (Facebook, Twitter, Instagram, etc.) play an alternative, non-academic role to language learning centres. The learner is not unaware of the advantage of this free, independent and comprehensive strategy, as it "eliminates geographical and spatial barriers and abolishes international borders"⁴², which is what illegal immigrants are striving for. As a result, they have been able to acquire a decent level of foreign languages in a short period of time due to the



ease of using the social media network for communication, which includes several advanced communication techniques such as audio, gestural and visual communication.

Advanced studies praise the effective role that illegal migration has played in learning foreign languages through social media platforms. These platforms have achieved a high success rate, which is manifested in their ability to “directly connect people regardless of their linguistic, ethnic or religious affiliations, and this was the beginning of the openness to the social world without borders”⁴³ or any other mentioned conditions such as educational, linguistic or cultural levels. The global social network was satisfied with free and voluntary association.

It is well known that any language becomes more powerful, skilful and pure the more speakers and members it has. For this reason, the developed countries have adopted a policy of not monopolising the language, but of spreading it as widely as possible. Thus, various means and methods of promoting living languages have multiplied, involving all social classes without exception. Among these target groups is the category of illegal immigrants, who urgently need to learn modern languages in order to facilitate their social and functional integration. It is well known that for any job, however simple, informal or temporary, employers require workers to have a relative command of the foreign language used. For example, the researcher Riyad Nu’san Aga affirms that “Turkey does not need mute people who rely on sign language. If you know seven languages but not Turkish, there is no difference between you and the mute, and this issue is not limited to Turkey. Any country whose language the newcomer does not know is like a mute person, and it is not logical to use sign language between the employee or worker and his boss”⁴⁴.

There are other barriers that undocumented migrants face. Even if they are able to speak English, the global language, this will not be of much use if they are in non-English speaking countries. This requires considerable additional effort on the part of the undocumented migrant to learn the language of the country to which they have migrated. In addition to social media, the migrant is compelled to frequent the church, where he or she will find provisions and the necessary support to learn the language quickly. It can be said without a doubt that the undocumented migrant receives specialised and intensive linguistic training in the Church under the supervision of the Pope, who is the teacher of Christian education. He is more than a teacher, because he is a master of the audiovisual language. His education in this language and in communication through voice and image is an education that helps the assimilation of the Gospel in the cultures of the peoples⁴⁵.

Especially since the Church turns a blind eye to the legal supervision of undocumented migrants, as this is not among its priorities or duties, the Church has become a centre of interest and a growing arena for learning a foreign language, after social media.

CONCLUSION:

The abuse associated with immigration illegality and violations committed by immigrants often results in an emphasis on deterrence by law enforcement agencies, whether at the national level through legislation or through international agreements. However, there are other aspects that are often neglected or overlooked, such as the potential to address the phenomenon of immigration illegality from the perspective of international human rights law provisions.

States indeed possess significant authority in determining the admission, residency conditions, and deportation of non-citizens within their borders. Furthermore, states have sovereign authority to enact measures aimed at safeguarding national security and establishing the necessary criteria for granting citizenship. However, it is imperative that this authority be exercised in a manner that fully respects the fundamental human rights and freedoms of non-citizens. These rights are protected under various international human rights instruments and customary international law, and must be upheld throughout all processes related to admission and deportation.

Based on the aforementioned points, we can propose a series of recommendations aimed at enhancing the level of assurances provided to immigrants regarding the humane management of illegal immigration issues. While states possess complete authority to safeguard their borders and regulate migration policies, they must prioritize the respect for the human rights of migrants during the formulation and enforcement of immigration laws. Regardless of the migrant’s legal status, it is



the responsibility of the state to abide by fundamental human rights principles and treat all migrants with dignity.

The effective management of migration flows relies on regional and bilateral cooperation, where agreements between countries of origin, transit, and destination can yield various social, economic, and security benefits. Nevertheless, the ongoing challenge lies in developing and implementing these policies in a manner that not only curbs illegal immigration but also safeguards the rights of immigrants.

- Promoting increased cooperation that may contribute to the prevention of illegal migration if migration control policies are appropriately established and implemented with the aim of ensuring their effectiveness, taking full account of the protection of all migrants at all stages of their movement process.

- Criminalizing behavior that is unlikely to cause harm For the identified victim - such as illegal residence or "marriage of convenience" and the penalties that are sometimes imposed, It is disproportionate to the seriousness of the acts complained of and does not require it.

- Humanizing the measures taken to confront illegal immigration instead of treating the problem with criminal tools.

For countries of origin, it is crucial to focus on equipping youth with qualifications and providing them with certain privileges such as transportation, housing, and health insurance, to deter them from being tempted to migrate to other countries.

To address migration challenges, it's essential to create job opportunities with fair wages in the source countries, ensuring justice and economic stability for individuals locally.

As for the problem of linguistic communication:

When the researcher examines the underlying relationship between the predicament of undocumented migration and the strategy of learning foreign languages through flexible and malleable social media networks, it becomes clear to him that the policy of the great powers is dedicated to the dissemination and generalisation of their living languages through simple and easy methods. The purpose of this is to pave the way for the spread of imperialist, communist, religious... ideas and their advocacy through linguistic propaganda. It is noteworthy that these media, means and strategies alone are not sufficient to achieve the desired objectives, unless the undocumented migrant is charged with acquired dispositions such as motivation and receptivity, on which the process of assimilating foreign languages depends faster and to a greater extent. These are the "internal driving force that stimulates the learner and makes him mobilise his attention and make a greater effort to acquire living languages.

Footnotes

⁽¹⁾ A report authored by Jorge Bustamante, titled "The Private Meaning Decision: Human Rights for Immigrants," is referenced as document A/HRC/7/12, dated February 2008.

⁽²⁾For instance, the description of the universe in the Universal Declaration of Human Rights (1948) states: "Everyone has the right to leave any country, including their own, and to return to their country."

⁽³⁾Salah El-Din Fawzi, The General Framework for Combating Illegal Immigration, Journal of Legal and Economic Research, Issue 63, (August 2017).

⁽⁴⁾The "Report VI" for an International Labor Conference titled "Towards a Fair Approach for Immigrant Workers in the Global Economy," found in Clause VI of the Business Schedule, is referenced as the 1st edition, published by the International Labor Office in 2001.

⁽⁵⁾Abdel Halim Ben Mechri, What Illegal Immigration is, Al-Moufakir Magazine, (November 2011), 98. See also Hasina Sharon, immigration not Legitimacy between Permissibility And Criminalization, Journal of Judicial Jurisprudence, (January 2013).

⁽⁶⁾Abdallah Saud Al-Sarani, Relationship between Immigration not Sharia And a crime Tahr y b Humans And trafficking With them, From the book Anti-Immigration not Shariah , Edition The first , (Riyadh : Publications university Nayef For science Security , 2010).

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(14) RafiaEmbarak, reality Immigration not Legitimacy, study in Concepts And the reasons And the effects - my banks Average Model - 15-16.

(15) Mansouri Raouf, Immigration Confidentiality from Perspective Security humanitarian, note Master's degree, Setif: university Setif, 2014), 1.

(16) Alexander Aleinikoff, "International Law and Migration: An Overview," International Organization for Migration's Program on Migration Policies and Research, 2003, p. 29.

(17) Ibid

(18) Ibid., p13

(19) Mansouri Raouf, immigration Confidentiality from Perspective Security Humanitarian, 10.

(20) There was no international agreement in 1990 to protect the rights of all migrant workers and individuals who hire them.

(21) A report authored by Jorge Bustamante on the private significance of human rights for immigrants, page 9.

(22) Fl y c Deer, Bezel application Countries The recipient For the immigrant YN not Sharia y n To agree rights Human " Countries Europe Model «, magazine Balance, (October 2018), 159.

(23) "Fly and Deer: The Application of Recipient Countries for Immigrants and the Non-Compliance with Human Rights" in European Countries, for example, pages 155-157.

(24) a report Secretary General For nations United Presenter For the association the public About " Protect Al-Muhajireen under No. A/66/253 , dated 8/3/2011 .

(25) a report Secretary General For nations United Presenter For the association the public About " Protect Al-Muhajiroun" under No. A/66/253 , (August 2011) , 6-7.

(26) Gisti, Immigration: a regular diet deception ,2012, http://www.gisti.org/publication_som.php?id_article=2781,p1

(27) art. L625-1 of the city Posted by Ordinance no. 2020-1733 on December 16, 2020 - art. 1(V)

(28) Ibid.

(29) Gisti, op.cit.,p3

(30) - Article 6: "Each nation's approach to criminalizing actions related to intentionally facilitating or benefiting from immigrant smuggling may vary. However, common measures include legislative actions and other measures aimed at penalizing the following:

(a) Immigrant smuggling;



(b) Actions undertaken with the purpose of facilitating immigrant smuggling, including but not limited to...

(31) Danièle Lochak. Immigration happens through the penal droit. Politique(s) crime(s). Melanges en l'honneur de Christine Lazerges, Dalloz, pp. 689-704, 2014, model, 978-2-247-12992-8. hal-01647328, p6.

(32) Patrick Henriot, "Decriminalization of Irregular Stay of Foreigners: The Stubborn Resistance of French Authorities (Born on December 31, 2012)," Home Writings Review, June 2013. available online: <http://revdh.files.wordpress.com/2013/06/6ph-article-dc3a9pc3a9nalisation-rdh1.pdf>

(33) Ibid.

(34) Ibid.

(35) Danièle Lochak. Immigration Through Penal Law. Politics Crimes, p. 1.

(36) Ibid

(37) The Schengen Convention was adopted by the European Union on 3/26/1995.

(38) The European policy on immigration adopted in 2008 sous la Présidence Française.

(39)- El-Akhdar Omar Al-Dehaimi: "A Study on Illegal Migration in Algeria", Scientific Symposium on Arab Experiences in Combating Illegal Migration, 8 April 2010, Naif Arab University for Security Sciences, Kingdom of Saudi Arabia, p.07.

⁴⁰- Rachid Saad: "The Reality of Illegal Migration from the Perspective of Human Security", Master's Thesis in Maghreb Studies, Faculty of Law and Political Science, University of Mohammad Khider Biskra, Algeria, 2012, p.28.

⁴¹- Reda Zahir, "The Use of Social Media Networks in the Arab World", Journal of Education, Issue 15, 2003, p.23.

⁴²- Ibrahim Brahmi, "The Role of Social Media Networks in Teaching Arabic to Non-Native Speakers - A Study of Mechanisms and Functions -" Al-Kalima Journal, Volume-07-, Issue 01, 2022, p.220.

⁴³- Ibid, p.223.

⁴⁴- Hussein Muhammad Hussein Al-Batayneh, "The Linguistic Consequences of Arab Migration to Non-Arabic Speaking Countries, The Syrian Migration to Turkey as a Model", Journal of Linguistic and Literary Studies, Issue: 01, June 2022, p.44.

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