

**LEGAL MECANISMS TO  
COMBAT ILLEGAL IMMIGRATION IN ALGERIA**



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*Date de soumission: 05/03/2022    Date d'acceptation: 27/03/2022    Date de publication: 28/04/2022*



**Revision of the article:** Dr./ DJERIBIAI Adel (Univ. of El Oued)

**Abstract:**

*In recent years, illegal immigration has rapidly spread in the world to become a real threat to the security of countries. Algeria is overwhelmed by these flows of illegal migrants, urging it to adopt a repressive legislative arsenal towards clandestine migrants by amending the Penal Code. This position has come in line with Algeria's international obligations regarding the issue of illegal immigration, such as its ratification of the Protocol against the Smuggling of Migrants by Land, Sea and Air, besides the conclusion of bilateral agreements intended to resettling illegal immigrants. Despite all the judicial instruments, irregular immigration continues to escalate in Algeria, calling for more suitable frameworks and effective solutions.*

**Key words:** *Illegal immigration; international agreements; European Union; security.*

**Introduction:**

Illegal immigration is one of the major topics that have drawn the attention of the legal researcher, because of the spread of this phenomenon, mainly in recent years with the massive arrival of African immigrants to Algeria. This has urged the Algerian legislator to search for legal mechanisms in order to eradicate it.

Migration is historically associated to the presence of Man on earth. Man constantly moved from one area to another, searching for better conditions of living and even for survival. His long geographical trips naturally led him to settle in areas where environmental living conditions helped him to build high civilizations recognized by history.

The development of human life has gradually led to the appearance of the modern State with its legal foundations, including the geographical or regional foundation, with defined borders in which the state can exercise its full political authority. The modern state has henceforth come to reduce the population movement with legal restrictions, mainly by imposing prior authorization to enter a country other than the land of nationality. This condition is applicable in most countries in the world, which limit entry to their territories by setting up preconditions for obtaining an entry visa. This is precisely the main concern of the states internal competence.

With the aggravation of crises and the decrease of living standard of the populations in the South countries, emerged an active movement of migration towards the North, especially towards Europe, since it is the geographically closest zone to the African continent which is overwhelmed with socio-economic issues and political instability, because most of African countries suffered from European colonialism and its post-independence hard impact.

The phenomenon of migration towards European countries has hence begun escalating, either for settlement purposes or as transit areas towards other lands. This migration can be either legal, or irregular when it violates the established restrictions on the geographical boundaries, whether for origin or destination countries of illegal migrants.

Illegal immigration has become a burden at the international level and has emerged as one of the major issues that have alarmed states and urged them to come up with a solution. Especially when considering the impact of clandestine immigration on both origin and host-countries, or even those used as transit corridors, considered as the providential gateway from Africa to Europe.

North African countries suffer from irregular immigration originating from the South to the North, taking these areas as a transit route towards overseas. With the exacerbation of their many-sided domestic crises, North African countries have become a ground for illegal immigration mainly for young people, and this has generated high pressure regarding the issue. Given that Algeria has a coastline overlooking Southern Europe, besides land boundaries overlooking some African countries, Algeria has become a vital area for illegal immigration as a transit route towards « The European Eden ». Alternatively, many Africans take it as a land of settlement regarding the difficulty of reaching the opposite shore of the Mediterranean. This plunged Algeria into security, health problems, etc... This major issue has even urged the development of an immigration strategy to reduce the flow, either by introducing internal measures, or in cooperation with countries directly concerned with this phenomenon. We, therefore, wonder to what extent the Algerian strategy to reduce illegal immigration is efficient. We will precisely try to answer this by adopting an analytical approach to the legal provisions dealing with immigration, by dividing the topic into two key axes:

The first axis relates to the concept of illegal immigration in jurisprudence and legal texts, through the various national legislations on the one hand, and international conventions incorporated into domestic law on the other hand, as well as the main reasons why young people - in particular – choose to migrate illegally.

The second discusses the efforts made by Algeria as a land destination of illegal immigration, in order to limit it, at both the national and the international level, in other words the solutions adopted in response to the clandestine migratory flow towards its territory.

## **I- Meaning and main causes of illegal immigration:**

Illegal immigration is a transnational organized crime which leads to multiple criminal acts, such as human and drug trafficking. It is hence a fertile field for many crimes. How can we therefore define illegal immigration? And what are the root causes of this growing phenomenon?

### **1. Defining the crime of illegal immigration:**

Several doctrinal definitions are proposed, and some legal legislation has also dealt with the definition of clandestine immigration as a crime.

#### **1.a. Defining illegal immigration in jurisprudence:**

*It is called either irregular, clandestine, or illegal immigration. All these terms bear the same meaning and despite their different forms, define immigration as « The infiltration to the territory of a given country through one of its boundaries, by a person who does not hold the domestic nationality or has no right to residence, or who enters the state through one of its legal ports with fraudulent documents ». (Al-Qunaei, 2015-2016, p. 14).*

Eduardo GERONIMI defines it as « Every international movement of populations that occurs outside the applicable laws in the countries of origin or destination, or both, or in transit countries. In this sense, illegal immigration is the product of laws made in order to deter the migratory flow, and is considered as a crime against the state sovereignty ».

On his side, Dr. Muhammad Fathi Eid defined it as: « *The infiltration of this country by a person who does not hold the domestic nationality or is not authorized to reside on its territory, either through land, sea or air frontiers, or enters the land through one of its legal ports with fraudulent documents or visas. Illegal immigration is often collective and is rarely the concern of individuals* ». (Saich, 2014, p. 57). Irregular immigration is thus the fact of entering a state territory or leaving the national territory by illegal means in violation of the laws of the state, whether it is the origin, transit or destination country of immigration (Marzouk, 2020, pp. 38-81). The illegal immigrant is hence an individual who

leaves and illegally goes through his original country frontiers towards a foreign land he is not authorized to live in.

### **1. b. Legal definition of irregular migration:**

No unified and agreed international definition of illegal migration is proposed. The European Commission designates illegal immigration as any illegal entry by land, sea or air frontiers into a given territory that is member of the European Union, or legal entry with a visa and staying beyond the authorized stay period, and the same goes for political asylum seekers who stay in the host country despite the rejection of their request (Marzouk, 2020, p. 45). At the internal level of states, legislation has rarely discussed the subject of definition, although they suffer from this phenomenon. Yet, Moroccan and Libyan legislators are among the ones that have dealt with the definition of illegal immigration. (Saich, 2014, p. 63).

In the case of Algeria, illegal immigration was regarded as a phenomenon that deserves treatment, within socio-economic development frameworks for the benefit of the South countries, which are a source of immigration. However, the situation started deteriorating because of the increase in the flow of illegal migrants towards Europe, mainly the southern European coastline. The flow is such that the European Union considered it as a threat to the European member states' national security. Accordingly, the European Union countries started putting pressure on the North African countries, including Algeria, exhorting them to set up a legal framework aiming to contain the phenomenon, by adopting a legislation penalizing clandestine migrants.

Algeria has ratified the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime issued in 2000, by Presidential Decree No. 481/03 of November 09, 2003, to end up introducing in 2009 Law 01/09 amending the Penal Code which criminalized the act of illegal immigration according to its Article 175 bis 1 in Section VIII of Chapter Five of Part I and Part II, under the title "*Crimes committed against laws and regulations related to leaving the National territory,*" which stipulates: "[...] *Any Algerian or foreign resident who illegally leaves the national territory when passing through one of the land, sea or air border crossings by holding a false identity or using forged documents or any other fraudulent means to escape submitting the required official documents or the required legal procedures and applicable regulations. The same penalty is applied to every individual who leaves the national territory through exit areas or places other than border posts* » (Journal, 2009). We note that the Algerian legislator uses the phrase "*the illegal exit from the national territory,*" which is not in line with Article 03, paragraph "A" of the Protocol against the Smuggling of Migrants by Land, Sea and Air, ratified by Algeria, which comes as follows: "*The illegal entry of a person into a State Party*". Thus, the Algerian legislator has reduced the concept of smuggling to the fact of forcibly displacing a citizen or foreigner

without the act of entering the Algerian territory (Saïch, 2011, p. 17). The Algerian legislator restricts, therefore, illegal immigration to the only act of leaving the national territory, while Algeria is struggling with a flow of immigrants coming from the South, which makes Algeria a transit and settlement land for African immigrants when it is impossible for them to cross the sea and reach Europe, choosing to stay in the Algerian territory rather than returning to their homelands.

## **2. Causes and effects of illegal immigration:**

People are forced to illegal immigration for several reasons and hard daily life circumstances. The destination countries suffer, in turn, from issues that arise due to immigrants entering their lands without a prior authorization.

### **2. a. Causes of illegal immigration:**

Illegal immigration has numerous socio-economic, psychological and security reasons, etc... Among the motivations that make a person go through the risks of illegal immigration figures unemployment in the first rank, then the high living cost as a result of high prices, the spread of economic crises, the low level of individual income as it can no longer meet his basic needs. Combined, these difficulties have driven young people into using drugs and stealing, and led to the spread of social evils and psychological pressure on society.

On the other hand, political instability in South states, including the Arab countries hit by the Arab Spring tsunami such as Syria, Libya, Tunisia and Yemen, has contributed to the decline in the standard of living and the eruption in some of these countries of wars that left them in ruins. This has had immediate impact on the peoples of these areas, who ended up seeking for better life conditions outside the boundaries of their homelands, even if this meant going through illegal means (Abdelhak Trabelsi, 2019, pp. 32-47) and risking their lives to reach overseas lands. This stated, illegal immigration is not exclusive to youth, but involves other social categories, including women and children of various ages.

### **2.b. Impact of illegal immigration on the destination country:**

The first matter which crops up when discussing irregular immigration is that the presence of illegal migrants in the destination countries means irregular situation, and this urges these countries activate all instruments to combat the phenomenon, including the use of force by the security forces.

Illegal immigration has many adverse consequences on the countries receiving flows of immigrants. Some of them impact the internal security due to the fact that illegal immigration is an additional source of crimes such as human, drugs, or weapons trafficking, and money laundering, which all undermine the security and stability of the host countries. Added to this, the spread of social evils in the illegal immigrants circles, such as theft, fraud, illicit gains, drug promotion, and even the constitution of dangerous criminal gangs, because the illegal immigrant finds himself homeless and often lives in the street or in makeshift

shelters. This precarious situation pushes him to commit violating acts in the host country in order to survive. As far as health is concerned, the illegal immigrant is highly exposed to diseases and epidemics as he cannot afford medical care. Even in case he finds a job, he is excluded from social security coverage because of his illegal presence in the host soil. Often, these immigrants accept to be exploited by their employers in heavy labour in order not to lose the job. A more alarming issue is that children fall into the hands of criminal networks which unscrupulously charge them with inhuman labour, in violation of the host country laws, such as begging and loitering without apparent purpose, depriving hence the child of his basic rights to education, medical care and decent life. In that respect, the illegal immigrant is seen as a threat to the national security of the destination countries which have for long defended human rights, to end up setting impossible conditions for immigrants. Paradoxally, many of them practice selective immigration according to competencies, and this encourages young candidates for illegal immigration, who blindly accept to run all the risks, whether during the perilous travel to the destination country or while entering the foreign territory. By doing so, the immigrant loses even his basic rights, including work and decent life. But beyond all this, the illegal immigrant does not benefit from any legal status in the destination country. He is neither eligible for a refugee status, nor considered as stateless or a legal immigrant. His position denies him thus the right to raise international responsibility in case he is subjected to acts violating the internationally recognized human rights (Kasmi, pp. 599-615).

## **II- The measures taken by Algeria to address illegal immigration**

Algeria initially viewed illegal immigration as a phenomenon resulting from the issues prevailing in the immigrants' home countries. But with the worsening of this phenomenon by the rise in the flow of clandestine migrants and the inherent problems both at the internal level with the spread of pests, and at the international level, as the Nordic countries accuse South states of being passive in the treatment of the illegal immigration phenomenon, Algeria has taken measures to reduce irregular migration, both at the internal and the international levels.

### **1. Algeria's internal strategy to fight against illegal immigration:**

Facing the increase in the flow of clandestine immigrants in Algeria, considered as a transit area towards the European "Eldorado", and the worsening of the situation at all levels, including security and public health, Algeria has introduced as a response a number of legal measures at the internal level, among which the setting of legislation criminalizing irregular migration, in addition to activating security apparatus to combat this phenomenon.

### 1. a. Criminalizing the act of illegal immigration:

The massive and multi-causal flow of illegal immigrants towards Algeria, mainly due to the security tensions prevailing in the neighboring countries, including Libya and Tunisia, which have been so far the transit areas of African migrants towards Europe, has pushed the migrants to take the Algerian soil as a special passage, as it is a strategic location with a large borderline overlooking the African immigrants home countries, and a long sea coast which reaches 1200 km and overlooks the Mediterranean and Europe.

It is not surprising then that Algeria becomes the prime destination for illegal immigrants, who take it as a bridge towards Europe, seen as the land to make their dreams of well-being and decent life come true. In case the project is proved impossible to achieve, they end up settling in Algeria, as it has known a kind of well-being and economic revival during the rise of oil prices, making the Algerian soil a settlement country for these immigrants.

Regarding the massive flow of irregular immigrants towards the North, the European countries are exerting high pressure on the Northern African countries in order to reduce and control the massive arrivals of immigrants, accusing them of laxity in their dealings with the immigration issue. Moreover, the global economic crisis and the decline in oil prices are factors that urged Algeria to deal with the phenomenon by adopting a repressive legislative policy, especially because irregular immigration is also a source of criminal acts such as human trafficking and smuggling.

Algeria has resorted to set up criminalizing laws for illegal immigration, by amending the Penal Code under Law No 09-01 of February 25, 2009, whereby Article 175 bis 1 states: *“Is punished by imprisonment from two (2) to six (6) months and a fine of from 20,000 to 60,000 DZD or one of these two penalties, every Algerian or foreign resident who illegally leaves the national territory, while crossing a land, sea or air border post, by holding a false identity or using forged documents, or by any other fraudulent acts to evade submitting the required official documents or to avoid the legal procedures mandated by the laws and regulations in force. The same penalty shall be applied to every person who leaves the national territory through ports or areas other than border posts”*. (Journal, Law No. 09-01 of February 25, 2009 amending and supplementing Ordinance 66-156 containing the Penal Code, 2009).

In fact, the above article limits irregular immigration as a recognized crime to the only act of leaving the Algerian soil, while illegal immigration may occur by entering the national territory by illegal means or by using Algeria as a transit land. As for Article 175 bis 1, the crime is limited to the act of leaving the national territory. However, the phrase *“without prejudice to other legislative provisions”*, stated in the same article, refers to the Maritime Law promulgated in 1976 and amended by Law No. 98/05 of June 25, 1998 supplementing the Maritime Law, as

well as Law No. 08-11 issued on June 25, 2008 regulating the conditions for entry, stay and movement of Aliens in Algeria (Law 11-08 of June 25, 2008 relating to the conditions for foreigners' entry, residence and movement in Algeria, 2008). This law punishes whoever transports to the Algerian territory a foreigner coming from another country without travel documents (Article 35). It contains penalties for any foreigner who evades executing an expulsion or deportation order at the frontier (Article 42) and penalties for employing foreigners who are under an irregular status (Article 49).

Clandestine migrants who reside illegally are gathered in reception centers, waiting for their expulsion to their homelands. These centers reduce the charges of illegal stays which are very costly for the public treasury (Tibi, 2008, p. 85).

The amendment of the Penal Code 09-01 includes criminalizing the smuggling of migrants and trafficking in persons, by adding a fifth section bis 2 to Chapter 1 of Book II entitled "Smuggling of migrants", which contains 12 articles intended to combat illegal immigrants smuggling networks, considered as new and dangerous crimes because of their global dimension which urgently requires cooperation between the concerned countries in order to curb it, knowing precisely that Algeria has ratified The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the Convention against Transnational Organised Crime (Kamini, 2016, p. 135). By doing so, Algeria has strengthened its legal arsenal meant to limit irregular immigration. It is necessary to point out that this increasing phenomenon is a fertile ground to commit more dangerous criminal acts.

#### **b. The role of security organs in combating irregular immigration:**

Algeria has not only introduced laws criminalizing illegal immigration, but has also activated action, monitoring and rescue plans, by devoting equipment and means belonging to various security services, including:

**Coast Guard:** It is an organ affiliated to the Ministry of National Defense and assigned to the surveillance of seaports from maritime smuggling, including illegal immigration which often occurs by sea. It also conducts patrolling activities at sea and provides assistance to illegal immigrants in case of a sea accident. This organ is equipped with all required modern technical means to detect crimes committed along the shores and stop vehicles and boats used to people smuggling criminal acts.

**Border Guard:** This organ works under the command of the National Gendarmerie and guards the land borders. Border Guard forces are deployed in regional border posts that permanently cover all the land frontiers of the country. Thanks to its foot and mobile units, it responds to smuggling attempts, including the smuggling of illegal immigrants. These units are distributed through the following frontier posts:

Border Guard Regional Command N<sup>o</sup>. 2 in Oran,  
Border Guard Regional Command N<sup>o</sup>. 3 in Bechar,  
Border Guard Regional Command N<sup>o</sup>. 4 in Ouargla,  
Border Guard Regional Command N<sup>o</sup>. 5 in Constantine,  
Border Guard Regional Command N<sup>o</sup>. 6 in Tamanrasset. (Youssefat Ali Hachem, 2019, p. 348).

A unified national network of information and wireless communication is set up to enable the National gendarmerie units identifying any suspect in a punishable act, who happens to be present at any of the control barriers across the land frontiers.

- Border Police: It ensures the monitoring of the sea, air and land Algerian borders. It mainly performs the following tasks:

- Combating social evils such as drugs and irregular immigration,
- Searching for people who are on the run, or searching and monitoring travel documents,
- Guarding ports, airports and railways. (Kamini, 2016, p. 174).

Illegal immigration is a global phenomenon. Combating it by legal or security instruments has raised such great controversy, as it occurred as a result of extreme living conditions of illegal immigrants in their home countries, which gave the phenomenon humanitarian dimensions. As expected, this made some people strongly defend irregular immigration and call for its decriminalization. The Algerian Parliament has by the way been invited to an intense debate about the possibility of repealing Paragraph 2 of Article 175 bis 1 (Above mentioned), which provides for the criminalization of illegal immigration on the understanding that those immigrants are in fact victims who have fled their home countries seeking for help and solutions in the host country (Zaza, 2017, p. 144).

Paradoxically to their human distress, illegal immigrants are seen as a source of criminal acts of global dimensions, including trafficking in persons and drugs, as these crimes threaten the sovereignty and value of states. In order to respond to this threatening phenomenon, the affected states, including Algeria, have reached the conclusion that it is necessary to put in place *an* international cooperation to curb such crimes.

## **2. Algeria and international efforts to combat illegal immigration:**

Considering that the phenomenon of irregular immigration has international dimensions, combating it requires both cooperation between concerned countries, and bilateral international agreements.

### **2. a. Algeria's adherence to international conventions on combating illegal immigration:**

Irregular immigration is one of the major issues that have recently drawn the attention of the international community, due to the rise in the number of clandestine migrants in search for a decent life in the northern countries. Faced with the massive flow of illegal immigrants as well as the crimes which may result, known as cross-border crimes, the affected countries, whether they are source, transit or destination countries, have felt the urgent necessity of eradicating the phenomenon by all legal instruments, mainly by a strong international cooperation to curb irregular immigration.

The United Nations has created the Convention against Organized Crime on 11/15/2000, which is in effect since 09/29/2003. It is the most suitable judicial framework for all forms of cross-border criminal acts, since illegal immigration is an increasing and worrisome source of serious cross-border crimes such as smuggling of migrants and human trafficking.

Algeria has ratified this agreement by Presidential Decree No. 02-55 issued on February 05, 2002, Official journal No. 9 of February 01, 2002. This agreement has set up an international strategy for cooperation between states in combating transnational organized crime (Oualhi, 2019, p. 243). Algeria has also ratified the Protocol against the smuggling of migrants by land, sea and air, adopted by the United Nations General Assembly Resolution No. 25 of November 15, 2000, ratified by Algeria according to Presidential Decree No. 03-418 of November 12, 2003, Official Journal No. 69 of November 12, 2003, considered as an important international document in combating the smuggling of illegal immigrants, as well as ensuring their protection and victims status.

This protocol is concerned about strengthening cooperation between countries that suffer from smuggling of migrants, which often does not occur within one country, but rather involves other country. Therefore, it imposes cooperation between the concerned states. This is precisely what is stated in Article 7 of the above-mentioned Protocol, regardless of origin, transit and destination countries. The provisions of this Protocol shall also apply to all forms of smuggling of migrants, whether by land, air or sea. The preamble of the Protocol has stressed the international nature of this crime which is not committed within one territory, but involves other countries, and needs therefore be addressed with cooperation between states, whether these include the origin, transit or destination state.

### **3. b. Algeria adopts bilateral international cooperation to limit illegal immigration:**

The Mediterranean basin countries suffer from illegal immigrants, which is growing in size and complexity from year to year. Faced with this intensifying

phenomenon and the damage it has caused to all the state actors, whether origin, transit or destination countries, or even to the irregular immigrants themselves who are subject to several cross-border crimes such as trafficking in persons and smuggling of migrants, the affected states have come to concluding bilateral agreements whose main focus is the return of illegal immigrants to their home countries, yet granting some advantages to the origin countries.

Much like the countries affected by massive illegal immigration, Algeria has signed bilateral agreements with European countries to set rules organising the movement of people, in addition to its cooperation with the European Union countries in their policy of combating illegal immigration.

Following the collapse of the Eastern camp, immigration to the European Union has substantially increased, prompting the latter to integrate the issue of immigration in its agenda, particularly after 09/11/2001 attacks. On this basis, European countries have seen in the issue of fighting terrorism a perfect pretext to set strict conditions for immigrants entry to their soils (Belarbi, 2019, p. 880). They have also adopted a policy of extraditing illegal immigrants to their home countries, in bilateral cooperation with the South states and cooperation meetings with the 5 + 5 group, namely Spain, France, Italy, Portugal and Malta from the European side, Algeria, Tunisia, Morocco, Libya and Mauritania, including the Oran meeting held in Algeria in November 2004. These meetings were devoted to immigration in the Mediterranean region, which must be regarded like any other serious criminal act such as terrorism and organized crime. Accordingly, the two parties have come out to the necessity of cooperation, including the conclusion of bilateral agreements (Zaza, 2017, p. 65), like the Algeria/ Italy Convention on February 24, 2000, according to which more than half a million Algerians were to be deported after verifying their nationality. Italy has also issued 1,000 work visas for Algerians in 2008 (Kamini, 2016, p. 257). For the same purpose, Algeria has signed bilateral agreements with other European countries such as France, Germany, Britain, Switzerland and Spain. Despite the convergence of objectives between the two parties (European/ Maghreb countries) on the issue of illegal immigration, divergent views still crop up, knowing that European states are trying hard to create Transit centers in the Maghreb region devoted to receive illegal migrants who are deported from Europe until they are returned to their home countries. This proposal has been rejected by the Maghreb countries. (Tibi, 2008, p. 84).

The illegal immigrant remains henceforth hostage to policies based on interests, at his rights expense, after being pushed by cruel circumstances to an unwanted situation, fleeing or hiding from security forces, living in constant fear of being arrested and sent home, unable even to defend one of the basic human rights : the right to decent life.

## Conclusion:

Given the scale and widespread nature of illegal immigration and its great negative impact, especially as it threatens the security of countries, it is necessary to work and find legal instruments to reduce it, both at the international level since it turns out to be a transnational issue, or at the internal level of states.

Algeria has dealt with illegal immigration by adopting a deterrent legislative policy given the seriousness and impact of this phenomenon, considered as the source of crimes that highly threaten the security and stability of countries. This is what comes out of Algeria's enactment of Law 01-09 amending the Penal Code, in addition to its ratification of several international agreements intended to combat illegal immigration. Algeria has also cooperated with European countries in attempts to conduct its policy aimed at eradicating illegal immigration.

Despite all these efforts counting the deployment of internal and international instruments, illegal immigration through « death boats » or other means does not decline, raising doubts about the efficiency of the efforts made by Algeria to reduce this phenomenon. The possible solutions should therefore be sought in the deep causes of illegal immigration, which are manifestly underdevelopment in the origin countries of immigrants. This statement remains theoretic because facing the causes means achieving development and creating jobs. We should keep in mind that Europe has benefited from immigration during its reconstruction phase after World War II. But from the eighties onwards, it does not need immigrants anymore. This explains its deterrent policy towards illegal entrants, which adds to their distress during their perilous movement towards the North, especially in the case of children and women who often fall into the hands of dangerous criminal networks involved in human trafficking, that exploit them by using violence.

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