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The concept of illegal migration on the national and international levels and its distinction from other concepts

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Abstract:

Migration, a long-standing human phenomenon, has grown complex due to social, economic, and political factors, impacting nations globally. In response, countries and international organizations have established legal frameworks to regulate migration, safeguarding human rights while enabling lawful movement. However, migration outside these legal boundaries is termed "illegal migration," overlapping with concepts like asylum, forced deportation, displacement, and expulsion. While all involve human movement, they differ in context. Domestic laws address these issues, forming the basis for international efforts through organizations and agreements to combat illegal migration and involuntary movement, mitigate risks, and protect rights. This paper aims to clarify illegal migration and differentiate it from related terms.

Keywords: Migration, Asylum, Displacement, Deportation.

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INTRODUCTION:

Migration, in general, and the movement of individuals are considered rights guaranteed by both local and international legislation. However, this movement is not absolute; rather, it is subject to legal controls and procedures. Every country in the world has the right to regulate the movement of individuals across its borders as it deems appropriate, within a legislative framework that governs these movements, ensuring that foreign nationals do not pose a threat to its security or the security of its citizens. Nevertheless, these legal systems and regulations governing the movement of individuals through official entry points and borders such as airports, ports, and transit centers have not been respected by certain segments of individuals in regional and international communities.

Many individuals have resorted to violating these legislative systems through secretive and ambiguous methods, attempting to cross national borders illegally. As a result, the international community has been grappling with what is known as the phenomenon of "migration outside the bounds of laws and regulations." This has led to a significant increase in the rates of this phenomenon, surpassing previous levels, and its patterns have continuously evolved, exerting pressure on the international, regional, and local arenas. This is due to the exacerbation of its causes, the dominance of its justifications, and the varying motives that drive migrants to leave their home countries whether due to suffering, oppression, persecution, displacement, or conflicts and wars that have fueled this phenomenon, willingly or unwillingly.

All of this has led to differences in concepts and changes in descriptions. For instance, a migrant fleeing persecution, torture, insecurity, and lack of stability in life is not the same as a refugee or displaced person, nor is it the same as someone who migrates voluntarily through clandestine means.

In light of this issue, the growing concern of the international community has intensified, as the phenomenon of illegal migration has emerged as a central problem with negative impacts on societies, directly linked to economic, political,

social, and security dimensions. It has therefore become imperative for these societies, whether local or international, to take action to curb the escalation of this phenomenon, mitigate its negative effects, and find effective solutions to address it through a comprehensive future vision. This vision relies on establishing adequate mechanisms and studies to tackle the phenomenon at its roots, analyzing the underlying reasons driving it, despite the harms it causes, which extend beyond the illegal migrants themselves.

Given that the concept of "illegal migration" overlaps with other concepts due to their shared element of movement, while differing in causes, factors, and surrounding circumstances, this research paper aims to highlight the concept of "illegal migration" and distinguish it from similar concepts within the framework of the following problem: What is the concept of illegal migration?, and how does it align with or differ from similar concepts?

Section One: The Conceptual Framework of Illegal Migration

First - The Concept of "Illegal Migration":

"Illegal migration" is a phenomenon that has long dominated both domestic and international spheres. While "migration," as a movement of people, has been a recognized societal practice throughout history and is a guaranteed right for every individual allowing them to choose their place of residence within the borders of a state, leave any country including their own, and return to it (Article 13(2) of the Universal Declaration of Human , 1948), its regulation over time, in response to the movement of people and its consequences, has become a pressing issue for the international community. This is due to the resulting harms at both domestic and international levels, as well as to the migrants themselves. Consequently, it has become necessary to distinguish between migration within the framework of domestic and international laws and migration outside this framework, termed "illegal migration."

If we seek to define "migration" in its modern usage as a legal phenomenon, it refers to individuals permanently leaving their

original homelands and moving to other places with the intention of settling, whether within their own country or abroad. This movement may be driven by choice or necessity, aiming to improve their economic or social conditions, seek security, or escape armed conflicts, wars, and human rights violations.

The United Nations Migration Agency defines a migrant as: any person who is moving or has moved across an international border or within a state away from their habitual place of residence, regardless of their legal status, whether the movement is voluntary or involuntary, the reasons for migration, or the duration of their stay (United Nations, 2018) .

As for the term "illegal," it is a restriction that refers to the violation of effective laws and regulations governing the movement of foreign nationals into the territory of a sovereign state. This term takes on other names, such as "unlawful" or "clandestine." From this, we can define "illegal migration" as the movement of individuals or groups from their home country to another country using methods prohibited by law, regardless of the motives.

Alternatively, it is defined as: "the infiltration of individuals across land or sea borders and residing in another country in an illegal manner." If the duration of stay in the host country exceeds the legally permitted period and the individual remains on its territory, this also constitutes illegal migration. Similarly, crossing international borders in an unlawful manner is considered illegal migration (Fathi, 2010, p48).

It has also been defined as: "a breach of the laws in force in the destination country by entering it without legal documentation." (Gharbi, 2014, p46), Additionally, it has been defined as: "the movement of individuals or groups from one country to another without legal authorization from the destination country, with the intent to work or reside for a short period, a long period, or permanently." (Al-Hawat, 2014, p56)

Second - The Position of Algerian Law on "Illegal Migration":

The Algerian legislator has addressed the reality of illegal migration in the laws issued in this regard, including those related to the legal restrictions regulating the entry of foreigners into the country or the departure from national territory. This leaves no room for doubt in defining such migration. Article 36 of Law No. 08-11 (Law No. 08-11 , 2008), concerning the conditions of entry, residence, and movement of foreigners in Algeria, clarifies that illegal migration refers to the unauthorized entry, exit, or residence of foreign nationals. This constitutes the material element of the crime of illegal migration.

Furthermore, Article 175 bis 1 of Law No. 09-01 (Law No. 09-01 , 2009), which amends the Penal Code, addresses the penalties imposed on individuals who commit crimes against laws and regulations related to leaving national territory. Accordingly, any Algerian or resident foreigner who leaves the national territory illegally, while crossing land, sea, or air border checkpoints, by assuming a false identity, using forged documents, or any other fraudulent means to evade the required official documentation or procedures mandated by applicable laws and regulations, is subject to these penalties.

Therefore, "illegal migration," as a legal phenomenon, revolves around the concept of "the movement of individuals from their home countries to another country with the intention of permanent residence, using methods that violate domestic and international laws and regulations." However, their intentions and purposes differ; some are refugees, while others have various interests.

Any movement of individuals across international borders in a manner that violates the laws and regulations governing the entry and exit of foreign nationals, as well as the duration of their stay on foreign soil, is considered illegal migration. It is also referred to as unlawful migration or clandestine migration.

Third - The Concept of "Illegal Migration" in International Law:

The Protocol Against the Smuggling of Migrants by Land, Sea, and Air, supplementing the United Nations Convention Against Transnational Organized Crime, defines the crossing of borders without meeting the necessary conditions for lawful entry into the receiving state as unlawful entry. Article 6 of the same Protocol outlines the essence of illegal migration, which includes the use of forged documents, assistance from organized crime networks, or entering the Union territory legally through authorization by the authorities to obtain a visa and then overstaying the permitted period (United Nations, 2000).

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by General Assembly Resolution 45 on December 18, 1990, also addresses illegal migration. It refers to situations where migrant workers and their family members are in an irregular status, meaning they do not possess the necessary documentation and are not authorized to enter or engage in remunerated activities in the host state under its laws or international agreements to which the state is a party. (United Nations, 1990)

Therefore, the concept of "illegal migration" revolves around an individual crossing the borders of a state without legal controls, using forged documents, or entering legally but overstaying the authorized period of residence granted by the authorities of the host country. This places them in an irregular status, in violation of national laws and international agreements.

Fourth - Characteristics of Illegal Migration:

Illegal migration is characterized by several features, including:

1. It is Self-Initiated Migration: This means it relies on the element of personal choice, based on the will and decision of the migrant. It originates from their desires and aspirations, with the purpose of leaving their home country for a destination country for various reasons. In this way, it differs from forced displacement, where the individual has no choice due to coercion, oppression, or violations of their rights, compelling them to flee their homeland. This is evident in cases of armed

conflicts and wars, as seen today with the population of the Gaza Strip in Palestine, who are subjected to forced displacement against their will due to the war waged by the occupying Zionist entity. Notably, they are forced into internal migration, such as moving from northern Gaza to neighboring cities like Rafah in search of safety, as well as external migration, where some residents flee to other countries like Qatar, Jordan, Egypt, and others, seeking refuge outside their homeland.

2. It is Permanent and Continuous Migration: This means that migrants prefer to remain in the host country and refrain from returning to their home countries, cutting all ties with them. This phenomenon has more severe consequences than others, as many young people today, especially in African countries in general and Algeria in particular, suffer from exclusion, marginalization, and neglect. They view their situation as a living hell they must escape. Additionally, they imagine the countries they migrate to as a "paradise on Earth." However, some soon realize the reality and return to their homelands due to the inability to endure the hardships, suffering, or humiliation they face, making them easy prey for criminal organizations, such as those involved in smuggling migrants through "boats of death."

3. It Depends on the Migrant's Intent and Purpose: Here, migration may occur for acceptable reasons, regardless of whether it is legal or illegal. These are cases where migrants resort to migration due to the difficulty and complexity of procedures, such as pursuing education, seeking employment, or improving their standard of living. It may also involve fleeing from security or political instability, leading individuals to consider returning to their homeland after achieving their goals or when the security situation improves. However, it is worth noting that illegal migration often has deeply hidden motives, as it is linked to human security and other crimes (Mohammed, 2020, p132), in addition to violating laws and regulations. These include drug trafficking, human trafficking, and the crime of migrant smuggling, which has taken on alarming forms.

4. It is Illegal (Unlawful) Migration:

This means it operates contrary to the immigration laws of all countries worldwide (Al-Madhoun, 2023,p22). It violates the norms and effective international laws of states that regulate the entry and exit of nationals into their territories. This includes bypassing legal procedures for movement, such as resorting to forgery to exit or enter through officially designated ports, or secretly leaving without the knowledge of official authorities, often with the help of criminal organizations and networks involved in migrant smuggling and deportation. These methods endanger the lives of migrants, risking their safety and survival. It also includes overstaying the legally permitted duration of residence in a foreign host country without renewing the residency permit.

Fifth - Causes of Illegal Migration:

To examine the danger and growth of this phenomenon at both local and international levels, it is necessary to explore the reasons that drive individuals to take this path. Among the many causes of illegal migration are the following:

1.Social Causes: This reason is evident in the marginalization and exclusion individuals face, which pushes them to leave their home country permanently. They endure the hardships of migration, believing that these difficulties will disappear once they reach their destination and that a new life will begin. However, they are unaware of the suffering and challenges that await them. This is the reality for many young people today, influenced by stories and examples of illegal migration where some have succeeded in regularizing their legal status in host countries (Al-Kafarna, 2012,p8). However, they often overlook the tragic outcomes of those who failed, losing their lives at sea due to the capsizing of "boats of death" used to smuggle migrants out of their countries. One of the clearest social causes driving illegal migration is the lack of employment and widespread unemployment, which is one of the main problems individuals face at the regional level. In fact, it has become a global issue that significantly contributes to the increase in global migration rates (Al-Hawat, Ibid,p42).

2. Economic Causes: These reasons may be somewhat acceptable if a person migrates for work and income to secure a better life, but not through secretive and illegal means. This is due to the failure of future strategic visions to address the economic situation of Algerian families and the state's inability to meet the desires and needs of individuals in society, especially the youth, who are searching for job opportunities and aspiring for better conditions. The growing phenomenon of unemployment in society has also contributed to illegal migration. These causes can be summarized as follows: (Al-Sarani, 2010,p12)

- Poverty and financial need, as well as poor economic conditions in the country of origin.
- Low living standards and weak purchasing power.
- Poor quality of services provided by the state to its citizens.
- The desire to achieve quick gains through smuggling and trafficking of goods and contraband in the destination country.

The economic system and its transformations play a significant role in increasing migration rates. However, some workers, despite holding jobs, do not live comfortably due to rising prices and declining purchasing power, which they perceive as a low economic standard.

3. Political Causes: These reasons stem from political exclusion, marginalization, and the prevailing system of neglect, which fails to provide opportunities for youth, especially those with academic qualifications, to engage in political life. Among the political causes that contribute to illegal migration are:

- Political instability in the country of origin.
- Political authoritarianism in some regimes.
- Suppression of freedoms and political arbitrariness. (Al-Sarani, 2010,p12)

4. Security Causes: Security-related causes can be summarized as follows:

- Fear of attacks due to deteriorating security conditions.
- Lack of security stability in the countries of origin.
- Security pursuits and crackdowns resulting from the authoritarianism of ruling regimes. These factors are significant

contributors to illegal migration, as individuals flee insecure situations to seek international protection outside their home countries. (Al-Sarani, 2010,p12)

Sixth - Consequences of Illegal Migration:

The transformation of illegal migration from a legal phenomenon to a problem has led to severe consequences at both international and domestic levels, including for Algeria, which suffers significantly from illegal migration. This has resulted in the loss of resources spent on education, particularly in cases involving the migration of highly skilled individuals such as doctors, engineers, and others who leave to work in Western countries. These individuals could have been utilized in various developmental and productive fields within their home country. However, administrative corruption, neglect of skilled professionals, and the lack of specialized industries to attract labor have exacerbated the issue. This has led to the spread of irregular labor in destination countries, contributing to economic crimes such as money laundering, especially given the significant currency disparities.

Other consequences of illegal migration include the escalation of moral deviation and increased suffering for illegal migrants in host countries. This significantly impacts the social lives of migrants, fostering criminal behavior, homelessness, and a sense of detachment from their home country. Migrants often feel a lack of pride and belonging, leading to a profound sense of alienation, humiliation, and degradation due to their inability to integrate into the societies where they reside.

Section Two: Distinguishing Between Illegal Migration and Similar Terms

First - Asylum:

A refugee is an individual in a threatened situation, either on an individual basis fleeing alone or with their family from a country where they face persecution to a country of refuge or as part of a mass exodus due to political, religious, or military circumstances. A refugee is someone who crosses international borders seeking protection, safety, and shelter. (Abou EL Wafa, 2009,p22)

The 1951 Convention defines refugees as individuals who fear persecution or significant harm in their home countries due to their race, religion, nationality, membership in a particular social group, political opinions, or as victims of human rights violations, armed conflicts, persecution, or natural disasters. (Al-Khayarin, 2023,p265)

Asylum is a form of protection that allows individuals to remain in a country other than their homeland and adapt to their new environment (Jamea, 2021,p322). It grants them the opportunity to reside legally and permanently, particularly for foreigners who lack the protection of their home state due to persecution, political dissent, religious or social reasons that disrupt their relationship with their home country. The host country grants asylum only when the individual faces dire circumstances that threaten their life, prompting them to seek protection from the oppression of their home state. In practice, most countries that grant asylum are Western nations. The central focus of asylum is the refugee's fear of persecution and widespread violence, especially in cases of internal armed conflicts, revolutions, or military coups. Asylum is not granted due to economic hardship, as this often overlaps with migration, whether legal or illegal. In such cases, the migrant maintains a relationship with their home country and may still have rights under its laws, especially if they migrated through legal channels. They remain under the protection of their home state and do not lose their ties to it. (Salam, 2015,p12)

As for refugees fleeing oppression, persecution, or security threats, they may face the revocation of their citizenship, which ties them to their home country, or be labeled as members of dangerous organizations opposing the ruling regime in their home state, especially if they engage in activities hostile to their home country from the territory of the asylum state. They may not be able to return under a specific political regime but may do so after its fall, under a regime that recognizes rights, freedoms, and the protection of human rights.

International organizations, such as the Organization of African Unity and the United Nations, have focused on establishing international conventions and charters to regulate asylum and the movement of individuals in this regard. These agreements include provisions that address the status of refugees and stand by their side. No country to which they have fled can return, deport, or expel them if their lives are in danger, in accordance with the principles of asylum (Abou EL Wafa, *The Right to Asylum Between Islamic Sharia and International Refugee Law: A Comparative Study*, 2009,p53). They must be protected, and their legal status clarified. This is due to the international organizations' commitment to protecting rights and freedoms, as well as the emergence of repressive dictatorial regimes that do not tolerate dissent, leading to increased political persecution. This has forced many oppressed individuals within their own countries to seek asylum in other countries for protection and safe refuge; otherwise, they face brutality, imprisonment, and other forms of harm.

Asylum can be humanitarian, granted to individuals whose lives are threatened due to wars, armed conflicts, persecution, racial discrimination, and humiliation—severe circumstances that compel them to leave their home country for a country of refuge. It can also be political, granted to individuals persecuted for their political or religious beliefs or the opinions they hold in their home country. Additionally, it can be religious, granted to individuals persecuted due to their religious affiliations.(Al-Khayarin, 2023,p266)

Asylum is necessitated by the urgent need for safety and international protection due to wars, armed conflicts, violations of rights and freedoms, political unrest, military coups, and similar situations. It is beyond the individual's control and closely resembles forced migration, driven by factors that compel the refugee to flee. This contrasts with voluntary migration, which is typically undertaken by the migrant's own will, whether legal or illegal. (Mohammed S., 2017,p318)

Second - Expulsion (Deportation):

Expulsion or deportation is a measure taken by the public authorities of a country when they compel foreign residents, whether individuals or groups, to leave the country and return to their home country or another country where they previously resided. The authorities require them to leave the territory within a specified period, or they will be forcibly deported (Abida, 2005,p245). This measure is imposed against the will of the individuals being expelled because their presence poses a threat to public order or state security, such as involvement in organized crime or the commission of offenses punishable by imprisonment.

A government may deport a foreigner for entering its territory illegally or because it deems the foreigner a danger to the country due to the harm they may cause to its interests. A person may also be deported for committing a serious crime punishable under the country's laws, with a corresponding penalty imposed. When examining terms such as "expulsion," "deportation," "extradition," or "banishment," they may appear to refer to the same concept related to foreign nationals or even citizens of the home country. However, each term carries a distinct meaning based on the circumstances of the individual—the foreign national. The expulsion of a foreign national is referred to as "deportation," a penalty imposed on the individual under the laws of the country from which they are deported.

Alternatively, a group of civilians may be displaced from one place to another if their home country is under occupation, as is the case in Palestine. As for the expulsion of a foreign national residing in a foreign country, it occurs when they engage in actions that harm the interests of their home country, oppose its government, or commit a crime on its territory and flee to another country. Their extradition to their home country is referred to as "extradition" if there is an extradition treaty between the two countries; otherwise, the foreign country where the individual sought refuge has no right to extradite them to their home country.

Article 32 of the Convention relating to the Status of Refugees, adopted on July 28, 1951, by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, convened by the United Nations General Assembly under Resolution 429 (V) of December 14, 1950, outlines the principles governing expulsion procedures and the reasons for which a host country may expel refugees. These reasons include national security or public order concerns. Each contracting state may grant the refugee a reasonable period to seek legal admission to another country and may take any internal measures it deems appropriate.

Article 33, on the other hand, prohibits the expulsion or return of a refugee in any manner to territories where their life or freedom would be threatened due to their race, religion, nationality, membership in a particular social group, or political opinion. This right may not be invoked by a refugee if there are reasonable grounds to consider them a danger to the security of the host country or if they pose a threat to the community due to a final conviction for a particularly serious crime.

Third - Displacement:

In its legal sense, displacement corresponds to forced internal migration, meaning the movement of local populations from one place to another to escape bombing, military actions, or other factors that compel them to relocate involuntarily. It can also be collective, involving mass migration due to war, famine, or dire living conditions.

From a legal perspective, concepts related to "displacement" generally agree on a single meaning: forced displacement. This refers to migration driven by pressure, coercion, fear of persecution, or threats to life and livelihood, whether due to human actions or natural disasters. Individuals are forced to leave their habitual residences and move to other locations. Displacement can be internal, where individuals remain within their home country under its authority and laws, or external, where they cross borders for the same reasons (Lavoyer, 1996,p27).

The Practical Dictionary of Humanitarian Law defines internally displaced persons (IDPs) as individuals who are uprooted and seek refuge within their own country when neighboring states close their borders. They remain under the authority of their home state and, in times of war, are protected under humanitarian law as civilians. If they cross borders, they become refugees and fall under the protection of international refugee law. (Mohammed B. , 2020,p352)

In this context, displacement differs from illegal migration, which occurs at the will of the migrant. Illegal migration involves crossing borders or using deceptive means to migrate illegally through external channels of the home country or overstaying the permitted duration in a foreign country.

The causes of displacement also differ from those of illegal migration. Displacement, or forced internal migration, is driven by factors such as natural disasters like earthquakes and floods, or human-made factors like civil wars, armed conflicts, ethnic cleansing, and human rights violations, pushing people to seek safer areas. This is evident in the current situation in Palestine, where the residents of Gaza are suffering from the brutal war and genocide carried out by the occupying Zionist entity, supported by the United States, amid widespread Arab silence. This has led to the displacement of residents from conflict zones in the north to relatively safer areas, such as Rafah, before the Israeli invasion of the city. Despite the destructive war machine, people continue to seek refuge in safer places, such as UNRWA schools, which have also not been spared from the brutal war.

Historical examples of displacement include the aftermath of World War I and World War II, the largest wars in history, led by the United States, the Soviet Union, Germany, and other major powers, which played significant roles in the extermination of populations, forced displacement, ethnic cleansing, and more.

Modern wars, driven primarily by the United States, have also caused widespread displacement, killing, and destruction, such as the wars in Iraq, Afghanistan, and Somalia. Additionally, the actions of armed criminal groups and drug cartels in Colombia, the Democratic Republic of Congo, and South Sudan have

significantly contributed to the forced displacement and migration of populations.

CONCLUSION:

This study highlights that illegal migration occurs outside legal frameworks and depends on migrants' intent and facilitating factors. It involves covert border crossings, often linked to crimes like human trafficking and drug smuggling. While similar to asylum, deportation, displacement, and extradition all involving human movement illegal migration differs in context and legal frameworks.

- Asylum results from wars, persecution, or conflict, granting legal protection to refugees, unlike illegal migration, which is a global issue, especially in developing nations.

- Deportation involves forced removal due to threats to public order or security, falling under state sovereignty, and differs from voluntary displacement.

- Displacement is often forced due to persecution or conflict but can also be voluntary for better living conditions.

The following suggestions are proposed to address illegal migration:

1. Analyze its root causes to enable authorities to reduce it by tackling marginalization, unemployment, and exclusion, while creating youth-focused job opportunities and development programs.

2. Revise current mechanisms and adopt stricter legislative measures to combat illegal migration, particularly the rising number of foreigners entering Algeria and worsening conditions.

3. Strengthen regional and international cooperation through agreements, treaties, and seminars to prevent displacement and human rights violations, ensuring protection under international humanitarian law.

4. Engage youth through dialogues, seminars, and media campaigns to raise awareness about the dangers of illegal migration, such as "boats of death" and life abroad. Include testimonies from failed migrants to serve as warnings.

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