

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

Migration is a complex and multifaceted phenomenon that has been a key feature of global human interaction for centuries. Over recent decades, irregular migration has become a pressing concern for both sending and receiving countries. Irregular migrants, often referred to as undocumented or unauthorized migrants, typically enter or reside in countries without the necessary legal documentation or permission. While much of the international discourse on migration focuses on the protection of the rights of migrants in destination countries, less attention is often given to how the laws of transit or host countries—such as Nigeria—respond to the issue.¹ Nigeria, as a major regional power in West Africa, plays a critical role in the movement of people within the continent. Its strategic position, its large economy, and relatively developed infrastructure make it an attractive destination for migrants.

Data on the flow of immigrants into Nigeria are scanty and incomplete, given the large numbers of non-Nigerians who enter the country through its many border entry points.² Inadequate data due to porous borders has serious implications one of which is that without accurate data, the Nigerian government cannot properly plan, implement, or evaluate migration policies. It becomes difficult to determine how many migrants need documentation, legal aid, or basic services (e.g., healthcare, shelter, education). Incomplete records mean many migrants are invisible to the legal system, including victims of trafficking, asylum seekers, and stateless persons. Their rights can easily be violated without scrutiny or accountability especially for irregular migrants who are often detained or deported arbitrarily.

1 Aderanti Adepoju, Alistair Boulton and Mariah Levin, 'Free Movement under ECOWAS', <<https://www.unhcr.org/sites/default/files/legacy-pdf/49e479c811.pdf>> accessed April 30, 2025.

2 IOM Nigeria, 'eMigration in Nigeria: A country profile of the International Organization for Migration' (2019)<https://nigeria.iom.int/sites/g/files/tmzbd11856/files/documents/2024-04/the-national-migration-profile-2019_0.pdf>, accessed 6th May, 2025.

Lack of proper data can lead to the over-criminalization of migration, because authorities cannot distinguish between economic migrants, victims of smuggling, refugees or asylum seekers and actual criminals or traffickers.

However, the 2006 census showed that there are nearly 1 million foreigners in Nigeria, 51.4% of who are from the Economic Community of West African States (ECOWAS). Only one third of the population are from non-African countries. The expansion rate of migrants in Nigeria has continued to increase steadily by about 5% annually from the 1990s. Two thirds of the entire population of migrants in Nigeria are from Africa. Only one third of the population are from non-African countries.³

The ECOWAS Protocol on Free Movement of Persons, Residence, and Establishment, adopted in 1979, underscores the commitment of member states, including Nigeria, to facilitate intra-regional mobility. This protocol grants ECOWAS citizens the right to enter, reside, and establish economic activities in member states without stringent visa requirements.⁴ However, the implementation of this protocol has faced challenges, including inconsistent application of its provisions and limited awareness among border officials and migrants.⁵

Despite Nigeria's adherence to international and regional instruments promoting the rights of migrants, its domestic legal framework often criminalizes irregular migration, without appropriately distinguishing those fleeing from danger or victims of human trafficking. The Immigration Act of 2015, for instance, imposes penalties on individuals who enter or reside in the country without valid documentation. While the act aims to regulate migration and

3 Ozuru G. and Nwajah P.O, Towards a Human Rights Approach for the Treatment of Migrants in Nigeria, *NAUJILJ* (2019) 10 (1) 92.

4 Article 2 (1), Protocol A/P.1/5/79 relating to Free Movement of Persons, Residence and Establishment, 1979

5Aderanti Adepaju, Alistair Boulton and Mariah Levin, 'Promoting Integration through Mobility: Free Movement under ECOWAS' <<https://www.unhcr.org/sites/default/files/legacy-pdf/49e479e811.pdf>>, accessed 3rd May, 2025

enhance national security, its enforcement has, at times, led to the detention and deportation of migrants without adequate consideration of their rights or the circumstances compelling their migration. Such practices raise concerns about the balance between state sovereignty and the protection of human rights.

The National Commission for Refugees, Migrants, and Internally Displaced Persons (NCFRMI),⁶ is mandated to manage the affairs of refugees, migrants, and internally displaced persons in Nigeria. The commission's responsibilities include providing care, protection, and support for these populations, as well as coordinating migration-related activities.⁷ However, the effectiveness of the NCFRMI in safeguarding the rights of irregular migrants has been subject to scrutiny, particularly in light of reports highlighting inadequate resources and limited institutional capacity.

This study seeks to critically examine the extent to which Nigerian laws protect or criminalize foreign migrants, with a focus on irregular migration. By analyzing the legal instruments, policies, and practices governing migration in Nigeria, the research aims to assess the alignment of domestic laws with international human rights standards. Furthermore, the study will explore the implications of criminalizing irregular migration on the rights and well-being of migrants, as well as the broader socio-economic and political ramifications for Nigeria.

1.2 Statement of Problem

The criminalization of irregular migration has led to severe human rights concerns, including arbitrary detention, forced deportations, and the denial of basic rights such as access to

⁶ It was established by Decree 52 of 1989 and now governed by the NCFRMI Act, Cap. N21, Laws of the Federation of Nigeria, 2004.

⁷ The NCFRMI Mandate

healthcare, education, and fair legal processes. Migrants—especially those fleeing conflict, poverty, or persecution—are often treated as criminals rather than individuals in need of protection. Nigeria’s response to migration has focused heavily on national security through border control and law enforcement, often at the expense of human rights safeguards. Nonetheless, it is understandable that while the protection of migrants’ rights is paramount, Nigeria also faces real and increasing security concerns. The porous nature of its borders creates opportunities for transnational crimes such as kidnapping, armed robbery, trafficking, and terrorism. These risks have understandably led to stricter migration controls. However, the challenge lies in ensuring that genuine national security measures do not result in the unjust criminalization of vulnerable migrants, such as asylum seekers or economic migrants. A balanced legal framework is therefore needed—one that ensures both national security and the protection of human rights.

There is the additional fear of population explosion without adequate facilities to cater for migrants if the inflow is not checked. People without skills may end up in Nigeria, becoming a liability to the Government. There is also the fear of sustainable development if there is no restriction, no matter how little on migration into the country. This creates a complex legal dilemma: how can the state protect its borders and security without violating the rights of vulnerable migrants? There is, therefore, a pressing need to critically assess the role of Nigerian law in balancing national security interests with its human rights obligations under international, regional, and domestic legal frameworks. This study explores whether current legal approaches criminalize migration in a way that undermines protection, and how Nigeria can move toward a more balanced, rights-based migration system.

The Nigerian Immigration Act of 2015 and its Immigration Regulation of 2017, while aiming to regulate migration, include provisions that penalize irregular migration without adequate

safeguards for the rights of migrants. Stringent penalties and expansive powers of enforcement are included in the 2015 Act, while the provisions of the Immigration Regulations empower immigration officers to arrest any immigrant found committing an offence or found to have committed an offence under the 2015 Act or the Immigration Regulations, and also to enter and search any premises in which the immigration officer reasonably believes an offence under the Act or Regulations is being or is about to be committed.

The Act criminalizes illegal entry into Nigeria, specifically addressing aiding or assisting someone to enter the country in contravention of the Act, or entering or remaining in Nigeria while a refusal of admission is in effect.⁸ Such contravention can lead to arbitrary detention and deportation without due process. Moreover, the National Commission for Refugees, Migrants, and Internally Displaced Persons (NCFRMI), established to protect and assist migrants, faces challenges such as limited resources and coordination issues, hindering its effectiveness.

These legal provisions and institutional challenges contribute to a legal environment where irregular migrants are often treated as criminals rather than individuals entitled to human rights protections. This situation not only undermines Nigeria's international obligations but also exposes migrants to exploitation and abuse.

There is the additional problem of not distinguishing between the reasons for the irregular migration. Some irregular migrants flee from their countries due to war or other conflict situations. Some are victims of human trafficking. The law does not distinguish between irregular migration and actual human trafficking and encompasses those involved in a single,

⁸ Section 46, Immigration Act, 2015

unhelpful category.⁹ A trafficked person who enters Nigeria irregularly, could, under a strict reading of the Act be treated as an ‘irregular migrant’, subject to deportation.

Therefore, this study seeks to critically examine the extent to which Nigerian laws protect or criminalize foreign migrants. By analyzing the legal frameworks, policies, and practices, the research aims to identify areas where reforms are necessary to align Nigeria's domestic laws with its international human rights commitments.

Research Questions

To guide this study and provide a structured approach to exploring the role of Nigerian law in the protection or criminalization of foreign migrants, the following research questions have been formulated:

- i. What legal and institutional frameworks currently govern irregular migration in Nigeria?
- ii. To what extent do Nigerian laws align with regional and international human rights frameworks in the treatment of irregular migrants?
- iii. To what extent does the criminalization of irregular migration affect the human rights of migrants in Nigeria?
- iv. How does Nigerian law define and treat irregular migration—administratively or criminally?
- v. Are there legitimate grounds for criminalizing certain aspects of irregular migration?

⁹ Sophia Kjeldbjerg, ‘Challenging Organised Crime: the Quasi-Illegality of Migration in Nigeria’ (Faculty of Law Blogs, University of Oxford, 2024) <<https://blogs.law.ox.ac.uk/centre-criminology-blog/blog-post/2024/03/challenging-organised-crime-quasi-illegality-migration>> accessed 28th April, 2025

- vi. How can Nigerian law balance national security imperatives with the need to protect the human rights of irregular migrants?
- vii. What reforms, if any, are necessary to improve Nigeria's legal framework and ensure better protection for irregular migrants?

1.3 Aim and Objectives of the Study

The aim and objectives of the study is to critically analyse the impact of Nigerian laws and policies on irregular migration and the extent to which they contribute to the criminalization migrants. The study will assess whether these legal frameworks align with international human rights standards with a view to recommending ways of protecting immigrants effectively through legal and policy reforms.

The objective of the research work is as follows:

- i. To analyze the legal and institutional framework governing irregular migration in Nigeria.
- ii. To examine the extent to which Nigerian law criminalizes immigrants including issues of detention, deportation and access to legal protection and its implications for human rights.
- iii. To identify how Nigerian law distinguishes (or fails to distinguish) between administrative breaches and criminal offences in migration matters.
- iv. To assess the effectiveness of international and regional human rights instruments in protecting migrants in Nigeria.
- v. To determine if the laws have remained in black and white prints or have been successfully enforced.
- vi. To evaluate when, if ever, the criminalization of irregular migration is justified from a legal and ethical standpoint.

- vii. To recommend legal and policy reforms for a balanced, security-conscious and rights-compliant approach to irregular migration.

1.4 Scope and Limitations

This research analyzes the criminalization of irregular migration in Nigeria and explores the role of law in protecting the human rights of migrants. It examines the legal and policy frameworks governing migration, including national laws and Nigeria's international and regional obligations. The study also investigates how irregular migrants are treated by law enforcement and highlights human rights concerns such as arbitrary detention, extortion, deportation, and denial of due process. It further evaluates the implementation and enforcement challenges faced by migration agencies, including gaps in the application of ECOWAS Free Movement Protocols. Through a comparative approach, the research offers recommendations for legal and policy reforms to enhance migrant protection while addressing security concerns. Although the study relies mainly on secondary data due to limited access to official records and detained migrants, and focuses primarily on Nigeria and ECOWAS rather than a broader global context, it aims to contribute meaningfully to academic discourse and policy development in migration governance and human rights.

1.5 Significance of the Study

Migration, in its many forms, has long been a feature of human existence; yet, in recent decades, irregular migration has come to occupy the centre of global political and legal debates. While scholarship and media narratives have often focused on the plight of Nigerians as irregular migrants abroad, far less attention has been paid to the reverse phenomenon—the experience of foreign irregular migrants within Nigeria's borders, and how Nigerian laws and institutions either protect or criminalize them. This study boldly shifts that

focus and opens up a critical conversation about Nigeria's dual identity as both a migrant-sending and migrant-receiving country.

The significance of this work lies in its pioneering contribution to the under-researched field of migration law from a Nigerian host-country perspective. It interrogates not only the letter of the law but also the lived realities of irregular migrants—many of whom face detention, deportation, discrimination, and denial of basic rights under the guise of immigration control.

By examining Nigeria's legal response to irregular migration, this research challenges the dominant criminal justice approach and advocates for a human rights-based migration governance framework.

This study is also timely. In an era of rising insecurity across West Africa, economic instability, and transnational crimes such as human trafficking and smuggling, Nigeria finds itself at a complex intersection: upholding state sovereignty and national security while meeting its regional and international obligations to protect migrants. The findings of this work will be invaluable not only to academics and legal practitioners, but also to policymakers, civil society actors, and international organisations working to ensure that migration governance in Nigeria is lawful, humane, and inclusive.

Moreover, this research provides a roadmap for legal reform, identifying specific gaps in Nigerian immigration legislation and the administrative practices of enforcement agencies such as the Nigeria Immigration Service (NIS) and National Commission for Refugees, Migrants and Internally Displaced Persons (NCFRMI). It also encourages further empirical studies and advocacy efforts aimed at elevating the voices and rights of one of the most invisible groups in Nigerian society—irregular migrants.

In sum, this study does not merely fill a gap in literature; it ignites a re-examination of the values, obligations, and priorities that underpin Nigeria's migration laws and policies. It invites Nigeria to look inward and ask: *Are we criminalizing vulnerability, or are we building a just society for all who dwell within our borders?*

1.6 Research Methodology

This study adopts a qualitative doctrinal legal research method, supported by desktop-based empirical analysis, to investigate Nigeria's legal and institutional responses to irregular migration and migrant human rights. The doctrinal approach involves analyzing primary legal sources—such as Nigerian migration laws and international treaties—and secondary sources including academic literature, policy reports, and case law. It also incorporates comparative and contextual analysis by referencing other West African countries to identify best practices and highlight gaps in Nigeria's implementation of regional mobility frameworks. The research is guided by a human rights-based framework, assessing the extent to which Nigerian laws uphold key rights such as dignity, non-discrimination, and access to justice for irregular migrants.

1.7 Chapters Analysis

Chapter One provides the general introduction to the research. It sets out the background of the study, highlighting the increasing global attention on irregular migration and the tension between the criminalization of migrants and the protection of their human rights. It presents the statement of the problem, research objectives, research questions, scope, significance, methodology, and this chapter analysis. The chapter introduces the dual challenge facing Nigerian migration law: addressing national security concerns while complying with international human rights obligations.

Chapter Two is devoted to the conceptual and theoretical framework and literature review. It defines key terms such as migration, irregular migration, criminalization, asylum seekers, and refugees. It further explores theoretical perspectives including the sovereignty theory, security-based migration control, and the human rights-based approach. The literature review examines scholarly debates around the criminalization of migrants, international legal protections, and Nigeria's obligations under domestic and international law.

Chapter Three examines the legal and institutional framework regulating migration in Nigeria. It evaluates relevant international instruments such as the 1951 Refugee Convention, the 1990 UN Migrant Workers Convention, and the African Charter on Human and Peoples' Rights. Regional frameworks such as the ECOWAS Free Movement Protocols as well as the African Charter on Human and Peoples Rights 1981 are also discussed. Domestically, the chapter analyzes the Nigerian Immigration Act 2015, Immigration Regulations 2017, The Constitution of the Federal Republic of Nigeria 1999 (as amended), The Criminal Code (Laws of the Federal Republic of Nigeria 2004, The Administration of Criminal Justice Act (ACJA) 2015, The Trafficking in Persons (Prohibition) Enforcement and Administration Act (TIPPEA) and the roles of institutions like the Nigeria Immigration Service (NIS), National Agency for the Prohibition of Trafficking In Persons (NAPTIP) 2015 and the National Commission for Refugees, Migrants and Internally Displaced Persons (NCFRMI). The chapter highlights gaps in legal protections and identifies the challenges of implementation, particularly in balancing border control with human rights guarantees.

Chapter Four provides a critical discussion on how Nigeria applies its migration laws in practice. It evaluates whether the current legal and institutional framework achieves a fair balance between national security concerns (e.g., terrorism, smuggling, document fraud) and the protection of migrants' rights, particularly those of irregular migrants, asylum seekers,

and trafficking victims. Case examples, human rights reports, and judicial interpretations are used to assess gaps, abuses, and areas for reform.

Chapter Five presents the findings, conclusions, and recommendations of the study. It synthesizes insights from previous chapters to evaluate the adequacy of Nigeria's legal framework in protecting the rights of irregular migrants while maintaining state security. It provides recommendations for legal reform, improved policy implementation, and compliance with international obligations. The chapter also outlines the study's contribution to knowledge and concludes by advocating for a more balanced, rights-based approach to migration governance in Nigeria.

Chapter Two: Conceptual and Theoretical Framework and literature Review

2. Conceptual Clarifications

2.1 Definition of Key Terms

Since the earliest times, humanity has been on the move. Some people move in search of work or economic opportunity, to join family, or to study. Others move to escape conflict, persecution or large-scale human rights violations. Still others move in response to the adverse effects of climate change, natural disasters or other environmental factors. The mobility of people across international borders dates back to the creation of borders themselves, and the vulnerability of non-nationals is not a new phenomenon.¹⁰

Today, more people than ever live in a country other than the one in which they were born. According to the Population Division of the United Nations Department of Economic and Social Affairs (UNDESA), in 2024 the global number of international migrants was 304 million, a figure that has nearly doubled since 1990, when there were an estimated 154 million international migrants worldwide. International migrants comprise 3.7 per cent of the global population, having increased only modestly from 2.9 per cent in 1990.¹¹

MIGRATION

Migration refers to the movement of people from one geographical location to another, either across international borders or within a state, for the purpose of settling temporarily or permanently in a new location. According to the International Organization for Migration

¹⁰ Grace Ayodele Arowolo, 'Protecting the Rights of Migrants: The Challenges and the Prospects', *Journal of Law, Policy and Globalization*, [2021] Vol.105, <https://iiste.org/Journals/index.php/JLPG/article/view/55419/57235#google_vignette>, accessed 12th May, 2025

¹¹ Global Issues: International Migration, United Nations Organization <<https://www.un.org/en/global-issues/migration>>, accessed 12th May, 2025

(IOM), it states that "*Migration is the movement of persons away from their place of usual residence, either across an international border or within a state.*" ¹²

Migration can be voluntary (e.g., for work, study, or family reunification) or forced (e.g., due to conflict, persecution, or environmental disasters). It encompasses several forms such as international migration, internal migration, legal or regular migration, and irregular migration.

IRREGULAR MIGRATION

Following the general definition of migration, irregular migration is a subcategory that occurs outside the legal framework governing movement across borders. Although a universally accepted definition of irregular migration does not exist, the term is generally used to identify persons moving outside regular migration channels. It is understood as the movement of persons that takes place outside the laws, regulations, or international agreements governing the entry into or exit from the state or country of origin, transit or destination. As defined by the IOM:

"Irregular migration refers to movement that takes place outside the regulatory norms of the sending, transit, and receiving country." ¹³

The irregularity in migration does not refer to the individuals but to their migratory status at a certain point in time. Changes in national laws and policies can turn regular migration into irregular migration, and vice-versa. The status of migrants can change during their journey

¹² IOM, *Glossary on Migration* (International Organization for Migration, 2019) <https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf> accessed 23 April 2025.

¹³ IOM UN Migration, *Key Migration terms* <<https://www.iom.int/key-migration-terms>> accessed 12th May, 2025

and stay in the country of transit or destination, which makes it difficult to have a comprehensive understanding of migration laws and the profiles of migrants.¹⁴

The United Nations High Commissioner for Refugees (UNHCR) similarly defines it as:

*"The movement of persons that occurs outside the laws, regulations, or international agreements governing the entry or exit of people in a country."*¹⁵

The rising trends in irregular migration are noted worldwide, specifically in under-developed to developing countries. A huge number of migrants within and outside Africa are irregular migrants.¹⁶

In Nigeria, irregular migration often includes instances where individuals attempt to travel to North Africa or Europe without valid travel documents, usually through human smuggling networks, exposing them to exploitation and abuse.

The fact that they migrate irregularly does not relieve states from the obligation to protect their rights. Moreover, categories of migrants who may not have any other choice but to use irregular migration channels can also include refugees, victims of trafficking, or unaccompanied migrant children. The fact that they use irregular migration pathways does not imply that States are not, in some circumstances, obliged to provide them with some forms of protection under international law, including access to international protection for asylum seekers fleeing persecution, conflicts or generalized violence. In addition, refugees

¹⁴ Imaan Suleiman-Ibrahim and Onah Otumala Peter, 'Irregular Migration and National Security in Nigeria: A Critical Analysis', *Academy Journal of Multidisciplinary Doctoral Research* [2023] Volume 1, Issue 1, pg 151

¹⁵ UNHCR, *Irregular Migration* [2022] <<https://www.unhcr.org/irregular-migration.html>> accessed 23 April 2025.

¹⁶ Imaan Suleiman-Ibrahim and Onah Otumala Peter, 'Irregular Migration and National Security in Nigeria: A Critical Analysis', *Academy Journal of Multidisciplinary Doctoral Research* [2023] Volume 1, Issue 1, pg 151

are protected under international law against being penalized for unauthorized entry or stay if they have travelled from a place where they were at risk.¹⁷

CRIMINALIZATION

Criminalization is the act of making something criminal, or making it against the law.¹⁸ It is the action of turning an activity into a criminal offence by making it illegal.

The criminalisation of migration refers to the use of the criminal law (as opposed to the administrative or civil law) to sanction immigration-related offences and, in particular, foreigners' irregular entry and stay. In other words, criminalisation refers here to the adoption and enforcement of the "crime of irregular migration" in national legislation.¹⁹

In recent years, due to the problem of insecurity that comes quite naturally with migration, many governments have made efforts to put more restrictive measures on migration.

ASYLUM SEEKER

An asylum seeker is a person who leaves their country of residence, enters another country, and makes in that other country a formal application for the right of asylum. It is a recognized right under the Universal Declaration of Human Rights.²⁰ It is the general term for any person who is seeking international protection. In some countries, it is used as a legal term referring

17 Art. 31(1) Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137).

18 Vocabulary.com Dictionary <<https://www.vocabulary.com/dictionary/criminalization>>. Accessed 12th May, 2025

19 Matilde Rosina, Criminalising Migration: The Vicious Cycle of Insecurity and Irregularity, *Social Sciences* 2024, 13(10), 529 <[12th May, 2025](https://www.mdpi.com/2076-0760/13/10/529#:~:text=In%20a%20narrower%20sense%2C%20however%2C%20the%20criminalisation,foreigners%27%20irregular%20entry%20and%20stay%20(Rosina%202022).&text=11)%2C%20which%20presents%20migrants%20as%20an%20existential%20threat%20to%20the%20survival%20of%20the%20community.> accessed 12th May, 2025</p></div><div data-bbox=)

20 Article 14 (1), Universal Declaration of Human Rights <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>>, accessed 12th May, 2025

to a person who has applied for refugee status or a complementary international protection status and has not yet received a final decision on their claim. It can also refer to a person who has not yet submitted an application but may intend to do so, or may be in need of international protection. However, an asylum-seeker may not be sent back to their country of origin until their asylum claim has been examined in a fair procedure, and is entitled to certain minimum standards of treatment pending determination of their status.²¹ A person keeps the status of asylum seeker until the right of asylum application has concluded. Not every asylum seeker will ultimately be recognized as a refugee, but every recognized refugee is initially an asylum seeker.

REFUGEES

A refugee is someone who has been officially recognized by a state or by the United Nations High Commissioner for Refugees (UNHCR) as meeting the legal definition under the 1951 Refugee Convention (or regional equivalents like the OAU Convention in Africa). Once granted refugee status, they receive legal protection and access to certain rights under international law.

A refugee qualifies for protection because of specific reasons defined in international,²² regional²³ or under the United Nations High Commissioner for Refugees (UNHCR)'s guidelines or a country's domestic laws. These reasons are usually based on fear of persecution or danger in their home country. Under international law and UNHCR's mandate, refugees are persons outside their countries of origin who are in need of international protection because of feared persecution, or a serious threat to their life, physical integrity or

21 UNHCR, Master Glossary of Terms, 2006 < <https://www.unhcr.org/glossary>>, accessed 12th May, 2025.

22 Convention Relating to the Status of Refugees, 1951

23 These include the 1984 Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, -, 22 November 1984, <<https://www.refworld.org/legal/resolution/rri/1984/en/64184>>, accessed 13 May 2025; OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, <https://au.int/en/treaties/oau-convention-governing-specific-aspects-refugee-problems-africa>, accessed 13th May, 2025

freedom in their country of origin as a result of persecution, armed conflict, violence or serious public disorder. The 1951 Convention defines a refugee as any person who

‘...owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of particular social group or political opinion, is outside the country of [their] nationality and is unable or, owing to such fear, is unwilling to avail [themselves] of the protection of that country; or who, not having a nationality and being outside the country of [their] former habitual residence ... is unable or, owing to such fear, is unwilling to return to it.’²⁴

The definition of Refugees by the 1951 Convention is quite limited as it does not encompass persons fleeing from armed conflict or natural disasters.

Subsequent international instruments (such as the Cartagena Declaration on Refugees and the Convention Governing the Specific Aspects of Refugee Problems in Africa) have expanded this definition to include persons fleeing the general effects of armed conflict and/or natural disaster. Refugees are people who have fled their homes, crossed an international border, and cannot return because they fear their lives are in danger. Because of this, they receive a number of protections under international law, the most important being ‘non-refoulement’ which requires that refugees have a right to be protected by the country in which they seek asylum, and can’t be forced to return home.

Under international law, a person is considered a refugee as soon as they meet the relevant criteria, whether or not they have been formally recognized as a refugee. A person does not become a refugee because of recognition, but rather is recognized because they are a refugee. This means that as soon as a person meets the criteria, they are legally a refugee, even before any official organization (like the UNHCR or a government) formally recognizes them.

²⁴ Article 1A(2), Convention relating to the Status of Refugees, 1951 (1951 Convention).

Recognition (formal status) does not make someone a refugee. They are recognized because they already are a refugee by the legal definition. Recognition is just an official confirmation, it doesn't create their refugee status. Sometimes—notably in statistical contexts—the word refugee is used to designate individuals or groups who have been formally recognized by States or UNHCR as entitled to refugee status following an asylum or other status-determination procedure. When this limited nonlegal meaning is intended, it should be clearly indicated. The clearest designation in such contexts is *recognized refugee*.²⁵

STATELESS PERSON

A person who is not considered as a national by any State under the operation of its law, either because they never had a nationality, or because they lost it without acquiring a new one. Not all stateless persons are refugees, but they may qualify as such if they are unable or unwilling to return to their place of habitual residence due to fear of persecution on one of the 1951 Refugee Convention grounds. The protection of all stateless persons falls within UNHCR's mandate.²⁶

HUMAN RIGHTS

They are the inalienable rights to which a person is entitled merely for being human. Human rights are built on underlying principles of universality, equality and non-discrimination, and are enshrined in international human rights laws,²⁷ rules of customary international law,

²⁵ UNHCR, *Master Glossary of Terms*, 2006 < <https://www.unhcr.org/glossary> >, accessed 12th May, 2025

²⁶ *ibid*

²⁷ The bill of Rights – Universal Declaration of Human Rights, UN General Assembly, International Covenant on Economic, Social and Cultural Rights, United Nations, Treaty Series, vol. 993, p. 3, 16 December 1966, <https://www.refworld.org/legal/agreements/unga/1966/en/33423>, accessed 13 May 2025, UN General Assembly, International Covenant on Civil and Political Rights, United Nations, Treaty Series, vol. 999, p. 171, 16 December 1966, <https://www.refworld.org/legal/agreements/unga/1966/en/17703>, accessed 13 May 2025

national laws and other standards that define them and help to guarantee their full enjoyment. Human rights apply to all individuals over whom States have jurisdiction, including all persons falling within UNHCR's mandate.²⁸

These rights include right to be Free from Torture or Cruel, Inhuman, or Degrading Treatment,²⁹ which applies particularly to detention conditions and treatment by authorities during arrest or deportation, right to Liberty and Security of Person / Protection from Arbitrary Detention³⁰ which protects migrants from being detained arbitrarily or for indefinite periods solely due to their migration status, right to Due Process and a Fair Trial,³¹ which entitles migrants to legal safeguards, including the right to be informed of reasons for arrest, to have legal representation, and to challenge deportation, right to Seek Asylum³² which gives migrants the right to apply for asylum and not be penalized for irregular entry if they are seeking protection, right to Non Refoulement³³ which provides that a state cannot expel or return a person to a country where they face threats to life, torture, or serious harm, among other rights.

IMMIGRATION LAWS AND POLICIES

Immigration laws are the formal, codified rules passed by a legislature. They are the specific statutes enacted by a legislative body (like a parliament or congress) that govern the entry, stay, and departure of foreign nationals. They define who is eligible to immigrate, the requirements for obtaining visas or residency, and the consequences of violating immigration

28 UNHCR, Master Glossary of Terms, 2006 < <https://www.unhcr.org/glossary> >, accessed 12th May, 2025.

29 **Article 13**, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, **1984**

30 Article 9 ICCPR

31 Article 14 ICCPR

32 Article 14 Universal Declaration of Human Rights

33 Article 33, 1951 Refugee Convention

rules. For example, Nigerian immigration law is derived principally from statute, supported by policy and case law.³⁴

The central piece of legislation governing immigration law and practice in Nigeria is the Immigration Act of 2015, which is supported by the Immigration Regulations of 2017.³⁵

Immigration policies on the other hand are a broad set of government measures designed to manage the movement of immigrants. It includes all of those policies whereby states control the influx of persons who want to establish residence within their borders: rules regarding rights of access to the territory (entry and residence), permission to participate in the labour market (work permits), the rights of asylum seekers and refugees, the rights of immigrants to bring family members (family reunification), and rules for the acquisition of citizenship by immigrants and their family members (naturalization).³⁶

In essence, laws provide the legal framework while policies dictate how that framework is applied. The laws are the building blocks of immigration policies, providing the legal foundation upon which policies are built and implemented.

HUMANITARIAN SERVICES

34 Adekemi Sijuwade, 'A general introduction to immigration law and policy in Nigeria' (An extract from the Corporate Immigration Review, 10th edition)[20th May 2020]

<[https://www.lexology.com/library/detail.aspx?g=fd818e23-bd89-4220-](https://www.lexology.com/library/detail.aspx?g=fd818e23-bd89-4220-9e16a4e1e0ace7fd#:~:text=Penalties%20include%20a%20fine%20of%205%20million,being%20or%20is%20about%20to%20be%20committed.>,)

[9e16a4e1e0ace7fd#:~:text=Penalties%20include%20a%20fine%20of%205%20million,being%20or%20is%20about%20to%20be%20committed.>," data-bbox="114 729 882 742">, accessed 25th June, 2025.](https://www.lexology.com/library/detail.aspx?g=fd818e23-bd89-4220-9e16a4e1e0ace7fd#:~:text=Penalties%20include%20a%20fine%20of%205%20million,being%20or%20is%20about%20to%20be%20committed.>,)

35 The Immigration Regulations were issued as subsidiary legislation by the Minister of Interior, pursuant to Section 112(1) of the 2015 Act and provide the legal framework for the effective implementation of that Act.

36 Sofia A. Perez, 'Immigration Policy', International Encyclopedia of the Social & Behavioral Sciences (Second Edition) 2015, Pages 662-668 <[https://www.sciencedirect.com/science/article/abs/pii/B9780080970868750227>," data-bbox="114 841 886 882">, accessed 25th June, 2025.](https://www.sciencedirect.com/science/article/abs/pii/B9780080970868750227>,)

Humanitarian services refer to a broad range of efforts designed to relieve human suffering and improve the living conditions of people affected by crises such as conflict, disasters, displacement, and migration. These services are especially vital for irregular migrants, many of whom leave their countries of birth due to disasters or conflicts and are often faced with harsh conditions, human rights violations, and criminalization due to their legal status in the host countries.

Globally, over 362 million people are in urgent need of humanitarian assistance,³⁷ including many migrants and displaced persons. Humanitarian aid typically involves the provision of food, clean water, medical care, shelter, sanitation, and support for education and livelihoods. These services are provided by various international organizations such as the International Rescue Committee (IRC), the World Food Programme (WFP), UNICEF, and the World Health Organization (WHO).

In the context of irregular migration, humanitarian services play a crucial role in safeguarding the dignity and rights of migrants who may otherwise be subjected to neglect, detention, or deportation. These services or assistance should be governed by the key humanitarian principles of humanity, impartiality, neutrality and independence. These are the fundamental principles of the International Red Cross and Red Crescent Movement (RCRC),³⁸ which are reaffirmed in United Nations General Assembly resolutions and enshrined in numerous humanitarian standards and guidelines. The RCRC, provides global humanitarian support, including to migrants in vulnerable situations.

ARBITRARY DETENTION

37 International Rescue Committee(IRC)Humanitarian aid organization, 'What is humanitarian aid'<<https://unis.unvienna.org/unis/topics/related/2023/humanitarian-need.html#:~:text=One%20in%2022%20people%20around,some%20at%20risk%20of%20famine>>, accessed 27th May, 2025

38 The International Red Cross and Red Crescent Movement is a global humanitarian network of 80 million people that helps those facing disaster, conflict and health and social problems. It consists of the International Committee of the Red Cross, the International Federation of the Red Cross and Red Crescent Societies and the 190 National Red Cross and Red Crescent societies

Arbitrary detention refers to the arrest or imprisonment of an individual without a valid legal basis or without following due legal procedures. The person is held without being charged with a recognizable criminal offense. The individual is denied access to a fair trial, legal representation, or timely judicial review. Such detentions are sometimes based on race, religion, political views, immigration status, or other unjust reasons. For example, detaining asylum seekers or irregular migrants indefinitely without trial or the opportunity to challenge their detention may be considered arbitrary under international law. Arbitrary detention violates international human rights laws, especially the right to liberty and security of person, and protection from unlawful or unfair imprisonment provided for under some International Law instruments like the International Covenant on Civil and Political Rights (ICCPR)³⁹ which recognizes the right to liberty and security of person and protection from arbitrary detention.

Similarly, the Universal Declaration of Human Rights (UDHR)⁴⁰ provides that “*No one shall be subjected to arbitrary arrest, detention or exile.*”

The United Nations established a Working Group on Arbitrary Detention. The mandate of the Working Group relates to the protection of individuals against arbitrary deprivation of liberty in all its forms. Deprivation of personal liberty occurs whenever a person is being held without his or her free consent. “Arbitrariness” is not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.⁴¹

³⁹ Article 9 ICCPR

⁴⁰ Article 9, UDHR

⁴¹ United Nations Working Group on Arbitrary Detention, ‘About Arbitrary Detention’ < <https://www.ohchr.org/en/about-arbitrary-detention>>, accessed 27th May, 2025

In its definition of Arbitrary Detention, it stated five (5) categories of deprivation of liberty that can be legitimately considered arbitrary detention. Of interest is Category IV states that it is arbitrary detention:

“When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy”.

Under international human rights law, no one can be detained without a legitimate reason and, anyone accused of a crime has the right to a fair trial.⁴² This unfortunately, is not the case with the refugees. This right extends to immigrants, irrespective of the legality or otherwise of their immigration status.

Many States consider immigration detention as an unavoidable and necessary migration management tool owing to the rights of States to control their borders and determine their migration policies. However, in doing so they must ensure respect for international law and standards. Detention of migrants is usually for the purpose of identifying persons and determining nationalities, preventing persons from gaining unauthorized entry, and expelling or ensuring the enforcement of a deportation order. Some transit countries also detain migrants to prevent them from leaving the country irregularly. In some instances, asylum seekers are detained pending a decision on their asylum application.

Immigration detention is often an administrative measure, but in States where unauthorized entry is a criminal act, detention can be imposed pursuant to criminal law. Most international bodies consider the criminalization of irregular entry as disproportionate and recommend that it be considered an administrative infringement. In many cases, however, the detention of migrants lacks regulation altogether and falls into a legal vacuum, leaving migrants with little

⁴² Amnesty International, 'Arbitrary Detention and Imprisonment' <<https://www.amnesty.org/en/what-we-do/detention/>>, accessed 27th May, 2025.

to no safeguards or remedies for any abuse suffered while in detention or for arbitrary or extended detention. ⁴³Deprivation of liberty should be a measure of last resort and States should always first explore the possibility of using less restrictive options and apply these when possible.

2.2 LEGAL THEORIES ON MIGRATION

Legal theories on migration aim to explain, justify, and critique how states regulate the movement of people across borders. These theories intersect with international law, human rights and state sovereignty. There are various theories, some of which include:

Sovereignist Theory: The core idea behind the Sovereignty theory is that a state has the sovereign right to control its borders and determine who may enter or stay. Sovereignty allows States to regulate the movement of persons within and across their borders. It is an accepted maxim of international law, that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe.⁴⁴ The sovereignty theory is often criticized for ignoring human rights obligations or humanitarian considerations particularly for refugees and asylum seekers fleeing persecution. Sovereign power of states should not be exercised to the detriment of individual human rights. While the liberty to move freely and in a lawful manner is by no means absolute, limitations imposed by a State should be justified, necessary and proportionate to the state interest.

43 IOM Global Compact Thematic Paper, Immigration Detention and Alternatives to Detention, pg5<
chromeextension://efaidnbmninnibpcapjpcglefindmkaj/https://www.iom.int/sites/g/files/tmzbd1486/files/our_work/ODG/GCM/IOM-Thematic-Paper-Immigration-Detention.pdf>accessed 27th May, 2025 .

44 Thomas Schindlmayr, 'Notes and Commentaries:Sovereignty, Legal Regimes, and International Migration', (2003), pg 110<<https://library.fes.de/libalt/journals/swetsfulltext/17087754.pdf>>accessed 21st May, 2025

Human Rights-Based Approach: It is a theory of migration that states that migration policy must prioritize fundamental human rights, regardless of legal status. This theory emphasizes the inherent dignity and rights of all individuals, arguing that migration is a fundamental human right. Its underlying feature is that it identifies “rights holders”, who, by virtue of being human, have a claim to certain entitlements, and “duty bearers”, who are legally bound to respect, protect and fulfil the entitlements associated with those claims.⁴⁵ It emphasizes that migrants, like everyone else, are entitled to universal rights and fundamental freedoms. These rights and freedoms are established in Human Rights treaties that apply to all persons. States that are party to these treaties – and all States are party to some – agree to not only respect, but to also protect and fulfil everyone’s Human Rights. This includes migrants’ rights.⁴⁶ The inherent challenge with human rights based approach is that it often clashes with state sovereignty in practice. Critics argue that this view overlooks the interests of the states, particularly their right to control borders and manage immigration for reasons such as security, economy, and public welfare.

Security-Based Theory views migration, especially irregular migration, as a potential threat to national safety. It argues that states have a right to control their borders to prevent risks such as terrorism, organized crime, and social instability. This theory became more prominent after the 9/11 attacks, leading many countries to tighten immigration laws and link migration policies with counterterrorism efforts.

However, critics warn that this approach can violate human rights, especially when it leads to unjust denial of asylum **or** discrimination against certain nationalities. It may also conflict with international principles like non-refoulement, which protect people from being returned to danger. The main concern is finding a balance between security and human rights. While

45 United Nations Network on Migration, ‘Implementing the Global Compact for Safe Orderly and Regular Migration: Guidance for governments and all relevant stakeholder, page 32’ <<https://migrationnetwork.un.org/system/files/docs/IOM-IGCM-GUIDE-EN.pdf>> accessed 21st May, 2025.

46 IOM, ‘Human Rights of Migrants: An Overview’ <<https://emm.iom.int/online-courses/human-rights-migrants-overview>> Accessed 21st May, 2025.

aimed at preventing terrorism and crime, this approach has faced criticism for leading to human rights violations, such as the unjust denial of asylum and discrimination against certain groups. It risks undermining international protections like non-refoulement and fuels a climate where migrants are seen more as threats than as individuals with rights.⁴⁷

PUSH AND PULL FACTORS OF MIGRATION

There are several reasons why people emigrate. These reasons are generally classified as push and pull factors of migration.

Push factors are factors or elements of the place of origin that are perceived negatively leading to a desire to leave. In other words, they are factors that push one away from the country of origin. They exist at the point of origin and act to trigger emigration. They are factors that force persons to leave their home. There are numerous reasons why people may leave their homes. The major push factors influencing migration include, but are not limited to general crime and violence, an unstable economy which in turn affects an individual's social and economic opportunities and career advancement.⁴⁸ Wars, political unrest, and persecution, be it ethnic, religious, or political often push people to flee. For instance, the civil war in Syria has displaced millions of persons, most of whom had to migrate to other states for safety. Of the 384,245 asylum seekers granted protection status in the European Union (EU) in 2022, more than a quarter came from war-torn Syria, with Afghanistan and Venezuela in second and third place respectively.⁴⁹

47 IOM, 'International Terrorism and Migration'[2010]

<https://www.iom.int/sites/g/files/tmzbd1486/files/jahia/webdav/shared/shared/mainsite/activities/tcm/international_terrorism_and_migration.pdf>, accessed 17th June, 2025.

48 Natasha C.Parkins, 'Push and Pull Factors of Migration', *American Review of Political Economy*, < <file:///C:/Users/user/Downloads/arpe-119-parkins.pdf>>, accessed 17th June, 2025.

49 EuroStat, 'Assylum decisions up by 40% in 2022', *Eurostat* 27th April 2023 < <https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20230427-1>>, accessed

Pull factors on the other hand, are factors or elements of the destination country that are perceived positively leading to place-attraction. In other words, they are factors that attract or pull one towards the destination country. People may move from one country to another because of pull factors like good salary, better standard of living, better education & health facilities, good communication, improved working conditions, more wealth, attractive environment, a good climate, less crime, or a historical or religious connection between the two countries.⁵⁰ Pushes and pulls are complementary, that is, migration can only occur if the reason to emigrate (the push) is remedied by the corresponding pull at an attainable destination. European Parliament identified three major causes that simultaneously pose as push and pull factors in migration, namely, Social and political factors, Demographic and economic causes and Environmental and climate factors of migration.⁵¹

2.3 The Concept of Criminalization of Migration

The criminalization of migration refers to the use of criminal law to regulate and punish immigration-related offenses, primarily focusing on irregular entry and stay. This process involves using criminal law enforcement mechanisms, such as surveillance and detention, to manage migration flows. It encompasses various stages of the migrant experience, including before entry (e.g., extraterritorial control), during stay, and after entry/towards removal.

It refers to treating actions like entering or staying in a country without permission as crimes, instead of handling them through civil or administrative rules. Migration is often seen as a

50 Md Imran Khan & Majed Alharthi, 'Statistical analysis of push and pull factors of migration: A case study of India', *Journal of King Saud University - Science*

Volume 35, Issue 8, (2023) <<https://www.sciencedirect.com/science/article/pii/S101836472300321X#bb0160>> accessed 25th June, 2025

51 European Parliament, Exploring migration causes: why people migrate, <<https://www.europarl.europa.eu/topics/en/article/20200624STO81906/exploring-migration-causes-why-people-migrate>>, accessed 17th June, 2025

security threat, leading to efforts to stop or prevent it before it happens. It involves using criminal laws, enforcing those laws, and taking steps to stop or prevent migration in advance.

Administrative law regulates the relationship between the state and individuals and does not usually entail punitive features. Immigration law is a subset of administrative law, aiming at regulating the powers of states towards those who are not nationals of such states.

Criminal law is “the body of law that defines criminal offenses, regulates the apprehension, charging, and trial of suspected persons, and fixes penalties and modes of treatment applicable to convicted offenders”⁵². The traditional approach to criminal law has been that a crime is an act that is morally wrong. The purpose of criminal sanctions was to make the offender give retribution for harm done and expiate his moral guilt; punishment was to be meted out in proportion to the guilt of the accused. It has been argued however, that migration, especially irregular is not a moral wrong and should not be subject to criminalization. For an act to be deemed a crime, it must involve harm to others, the infringement of their rights, or pose a threat to society as a whole. A crime is a moral wrong and in the opinion of Lord Denning L.J referring to the time of King Henry, for an act to be punishable, ‘it must be, morally blameworthy and it must be a sin.’⁵³ Migration, in itself, does not meet these criteria. It should therefore remain regulated under administrative and not criminal law.

While administrative law focuses on the migration status of the individual (e.g., regular migrant, undocumented migrant, asylum seeker), criminal law can only be applied when the specific actions of a particular individual are framed as criminal: punishment is related to what the person does, and not to their migration status. In the case of current immigration

⁵² Hans-Heinrich Jescheck and Jerry Norton, ‘Criminal Law’ *Encyclopaedia Britannica* <<https://www.britannica.com/topic/criminal-law>> Accessed 20th May, 2025

⁵³ L.O. Taiwo, ‘Death Penalty as an Affront to Humanity and Global Civilisation: Nigeria as a Case Study’, (*Ajlhr*) 6(1) 2022.

policies, this distinction is blurred. The convergence of criminal law and administrative law in the field of migration and border control has taken place over the last 30 years. US scholars have developed the concept of crimmigration to describe this trend, which was later applied in the European context.⁵⁴

The concept of Crimmigration was introduced to the United States in 2006 by Prof. Juliet Stumpf to draw attention to the increasing fusion of migration law and criminal law.⁵⁵ Van der Leun introduced it in her Leiden lecture in 2009 in the Netherlands.⁵⁶

The concept of 'crimmigration' refers to the intertwinement of crime control and immigration control. It represents the distinct laws and legal processes that states employ as a means of exerting control over a sector of our global society. Simply stated, crimmigration is where two areas of law—criminal and immigration—meet. For a long time, criminal law and immigration law were largely separate. Citizens and non-citizens were typically punished the same way for crimes, regardless of their immigration status. But in the 1980s, criminal and immigration law began to mingle and eventually became what is now called crimmigration. Suddenly, non-citizens with criminal charges now find themselves also faced with possible immigration penalties as well. Once a non-citizen of a host country is charged with a crime, his immigration status may very well be in jeopardy. Even relatively small criminal charges such as public intoxication, domestic violence and other petty crimes can easily impact on

54 Eleonora Celoria and Marta Gionco, 'Between Administrative and Criminal Law: An Overview of Criminalisation of Migration across the EU', Platform for International Cooperation on Undocumented Migrants, *PICUM*, 2024 < chrome-extension://efaidnbmninnbpcajpcgclcfndmkaj/https://picum.org/wp-content/uploads/2024/04/Betwenn-Administrative-and-Criminal-Law.pdf>, accessed 20th May, 2025

55 Juliet Stumpf, 'The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power', *American University Law Review*, Volume 56, Issue 2, Article 3, 2006.

56 Leiden University Research Project 'Crimmigration', < <https://www.universiteitleiden.nl/en/research/research-projects/law/crimmigration#:~:text=The%20concept%20of%20Crimmigration%20was%20introduced%20to,Leiden%20lecture%20in%202009%20in%20the%20Netherlands.>>, accessed 20th May, 2025

their immigration status.⁵⁷ Unfortunately, many states utilize legal framework to criminalize migrants which invariably impact negatively on their human rights.

Some European countries like Italy, France, United Kingdom, among others have very strict sanctions on irregular migration, imposing fines and imprisonment on defaulters. Italy and France are the two countries with the most severe sanctions in Europe. They apply very strict measures and policies. The strictness of their policies is aimed at reducing the incidence of irregular migration. Studies have however shown that it has inadvertently led to more irregularity, in relation to entering, staying or working in these countries.⁵⁸

When migration laws are too restrictive, it pushes migrants to enter, stay or work irregularly in an attempt to avoid detection and repatriation. The more restrictive the measures, the more is an increase in irregularity. For instance, in a study cited by Czaika and Habolth, it was found that every 10% in asylum rejections, led to an average of 2% or 4% increase in irregular migration.⁵⁹

Laws and policies need to recognize that the presence, no matter how unwanted, of migrants with irregular status, is not eradicable. Other ways of managing irregular migration need to be sought without criminalizing it. Nicola Delvino has suggested that policies governing irregular migration must develop into 2 equally relevant dimensions. On the one hand, policies aiming to prevent irregular migration in order to reduce irregular arrival and on the

⁵⁷ Kyle E. Cray, 'What is Crimmigration? Don't Let Criminal Charges Disrupt Your Dream' [BB&C Attorneys] <<https://hereforlife.com/what-is-crimmigration/>>, accessed 21st May, 2025

⁵⁸ Rosina Matilde, 'Criminalising Migration: The Vicious Cycle of Insecurity and Irregularity' *Social Sciences* 13(10), 529, 2024 <<https://www.mdpi.com/2076-0760/13/10/529>>, accessed 12th June, 2025

⁵⁹ M. Czaika, M. Hobolth, Do restrictive asylum and visa policies increase irregular migration into Europe? *European Union Politics*, Vol. 17 No.3, SAGE Publications, 2016 <<https://journals.sagepub.com/doi/10.1177/1465116516633299>>, accessed 25th June, 2025

other hand, policies addressing the treatment of irregular migrants once they have entered or overstayed in a country.⁶⁰

Francisco Carrion Mena has stated that “States’ legitimate interests in securing their borders and exercising immigration control cannot override their obligation to respect, protect and fulfil the human rights of all persons in all areas under their jurisdiction, regardless of their migration status”.⁶¹ Some States mistakenly consider border areas as exempt from human rights obligations.

2.4 LITERATURE REVIEW

This section reviews existing academic, legal, and institutional perspectives on irregular migration and the criminalization of migrants, with a focus on the Nigerian context. The review draws from scholarly works, international instruments, UN bodies, and migration policy reports that assess how irregular migration is understood, legislated, and addressed in practice.

The global increase in international migration, from 154 million in 1990 to 304 million in 2024 has intensified state efforts to manage migration flows, particularly irregular migration. Scholars like Grace Arowolo⁶² and organizations like International Organisation for Migration (IOM) note that migration is driven by factors such as poverty, conflict, environmental degradation, and family reunification. Irregular migration, as defined by IOM and UNHCR, refers to the movement of persons outside regulatory frameworks governing

60 Nichola Delvino, ‘European Union and National Responses to Migrants with Irregular Status: Is the Fortress Slowly Crumbling?’ *IMISCOE Research Series*, Springer

Nature Link [2020] <https://link.springer.com/chapter/10.1007/978-3-030-34324-8_5>, accessed 25th June, 2025

61 Comment by Francisco Carrion Mena, Chair of the UN Committee on Migrant Workers (CMW), during the Committee’s annual report to the General Assembly’s Third Committee in New York on the 24 October 2014. <https://www.ohchr.org/en/press-releases/2014/10/criminalization-no-solution-irregular-migration-un-committee-migrant-workers>, accessed 20th May, 2025

62 Grace Ayodele Arowolo, ‘Protecting the Rights of Migrants: The Challenges and the Prospects’, *Journal of Law, Policy and Globalization*, Vol.105, 2021 <https://iiste.org/Journals/index.php/JLPG/article/view/55419/57235#google_vignette>, accessed 12th May, 2025

entry or stay. Suleiman-Ibrahim and Onah emphasize that irregular migration does not refer to the migrant as a criminal but rather to the lack of legal authorization of their status at a point in time. Migrants' legal status can shift depending on evolving laws and conditions, complicating enforcement and protection.⁶³

The literature makes clear distinctions between administrative immigration control and criminal law. The criminalization of migration involves using criminal law to penalize acts such as unauthorized entry or overstaying, a concept now popularly known as crimmigration. Juliet Stumpf coined the term “crimmigration” to describe the increasing convergence between immigration law and criminal law, a development she characterizes as a “crimmigration crisis.” In her view, immigration enforcement increasingly adopts punitive tools such as detention, deportation, and surveillance that resemble criminal sanctions, even though immigration law traditionally falls within the civil domain. Stumpf argues that irregular migrants are often treated as quasi-criminals, facing severe consequences without access to the procedural safeguards guaranteed in criminal law, such as the presumption of innocence or legal representation. She warns that this blending of systems expands state power, undermines constitutional protections, and disproportionately targets vulnerable and racialized populations. Her work is central to the theoretical foundation of crimmigration studies and supports calls for reforms that ensure immigration policies respect human rights and due process guarantees.⁶⁴ In her 2009 inaugural lecture at Leiden University, Joanne Van der Leun introduced the concept of “crimmigration”, originally coined by Juliet Stumpf. She highlighted how immigration control increasingly adopts criminal law mechanisms (e.g., deportation via criminal processes, detention, police profiling), and argued that these go well

⁶³ Imaan Suleiman-Ibrahim and Onah Otumala Peter, ‘Irregular Migration and National Security in Nigeria: A Critical Analysis’, *Academy Journal of Multidisciplinary*

⁶⁴ Juliet Stumpf, ‘The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power’, *American University Law Review*, Volume 56, Issue 2, Article 3, 2006.

beyond statutes to include policing practices and everyday law enforcement. By doing so, she helped position crimmigration as a multidisciplinary research field focused on the blending of migration and crime control in Europe.⁶⁵ Matilde Rosina and others criticized crimmigration, arguing that it creates a vicious cycle of insecurity and marginalization. She critically examined the criminalization of irregular migration within the European Union, particularly under legal instruments known as the ‘Facilitators’ Package’ which requires member states to criminalize the act of assisting irregular migrants, often regardless of humanitarian intent and ‘Return Directive’ which permits detention and deportation of migrants on administrative grounds. She argues that the increasing use of criminal sanctions to address immigration violations, traditionally civil in nature, reflects the growing phenomenon of crimmigration. Rosina highlights how this trend erodes the principles of proportionality and due process, leading to the detention and exclusion of migrants based solely on their irregular status. Although her focus is primarily on the European context, her insights offer a valuable framework for analyzing similar developments in other regions, including West Africa, Nigeria inclusive, where punitive approaches to irregular migration are also on the rise.⁶⁶ Lord Denning’s view that crime must involve moral blame supports the argument that mere irregular presence does not amount to a criminal act.⁶⁷ Scholars argue that punitive approaches lack proportionality and often violate due process rights.

International law, especially the 1951 Refugee Convention, International Covenant for Civil and Political Rights (ICCPR), and the Universal Declaration of Human Rights, emphasizes that migrants are entitled to fundamental rights irrespective of their legal status. Rights such

65 Joanne Van der Leun is an Academic Lead International Affairs and Professor of Criminology in Leiden University<
[66 Matilde Rosina, Criminalising Migration: The Vicious Cycle of Insecurity and Irregularity, *Social Sciences*, 13\(10\), 529, 2024 < \[67 L.O. Taiwo, ‘Death Penalty as an Affront to Humanity and Global Civilisation: Nigeria as a Case Study’, *Ajlhr* 6 \\(1\\) 2022.\]\(https://www.mdpi.com/2076-0760/13/10/529#:~:text=In%20a%20narrower%20sense%2C%20however%2C%20the%20criminalisation,foreigners%27%20irregular%20entry%20and%20stay%20\(Rosina%202022\).&text=11\)%2C%20which%20presents%20migrants%20as%20an%20existential%20threat%20to%20the%20survival%20of%20the%20community.>”, accessed 12th May, 2025</p>
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as freedom from arbitrary detention, due process, and the right to seek asylum are central to international protections. Numerous scholars and bodies, including Amnesty International and IOM, argue that irregular migrants, especially asylum seekers, stateless persons, and victims of trafficking, should not be penalized for their status. The principle of non-refoulement, as well as the prohibition of arbitrary detention under Article 9 ICCPR, are frequently cited to oppose indiscriminate criminalization. Joseph H. Carens, in his influential book *The Ethics of Immigration* (2013), argues that irregular migrants are entitled to basic rights by virtue of their equal moral worth as human beings, regardless of legal status. He challenges the ethical legitimacy of criminalizing unauthorized migration, asserting that such policies often fail to account for the structural injustices and vulnerabilities that drive people to migrate. He advocates for firewalls between immigration enforcement and public services to protect migrants' access to healthcare, education, and justice. He further proposes that irregular migrants who have lived within a country for an extended period should be regularized due to their deep social ties. His work provides a powerful moral critique of securitized and punitive migration regimes, offering a human rights-based approach grounded in justice, dignity, and inclusion.⁶⁸ Notably, Nigerian scholar Chukwuka Onyeaku critiques the Immigration Act 2015 for granting broad enforcement powers to immigration officers while embedding limited human rights safeguards. He argues that these provisions risk violating constitutional protections under Sections 35 and 41 of the 1999 Constitution (as amended), and international obligations under the ICCPR and African Charter on Human and Peoples' Rights (ACHPR). His analysis supports calls for legal reform that ensures migration control is exercised with proportionality, judicial oversight, and respect for due process.⁶⁹

68 Joseph H. Carens, *The Ethics of Immigration*, n (Oxford University Press 2013). <

<https://ccect.law.columbia.edu/sites/ccect.law.columbia.edu/files/content/Readings/Carens%20-%20The%20Ethics%20of%20Immigration%20Excerpts.pdf>>, accessed 6th July, 2025.

69 Chukwuka Onyeaku, 'Nigerian Immigration Act 2015: An Examination with the 1999 Constitution and International Human Rights and Humanitarian Law', *NILA JOURNAL* VOL. 1 NO. 1 OCTOBER, 2024 < <file:///C:/Users/user/Downloads/5543-105787-1-PB.pdf>>, accessed 6th July, 2025

The African Commission on Human and Peoples' Rights, in Resolution 114, affirms that refugees and asylum seekers, including those with irregular status, are entitled to rights under the African Charter, such as non-refoulement, freedom from discrimination, and due process. It urges states to align national laws with regional instruments like the OAU Refugee Convention and the Kampala Convention, reinforcing that irregular migration does not negate fundamental human rights.⁷⁰

The literature acknowledges that states have a legitimate right to control their borders. Authors like Thomas Schindlmayr⁷¹ explain the *sovereigntist theory*, which justifies migration controls as inherent to state survival. Suleiman-Ibrahim and others have noted that irregular migration can pose threats, such as terrorism, trafficking, and organized crime. The *security-based theory* emphasizes migration as a potential risk, especially post-9/11 2001 terrorist attack in the US, with global policy shifts linking migration control with counterterrorism. This has led to increased detention, vetting, and deportation, as highlighted in IOM reports. However, critics argue this often leads to the erosion of humanitarian principles.

Yahaya, J.U. examines how irregular cross-border migration into Nigeria, especially from neighbouring countries like Niger, Chad, Cameroon, and Benin, contributes to national security risks. His mixed-methods study, using both qualitative interviews and quantitative surveys, finds that the porous borders and weak enforcement by the Nigeria Immigration Service (NIS) have enabled unauthorized migration for criminal activities. This influx is significantly linked to socio-economic problems, including terrorism, trafficking, arms smuggling, and communal conflict. His findings underline the importance of effective border

70 ACHPR, Resolution 114 <<https://achpr.au.int/en/adopted-resolutions/114-resolution-migration-and-human-rights-achprres114xxxxii07>>, accessed 6th July, 2025

71 Thomas Schindlmayr, Notes and Commentaries: Sovereignty, Legal Regimes, and International Migration, 2003, pg 110 <https://library.fes.de/libalt/journals/swetsfulltext/17087754.pdf>, accessed 21st May, 2025

management and justify targeted criminalization of smuggling and irregular entry, making his work directly supportive of the argument that state sovereignty and security form legitimate bases for certain migration enforcement policies in Nigeria.⁷²

A growing body of literature advocates for a balanced approach to irregular migration—one that addresses security concerns without undermining human rights obligations. Scholars like Chukwuka Onyeaku acknowledge Nigeria’s legitimate interest in controlling borders but emphasize the need for judicial oversight and proportionality in enforcement. This view is echoed in ACHPR Resolution 114, which urges African states to protect the rights of asylum seekers and refugees, including those entering irregularly. Collectively, these sources support a migration framework that integrates security imperatives with fundamental rights, ensuring that irregular migration is managed without violating the dignity of affected persons.

In conclusion, the literature therefore reveals a clear tension between concern for national security and protection of the rights of migrants, and underscores the urgent need for legal frameworks that uphold both the sovereignty of the state and the dignity of the migrants.

⁷² J.U Yahaya, ‘International Migration and the Phenomenon of Insecurity in Nigeria’, , *Journal of International Politics*, Volume1, 2019< file:///C:/Users/user/Downloads/5-1.pdf>, accessed 6th July, 2025

CHAPTER THREE: LEGAL AND INSTITUTIONAL FRAMEWORK ON MIGRATION IN NIGERIA

3.1 INTRODUCTION

Migration governance in Nigeria involves a complex interplay of legal rules, policies, and institutional practices that regulate the movement of persons across borders. The legal framework seeks to address key concerns such as border security, national sovereignty, and the prevention of irregular migration, while also respecting Nigeria's obligations to uphold fundamental human rights under domestic and international law.

In recent years, the issue of irregular migration has gained increased attention due to its links with transnational crimes such as human trafficking, terrorism, and document fraud. Nigeria's response has primarily focused on enforcement-based strategies grounded in laws such as the

Immigration Act 2015 and the Immigration Regulations 2017, which define immigration offences, assign enforcement powers, and prescribe sanctions. The 1999 Constitution of the Federal Republic of Nigeria (as amended) further guarantees core rights such as liberty, fair hearing, and freedom from discrimination, which extend to all persons, including non-citizens.

Importantly, where immigration-related offences are treated as crimes, their prosecution must comply with the provisions of the Administration of Criminal Justice Act (ACJA) 2015. The ACJA ensures that any arrest, detention, or trial involving migrants follows due process, including timely arraignment, access to legal representation, and protection against unlawful detention. This Act serves as a procedural safeguard for migrants caught in the intersection between immigration enforcement and criminal justice.

Beyond domestic laws, Nigeria is also bound by various regional and international instruments, including the African Charter on Human and Peoples' Rights (ACHPR), the 1951 Refugee Convention and its 1967 Protocol, and the ECOWAS Protocol on Free Movement of Persons. These frameworks collectively impose duties on Nigeria to protect the rights of migrants, including those with irregular status.

This chapter provides a detailed review of the legal and institutional frameworks governing migration in Nigeria. It begins by analysing relevant domestic legal instruments, including the Immigration Act, Immigration Regulation, the ACJA, the Criminal Code and the Constitution. It then considers Nigeria's commitments under regional and international human rights law. And Finally, it examines the role of key institutions such as the Nigeria Immigration Service (NIS), NCFRMI, and NAPTIP. The goal is to evaluate how these legal and institutional mechanisms balance state security interests with the protection of migrants' rights.

3.2. DOMESTIC LEGAL FRAMEWORK

3.2.1 THE NIGERIAN IMMIGRATION ACT (2015)

The Nigerian Immigration Act of 2015,⁷³ established pursuant to an Act the National Assembly is the primary law that governs immigration and migration matters in Nigeria. It replaced the older Immigration Act of 1963 to reflect modern migration realities and align with Nigeria's international obligations. The Act establishes the legal framework for entry, stay, and exit of non-Nigerians, as well as establishing an institutional framework by establishing the Nigerian Immigration Service (NIS) ⁷⁴

The Act regulates migration by addressing certain migration infractions using administrative measures, that is, measures that are non penal in character. It uses measures that are corrective rather than punitive. For example, it condemns certain infractions by refusal of entry, cancellation of visa, deportation, fees for regularization of status, etc.

It regulates the powers of immigration officers, and sets out the rights and responsibilities of migrants, including penalties for violations. The Act provides for entry requirements. It requires a non-Nigerian to enter Nigeria with valid travel documents and visas ⁷⁵so long as such immigrant is not a prohibited immigrant or pose a risk to public health or interest or security. It permits an immigration officer stationed at a port of entry to admit into Nigeria any person who is in possession of a valid passport or such other approved travel document. Section 19 gives an immigration officer the power to refuse entry into Nigeria any person who is not a citizen of Nigeria, if the person concerned is a prohibited immigrant; where a visa is required and such person has no valid visa or where a resident or other permit is required as a condition of entry and it has not been obtained or on the advice of a medical

⁷³ The Nigerian Immigration Act (No.8) 2015

⁷⁴ Sections 2 and 3, Immigration Act, 2015.

⁷⁵ Section 18, Immigration Act, 2015

inspector it is undesirable for medical reasons to admit such person.⁷⁶ Non-Nigerian citizens who are desirous of entering Nigeria for the purpose of residence, can be issued residence permit, upon supplying such information as the Director of Immigration may require.⁷⁷ Where a person fails to provide or show that he possesses a valid travel document or visa, the Act provides for such faults to be handled, not as a criminal offence but as an administrative infraction. Section 19(6) treats such situations as merely administrative. The penalty is refusal or denial of entry into Nigeria.

However, not all immigration offences are handled administratively. Some immigration are criminalized.

Section 12(1) provides that any person not being a Nigerian citizen who has, holds or is in possession of any Nigerian passport commits an offence. Such offender is liable on conviction to seven (7) years imprisonment or a fine of two (2) million naira.⁷⁸ And such a person may be deported also.⁷⁹ Similarly, any person who unlawfully assists a non-Nigerian to procure or be in possession of a Nigerian passport, commits an offence and is liable on conviction to seven (7) years imprisonment and a fine of two (2) million naira.⁸⁰

Also, section 36 (1) of the Act provides that no person other than Nigerian citizens can accept employment⁸¹ or on their own account or in partnership with any other person, practice a profession or establish a trade without the consent in writing of the Director of Immigration.⁸² This implies that any non Nigerian desiring to enter Nigeria for the purpose of being employed or to establish a business either personally or in conjunction with others, shall obtain the consent in writing of the Director of Immigration. Failure to obtain prior consent shall be construed as an offence. The person if found guilty, is liable on conviction to a fine

⁷⁶ Section 19 (6) (a-d), Immigration Act, 2015.

⁷⁷ Section 37, Immigration Act, 2015.

⁷⁸ Section 12(3) Immigration Act, 2015

⁷⁹ Section 12(5) Immigration Act, 2015

⁸⁰ Section 12(4) Immigration Act, 2015

⁸¹ Section 36 (1) (a), Immigration Act, 2015

⁸² Section 36 (1) (b), Immigration Act, 2015

of N1,000,000.00 (one million naira) or deportation or both as a prohibited immigrant.⁸³ The Act is generally lenient towards aliens who wish to enter Nigeria, so long as they have the required conditions.

However, in order to balance the rights of migrants with national interest, especially as regards security and sustenance, the Act provides for a category of persons considered ‘Prohibited Immigrants’.⁸⁴ A prohibited immigrant is any foreigner who is liable to be refused entry into Nigeria or if already in Nigeria, is liable to be deported because of failure to meet certain requirements.⁸⁵ Such persons include persons without visible means of support who are likely to become a burden on public funds, mentally ill persons⁸⁶, persons trafficking in persons or smuggling migrants,⁸⁷ persons convicted of extradition crime in any country,⁸⁸ persons considered dangerous to national security, any⁸⁹ person against whom there is a deportation order,⁹⁰ a person without a valid passport,⁹¹ or any person who is a prostitute or who trades in prostitutes or is a procurer.⁹² A prohibited immigrant found guilty shall be liable on conviction to 10 years imprisonment.⁹³ In addition to the prison term, the person, after serving the jail term shall be deported.⁹⁴

It is unfortunate that the Act groups together as ‘prohibited immigrants’ such serious offenders like persons trafficking in persons or migrants smugglers and those who simply do not possess a valid passport⁹⁵ and provides the same penalty for them. The requirement of a valid passport is a border control safeguard which allows the State to ensure that everyone

⁸³ Section 36 (2), Immigration Act, 2015

⁸⁴ Section 44(1), Immigration Act, 2015

⁸⁵ Section 44 (1),(a), Immigration Act, 2015

⁸⁶ Section 44(1),(b), Immigration Act, 2015⁸⁶

⁸⁷ Section 44 (1) (c), Immigration Act, 2015

⁸⁸ Section 44 (1) (d), Immigration Act, 2015

⁸⁹ Section 44(1)(e), Immigration Act, 2015

⁹⁰ Section 44(1)(f), Immigration Act, 2015

⁹¹ Section 44(1)(g), Immigration Act, 2015

⁹² Section 44(1)(h), Immigration Act, 2015.

⁹³ Section 44(1), Immigration Act, 2015

⁹⁴ Section 44(2), Immigration Act, 2015

⁹⁵ Article 31 Refugee Convention, 1951

entering Nigeria is properly identified and screened. This helps in preventing unlawful entry, smuggling, trafficking, and security risks but the provision does not distinguish between a person deliberately evading border control (e.g., smugglers, traffickers), and a vulnerable migrant or asylum seeker who genuinely cannot obtain travel documents such as refugees fleeing persecution or stateless persons. By treating *anyone without a valid passport* as a *prohibited immigrant*, the law risks criminalizing migration status alone, not conduct. International law discourages punishing refugees for illegal entry if they come directly from persecution and present themselves without delay. Nigeria, being a party to these conventions, is expected to align with this requirement. Section 44(1)(g), however, is silent on exceptions for such cases.

Section 44 (3) gives the Minister the power to include, if he deems it conducive to public interest, any other class of persons, so long as such prohibited immigrants are not Nigerians. It is interesting to note that the combined effect of S.14 (2)(e) which prohibits the deportation of a Nigerian citizen and S. 44(3), Immigration Act, 2015 means that Nigerians cannot be deported from their own country whether or not their acts contravene any of the provisions of the Immigration Act.

The case of *Shugaba v Minister of Internal Affairs* is illustrative. In 1980, Alhaji Abdurrahman Shugaba Darman, Majority Leader of the Borno State House of Assembly, was wrongfully declared a “prohibited immigrant” and deported from Nigeria to Chad. The deportation order was premised on the claim that his father had migrated from Chad into Nigeria in 1911, even though his mother was a Nigerian and he himself was born in Nigeria. The High Court and eventually the Supreme Court held that the deportation was unconstitutional. Under the Constitution of the Federal Republic of Nigeria, 1979 (then in force), a person is a Nigerian citizen by birth if either parent or grandparent belongs or

belonged to a community indigenous to Nigeria.⁹⁶ This provision clearly covered Shugaba, since his mother was Nigerian and he was an indigene of a Nigerian community. The Court therefore ruled that his deportation was unlawful, null and void, and emphasized the principle that no Nigerian citizen can be expelled or deported from Nigeria. He was awarded damages of N350,000 (Three hundred and fifty thousand naira) for the violation of his rights to liberty and freedom of movement.⁹⁷

Section 57(5) provides penalties for persons who remain in Nigeria after the expiration of their permit or visa.

“Any expatriate person who fails, neglects or refuses to apply for the (a) regularization of stay in Nigeria within the stipulated period of three months, (b) renewal of his business, Transit, Visitors Pass or Temporary Work Permit (TWP) after expiration; or (c) renewal of his residence permit within 30 days after its expiration, shall be guilty of an offence and shall be liable to imprisonment for a term of three (3) years or a fine of five hundred thousand naira (N500,000) only.”

On one hand, the State’s interest in migration control and national security justifies requiring migrants to keep their documents in order. On the other hand, this provision directly criminalizes irregular status, which may end up punishing migrants whose irregularity could result from systemic barriers such as delays, bureaucracy, inability to pay high fees, or being compelled to flee persecution. Penalty of imprisonment equates “being irregular” with “being a criminal.”

No doubt, the Act rightly criminalizes acts that harm society such as passport forgery, trafficking etc, but it also criminalizes mere status issues like no valid passport, overstaying

⁹⁶ Section 25 (1) (a) – (c) of the 1999 Constitution, as amended, carries forward the same principle.

⁹⁷ *Shugaba v Minister of Internal Affairs* [1982] 3 NCLR 915.

visas, failing to regularize stay etc without distinguishing between those who are genuine security threats, and those who are simply irregular due to vulnerability, systemic failures, or inability to secure documents. While these provisions aim to deter unlawful migration, they in practice criminalize irregular migrants who pose no threat to national security and who may, in fact, be entitled to protection under international law.⁹⁸ Thus, the Act embodies both necessary safeguards for national interest and problematic elements that risk conflating migration status with criminality.

For a rights-sensitive migration regime, it is essential to distinguish between migrants who engage in criminal acts (such as forgery, trafficking, or smuggling) and migrants whose irregularity is purely administrative. Nigeria's legal framework would be strengthened by ensuring that the latter are not penalized solely for their lack of documentation, but are instead processed through administrative and humanitarian procedures that align with its constitutional obligations and international commitments.

3.2.2. IMMIGRATION REGULATIONS 2017

The Immigration Act, 2015 is the primary legislation passed by the National Assembly. Section 112 of the Immigration Act, 2015 gives the Minister of Interior the power to make regulations “for the purpose of giving effect to the provisions of this Act.” Based on this authority, the Immigration Regulations 2017 were issued.

The Regulations are designed to give practical effect to the provisions of the main Act by detailing how those provisions should be implemented in everyday situations. These regulations are crucial for ensuring that implementation of the Act is consistent with international human rights standards.

⁹⁸ Article 31, Convention Relating to the Status of Refugees, 1951

The Immigration Regulations 2017 outlines key actions or omissions constituting irregular migration under Nigerian law. It provides a detailed framework for sanctioning various immigration-related offences such as:

- [illegible]

46

intentionally procures or possesses a fraudulent travel or identity document to enable the smuggling of a migrant, commits an offence and is liable on conviction or a fine of not less than one million naira or both.¹⁰¹ It further provides that the offender shall in addition return to the smuggled migrant all monies obtained from him in the course of the commission of the offence.¹⁰² Aggravated offences, for instance, where life was endangered or organized crime is involved attract up to 12 years' imprisonment and ₦2 million fine or both¹⁰³ and the fact that a smuggled migrant consented is not a defence.¹⁰⁴

3. Obstruction of Justice: Anyone who obstructs justice by any form of interference with investigations commits an offence that carries a penalty of 14 years' imprisonment or ₦2 million fine, and asset forfeiture.¹⁰⁵

4. Corporate Non-compliance with Expatriate Quotas: Regulation 52, among other provisions, mandates that corporate bodies must engage two Nigerian understudies per expatriate position. Besides, failure to renew their expatriate quota, submit monthly expatriate returns, or employ required understudies, attracts a fine of ₦3 million per month and may result in deportation of the expatriate.¹⁰⁶

5. Warrantless Arrests by Immigration Officers: The Immigration Regulation empowers immigration officers to arrest without warrant any person whom they reasonably suspect of committing an offence under the Act or Regulations.¹⁰⁷

¹⁰¹ Section 56(1) Immigration Regulation, 2017

¹⁰² Section 56(1)(a) Immigration Regulation, 2017

¹⁰³ Regulations 56 (2), Immigration Regulations, 2017

¹⁰⁴ Section 62 Immigration Regulation, 2017

¹⁰⁵ Regulation 61, Immigration Regulation, 2017

¹⁰⁶ Regulation 52 (7)(8), Immigration Regulation, 2017

¹⁰⁷ Regulation 34(1), Immigration Regulation 2017

Notably, not all irregular migration offences are treated as crimes. Although the Regulations make room for penalties, they also reflect a recognition that not all immigration violations warrant criminal prosecution. Scholars like Rosina¹⁰⁸ and Stumpf¹⁰⁹ warn against the expanding use of criminal law in immigration control, a trend known as crimmigration, arguing that it leads to disproportionate punishment.

3.2.3 THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 (AS AMENDED)

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) is the supreme law of the land and provides fundamental rights that apply to all persons within Nigeria's jurisdiction, regardless of nationality or immigration status. These rights serve as important legal safeguards, ensuring that the enforcement of immigration laws does not result in the violation of human dignity or the arbitrary deprivation of liberty.

Section 34 provides for the dignity of the human person, including the prohibition of torture, inhuman or degrading treatment. These provisions are particularly relevant in the context of immigration enforcement, as migrants especially those detained or subject to deportation must not be subjected to excessive force, prolonged detention, or degrading conditions. It also guarantees the right to personal liberty. The right to liberty of individuals is guaranteed and protected by both international¹¹⁰ and national instruments. The Constitution provides that no one shall be arbitrarily arrested or detained except in accordance with a procedure permitted by law.¹¹¹ This is crucial in cases where irregular migrants are detained without judicial

108 Matilde Rosina, 'Criminalising Migration: The Vicious Cycle of Insecurity and Irregularity', *Social Sciences*, 13(10), 529, 2024< [109 Juliet Stumpf, 'The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power', *American University Law Review*, Volume 56, Issue 2, Article 3, 2006.](https://www.mdpi.com/2076-0760/13/10/529#:~:text=In%20a%20narrower%20sense%2C%20however%2C%20the%20criminalisation,foreigners%27%20irregular%20entry%20and%20stay%20(Rosina%202022).&text=11)%20which%20presents%20migrants%20as%20an%20existential%20threat%20to%20the%20survival%20of%20the%20community.>, accessed 12th May, 2025</p>
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110 Article 9, International Covenant on Civil and Political Rights (ICCPR) of 1966

111 Section 35 (1) Constitution of the Federal Republic of Nigeria, 1999 9as amended)

oversight, often for administrative violations rather than criminal conduct. It aligns with the international principle that irregular presence should not, on its own, justify criminal detention.

It also enshrines the right to fair hearing, including the presumption of innocence. The presumption of innocence is explicitly recognized in the 1999 constitution as follows:

“Every person who is charged with a criminal offence shall be presumed to be innocent

until he is proved guilty.”¹¹² Accused persons must have access to legal representation.¹¹³

Migrants who are accused of immigration offences whether civil or criminal are entitled to the same legal protections as citizens. This provision underscores the need for due process when enforcing immigration measures, particularly when detention or deportation is involved.

The freedom of movement is an essential right which applies directly to citizens¹¹⁴ but raises broader issues of how mobility is regulated in relation to non-citizens. While the Constitution allows the state to regulate the movement of foreigners, such regulation must still comply with due process and human rights norms.

Discrimination based on ethnic group, place of origin, sex, religion, or other circumstances of birth is prohibited.¹¹⁵ This has implications for immigration practices that may disproportionately target certain nationalities or vulnerable groups.

Additionally, Chapter II of the Constitution outlines the Fundamental Objectives and Directive Principles of State Policy,¹¹⁶ including the promotion of equality, human dignity,

¹¹² section 36(5) Constitution of the Federal Republic of Nigeria, 1999 (as amended)

¹¹³ Section 36 CFRN1999

¹¹⁴ Section 41 CFRN1999

¹¹⁵ Section 42 CFRN1999

¹¹⁶ (Particularly Sections 14 and 17)

and social justice. Though not justiciable, these principles guide the interpretation of laws and promote a rights-based approach to governance including immigration management.

In sum, the Constitution provides a strong legal foundation for advocating a non-criminal and humane approach to irregular migration. While the state retains the right to control its borders and enforce immigration laws, such actions must be balanced with constitutional obligations to protect individual rights.

3.2.4 THE ADMINISTRATION OF CRIMINAL JUSTICE ACT (ACJA) 2015

The Administration of Criminal Justice Act (ACJA) 2015 was enacted to unify and streamline the administration of criminal justice in Nigeria. Among other objectives, it was enacted with the objective of the protection of the rights and interests of defendants, suspects, and victims.¹¹⁷ While not an immigration law per se, it plays a critical role in regulating how criminal proceedings such as those involving immigration offences are conducted. The Act ensures that all criminal prosecutions comply with the principles of due process, fairness, and human dignity, including those involving migrants.

Where irregular migration is criminalized, such as in cases involving document fraud, migrant smuggling, or aiding and abetting unlawful entry, the ACJA governs the procedure by which suspects are arrested, detained, charged, tried, or released. This ensures that even migrants accused of crimes benefit from the constitutional protections embedded in the justice system.

The ACJA, although does not have a direct provision on the presumption of innocence, affirms the presumption of innocence consistent with the Constitution.¹¹⁸ The Act requires

¹¹⁷ Section 1, Administration of Criminal Justice Act, 2015

¹¹⁸ Section 36 Constitution of the Federal Republic of Nigeria, 1999 (as amended)

that arrests must be based on reasonable suspicion, and detainees must be informed of the reason for their arrest and their right to legal representation.¹¹⁹ It mandates that detainees be arraigned promptly before a court of competent jurisdiction, preventing unlawful and prolonged detention.¹²⁰ Sections 293–299 introduce mandatory court oversight for detention beyond 48 hours, with provisions for remand orders and periodic review, offering legal protection even to non-citizens.

The ACJA therefore supports a more humane and measured approach to the enforcement of immigration laws. Rather than defaulting to incarceration, it offers legal mechanisms that enable courts to consider individual circumstances, such as a migrant's family situation, vulnerability, or reason for entry.

Scholars and legal practitioners have commended the ACJA for strengthening access to justice and limiting the arbitrary use of detention in criminal processes.¹²¹ In the migration context, its application helps mitigate the crimmigration trend, where administrative immigration breaches are punished as if they were criminal offences¹²²

Accordingly, the ACJA offers a procedural safeguard for migrants caught in the criminal justice system, ensuring that Nigeria's national security goals are not pursued at the expense of constitutional rights and international human rights obligations.

3.2.5 THE TRAFFICKING IN PERSONS (PROHIBITION) ENFORCEMENT AND ADMINISTRATION ACT 2015

¹¹⁹ Sections 6 ACJA. 2015

¹²⁰ Sections 30 ACJA 2015

¹²¹ Tariere Egbegi, 'Administration of Criminal Justice of Nigeria (ACJA) 2015; Overview of Tools for the Protection of the Rights of Women and Children,' <https://fida.org.ng/wp-content/uploads/2020/11/THE-ADMINISTRATION-OF-CRIMINAL-JUSTICE-ACT-ACJA-2015.pdf> accessed 12th May 2025

¹²² Juliet Stumpf, 'The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power,' *American University Law Review*, Vol. 56, Issue 2, 2006.

The Trafficking in Persons (Prohibition) Enforcement and Administration Act (TIPPEA) 2015, commonly known as the NAPTIP Act, is Nigeria's primary legal instrument for combating human trafficking and related transnational crimes. The Act establishes the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) and outlines offences, penalties, institutional mandates, and victim protection mechanisms. Although not an immigration law in the strict sense, it is highly relevant to irregular migration because human trafficking and migrant smuggling often overlap in practice.

Under the NAPTIP Act, several offences are defined that relate directly to irregular migration. Section 13 criminalizes the act of procuring or recruiting any person by means of deception, coercion, or abuse of vulnerability for exploitation, including illegal migration for labour or sexual purposes. It also provides for the offence of trafficking in persons, which attracts penalties ranging from 7 years to life imprisonment, depending on the severity of the case.¹²³ The Act criminalizes any person who procures the illegal entry of any person not a Nigerian citizen into Nigeria such as those involved in facilitating irregular border crossing for exploitative purposes.¹²⁴

The Act distinguishes victims of trafficking from offenders, thereby aligning with the international principle that migrants who are coerced or deceived into irregular movement should not be punished for their irregular status. This distinction reinforces the core argument that irregular migrants, particularly those pushed by economic vulnerability, should be treated with protection and assistance, not criminal penalties.

In summary, the NAPTIP Act 2015 complements Nigeria's immigration regime by targeting the exploiters rather than the migrants, reinforcing the legal and moral imperative to protect

¹²³ Section 15 NAPTIP Act, 2015.

¹²⁴ Section 26 NAPTIP Act, 2015

vulnerable individuals. It offers a rights-based approach to addressing irregular migration within the broader context of transnational crime, and should be used alongside immigration law to ensure that migrants are not wrongfully criminalized when they are in fact victims of trafficking or coercion.

3.2.6 THE CRIMINAL CODE ACT

The Criminal Code Act (Cap. C38, Laws of the Federation of Nigeria 2004) is Nigeria's principal criminal legislation in the southern states. While not immigration-specific, it is relevant to irregular migration in several ways, especially in defining and punishing offences that often occur in the context of irregular migration, such as document forgery, human smuggling, and harbouring offenders.

Several provisions of the Code are commonly invoked in cases involving irregular migrants, particularly when their conduct (or that of their facilitators) involves deception, violence, or fraud.

Sections 463–467 criminalize forgery, alteration, and uttering of false documents, including immigration documents, passports, visas, and permits. These offences are punishable by up to 14 years' imprisonment. It also punishes acts of conspiracy to commit a felony, which can include facilitating illegal entry or forging documents for the purpose of irregular migration.¹²⁵ It defines and punishes obtaining property by false pretence, often used in cases where migrants or traffickers fraudulently obtain travel or work authorizations.¹²⁶ It further criminalize various forms of assault and unlawful confinement, which may be relevant where

¹²⁵ Section 518 Criminal Code Act, 2004

¹²⁶ Section 371 Criminal Code Act, 2004

irregular migrants are subjected to inhumane treatment by traffickers, smugglers, or corrupt officials.¹²⁷

However, it is important to emphasize that the Code primarily targets criminal acts rather than status-based violations. As such, irregular migration per se, such as overstaying a visa or entering without documentation, is not criminalized under the Criminal Code, unless accompanied by aggravating factors like fraud or violence.

This distinction supports a measured enforcement approach. Migrants should not be prosecuted under the Criminal Code simply for being undocumented, but rather only when they engage in conduct that violates the broader criminal laws of the country. This reinforces the principle that irregular migration should attract proportionate, administrative penalties unless it overlaps with recognized criminal conduct.

In this regard, the Criminal Code complements the Immigration Act and NAPTIP Act, ensuring that serious criminal elements of irregular migration, such as trafficking, fraud, and exploitation, are sanctioned, while leaving room for non-criminal, human-rights-sensitive handling of status-related issues.

3.3 INTERNATIONAL LEGAL FRAMEWORK

Migration is not just a national issue. It is also governed by international rules and standards that aim to protect the rights and dignity of all people, including migrants. These international laws are created through agreements between countries and through the work of global and regional organizations such as the United Nations (UN) and the African Union (AU).

¹²⁷ Section 365-368 Criminal Code Act, 2004.

Nigeria has signed and ratified several important international treaties and conventions that protect human rights, including the rights of migrants. By signing these treaties, Nigeria has promised to respect and protect the rights of all people within its borders, including migrants. This means Nigerian laws and practices should follow the standards set by these international agreements.

However, in practice, there are challenges. Migrants in Nigeria, especially those without proper documents often face discrimination, poor living conditions, lack of access to justice, and in some cases, unlawful detention or deportation. These actions go against the international human rights standards that Nigeria has agreed to follow.

This section will examine how Nigeria's laws and actions measure up to its international human rights commitments and identify where improvements are needed to ensure the protection of all migrants, regardless of their legal status.

3.3.1 THE 1951 REFUGEE CONVENTION AND RELATING TO THE STATUS OF REFUGEES AND ITS 1967 PROTOCOL

The 1951 Refugee Convention,¹²⁸ is the main international treaty that defines who a refugee is and outlines the rights of refugees, as well as the duties of countries that host them. It was later expanded by the 1967 Protocol,¹²⁹ which removed earlier geographical and time limits contained in the 1951 Convention.

The 1951 Convention contains a number of rights and also highlights the obligations of refugees towards their host country. The cornerstone of the 1951 Convention is the principle of non-refoulement.¹³⁰ According to this principle, a refugee should not be returned to a

128 UNHRC, 'The 1951 Refugee Convention' <<https://www.unhcr.org/about-unhcr/overview/1951-refugee-convention>> accessed 2nd July, 2025

129 *ibid*

130 Article 33, Refugee Convention Relating to the Status of Refugees, 1951

country where he or she faces serious threats to their life or freedom. This protection, however, may not be claimed by refugees who are reasonably regarded as a danger to the security of the country or, having been convicted of a particularly serious crime, and are thus considered a danger to the community.

Other rights contained in the 1951 Convention include the right not to be expelled, except under certain, strictly defined conditions;¹³¹ the right not to be punished for illegal entry into the territory of a contracting State;¹³² the right to work;¹³³ the right to housing and education;¹³⁴ the right to access the courts;¹³⁵ the right to freedom of movement within the territory;¹³⁶ the right to be issued identity and travel documents¹³⁷ among other rights. Some basic rights, including the right to be protected from refoulement, apply to all refugees. A refugee becomes entitled to other rights the longer they remain in the host country, which is based on the recognition that the longer they remain as refugees, the more rights they need. These limits initially restricted the Convention to persons who became refugees due to events occurring in Europe before 1 January 1951. Refugees, on the other hand, are required to abide by the laws and regulations of their country of asylum and respect measures taken for the maintenance of public order. The 1967 Protocol broadens the applicability of the 1951 Convention by removing the geographical and time limits that were part of the 1951 Convention.

Nigeria is a signatory to both the 1951 Convention and the 1967 Protocol, which means it has agreed to follow the rules and responsibilities stated in these documents. One of the most important principles of the Convention is non-refoulement. Nigeria must not return a refugee

131 Article 32, Convention Relating to the Status of Refugees, 1951

132 Article 3, Convention Relating to the Status of Refugees, 1951

133 Articles 17 to 19, Convention Relating to the Status of Refugees, 1951

134 Article 21 and 22, Convention Relating to the Status of Refugees, 1951

135 Article 16, Convention Relating to the Status of Refugees, 1951

136 Article 26, Convention Relating to the Status of Refugees, 1951

137 Articles 27 and 28, Convention Relating to the Status of Refugees, 1951

or asylum seeker to a place where their life or freedom would be at risk. It also specifically provides for the protection of irregular migrants, that is, Refugees who are unlawfully in the country of a contrasting state:

*“The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence”.*¹³⁸

Article 31(1) protects asylum seekers who enter a country irregularly (e.g., without a visa or passport) from being punished, as long as they act in good faith and promptly seek asylum. This is crucial because many refugees are forced to flee urgently and may not have time to obtain travel documents.

Nigeria has made efforts to comply with the Convention through its National Commission for Refugees, Migrants and Internally Displaced Persons (NCFRMI).¹³⁹ This agency is responsible for coordinating refugee protection and working with international organizations like the United Nations High Commissioner for Refugees (UNHCR).

While Nigeria has signed the necessary treaties and created institutions, there are still challenges in fully protecting asylum seekers and refugees. Challenges include delays in processing asylum claims, limited access to legal support and interpreters, poor living conditions in refugee camps or urban settlements, risk of being detained or deported, etc.

¹³⁸ Article 31, Convention Relating to the Status of Refugees, 1951

¹³⁹ NCFRMI, formerly known as the National Commission for Refugees (NCFR), an agency established by Decree 52 of 1989 now Cap. N21, Laws of the Federation of Nigeria, 2004 (NCFRMI Act) was established by the Federal Government of Nigeria to fulfil the United Nations General Assembly Resolution 319(IV) under Article 35 of the United Nations 1951 Convention.

By signing the 1951 Refugee Convention, Nigeria has shown its commitment to protecting people fleeing danger. However, more must be done to ensure that asylum seekers are treated fairly and that their rights are fully respected in practice, not just on paper.

3.3.2 INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES (1990)

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families¹⁴⁰ was adopted by the United Nations in 1990 and came into force in 2003. It is the most comprehensive international treaty that deals with the rights of migrant workers and their families, regardless of whether their migration status is regular (legal) or irregular (undocumented). The primary objective of the Convention is to foster respect for migrants' human rights. Migrants are not only workers, they are also human beings. The Convention does not create new rights for migrants but aims at guaranteeing equality of treatment, and the same working conditions, including in case of temporary work, for migrants and nationals. Its aim is to provide migrants with a minimum degree of protection. It recognizes that regular migrants have the legitimacy to claim more rights than irregular immigrants, but it stresses that irregular migrants must see their fundamental human rights respected, like all human beings.

Nigeria is a State Party to this Convention, having ratified it in 2009. This means Nigeria has agreed to respect, protect, and fulfil the rights guaranteed in the Convention for all migrant workers within its territory, including Nigerians working abroad and foreign nationals working in Nigeria.

¹⁴⁰ The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, UNHR <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers>>, accessed 2nd July, 2025

The Convention sets out rights for all migrant workers, whether they are documented or undocumented. It provides for equal treatment of migrants and with nationals in terms of wages, working conditions, and social security;¹⁴¹ right to life, liberty, and security;¹⁴² protection from torture, cruel, inhuman, or degrading treatment;¹⁴³ freedom from arbitrary arrest or detention;¹⁴⁴ right to due process and fair trial.¹⁴⁵

For documented migrants, the Convention also guarantees the right to form and join trade unions;¹⁴⁶ the right to participate in cultural life and access education¹⁴⁷ freedom of movement within the country of employment.¹⁴⁸

By ratifying the Migrant Workers' Convention, Nigeria is expected to treat migrant workers and their families fairly and without discrimination, ensure their rights are protected under Nigerian law and practice, provide legal remedies and complaint mechanisms for abused or exploited migrant workers and especially avoid criminalizing migrants solely for being undocumented, among other obligations.

Despite ratifying the Convention, implementation in Nigeria faces several obstacles such as weak enforcement of labour laws for migrant workers, poor conditions in detention centres for undocumented migrants, lack of coordination among migration-related institutions, etc.

Nigeria has taken a positive step by ratifying the treaty, but stronger efforts are needed to make sure these rights are respected in practice.

¹⁴¹ Article 25, UN Convention on Migrant Workers' Rights, 1990

¹⁴² Article 9, UN Convention on Migrant Workers' Rights, 1990

¹⁴³ Article 10, UN Convention on Migrant Workers' Rights 1990

¹⁴⁴ Article 16, UN Convention on Migrant Workers' Rights, 1990

¹⁴⁵ Articles 16 and 18, UN Convention on Migrant Workers' Rights, 1990.

¹⁴⁶ Article 26, UN Convention on Migrant Workers' Rights (1990)

¹⁴⁷ Articles 43 and 45, UN Convention on Migrant Workers' Rights (1990);

¹⁴⁸ Article 39, UN Convention on Migrant Workers' Rights (1990).

3.4 REGIONAL LEGAL FRAMEWORK

This section will look at 2 main legal frameworks – The ECOWAS Free Movement Protocols, 1979 and the African Charter on Human and Peoples’ Rights (ACHPR) 1981.

3.4.1 ECOWAS FREE MOVEMENT PROTOCOLS AND NIGERIA’S OBLIGATIONS

The Economic Community of West African States (ECOWAS) is a regional organization made up of 15 West African countries, including Nigeria. One of its main goals is to promote regional integration by allowing the free movement of people, goods, and services across member states.¹⁴⁹

To achieve this, ECOWAS introduced a series of Free Movement Protocols, starting with the 1979 Protocol on Free Movement of Persons, Residence and Establishment. These protocols aim to allow citizens of member states to travel, live, and work freely within the ECOWAS region without needing a visa.

The protocols were designed to be implemented in three main phases. Phase 1 is aimed to give the Right of Entry to citizens of ECOWAS countries to enter any other member state without a visa for up to 90 days. They must travel with a valid travel document such as a passport or ECOWAS identity card. They may be refused entry only on grounds of public order, security, or health. Phase II gives Right of Residence which means that ECOWAS citizens can live in another member state to take up paid employment. They must obtain a residence permit but should not face discrimination. And lastly, Right of Establishment Phase

149 A.J Akperan, and S.G Kayode., ‘The role of Economic Community of West African States (ECOWAS) in promoting borderless trade in West Africa’. (2010) *CBN*

Bullion, 34(4), 31-40 <https://dc.cbn.gov.ng/cgi/viewcontent.cgi?article=1282&context=bullion>, accessed 3rd July, 2025.

III provides that citizens can set up businesses or self-employment activities in any ECOWAS country under the same conditions as nationals.

At the end of 2006, there were approximately 261,800 refugees in West Africa, including approximately 117,000 from Liberia and 18,000 from Sierra Leone.¹⁵⁰ Though ECOWAS citizens, toleration of the residence of these individuals in their host countries, whether in refugee camps, in rural communities or dispersed in urban settings, often depended upon their status as refugees. Fuller implementation of the ECOWAS protocol, particularly its Phase II dealing with residence, would entitle all citizens of West African member states willing and able to work, including refugees, to secure residence and the right to seek and carry out such work.¹⁵¹

As a founding member and one of the largest countries in ECOWAS, Nigeria plays a major role in implementing the Free Movement Protocols. Nigeria is expected to allow visa-free entry for ECOWAS citizens, issue residence permits to ECOWAS nationals who want to live and work in Nigeria, protect the rights of ECOWAS citizens from discrimination or abuse, promote regional cooperation in migration management and border control, among other obligations.

150 UNHCR. 2006 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons. Division of Operational Services, Field Information and Coordination Support Section, June 2007< https://www.meltingpot.org/app/uploads/2007/08/2006_global_trends.pdf>, accessed 2nd July, 2025

151 Article 2 of the 1986 Supplementary Protocol A/SP.1/7/86 on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment obliges member states to “grant to citizens of the Community, who are nationals of other Member States, the right of residence in its territory for the purpose of seeking and carrying out income earning employment

However, despite the legal commitment, there are several challenges in implementing the ECOWAS Free Movement Protocols as there are recorded cases of harassment and extortion by border officials and police,¹⁵²

detention and deportation of ECOWAS citizens without due process,¹⁵³ lack of awareness among migrants and authorities about the rights provided by the protocols, security concerns, including terrorism which have led to tighter border controls.

While the Free Movement Protocol is meant to reduce irregular migration within West Africa, some migrants still end up in irregular situations either due to lack of documents, overstaying, or informal employment. Nigeria must balance security concerns with its obligation to respect the rights of ECOWAS citizens under regional law.

3.4.2 THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS (ACHPR) 1981

The African Charter on Human and Peoples' Rights (ACHPR), also known as the Banjul Charter, is a key regional human rights treaty adopted by the Organization of African Unity (OAU), now the African Union (AU) in 1981, and it entered into force in 1986.¹⁵⁴

152 IOM Regional Office for West and Central Africa, 'ECOWAS, IOM Launch Cross-Border Campaign to Promote Use of Travel Documents, Tackle Human Trafficking in Nigeria, Togo and Benin', 2019 <

benin#:~:text=The%20cross%2Dborder%20meetings%20with%20over%20300%20Nigerian%2C,borders%20during%20a%20roundtable%20discussion%20in%20Lagos.>," data-bbox="114 786 876 826"/>
accessed 3rd July, 2025

153 Samuel Fury Childs Daly, 'Ghana Must Go: Nativism and the Politics of Expulsion in West Africa, 1969–1985', *Past & Present*, Volume 259, Issue 1, May 2023, Pages 229–261, <<https://academic.oup.com/past/article/259/1/229/6652271?login=false>>, accessed 3rd July, 2025

154 African Charter on Human and Peoples' Rights
<<https://adssdatabase.ohchr.org/IssueLibrary/AFRICAN%20COMMISSION%20ON%20HUMAN%20AND%20PEOPLES%27%20RIGHTS.pdf>>, accessed 3rd July, 2025.

Nigeria as a dualist state views international and domestic law as separate systems, requiring international law to be specifically incorporated into domestic law before it can be applied by national courts. Nigerian Constitution provides that an international treaty not domesticated cannot have the force of law in Nigeria.¹⁵⁵ This position was aptly expressed by the court in the case of *Abacha v Fawehinmi*¹⁵⁶ where the Nigerian Supreme Court held that international treaties can only have the force of law if ratified and domesticated by Nigeria and must therefore be enforced by Nigerian courts.

Thankfully, Nigeria is one of the few African countries where the ACHPR has been domesticated through national legislation. Courts in Nigeria have relied on the Charter to protect non-nationals, especially when Nigerian laws are silent or unclear.

Nigeria ratified the Charter in 1983, and it is part of Nigerian law.¹⁵⁷ This means that the Charter has the force of law in Nigeria and can be directly enforced in Nigerian courts. In the celebrated case of *Gbemre v. Shell Petroleum Development Company Nigeria Limited and 2 others (SPDC)*,¹⁵⁸ the Plaintiff relied on the provisions of the ACHPR, particularly article 24 that provides for peoples' right to the environment and he contended that this right has been breached by the Defendant's gas flaring activities in the Plaintiffs' community. The court held that the plaintiff was right to have relied on the provisions of the ACHPR being which is a domesticated international treaty, and therefore has the force of law in Nigeria. Though this case is centred on Article 24 of the ACHPR, it however gives credence to the fact that other Articles of the Charter can also be enforced in Nigerian courts.

¹⁵⁵ Section 12 (1), Constitution of the Federal Republic of Nigeria, 1999 (as amended)

¹⁵⁶ *Abacha v Fawehinmi* [2000] NGSC 2, (S.C. 45/1997)

¹⁵⁷ It became part of Nigerian law through the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap A9, LFN 2004.

¹⁵⁸ *Gbemre v. Shell Petroleum Development Company Nigeria Limited and 2 others (SPDC)* FHC/B/CS/53/05, 2005 <<https://climatecasechart.com/non-us-case/gbemre-v-shell-petroleum-development-company-of-nigeria-ltd-et-al/>>, accessed 3rd July, 2025

Although the Charter does not focus exclusively on migrants or refugees, it contains broad human rights protections that apply to everyone, including non-citizens and these rights include right to equality and non-discrimination;¹⁵⁹ right to life and personal liberty¹⁶⁰; right to fair trial and legal protection,¹⁶¹ right to freedom of movement,¹⁶² right to seek asylum¹⁶³, prohibition of mass expulsion of non-nationals¹⁶⁴, right to dignity and protection from torture or inhuman treatment,¹⁶⁵ right to work under equitable conditions.¹⁶⁶

As a State Party to the ACHPR, Nigeria is legally bound to respect, protect, promote, and fulfill the rights in the Charter for all persons within its jurisdiction, including migrants, irrespective of whether they are regular or irregular immigrants, avoid discriminatory practices, arbitrary detention, and unlawful deportations, provide effective legal remedies when these rights are violated, prevent and investigate abuse against foreign nationals (e.g., torture, extortion, or forced deportation), uphold due process for migrants in immigration or criminal proceedings.

Nigeria, as both a signatory and enforcer of the Charter, has a clear obligation to apply its principles when dealing with all persons, regardless of nationality or migration status.

3.5 INSTITUTIONAL FRAMEWORK IN NIGERIA

Nigeria's response to irregular migration involves a network of institutions whose mandates span immigration control, protection of vulnerable groups, enforcement of criminal laws, and

¹⁵⁹ Article 2 ACHPR, 1981

¹⁶⁰ Articles 4 & 6 ACHPR, 1981

¹⁶¹ Article 7 ACHPR, 1981

¹⁶² Article 12 ACHPR, 1981

¹⁶³ Article 12(3) ACHPR, 1981

¹⁶⁴ Article 12(5) ACHPR, 1981

¹⁶⁵ Article 5 ACHPR, 1981

¹⁶⁶ Article 15, ACHPR

coordination with international partners. This section evaluates the legal powers, responsibilities, and practical challenges of the major agencies involved, focusing on their relevance to irregular migration.

3.5.1 NIGERIA IMMIGRATION SERVICE (NIS)

The Nigerian Immigration Service (NIS), is an Agency under the Federal Ministry of Interior, and is charged with the responsibility of regulating and approving the immigration and emigration of expatriates as well as granting visas and entry permits into Nigeria. According to Onyeaku, quoting Bisi Adeyemi, he mentioned that:

‘the mandate of the NIS is hinged on the tripod necessity of advancing the security wellbeing of the citizenry, enhancing the in-flow of requisite skills and know-how required to drive the Nigerian economy as well as preventing indiscriminate employment of under-qualified immigrants with its attendant negative consequences’.¹⁶⁷

The Nigerian Immigration Service (NIS) is constitutionally mandated to regulate the entry, residence, and exit of non-citizens. The Act mandates that individuals entering or exiting Nigeria must undergo examination by an immigration officer.¹⁶⁸ Based on the information obtained during this process, the officer has the authority to deny entry to any non-Nigerian citizen when appropriate. This was the court’s decision in the case of *Awolowo v Minister of Internal Affairs*,¹⁶⁹ which centered on the interpretation of a citizen's right to legal representation, specifically concerning a foreign lawyer's ability to represent a client in a Nigerian court. The case highlighted a conflict between the constitutional right to legal representation and the existing laws regarding entry and practice for foreign lawyers in Nigeria. Ultimately, the court ruled that the right to legal representation was limited to

¹⁶⁷ Chukwuka Onyeaku, ‘Nigerian Immigration Act 2015: An Examination with the 1999 Constitution and International Human Rights and Humanitarian Law’, *NILA Journal* Vol. 1 No. 1 October, 2024

¹⁶⁸ Section 2 (1), Nigerian Immigration Act 2015

¹⁶⁹ *Awolowo v Minister of Internal Affairs*, (1963) LCN/1050(SC)

lawyers qualified to practice in Nigeria, and that a foreign lawyer's ability to represent a client in court was subject to obtaining the necessary permits and meeting other legal requirements.

Regulation 31 grants Immigration Officers the power of examination, that is, the power to inspect individuals to assess immigration compliance. It empowers them to demand particulars from immigrants, for instance, identity, status, or documentation.¹⁷⁰ It also grants them the power to search individuals and premises.¹⁷¹

These sections are critical for tackling irregular migration because they enable officers to identify, detain, and take legal action against unauthorized entrants or those violating visa conditions.

Nonetheless, The *Immigration Act 2015* and the *Immigration Regulations 2017* collectively confer broad and far-reaching enforcement powers on immigration officers in Nigeria. While these powers are justified on grounds of national security, border protection, and migration management, their expansive and weakly supervised nature raises serious human rights concerns. In practice, they create fertile ground for arbitrary arrest, abuse of discretion, and the criminalization of migrants based solely on their status rather than their conduct. While immigration control is traditionally classified as an administrative function, the nature and extent of powers conferred on immigration officers under the *Immigration Act, 2015* and the *Immigration Regulations, 2017* reveal a significant drift towards criminal law enforcement mechanisms. For example, Regulation 34 grants Immigration Officers the power to Arrest without warrant on mere suspicion:

¹⁷⁰ Regulation 32, *Immigration Regulations 2017*.

¹⁷¹ Regulation 35, *Immigration Regulations 2017*

“An Immigration Officer may arrest, without warrant, any immigrant found committing an offence, or whom he reasonably suspects of having committed an offence, under the Act or these Regulations.”¹⁷²

The legal threshold of *mere “reasonable suspicion”* is vague, subjective, and largely left to the personal judgment of individual officers in the field. There is no statutory requirement for judicial oversight or clear guidelines defining what qualifies as reasonable grounds. This places migrants at the mercy of discretionary power rather than rule-of-law safeguards.

Another implication of Regulation 34 is that it grants Immigration Officers street policing powers. Originally, immigration control was conceived as a border function. However, with these provisions, immigration officers are effectively granted policing powers within the interior of the country, enabling them to stop, question, and arrest persons based on perceived foreignness. This risks the emergence of profiling practices, particularly against ECOWAS nationals, informal workers, or undocumented migrants, who may be treated as offenders without committing any harmful act.

While the law frames these interventions as *administrative enforcement*, the effect is punitive. A migrant who lacks valid documents, even if caused by poverty, bureaucratic delay, flight from danger, or systemic exclusion, may be arrested like a criminal, detained, and subjected to prosecution or deportation procedures. Thus, irregular migration status becomes implicitly criminalized, despite being, in essence, an administrative issue.

This approach fails to distinguish between high-risk individuals such as smugglers, traffickers, or genuine security threats and low-risk or vulnerable migrants such as those fleeing persecution, victims of trafficking, or overstayers due to hardship. The result is a system that

¹⁷² Regulation 34, Immigration Regulation 2017

polices status rather than conduct, contrary to the human rights principle that punishment should be based on harmful actions, not mere existence outside bureaucracy.

3.5.2 NATIONAL COMMISSION FOR REFUGEES, MIGRANTS AND INTERNALLY DISPLACED PERSONS (NCFRMI)

The NCFRMI, originally established by Decree No. 52 of 1989 and now governed by the NCFRMI Act, 2022 is the central coordinating body for migration, asylum, and internal displacement in Nigeria. The Commission is mandated to provide protection and assistance to refugees, asylum seekers, and stateless persons, coordinate migration-related interventions with local and international partners, advise the government on refugee and migration issues, among other functions.

Though not a law enforcement agency, NCFRMI's role is critical in ensuring that irregular migrants, particularly those with humanitarian claims, are not subjected to criminal penalties contrary to international standards.

The NCFRMI operates in collaboration with bodies such as UNHCR, IOM, and ECOWAS to conduct refugee status determination, coordinate voluntary return and reintegration, provide temporary shelter and legal aid to vulnerable migrants.

NCFRMI is grossly underfunded and lacks the political clout necessary to counterbalance the securitized approach of other migration enforcement agencies.¹⁷³ It also lacks adequate capacity. There is the need for stronger legislative backing and clearer mechanisms for the Commission to intervene in cases of arbitrary detention or deportation of irregular migrants.

173 Mina Margaret Ogbanga, 'A National Response to Global Challenge: The Importance of Establishing a National Commission for Refugees, Migrants, and IDPs', *Journal for Studies in Management and Planning*, 2024, <https://www.researchgate.net/publication/385700496>, accessed 15th October, 2025

Without adequate capacity and autonomy, NCFRMI is unable to fully implement Nigeria's international obligations under the Refugee Convention and the African Charter.

3.5.3 NATIONAL AGENCY FOR THE PROHIBITION OF TRAFFICKING IN PERSONS (NAPTIP)

Nigeria is a significant country in terms of anti-trafficking work, with a larger number of emigrants and trafficked persons compared with other countries on the African continent.¹⁷⁴ In order to curb the incidence of human trafficking, the Trafficking in Persons (Prohibition) Enforcement and Administration Act (TIPPEA) first enacted in 2003 and later repealed and re-enacted as the TIPPEA Act, 2015. The TIPPEA Act established the National Agency for the Prohibition of Trafficking in Persons (NAPTIP), Nigeria's primary institution for combating human trafficking and related transnational crimes.¹⁷⁵

Its functions, among others, include adopting effective measures for the prevention and eradication of trafficking in persons and related offences.¹⁷⁶

While its core mandate is to address human trafficking, NAPTIP's role intersects significantly with irregular migration because many instances of irregular migration in Nigeria are linked to, or result in, trafficking in persons, migrant smuggling, and exploitation. While the Nigeria Immigration Service focuses on border control and immigration compliance, NAPTIP addresses the *criminal exploitation* that often drives or exploits irregular migration flows. This dual-track approach, that is, border management handled by NIS plus human protection handled by NAPTIP is critical for ensuring that anti-trafficking efforts do not devolve into indiscriminate criminalization of all irregular migrants.

¹⁷⁴ United Nations Office on Drugs and Crime (UNODC), *Global Trafficking Patterns*, 2006, p. 22.< https://www.unodc.org/pdf/traffickinginpersons_report_2006ver2.pdf>, accessed 11th August, 2025.

¹⁷⁵ Section 2(1) TIPPEA, 2015.

¹⁷⁶ Section 5(1) TIPPEA, 2015

In collaboration with the Nigeria Immigration Service and other security agencies, NAPTIP works to screen and profile incoming travellers at airports, seaports and other land borders. When a foreign national is suspected of being trafficked into Nigeria for exploitation such as forced prostitution, organ harvesting, etc, NAPTIP rescues the person and provides temporary shelter and protection while beginning legal processes against the traffickers.

It successfully intervened in several human trafficking incidents, thanks to it, Nigeria recorded about 220 convictions between 2003 and 2014.¹⁷⁷

Unlike the punitive immigration laws, NAPTIP's approach prioritizes protection and rehabilitation of victims. It clearly distinguishes between victims and traffickers. It protects victims and brings traffickers to book. NAPTIP has been a crucial player in shifting Nigeria's focus toward victim protection in migration-related offences. However, its effectiveness is limited by overlapping mandates with the NIS and poor inter-agency coordination.

3.6 COMPARATIVE ANALYSIS OF MIGRATION LAWS IN OTHER JURISDICTIONS

In order to contextualize the Nigerian experience, it is instructive to undertake a comparative analysis with jurisdictions whose immigration system is mature and well-documented. The United Kingdom and the United States of America present an appropriate model due to their long history of migration control, and their continuing struggle to balance border security with human rights obligations. By examining their legislative framework and judicial interpretation of irregular migration, valuable lessons can be drawn on how national security can coexist with a rights-based approach to migration management.

¹⁷⁷ N M Akede, 'No Safe Haven for Human Traffickers in 2014—(NAPTIP BOSS)', press release, NAPTIP, 9 Jan 2014, retrieved 1 April 2014 <https://antitraffickingreview.org/ATR/AntiTraffickingReview_Issue3.2014.Following_the_Money.pdf>, accessed 11th August 2025

3.6.1 THE UNITED KINGDOM

The UK immigration regime is primarily governed by three key statutes namely; The Immigration Act 1971, Nationality, Immigration and Asylum Act 2002, and Immigration Act 2016. Together, these statutes form the backbone of the UK's migration control system, addressing both legal entry and the treatment of irregular migrants. While the framework aims to regulate and secure borders, several provisions have been criticized for criminalizing migrants solely based on their immigration status.

(a) Immigration Act 1971

The Immigration Act 1971 introduced the concept of “*leave to enter or remain*”, making it an offence to enter or stay in the UK without such leave. It criminalizes anyone who “knowingly enters the United Kingdom without leave” or overstays their leave. Offenders are liable on summary conviction to imprisonment for up to six months or a fine, or both.¹⁷⁸ Similarly, Section 24(1)(b) penalizes those who fail to observe conditions attached to their leave, such as restrictions on work or residence.

These provisions effectively criminalize irregular migrants not for acts of fraud or violence, but for their mere *irregular status*, a position that mirrors the tendency in Nigerian law to penalize undocumented presence.

(b) Nationality and Borders (NBA) Act 2022

Section 40 of NBA amended Section 24 of the Immigration Act 1971, which already made it an offence to enter or remain in the UK without leave. The 2022 amendment expanded the wording and increased the penalties.

¹⁷⁸ Section 24(1)(a) Immigration Act 1971.

“A person who knowingly arrives in the United Kingdom without valid entry clearance or without leave to enter commits an offence..... and is liable on conviction to imprisonment of not more than 12 months”.¹⁷⁹

This section now criminalizes irregular entry itself, not merely facilitation, document fraud, or trafficking. This means that Asylum seekers or migrants arriving by small boats *without prior entry clearance* technically commit an offence under s. 24 (as amended by s. 40 NABA 2022). This was a major policy shift from previous practice, which treated such entry mainly as an *administrative violation*. In *Rex v Ashari Mohamed & others*, for example, the Court of Appeal upheld prosecutions of Sudanese asylum seekers under sections 24(D1) and 25(1) of the Immigration Act 1971 (as amended), rejecting the argument that they could not be prosecuted for arriving without valid entry clearance.¹⁸⁰

Before 2022, and even now in practice, UK authorities often do not prosecute everyone under this section. The Crown Prosecution Service (CPS) guidance says prosecutions for illegal arrival should be “exceptional” and not used against people seeking asylum in good faith. In other words, the *law criminalizes it*, but policy discretion limits when it is enforced. Hence, scholars sometimes phrase it as “criminalization in law, but selective enforcement in practice.”

¹⁷⁹ section 40 Nationality and Borders Act 2022, which inserted new subsections into section 24 Immigration Act 1971

¹⁸⁰ *Rex v Ashari Mohamed & others* [2023] EWCA Crim 211

By end of 2024, over 450 convictions for “illegal arrival” on small boats had been recorded, including some involving children, victims of trafficking, and persons seeking safety.¹⁸¹

(c) Immigration Act 2016

The Immigration Act 2016 represents a tougher stance against irregular migration.

It introduced the offence of *illegal working*, making it a crime for anyone without proper leave to work in the UK. Conviction can lead to imprisonment of up to six months and/or an unlimited fine.¹⁸² It also criminalize landlords who rent premises to migrants without lawful status. They are liable on conviction on indictment, to imprisonment for a term not exceeding five years, to a fine or to both.¹⁸³

In *R v Patel*, the English Court of Appeal upheld the conviction of an Indian overstayer for illegal working.¹⁸⁴

However, there are judicial and policy developments that help to balance national security and interest and human rights of migrants.

In *U3 (AP) v Secretary of State for the Home Department*, the appellant, a dual British-Moroccan national, had her British citizenship revoked and was refused re-entry into the UK after traveling to Syria with her husband, alleged to have joined ISIS. She challenged the deprivation and refusal on human rights grounds, arguing that the decisions violated her and her children’s rights under Article 8 of the ECHR. The UK Supreme Court dismissed her

181 Victoria Taylor, “*I Told them the Truth*”: *New Research on the Criminalisation of People Seeking Safety in the UK*”, University of Oxford, published 2nd June, 2025.

https://www.law.ox.ac.uk/content/news/i-told-them-truth-new-research-criminalisation-people-seeking-safety-uk?utm_source=chatgpt.com, accessed 9th October 2025

182 Section 34, Immigration Act 2016.

183 Sections 39, Immigration Act 2016

184 *R v Patel* [2018] EWCA Crim 202

appeal, holding that the Home Secretary's decision was lawful and proportionate, and that national security concerns outweighed her right to family life, affirming that SIAC's limited fact-finding approach in such cases was appropriate.¹⁸⁵

UK courts have occasionally moderated the harshness of these laws by invoking human rights principles, particularly Article 8 of the European Convention on Human Rights (ECHR) which provides for the right to private and family life.

In *Chikwamba v Secretary of State for the Home Department*, the House of Lords criticized the mechanical deportation of irregular migrants who had established family life in the UK. The court emphasized that immigration control must be balanced with respect for human dignity and proportionality.¹⁸⁶

3.6.2 UNITED STATES OF AMERICA

The main immigration law in the United States is the Immigration and Nationality Act (INA) of 1952, as amended. The INA is the foundational statute governing immigration law in the U.S. It consolidated and codified earlier immigration laws. Although passed in 1952, it has been heavily amended, notably by the Immigration Reform and Control Act (IRCA) of 1986, The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, The Homeland Security Act of 2002 (which created the Department of Homeland Security and transferred most immigration enforcement to it). The INA is codified in Title 8 of the U.S. Code.

The US Immigration law makes it a misdemeanor for an alien to *enter or attempt to enter the United States at any time or place other than as designated by immigration officers*, or to

¹⁸⁵ U3 (AP) v Secretary of State for the Home Department [2025] UKSC 19

¹⁸⁶ *Chikwamba v Secretary of State for the Home Department* [2008] UKHL 40

elude inspection. First offences carry up to six months' imprisonment (longer for repeat offences).¹⁸⁷ It also criminalizes re-entry after removal.

Any alien who

(1) has been denied admission, excluded, deported, or removed or has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter

(2) enters, attempts to enter, or is at any time found in, the United States.....

shall be fined under title 18, or imprisoned not more than 2 years, or both.¹⁸⁸

In *United States v. Aldana*, the defendant, a Honduran national, was arrested near the U.S.–Mexico border and charged under 8 U.S.C. section 1325(a) for “improper entry by an alien.” The Ninth Circuit upheld the conviction, affirming that mere unauthorized entry, constitutes a criminal offence, even without any aggravating factor such as fraud or smuggling.¹⁸⁹

Policy Safeguards in the U.S. Immigration Framework

Despite the criminalization of irregular migration, the United States has adopted important policy safeguards to ensure that vulnerable migrants are not subjected to indiscriminate detention or deportation. Such policies include:

1. U-Visas and T-Visas (Trafficking Victims Protection Act – TVPA)

U-Visas are available to victims of crimes such as domestic violence, sexual assault, and exploitation, provided they cooperate with law enforcement. T-Visas protect victims of human trafficking who would face hardship or danger if removed.

These visas allow migrants to remain lawfully in the United States, access services,

¹⁸⁷ 8 U.S.C. Section 1325

¹⁸⁸ 8 U.S.C. Section 1326.

¹⁸⁹ *United States v. Aldana*, 878 F.3d 877 (9th Cir. 2017)

and eventually adjust their status. They prevent the criminalization of migrants who are themselves victims of abuse or exploitation. Also, under the Trafficking Victims Protection Act – TVPA) migrants who are victims of serious crimes or human trafficking are granted temporary legal protection and relief from deportation.

2. ICE and DHS Enforcement Guidelines (2021)

The Department of Homeland Security issued revised enforcement directives in 2021, shifting immigration control away from blanket criminalization toward targeted enforcement. These guidelines, among others, prioritize detention and deportation only for migrants who pose threats to national security, recent border crossers, or serious criminal offenders; require case-by-case assessment, taking into account health, age, family ties, length of residence, and humanitarian circumstances; discourage enforcement against victims, witnesses, pregnant women, the elderly, and the medically vulnerable; restrict immigration raids in schools, hospitals, places of worship, and other “sensitive locations.”

This approach reduces arbitrary detention and protects migrants with humanitarian claims or strong social ties.

3. Judicial Oversight of Detention

The courts have often utilized judicial oversight to ensure the human rights of migrants. The case of *Zadvydas v. Davis* is instructive. Kestutis Zadvydas was a *lawful permanent resident* in the U.S. (i.e., he had a green card). He had committed crimes that made him deportable under U.S. immigration law.

So the U.S. government ordered his deportation. The problem was that he was born in a displaced persons camp in Germany and was thus *not* a German citizen. Lithuania (his parents’ origin) refused to accept him and no other country would issue travel documents to receive him. As a result, even though the U.S. wanted to deport him, there was nowhere to

send him. So he was kept in immigration detention indefinitely, with no realistic prospect of removal. The question before the U.S. Supreme Court was whether the U.S. government can detain someone indefinitely after a removal (deportation) order, when there's no country willing to accept them? The U.S. Supreme Court held that indefinite or prolonged detention of migrants with final removal orders is unconstitutional if removal is not reasonably foreseeable. They interpreted the immigration statute to say that after six months, if deportation is not likely to happen in the near future, the person must be released under supervision and not kept in indefinite detention. This case reinforces migrants' due process rights under the Constitution.

While the United States clearly criminalizes irregular entry and re-entry under 8 U.S.C. sections 1325 and 1326 often resulting in arrest, prosecution, detention, deportation or imprisonment, the legal and institutional framework also places substantive limits on how far the state may go in enforcing these provisions. The policies safeguards ensure that despite the criminalization of irregular status, its practical enforcement is moderated by constitutional oversight and human rights protections, a balance that offers important comparative lessons for Nigeria.

Conclusion

The Immigration Act 2015 and Immigration Regulations 2017 provide a broad range of enforcement powers, including arrest without warrant (Regulation 34), detention, deportation, entry refusal, and penalties such as imprisonment for status-related breaches like overstaying, undocumented entry, or entry without valid documentation. While certain provisions such as those addressing passport forgery or trafficking are justifiable as criminal offences, others blur the line between administrative infractions and criminal conduct. Sections such as 41, 44 and 57(5) effectively expose migrants to criminal consequences for irregular presence alone,

without distinguishing between smugglers, traffickers, and vulnerable border crossers fleeing hardship.

Institutionally, the Nigerian Immigration Service (NIS), together with NAPTIP and the NCFRMI, is tasked with enforcement, protection and migration management. However, overlapping mandates, weak accountability, underfunding and the absence of clear procedural safeguards limit their effectiveness. Enforcement practices such as raid-based arrests, discretionary detention, lack of access to legal remedies and profiling of ECOWAS nationals further entrench a punitive approach. Although Nigerian courts rarely adjudicate migration rights cases.

A comparative review of the UK and US shows that Nigeria is not unique in criminalizing aspects of irregular migration, but the degree of safeguards differs. In the UK, laws such as the Borders Act 2007, Immigration Act 1971, and Nationality and Borders Act 2022 (s.40) criminalize unauthorized entry and facilitate detention. However, the UK's use of judicial oversight of detention, and recognition of asylum defences introduce some limits on enforcement. Similarly, the United States criminalizes irregular entry and re-entry under 8 U.S.C. Sections 1325 and 1326, with imprisonment ranging from 6 months to 10 years. Yet, US courts have occasionally prioritized due process over enforcement, particularly where detention violates constitutional rights, as seen in *Zadvydas v. Davis* which restricted indefinite detention of non-citizens.

The key lesson from the UK and US is not that they avoid criminalization, because they do criminalize irregular entry, but that they incorporate procedural safeguards, discretionary prosecution, court oversight and policy exceptions for asylum seekers and minors. Nigeria, by contrast, lacks a clear framework for distinguishing vulnerable migrants from criminal actors, and its enforcement relies heavily on detention, profiling and deportation without

adequate review. A rights-based framework would require differentiating administrative infractions from genuine criminality, embedding judicial checks on immigration powers, and improving cooperation between enforcement and protection-oriented agencies.

In conclusion, although Nigeria's legal and institutional framework acknowledges national security priorities, it currently treats irregular migration in a manner that risks over-criminalization, arbitrary detention, and violations of constitutional and international human rights obligations. The Nigerian experience, especially when contrasted with the partial safeguards seen in the UK and the US shows the need for reforms that separate irregular status from criminality, ensure proportionality in enforcement, and introduce clearer protections for vulnerable persons.

CHAPTER FOUR: CRIMINALIZATION OF IRREGULAR MIGRATION – BALANCING NATIONAL SECURITY AND HUMAN RIGHTS

4.1 – INTRODUCTION

Irregular migration has increasingly become a site of legal and political tension in Nigeria, where the state seeks to protect territorial sovereignty and national security while remaining bound by regional and international human rights obligations. In recent years, concerns over terrorism, human trafficking, porous borders, and transnational crime have driven the adoption of stricter immigration controls and enforcement strategies.¹⁹⁰ However, the challenge arises when state responses begin to treat the mere irregular status of migrants such as undocumented entry, overstaying visas, or lack of valid documents as grounds for criminal suspicion or punitive action, rather than as an administrative matter rooted in mobility and vulnerability.

This chapter examines how Nigeria's legal and institutional approach to irregular migration sometimes blurs the line between immigration control and criminal justice. It explores the extent to which current laws, policies, and enforcement practices reflect a criminalization model, and the implications of this for human rights protection. The aim is not to dismiss the legitimacy of national security concerns but to interrogate whether punitive approaches are necessary, proportionate, and consistent with Nigeria's obligations under instruments such as the African Charter on Human and Peoples' Rights, the ECOWAS Free Movement Protocol, and the Refugee Convention.

By analyzing the nature, impact, and justification of criminalization measures, as well as critiques and alternatives, this chapter argues for a more balanced framework—one that distinguishes between genuine threats and vulnerable migrants, and adopts rights-based enforcement rather than punitive exclusion. This sets the stage for a constructive inquiry into

¹⁹⁰ Emmanuel Onoto and Chris Ogbonna and Nesochi Alfred-Igbokwe, *Cross-border migration, banditry and the challenges of development in Nigeria*, Springer nature link, Vol 2, article 80 (2024) <https://link.springer.com/article/10.1007/s44282-024-00114-z>, accessed 19th October, 2025.

whether Nigeria can safeguard its borders without undermining the dignity and rights of migrants, especially those in irregular situations.

4.2.1 Legal Provisions that Criminalize Irregular Migration in Nigeria

Although irregular entry or stay is fundamentally an administrative issue under international law, Nigeria's domestic legal framework adopts a semi-criminalized approach through statutory and regulatory provisions. The Immigration Act 2015 is the primary legislation governing migration control, and while it does not explicitly define irregular status as a crime, several provisions indirectly¹⁹¹ impose criminal consequences on migrants who lack documentation or lawful status.

Particularly significant is Section 57 of the Act which provides that any person who remains in Nigeria beyond the period permitted by their visa or entry conditions commits an offence and is liable on conviction to 3 years imprisonment or fine. This statutory provision demonstrates that the law shifts irregular stay from a purely administrative infraction to a penal category. While the provision is often justified as a deterrent against security risks, critics argue that the punishment attaches to *status*, not conduct, and therefore criminalizes mere presence rather than inherently wrongful acts.¹⁹²

The Immigration Regulations 2017 reinforce this position by expanding enforcement powers and outlining offences connected to documentation and status. It empowers immigration officers to arrest, detain and prosecute without warrant any migrant "reasonably suspected" of violating immigration laws, even in the absence of a criminal act.¹⁹³

¹⁹¹ Section 57(5) Immigration Act 2015

¹⁹² Thomas Hammarberg, *It is Wrong to Criminalize Migration*, Commissioner for Human Rights-Council of Europe, European Journal of Migration and Law 11 (2009), file:///C:/Users/user/Downloads/journals_emil_11_4_article-p383_5-preview.pdf, accessed 21st October, 2025.

¹⁹³ Regulation 34 Immigration Regulations 2017

In effect, while Nigerian law does not openly declare irregular migrants as criminals, the combined effect of the Immigration Act 2015 and the Immigration Regulations 2017 constructs a quasi-criminal regime where lack of documentation, overstay, or non-compliance with administrative directives leads to fines, detention, prosecution, removal or imprisonment. This legal architecture lays the foundation for the broader argument that Nigeria's approach reflects elements of "crimmigration," where migration management merges with criminal law enforcement.¹⁹⁴

A person with regular (legal) migration status can become irregular overnight for various reasons which include expiration of visa without immediate renewal, job Loss for Work-Permit Holder, failure to Renew Documentation, change in Law or Policy, breach of Visa Conditions even with valid documents, violating the terms can make status irregular, overstaying entry permission without intent, especially due to ill health, asylum Application Rejection, and others. This shows that irregularity is not always the result of *illegal entry*; it can arise from administrative, economic, humanitarian, or policy-related shifts, often without intent.

4.2.2 Enforcement Practices and Policing of Irregular Migrants in Nigeria

Beyond statutory provisions, the enforcement practices of state agencies significantly influence how irregular migration is treated in Nigeria. The Nigerian Immigration Service (NIS), often working in collaboration with the Nigeria Police Force, Joint Border Task Forces, and in some cases the Nigerian Army, conducts routine raids, highway checkpoints, hotel inspections, and workplace surveillance to identify undocumented migrants. These operations frequently result in arrests, detention, and expedited removals, even where migrants pose no

¹⁹⁴ Juliet Stumpf, 'The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power', *American University Law Review*, Volume 56, Issue 2, Article 3, 2006.

security threat or have pending regularisation claims. They may simply be victims of migrants smuggling or human trafficking.¹⁹⁵

One of the major concerns is the broad discretionary power granted to immigration officers which authorises arrest without warrant on the basis of “reasonable suspicion” of irregular status, a standard that is vague and susceptible to abuse.¹⁹⁶ This mirrors the critique of “crimmigration” advanced in academic literature, where immigration enforcement tactics increasingly resemble criminal policing.¹⁹⁷

In practice, migrants are often apprehended not because of any criminal conduct, but because their nationality, language, or physical appearance marks them as “foreign”

Deportations are also carried out with minimal procedural safeguards. The NIS has, on several occasions, conducted mass expulsions of West African nationals, particularly Nigeriens, Chadians, and Cameroonians, on the basis of lacking documentation or overstaying their visas. In 2024, the then Minister of Interior, Dr Olubunmi Tunji-Ojo, said that the government deported about 828 illegal immigrants. However, the minister did not make mention of any criminal acts or criminal elements among those who were sent out of the country.¹⁹⁸ In many cases, migrants are not allowed to contact legal counsel, challenge removal decisions, or seek asylum before expulsion. This violates due process guarantees and

195 Michael Olugbode, ‘Nigerian Immigration Service arrests 51 migrants from Mali’, *ThisDaylive Newspaper* (Abuja, March, 2025),

<<https://www.thisdaylive.com/2025/04/02/nigeria-immigration-service-arrests-51-irregular-migrants-from-mali/#>>, accessed 21st October, 2025.

196 Regulation 34 of the Immigration Regulations 2017

197 Juliet Stumpf, ‘The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power’, *American University Law Review*, Volume 56, Issue 2, Article 3, 2006.

198 Anthony Ufoh, ‘Nigeria deports 828 Illegal Migrants’, *The Guardian Newspaper*, (28th January, 2025), <<https://guardian.ng/news/nigeria/nigeria-deports-828-illegal-immigrants/>>accessed 21st October, 2025

contradicts the African Charter on Human and Peoples' Rights, which prohibits arbitrary expulsion of non-nationals.¹⁹⁹

Furthermore, detention is often used as a first response rather than a last resort. Migrants are held in overcrowded facilities, police cells, or transit camps pending deportation, sometimes for weeks without charge or judicial oversight. Such detention practices conflict with emerging international standards.

Collectively, these enforcement patterns reinforce a punitive approach to irregular migration. Even where the intent is administrative regulation rather than criminal prosecution, the methods employed blur the line between migration control and criminal justice. This securitized enforcement model reflects a broader narrative that equates irregular status with illegality, thereby legitimizing harsh measures that disproportionately target vulnerable migrants rather than genuine security threats.

4.2.3 Administrative Detention and Penal Outcomes

Many States consider immigration detention as an unavoidable and necessary migration management tool. States have the right to control their borders and determine their migration policies. However, in doing so they must ensure respect for international law and standards and must respect the rights of migrants.²⁰⁰ Detention of migrants is usually for the purpose of identifying persons and determining nationalities, preventing persons from gaining unauthorized entry, and expelling or ensuring the enforcement of a deportation order. Some transit countries also detain migrants to prevent them from leaving the country irregularly. In

¹⁹⁹ Article 12, African Charter on Human and People's Rights, 1981.

²⁰⁰ United Nations Refugee Agency, UNHCR Detention Guidelines< <https://www.unhcr.org/media/unhcr-detention-guidelines>>, accessed 23rd October, 2025

some instances, asylum seekers are detained pending a decision on their asylum application. Immigration detention is often an administrative measure in many states.²⁰¹

Although irregular entry and stay are administrative infractions under international law, Nigerian practice often treats such situations with punitive measures that resemble criminal sanctions. Administrative detention is one of the most widely used enforcement tools all over the world, even in cases where migrants have not committed any offence beyond overstaying their permits or lack of valid documentation.²⁰²

The Immigration Act 2015 gives immigration authorities power to detain non-citizens pending investigation, removal, or prosecution. Under Section 57, migrants who overstay their visa or residence permit may be detained and removed, with the Act framing such overstay as an offence, a crime rather than a civil breach, allowing imprisonment for up to three years for migrants who violate these conditions.²⁰³

The Immigration Regulations 2017 reinforce this punitive orientation. Regulation 34 empowers immigration officers to arrest, detain, and remove migrants based on suspicion of non-compliance with the Act. In practice, when these migrants are arrested, they are detained for a period beyond the legally recognized timeframe and often in deplorable detention facilities.²⁰⁴ Detention is frequently applied as a default measure rather than as a last resort, a trend the Executive Secretary of the National Human Rights Commission (NHRC), Chief

201 IOM, Immigration Detention and Alternative to Detention, Global Compact Thematic Paper<
[202 Human Rights Watch, In the Freezer: Abusive Conditions for Women and Children in US Immigration Holding Cells, 28th February, 2018<](https://www.iom.int/sites/g/files/tmzbd1486/files/our_work/ODG/GCM/IOM-Thematic-Paper-Immigration-Detention.pdf#:~:text=Detention%20centres%20often%20fail%20to%20satisfy%20international,degrading%20conditions%20of%20detention%20or%20abuses%20suffered.>,>, accessed 22nd October, 2025</p></div><div data-bbox=)

203 Section 57(5), Immigrations Act 2015

204 Global Detention Project: Nigeria Immigration Detention Data Profile 2020 <

Tony Ojukwu SAN recognized, expressing regrets over the dehumanizing conditions, illegal arrests, prolonged detention, and torture that migrants face in Nigeria and across the world.²⁰⁵

There are often breaches of the human rights of migrants. In many cases, they are detained indefinitely until deportation arrangements are made, which may take weeks or months depending on consular cooperation and logistical constraints. This raises serious constitutional concerns under their right to personal liberty²⁰⁶ and right to fair hearing²⁰⁷ under the Nigerian Constitution. *Generally, migrants' access to justice, especially irregular migrants is often limited. In order to protect the rights of Migrants, in December, 2018, the United Nations General Assembly adopted the Global Compact for Safe, Orderly and Regular Migration (GCM), the first UN global agreement on a common approach to international migration in all its dimensions, and Nigeria is a signatory. Access to justice is a fundamental right, including for migrants. The right to access justice is recognised in international and regional human rights instruments.*²⁰⁸

Deportation, though not traditionally classified as a criminal sentence in itself, sometimes results in punitive outcome. For instance, mass deportations of undocumented West African nationals were carried out without individual assessment of circumstances, protection needs, or avenues for appeal, as was the case with the famous “Ghana Must Go” incident of 1983. Under the President Shehu Shagari regime, many irregular Migrants were forced to leave

205 Wondrous Nnaemeka, ‘MIGRATION: NHRC Regrets Illegal Arrests, Prolonged Detention In Nigeria’. *The Whistler*, (19th September, 2023)

<<https://thewhistler.ng/migration-nhrc-regrets-illegal-arrests-prolonged-detention-in-nigeria-others/>>, accessed 22nd October, 2025

206 Section 35, CFRN,1999

207 Section 35, CFRN,1999

208 Articles 7 and 8 of the Universal Declaration of Human Rights (UDHR); Articles 2(3)(a), 9(4), 14(1) of the International Covenant on Civil and Political Rights (ICCPR);

Articles 5 and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD); Articles 16(7-9), 18(3)(5)(7), and 24 of the International

Convention on the Protection of the Rights of all Migrant Workers and Members of the ir Families (ICRMW); Article 12 of the International Convention for the Protection of

All Persons from Enforced Disappearance (ICPPED); Article 8 of the American Con vention

on Human Rights (ACHR); IOM, Information Note on Access to Justice: A Migrant’s Right, June 2019, p. 2.

Nigeria or face arrest. As a result, over two million migrants were deported, including one million Ghanaian nationals.²⁰⁹ In some cases, pregnant women, children, and long-term residents have been deported without due consideration for humanitarian or family unity concerns.

This system amounts to the criminalization of status rather than conduct. Detention and imprisonment are applied not because migrants have committed crimes such as fraud, trafficking, or violence, but simply because they lack valid documents or overstayed their permits.

By relying on administrative detention and imprisonment as enforcement tools, Nigeria effectively blends criminal and immigration law—a hallmark of “crimmigration.” The result is a punitive migration control regime that does not always distinguish between high-risk offenders and vulnerable migrants whose irregularity may stem from displacement, poverty, or lack of access to legal pathways.

4.3 Impact on Human Rights

The criminalization of irregular migration in Nigeria has far-reaching implications for the protection of fundamental rights. Although the state retains the sovereign authority to regulate entry, stay, and removal of non-nationals, this power must be exercised in a manner consistent with international and regional human rights obligations. However, the punitive legal framework and enforcement practices adopted in Nigeria have resulted in violations of key rights, particularly those relating to liberty, due process, non-refoulement, socio-economic entitlements, and non-discrimination. Some of the Rights impacted include:

209 Daly Samuel Fury Childs, ‘Ghana Must Go: Nativism and the Politics of Expulsion in West Africa, 1969–1985’.

(a) Right to Liberty and Freedom from Arbitrary Detention

Administrative detention of migrants is frequently used as a default enforcement mechanism, rather than a measure of last resort.²¹⁰ The detention of migrants in police cells, transit camps, and immigration holding facilities for prolonged periods without judicial authorization or review amounts to a breach of their right to liberty, a right recognized under international and regional laws. Courts have often frowned at prolonged detentions. In *Amuur v. France*,²¹¹ the applicants, Somali nationals – three brothers and a sister – were born between 1970 and 1975, arrived in France via Syria in March 1992. They asserted that, after the overthrow of the regime of President Siyad Barr, their lives were in danger in Somalia. They were not admitted onto French territory on the ground that their passports had been falsified. They complained that they had been held in the transit zone at Paris-Orly Airport for 20 days before being sent back to Syria. The European Court of Human Rights held that there had been a violation of Article 5 (1) (right to liberty and security) of the European Convention of Human Rights. It found that Article 5 of the Convention was applicable, as holding the applicants in the transit zone had been equivalent in practice to a deprivation of liberty. The judgment stressed that administrative convenience cannot justify deprivation of liberty, and that asylum seekers, even when in irregular status, retain fundamental human rights under international law.

If the state wishes to detain migrants administratively, it must do so in a way that respects the rights of such migrants. They should not be detained in poor undignified conditions. This was the issue in the case of *Feilazoo v. Malta*²¹² This case concerned,

210 ICRC Policy Paper on Immigration Detention <https://www.icrc.org/sites/default/files/document/file_list/icrc-policy-paper-migration-detention.pdf> accessed 26th October, 2025.

211 *Amuur v France* 19776/92, judgement delivered 25 June 1996< <https://hudoc.echr.coe.int/eng?i=002-9140>>, accessed 26th October, 2025.

212 *Feilazoo v Malta* (application no. 6865/19) ECtHR, 11 March 2021 (Chamber judgment)<

<file:///C:/Users/user/Downloads/Judgment%20Feilazoo%20v.%20Malta%20Multiple%20violations%20of%20deportation%20detainee's%20rights.pdf>>, accessed 26th

inter alia, the conditions of the immigration detention of a Nigerian national, including time spent in de facto isolation and a subsequent period where the applicant had been placed with new arrivals in Covid-19 quarantine. The Court held that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention on account of the applicant's inadequate conditions of detention. In particular, the Court was concerned about the applicant's assertion, not rebutted by the Maltese Government, that following an isolation period the applicant had been moved to other living quarters where new arrivals (of asylum seekers) had been being kept in Covid-19 quarantine. There was no indication that the applicant had been in need of such quarantine – particularly after an isolation period which, moreover, had lasted for nearly seven weeks. Thus, the measure of placing him, for several weeks, with other persons who could have posed a risk to his health in the absence of any relevant consideration to that effect, could not be considered as a measure complying with basic sanitary requirements. The court held that his right has been violated.

The excessive powers granted the Nigeria Immigration Service has often been abused by its officers in a manner that violates the rights of Immigrants. In *Martin Gegenheimer & 4 Ors v The Republic of Nigeria & Anor.*,²¹³ the applicants, German nationals working legally in Nigeria, were arrested by officers of the Nigerian Immigration Service (NIS) and detained without charge or trial for several weeks. Their detention was justified on the grounds of alleged irregularities in their residence permits. However, the authorities failed to produce any formal charges or obtain a judicial warrant for their continued detention. The ECOWAS Court held that such detention was arbitrary, unlawful, and contrary to Articles 6 and 7 of the

October, 2025

213 *Martin Gegenheimer & 4 Ors v The Republic of Nigeria & Anor.* (Application No. ECW/CCJ/APP/23/20)<https://policehumanrightsresources.org/martin-gegenheimer-4-ors-v-the-republic-of-nigeria-anor-application-no-ecw-ccj-app-23-20#:~:text=Again%2C%20the%20Applicant's%20complaint%20for%20his%20inappropriate,headquarters%20of%20the%20Nigerian%20Immigration%20Service%2C%20Abuja.> accessed 26th October 2025>

African Charter, which guarantee the rights to liberty, security, and fair trial. The Court further held that even where immigration irregularities are suspected, the state must act in accordance with due process and cannot resort to punitive or prolonged detention without judicial oversight. The Court ordered the Nigerian government to release the applicants immediately and to pay compensation for the violation of their rights.

This decision is significant because it shows how Nigeria's immigration enforcement practices, including arrests based on suspicion of irregular status, can breach regional human rights standards. It underscores the argument that the Nigerian Immigration Act and Regulations grant excessive discretionary powers to immigration officers notably under Regulation 34, enabling arbitrary arrests and detention without prompt judicial review.

This practice of NIS conflicts with Section 35 of the 1999 Constitution, which prohibits arbitrary detention, and with Article 6 of the African Charter on Human and Peoples' Rights, which mandates prompt judicial oversight emphasize that migrants should not be detained solely on the basis of irregular entry or status.

(b) Right to Fair Hearing and Due Process

Irregular migrants subjected to arrest or deportation rarely enjoy procedural guarantees such as access to legal counsel, individual assessment, the right to appeal, or interpreter services, a right they are entitled to. Deportations are often carried out through summary procedures without reference to the courts which violates their rights under the Nigerian Constitution, as well as the African Charter, which guarantee fair hearing and legal representation.²¹⁴ The lack of due process underscores how irregular status is treated as presumptive guilt rather than an administrative issue.

²¹⁴ Section 36, Constitution of the Federal Republic of Nigeria, 1999; Article 7 of the African Charter on Human and Peoples Rights.

Although Nigeria, like other sovereign states, has the right to regulate entry and stay within its territory, this authority must be exercised in conformity with its international human rights obligations. Migrants—regular or irregular—remain under Nigeria’s jurisdiction once within its territory, including at border posts, detention centres, and deportation points. International instruments such as the Global Compact for Safe, Orderly and Regular Migration emphasize that migrants must have access to information and legal assistance at all stages of migration control. The Compact require States to guarantee access to independent and affordable legal aid, interpreters, and fair complaint procedures, allowing migrants to challenge detention or deportation decisions.²¹⁵

In practice, however, Nigeria’s immigration system falls short of these guarantees. Migrants detained under administrative or irregular status often lack access to independent legal counsel, interpreters, or information on their rights, leading to de facto denial of due process. Such failures contravene international standards that recognize legal aid as essential to protecting migrants from arbitrary detention and refoulement.²¹⁶

(c) Non-Refoulement and Protection of Asylum Seekers

Nigeria is bound by the 1951 Refugee Convention and the OAU Refugee Convention, both of which prohibit the return of individuals to territories where they face persecution or serious harm. The international community often condemn countries which repatriate irregular migrants, as was the case of Cameroun which deported Nigerian refugees fleeing from the Boko Haram onslaught in the Northern part of Nigeria.²¹⁷

215 Objectives 12 and 13, Global Compact for Safe, Orderly and Regular Migration, 2018.

216 see OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, 2014; UN Special Rapporteur on the Human Rights of Migrants, A/HRC/29/36, 2015 < <https://www.ohchr.org/en/special-procedures/sr-migrants> > accessed 27th October, 2025

217 Human Rights Watch, ‘Cameroon: Mass Forced Return of Nigerian Refugees’ *HumanRightsWatch* (Sept. 2017) < <https://www.hrw.org/news/2017/09/27/cameroon-mass-forced-return-nigerian-refugees> >, accessed 27th October, 2025

*Nigeria is similarly guilty of repatriating immigrants on grounds of illegal entry or irregular status, including asylum seekers who ran from their country due to conflict. In April, 2025, Nigeria deported some Malian irregular migrants back to their military ruled country simply because of illegal entry, without attributing to them any criminal conduct.*²¹⁸

*It is understandable and is infact the right of any country to deport migrants or give them a jail term, including irregular migrants if they are found to have committed a criminal offence as was the case in August 2025 when 192 foreigners, more than 140 of whom were Chinese nationals, were deported for cyber terrorism.*²¹⁹

While Nigeria's security concerns are legitimate, its enforcement of immigration control must not override core human rights obligations especially denial of access to asylum seekers as this will undermine the country's international commitments under the 1951 Refugee Convention, the African Charter on Human and Peoples' Rights, and the Global Compact for Migration. A rights-based approach requires that non-refoulement be strictly observed.

(d) Socio-Economic Rights: Health, Education, and Work

Under Nigeria's Immigration Act (2015) and Immigration Regulations (2017), there are certain reporting obligations imposed on landlords to help monitor the presence of non-nationals.

²¹⁸ Ekanem, Solomon. "Nigeria deports dozens of illegal migrants back to military-run Mali". *Business Insider Africa* (2025-04-20)<
<https://africa.businessinsider.com/local/lifestyle/nigeria-deports-dozens-of-illegal-migrants-back-to-military-run-mali/99ehlf7>>, accessed 27th October, 2025

²¹⁹ Abdullateef Aliyu, 'Nigeria Completes the deportation of 192 foreign Nationals over Cyber Terrorism', *Daily Trust Newspaper* <<https://dailytrust.com/nigeria-completes-deportation-of-192-foreigners-convicted-for-cyber-terrorism-others/>> accessed 27th October, 2025.

Regulation 28 and 29 of the Immigration Regulations 2017 impose obligations on landlords to verify and to report non-compliance of migrants to the Nigerian Immigration Service (NIS). Thankfully, there is no statutory duty on hospitals or public health workers to check or report the immigration status of patients. However, in practice, there have been instances of informal cooperation where immigration officers request information from local authorities or institutions — including hospitals — when conducting enforcement operations, but such actions lack clear legal basis and raise human rights and privacy concerns, particularly regarding the right to health and non-discrimination.²²⁰

(d) Discrimination and Xenophobia

Criminalization reinforces the perception that migrants, particularly those from West African countries, are security threats or economic burdens. This has led to profiling, extortion, harassment, and xenophobic attitudes by both state agents and civilians.²²¹

Article 2 of the African Charter and Section 42 of the Nigerian Constitution prohibit discrimination based on nationality or origin, yet enforcement practices often target migrants solely on identity markers rather than conduct.

Collectively, these human rights impacts show that current approaches to irregular migration in Nigeria prioritise control over protection. The punitive orientation of the law disproportionately affects vulnerable migrants rather than addressing root causes such as conflict, displacement, and lack of legal pathways. As Juliet Stumpf observes, the conflation

220 UN Committee on Economic, Social and Cultural Rights, General Comment *No. 14 (2000)* – <https://www.ohchr.org/en/resources/educators/human-rights-education-training/14>, accessed 26th October, 2025

221 Adedekun Olaide, 'The Rights of migrants workers and members of their families:Nigeria ' (Country reports on the ratification of the UN Convention on Migrants), 2003,

<https://unesdoc.unesco.org/ark:/48223/pf0000139534>, accessed 28th October, 2025

of migration control with crime control “creates a system where migrants are treated as offenders by default”, a dynamic quite visible in the Nigerian context.

4.4 Justifications for Criminalization

Despite the human rights concerns associated with punitive migration control, the Nigerian state and its security institutions justify the criminalization of irregular migration on several grounds. These justifications are often rooted in national sovereignty, territorial integrity, counterterrorism efforts, and the protection of public order. Understanding these arguments are essential for evaluating the balance between enforcement and rights.

(a) State Sovereignty and Border Control

One of the most common arguments in favour of criminalizing irregular migration is the sovereign right of states to determine who may enter and remain within their territory. Nigeria, like other nations, asserts that regulating immigration is essential to protecting national identity, internal stability, and demographic control. Supporters of strict enforcement rely on Article 2 of the UN Charter, which recognizes state sovereignty in domestic affairs, including border management.²²²

(b) National Security and Counterterrorism

The rise of terrorism, insurgency, and cross-border armed groups has strengthened security-based arguments for criminalization. Nigeria faces persistent threats from Boko Haram and bandit groups that exploit porous borders in the northeast and northwest.²²³ Scholars argue

²²² Article 2(7) United Nations Charter, 1945

²²³ Olalekan Fatokun and Pius O. Ibitoye, ‘Challenges in Lake Chad Basin: The Nigerian Perspective’, *African Journal of Stability & Development* Vol. 12, No. 1, 2019

that irregular migration channels can be used by arms traffickers, militants, and foreign fighters, justifying strict entry documentation requirements and detention powers.²²⁴

(c) Prevention of Human Trafficking and Smuggling

Nigeria is both a source and transit country for human trafficking and migrant smuggling. The government often defends punitive immigration enforcement as a means to disrupt trafficking networks and protect vulnerable population.²²⁵ However, this approach sometimes overlooks the distinction between traffickers and trafficked persons, resulting in the detention or deportation of victims who should instead receive protection.

(d) Public Order and Crime Prevention

Authorities also argue that irregular migrants may contribute to rising urban insecurity, informal economic competition, and unregulated labour markets. Immigration enforcement is therefore presented as a public order measure intended to prevent offences such as document fraud, identity theft, and illegal employment. Criminalizing status violations is thus perceived as a deterrent to future irregular entry or overstay.²²⁶

These justifications reflect legitimate state interests but fail to adequately differentiate between high-risk actors and migrants whose irregular status arises from economic necessity, displacement, or lack of legal pathways. Criminalization based solely on status does little to address terrorism, trafficking, or organized crime but instead diverts enforcement resources toward low-risk individuals. This gap between rationale and reality is what the next section interrogates.

224 Anthony Itumo, Humphrey Nwobashi, Joshua Nweke and Justina Igwe, 'Cross-Border Migration and the Rising Waves of Terrorism in West Africa: The Example of Boko Haram in Nigeria', *South East Journal of Political Science*, Vol.4 No1, 2018< <file:///C:/Users/user/Downloads/admin,+2018+SEJPS+complete+vol.+4+no.+1,+2018-305-323.pdf>> accessed 28th October, 2025

225 NAPTIP, *NIS Step Up Partnership to Tackle TIP and SOM in Nigeria*, November 22, 2024< <https://naptip.gov.ng/naptip-nis-step-up-partnership-to-tackle-tip-and-som-in-nigeria/>>, accessed 28th October, 2025

226 Arjen Leerkers, Godfried Engbersen and Joanne Van Der Leun, *Crime among Irregular Migrants and the Influence of Internal Border Control*, Springer Nature Link, Volume 58 (2012)< <https://link.springer.com/article/10.1007/s10611-012-9367-0>>, accessed 3rd November, 2025.

4.5 Critique and Counterarguments

While the Nigerian state invokes sovereignty, security, and public order to justify punitive migration control, legal scholars, human rights bodies, and international institutions have strongly critiqued the criminalization of irregular migration. These counterarguments challenge both the effectiveness and legality of punitive responses and call for approaches grounded in proportionality, necessity, and human dignity.

(a) Irregular Migration Is an Administrative, Not Criminal Issue

A central critique is that irregular entry or overstay is not inherently criminal conduct but an administrative violation. The United Nations Working Group on Arbitrary Detention has repeatedly stated that immigration infractions should not attract criminal penalties in the absence of aggravating acts such as fraud or trafficking.²²⁷ This position is echoed by the African Commission on Human and Peoples' Rights, which emphasizes that every person, migrants inclusive, irrespective of their status retain their fundamental rights regardless of legal status.²²⁸ *Article 2 specifically provides that* "Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status".

(b) Juliet Stumpf's Theory of "Crimmigration"

In her seminal work, Juliet Stumpf argues that the fusion of criminal and immigration law produces a system that treats migrants as offenders based on identity rather than conduct.²²⁹ This "crime-law logic" normalizes detention, surveillance, and deportation, even in cases

²²⁷ Working Group on Arbitrary Detention, Revised Deliberation No. 5 on Deprivation of Liberty of Migrants, UN Working Group on Arbitrary Detention, 7 February 2018, <https://www.refworld.org/legal/resolution/unwgad/2018/en/120413> accessed 03 November 2025

²²⁸ Articles 1-26, *ACHPR*, 2018

²²⁹ Juliet Stumpf, 'The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power', *American University Law Review*, Volume 56, Issue 2, Article 3, 2006

where no criminal activity has occurred. Nigerian enforcement practices, such as detention on suspicion and deportation without trial, reflect this crimmigration paradigm.

(c) Disproportionate Punishment and Lack of Necessity

Critics contend that imprisoning or detaining migrants for overstaying visas or lacking documents is disproportionate and fails the test of necessity under international human rights law.²³⁰ These sanctions do not target genuine threats but instead punish socio-economic vulnerability, forced displacement, and bureaucratic exclusion. The United Nations has emphasized that detention should be a last resort and never automatic or status-based.²³¹

(d) Violation of Non-Refoulement and Protection Obligations

Criminalization creates barriers to asylum and refugee protection. Fear of arrest or deportation discourages migrants from approaching authorities, resulting in refoulement or denial of humanitarian relief. The backlash against irregular entry also undermines the 1951 Refugee Convention, which forbids penalizing refugees for illegal entry when fleeing danger.²³²

(e) Reinforcement of Xenophobia and Stigmatization

Treating irregular migrants as criminals fuels public suspicion and discrimination. Migrants become associated with insecurity, illegality, or moral threat, enabling social exclusion and

230 Stefanie Grant, 'Immigration Detention: Some Issues of Inequality', *The Equal Rights Review*, Vol. Seven (2011) <<https://www.corteidh.or.cr/tablas/r27135.pdf>>, accessed 3rd November, 2025

231 Working Group on Arbitrary Detention, Revised Deliberation No. 5 on Deprivation of Liberty of Migrants,

2018 <https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/RevisedDeliberation_AdvanceEditedVersion.pdf> accessed 3rd November, 2025

232 Article 31 Refugee Relating to the Status of Refugees, 1951

xenophobic narratives.²³³ This violates Article 2 of the African Charter and Section 42 of the 1999 Constitution, which guarantee equality and non-discrimination.

(f) Ineffectiveness of Punitive Measures

Evidence from comparative jurisdictions shows that criminalization does not deter irregular migration, as drivers such as poverty, conflict, and family reunification outweigh fear of punishment.²³⁴ Instead, punitive laws push migrants into informal economies and unsafe routes, empowering smugglers and traffickers rather than weakening them.²³⁵

(g) Alternatives Exist

Critics advocate for non-punitive strategies such as regularization programmes,²³⁶ community-based monitoring, consular cooperation, and differentiated enforcement targeting serious offenders rather than vulnerable migrants. These models align with a rights-based approach without undermining state security interests.

In sum, the critiques demonstrate that criminalization is neither legally justified nor practically effective. Instead, it entrenches human rights violations, diverts resources, and obscures the real causes of migration. These arguments form the basis for the reform-oriented proposals in the next section.

4.6 Toward a Balanced Approach

233 ILO and Others, 'International Migration, Racism, Discrimination and Xenophobia', 2001 <

https://publications.iom.int/system/files/pdf/international_migration_racism.pdf>, accessed 3rd November, 2025

234 Matilde Rosina, 'Criminalising Migration: The Vicious Cycle of Insecurity and Irregularity', Social Sciences <

235 United Nations Office on Drugs and Crime (UNODC), *Irregular migration vs. migrant smuggling – what is the difference?* < <https://www.unodc.org/unodc/frontpage/2025/January/irregular-migration-vs--migrant-smuggling--what-is-the-difference.html>>, accessed 3rd November, 2025

236 See the Report of the Rapporteur, Mr. John Greenway for the Committee on Migration, Refugees and Population on 'Regularisation programmes for irregular migrants'. Doc. 11350, 2007 < <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=11614&lang=EN>> accessed 3rd November, 2025

In light of the tensions between national security imperatives and the human rights of migrants, a balanced approach is both necessary and possible. Rather than relying on punitive enforcement and status-based criminalization, Nigeria can adopt legal and institutional reforms that safeguard sovereignty while respecting human dignity and international obligations. The following are suggested measures towards a balanced approach:

(a) Proportional and Differentiated Sanctions

Instead of imposing imprisonment or prolonged detention for administrative infractions, the state could adopt civil penalties, fines, or regularisation pathways for migrants whose only violation is irregular entry or stay.²³⁷ Punitive sanctions should be reserved for offences involving fraud, trafficking, terrorism, or organized crime, not mere status violations.²³⁸

(b) Firewalls Between Immigration Control and Basic Services

Some countries like Germany, have a reporting obligation policy. ‘Reporting’ refers to the act of sharing a person’s personal data, particularly their residence status, with the authorities responsible for migration control. Countries like Sweden and Finland are in favour of reporting undocumented migrants to immigration authorities. However, in order to protect undocumented migrants, some countries establish firewalls. Establishing "firewalls" between immigration control and basic public services is a strategy to protect irregular immigrants, ensuring they can access essential support without fear of arrest or deportation. These

237 United Nations Network on Migration, ‘Guidance Note: Regular Pathways for Admission and Stay for Migrants in Situations of Vulnerability’ (July 2021)<
https://migrationnetwork.un.org/sites/g/files/tmzbdl416/files/docs/guidance_note-_regular_pathways_for_admission_and_stay_for_migrants_in_situations_of_vulnerabilty_final.pdf#:~:text=Vulnerabilities%20can%20be%20addressed%20and%20avoided%20by,recruitment%20fees%20and%20ensuring%20that%20migrant%20workers> accessed 23rd October, 2025

238 United Nations Office on Drugs and Crime, ‘Part Three: Legislative Guide for the Implementation of the Protocol Against the Smuggling of Migrants by Land, Sea And Air, Supplementing the United Nations Convention Against Transnational Organized Crim’
<https://www.unodc.org/pdf/crime/legislative_guides/04%20Legislative%20guide_Smuggling%20of%20Migrants%20Protocol.pdf>, accessed 23rd October, 2025

policies prevent public service providers such as hospitals, schools, and police from sharing a person's migration status with immigration enforcement authorities.²³⁹

This “firewall” approach has been endorsed by the UN Special Rapporteur on the Human Rights of Migrants.²⁴⁰

Several countries, including Italy implement ‘firewalls’ measures to some extent in order to protect migrants. In 2009, during discussions on the Security Package, the Italian government proposed to require healthcare professionals to report undocumented migrants. In response, civil society and medical organisations launched the campaign ‘Forbidden to report: We are doctors and nurses, not spies!’ (*Divieto di segnalazione. Siamo medici ed infermieri, non siamo spie!*). The reporting obligation on health professionals was eventually excluded from the final bill.²⁴¹

In general, thankfully Nigeria at the moment does not impose reporting obligations on health institutions, except in the case of Landlords housing foreigners. It is important that this status quo is maintained as it aligns with international best practices.

(c) Alternatives to Detention

239 R. Bauböck, and J.M Permoser, ‘Sanctuary, Firewalls, Regularisation: Three Inclusive Responses to the Presence of Irregular Migrant’, *Journal of Ethnic and Migration Studies*, (2023).49(14), 3671–3688. <<https://doi.org/10.1080/1369183X.2023.2198812>> accessed 24th October, 2025

240 United Nations General Assembly, Seventy-third session Agenda item 74 (b) Promotion and Protection of Human Rights: Human Rights Questions, including Alternative Approaches for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms Human Rights of Migrants, 2018<<https://docs.un.org/en/A/73/178/Rev.1>> accessed 25th October, 2025

241 PICUM, ‘Reporting Obligations and Firewalls’,< <https://picum.org/blog/reporting-obligations-and-firewalls/>> accessed 25th October, 2025

Detention should not be a first resort but rather, a last option when other alternatives have failed. Evidence shows, that among other reasons, detention of migrants is expensive and difficult for states to maintain and that it is not an effective migration management tool. The experience from states like the US shows that detention, particularly of families, can be 80 per cent more expensive than community-based supervision,²⁴² and furthermore, there is no evidence that the use of detention deters would-be migrants from attempting to enter a country.²⁴³

Detention should be exceptional, time-bound, and subject to judicial review. Alternatives to detention include measures ranging from policy or legislative developments that have an impact on preventing unnecessary detention, effective screening and identification procedures, bail systems, bond and surety options, reporting requirements and case resolution options monitoring, and case management programmes.²⁴⁴ These have proven effective in reducing costs and rights violations.

(d) Regularisation Mechanisms and Pathways to Status

Introducing periodic regularisation programmes for long-term residents, spouses, workers, and asylum seekers would reduce undocumented populations and support state oversight.

Felipe González Morales, UN Special Rapporteur on the human rights of migrants gave a recommendation to the Human Rights Council for States to provide options for permanent

242 Immigration Detention Centre, 'There are Alternatives - A Handbook for Preventing Unnecessary Immigration Detention (Revised Addition)', Immigration Detention Coalition, Melbourne 2015, Page 11 < <https://idcoalition.org/wp-content/uploads/2016/01/There-Are-Alternatives-2015.pdf> >, accessed 25th October, 2025

243 Edwards, Alice, 'Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Asylum-Seekers, Stateless Persons, and Other Migrants',

Legal and Protection Policy Research Series, UNHCR, Geneva, 2011 < <https://www.unhcr.org/sites/default/files/legacy-pdf/4dc949c49.pdf> >, accessed 25th October, 2025

244 International Organization for Migration, Alternatives to Detention

< <https://www.iom.int/alternativesdetention#:~:text=Examples%20of%20alternatives%20to%20detention,open%20or%20semi%20open%20centres%2C> > accessed 23rd October, 2025

residence, citizenship and meaningful participation of migrants in host societies.²⁴⁵ Many European countries have adopted the Regularization mechanism with measurable benefits in labour regulation and social stability.²⁴⁶

So far, the Nigerian government must be commended for offering a grace period for foreigners to regularize their immigration status without penalty. This was from 1st of May, 2025 to 30th September, 2025. It covered migrants with an expired Visa on Arrival (VoA), holders of expired Single and Multiple-Entry Visas, individuals with an expired Combined Expatriate Residence Permit and Aliens Card (CERPAC).²⁴⁷ The initiative offers ‘overstayers’ a chance to regularise their stay or exit the country voluntarily without facing penalties.²⁴⁸

However, for those who failed to regularize their status during the initial amnesty period, the Federal Government allowed affected foreign nationals to report to the nearest Immigration Command for registration and documentation. Those who participate will have their circumstances assessed on an individual basis before the NIS determines an appropriate course of action, which may include voluntary departure.²⁴⁹ This is a welcome and laudable development by the Nigerian Federal Government and it is recommended that such practices should be done regularly.

245 United Nations Human Rights Office of the High Commissioner, ‘States must Broaden Pathways to Regularisation for Migrants: UN Expert’ (2023) <<https://www.ohchr.org/en/press-releases/2023/06/states-must-broaden-pathways-regularisation-migrants-un-expert>> accessed 24th October, 2025

246 PICUM, ‘Regularisation and Access to a Secure Residence Status’ <<https://picum.org/es/blog/regularisation-and-access-to-a-secure-residence-status/#Q5>>, accessed 25th October, 2025.

247 NIS, Regularise Your Visa <<https://immigration.gov.ng/expired-visa-holders/>> accessed 25th October, 2025.

248 Ojochenemi Onje, ‘What to know about FG amnesty for visa ‘overstayers’ *Business Day Newspaper* (29th August, 2025) <<https://businessday.ng/news/article/what-to-know-about-fg-amnesty-for-visa-overstayers/>> accessed 25th October, 2025.

249 Tina Abeku, ‘FG gives post-amnesty window to irregular immigrants, warns of arrests’, *The Guardian Newspaper*, 10th October, 2025 <[https://guardian.ng/news/fg-gives-post-amnesty-window-to-irregular-immigrants-warns-of-arrests/#:~:text=The%20Nigeria%20Immigration%20Service%20\(NIS\)%20has%20announced%20the%20commencement%20of,is%20determined%2C%E2%80%9D%20he%20added.>](https://guardian.ng/news/fg-gives-post-amnesty-window-to-irregular-immigrants-warns-of-arrests/#:~:text=The%20Nigeria%20Immigration%20Service%20(NIS)%20has%20announced%20the%20commencement%20of,is%20determined%2C%E2%80%9D%20he%20added.>)> accessed 25th October, 2025.

(e) Institutional Reform and Capacity Building

Training immigration officers, police, and border officials on human rights standards would reduce abuses stemming from profiling, arbitrary arrest, and excessive discretion. Judicial oversight of detention decisions and deportation orders would reinforce due process and constitutional guarantees under Sections 35 and 36 of the 1999 Constitution.

(f) Targeted Enforcement Against High-Risk Actors

A more effective approach would be to focus enforcement resources on traffickers, smugglers, money launderers, and security threats rather than migrants fleeing economic hardship or instability. This aligns security priorities with human rights-based migration governance.²⁵⁰

Collectively, these reforms demonstrate that Nigeria does not need to choose between national security and human rights. A balanced, proportionate, and rights-compliant framework can protect territorial integrity while preventing the unjust criminalization of vulnerable migrants. This approach would also better align domestic practice with the country's obligations under the African Charter, ECOWAS protocols, and international human rights law.

4.7 Conclusion

The criminalization of irregular migration in Nigeria reflects a broader global trend where immigration control has increasingly merged with criminal law enforcement. While the state's obligation to safeguard national security, territorial integrity, and public order is

²⁵⁰ Lawrence Benenson, 'Explainer: DHS Immigration Enforcement Guidelines' (2021) < <https://forumtogether.org/article/explainer-dhs-immigration-enforcement-guidelines/>>, accessed 3rd November, 2025

legitimate, the application of punitive sanctions to mere immigration status such as irregular entry, overstaying, or lack of documentation, raises serious human rights concerns.

The justifications for criminalization, such as preventing terrorism, human trafficking, or organized crime, are not inherently misplaced; however, the failure to distinguish between actual offenders and vulnerable migrants, such as refugees, trafficked persons, and economic migrants fleeing hardship, results in overreach. This aligns with Juliet Stumpf's theory of *crimmigration*, where immigration law increasingly borrows from criminal law not only in substance but in enforcement. Broad criminalization undermines both human rights norms and the efficiency of migration governance by driving migrants into irregularity and invisibility.

Comparative insights from the United Kingdom and the United States further show that while these jurisdictions have enacted criminal provisions targeting irregular entry and re-entry, policy safeguards, judicial oversight, and humanitarian exemptions attempt, albeit imperfectly, to moderate the harshness of criminalization. Nigeria, by contrast, lacks or underutilizes clear procedural safeguards, alternatives to detention, and firewalls that protect access to basic rights and justice.

A balanced approach, as outlined in Section 4.6, does not weaken state sovereignty but refines it. Differentiating between administrative infractions and serious criminal conduct, strengthening judicial oversight, adopting alternatives to detention, and implementing regularisation mechanisms would curb abuse while enhancing state control. Institutional reforms within the Nigerian Immigration Service, as well as inter-agency cooperation with NAPTIP and NCFRMI, can ensure that enforcement is intelligence-driven rather than indiscriminate.

Ultimately, Nigeria stands at a defining moment. It can continue down the path of punitive enforcement that conflates status with criminality, or recalibrate its migration governance in line with constitutional rights, human dignity, and international best practices. A security framework that respects human rights is not only more just—it is also more effective. Chapter Five will build on this conclusion by proposing concrete legal and policy reforms that reconcile enforcement objectives with a rights-based approach to migration management.

CHAPTER FIVE: CONCLUSION

5.1 Summary of Findings

This study has examined the criminalization of irregular migration in Nigeria within the broader context of national security and human rights protection. It has established that while the Nigerian state is entitled to control its borders and regulate the movement of non-nationals, this power must be exercised in conformity with international and regional human rights norms.

A major finding is the existence of significant gaps in the Nigerian legal framework regarding the protection of irregular migrants. The Immigration Act, 2015 and Immigration Regulations, 2017 contain provisions that, though intended to safeguard national security, effectively criminalize irregular status and enable arbitrary arrests and detentions. For instance, Regulation 34 of the 2017 Regulations grants immigration officers wide discretionary powers to arrest and detain migrants on mere suspicion, often without judicial oversight. Such powers are inconsistent with individual rights enshrined in the African Charter on Human and Peoples' Rights²⁵¹ and the **International Covenant on Civil and Political Right**.²⁵²

Another finding is the over-criminalization of administrative migration infractions such as overstaying visas or lacking documentation which should ordinarily attract administrative, not criminal, sanctions. Section 57(5) of the Act criminalizes mere irregular status. This conflation of administrative and criminal law reflects the growing trend of “crimmigration” where immigration enforcement is treated as a form of criminal control.²⁵³

²⁵¹ Article 6, African Charter on Human and Peoples' Rights, 1981

²⁵² Article 9, International Covenant on Civil and Political Rights, 1966

²⁵³ Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, American University Law Review, Volume 56, Issue 2, Article 3, 2006

The study also found weak institutional capacity within the Nigerian Immigration Service (NIS) and the National Commission for Refugees, Migrants and Internally Displaced Persons (NCFRMI) to implement human rights obligations. Insufficient training, poor inter-agency coordination, and limited judicial oversight often result in rights violations, including arbitrary detention, refoulement, and denial of access to legal assistance. These institutional weaknesses reflect not only inadequate resources but also the absence of a consistent rights-based policy framework guiding migration governance in Nigeria.

5.2 RECOMMENDATIONS

In light of these findings, the following recommendations are proposed to promote a balanced and humane migration system that respects both national security and human rights:

1. Legal Reforms:

The Immigration Act, 2015 and the Regulations 2017 should be reviewed to clearly distinguish between administrative violations (such as irregular entry or overstaying) and criminal offences (such as human trafficking, smuggling, or document forgery). Provisions that enable arrest and detention based on suspicion should be replaced with judicially supervised procedures. Nigeria should also incorporate explicit references to the principle of non-refoulement and due process guarantees in its national legislation.

2. Capacity Building:

The government should strengthen the institutional capacity of the NIS and NCFRMI through regular human rights training, resource allocation, and inter-agency coordination. Officers involved in migration enforcement should be trained on the humanitarian dimensions of migration and Nigeria's obligations under international

instruments such as the 1951 Refugee Convention and the African Charter on Human and Peoples' Rights.

3. Enhanced Judicial Oversight:

Courts should play a more active role in monitoring immigration detention and deportation procedures. Establishing specialized immigration benches or designated judges within the Federal High Court could help ensure prompt judicial review of detention orders and compliance with due process standards.²⁵⁴

4. Alternatives to Detention and Deportation:

Nigeria should adopt non-custodial measures such as reporting obligations, bail, or community-based monitoring as alternatives to detention. These mechanisms align with international best practices outlined by the UN Special Rapporteur on the Human Rights of Migrants²⁵⁵ and have proven effective in reducing costs and human rights abuses.

5. Access to Legal Assistance

Migrants, regardless of status, should be able to seek legal aid when their migration status is in doubt or where there is risk of deportation. The government should provide such aid where migrants are unable to afford the expenses of getting a counsel.

5.3 Contribution to Knowledge

This research contributes to scholarly and policy discourse by:

254 *Martin Gegenheimer & 4 Ors v The Republic of Nigeria & Anor.* (Application No. ECW/CCJ/APP/23/20) <<https://policehumanrightsresources.org/martin-gegenheimer-4-ors-v-the-republic-of-nigeria-anor-application-no-ecw-ccj-app-23>
20#:~:text=Again%2C%20the%20Applicant's%20complaint%20for%20his%20inappropriate,headquarters%20of%20the%20Nigerian%20Immigration%20Service%2C%20Abuja.> accessed 26th October 2025

255 UN Special Rapporteur on the Human Rights of Migrants (A/HRC/29/36, 2015 –< <https://www.ohchr.org/en/special-procedures/sr-migrants>> accessed 4th November, 2025

- Providing one of the few comprehensive legal analyses of the Nigerian Immigration Act, 2015 and Regulations, 2017 through a human rights lens, revealing how their enforcement mechanisms contribute to the criminalization of irregular migrants.
- Advancing the application of “crimmigration” theory within the African context, showing its manifestation in Nigerian immigration enforcement.
- Offering a balanced framework for reconciling national security imperatives with human rights protection, thereby filling a crucial gap in migration law scholarship in Nigeria.
- Generating actionable policy recommendations that could guide legislative reforms and institutional restructuring toward a rights-based migration system.

Through these contributions, the study strengthens understanding of how domestic migration governance can be aligned with regional and international standards, particularly those under the African Charter, 1951 Refugee Convention, and Global Compact for Migration.

5.4 Areas for Further Studies

Future research could expand this work by:

1. Conducting empirical studies on the lived experiences of irregular migrants and asylum seekers in Nigeria, to complement the legal analysis with field data on enforcement practices and human rights impacts.
2. Exploring comparative analyses with other African states (e.g., Ghana, South Africa, and Kenya) to identify best practices for balancing national security and migrant protection.

3. Assessing the role of non-state actors—including civil society organizations, media, and international agencies—in shaping migration governance and accountability in Nigeria.
4. Investigating the potential for judicial activism and regional court interventions (e.g., ECOWAS Court) to strengthen migrants' rights and influence domestic migration reforms.

Such further research will deepen understanding of the intersection between security policy, migration control, and human rights, providing stronger evidence for policy coherence and institutional reform.

5.5 Conclusion

This study has examined the complex intersection between national security imperatives and the protection of the human rights of migrants within Nigeria's legal and institutional framework. The analysis revealed that while the Nigerian Immigration Act 2015 and Immigration Regulations 2017 were designed to promote orderly migration and safeguard national interests, several of their provisions and enforcement practices have the unintended consequence of criminalizing irregular migration. By imposing custodial sentences or prolonged detention on individuals whose only fault lies in their irregular status, Nigeria risks undermining its obligations under international and regional human rights instruments, including the 1951 Refugee Convention, the African Charter on Human and Peoples' Rights, and the ECOWAS Protocol on Free Movement of Persons.

The study also demonstrated that the Nigerian Immigration Service (NIS), the National Agency for the Prohibition of Trafficking in Persons (NAPTIP), and the National Commission for Refugees, Migrants, and Internally Displaced Persons (NCFRMI) remain

pivotal in migration governance but are often constrained by overlapping mandates, inadequate resources, and insufficient human rights training. This institutional weakness fosters arbitrary decision-making, poor detention conditions, and lack of due process guarantees for migrants—issues that mirror broader governance challenges in Nigeria’s justice sector.

Comparative analysis with the United Kingdom and the United States further highlighted that the criminalization of irregular migration is not unique to Nigeria. Both countries similarly employ punitive measures such as imprisonment or deportation for irregular entry. However, they also provide institutional and policy safeguards—such as judicial oversight, humanitarian visas, and victim protection mechanisms—which Nigeria can adapt to its own context. Lessons from South Africa’s Constitutional Court and regional human rights jurisprudence equally affirm that migration control must not come at the expense of human dignity and the rule of law.

Therefore, this research concludes that while national security remains an essential and legitimate goal, it must be pursued in a manner consistent with Nigeria’s constitutional and international commitments to human rights. A rights-based migration policy does not imply open borders; rather, it calls for proportional and humane responses that distinguish between genuine security threats and vulnerable individuals seeking refuge or livelihood opportunities.

Ultimately, true national security cannot be achieved through the blanket criminalization of irregular migrants but through a fair, transparent, and humane migration system that integrates human rights principles into law, policy, and practice. Only by achieving this balance can Nigeria strengthen its global standing, uphold its moral and legal obligations, and ensure that the pursuit of security does not come at the cost of justice and human dignity.

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