

BORDERS, BARRIERS AND BROKEN PROMISES: THE LEGAL REALITIES OF IRREGULAR MIGRATION

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ABSTRACT

This paper interrogates the paradox of migration governance under the theme Borders, Barriers and Broken Promises. It argues that irregular migration is not simply a matter of illegality but a legal reality produced by restrictive frameworks, administrative barriers, and sovereignty-driven policies that criminalize mobility. Despite international commitments to human dignity and rights, states increasingly enact deterrent measures that fracture promises of protection and equality. Nigeria provides a compelling case study, positioned as both a hub of emigration and immigration within Africa, while simultaneously enforcing exclusionary practices that conflict with ECOWAS free movement protocols. The analysis demonstrates how barriers (legal, political, and administrative) transform migrants into subjects of irregularity, exposing them to detention, discrimination, and insecurity. By situating Nigeria within broader African and global debates, the paper reveals how broken promises of international law undermine genuine pathways for lawful mobility. Ultimately, it calls for a rethinking of migration governance that reconciles sovereignty with universal rights, ensuring fairness, proportionality, and genuine protection for migrants.

Keywords: Borders, Irregular migration, Nigeria, Human rights.

Introduction

1.0 Introduction: The Paradox of Migration Governance

Migration has become one of the most pressing legal, political and humanitarian issues of the 21st century.¹ While cross-border movement of people has existed for as long as human civilizations,

¹C Nweke and FMO Enyosiobi, 'A Philosophical Analysis of the Impacts of Migration on Nigeria Development', *AJAP-AMAMIHE Journal of Applied Philosophy*, [2023], 21(3) 84-86

the current management of migration has resulted in a unique set of debates about the balance between territorial sovereignty, border control, human rights and international law.² Nations all over the world have continued to pledge their support for international human rights standards, refugee rights, regional integration initiatives, and human dignity.³ Governments, on the other hand, have been increasingly responding to migration by enacting a slew of restrictive measures to deter, prevent, and criminalize all unofficial cross-border movements.⁴ The legal systems are thus confronted with a stunning paradox. Although the universal dignity of every human being is a principle of international law, and a number of rights are associated with the freedom to move, seek asylum, reunite with family, and be protected from persecution, migration legal frameworks make it difficult or impossible for many groups of people to move lawfully.⁵ Irregular migration has thus become a symptom of the conflicts in the current legal and political systems, rather than just a border control issue.

This contradiction is encapsulated in the title of this paper: Borders, Barriers, and Broken Promises. Borders remain an authentic expression of territorial sovereignty and play an important role in defining states' territorial boundaries.⁶ However, human mobility is hindered by not only these physical obstacles, but also by legal restrictions, administrative obstacles, visa regimes, detention policies, carrier sanctions, externalization agreements and enforcement mechanisms that all join forces.⁷ When international legal instruments refer to “promises” and migrants live by “broken promises,” there is talk of broken promises. The international law has created an extensive body of principles and standards for safeguarding human dignity, ensuring non-arbitrariness and protecting vulnerable people.⁸ Many migrants, however, still experience perilous routes to migration, extended periods of detention, exploitation, family separation, discrimination, and a lack of access to justice. It is important to consider whether current legal regimes provide genuine protection to migrants or simply create the illusion of protection while enacting exclusionary migration governance.

Irregular migration is frequently discussed in public debate in a one-dimensional manner, focusing on legality or illegality.⁹ This viewpoint holds that migrants who enter or remain in a state without proper

²*Ibid* 85

³J. Nkrumah, ‘International Human Rights Law and the Protection of Refugees in the Modern World’ [2023] (3)(2) *Journal of Modern Law and Policy* 29–40

⁴*Ibid* 35

⁵L. Dirar, I.M. Kysel and F. Raach, ‘The African Guiding Principles on the Rights of Migrants, Refugees and Asylum Seekers (Afr. Comm’n H.P.R.)’ [2024] (63)(3) *International Legal Materials* 482–522

⁶S. Benhabib and A. Shachar (eds), *New Geographies of Borders: Territory, Land, and Water*, ‘Lawless Zones, Rightless Subjects: Migration, Asylum, and Shifting Borders’ [2025] (Cambridge University Press) 107–172.

⁷*Ibid* 110

⁸Z. Zohra and B. Hichem, ‘International Legal Protection of Human Dignity’ [2026] (26)(1) *Cadernos de Pós-Graduação em Direito Político e Econômico* 503, Centro de Estudos Acadêmicos Press, ISSN 1678-2127 <https://ceapress.org> Accessed 20 May 2026

⁹A. Amuda-Kannike SAN, S. Oniye and A. Abdulkareem, ‘Legal Analysis of Irregular Migration and the Effects on Host Countries’ [2026] (1)(1) *LexScriptio*

authorization have simply broken the law and are thus subject to prosecution. Interposition sounds logical, but it involves much more in the legal world. Irregular migration occurs in a real world context. Instead, it is through the development of ‘migration governance systems’ that decisions are made on who can move, when and who is entitled to legal protections.¹⁰ Irregularity thus has a legal dimension and is not a given state of affairs, but rather a legal reality resulting from legislation, administrative measures, diplomatic treaties, and institutional procedures. But many migrants are not necessarily irregular, instead, because it is easier for them to evade legal channels than to access, afford or obtain them, or due to the limitations and inflexibility of the current law, or because the law cannot adequately address the drivers of migration.¹¹ It is therefore necessary to question the legal frameworks that make irregularity in the first place, and go beyond simplistic framings of legality and illegality, to examine irregular migration itself.

This is a topic that resonates with the current situation in Africa. Economic disparities, political unrest, war, environmental degradation, population growth, education, and family ties continue to be major drivers of cross-border migration on the continent.¹² Several African regional institutions have pledged to promote migrant mobility, integration, and protection. Yet, national governments often adopt measures that hinder these objectives. This paradox is especially evident in the case of regional economic communities (RECs), which have formal charters that include the principle of freedom of movement but have implemented measures that limit people's ability to move.¹³ This often results in migrants being exposed to conflicting legal claims and administrative policies. As a result, the African experience can provide insight into the broader context of international discussions about migration governance.

Nigeria has a unique place in this context. Nigeria is one of Africa's largest economies and most populous countries, serving as a point of origin, destination, and transit for migrants. Nigerians travel throughout Africa, Europe, North America, the Middle East, and other parts of the world for a variety of reasons, including education, economic growth, family reunification, and security.¹⁴ In the meantime, the country is a host to migrants from its neighboring countries and is actively involved in the regional mobility arrangements under ECOWAS. Nigeria's multiple roles place it at the center of

¹⁰*Ibid* 2

¹¹M. Ambrosini and M.H.J. Hajer, ‘The Political Challenge of Irregular Migration’ in *Irregular Migration* (IMISCOE Research Series, Springer, Cham, 2023) 12

¹²*Ibid* 11

¹³B. Gnimeassoun and A. Okara, ‘Migration Policies in Africa’s Regional Economic Communities’ [2024] *Journal Article* 17.

¹⁴S.A. Adedigba and S.O. Ojo, ‘Examining the Contributions of the Nigeria Diaspora to the Development of the Country’ [2025] (2)(1) *International Journal of Religions and Peacebuilding* 59–79.

current migration debates.¹⁵ Addressing the country's concerns about emigration, immigration, refugee protection, border security, labor mobility, and regional integration must all be done concurrently.¹⁶ As a result, a study of irregular migration through a Nigerian lens provides valuable insights into broader legal debates about the control of human movement in an increasingly globalized world.

This paper contends that the dominant legal paradigm for dealing with irregular migration has been exclusion and control, rather than rights protection and legal coherence. States have a legitimate sovereign interest in regulating entry into their territories, but their migration control powers must be exercised in compliance with international law obligations, and the principles of fundamental human dignity.¹⁷ The growing perception of irregular migration as a security issue has resulted in the development of laws that priorities deterrence over protection, enforcement over accountability.¹⁸ In many cases, migrants do not face a lack of laws, but rather an abundance of laws aimed at curbing mobility but that offer no realistic pathways for mobility to take place. So the central issue is not simply to improve migration governance, but also to ensure that it is consistent with the values and commitments outlined in international law.¹⁹

In this context, the paper delves into the legal realities of irregular migration by critically examining the concepts and connections between sovereignty, border control, human rights, and migration regulation. It explores how legal systems can contribute to the creation of irregularity, the tension between the state's interests and individual rights, and evaluates the effectiveness of current international, regional and domestic legal frameworks and whether these have achieved their stated objectives. A special emphasis is placed on the African and Nigerian contexts, where migration governance is still a mix of contradictory African integration and national security issues. Finally, the paper seeks to demonstrate that the issue of irregular migration extends beyond illegal migration. It is rather a symptom of more fundamental contradictions in legal regimes that enable, regulate, restrict and criminalize human movement.

2.0 The Legal Construction of Irregularity

2.1 Rethinking the Meaning of Irregular Migration

The concept of irregular migration frequently appears to be taken for granted. In public discourse, irregular migrants are frequently assumed to have broken immigration rules and thus be beyond the

¹⁵*Ibid* 61

¹⁶*Ibid* 66

¹⁷*Ibid* 59

¹⁸*Ibid* 60

¹⁹O.J. Adelakun, F.A. Mohammed, A.O. Olaniran and T.H. Odugbemi, 'Economic and Geopolitical Push Factors, and Migration Tendencies in Nigeria: The Intervening Role of Institutional Quality' [2025] (30) *Scientific African* e02955.

reach of the law.²⁰ However, these assumptions fail to recognize the extent to which the irregularity itself is a result of a legal classification. Movement is not necessarily an irregular phenomenon. Rather, there are certain conditions in which movements are allowed, restricted, or forbidden, as determined by legal frameworks. The distinction between regular and irregular migration is thus legal rather than natural or objective, as determined by states exercising their sovereign powers.²¹ This is significant because it moves away from migrants' behaviour and towards the functioning of the legal regimes that regulate and produce immigration.

Legally, the term irregular migration encompasses various scenarios. A person may be considered in violation of the rules for violating entry rules, exceeding the number of entries on a visa, working contrary to a residence permit or for failure to meet administrative registration obligations.²² "Irregularity" is not a specific legal status; it can refer to any combination of the following:

- i. Individuals' situations also change from year to year.
- ii. A foreigner can "regularize" his or her stay through legal means, such as the asylum process, whereas a foreigner who enters the country lawfully may become irregular once his or her documentation expires.

This fluidity is an indicator of the instability and heterogeneity of irregular migration narratives. Irregular status is frequently established, modified, or terminated through administrative determination and/or legislative action under the law.²³ This raises a key legal question: What fraction of irregular migration is due to "migrant behavior" and what is due to "migrant design"? Such a question is especially relevant in today's migration systems, which allow only a limited number of migrants to enter and stay legally. Despite the vast differences in economies between countries, many areas of the world have a large proportion of the population who are unable to access legal migration options.²⁴ Individuals who can legitimately move for work, education, family, and the protection of their personal safety, but are facing a growing number of legal hurdles.²⁵ In such cases, irregular migration is not only illegal, but it can also be viewed as a symptom of a disconnect between

²⁰JF Hollifield and N Foley (eds), *Understanding Global Migration* (Stanford University Press, 2022) 1; E Yendaw, 'Cross-Border Migration of Itinerant Immigrant Retailers in Ghana', *Journal of International Migration and Integration*, [2022], 23(1) 205-225.

²¹S. Angeleri, 'Sovereignty and the Human Rights of Irregular Migrants' in *Irregular Migrants and the Right to Health* [2022] (Cambridge University Press) 15–60.

²²United Nations Office on Drugs and Crime (UNODC), 'Irregular Migration vs. Migrant Smuggling: What is the Difference?' [2025] *UNODC Frontpage* (January) <https://www.unodc.org/unodc/en/frontpage/2025/January/irregular-migration-vs--migrant-smuggling--what-is-the-difference.html> Accessed 29 May 2026

²³C O'Cinneide, 'The Human Rights of Migrants with Irregular Status: Giving Substance to Aspirations of Universalism' in S Spencer and A Triandafyllidou (eds), *Migrants with Irregular Status in Europe* (IMISCOE Research Series, Springer 2020) 54

²⁴F. Castelli, 'Drivers of Migration: Why Do People Move?' [2018] (25)(1) *Journal of Travel Medicine* tay040

²⁵*Ibid*

migration needs and the legal frameworks that attempt to control migration.²⁶ Migration is a more than legal solution. It actively constructs migration routes; it is a migration route that allows for certain types of migration and makes others illegal.

The definition of irregularity in the law has also created issues of equality and fairness. Laws and policies, which may be beyond the individual's control, such as nationality, wealth and economic resources, geopolitics, and access to documentation, often determine the ability to migrate legally.²⁷ Citizens in some states have broad mobility rights and can travel to a variety of destinations without requiring a visa, whereas citizens in other states may have limited mobility rights, even when legitimate opportunities arise.²⁸ Thus, in many cases, the legal distinction between regular and irregular migration is indicative of the overall inequalities that underpin the international system. Apparent apolitical application of immigration law may actually be used as a tool for enforcing nationality, wealth and geopolitical power.²⁹ An in-depth legal approach to irregular migration should consider not only the mechanisms for enforcing migration laws, but also the normative foundations of those laws.

2.2 Sovereignty and the Power to Define Mobility

The principle of sovereignty should be considered when interpreting the legal framework of irregular migration. Under international law, States can regulate access to their territory and impose conditions on the presence of people who are not their nationals.³⁰ This authority has always been regarded as a necessary component of statehood and is one of the most sacred aspects of sovereign power. Immigration control is often referred to as one of the areas where states possess a high degree of autonomy in decision-making and are relatively free from external constraints.³¹ The concept of sovereignty is used to justify visa restrictions, border policing, and deportation policies, among other tools for controlling migration.

However, no government can simply regulate migration. It also allows them to develop categories that serve as vehicles for understanding migration.³² States in the United States determine who can be a

²⁶*Ibid*

²⁷S.D. Albert-Makyur and M.U. Mbanaso, 'Irregular Migration and Governance: Implications for Nigeria' [2022] (3)(11) *Journal of Global Social Sciences* 135–171

²⁸*Ibid* 139

²⁹*Ibid* 140

³⁰S. Angeleri, 'Sovereignty and the Human Rights of Irregular Migrants' in *Irregular Migrants and the Right to Health* [2022] (Cambridge University Press) 15–60.

³¹B. Niño Arnaiz, 'The Ethics of Immigration Enforcement: How Far May States Go?' [2024] (20)(1) *Journal of International Political Theory* 66–87.

³²*Ibid* 69

visitor, student, worker, refugee, permanent resident, or undocumented migrant.³³ Legislation and administrative processes create criteria for legal mobility and for illegal mobility. As a result, what is classified as irregular migration is not only found in legal processes, but is also created by legal categorization. The ability to define irregularity is thus an important aspect of sovereign power because it allows states to determine who can and cannot be a member of the national community.³⁴ This authority, however, may be subject to much legal and philosophical analysis. Is there a limit to a state's ability to define irregularity for itself, given its sovereignty? Is it possible to design a migration regime in which a large number of people become irregular by default? Does sovereignty allow the government to use its policies to endanger migrants? The questions show that tensions exist at the heart of current migration law issues. Sovereignty allows for a great deal of flexibility in determining borders, but since World War II, there has been a significant development in international law that has increasingly bound sovereign power to human rights concerns.³⁵ This implies a conflict between state sovereignty and universal human rights, a core feature of contemporary migration governance and the basis for analysis in the next section.

2.3 The Production of Irregularity through Restrictive Migration Regimes

Most of today's debates about irregular migration center on the idea that irregularity is primarily caused by migrants' own decisions.³⁶ That type of solution assigns all of the blame to those who migrate without authorization, while ignoring the structural factors that influence migration decisions. A more in-depth legal analysis reveals that restrictive migration regimes with no realistic options for lawful mobility are a predictable outcome of irregular migration.³⁷ Noncompliance with the law, according to this viewpoint, is not only the result of a lack of compliance, but also of a failure in the legal design.³⁸ Often legislation that is not grounded in social, economic and humanitarian conditions creates results that are contrary to the law's goals. Irregular migration is almost unavoidable when legal migration opportunities are severely limited but migration pressures persist.

Today's immigration policies are severe, with lengthy prenuptial agreements, monetary conditions, sponsorship conditions, security clearance, and administrative requirements. These can be presented

³³American Immigration Council, 'How the United States Immigration System Works: Fact Sheet' [2026] *American Immigration Council* <https://www.americanimmigrationcouncil.org/fact-sheet/how-united-states-immigration-system-works-fact-sheet/> Accessed 29 May 2026

³⁴L. Erez and A. Banai, 'Self-Determination and the Limits on the Right to Include' [2025] (73)(2) *Political Studies* 753–769.

³⁵*Ibid* 757

³⁶G. Echeverría, 'Irregular Migration Theories' in *Towards a Systemic Theory of Irregular Migration* [2020] (IMISCOE Research Series, Springer, Cham) 21

³⁷L.M. Borrelli, L. Johannesson and A. Lindberg, 'Predictable Patterns of Unpredictability: A Literature Review of Discretion in Migration Control' [2025] (7)(1) *Political Research Exchange* DOI:10.1080/2474736X.2025.2508374.

³⁸*Ibid*

as critical tools for migration control, but they can also be significant impediments to legal migration.³⁹ Those interested in working in another country may discover that there is no visa category available that matches an actual job in the labor market.⁴⁰ Family reunification can be a lengthy process. Students may face economic constraints that effectively exclude less well-off students from less affluent societies.⁴¹ For refugees and people on the move, legal routes are too slow and/or too inaccessible to respond to pressing situations.⁴² In such cases, the distinction between legal and illegal migration becomes blurred, and the definition of regular and irregular migration becomes more of a measure of differential access to mobility opportunities.

Rather, they are a product of legal frameworks restraining frequent mobility of large populations. Strict migration controls create a secondary market that may encourage illegal migration.⁴³ When lawful options are limited, smuggling networks and/or fraudulent documentation schemes often emerge, as do informal migration routes. Significantly, such occurrences cannot be regarded as unregulated criminal enterprises.⁴⁴ They rather emerge from legal contexts that prevent large numbers of people from moving on a regular basis. This is an observation, not a call to lawlessness in migration or criminality. Instead, it emphasizes the interconnectedness of migration boundaries and irregular migration. Migration governance must consider the possibility that policies will have unanticipated consequences, providing incentives for the very behavior they are intended to discourage.⁴⁵

It is also debatable whether the creation of irregularity through restrictive laws is proportional. According to law theory, regulations must be “rationally related” to lawful ends and not unduly burdensome.⁴⁶ However, numerous migration policies appear to be designed not only to control migration, but also to discourage migration. Deterrence is a key concern in migration policy in many jurisdictions. Many governments are enacting measures to make migration more expensive, uncertain, and difficult. While states have border-control interests, deterrence goals can result in measures that

³⁹H de Haas, ‘A Theory of Migration: The Aspirations–Capabilities Framework’ (2021) 9 *Comparative Migration Studies* 8

⁴⁰*Ibid*

⁴¹L Oso, P Kaczmarczyk and J Salamońska, ‘Labour Migration’ in P Scholten (ed), *Introduction to Migration Studies* (IMISCOE Research Series, Springer 2022) 20

⁴²*Ibid* 21

⁴³*Ibid* 21

⁴⁴*Ibid* 22

⁴⁵J Park, S Lee and J Park, ‘The Economic Decision of International Migration: Two Empirical Evidences from the United States and Canada’ (2024) 12 *Economies* 8, 214

⁴⁶V.C. Jackson, ‘Constitutional Law in an Age of Proportionality’ [2016] (3104) *Yale Law Journal* https://yalelawjournal.org/pdf/h.3094.Jackson.3196_fteiok9v.pdf Accessed 29 May 2026

target vulnerable groups disproportionately.⁴⁷ The legal issue is whether or not these measures are compatible with the overall expressions of fairness, necessity and human dignity.

Selectivity of migration restrictions is another key aspect of this discussion. There is also a lack of consistency in the application of migration controls to various categories of people. Highly skilled workers, investors, businessmen, and people with large sums of money have more mobility options than low-skilled workers, refugees, or economically disadvantaged migrants.⁴⁸ Therefore, the legal concept of irregularity is often similar to the economic and geopolitical interests. Some forms of mobility are encouraged because they are seen to benefit the receiving countries, while others are discouraged because they are seen to be harmful.⁴⁹ It is a tactic that shows that irregularity is a legal, political and economic matter. The separation of legal and illegal movement is not the only aspect of the law. It also indicates who is and isn't moving.

2.4 The Expansion of Administrative Barriers as Instruments of Migration Control

Migration outside of traditional border checkpoints is growing in regulation. Administrative devices play an important role in contemporary migration governance, both before, during, and after migration.⁵⁰ These include visa requirements, carrier sanctions and employer verification requirements, biometric registration programs, digital surveillance technologies, and inter-state information sharing. While they may appear to be innocuous administrative mechanisms, such measures have a significant impact on migration outcomes and cause irregularities.⁵¹

One example is visa regimes. In principle, visas are instruments for regulating access to a country. In reality, visa regimes can act as de facto border controls, influencing who attempts to cross the border and, as a result, the nature of eventual migrants.⁵² Those coming from certain countries may face a large amount of paperwork, long processing times, and a high rejection rate. Consequently, many potential migrants are deterred at a virtual checkpoint. It is a major change in the legal framework of migration governance.⁵³ Border control is no longer limited to territorial frontiers, but is increasingly being used in administrative procedures and activities that go far beyond national borders.⁵⁴

⁴⁷ *Ibid*

⁴⁸ H.G. van de Werfhorst and A. Heath, 'Selectivity of Migration and the Educational Disadvantages of Second-Generation Immigrants in Ten Host Societies' [2018] (35)(2) *European Journal of Population* 347–378

⁴⁹ *Ibid* 349

⁵⁰ M. Godin, D. Ozkul and R. Humphris, 'Digital Technologies and Migration: Behind, Beyond and Around the Black Box' [2025] (51)(14) *Journal of Ethnic and Migration Studies* 3571–3589

⁵¹ *Ibid* 3579

⁵² R. Birnie, 'The Right to Visit: Migration Control, Visa Policies and the Ethics of Temporary Entry' [2018] *ECPR Conference, Oslo* 1.

⁵³ *Ibid* 1

⁵⁴ L. Axelsson, 'Border Timespaces: Understanding the Regulation of International Mobility and Migration' [2022] (104)(1) *Geografiska Annaler: Series B, Human Geography* 59–74

Another example of this is carrier sanctions. In such cases, the transport companies are liable to monetary penalties. This effectively transforms airlines and other carriers into private actors, carrying out migration control functions on behalf of governments.⁵⁵ It is a development with significant legal consequences. Access to mobility decisions are increasingly being delegated to private bodies that are not judicial or immigration authorities.⁵⁶ This could imply that people are denied a meaningful opportunity to participate in travel without adequate safeguards and access to legal remedies.⁵⁷ This raises concerns about accountability, transparency, and due process in migration governance systems. Administrative barriers also play a role in the status insecurity. Migrants who enter the country legally may become irregular due to a number of factors, including paperwork errors, administrative decisions, legal changes, and/or delays.⁵⁸ In these instances, there is no illegal entry; the failure is due to the functioning of a complicated regulatory mechanism. The law thus establishes categories of irregularity which are often not related to public opinion about illegal migration. However, a person who enters legally and pays taxes, works, and contributes to society, may be irregular, due to technical and/or administrative reasons.⁵⁹ These realities call into question the simplistic narrative of people crossing irregularly and illegally to avoid legal procedures.

2.5 The Tension between Mobility Rights and Territorial Sovereignty

The law of irregular migration is ultimately a battleground between two opposing international legal principles: territorial sovereignty and human mobility. States have legitimate jurisdiction over their borders and the entry of non-citizens.⁶⁰ International law instruments, by contrast, are more specific in their recognition of rights related to movement: the right to free movement within the state, the right to leave any country, the right to seek asylum, the right to family life protection and other general principles of human dignity and personal autonomy.⁶¹ Among the most disputed among the present legal community is the relationship between these principles. The relationship between these principles remains one of the most contentious issues in contemporary legal scholarship.

The concept of sovereign equality of states has been at the heart of international law since its inception. Control over territory was regarded as critical to political independence and statehood.⁶² As

⁵⁵T. Baird, 'Carrier Sanctions in Europe: A Comparison of Trends in 10 Countries' [2017] (19)(3) *European Journal of Migration and Law* 307–334

⁵⁶*Ibid* 310

⁵⁷*Ibid* 310

⁵⁸S Vohra and J Martens, *Protecting the Human Rights of Migrants: A Course for Migration Officials in Africa* (IOM, African Capacity Building Centre, Kilimanjaro 2024) 21

⁵⁹*Ibid* 22

⁶⁰*Ibid* 22

⁶¹*Ibid* 22

⁶²C.E. Okeke, 'The Doctrine of the Equality of States and Its Applicability to the United Nations Security Council' [2022] (6)(1) *African Journal of Law and Human Rights (AJLHR)* 97.

a result, states had a lot of say over who could enter and stay in their territories. However, since the end of World War II, the development of international human rights law has placed some constraints on the use of sovereign power. Human rights became more salient as norms, with the increasing recognition of rights inherent in persons and the duty of states to uphold these rights.⁶³ This movement created a tension in migration law based on norms, as mobility always entails engagement between a population that wants to move and a government that wants to control.

An example of this tension is the right to leave any country, including one's own. This freedom is an essential form of personal freedom, as recognized by international human rights instruments.⁶⁴ However, there is no general right to enter another state. This leaves room for an uneven legal environment where people are allowed to go but can't be assured of where they will end up. This inequality helps to explain irregular migration by allowing migration at one point but not at another.⁶⁵ People may be free to leave their home countries but lack access to legal channels of entry into other countries. This is especially true when there is no option for migration. Many people who have been forcibly displaced from their home countries as a result of conflict, persecution, environmental crises, economic collapse, or humanitarian crises find it impossible to return.⁶⁶ They may, however, encounter significant difficulties if they seek legal admission elsewhere. Under these conditions, there is no distinction between voluntary and involuntary migration. Border control-oriented legal rules may not reflect all factors relevant for making migration decisions.⁶⁷ Consequently, when need and law converge, irregular migration often happens. This tension has implications for the future of migration governance that are wide-ranging. Under the interpretation of sovereignty as unrestricted control over migration, the protection of migrant rights becomes increasingly precarious. However, extending mobility rights without regard for legitimate state interests will jeopardize border management and public administration concerns.⁶⁸ The problem for the contemporary legal systems is not to decide between the two principles, but to design a system that can accommodate them. To achieve such balance, it is critical to recognize that irregular migration involves more than just offenders or legal violations.⁶⁹ It could be the result of a never-ending internal conflict within the law.

⁶³ *Ibid* 99

⁶⁴ *Ibid* 99

⁶⁵ *Ibid* 99

⁶⁶ *Ibid* 99

⁶⁷ *Ibid* 99

⁶⁸ A. OsawaruErimwinorosee, I.P. Nwakoby and N.E. Emeka, 'State Sovereignty, Immigration Detention, and Migrants' Rights: A Doctrinal and Comparative Analysis under International Human Rights Law' [2026] (3)(1) *NnamdiAzikiwe University Journal of Law and Clinical Legal Education (NAU-JLCLE)* 39.

⁶⁹ *Ibid* 40

3.0 Borders and Barriers: The Conflict between State Sovereignty and Human Rights

The most apparent legal aspects of these irregular migration processes are where sovereign power meets human vulnerability. Since irregular migration is frequently carried out through legal and administrative channels, it is also critical to examine states' responses to irregular migration. Present-day approach to migration governance is characterized by an emphasis on enforcement. In many countries, migration governance has become a major part of the migration system, including border surveillance technologies, immigration detention centers, deportation mechanisms, maritime interdiction operations and extensive security apparatus.⁷⁰ They are often offered as essential measures for territorial integrity, public order and countering transnational crime and national security.⁷¹ But there has been an escalation in migration enforcement, which has created intricate legal issues concerning the extent to which a state can assert its sovereign authority and the significance of human rights obligations in migration and border control.⁷² The question now is whether states have the authority to regulate migration. Instead, the more pressing question is how that power can be used without violating the rights and dignity of the people it is supposed to serve, those subject to immigration control.

The crux of this debate is a basic paradox. States have relied upon foreign law to bolster territorial claims without being legally bound by foreign human rights law. Both are part of the current international legal system, but they appear to conflict with one another.⁷³ The concept of sovereignty emphasizes territorial sovereignty and government independence, whereas human rights law emphasizes the protection of individuals from abuses of power. Migration law is found somewhere in between these competing principles.⁷⁴ Therefore, state interests must be weighed against individual rights for every immigration ruling. The challenge is that these interests are often seen and treated as mutually exclusive, and that migration governance often does not see them as such.⁷⁵ This implies that migrants are often seen as a potential danger to state interests, instead of as rights holders who need legal protection.

3.1 The Legal Limits of Sovereign Border Control

The right of states to control their borders is one of the least contentious international law principles. Courts, governments and international organizations have all recognized that states have the right to establish conditions for admission, immigration procedures and to deport non-citizens who do not

⁷⁰N. Bates-Eamer, 'Border and Migration Controls and Migrant Precarity in the Context of Climate Change' [2019] (8) *Social Sciences* 198

⁷¹*Ibid* 199

⁷²*Ibid* 200

⁷³*Ibid* 200

⁷⁴Okeke [n62] 97

⁷⁵*Ibid* 97

fulfill the legal requirements for immigration or residence.⁷⁶ But having sovereign authority does not imply that there are no legal constraints. The term sovereignty no longer suggests unlimited power; it does not suggest power that is beyond the reach of outside scrutiny. Instead, sovereign powers must be exercised in respect of the treaty obligations, customary international law and general legal principles.⁷⁷

This distinction is particularly relevant in the context of migration, which is often cited as justification for the sovereignty argument in response to attacks from the legal world. Issues such as border closures, mass deportations, detention and discriminatory migration policies are often portrayed as issues of ‘domestic jurisdiction’.⁷⁸ Such arguments are correct in part, but they ignore the fact that international law limits the exercise of sovereign authority in terms of substance and procedure. The issue is thus not if states can regulate migration but if specific ways of doing so are in line with more general legal obligations. Sovereignty provides authority, with responsibility.⁷⁹

Following 1945, international human rights law had a significant impact on traditional concepts of state power. This allowed the creation of a new legal paradigm, where state actions could be appraised normatively, outside of the State's legal framework, merely on the basis that the individual held inherent rights that the State was obliged to respect.⁸⁰ This change impacted migration control as well. Over time, courts and international monitoring bodies began to focus on the fact that migrants, regardless of their migratory status, have basic human dignity protections. In particular, the concept of proportionality is relevant.⁸¹ The requirements listed above represent the general rule that public power should not be exercised arbitrarily.

Proportionality is one particularly relevant concept. All enforcement measures are not appropriate for all migration objectives. While the government has a legitimate interest in preventing unauthorized entry, there must be a reasonable connection between the means used and the goal of such prohibition.⁸² A restriction can be disproportionate if it imposes a significant restriction on individuals but does not serve any public interest. It is a good means to ensure that governance does not become a domain of unfettered executive power in the field of migration. It highlights the fact that migrants are subjects of law and not objects of administration.

⁷⁶Erimwinorosee et al [n68] 40

⁷⁷*Ibid* 40

⁷⁸Okeke [n62] 97

⁷⁹*Ibid* 97

⁸⁰L. Hennebel and H. Tigroudja, ‘The Machinery of International Human Rights Law’ in *International Human Rights Law: A Treatise* [2025] (Cambridge University Press) 155–438.

⁸¹Erimwinorosee et al [n68] 40

⁸²V.C. Jackson, ‘Proportional Immigration Enforcement’ [2026] *King's College London Pure* https://kclpure.kcl.ac.uk/portal/files/191220285/Proportional_Immigration_Enforcement.pdf Accessed 29 May 2026

3.2 Immigration Detention and the Problem of Administrative Deprivation of Liberty

Detention of migrants is one of the most contentious aspects of current immigration policy. Migrants are often routinely detained while awaiting immigration proceedings, refugee status determination, deportation or identity verification in many jurisdictions.⁸³ In general, governments justify detention by claiming that it aids enforcement, prevents people from fleeing, maintains public order, and/or ensures compliance with immigration laws. However, immigration detention raises a number of fundamental legal issues because it can result in the deprivation of one of the most fundamental human rights: personal liberty.⁸⁴

One of the most notable aspects of immigration detention is that it frequently takes place outside of the criminal justice system. It is possible that the individual's freedom will be restricted due to their migration status, rather than for committing crimes.⁸⁵ It is a serious legal issue. In principle, the judicial process precedes criminal detention and establishes guilt following the procedural standards. Immigration detention on the other hand is sometimes regarded as an administrative measure. In practice, the implications may be the same for the individual in question.⁸⁶ Detained migrants can be detained for extended periods of time, have limited access to legal aid, are separated from their families, and experience psychological distress and a lack of communication.

International human rights law does not specifically prohibit immigration detention. However, it must be exceptional and not routine.⁸⁷ Deprivation of liberty should be legal, necessary, and proportionate, with an effective review mechanism. Detention should not have been imposed as an automatic consequence of a person's lack of regular immigration status. Authorities must have specific reasons for detaining someone in one case and should consider less restrictive alternatives whenever possible. The principles were an expression of a larger principle: protecting individual liberties from arbitrary state actions. However, migration detention regimes do not always adhere to these standards. Various areas have reported extended detentions, and facilities often have been substandard, with inadequate legal representation and restricted judicial oversight.⁸⁸ The arrest of vulnerable people, such as children, asylum seekers, trafficking victims, and those who are physically or mentally ill, is particularly concerning. The arrest of such people raises serious concerns about their compliance with

⁸³W.M. Sweileh, 'Analysis and Mapping of Scientific Literature on Detention and Deportation of International Migrants (1990–2022)' [2023] (25)(5) *Journal of Immigrant and Minority Health* 1065–1076

⁸⁴*Ibid* 1069

⁸⁵J. Könönen, 'Multiple Functions of Immigration Detention: Police Measures in the Governance of Mobile Populations' [2024] (26)(3) *Punishment & Society* 507–526

⁸⁶*Ibid* 511

⁸⁷*Ibid* 509

⁸⁸International Organization for Migration (IOM), *Analysing Migrant Detention Legal Frameworks: Perspectives from West and Central Africa* [2024] IOM, Geneva https://publications.iom.int/system/files/pdf/pub2024-043-l-analysing-migrant-detention-legal-frameworks_0.pdf Accessed 29 May 2026

international legal obligations.⁸⁹ It serves also as an illustration of the limits of the migration governance paradigm, which favors administration over individual rights.

Immigration detention raises legal issues not only in relation to treatment. The symbolic aspect refers to the purpose of detention in migration governance: a declaration of state sovereignty and a deterrent measure.⁹⁰ Detention is employed in many jurisdictions not only as a measure for immigration or facilitation, but also as a deterrent against further migration. This is of particular relevance for normative question since the denial of liberty should not be used as a deterrent measure.⁹¹ The value of human rights guarantees would be severely undermined if people were denied some of their basic liberties in order to convey a political message about migration policy.

3.3 Deportation, Expulsion, and the Requirement of Due Process

The right to deprive non-citizens of a country's citizenship is an important aspect of sovereignty. The majority of states have the authority to deport people who have violated immigration laws or are no longer legally permitted to stay in their state. However, deportation powers are limited.⁹² The removal process shall be conducted in accordance with the principle of justice, legality and due process established by international law. These requirements are especially important because deportation can have long-term consequences for those affected and their families.

Due process is an important issue in migration law because the reasons for deportation can often be conflicting, and there may be a number of complex factual elements involved.⁹³ Migrants may have established family ties, employment, educational, or community connections in their new home states. Significant risks may exist for some on return to their country of origin. Others may have been resident in host societies for many years without legal status.⁹⁴ Fair decision-making thus includes the ability to submit evidence, contest decisions, seek legal advice, and have decisions made by administrators reviewed independently. These are some of the most basic elements of the rule of law.

One of the pressing legal issues in this field is collective expulsions. Collective expulsion refers to the deportation of migrants in groups without taking individual circumstances into account.⁹⁵ International legal organizations have condemned such practices as contrary to the principle that special consideration shall be given to each person in his or her particular case. Refusing to maintain

⁸⁹ *Ibid*

⁹⁰ *Ibid*

⁹¹ *Ibid*

⁹² J. Hidalgo, 'Self-Determination, Immigration Restrictions, and the Problem of Compatriot Deportation' [2014] (10)(3) *Journal of International Political Theory* 261–282.

⁹³ *Ibid* 266

⁹⁴ *Ibid* 265

⁹⁵ EX Obiezu and I Odimegwu, *Nigerian Migration Dynamics and Governance* (Fab Educational Books 2021) 12

procedural guarantees for that reason would be incorrect: migration status.⁹⁶ Those who enter a country illegally continue to have the right to fair treatment under the fundamental principles of justice. The accelerated deportation procedures present new challenges. Governments tend to claim that their relevant processing mechanisms need to be efficient, that they have to be able to process a large number of cases.⁹⁷ Administrative efficiency is unquestionably important, but it should not come at the expense of fairness. Rushing procedures in order to make a decision faster can result in making incorrect decisions, which can have long-term consequences.⁹⁸ As well as laws having to be enforced, the processes in which these laws are applied need to be considered as a key measure to ensure the legitimacy of migration governance.

3.4 Non-Refoulement and the Human Rights Limits of Exclusion

The principle of non-refoulement may be the most significant legal restriction on states' migration powers. This principle prohibits forcing someone to return to a place where he or she would face persecution, torture, inhumane treatment, or serious threats to his or her life or liberty.⁹⁹ Non-refoulement was once a refugee law norm, but it is now recognized as a broader human rights norm in several areas of international law.¹⁰⁰ It is a really serious restriction on the exercise of migration control powers, and it is one of the most conspicuous illustrations of human rights limiting sovereign power. Non-refoulement is important because it recognizes that migration decisions can mean life or death.¹⁰¹ A deportation order is not the same as an administrative order. In some cases, it may result in imprisonment, violence, persecution, torture, or even death. According to international law, States must assess the potential risks before implementing any removal measures.¹⁰² The legality of deportation is also determined by the deportee's immigration status, the situation in the country of deportation, and the individual's situation.

The principle is particularly relevant in the context of 'mixed migration flows'. Many border crossers are not “in-between” the usual legal categories. Often, economic suffering, environmental stresses, political turmoil, armed violence, and human rights violations, are interwoven in a complex manner.¹⁰³ As a result, distinguishing between refugees and other migrants may prove difficult. States

⁹⁶*Ibid* 11

⁹⁷*Ibid* 13

⁹⁸*Ibid* 13

⁹⁹N.C. Nguindip and K.H. Nyingchia, ‘The Principle of Non-Refoulement and the Protection of Refugees in International Law: What Prospect for Application under Cameroonian Refugee Law’ [2020] (6)(4) *International Journal of Law* 165–172.

¹⁰⁰*Ibid* 166

¹⁰¹*Ibid* 165

¹⁰²*Ibid* 166

¹⁰³Samuel Hall, *Youth, Migration and Development: A New Lens for Critical Times – Case Studies from Colombia, Jordan, Kenya, Mexico, Pakistan, Senegal, Thailand, and Tunisia* [2023] KNOMAD Paper 53, World Bank

are still responsible for placing people facing removal in situations that will not cause serious harm. Another cautioned aspect of the assessment process is uncertainty. Pushbacks, summary removals and border controls outside of European Union territory have also become a subject of growing concern from a legal standpoint as they can compromise the effectiveness of the non-refoulement obligations.¹⁰⁴ Restricting people's ability to go through asylum procedures or forcibly returning them without proper consideration increases the risk of illegitimate refoulement. However, an assessment of migration governance should not be limited to domestic immigration laws.¹⁰⁵ It should also be evaluated in light of international commitments to protect against serious human rights violations. Finally, the concept of “non-refoulement” exemplifies the paper's general thrust. Contemporary migration governance is based on the rule of law while also respecting state sovereignty and human dignity.¹⁰⁶ The challenges are to ensure that border control does not jeopardize the values guaranteed by international law. While regulatory responses may be warranted in the case of irregular migration, it is not justified to abandon basic legal principles. So the real strength of any legal system is not how well it serves the interests of those who have power and those who are to be protected, but how well it serves the interests of those who are on the periphery, whose presence is questionable but whose human rights are not.

4.0 Broken Promises: The Failures of International, African and Nigerian Migration Frameworks

The contemporary regime for migration is supported by an extensive network of international treaties, regional agreements, declarations, protocols and policy frameworks.¹⁰⁷ This architecture seems on paper to be complete. International human rights law promises more than just equality and dignity for all people. Refugee law has guaranteed protection to people who have left their homes out of fear of persecution.¹⁰⁸ Regional integration regimes offer free movement and mobility. African institutions are constantly reiterating their commitments to human security, African integration, and vulnerable populations' protection. Nonetheless, the number of irregular migrants is increasing, as are migrant deaths and detentions, and migrants continue to be vulnerable to exploitation and abuse in several jurisdictions.¹⁰⁹ These facts raise an underlying legal issue: if there are so many protections in the law,

<https://documents1.worldbank.org/curated/en/099747308202494701/pdf/IDU146436adb17fb2140ae1a87a154b142e6a308.pdf> Accessed 29 May 2026

¹⁰⁴ *Ibid*

¹⁰⁵ *Ibid*

¹⁰⁶ Nguindip and Nyingchia [n99] 166

¹⁰⁷ R Cholewinski, *Migrant Workers in International Human Rights Law: Their Protection in Countries of Employment* (Clarendon Press 1997) 31

¹⁰⁸ *Ibid* 32

¹⁰⁹ *Ibid* 33

why are so many migrants vulnerable? The answer, however, lies not in a lack of legal norms, but in a lack of existing legal frameworks to turn legal promises into reality.

One of the greatest challenges of contemporary migration governance is the so-called 'implementation gap'. States are frequently more willing to subscribe to lofty international law principles while also adopting restrictive domestic law policies.¹¹⁰ It is not a coincidence that this is a contradiction. Migration is one of the few areas where governments continue to try to benefit from international cooperation without necessarily constraining sovereign discretion.¹¹¹ The law is often interpreted narrowly, selectively applied and/or de-prioritized in relation to political concerns. The result is a migration regime where outward migration is the norm, and inward migration is the practice. Rights are written into laws, but it is unclear whether they are accessible in practice.¹¹² A major theme of irregular migration is the disconnect between law and fact.

4.1 The Unfulfilled Promise of International Migration Governance

Human rights treaties, refugee law and protection, employment standards, and anti-trafficking provisions have all played an important role in establishing migration standards.¹¹³ Overall, migration governance is weaker and less institutionalized than in other areas of international law. There is no international agreement that establishes uniform obligations for migration management. Rather, it is dispersed across various migration laws and policies that focus on specific aspects of migration rather than establishing a comprehensive overall structure.

Such fragmentation creates a plethora of legal uncertainties. The goals of various legal systems are likely to differ. The essence of human rights law is individual protection.¹¹⁴ The purpose of refugee law is to deal with displacement on account of persecution. Labor law applies to all forms of employment. Security regimes are concerned with border security and crime prevention. Because there are no consistent policies, migrants frequently find themselves 'between the cracks' of the law.¹¹⁵ Those whose circumstances are difficult to categories under existing protection standards may be denied access to potential protection, even if they are extremely vulnerable.

The other problem is that there is no legal responsibility retention. States are more likely to accept principles that impose costs on the other country and not on their own migration policies. This is particularly true in refugee protection. While refugee law is based on the principle of international

¹¹⁰*Ibid* 33

¹¹¹*Ibid* 32

¹¹²*Ibid* 33

¹¹³International Organization for Migration (IOM), *Immigration Detention and Alternatives: Thematic Paper No. 7* [2018] IOM, Geneva <https://www.iom.int/sites/g/files/tmzbd12616/files/2018-07/TP7.pdf> Accessed 29 May 2026

¹¹⁴C. Mantilla, 'International Agreements Shaping Migration Solutions' [2023] (1)(2) *Refugee Law & Migration Studies Brief* 1

¹¹⁵*Ibid* 2

solidarity, responsibility for displacement is highly uneven.¹¹⁶ This is clearly the case in many developing countries, and even in more affluent countries, large numbers of refugees remain even if the countries lack significant economic resources, whereas more economically advanced countries are increasingly investing resources in measures to prevent asylum seekers from reaching their borders.¹¹⁷ The end result is that the law sometimes holds the innocent accountable.

However, deterrence measures are becoming more common, compromising international migration governance. Migration policies frequently priorities preventing migration over protecting migrants. The emphasis has shifted away from determining who has the right to access and toward preventing the processes by which the rights can be accessed. Legal guarantees are theoretically available in such cases, but not in practice.¹¹⁸ However, if people do not have access to the institutions that provide protection, the idea is meaningless. As a result, the effectiveness of the migration law can only be assessed by examining the law itself.¹¹⁹ It must also be evaluated in light of the feasibility for migrants to obtain the protections promised in those texts.

4.2 The African Paradox: Integration without Mobility

The contradictory aspects of global migration governance are most apparent in Africa. There is a strong argument for mobility and integration in few places.¹²⁰ Several African leaders have emphasized the importance of free movement of people, regional cooperation, and economic integration in facilitating the continent's development. This goal is reflected in numerous legal and policy mechanisms put in place at the regional level.¹²¹ However, many African migrants face the reality that the existing laws and policies are not being enforced. In Africa, a unique combination of factors influences migration. Communities were divided by colonial borders but have been united long ago by culture, economy and family. Migration routes are frequently the result of old relationships and boundaries that existed before modern state borders were established.¹²² Meanwhile, economic, political, and governance capacity gaps continue to be major drivers of migration across the continent. All of these factors create strong incentives for regional mobility. As a result, migration

¹¹⁶P de Guchteneire, A Pécoud and R Cholewinski (eds), *Migration and Human Rights: The United Nations Convention on Migrant Workers' Rights* (Cambridge University Press 2009) 38.

¹¹⁷*Ibid* 40

¹¹⁸*Ibid* 39

¹¹⁹*Ibid* 40

¹²⁰P. Mudungwe, 'Migration Governance in Africa: Challenges and Opportunities' [2025](11)(1) *African Human Mobility Review (AHMR)* 13

¹²¹*Ibid* 14

¹²²*Ibid* 16

is frequently identified as an integral rather than a secondary component of development in African integration programmes.¹²³

However, African migrants frequently face numerous challenges in exercising their mobility rights. Border control is inconsistent, administrative procedures are handled differently by states, and implementation frequently varies from state to state and is influenced by domestic political considerations.¹²⁴ However, occasional outbreaks of xenophobia, protectionist policies, and migration restrictions based on security concerns all contribute to mobility restrictions across the continent.¹²⁵ What ensues are paradoxical policies where the legal language is favorable to mobility and administrative procedures often slow down mobility.

This paradox is of great importance for the understanding of migration law. Mobility cannot be compelled by legal obligations. Institutional capacity, political will, public support, and accountability mechanisms should all be in place to ensure compliance.¹²⁶ These elements are the reasons why legal promises can be mere illusions of guarantees. The African case has shown how migration governance does not necessarily have to be measured through formal legal frameworks. The institutional and political contexts in which the frameworks function must also be taken into account.

4.3 ECOWAS and the Limits of Free Movement

Economic Community of West African States (ECOWAS) offers a good illustration of potential tensions between regional mobility commitments and national migration legislation. The ECOWAS is widely recognized as one of Africa's most ambitious free movement regimes. In general, residents of member countries have rights to access, stay, and settle on the territory. They were created to promote economic integration, labor mobility, regional development and social cooperation between West African countries.

This framework is essential and needs to be understood. West Africa has experienced numerous cross-border movements throughout its history. Historically, trade, jobs, school, culture and familial relations have all transcended borders. The ECOWAS regime wanted to recognize and manage these realities rather than squander them. This was a huge change to pre-existing migration models that were mainly about restriction and exclusion.

The exercise of free movement of persons however has been uneven in the ECOWAS. Administrative barriers, rule inconsistencies, corruption, documentation requirements, and arbitrary enforcement

¹²³*Ibid* 16

¹²⁴V Chetail and Céline Bauloz (eds), *Research Handbook on International Law and Migration* (Edward Elgar 2014) 19.

¹²⁵A Desmond, 'A New Dawn for the Human Rights of International Migrants? Protection of Migrants' Rights in Light of the UN's SDGs and Global Compact for Migration' (2020) 16(3) *International Journal of Law in Context* 222–238

¹²⁶*Ibid* 229

practices are frequently cited as obstacles to migrants.¹²⁷ States tend to be reluctant to fully honor regional commitments on national security, economic, or political grounds. Consequently, formally acknowledged rights are not easily practicable.

The implementation gap is crucial in irregular migration. Lawful mobility has a legal framework in place, as well as lawful portals through which it can occur. Conversely, the higher the level of complexity of the administrative hurdles to legal mobility, the higher the risk of irregularity. ECOWAS is an example of not only recognizing rights, but also making those rights accessible, predictable, and enforceable.¹²⁸ However, the failure to implement what has been agreed upon at the regional level has resulted in the continuation of irregular migration, despite the fact that regional laws are expressly designed to facilitate migration.

4.4 Nigeria and the Legal Realities of Migration Governance

Nigeria plays a unique role in the governance of Africa's migration process as a country of origin, transit, destination, and return.¹²⁹ Nigeria, in this multifaceted role, is subject to nearly all of the major migration issues confronting modern states. Nigerian authorities need to respond to border control concerns, labour migration concerns, refugee protection concerns, regional mobility concerns, and reintegration of returnees. The variety of these activities demonstrates the complexity of the issues involved in reconciling migration control with human rights protection.¹³⁰

Nigerian legislation reflects the attempt to strike a balance between competing interests. The state, on the other hand, wishes to ensure border security, regulate migration movements, and combat transnational crime.¹³¹ Nigeria, on the other hand, is actively involved in regional mobility arrangements and has several international human rights obligations. All these obligations establish a legal landscape where the balance between sovereignty and responsibility is always required when it comes to migration governance.¹³²

One of the major issues is the absence of long-term governance goals when developing migration policies and responding to immediate security concerns.¹³³ Although security concerns are understandable, focusing solely on security-related mechanisms risks overlooking the structural issues that underpin migration. Economic inequality, unemployment, education, family reunification, the

¹²⁷ A Bisong, 'Strengthening Implementation of the ECOWAS Free Movement Protocol' ECDPM Discussion Paper 256 (2019) 12

¹²⁸ *Ibid* 13

¹²⁹ A Adepoju, 'International Migration in Sub-Saharan Africa in the 21st Century' (2008) 1(2) *International Social Science Journal* 17

¹³⁰ *Ibid* 18

¹³¹ V Amadi, *An Analysis of Migration Governance Frameworks in Nigeria* (New South Institute 2024) 51

¹³² *Ibid* 55

¹³³ LA Oucho and DA Williams, 'Challenges and Solutions to Migrant Integration, Diversity and Social Cohesion in Africa' (African Migration and Development Policy Centre 2020) 8

environment and regional instability remain factors affecting migration decisions.¹³⁴ Working in this manner entails devising strategies that address underlying causes rather than symptoms.

The key lesson from the Nigeria experience is related to institutional coordination. Numerous organizations from different sectors engage in migration governance activities, including immigration authorities, law enforcement institutions, labor regulators, human rights groups and foreign affairs agencies.¹³⁵ These institutions are critical to the efficacy of migration policies, which rely heavily on their collaboration. Fractured actions can contribute to inconsistencies, affecting enforcement and rights protection.¹³⁶ Therefore, in addition to law reform, institutional capacities and governance effectiveness need to be tackled.

5.0 Towards a Rights-Based and Sustainable Migration Regime

The preceding analysis demonstrates that irregular migration cannot be considered illegal migration. Instead, it is a symptom of the conflicts that are implicit in the existing legal regimes concerning sovereignty, human rights, mobility, and global inequalities.¹³⁷ Migration governance can be polarizing at times. Migration, according to one viewpoint, is a security risk that must be reduced further.¹³⁸ One is rights oriented and has a shallow interest in the legitimate interests of the state. Both models fall short in terms of building a basis for long-term migration governance. What is needed is an architecture that is able to uphold the dignity of migrants and the sovereignty of states.

The use of a rights-based approach is not incompatible with border control. Valid state interests remain in areas like entry regulation, public order and national security. But these objectives should be achieved within the framework of international law.¹³⁹ Therefore, migration policies should be assessed not only on their effectiveness, but also with regard to their legal, proportional, accountable and dignifying nature. Balance enforcement goals and rights protection, rather than sacrificing one for the other, is a prerequisite for migration governance legitimacy.

A sustainable migration regime needs to take into account the structural situation that is conducive to irregular migration. Migration pressures caused by conflict, inequality, environmental degradation, demographic change, and labor market demands can only be alleviated by a combination of restrictive laws and other policies. More attention needs to be paid to development, regional cooperation, legal

¹³⁴ *Ibid* 9

¹³⁵ E.X. Obiezu and I. Odimegwu, *Nigerian Migration Dynamics and Governance* [2021] Fab Educational Books, ISBN:978-978-988-802-3 <https://migrationstudies.unizik.edu.ng/nigerian-migration-dynamics-and-governance/> Accessed 29 May 2026

¹³⁶ *Ibid*

¹³⁷ *Ibid*

¹³⁸ A Pécoud and P de Guchteneire (eds), *Migration and Human Rights: The United Nations Convention on Migrant Workers' Rights* (Cambridge University Press 2009) 21

¹³⁹ Erimwinorose et al [n68] 40

mobility channels and institutional strengthening for long-term solutions. Leaving one place for another is a permanent characteristic of human society and not a temporary 'abnormality'. Thus, effective governance must prioritize regulation over unrealistic efforts to eliminate.

Improving regional implementation of mobility commitments remains critical. Paper rights are not the same as legal rights, and they provide little protection for migrants. As a result, it is necessary to improve monitoring mechanisms, harmonize migration policies, and increase regional commitment implementation. Mobility frameworks are an essential component of integration projects, and they must be credible. Citizens' trust in regional legal systems may be jeopardized if they are unable to exercise their promised rights in an effective and meaningful manner.

Nigeria faces the challenge of developing migration policies that recognize its diverse role in regional and global migration.¹⁴⁰ This must be done in a balanced manner, with proper border management and strong safeguards for migrants' rights. Institutional reforms should focus on coordination, transparency, accountability, and access to justice. Migration governance must be viewed not only as an enforcement issue, but also in the context of economic development, regional integration, and human security.

6. Conclusion

These facts of irregular migration highlight a serious dilemma in contemporary migration management. States still continue to assert their commitment to human rights, refugee protection, regional integration and international cooperation, as well as introducing legal and administrative restrictions on mobility and irregularities.¹⁴¹ This is one of the reasons why migration is one of the most polarizing topics of today's law. It is not just about migrants crossing borders unauthorized. Instead, those legal systems are prone to creating conditions in which authorized movement of individuals is impossible, increasing the risk of irregularity.¹⁴²

The investigation by this paper shows that irregular migration is not solely the product of individual behavior. It is also, however, a product of legal systems that define, regulate and limit movement. Sovereignty does give states authority to control their borders, but within a legal system where all humans have dignity and rights. Migration governance cannot just be effective enforcement. It requires adherence to the principles which form the basis of contemporary international law. Borders, Barriers, and Broken Promises is a central conundrum of present migration law. Borders are valid. Barriers might be required. But if they make promises in the air, they're worth nothing. The future of

¹⁴⁰ *Ibid*

¹⁴¹ V Chetail, *International Migration Law* (Oxford University Press 2019) 25

¹⁴² *Ibid* 26

migration governance will depend on the gap that is filled between words and deed. Only then can the law move beyond migration management to achieve justice in migration.

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