

Expert Meeting on

Protecting the human rights of migrants in the context of return

6 March 2018

Palais Wilson, Room 1-016

Concept Note

In recent years, the topic of return has become increasingly prominent in migration governance discussions. Return has been promoted as the “preferred option” and an essential aspect of a “well-managed migration policy”, largely because of its presumed, though largely unproven, deterrent effect on irregular migration, and other assumptions such as the links between returns and well-functioning asylum systems. Globally, the number of people subject to returns has been increasing, despite the fact that global migration figures remain relatively stable and are even decreasing in some countries.¹

States are also increasingly prioritising return over other available policy options such as regularisation or expanded regular migration pathways. For example, from 2009 to 2016, the United States forcibly removed 3,094,208 persons, and voluntarily removed an additional 2,186,907 persons who were apprehended at the border.² Similarly, in 2015, a total of 175,220 persons were either forcibly or voluntarily returned from Europe according to figures registered by Frontex,³ representing a nearly 9 per cent increase over the previous year and the highest number of recorded returns from Europe since 2011.⁴ Meanwhile, the International Organization for Migration (IOM) has returned more than half a million people in the past ten years and reported voluntarily returning 98,403 persons in 2016 alone,⁵ representing a 41 percent increase from the previous year, the overwhelmingly majority of which were carried out from Europe.⁶

However, the return phenomenon is not limited to countries in the global north alone. Increasingly, countries in the global south are also prioritising returns, often due to financial and political pressure from neighbouring countries to limit or “combat” irregular migration. For example, due in large part to pressure from the USA, Mexico adopted the *Programa Frontera Sur* and subsequently deported around 150,000 Central American migrants between October 1, 2015 and January 31, 2016, representing a 44 percent increase over the previous year.⁷

In the view of the Office of the High Commissioner for Human Rights (OHCHR), current return practices are leading to a number of serious human rights concerns. While States retain a sovereign prerogative to remove from their territory those who do not have a right to enter or remain, this prerogative is not absolute and must

¹ According to the Population Division of the UN Department of Economic and Social Affairs (DESA), migrants have accounted for between 2.8 – 3.4 percent of the total population since 1990, with current migration figures at 3.2 percent. See, <http://www.un.org/en/development/desa/population/migration/data/estimates2/estimates15.shtml>.

² Muzaffar Chishti, Sarah Pierce, and Jessica Bolter, Migration Policy Institute, *The Obama Record on Deportations: Deporter in Chief or Not?* (January 26, 2017), available at <https://www.migrationpolicy.org/article/obama-record-deportations-deporter-chief-or-not>.

³ Frontex, Annual Risk Analysis Report 2016.

⁴ IOM, 2015 Global Migration Trends Factsheet, available at https://publications.iom.int/system/files/global_migration_trends_2015_factsheet.pdf.

⁵ IOM, AVRR 2016 Key Highlights, available at http://www.iom.int/sites/default/files/our_work/DMM/AVRR/AVRR-2016-Key-Highlights.pdf.

⁶ Fully 72.9 per cent of IOM returns are carried out from the European Economic Area (EEA) and Switzerland. See, http://www.iom.int/sites/default/files/our_work/DMM/AVRR/AVRR-BULLETIN2017-3-1129.pdf.

⁷ Alejandra Castillo, Council on Hemispheric Affairs, *The Mexican Government's Frontera Sur Program: An Inconsistent Immigration Policy*, available at <http://www.coha.org/wp-content/uploads/2016/10/The-Mexican-Government%E2%80%99s-Frontera-Sur-Program-An-Inconsistent-Immigration-Policy.pdf>.

always be subject to human rights considerations. Human rights concerns in this context can broadly be described as relating to a) lawfulness and b) sustainability. On the former issue, OHCHR is currently mapping existing forms and mechanisms of protection under international human rights law that protect migrants from return due to human rights considerations including the inability of the country of origin (or country of habitual residence for stateless persons) to protect against torture, ill-treatment or other serious harm. Investigations into the lawfulness of returns would also monitor due process and proportionality requirements under international human rights law, including in the context of pre-removal detention and the use of force during returns.

The second – and often related – issue is that of sustainability. In the absence of adequate post-return monitoring, deporting States are generally unaware of what is happening to returnees. Significant evidence suggests that many returnees are unable to effectively reintegrate in the community to which they are returned,⁸ may end up internally displaced,⁹ or may embark on new international migrations that are increasingly precarious¹⁰ due to the failure of the receiving State to provide adequate human rights protection. Further human rights concerns related to the issue of the sustainability of returns include: concerns about the genuine ‘voluntariness’ of the decision to return, lack of ‘pre-departure’ preparation for return, the consequences of returns that are not carried out to the places of residence of the returning migrant, and a lack of independent mechanisms for ongoing post-return human rights monitoring.

With this expert meeting, OHCHR is seeking to understand the human rights consequences, State obligations, and possible remedies in the context of current return practices, both voluntary and involuntary. As the international community embarks on the negotiation of a Global Compact aimed at ensuring that the governance of migration is both more effective and more principled, the issue of returns is an essential issue. This expert meeting will, therefore, seek to inform OHCHR’s contributions to the Global Compact on Safe, Regular, and Orderly Migration. The meeting will be guided by the findings of an OHCHR-drafted background paper, which highlights the impacts of return practices and analyses the international legal landscape for returns, discussing both potential sources of State obligations and gaps in legal protection for those who are subject to return. The expert meeting will be informed by OHCHR’s *Recommended Principles and Guidelines on Human Rights at International Borders* and the Global Migration Group’s (GMG) draft *Principles and Guidelines on the human rights protection of migrants in vulnerable situations*.

Meeting Scope and Participation

This one-day expert meeting will provide a forum for exploring the human rights of migrants in the context of return. It will discuss issues raised in the background paper and challenges posed by current State practices. Each session is intended to feed into the final session, which aims to discuss recommendations and ways forward.

Expected Outcomes

The goals of the meeting are to: (1) discuss challenges and human rights protection gaps posed by current State return practices; (2) generate recommendations and next steps to address these challenges and gaps in protection; and (3) identify areas of focus for OHCHR’s continued work on migration and human rights.

⁸ See, e.g. Cassarino, Jean-Pierre (ed.). 2008. Return migrants to the Maghreb countries: Reintegration and development challenges. MIREM Report, European University Institute.

⁹ Sune Engel Rasmussen, The Guardian, *EU deportation of migrants ‘adds to Afghanistan’s instability’, says UN*, available at <https://www.theguardian.com/global-development/2016/nov/01/eu-deportation-of-migrants-adds-to-afghanistans-instability-says-un-united-nations>.

¹⁰ Schuster, Liza, and Nassim Majidi. 2015. Deportation stigma and re-migration. *Journal of Ethnic and Migration Studies* 41.4: 635–652.