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Office of the High Commissioner for Human Rights (OHCHR)

Research Report

Topic 2: Providing a framework to protect individuals with wrongful deportation.



LEA – SOPHIA MAINI SØGAARD & NEDA VLADIMIROVA PETROVA

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1. Introduction:

Wrongful deportation has been and is still a serious and persistent ongoing challenge to the international human rights framework, occurring when individuals are removed from a state's territory in a violation of international human rights or refugee law, that is often due to a lack of fair procedures or a proper assessment of their situation. These deportations can place a risk on the individuals, exposing them to torture, persecution, family separation or even loss of legal status. As global migration increases many states have begun to rely on a faster and more restrictive immigration and border control measures.

While these policies are often justified on the grounds of national security and its efficiency, they can severely weaken the legal safeguards and increase the likelihood of the unlawful removal of individuals. Wrongful deportation can not only cause the severe harm to a person, but it also very much undermines the credibility of the international human rights law.

2. Definition of Key Terms:

Wrongful deportation¹ – The removal of an individual from a country's territory in a violation of the human rights law or the refugee law. This could occur when legal procedures are not followed correctly, when a person is denied access to protection or the exposure to serious harm, due to their removal.

Collective expulsion² – the removal of a group of people from a state's territory without an individual examination of each individual's situation and circumstances. The collective expulsion is prohibited under the international human rights law, due to its denial of due process.

Due process³ – legal requirement that refers to individuals being treated fairly through the proper procedures before a final decision is made. Due process in the context of deportation includes the access to legal representation as well as interpretation if needed, the right to be heard and a fair examination of the individual's case.

Effective remedy⁴ – a legal mechanism that allows people to challenge the violation of their human rights, by which they could make a meaningful change. In the cases of wrongful deportation such actions could be realised, these include suspensive measures preventing

¹ <https://www.ohchr.org/en/press-releases/2025/04/un-experts-alarmed-illegal-deportations-united-states-el-salvador>

² <https://committees.parliament.uk/writtenevidence/12080/html/>

³ <chrome-extension://efaidnbmnnnibpcajpegclefindmkaj/https://www.oas.org/en/iachr/reports/pdfs/dueprocess-en.pdf>

⁴ https://en.wikipedia.org/wiki/Right_to_an_effective_remedy

removal, access to appeal and the ability to receive compensation or return if a violation has been committed against an individual.

Non – refoulement⁵ – a fundamental principle of international law, that applies regardless of a person’s legal status, that prohibits states from deporting or returning individuals to a country where they can face a risk of prosecution or other serious human rights violations.

Reparation⁶ – measures taken by a state that repairs harms caused by human rights violations. Reparations could be restitution, like the facilitated return of an individual, rehabilitation, compensation and a guarantee of non – repetition.

3. Background Information:

Historical context:

Deportation has existed for centuries as an expression of a state’s sovereignty over their territory, as well as population control. Prior to the international human rights law, deportations were often used without the usage of due process nor legal safeguard, involving periods of colonial rule and conflict, where groups or individuals were expelled on an ethnic, political and nationality base, resulting in collective expulsions. Such practises often resulted in severe human rights violations, including statelessness, collective punishments and forced placement. The absence of international legal safeguards during such period allowed states to exercise broad non – compulsory power over removal decisions.⁷

The large-scale forced deportation and population expulsion during WWII (1939 - 1945)⁸ highlighted the destructive consequences of the unrestricted deportation powers. Millions of people were displaced or deported without a legal status or protection, which lead to massive suffering and injustice of the displaced population. The international human rights law was invented due to the need of internal rules that limit a state’s authority over removal of individuals as well as wrongful deportation.

Timeline:

The establishment of international Legal Safeguards 1945 – 1989:⁹

The creation of the United Nations – 1945:

⁵ <https://emergency.unhcr.org/protection/legal-framework/access-territory-and-non-refoulement>

⁶ <https://www.merriam-webster.com/dictionary/reparation>

⁷ <https://aeon.co/essays/the-worlds-first-mass-deportation-took-place-on-american-soil>

⁸ <https://encyclopedia.ushmm.org/content/en/article/deportations>

⁹ <https://www.un.org/en/about-us/history-of-the-un>

- The establishment of the UN marked the beginning of a global commitment to the protection of human rights. The UN prevents abuses such as unmotivated removal and wrongful deportation that become an important concern of the international community.

Universal Declaration of Human Rights (UDHR) – 1948:¹⁰

- The UDHR introduced core principles that include the right to liberty, life and the protection from arbitrary interference. While it is not legally binding, it promoted the concept of the due process, that later influences treaties that regulate the procedure of deportation.

Convention Relating to the Status of Refugees – 1951¹¹:

- The Convention was adopted in response to the post – war displacement of people, introducing the principle of non-refoulement, which prohibits the deportation of individuals to territories where they could possibly face threats to their freedom and life. The Convention has significantly limited the states choice in deportation cases and has become central to the prevention of wrongful deportation.

International Covenant on Civil and Political Rights (ICCPR) – 1966¹²:

- The ICCPR has strengthened procedural protections by requiring state to provide effective remedy for violation of the protected human rights. Article 2 (3) obliges states to ensure the legal mechanisms which can challenge unlawful deportation.

Convention Against Torture (CAT) – 1984:¹³

- The Convention Against Torture has restricted deportation by prohibiting a states status where there is a risk of torture, regardless of the individual's status. This reinforces the importance of individual risk assessments and compliance with non- refoulement obligations.

Despite these protections, wrongful deportation continues to accelerate procedures, limit access to legal assistance and appeal mechanisms. With cases like these, deportation occurs without individual case assessment, constituting collective expulsion. Once the removed, deported people often face difficulties accessing justice, as many states lack the systems to provide reparations to individuals, including return or compensation.

¹⁰ <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

¹¹ chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://emergency.unhcr.org/sites/default/files/UNHCR,%20Handbook%20and%20Guidelines%20on%20Procedures%20and%20Criteria%20for%20Determining%20Refugee%20Status%20under%20the%201951%20Convention%20and%20the%201967%20Protocol%20Relating%20to%20the%20Status%20of%20Refugees_0_0_0_0_0.pdf

¹² <https://docs.un.org/en/HRI/GEN/1/Rev.9%28Vol.II%29>

¹³ <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

From the 20th century until today, the focus of the international community has shifted from the creation of legal standards to their implementation and their enforcement. Even though the clear international rules regarding deportation that exist now, many of the states have and are struggling to apply them consistently in the deportation practices. Weak oversight, absence of mechanisms and the limited accountability to ensure the effectiveness of reparations and remedies have allowed wrongful deportation to persist despite the international human rights law and the established legal safeguards.

4. Major Countries and Organisations Involved:

Countries:

- The European Union Member States:¹⁴

Many of the EU states are major stakeholders due to their high levels of asylum applications and high migration rates. They aim to manage borders effectively several states face criticism over accelerated deportation procedures and insufficient safeguards. Most of the EU countries seek a balance between the effective migration control and the compliance with the international human rights law and obligations.

- Countries of return – such as conflict – affected or unstable states:

States like these are directly involved, as wrongful deportations may return individuals to environments where the people's safety and rights are at a risk. Countries like these generally lack the capacity to protect refugees and are often cited in non-refoulment concerns.

- The United States¹⁵:

The USA plays a significant role due to its large immigration enforcement system. People there have continually face wrongful deportation caused by errors from the administrative sector and limited access to remedies. The USA's preferred outcome is for them to maintain border control while the legal liability is reduced, and the improvement of the procedural safeguard is in focus.

Organisations:

- Office of the High Commissioner for Human Rights (OHCHR)¹⁶:

¹⁴ <https://www.consilium.europa.eu/en/policies/eu-migration-policy/>

¹⁵ <https://www.nbcnews.com/data-graphics/us-immigration-tracker-follow-arrests-detentions-border-crossings-rcna189148>

¹⁶ https://www.ohchr.org/en/ohchr_homepage

The OHCHR is central to the issue as it monitors the deportation practices that provide guidance on human rights borders, promoting access to justice and remedies for victims of violations. The OHCHR supports a stronger accountability mechanisms and prevention of wrongful deportation.

- International Organisation for Migration (IOM)¹⁷:

The IOM works on migration management and provides guidance on returns. While the IOM is not a protection body, it still promotes a rights-based return policy as well as cooperation between states.

- United Nations High Commissioner for Refugees (UNHCR)¹⁸:

The UNHCR focuses on protecting refugees and asylum seekers, particularly through the enforcement of the principle of non-refoulment. It advocates for a fair asylum procedure and opposes deportations that expose individuals to a risk of prosecution or a threat to their life and freedom.

5. Relevant UN Resolutions:

Relevant UN Resolutions:

UN General Assembly Resolution 60/147 (2005):	Basic Principles and Guidelines on the Right to a Remedy and Reparation. The resolution has established that victims of human rights violations, such as wrongful deportation are entitled to restitution, compensation and a guarantee of non-repetition.
Human Rights Council Resolution 29/2 (2015):	Protection of the human rights of migrants. The resolution call on states to ensure migrants have access to justice and are protected from unlawful forceful removal.
Human Rights Council Resolution 9/5 (2008):	Human rights of migrants. The resolution reaffirms the obligation to respect due process of migration and deportation procedures.

Relevant Articles:

UN Charter, Article 1 (3):	Promotion of human rights and fundamental freedoms.
UDHR Article 8:	Right to an effective remedy.
UDHR Article 9:	Protection from arbitrary arrest, exile or detention.

¹⁷ <https://www.iom.int/>

¹⁸ <https://www.unhcr.org/>

UDHR Article 14:	The right to seek asylum.
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6. Previous Attempts to Solve the Issue:

The international community has primarily addressed wrongful deportation through the development of legal standards rather than enforcement mechanisms. Treaties such as the Refugee Convention, the ICCPR and the Convention Against Torture have established binding obligations on states to prevent the unlawful removal and to provide protection against harm to deported individuals.

The UN bodies, like the OHCHR and the UNHCR have issued guidelines and recommendations aimed at strengthening due process, that prevent collective expulsion, while also ensuring access to remedies. Regional courts have opposed states in cases involving wrongful deportation, ordering compensation or changes in the deportation policy.¹⁹

Despite all the efforts, the enforcement has remained inconsistent. Many remedies only become available after the deportation has occurred, which reduces their effectiveness. The lack of international mechanisms to ensure the reparations and the return has limited the success of the previous attempts.

7. Possible Solutions:

Strengthening preventative safeguards:	Emphasising due process, suspensive appeal before deportation is carried out and legal representation.
The establishment of reparation mechanisms:	The encouragement of states to adopt a system for return, compensation and rehabilitation for wrongfully deported individuals.
International oversight and cooperation:	By expanding the role of OHCHR in monitoring deportation practices and further promoting cooperation between states to prevent violations.

¹⁹

[chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf)

Balancing state sovereignty and human rights:	Allowing a discussion and a debate on how states should handle and manage migration more effectively, while also fully respecting the international legal obligations.
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OHCHR and UN- Led Guidance:

- OHCHR – Basic Principles and Guidelines on the Right to a Remedy and Reparation:

<https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>

- Recommended Principles and Guidelines on Human Rights at International Borders (OHCHR):

chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf

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