Expert Meeting on

Protecting the human rights of migrants in the context of return

6 March 2018
Palais Wilson, Room 1-016

Informal Summary

“Unsustainable return practices heighten the vulnerability of migrants to precarious re-migration, putting them at risk of violence, exploitation and abuse.”

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Background

This summary is derived from discussions and written inputs received in the context of a multi-stakeholder expert meeting on Protecting the human rights of migrants in the context of return organized by the Office of the High Commissioner for Human Rights (OHCHR) on 6 March 2018 in Geneva, Switzerland.¹

The one-day expert meeting provided a forum for understanding the human rights consequences, State obligations, and possible remedies in the context of current return practices, both voluntary and involuntary, and sought to inform OHCHR’s contributions to the Global Compact for Safe, Regular, and Orderly Migration, where issue of return migration is emerging as a critical consideration.

The meeting was guided by the findings of an OHCHR-drafted background paper, which highlighted the impacts of return practices and analysed 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 was also informed by the previous recommendations on return from OHCHR’s Recommended Principles and Guidelines on Human Rights at International Borders and the Global Migration Group’s (GMG) Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations.

The goals of this one-day expert meeting were 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.

The following Informal Summary does not necessarily represent the individual views of participants or OHCHR, but reflect broadly the themes, issues and understandings emerging from the discussion.

¹ More information and relevant documentation regarding the expert meeting is available at: http://www.ohchr.org/EN/Issues/Migration/Pages/MigrationAndHumanRightsIndex.aspx
Welcome remarks

Ms. Peggy Hicks, Director of TESPRDD, OHCHR, welcomed the participants. She noted that States are required to govern their borders consistent with their obligations to respect, protect and fulfil the human rights of migrants. On 19 September 2016, in the New York Declaration on Refugees and Migrants, 193 States recalled their obligations to respect the human rights of migrants. However, current return practices raise serious human rights concerns, including: a denial of due process and procedural safeguards; the threat of arbitrary detention; an absence of individual determinations; refoulement or collective expulsion; and return to unsustainable situations of internal displacement, discrimination, marginalization, or denial of rights. Unsustainable return practices heighten the vulnerability of migrants to human rights abuses, yet there is an absence of post-return monitoring, such that governments themselves do not always have a clear understanding of what happens to migrants once they are returned. Despite these concerns, returns are on the rise in all regions in the world, and current anti-migrant policies are driving more and more governments to prioritize returns. OHCHR has previously highlighted a number of recommendations on return and reintegration, including:

- **Non-refoulement and collective expulsion.** The principle of non-refoulement and the prohibition of arbitrary or collective expulsion comprise customary norms of international law and apply to all human beings at all times, including to all migrants, regardless of their migratory status. States, therefore, have an obligation to ensure that no person is returned to a place where there are substantial grounds to believe that he or she would be at risk of torture or other cruel, inhuman, or degrading treatment or punishment, or other serious human rights violations, including enforced disappearance, serious forms of discrimination and arbitrary interference with the right to a family and private life.

- **Due process and procedural safeguards.** The prohibitions on non-refoulement and collective expulsion imply that, prior to being returned, migrants have a right to an individual assessment, in accordance with due process and fair trial guarantees. This individual assessment requires an in-depth, substantive understanding of each migrant’s situation and the risks that she might face upon removal, as well as access to fair and efficient protection procedures.

- **Sustainability.** There is an urgent need to address the sustainability of returns from a human rights perspective. When migrants are sent back to countries in which they face the same conditions that compelled them to leave, such returns will not be sustainable. Instead, they may lead to repeated cycles of migration through increasingly dangerous routes and in increasingly perilous conditions. States should implement measures that will ensure returns are sustainable, principally by ensuring returning migrants are able to enjoy all of their human rights upon return, and tailored reintegration programmes should be developed to address the different needs of women, men and children, among others.

- **Children’s best interests.** Children should only be returned where it has been determined through a formal, adequate and participatory process that return is in the best interest of the child. Return should not cause children to be separated from their parents, to become homeless, or to go without proper care and custody. If determined that it is in the best interests of the child to be returned, an individual plan should be prepared, together with the child where possible, for her sustainable reintegration.

- **Voluntary return should be given preference over forced return.** Voluntary return should always be prioritized over forced return, including by providing information about voluntary return processes in accessible formats and languages migrants are known to understand. Returns can only be called “voluntary” if migrants are fully and meaningfully informed of the...
choice they make and if consent is given free of any coercion, including actual or implied violence, torture, ill-treatment, indefinite or arbitrary detention, including detention in inadequate conditions.

- **Monitoring and accountability.** Independent mechanisms for ongoing human rights monitoring post-return should be instituted in both forced and voluntary return processes in order to ensure that returns do not violate the principle of *non-refoulement*, the right to seek asylum, or the prohibition of arbitrary and collective expulsions; to guarantee that all allegations of human rights violations during return processes are promptly and impartially investigated; to monitor the ongoing human rights situation of migrants who have been returned; and to ensure access to effective complaints mechanisms and remedies.

### Setting the scene

**Ms. Pia Oberoi,** Advisor on Migration and Human Rights, OHCHR, moderated the session and began by introducing the three main issues of the expert meeting agenda: lawfulness, voluntariness and sustainability. To help set the scene, she highlighted limitations of the word “return”, including that it does not distinguish between the varying degrees of force, coercion or voluntariness that accompany different State actions—and that imply different obligations—often taking place under the banner of “return” programs. For this reason, she indicated that “return” is used by OHCHR as an umbrella term and does not impute any legal meaning as to a particular measure’s compliance with human rights law, but rather should be understood as capturing the breadth of practices in use in various national, regional and international contexts, which will always still need to be assessed as to their compliance with human rights obligations.

**Mr. Nils Melzer,** UN Special Rapporteur on Torture, provided an overview of his thematic report on migration-related torture, which was recently delivered to the Human Rights Council. He noted that many State policies and practices in the context of migration and/or border control are known to cause grave pain and suffering and can, therefore, amount to torture or ill-treatment. Regarding return practices, he highlighted that “voluntary” return is often the result of threats or coercion which deny the genuine consent of the individual and may amount to torture or ill-treatment, for example when so-called “voluntary” return is extracted with the use of arbitrary or abusive detention practices. He also highlighted that return practices may lead to torture and ill-treatment in the following phases of the return process:

- **Pre-return phase:** When States base their migration policies on deterrence, criminalization, and discrimination—and not on protection—human rights violations can result, including push and pull-backs, offshore detention, border closures, and collective expulsions. All of these measures lack the required individualized assessment that must be implemented in order to respect the principle of *non-refoulement*, and generally create a context where torture and ill-treatment are routine. This is especially concerning for migrants in vulnerable situations (including, inter alia, children, women, elderly, torture and trauma survivors, and racial, ethnic or religious minorities), for whom States have a heightened duty of care to protect from torture and ill-treatment.

- **Return phase:** The systematic use of detention (whether criminal or administrative) in removal procedures is largely arbitrary and very quickly becomes ill-treatment. When States knowingly create physical conditions (separating families, use of criminal detention facilities, conditions falling below minimum standards, etc.) in order to coerce people to return “voluntarily” or to intimidate or coerce them into withdrawing requests for protection, torture or ill-treatment can be assumed. When detainees are deprived of due process, procedural safeguards, and
access to information, torture or ill-treatment can be assumed. The longer migrants are held in detention, the more likely their suffering will amount to torture or ill-treatment.

- **Post-return phase**: Returning States have an obligation to evaluate the risk of torture or ill-treatment prior to return, but should also evaluate post-return whether or not returns are leading to torture or ill-treatment. Post-return monitoring by the receiving State is insufficient precisely because the receiving State is the one who may be committing the violation. However, post-return monitoring by the returning State must also be independent of the migration enforcement function, as the returning State may otherwise be incentivised not to find violations so that their enforcement and removal aims remain unaffected. Post-return monitoring requires not only an assessment of the general situation in the country, but also an individualized assessment which takes into account each returnee’s personal circumstances such as age, sex, gender, and ethnicity. Diplomatic assurances are inherently incapable of providing sufficient protection from torture or ill-treatment, as they are used precisely when the returning State has substantial grounds to believe the receiving State is engaging in torture or ill-treatment.

Mr. Felipe Gonzalez Morales, UN Special Rapporteur on the Human Rights of Migrants, provided an overview of his forthcoming thematic report on return and reintegration, which will be presented to the Human Rights Council in June. He expressed concern over the ambiguity of the word “returns” as in colloquial language the term might imply that the act is voluntary, (e.g. you return to your school or to your home), however in the context of migration the act is rarely voluntary. The terms “deportation”, “removal”, and “expulsion” more clearly refer to a process that is not entirely voluntary and may, therefore, be more accurate. Regarding voluntary return, it was noted that migrants should have access to free, prior and informed consent, and that when there is evidence of coercion or threat—for example, inadequate reception conditions, withdrawal of social benefits, or prolonged detention—voluntariness will not be present. Regarding the sustainability of returns, it was noted that both access to economic, social and cultural rights (e.g. work, health, housing, education) as well as civil and political rights (e.g. life, liberty, protection from refoulement) are important elements of sustainability. Special attention to the needs of children and other migrants who may be in vulnerable situations, as well as ensuring effective and independent monitoring by both States and civil society, were also noted as important.

**Discussion:**

- Participants debated the efficacy of the term “return”, especially to describe involuntary, coerced or even forced practices such as deportation or expulsion. It was noted that the term “return” is a political construct often preferred by States because it lacks clarity as to rights and obligations, and that the term is increasingly being promoted by some international organisations with vested interests in so-called “return” programming. Other participants noted that the word can be understood in general terms as an umbrella term that does not confer legal meaning as to the level of voluntariness or coercion, and that more specific terms such as expulsion or deportation can and should still be used when specifically relevant. It was noted that attempting to change the terminology might not result in greater accuracy, as States will continue to create or use new terminology. Therefore, maintaining the term but understanding it as non-legal term of general applicability may be helpful in order to take account of all of the practices which might be included under the umbrella of “return” but being careful not to assume that “return” is always voluntary.

- It was noted that new technologies and forms of transportation have transformed modern migration in a way that some see as threatening. Returns, therefore, are often an attempt to
reclaim a sense of control or to assert State sovereignty at the expense of other long-standing policy options such as regularisation or other legal stay arrangements.

- Participants agreed that individual factors must be assessed (in addition to the general conditions of safety in the country of return) in order to evaluate if a return was legal, safe, dignified and sustainable.
- It was noted that alternative policies to return must be found in order to accommodate the stay of persons falling outside the protections of refugee law, but still needing protection under international human rights law. Such alternatives to return could include complementary protection or other legal stay arrangements, regularisation programs, or visas for study, family or labour, among others.
- Participants noted a growing case law (Inter-American Court, European Court, Human Rights Committee, etc.) regarding cases of return, including findings of torture and ill-treatment, arbitrary detention, breaches of procedural guarantees, and refoulement.

Lawfulness of returns

Ms. Elspeth Guild, Jean Monnet Professor ad personam and member of the Law Faculties at the Radboud University, Nijmegen Netherlands and Queen Mary University of London, moderated the session and began by explaining that the vast majority of migrants independently and voluntarily return to their countries of origin in dignity and safety, and on their own terms. Only a small minority of migrants are forcibly returned or otherwise returned through “voluntary” return programs. However, many such forcible or coerced returns are clearly unlawful under international law—for example, because they violate the prohibitions on collective expulsion or refoulement, fail to respect the principle of voluntariness, or when violent return practices are linked with torture or ill-treatment.

The costs associated with the phenomenon of such unlawful returns include the human rights costs to the individual, reputational costs to States, monetary/compensation costs owing to harmed migrants, and the efficiency costs that could be better spent on pursuing more humane and effective policies of inclusion. Recognizing that returns are an international issue, Ms. Guild suggested the need to move away from the idea of the absolute sovereignty of the State and instead recognize that migration is a matter of “shared sovereignty”, with consequences for both States and migrants alike.

Mr. Massimo Frigo, Senior Legal Advisor, International Commission of Jurists (ICJ), noted that the principle of non-refoulement began in international refugee and extradition law, but has since been explicitly incorporated into the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), other international human rights instruments, and is also considered a non-derogable norm of customary international law, or jus cogens. He also noted that the principle of non-refoulement has increasingly been interpreted by courts and human rights treaty bodies as applying not only to persecution and torture but to the deprivation of all core human rights, including where return would implicate serious violations of inter alia: the right to health, the best interests or integrity of the child, right to family, and the rights to freedom of expression or association. Mr. Frigo highlighted the importance of procedural guarantees in the context of return, including rights to fair trial, individual assessment, legal representation, the right to challenge the legality of return, the right to restitution/remedy, and that procedural guarantees should always have a suspensive effect on any return procedure.

Mr. Daniel Kanstroom, Professor of Law and Thomas F. Carney Distinguished Scholar at Boston College Law School, called judicial review in cases of expulsion the “testing crucible” of constitutional democracies. He noted that, at a moment where return is seen by some States as centrally important to migration management, the notion of citizenship itself is becoming more fluid and some countries have used de-nationalization as a strategy for expelling persons from their territory without affording
them the same due process they would nationals. Mr. Kanstroom noted that such coercive return practices are a rising phenomenon, for example the increased use of “expedited removal” procedures globally, whereby non-citizens are denied entry to the State and/or are physically removed from the State without going through formal removal proceedings, which would require a judicial hearing. In this context, the distinction between expulsion (return) and exclusion (non-entry) is becoming increasingly blurred. Additionally, corporate involvement in return processes presents significant legal and due process challenges. For example, in 2016 fully 65% of all immigration detainees set to be returned from the USA were held in private detention facilities, raising questions as to the legal liability and responsibility of non-State actors.

Discussion:

- Participants agreed that the principle of non-refoulement is a binding and non-derogable norm of international humanitarian, human rights and refugee law applying to all migrants at all times, irrespective of their status, and also comprises an important norm of customary international law.
- Participants agreed that the principle of non-refoulement applies to a range of human rights violations beyond persecution and torture, and noted that the full scope of the principle of non-refoulement has not yet been fully explored by courts and/or human rights treaty bodies. The scope of the principle should, therefore, not be understood restrictively and State practice should honour the progressive interpretation of the principle so as to avoid any possible violations.
- Participants noted that procedural safeguards are a necessary component of lawfulness, however even in countries where these safeguards exist on paper, they are not frequently available in practice. Additionally, participants noted that procedural safeguards must be available at all stages of return procedures, including prior to, during and post return in order to ensure the lawfulness of returns and access to justice.
- Participants noted that when State policies prioritise border protection over the protection of migrants’ human rights, they often fail to uphold international human rights obligations. Notably, policies which seek to restrain movement or to create more stringent criteria for entry—including policies ostensibly seeking to “save lives” and/or to “combat smuggling”—frequently result in returns which are not human rights compliant and may amount to collective expulsion or refoulement.
- Participants indicated a lack of effective complaint mechanisms available to migrants at the local or national level for abuses committed in the context of returns.
- Participants noted that National Human Rights Institutions (NHRI) and OHCHR play a crucial role in monitoring and investigating complaints on behalf of migrants who may have been returned unlawfully.

Voluntariness of returns

Ms. Michele LeVoy, Director, Platform for International Cooperation on Undocumented Migrants (PICUM), moderated the session and began by introducing the concept of “voluntariness”. She noted that there has been an increasing trend in the European region away from use of the term “deportation” and towards words such as “return” or “voluntary return”. Such terms seem to indicate a more active choice on the part of migrants themselves, but this is not frequently the experience of migrants in practice. She highlighted the principle of free, prior and informed consent as outlined in OHCHR’s Background Paper to the Expert Meeting (p.7), as well as UNHCR’s Handbook on Voluntary Repatriation (Geneva, 1996) as helpful sources of normative guidance for understanding voluntariness. She also drew attention to examples of State practices involving pressure or coercion
which may negate voluntariness in the context of returns, for example: a lack of regular options to remain in the country; the threat of arbitrary detention; denial of basic services; and “hostile environment” policies requiring services providers to report undocumented migrants to immigration enforcement officials.

Ms. Violeta Moreno-Lax, Senior Lecturer in Law, Queen Mary University of London, noted that any voluntary return decision must be human rights compliant, meaning it must be based on migrants’ rights and States’ corresponding obligations under international law. The right to free, prior and informed consent (FPIC) derives from international human rights law but has been used in various policy frameworks. Key elements of the right include that: consent is given free of coercion, threat, intimidation or manipulation and is based on the availability and consideration of choices/options; consent is given prior to any return taking place; and consent is meaningfully informed by accurate information about one’s rights and options, including the conditions of/upon return. The right to FPIC imposes a number of obligations on States, including a duty to inform; to protect migrants’ individual agency; to facilitate choice; and to provide meaningful options. These obligations will call into question a number of current State policies or practices with regard to voluntary returns, for example: so-called “voluntary humanitarian returns” from Libya, the UK’s “assisted return program”, and “voluntary return” options for African migrants. Each of these programs currently violate important elements of FPIC.

Ms. Liza Schuster, sociologist and co-founder, Afghan Migrant Advice and Support Organisation, highlighted the importance of clarifying when returns are truly voluntary and when forced returns take place under the auspices of “voluntary” return, as voluntary returns are not accompanied by the same oversight and due process rights. So-called “voluntary” returns that are, in fact, coerced or forced allow States to maintain the appearance of providing a form of assistance or support to migrants when the reality is that migrants are physically resisting being removed. For example, in the case of returns from Iran and Pakistan to Afghanistan, migrants were forced to sign a document stating they were “voluntarily” returning, but did so under treat of physical violence and intimidation. Similarly, the UK’s “hostile environment” policy results in so-called “voluntary” returns in which migrants are threatened with arbitrary detention and the denial of access to basic services. Finally, in Sweden social workers have been hired to visit children in detention centres to encourage them to “voluntarily” return in the absence of legal representatives or child protection officials mandated to uphold their best interests. Ms. Schuster also highlighted the ways in which some migrants are targeted for return based on protected grounds of non-discrimination, such as race, ethnicity and religion. While States may have the sovereign prerogative to forcibly deport certain non-nationals, such removals should not be conducted under the auspices of “voluntary” return programs, which lack critical procedural safeguards.

Discussion:

- Participants noted the need to avoid confusion in terminology and that it may be preferable to refer to all forced or coerced returns as “expulsion” or “deportation”.
- Participants agreed that in the absence of FPIC, returns cannot be considered voluntary and that there should be a presumption that all returns are expulsions or deportations unless FPIC is specifically sought and obtained by the returning authorities.
- Participants highlighted that accurate, up-to-date information about conditions and opportunities in the country of return (either the country of origin, or another country in the case of 3rd country returns) are an important part of migrants’ decision making process and an integral consideration for upholding the principle of FPIC.
Participants noted that denying migrants access to basic services in an effort to coerce them to voluntarily return would violate FPIC and that lawyers and advocates should be trained in migrants’ economic, social and cultural rights—especially for migrants in irregular situations—in order to avoid any “voluntary” return under duress or coercion related to the denial of ESCR.

Participants highlighted the need for increased monitoring of voluntary return programs, including that OHCHR plays an important role in monitoring and investigating human rights violations, and could undertake increased monitoring of voluntary returns.

Participants agreed that States should focus on alternatives to return, including by expanding regular migration pathways such as family, educational, and humanitarian visas, so that voluntary return and expulsion are not the only, or preferred, options for resolving the migration status of migrants in irregular situations.

Sustainability of returns

Ms. Anna Crowley, International Migration Initiative, Open Society Foundation (OSF), moderated the session and began by pointing out that sustainability had not been given sufficient definitional or conceptual clarity. Sustainability will mean different things to returning States, receiving States, and to returning migrants themselves. The current discourse around sustainability is largely focused on preventing repeat migration and deprives migrants of their agency and right to leave. Current sustainable reintegration programs also largely fail to address the main drivers of migration, including climate change, food insecurity, systemic poverty, social exclusion and human rights violations. Many returning migrants have limited ties, or no ties at all, to their country of origin such that sustainability discourse may need to focus more attention on “sustainable integration” rather than “sustainable reintegration”.

Mr. Jean-Pierre Cassarino, researcher, Institut de Recherche sur le Maghreb Contemporain, noted that “sustainability”, like “return” itself, is a political construct and largely refers to the mechanisms whereby States attempt to keep people—predominantly low-skilled migrants—in their countries of origin. It is generally viewed from the perspective of the State and aims to limit prospects for re-migration, viewing return as the end of a linear construct of migration. Meanwhile, most scholars prefer not to use the term “sustainability” because they view return as only one stage in a migration cycle that does not end in return. Mr. Cassarino explained that the migration cycle consists of a) Departure - motivations to leave one’s home; b) Immigration – motivations to stay abroad; and Return – motivations to go back home. In recent years, the emphasis on sustainability has shifted from an autonomous decision of the individual migrant to return home (or not), to a policy decision of States to expel (whether by force or coercion) migrants to another country which may, or may not, be their country of origin. This shift is perceptible in many policy discussions including: the focus on temporary labour migration arrangements, which often come with limited rights to remain and can be revoked by the host State when such migration is no longer wanted; and the focus on limiting, preventing or “combatting” irregular migration, including by deporting all migrants who are in an irregular situation. The increased focus on return in recent years has been detrimental both to the actual reintegration of migrants in their home countries, as well as to the progress and development of States.

Ms. Katie Kuschminder, Research Fellow at the Global Governance Programme of the Robert Schuman Centre for Advanced Studies at the European University Institute (EUI), agreed that “sustainable return” is a political construct and is generally viewed from the perspective of the State, which aims to limit re-migration. She noted, however, more recent efforts to move away from “sustainable return” and towards a concept of “sustainable reintegration”. This concept allows for the possibility that successfully reintegrated migrants may still choose to re-migrate in the future, or that
people may not want to migrate out of their home country regardless of whether they are well-integrated or not. The focus on “sustainable reintegration” also recognises that reintegration is a multi-dimensional process. However there is still a lack of agreement and clarity about what these dimensions are or should be. Ms. Kuschminder’s research has looked primarily at the following dimensions of sustainable reintegration: safety/security; social; and psycho-social. She noted that reintegration must always be a two-way process, involving both the returning migrants and the communities to which they are returning. When communities do not welcome returning migrants—for example, if returning migrants are rejected, shamed, or viewed with suspicion—sustainable reintegration cannot be achieved. She noted, particularly, the lack of monitoring or indicators for sustainable return and reintegration, and indicated that States often don’t want to know whether or not a return is sustainable, but only that the migrant has been returned.

Discussion:

- Participants noted the many structural barriers to sustainable return—including the lack of realistic options for decent work, health care or education in countries of origin—render many returns unsustainable and that individual investment or small-scale economic opportunities for individual returnees or their communities are unable to make an impact on such structural factors.
- Participants highlighted that alternatives to return are urgently needed, including expanded labour, family, educational, and humanitarian migration pathways as well as opportunities for regularisation and stay.
- It was noted that such alternatives to return are more cost effective than current detention and deportation policies, as well as current expenditures on voluntary return programming.
- Participants emphasized that sustainability must take into account the views and opinions of returnees and receiving communities, and that sustainability will require States to actively combat discrimination and stigmatization against returning migrants.
- Participants also emphasized that the focus on sustainable return should never obstruct or divert attention away from ensuring the legality of returns, including procedural safeguards and substantive prohibitions on unlawful returns, including when return would be in violation of the principle of non-refoulement, the child’s best interests, or other serious violations of migrants’ civil, political, economic, social and cultural rights.
- It was noted that States will have a heightened obligation to protect persons from human rights abuses in the context of return, especially for children and migrants in vulnerable situations.
- Participants noted that States also have an obligation to monitor returns to ensure their legality, voluntariness and sustainability and to provide access to remedy for rights violations happening within the context of returns.

Conclusion and Recommendations

As expert meeting participants observed, return migration is a complex and multifaceted issue that raises a number of serious questions regarding current State practices and their compliance with international human rights obligations, including the legality, voluntariness and sustainability of returns.

Returning migrants are largely in irregular situations, among the most marginalized in society, and at risk of serious human rights abuses in the context of return, including collective expulsion, refoulement, torture, enforced disappearance, denial of access to economic, social and cultural rights, and arbitrary interference with the right to a family and private life.
It was agreed that forced returns largely represent a failure of well-governed migration and should be restricted to an exceptional measure of last resort, for use in extreme cases only. When forced returns (“expulsion” or “deportation”) do take place, they must be accompanied by procedural guarantees and subject to the principles of legality and proportionality.

When migrants are considering voluntary return, participants agreed that voluntariness must be accompanied by free, prior and informed consent, including that voluntary return must never be the result of coercion or threats, such as indefinite or arbitrary detention or the denial of other human rights.

An underlying thread of the discussions was how policies of deterrence, criminalisation, detention and discrimination work to create a “return machinery” that prioritizes return over other available polity options and often creates a “hostile environment” in which migrants’ human rights are not respected.

A key message was that States should prioritize alternatives to return, such as expanded safe, dignified, and regular migration channels and opportunities for regularisation and stay.

In order to protect the human rights of migrants in the context of return, participants emphasized the need for States and other relevant stakeholders to undertake a number of urgent actions, including: immediately cease all collective expulsions and refoulement; ensure due process and procedural safeguards in any return process; ensure all voluntary returns take place on a freely informed and voluntary basis; undertake systematic monitoring of return conditions and procedures in both returning and receiving countries; provide alternatives to return in the form of expanded labour, family, educational, and humanitarian migration options; and provide access to justice and remedies for human rights violations taking place in the context of return.

OHCHR, March 2018