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## Avoiding Refoulement: The Need to Monitor Deported Failed Asylum Seekers

By Leana Podeszfa and Charlotte Manicom

### Abstract

Although the fate of deported asylum seekers remains largely undocumented, a number of organisations have compiled evidence that the human rights of failed asylum seekers are being violated upon return. Deportees are often arrested, put in prison, and tortured. Some are charged with treason; some disappear altogether. Using the example of the United Kingdom, this article argues that such deportations amount to *refoulement*, and must therefore be monitored. Importantly, more and better documentation of these cases may help influence asylum policies.

### Introduction

As we will show in this article, many failed asylum seekers who are deported<sup>1</sup> are faced with severe human rights violations upon arrival. This violates the principle of *non-refoulement*.<sup>2</sup> Unfortunately, there is little systematic documentation of these human rights violations in countries of origin so far. As deportation is increasingly used as a mechanism to manage migration, it is necessary to document what happens afterwards. Post-deportation monitoring may encourage the safety of deportees whilst building a body of evidence demonstrating that certain deportations amount to *refoulement*.

This article calls for better research, systematic documentation and monitoring of what happens to failed asylum seekers post-deportation to effect changes in the asylum policies of asylum countries. Firstly, we will review the existing literature on post-deportation human rights violations. Using the example of the United Kingdom (UK), we argue that asylum seekers with genuine<sup>3</sup> claims *are* being deported and that this amounts to *refoulement*. Lastly, we look at civil society initiatives that work on post-deportation human rights violations.

Although the fate of deported asylum seekers remains largely undocumented, a number of organisations have compiled reports of human rights violations occurring in particular countries (see Corlett 2005; Edmund Rice Center 2004a, 2004b; Kanstroom 2012). Typically, these include arbitrary detention (often upon arrival at the airport), mistreatment and torture. Bernadette Iyodu, formerly of the Refugee Law Project, Uganda, paints the following scenario:

A failed asylum seeker ... arrives at Entebbe airport and is handed over to one of the security organisations. If suspected of political dissident activities, the person is taken ... for questioning. Rape, for women, is inevitable. Children over the age of three are taken from their mother and put in an orphanage. Detention can last weeks, or months; a number of people have “disappeared” from custody (Iyodu 2010).

Such practices were also documented in Justice First’s report *Unsafe Return* (Ramos 2011), which found that failed asylum seekers deported to the Democratic Republic of Congo (DRC) had been harassed, imprisoned, and tortured by state authorities upon return. Two of the 17 deportees

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<sup>1</sup> Deportation is defined as the ‘return of foreign nationals to their country of origin against their will’ (Gibney and Hansen 2002).

<sup>2</sup> In international law, *refoulement* refers to the return of individuals to inhumane, cruel, or degrading treatment.

<sup>3</sup> We use ‘genuine’ to refer to asylum seekers who fear persecution on one of the five convention grounds, and who should have been given asylum but have been rejected.

included in the report have disappeared altogether. Human Rights Watch (2012) also documented the fates of 13 failed Tamil asylum seekers – all of whom experienced arrest, mistreatment and torture after they had been deported from the UK.

Moreover, several states view the mere application for asylum in another state as an act of treason. Amnesty International (2009: 4) found that in Eritrea ‘under torture ... returnees have been forced to state that they have committed treason by falsely claiming persecution in asylum applications’. In Uganda, Iyodu (2010) asserts, ‘political ideology need not be the instigator for the mistreatment [of deportees] as people who have claimed asylum in the West are immediately regarded as a threat and are automatic targets’. In the DRC, deportees are also seen as having betrayed the government. In an interview with Justice First, a refused Congolese asylum seeker recounted how he was arrested post-deportation. He was told by state officials:

You went to a foreign country...and said that we don't respect human rights here...that you were ill-treated...And for having said that over there, here, on principle, we have to arrest you. Because there, you betrayed our country, you betrayed our government (in Ramos 2011: 2).

In Sudan, simply visiting Israel is ‘punishable by long-term imprisonment or death’ (US Committee for Refugees and Immigrants 2009).

International law is supposed to protect individuals from return to countries where they would face torture or cruel, degrading, or inhumane treatment (Art. 3 CAT; Art .7 ICCPR). This principle of *non-refoulement* is the cornerstone of international refugee law (UNHCR 1997). In Europe, states are further bound by the provisions of the European Convention of Human Rights (Art. 3 ECHR, see also ECtHR 1996). However, the UK continues to deport people to danger (Iyodu 2012, Ramos 2011, HRW 2012). As will be explored briefly, such deportations to danger are a symptom of the decreasing asylum space in the UK (see Haydon 2012). Indeed, Gibney (2008) suggests that deportations are increasingly used by governments to manage migration across Europe.

For example, recent proposed cuts in legal aid in the UK have put more asylum seekers at risk of deportation. In 2011, the *Guardian* reported that Refugee Action had its government funding cut by 62 per cent. Refugee Action's representative said ‘clients will ... not receive the help they need to accurately make their asylum applications – which means they will be wrongly returned to murderous regimes’ (in Hill 2011). In 2010, Refugee and Migrant Justice (RMJ) went into administration due to cash-flow problems caused by changes to the legal aid system. This left 10,000 forced migrants without representation (BBC 2010; Brulc 2010). Moreover, asylum seekers are often faced with a ‘culture of disbelief’ within the Home Office, which paints genuine claims as bogus from the outset. This can lead to ‘perverse and unjust [asylum] decisions’ (IAC 2008a; see also Souter 2011). The Independent Asylum Commission (IAC) has further warned that some of the United Kingdom Border Agency's (UKBA) targets regarding the number of returns have led to a ‘culture in which every application for asylum is viewed as a potential refusal’. The focus is on removal rather than on the provision of sanctuary to those in need (IAC 2008b: 15). Confronted with disbelief and poor representation, genuine refugees are unable to put forward their claims properly. As a result, they can be faced with *refoulement*.

In the absence of official monitoring mechanisms run by states or the UN, civil society must fill the gap. Indeed, a number of organisations have called for a post-deportation monitoring system (Iyodu 2010; Ramos 2011). IAC wants to establish such a system for all deportations because

‘[w]here there has been persecution on return, knowledge of such persecution would contribute towards better decision-making in the future’ (IAC 2008b: 27-28).

Unfortunately, initiatives working on this subject are few and far between. In a closed discussion, a high ranking representative of a prominent human rights organisation pointed to the difficulties of post-deportation human rights monitoring: it would be costly, time-consuming, and frequently dangerous (Anon. 2012). Post-deportation persecution, he said, was not systematic and widespread enough to justify such a commitment of resources. We disagree. The brief overview of literature above shows that post-deportation human rights violations are indeed systematic and widespread. We believe that closer monitoring and documentation would further support this statement.

A few organisations have started this important work: Justice First follows Congolese deportees; the Refugee Law Project receives Ugandan deportees and provides legal as well as psycho-social advice. The Post-Deportation Human Rights Project (PDHRP) at Boston College, Massachusetts documents unlawful deportations and presents test cases to Federal Courts to establish the right of deportees to reopen their cases from abroad (PDHRP 2012, see also Kanstroom 2012).

However, these initiatives are insufficiently networked. Organisations in countries of origin do not know when people arrive (Working Group on Unsafe Return 2012). The Fahamu Refugee Programme (2012)<sup>4</sup> is in the process of building such a network. Fahamu is compiling an online directory of organisations willing to assist failed asylum seekers post-deportation in host countries and countries of origin. Fahamu envisions that when a failed asylum seeker is being deported, an organisation working with the individual in the host country would use this directory to contact an organisation in the country of origin. Ideally, that organisation would then pick up the individual from the airport and provide support. Fahamu is also setting up a database to collect information about human rights violations against deportees and to lobby governments concerning their asylum policies. Dr Barbara Harrell-Bond (Fahamu) explains the rationale:

Until now, there are only a few reports, which show that deportees have been detained, imprisoned, and tortured. By systematically gathering information, governments which deport failed asylum seekers will be made aware of these realities. This will help on-going asylum claims, and, ultimately, shape fairer asylum policies (Harrell-Bond 2012).

Post-deportation monitoring and assistance faces a number of problems. The network needs to be extensively publicised in host countries and have reliable partners in countries of origin. The major issue in such an undertaking, however, is trust. Failed asylum seekers must be able to trust that the organisations receiving them in their countries of origin are genuine and are not security agents in disguise. Organisations in countries of origin must be able to trust that membership of the network will not expose them to the state. Developing a good vetting mechanism will be challenging.

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<sup>4</sup> Both authors are affiliated with the programme.

Nevertheless, these initiatives are timely in light of decreasing asylum space. Not only do they help individuals who have been deported; by documenting what happens post-deportation, they can influence asylum policies. Justice First has shown the way forward. After extensive lobbying, their report *Unsafe Return* (Ramos 2011) was included in the Country of Origin Information (COI) for the DRC (UKBA 2012). Despite this success, much more research and documentation is needed so that asylum policies may be influenced and no one is deported cruel, inhumane, or degrading treatment.

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