The EU’s emphasis on migrant returns has some serious human rights problems

In yet another move intended to increase migrant returns, the European Commission has presented new measures for an “efficient and credible” return policy in the European Union.

One might read the March 2 2017 announcement as part of the perennial performance put on by EU member states to demonstrate control and assert their authority to affect deportations. Various official speeches claim that the move is related to security, “to reassure EU citizens that only those with a right to remain are in the EU”.

Others contend it will give “credibility and legitimacy to the asylum system”.

In practice, such return policies are often driven by the belief that they will act as a deterrent for migrants contemplating irregular stays.

But what they may actually translate into is deportation at all costs, including at the expense of migrants’ human rights.

A pressure to increase migrant returns

The pressure on EU countries to increase migrant returns has been incessant. The first milestone in this process was the 2010 enactment of the Return Directive, and the second occurred in May 2015 when a return policy was included in the European Agenda on Migration.

The latter came to effect in the midst of the so-called “refugee crisis”, giving states greater impetus to effectively manage migration by blocking immigrants from entering through various means and returning “irregular migrants” – individuals who either do not have a residence permit any more or never obtained one. Often they are failed asylum seekers.

Citing the “less than satisfactory” rate of returns, Migration Commissioner Dimitris Avramopoulos in May 2015 encouraged EU states to step up their efforts. Since then, the call for returns has become a persistent chorus.
Flagged clumsily as one of the “solutions” to the refugee crisis, an issue taken up in my article *Returning and Deporting Irregular Migrants: Not a Solution to the Refugee Crisis*, the call for increasing the rate of returns revealed, yet again, a discriminatory and selective approach to international migration from the global south.

Aside from its ideological underpinnings, little mention was made of the difficulties – well known to policymakers – of actually implementing returns policies, including the exorbitant costs of deportation, the bureaucratic difficulties of collaborating with origin countries on return paperwork, and the mammoth organisational complexity of arranging the trip back home.

**Human rights in law and policy**

Then, there is the challenge of respecting migrants’ human rights throughout the whole return process, particularly when they have been forced to return.

Every EU member state should follow the regulations of the 2010 Return Directive. It restated the *Brussels European Council of November 4 and 5 2004* that effective removal and repatriation should be based on common standards, “for persons to be returned in a humane manner and with full respect for their fundamental rights and dignity”.

There are some human rights provisions in the Return Directive, in areas that have to do with the modalities of return, detention, the use of physical force and procedural safeguards.

Apart from this specific law, people pending return should also be protected by the same general EU human rights protective measures.

But the Return Directive faced serious criticism from human rights advocates, which remains a source of concern. It
is considered to be too weak with regard to substantive safeguards against expulsion and detention. And it also opens up the possibility of detention for up to 18 months, imposes a re-entry ban into European territory of up to five years and permits the detention of minors and vulnerable persons.

Among immigration scholars, the shared sentiment was that the EU had opted for the lowest common denominator. By doing so, the Directive “strips away some of the protections afforded migrants in some member states, encouraging them to adopt worst practices”, claimed UK sociologist Liza Schuster.

Human rights groups concurred. In 2008, during the drafting of the Directive, Amnesty International stated directly that the document “does not guarantee the return of irregular migrants in safety and dignity”. And the European Council on Refugees and Exiles stated that it was "profoundly disappointed" that its recommendations and those of the UN’s Human Rights Commission were not included.

Across the world, the activity of returning and deporting migrants is rife with the potential for human rights violations. And, in Europe, it’s clear neither the protections of the Return Directive nor the human rights law that should apply to all people within the EU has proven sufficient to avoid abuse of refugees.

**Human rights in practice in Sweden**

Take Sweden as an example. In global and EU circles, the country enjoys a good reputation for its human rights “mainstreaming”. Among many other protections, it has numerous laws, policies and well-resourced institutions safeguarding deportees’ human rights.

This reputation has been somewhat tarnished in recent years with policies prioritising state interests over the rights of asylum seekers and migrants. The most notable of these are the legal amendments of 2016, passed in a climate of rapidly deteriorating human rights across Europe. But in comparison with other member states, Sweden still retains an elevated status in protecting human rights.

Despite these efforts, the narratives of Sweden’s deportees paint a very different picture, as told in the 2015 book, *Humane and Dignified? Migrants’ Experiences of Living in a ‘State of Deportability’ in Sweden*. This study, which I co-authored, finds that for migrants the deportation process is excruciating, negatively impacting their mental health and well-being through various processes of exclusion and criminalisation.
As the title of the book suggests, such experiences call into question whether migrants’ human rights are in fact being safeguarded, and whether that is even possible within the deportation process.

In my most recent study, ‘Burning without Fire’ in Sweden: The Paradox of the State’s Attempt to Safeguard Deportable Migrants’ Psychosocial Wellbeing, I undertook an in-depth analysis of ethnographic material. Migrants’ narratives point towards a dramatic downward spiral of psychosocial well-being and mental health during the deportation proceedings.

When they are given their decision, “forced-return migrants” – those who resist the outcome and do not collaborate with the authorities – experience increasing social detachment, isolation and an erosion of social rights.

Both of these troubling studies draw on ethnographic data collected in Sweden during 2014 and 2015. It is likely that following the 2016 legislative changes, the situation is further deteriorating.

Deportation and returns at all costs?

These findings call into question the claim that deportation respects the dignity of the forced-return migrant. Can deportation ever really be “humane and dignified”?

As Ines Hasselberg beautifully shows in her ethnographic study of deportable criminals in the UK, deportation is a “frame of mind” characterised by uncertainty. Poignantly, she adds that “enduring uncertainty is extremely tiring and exhausting”.

Empirical research points towards the fact that migrants are subject to an experience of violence – psychological, existential and, at times, physical – that has negative consequences for their health. This evidence indicates that the idea of deportation itself is antithetical to the underlying humanism of the modern human rights framework.
This doubt engenders two questions. First, can any deportation process claim to respect the dictum of the *Universal Declaration of Human Rights* – that of “safeguarding human dignity”? And, second, in the contemporary European scenario of *irregularisation of migration*, is deportation a legitimate practice?

Whatever we establish as the function of human rights in this field, everyone in the EU – from the directorate-general responsible for migration to the EU Parliament and member states – are well aware that deportations risk violating people’s human rights.

Even with all the institutional checks and balances in place, the subjugation and powerlessness of migrants makes it difficult to speak honestly of human rights, respect and dignity of the person.

Indeed, from a purely human rights perspective, deportations should be avoided at all costs. And states experiencing pressure to increase the rate of returns and deportations should not bow to it at the expense of human rights.

European authorities would do better to start by questioning the merits of an immigration system that poses returns and deportation as necessary to upholding its own legitimacy and sustainability.