‘I’m Treated Like A Criminal But I Am Not A Criminal’: The Effects of ‘Crimmigration’ on the Deportation Process

Although few irregular migrants apprehended are actually prosecuted, deportation is perceived and experienced by migrants as severe punishment.

Empirical qualitative findings
1. Migrants at risk of deportation feel that they are unjustly treated like criminals.
2. Migrants feel that deportation and pre-removal detention are punishments by the Swedish authorities. This is in spite of the fact that, legally, both deportation and pre-removal administrative detention are not conceptualised as penal measures and, secondly, that the Police in the vast majority of cases do not press charges in cases of irregular stay even though, according to the Aliens Act, they would be entitled to.

“They acted in such a way as if I had committed a grave crime such as causing a death or a big crime.”

3. Migrants at risk of deportation resist and refuse the label of ‘criminal’. The feeling of being treated as a criminal is a source of great distress for them.
4. When detained, even in pre-removal centres, migrants’ psychological wellbeing is severely negatively impacted on.

Systemic human rights considerations
1. Irregular stay is a criminal offense punishable by law. Given the negative impact that criminalisation has on migrants at risk of deportation, should Sweden move towards total decriminalisation?
2. The pre-removal detention of migrants should remain a last resort although the material conditions in these centres are good. The findings lead us to question whether all other alternatives have been exhausted before a person is detained.
3. Tactics of control, such as handcuffing, and the use of force – to what extent and when are they necessary? Could more be done to limit their use?
4. The journey home. The setting up of a forced-return monitoring system on return flights will ensure that migrants’ rights are safeguarded and will bring Sweden in line with the European Return Directive.
5. The principle of ‘non-refoulement’. The fear projected by some migrants at risk of deportation is so great that it is crucial to reiterate the importance of respecting this principle of non-refoulement.

Policy Brief

Sweden gives protection to many asylum seekers – almost 50,000 in 2014. The country also receives a large number of immigrants who enter Sweden on different visas. The Swedish system allows a clear and transparent pathway to citizenship. As a result, there are few irregular migrants in Sweden compared to many other European countries. People who do not have a permit to stay in Sweden are asked by the authorities to leave the country; when they refuse, their return is forced upon them. The implementation of the forced-return decision can include monitoring, detention and the use of control. Many of those who are forcibly returned would have originally applied for asylum but their application would have been refused.

The 2008 European Return Directive, which was transposed into Swedish law in 2012, puts an obligation on each member-state to ensure that all returns are conducted in a ‘humane and dignified’ manner. This research project is an contribution to the discussion of what constitutes ‘humane and dignified’ in the deportation process in Sweden. It approaches the subject from the perspective of the people who are currently or have been in a ‘state of deportability’ - that is, those who were informed by the authorities that they had to leave the country but who, for one reason or another, did not.

This research project therefore sets out to explore how these migrants experience the deportation process. The findings and the concluding remarks that arise from our analysis of the data are gathered together in this summary and in a longer version in the book Daniela DeBono, Sofia Rönnqvist and Karin Magnusson (2015) ‘Humane and dignified? Migrants’ Experiences of Living in a ‘State of Deportability’ in Sweden, MIM, Malmö University, Sweden. The findings are based on 26 long, in-depth interviews with migrants at risk of deportation. The migrants are a heterogeneous group, including both men and women, and hailing from the following countries: Afghanistan, Albania, Algeria, Bangladesh, Ethiopia, Iran, Libya, Pakistan, Nigeria, Russia and Serbia, together with stateless Bidoons from the Kuwait region and stateless Palestinians. The issues that arose during the interviews were brought up by the migrants themselves and were not pre-set by the researchers. To enable contextualisation and a sound analysis, interviews and meetings were also held with policy-makers, practitioners and NGO officials.

This is a summary of the findings and conclusions that can be found in the book: Daniela DeBono, Sofia Rönnqvist & Karin Magnusson (2015) ‘Humane and dignified? Migrants’ Experiences of Living in a ‘State of Deportability’ in Sweden, MIM Malmö University, Sweden
The ‘State of Deportability’ as ‘In Limbo’: The Negative Effects on Migrants’ Psychosocial Wellbeing

Empirical qualitative findings
Migrants’ health and psychosocial wellbeing are negatively impacted on by the deportation decision in the following ways:

1. The lack of autonomy, the restricted participation in society, the inability to move freely due to financial restrictions, and the fear of being apprehended all contribute to a feeling of powerlessness.
2. Insecurity and the fear of being returned to the country of origin appear to be debilitating.
3. For stateless people, who are more likely to end up in a protracted ‘in limbo’ situation, the impact can become more acute.

"Before I thought a lot about my future, what I wanted to become and things like that. But now when I lost my hope, I don’t think so much. I don’t have the energy right now."

In addition it is important to see that the state of deportability is an ‘in limbo’ situation. As such, it is important to recognise that:
- the state of being ‘in limbo’ is a corollary effect of the authorities’ implementation of the return decision;
- intrinsic to the ‘in limbo’ situation is the lack of power to change the situation and a dependency on the system, which has a negative impact on migrants’ psychosocial wellbeing;
- this ‘in limbo’ state of deportability arises at a critical point in peoples’ lives when they are dealing with the news that they have not been granted asylum and/or will be returned back to a country from which they have fled or with which they have few positive connections; and
- this situation occurs after a long migratory process when migrants’ resources are scarce.

Systemic human-rights considerations
1. The right to quality of life and wellbeing. The state of deportability that migrants face on a daily basis has a severe impact on their psychosocial wellbeing.
2. The right to health. The factors brought about by the physical and mental health of the migrants, their legal-political status, and their social situation: to what extent do they impede access to health services?
3. The social and political creation of an ‘in limbo’ state of deportability by the Swedish state limits migrants’ basic human rights. Can this be justified? Should the right of the state to expel people take precedence over the human rights of the persons involved?
4. From a human rights and justice point of view it is unacceptable that anyone should be subjected to interminable, protracted ‘in limbo’ situations, which result in acute and undignified conditions of deprivation.

Migrants’ Interactions with the ‘Deportations System’: Complexity. Grey Areas of Discretionary Space and Gradual Restrictions?

Empirical qualitative findings
1. Migrants feel that aspects of the deportation system are unfair, discriminatory and that decisions are made in an arbitrary way.
2. Events that occurred during the asylum-seeking process often condition the interactions between migrants and the authorities during the deportation process.
3. Events that seem logical to the authorities may be incomprehensible from the migrants’ point of view. Migrants’ acts of resistance are interpreted as a lack of cooperation and lead to negative repercussions for them. There is no parallel to this for Swedish citizens, and this indicates that non-citizens are treated differently.
4. Migrants feel that the return decision should be communicated with greater sensitivity and adequate explanation.

"I am deeply disappointed; they (the authorities) should know how much I am suffering, how I am hurt. I don’t hope that anybody should feel the way I am feeling, even if he is my enemy."

Systemic human-rights considerations
1. Efficiency is important in order to avoid situations where the human rights of migrants at risk of deportation could/would be violated. However, the authorities should be careful not to use the logic of efficiency at the expense of fairness or transparency.
2. The right to a fair hearing. Sweden has institutionalised appeal procedures in a bid to ensure that migrants’ and asylum-seekers’ right to a fair hearing is safeguarded. This positively distinguishes Sweden from other countries where migrants might not be given the right to appeal within the system or to make a judicial appeal. The right to a fair hearing, however, hugely depends on the lawyer. The varying degrees of professionalism of deportees’ lawyers are a cause for concern and impact on the extent to which, in practice, migrants can access a fair hearing.
3. Fairness, discrimination and transparency issues. The complexity of the system that presents itself at a time when the migrants are particularly vulnerable and not always receptive to information lends itself to a lack of transparency and increases the sense of unfairness and discrimination.
4. Punishment should be proportionate to the act. It is important that migrants do not get overly punished for expressing their feelings of disappointment or for offering different forms of resistance. Security concerns and discretion in decision-making processes should be documented in a careful manner in order to avoid arbitrary decision-making and to increase the transparency of the system.
5. There is a critical juncture in the joint workings of the various authorities in the deportation process, which is when cases are moved from the Migration Agency to the Police. It is important that cases remain with the Migration Agency as long as possible and that they are not moved to the Police unless there is no other option.