

Forum: General Assembly 6th Committee

Issue: Measures to address the deportation of illegally-immigrated or undocumented children

Student Officer: Victoria Lee

Position: Head Chair

Introduction

The UN Declaration of Human Rights (UDHR) boasts that no being human is illegal and that all humans reserve the right to movement and migration. Yet this is simply untrue in practice. Article 14 of the UDHR has been violated by virtually every single signatory since it was adopted in 1948. The United States's Immigration and Customs Enforcement (ICE) apprehended 20,752 individuals as children from the years 2009 to 2013. They forced these children to live stateless lives whilst waiting for their court hearing which could take months and oftentimes years. Similar stories reign throughout Europe and Asia. In Denmark, the Danes contend that an unrestricted influx of immigrants will lead to a breakdown in welfare and higher crime rates. In January of 2016, the Danish police were given the right to search any immigrant and confiscate any item of value. These acts of injustice are not isolated incidents. The United Nations under the UDHR needs to uphold its obligations and protect these stateless individuals. Under the obligations of the UDHR, immigrants should be subjected to the same fundamental rights and due process of law as any other citizen.

The issue of deporting children is slowly being recognized and resolved by institutions such as the European Court of Justice (ECJ); however, child deportation rates remain at a steady high with the situation at Idlib remaining stagnant and illegal immigration in the Northern Triangle remaining prevalent.

Definition of Key Terms

Deportation

To be expelled from a nation on the basis of illegal migration to said nation. Deportation carried on the basis of both national (municipal) law and international law.

Illegally-immigration

The migration of individuals that violate the laws and customs of the given nation. This can be illegal entry, illegal residence, or both.

Undocumented immigrants

The term 'undocumented immigrant' refers to anyone residing in any given country without legal documentation. It includes people who entered nations without inspection and proper permission from the government, and those who entered with a legal visa that is no longer valid.

Stateless individuals

Stateless individuals are typically refugees that do not belong to any nation. These people do not hold citizenship. There were a total of 3,469,250 stateless individuals worldwide as of 2013 according to the United Nations Refugee Agency (UNHCR). Refugees are not necessarily stateless, refugees can still be citizens of their origin nation.

Detention Facilities

Detention centers/ detention facilities hold immigrants that are suspected of visa violations or for entering into countries illegally. Detention centers are not the same as refugee camps.

Refugee Camps

Refugee camps are intended to provide temporary accommodation for refugees fleeing their nation of origin. These camps accommodate both refugees and the internally displaced.

Xenophobia

An excessive and irrational fear or dislike of a certain race, religion, or gender on the basis that it is foreign.

Asylum Seekers

Those who seek refuge in other nations due to political persecution. Asylum seekers are permitted to break certain immigration laws as allowed under documents such as the United Nations Declaration of Human Rights (UDHR).

History

Throughout history, human migration has been common; however, it was not until the 1700s where there were lines drawn between legal and illegal immigration. Immigration laws were set up in many countries as a result of anti-immigration sentiments. A famous example is the Immigration Act of 1882, passed by the United States Congress. This was considered by many to be the first general immigration law due to its guidelines of exclusion through creating a new category of "aliens." But the criminalization of undocumented immigrants in America only began in 1929 through Section 1325 of Title 8 in the U.S. Code. This began a long history of deportation as prior to Section 1325, illegal immigration was illegal (and common) yet these migrants could not be deported.

Such deportation laws came from anti-immigration sentiments. Between 1991-1992, Bhutan forcefully removed and deported many Nepali-speaking Bhutanese. This group of people were the Lhotshampas ("southerners"); they were originally placed in Nepali refugee camps and were eventually deported from Bhutan for protesting the Bhutanese state and monarchy. This is just one example of the cruel and inhumane treatment of refugees. The Lhotshampas were essentially denied their right to speech and livelihood. As of 2021, there has yet to be any agreement on repatriation. This provides context to deportation as a political maneuver.

Child deportation has been an ongoing issue that has only recently seen light. In Australia, since the 1930s, child deportation was used as a mechanism to remove children as young as three. These children were sent to distant lands within the Commonwealth, often

without their parents' consent. Child migrants were sent abroad without passports, social histories, or even basic documents such as a full birth certificate. Siblings were frequently separated for most of their childhood; some were loaded onto trucks for long journeys to remote institutions, only to be put to work as laborers the next day. These children were seen as illegal and were deported because they belonged to the aboriginal population in Australia.

In recent history, many governmental entities have campaigned against the usage of the phrase "illegal immigrants" as the term insinuates that people can inherently be illegal. The Platform for International Cooperation on Undocumented Migrants (PICUM) in 2014 launched its international "Words Matter" campaign in which it promotes the usage of the term "undocumented" as opposed to "illegal immigrants." However, for the purpose of this conference, there will be no rules against the usage of the word illegal immigrants or illegal immigration for the purpose of clarity.

Key Issues

Immigration, especially illegal immigration, exists because of poverty, overpopulation, family reunification, asylum, deprivation of citizenship, and education. When a country, especially those that are ravaged by war, is unable to provide adequate access to medication, food, and water, civilians will choose to flee. It is important to note that illegal immigrants are typically not impoverished by the standards of their nation of origin. The poorest class in a developing nation typically lacks the necessary resources and connections to illegally migrate out of the country. Many also illegally immigrate for the purpose of family reunification; however, this may be counterintuitive as deportation further separates more families. Deportation causes family separation as deported individuals are unable to travel across borders to visit family members. A common occurrence is the deportation of people born on national territory (see: Rohingya Muslims). Groups such as the Rohingya Muslims do not automatically obtain citizenship of their birth nation. They are therefore considered stateless and can be deported, which they often are. One possible way to bypass deportation is through the 1951 Refugee Convention, which states that asylum seekers escaping war, oppression, or persecution shall be exempt from immigration laws and are entitled to protection from the country they enter.

Major Parties Involved and Their Views

United States of America

The Immigration and Nationality Act (INA) allows the United States to grant up to 675,000 permanent immigrant visas each year across various visa categories. Immigration and Customs Enforcement (ICE) works with Homeland Security Investigations (HSI) in order to identify those who have broken American immigration laws and are responsible for the deportation of such. In 2013, the then Democrat-led Senate passed the immigration reform bill that outlined a more comprehensive path to citizenship for undocumented immigrants. The Biden Administration is expected to uphold and adopt similar immigration policies.

Mexico

According to the CATO research institute, the highest population deported from the United States was Mexico with 2 million deported under the Bush Administration, and 3.2 million deported under the Obama Administration. However, Mexico deports more Central Americans than the United States. Just as there are many Mexicans moving north in hopes of more opportunities, so do the majority of Central Americans. This demonstrates that Mexico has a harsher anti-immigration policy than the United States, even while the United States was under the Trump Administration. Mexico deports nearly all illegal migrants it apprehends.

FIGURE 1
Deportations to the Northern Triangle From the United States and Mexico
 FY 2004-18

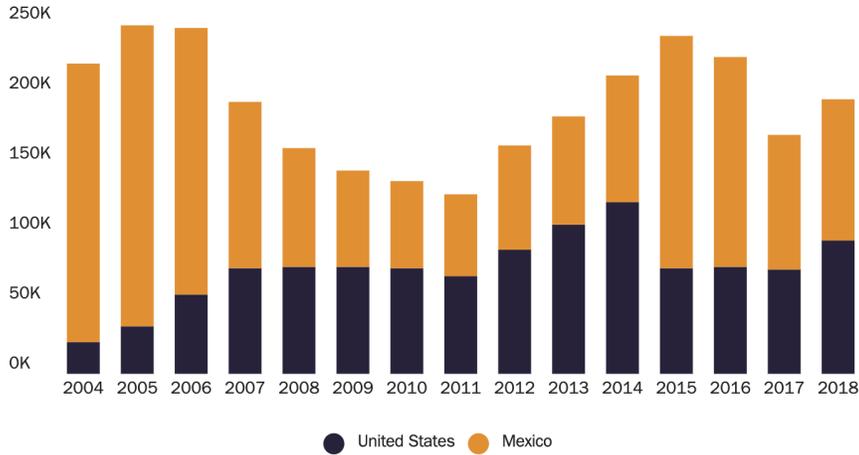


FIGURE 1: Deportation of Central Americans by Mexico and the United States (CATO Institute)

FIGURE 3
Mexican Apprehensions and Deportations of Northern Triangle Migrants
 FY 2004-18

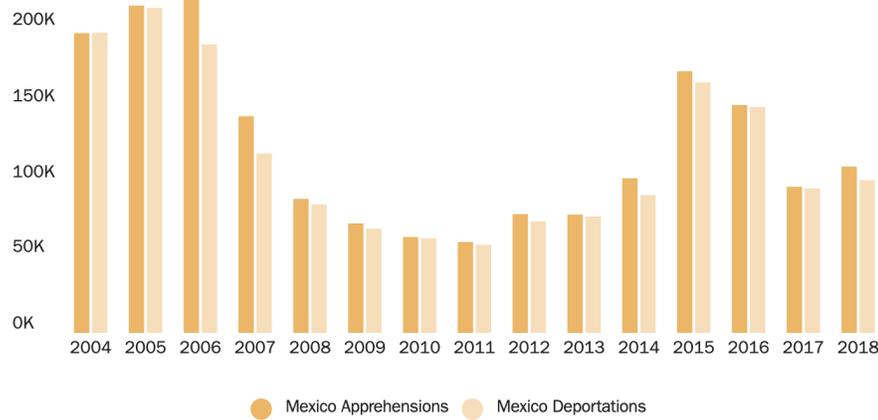


FIGURE 2: Mexican Apprehensions and Deportations of Northern Triangle Migrants (CATO Institute)

European Union

The European Union's top court, the European Court of Justice (ECJ), ruled that EU states cannot deport unaccompanied minors aged under 15 unless there are “adequate reception facilities” in their home countries. Though many nations in the EU such as the Netherlands do not have the most friendly immigration policies, the EU urged nations to

conduct a "general and in-depth" assessment of the situation of the child's home country before coming to a conclusion. Given that European Union laws and the ECJ hold precedence over national laws and courts, countries are expected to uphold this ruling.

Syria

Syrian refugees are currently at risk of deportation in Lebanon, Turkey, Germany, and many other European nations. These nations are being accused of illegal deportation and the removal of Syrian asylum seekers. As asylum seekers, though many undocumented, retain the right to seek asylum in neighboring nations. In Lebanon, up to 2731 Syrians were deported upon arrival without the due process of law. The acting director for the Human Rights Watch in the Middle East states, "Lebanon is legally obligated to allow people to challenge their deportation and argue for protection. And it is forbidden by law to return anyone to face persecution or torture." The Human Rights Watch (HRW) has long documented the arbitrary abuses, detention, and torture under the custody of the Syrian Government, which by definition, makes Syrians asylum seekers who are legally not allowed to be deported.

China

During the last decade, China has been accused of genocide against the Uyghur Muslims. The Uyghur Muslims in Turkey fear deportation to China as deportation to China would mean forced sterilization and life in concentration camps. The Turkish Parliament is in the process of ratifying an extradition treaty with China which would authorize the deportation of Uyghur Muslims back to China. The Turkish government is in its right to deport the Uyghur Muslims through an extradition treaty as many of the said immigrants are undocumented or considered stateless.

Philippines

Many Filipino workers illegally immigrate to places such as the Republic of China (ROC) and China by purposefully overstaying their visas. The majority work as caregivers at minimum wage as ROC and Chinese worker protection laws do little to protect undocumented workers. The Filipino Immigration Bureau has long fought for the deportation of Filipinos, who have committed "cyber-libel" against the Filipino government from the ROC and China back to the Philippines. However, in all other

scenarios, it is the ROC and China that threaten to send these illegal domestic workers back to the Philippines.

Timeline of Relevant Resolutions, Treaties, and Events

Date	Description of Event
1948	<p>Universal Declaration of Human Rights (UDHR): Provided additional protocols that grant rights to migrants by virtue of migrants' humanity. States that asylum seekers "have the right to seek and to enjoy in other countries asylum from persecution." This, however, only pertains to "case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations."</p>
1951	<p>Convention relating to the Status of Refugees and its 1967 Protocol (The 1951 Refugee Convention): The convention works to stipulate that refugees shall not be penalized for their illegal entry or stay as it recognizes that immigration laws may be broken or violated in cases of asylum-seeking. The convention also lays the basic minimum standards of treatment of refugees.</p>
1961	<p>Convention on the Reduction of Statelessness: The convention states that statelessness should be avoided through nation compliance with international norms in terms of nationality. A central focus in this convention is the avoidance of statelessness through "requiring States to grant citizenship to children born on their territory, or born to their nationals abroad, who would otherwise be stateless."</p>
1966	<p>International Covenant on Civil and Political Rights (ICCPR): The ICCPR gives children the right to equal protection under the law in addition to legal protection from torture and cruel and degrading treatment. The ICCPR shall "extend to all parts of federal States without any limitations or exceptions," including immigration and deportation. *This treaty was rejected by the United States Senate and thereby inapplicable and not enforceable in American courts</p>
1989	<p>Convention on the Rights of the Child: This convention stresses the importance of international cooperation in order to improve the living conditions of children. This is often applied to children seeking asylum and refuge in nations that are not their own.</p>

2007	<p>International Convention for the Protection of All Persons from Enforced Disappearance:</p> <p>This convention was ratified for the purpose of protecting the victims of enforced disappearance. Examples of enforced disappearance include the disappearance of El-Sisi political opponents under the guise of deportation.</p>
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Relevant UN Treaties and Events

- Universal Declaration of Human Rights, 10 December 1948 (A/RES/217)
- Convention Relating to the Status of Stateless Persons, 28 September 1954 (E/RES/526)
- Declaration on International Migration and Development, 1 February 2000 (A/RES/54/212)
- Convention concerning Decent Work for Domestic Workers, 16 June 2011 (ILO/ C.189)
- Declaration on the Protection of All Persons from Enforced Disappearance, 18 December 1992 (A/RES/47/133)

Evaluation of Previous Attempts to Resolve the Issue

The issue of immigration and the rights given to undocumented immigrants has been a debate stemming from the 1940s. In 1948, the Universal Declaration of Human Rights in article 14 stated that asylum seekers were entitled to seek refuge in case of political persecution. This is among the first pieces of international law that provide rights to refugees identified as asylum speakers. Though ratified by 193 member states as of 2021, many asylum seekers still face persecution. Most notably the Syrians, who are the textbook definition of political persecution yet are forcefully detained and removed in Lebanon, Turkey, and many EU nations. The main problem with the UDHR is that it is non-binding. Ratification of the UDHR does not equate to having to enforce the UDHR in domestic and international law. Though many scholars argue that the UDHR is considered binding under Customary International Law, the UDHR is still widely considered to be non-binding. There has yet to be an International Court of Justice (ICJ) case that has indicted or incriminated a nation on the sole basis of violating article 14 of the UDHR.

Possible Solutions

1. Renew Nation Commitments to International Human Rights Norms: Nations will be required to ratify treaties and conventions such as the UDHR and the 1951 Refugee Convention. The key difference will be the policing of nations carried out by the ICJ and UN peacekeepers in order to ensure compliance.
 - **Pros:** Nations would be required to carry out fair and just immigration policies (eg: due process of law). Furthermore, asylum seekers would be granted a safe space in which they can stay temporarily without the constant fear of deportation which they currently face (see: Lebanon's forced deportation of Syrian asylum seekers).
 - **Cons:** Few nations will be willing to enforce International Human Rights norms because this would mean that said nation could be subjected to charges of human rights violations due to past actions. Countries such as the United States would not partake as the United States has a history of rejecting treaties that they see incompatible with domestic laws (see: U.S. non-compliance in ICCPR).
2. Better Pathways to Legal Immigration: Nations would create simple, manageable, and reasonable pathways to legal immigration. This would allow migrants to reap the social benefits of the said nation whilst performing their civic duty such as paying taxes and voting.
 - **Pros:** If refugees and asylum seekers are fairly educated on the legal pathway to immigration, this would be an incentive to migrate legally rather than illegally as legal migration grants these refugees and asylum seekers more rights and freedoms.
 - **Cons:** Legal pathways to immigration already exist. Though complicated, those who choose to immigrate illegally will always try to find shortcuts in the immigration system. Furthermore, this does not fully solve the deportation of already undocumented immigrants and children.
3. Harsher Immigration Laws: Harsh immigration laws might include capital punishment or excessive jail time for those found to have illegally immigrated. The intention is not necessarily to punish illegal immigrants, but instead to prevent further immigration.

- **Pros:** Harsher immigration laws may potentially deter potential immigrants who seek to illegally migrate to the said nation. This can ensure those host nations are not overwhelmed with high rates of immigration and are entitled to mass deportations of undocumented or illegal immigrants.
 - **Cons:** Such hard policies make it difficult for asylum seekers and refugees to escape their war-torn home nations. If not conducted carefully, this potential solution would be a blatant violation of international humanitarian rights.
4. Exempt children from the expedited removal process: By not forcefully removing children, a nation can uphold the Convention on the Rights of the Child, ICCPR, and the UDHR. This solution works because many children did not have a say in their original displacement and it would be unfair to deport a child who has spent their entire life in said nation. The solution would follow a Deferred Action for Childhood Arrivals (DACA)-esque policy, however, with the possibility of deportation if the nation sees fit.
- **Pros:** If nations exempt children from expedited removal processes, children will no longer be sent back to war-torn nations. Furthermore, national courts should first and foremost assess the best interest of the child. Children will also be allowed consultation with legal services prior to voluntary return. By allowing children who have already been living in the nation to remain, this is in the best interest of the children in terms of education, access to necessities, and their livelihood.
 - **Cons:** This could create additional incentives for undocumented immigrants to bring their children into foreign nations. This would exacerbate the issue of mass illegal immigration. Furthermore, in the event that the child's parents are deported yet the child chooses to stay, the nation would be criticized by its citizens for devoting excessive resources to the livelihood of migrant children rather than their own citizens. Additionally, this will cause even more family separation even if it is considered to be voluntary separation. Children might not be mature enough to make these decisions.

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Appendix or Appendices

- I. ECJ ruling on child deportation:
<https://www.aa.com.tr/en/europe/eu-court-lays-out-conditions-for-deportation-of-minors/2111090>
- II. Convention relating to the Status of Refugees:
<https://www.unhcr.org/3b66c2aa10>
- III. OHCHR's Latest Updates on ratification of treaties, bi- and multilateral agreements and domestic laws in regards to immigration:
https://www.ohchr.org/en/NewsEvents/Pages/NewsSearch.aspx?SID=Migration_HR
- IV. UN Treaty Collection on Human Rights, Immigration, and Statelessness:
<https://treaties.un.org/Pages/ParticipationStatus.aspx>
- V. Chapter 14: Human Rights of Migrants. In: Handbook for Improving the Production and Use of Migration Data for Development. Global Knowledge Partnership for Migration and Development (KNOWMAD):
<https://www.knomad.org/publication/handbook-improving-production-and-use-migration-data-development-0>
- VI. Office of the High Commissioner for Human Rights (OHCHR): Human Rights Indicators: A Guide to Measurement and Implementation:
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