Minimum Standards for Return Procedures 
and International Human Rights Law

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Abstract
The European Commission has finally released its long-awaited proposed directive on minimum standards for return procedures (COM(2005) 391). Taking as a starting point that standards on return procedures, however minimal they are, must comply with those international human rights norms that are binding upon EU Member States, this article seeks to identify which restrictions these norms impose on States seeking to expel foreigners from their territory. This article reviews what substantive protection is available to individuals facing expulsion to a country where they may be exposed to grave human rights violations, including torture. It identifies what procedural guarantees are available to persons who are subject to an expulsion decision and those restrictions placed by international human rights law on the methods of expulsion. Finally, the proposed directive will be assessed against the benchmarks which have been identified.

Keywords
Return; expulsions; international human rights; European Union

Introduction
At a time when EU Member States are becoming increasingly concerned about removing from their territories all those individuals who are no longer entitled to remain there, the Commission has finally released its long-awaited proposed directive on minimum standards for return procedures.¹ The purpose of this article is to recall what international human rights norms apply in the area of expulsions and to assess the proposed directive against these benchmarks. One should bear in mind that standards on return procedures, however minimal they are, must comply with those international human rights norms that are binding upon EU Member States.

While no state may expel its nationals, it is the sovereign prerogative of states to regulate the presence of foreigners on their territory. This power is not unlimited

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and international human rights law places some restrictions on when and how to exercise this power. The purpose of this article is to identify those restrictions. With regard to expulsions, three types of protection are available, namely substantive protection against return to face grave violations of human rights, procedural safeguards during deportation procedures, and protection with regard to the methods of expulsions. In addition to the general protection afforded to all foreigners, certain categories of foreigners, such as refugees and migrant workers may be afforded additional protection against expulsions and/or benefit from additional procedural guarantees. As a preliminary remark, one should note that many terms are used by states to refer to “expulsions”: in some cases, these are called “deportations”, “removals”, and so on.

This article will first review what substantive protection is available to individuals facing expulsion to a country where they may be exposed to grave human rights violations, including torture. It will then identify what procedural guarantees are available to persons who are subject to an expulsion decision. In the light of these procedural safeguards, it will be demonstrated that mass or collective expulsions are clearly prohibited under international law. International human rights law also places restrictions on the methods of expulsion. Since these restrictions are not so explicit, non-legally binding instruments on expulsions have been adopted. Finally, the proposed directive will be assessed against the benchmarks which have been identified.

1. Protection against Expulsion to a Country where the Person would face Grave Human Rights Violations

1.1. The Refugee Convention

All EU Member States are parties to the Refugee Convention which was adopted in 1951 and is the first international instrument to place legal restrictions on State parties’ power to expel foreigners. Article 33 lays down the prohibition of “refoulement” according to which no State party “shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”.

Since all asylum seekers are presumed to be refugees until proven otherwise, they benefit from the protection afforded by article 33 unless their claim to refugee status is rejected. Such protection against “refoulement” can however not be invoked by refugees who pose a security threat to the country or who have committed a par-

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2) See also article II(3) of the 1969 OAU Convention governing the specific aspects of refugee problems in Africa.