**‘Undesirable and Unreturnable’**

Jennifer Bond

I have spent a lot of time considering the intersection between refugee law and criminal law, especially in the context of Article 1(F) of the *Refugee Convention,* which denies access to protection where there are serious reasons for considering that a refugee claimant has committed certain criminal acts. Broadly speaking my work has attempted to explore the tensions that arise where legal tests and principles developed in one legal context (criminal law) are imported into another (refugee law), and I have expressed various concerns about the way the exclusion clause (and related schemes that also use criminal law to deny refugee protection) is interpreted and applied both within Canada and internationally.

The ‘Undesirable and Unreturnable’ (UaU) project forefronts a series of related but distinct tensions that arise *after* it has been determined that an individual is “undesirable” for reasons of criminality, with a particular focus on situations where there is some impediment to removal from the relevant territory. In my view, the issues that the project confronts are about to become of urgent and critical importance as a result of the unprecedented refugee crisis that is currently driving millions of people across state boundaries. While some (though sadly not all) of these individuals are receiving some immediate humanitarian assistance, state actors are likely to eventually consider the exclusion provisions before granting permanent protection. This raises the spector of thousands of new UaUs and makes the questions this project considers incredibly important and timely.

I have conducted detailed research into the UaU situation in Canada in particular. Using a combination of on- and off- the record sources, I have identified five potential outcomes for individuals Canada deems “undesirable” as a result of alleged criminality but who cannot be removed:

* Eligible for permanent residence
* Granted temporary stay of removal until impediment removed
* Granted temporary status while still under active removal order
* Placed in legal limbo
* Subjected to suspect deportation

The rights and restrictions that flow from each of these global outcomes vary significantly, but the result in a given case does not appear to reflect deliberate policy choices that consider and treat criminal-unremovable persons as a class. Rather, factors such as the nature of the underlying criminality, the specific impediment to removal, and the legal availability of certain formal decision-making mechanisms intersect in complex and seemingly arbitrary ways to dictate which outcomes are available in each case.

This arbitrariness is exacerbated by the fact that the majority of impediments to removal are not the specific subject of any decision-making process in Canada. They are also not factors that must be considered as part of a multi-faceted decision. Instead, most impediments to removal are relevant only in highly discretionary contexts where they may be deemed insignificant or given minimal weight.

The overall conclusion of my research is that Canada does not have a coherent or deliberate policy for dealing with individuals who are “undesireable” on the basis of alleged criminality but are unremovable. Further, individuals in this group are frequently facing significant hardship.