

‘Undesirable and Unreturnable’ in the UK

Sarah Singer

Questions surrounding the removal of migrants convicted or suspected of serious criminality have been very high on the media and political agenda in the UK in the last two decades. One need only think of the long-running saga over the removal of Muslim cleric Abu Qatada, which dominated newspaper headlines for over a decade; the ‘catgate’ affair in which Home Secretary Theresa May (mistakenly) claimed that an ‘illegal immigrant’ could not be deported because he had a pet cat, or; the ‘Afghan hijackers’ incident in which nine Afghan nationals fleeing the Taliban regime hijacked an aircraft and directed it to land in London Stansted airport, but could not be removed from the UK as they were considered to be at risk if returned. All these incidents, and many more besides, have attracted furious reactions from the popular press and an extraordinary amount of political and legal attention.

The UK government has sought to address the issue of unremovable (criminal) migrants in a number of ways: by entering into diplomatic assurances, or memoranda of understanding (MoU), with third States relating to the treatment of individuals returned to these countries – the UK has agreed MOUs with Ethiopia, Jordan, Libya and Lebanon, setting out the ‘correct’ approach to private and family life cases in primary legislation and, of course, ongoing debates over the UK’s proposed withdrawal from the European Convention on Human Rights. But what is the human cost of this approach? And what are the consequences for those who can nevertheless not be removed from the UK due to either legal or practical obstacles? Contrary to official policy, the UK’s default approach appears to centre primarily on the detention of unremovable (criminal) migrants. A recent Parliamentary inquiry into this issue condemned the UK’s practice of detaining migrants for often extended periods of time where there was no realistic prospect of removal. Indeed, a viable solution to this issue is unlikely to be reached unless and until the Home Office channels further energy into exploring alternative in-country solutions which are more than temporary in nature.

This raises a number of questions:

- What makes the UK country situation unique to warrant the extraordinary amount of legal and political attention focused on the removal of criminal migrants, which seems to far outstrip that of neighbouring European States?
- What alternatives to detention might be employed in the case of unremovable migrants? Can these address the UK’s public policy concerns while ensuring a better standard of treatment for unremovable persons?
- How effective are memoranda of understanding in safeguarding the treatment of those removed to a third State? What alternatives might exist?