



Prof. dr. Miguel De Jonckheere, Dean of the faculty Law and Criminology, kindly invites you to the public defence to obtain the academic degree of

DOCTOR OF LAWS

of Ms. Júlia Zomignani Barboza

which will take place on

Wednesday 12 June 2024 at 4 p.m.

in the Promotion Room D2.01 and [online](#)

at the VUB Main Campus, Pleinlaan 2, 1050 Etterbeek.

UNDESIRABLE UNRETURNABLES: THE CHALLENGES OF DEALING WITH CRIMINAL MIGRANTS IN NEED OF PROTECTION. A SOLUTION BASED ON THE COMPARATIVE ANALYSIS OF AUSTRALIA, BELGIUM AND CANADA THROUGH HUMAN RIGHT LENSES

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You are warmly invited at the **reception** afterwards. Please register [here](#) for the reception not later than 5 June 2024.

If you can not come in person, you can watch the defence [online](#).
A map of the campus and directions to reach the VUB can be found [here](#). If you are coming by car, please register your numberplate [here](#) in advance for easy parking access. Then take entrance 11 and you can park underneath building C.



Abstract

States usually insert clauses in their national laws to ensure undesirable migrants – such as criminals or suspected terrorists – are deprived of the right to enter or stay within their borders. Consequently, States default response to such migrants is to start procedures to return them to their country of origin. However, when there is a risk that undesirable migrants will be subjected to human rights violations upon return, human rights law provides a broad protection against their removal, as it sets an absolute prohibition (known as non-refoulement) to returning someone in these conditions. These migrants are thus undesirable (due to their criminal acts or for being a threat to security) but also unreturnable (due to non-refoulement). As returning them would violate international law, host States are forced to find a different solution. Against this background, the goal of this thesis is to propose a sustainable and human rights compliant national solution to the challenge of regulating the situation of these migrants (hereafter referred to as undesirable unreturnables).

To identify such a solution, this thesis starts by exploring who States consider undesirable migrants. It then explains the legal framework that protects migrants from return to harm, focusing on the protection stemming from refugee law and human rights law. Subsequently, this thesis situates the topic of undesirable unreturnables in literature, presenting some of the solutions that have been proposed to the challenge of regulating their situation.

After laying down the theoretical background, this thesis studies what measures are in place in Australia, Belgium and Canada to regulate the situation of undesirable unreturnables to understand how different countries regulate the situation of such migrants in law and how the law is applied in practice. It also critically assesses whether the practices of these States are sustainable and comply with human rights.

Based on the analysed existing measures, this thesis proposes the grant of limited residence statuses for these migrants. These statuses would give undesirable unreturnables a number of rights but would also be associated with conditions that would either protect the community of a State from any possible danger the concerned migrant may pose or allow migrants to overcome their past acts through integration. In the long-term, such statuses provide a more stable and thus sustainable solution for these migrants as a human rights compliant alternative to existing practices. Such statuses should be embedded in international protection procedures, which are already the main procedure to assess non-refoulement. To protect migrants against disproportionate measures, applicable conditions associated with their status must be prescribed in law, applied proportionally, revised periodically and decisions regarding them subjected to judicial review. Renewal of temporary limited statuses would be dependent on compliance with the imposed conditions and, after a certain, pre-defined, number of renewals, migrants would receive unrestricted permanent status. Considering that some undesirable unreturnables are long settlers and thus find themselves in a different situation than new arrivals, certain provisions



that relate specifically to them should also be enacted to complement the proposal to give undesirable unreturnables limited statuses.