

## THE RIGHT NOT TO BE DISPLACED IN INTERNATIONAL LAW



THE RIGHT NOT TO BE  
DISPLACED IN  
INTERNATIONAL LAW

Michèle MOREL



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The Right not to be Displaced in International Law  
Michèle Morel

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## PREFACE

Years before I was born, Prof. Stephen Marks wrote that ‘careers in human rights are less numerous and less lucrative than those in corporate law. [...] In other words, a career in human rights implies a certain degree of risk. Yet, in my experience, that risk is worth taking’ (S. Marks, ‘Emerging human rights: A new generation for the 1980s?’ (1980–81) 33 *Rutgers Law Review* 435, 435). I agree, although I must admit that during the writing process of this book, I have encountered moments of frustration and profound doubt towards the very idea of human rights. I started my doctoral studies blindly in love with human rights, wanted to run away from them a year later, and finally learnt to appreciate their merits while also recognizing their shortcomings. It has been an interesting yet necessary challenge over the past years to separate feelings of activism from objective academic research.

My interest in and fascination with the issue of displacement and forced migration were triggered by a conversation in 2006 in Kigoma, Tanzania, with a Congolese refugee who was about to be repatriated to his homeland in D.R. Congo by the UN Refugee Agency. Violent conflict in his region of origin had forced this man and his family to flee across the border more than twenty years ago. While queuing for rice and beans, a cold shower and a medical check, ‘home sweet home’ were the only words he repeatedly directed to me while wearing a fragile, seemingly endless smile. It was not until then that I understood the true meaning of home.

Writing this work has been an enriching experience, both academically and personally. If it succeeds in inspiring or empowering even one other person, it will have been a satisfying undertaking.



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It is hard to imagine how the past four years would have been without the motivating and supportive words and deeds of my family, friends and colleagues. I thank all of them, in particular Nicole, Pieter and Rudy, who fully understood what doctoral students are going through; Sophie, Jasmien and Nikè, for the many years of true friendship; Jan, whose humour brightened up the dark days and silent nights; Cedric, for the warm support during the first years; Petrus, Marie, Durkadin and Dirk, for the valuable philosophical chats over a glass of wine; Nadine, who has meant much more to me than she will ever imagine; all of my fellow *tangueros* and *tangueras*, in particular Koen, Tim, Peter and Rogier, for giving me what has been the oxygen of my life; Tim, for shouting at me when I was losing faith in what I was doing, and simply for being there. Thank you. Finally, to my dear parents, my sister Catherine and my brother Frédéric, who have been tireless in their encouragement from the first until the very last day, in good times and in vulnerable times, with their unconditional love, I express my deepest gratitude.





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## ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ACmHPR	African Commission on Human and Peoples' Rights
African Refugee Convention	Convention governing the Specific Aspects of Refugee Problems in Africa
ArCHR	Arab Charter on Human Rights
Compilation and analysis of legal norms, 1995	Report of the Representative of the Secretary-General, Mr Francis Deng, submitted pursuant to Commission on Human Rights resolution 1995/57, Compilation and analysis of legal norms, UN Doc. E/CN.4/1996/52/Add.2, 5 December 1995
Compilation and analysis of legal norms, Part II, 1998	Report of the Representative of the Secretary-General, Mr Francis Deng, submitted pursuant to Commission on Human Rights resolution 1997/39, Compilation and analysis of legal norms, Part II: Legal aspects relating to the protection against arbitrary displacement, UN Doc. E/CN.4/1998/53/Add.1, 11 February 1998
Convention against Torture, CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Convention on Enforced Disappearance	Convention for the Protection of All Persons from Enforced Disappearance
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CESCR	International Committee on Economic, Social and Cultural Rights
CETS	Council of Europe Treaty Series
COHRE	Centre for Housing Rights and Evictions
CRC	Convention on the Rights of the Child

CRPD	Convention on the Rights of Persons with Disabilities
Declaration on Enforced Disappearance	Declaration on the Protection of All Persons from Enforced Disappearance
Declaration on Non-Nationals	Declaration on the Human Rights of Individuals who are not Nationals of the Country in which they Live
ECHR	European Convention on Human Rights
ECSR	European Committee of Social Rights
ECtHR	European Court of Human Rights
ESC	European Social Charter
EU Temporary Protection Directive	EU Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof
EU Qualification Directive	EU Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted
Fourth Geneva Convention	Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War
GPID	Guiding Principles on Internal Displacement
HRC	International Human Rights Committee
IACmHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICC Statute	Statute of the International Criminal Court
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTR Statute	Statute of the International Criminal Tribunal for Rwanda
ICTY Statute	Statute of the International Criminal Tribunal for the former Yugoslavia



IDPs	internally displaced persons
IDP Protocol to the Great Lakes Pact	Protocol to the Pact on Security, Stability and Development in the Great Lakes Region on the Protection and Assistance to Internally Displaced Persons
ILA	International Law Association
ILC	International Law Commission
ILM	International Legal Materials
ILO	International Labour Organization
IOM	International Organization for Migration
Kampala Convention	Convention for the Protection and Assistance of Internally Displaced Persons in Africa
London Declaration	London Declaration of International Law Principles on Internally Displaced Persons
Migrant Workers Convention	Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
NGOs	non-governmental organizations
OAS	Organization of American States
OCHA	UN Office for the Coordination of Humanitarian Affairs
OECD	Organization for Economic Cooperation and Development
OHCHR	UN Office of the High Commissioner for Human Rights
Pinheiro Principles	United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons
Protocol I to the Geneva Conventions	Protocol I relating to the Protection of Victims of International Armed Conflicts
Protocol II to the Geneva Conventions	Protocol II relating to the Protection of Victims of Non-International Armed Conflicts
Third Geneva Convention	Third Geneva Convention relative to the Treatment of Prisoners of War
UDHR	Universal Declaration of Human Rights
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNSC	United Nations Security Council
UNTS	United Nations Treaty Series

