

mehari taddele maru

the kampala convention and its contributions to international law



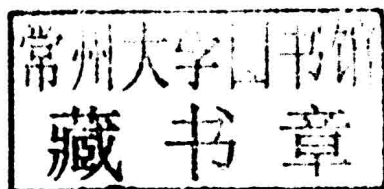
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THE KAMPALA CONVENTION AND ITS CONTRIBUTIONS TO INTERNATIONAL LAW

*LEGAL ANALYSES AND INTERPRETATIONS OF THE
AFRICAN UNION CONVENTION FOR THE PROTECTION
AND ASSISTANCE OF INTERNALLY DISPLACED PERSONS*

MEHARI TADDELE MARU



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The Kampala Convention and Its Contributions to International Law

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I want to express my deeply felt thanks to my beloved wife Emebet Getachew for her academic, social and emotional support. A distinct acknowledgment is also due to my son, Mahateme Mehari. A source of enormous joy, he has always been there on my side and offered me the much needed respite and love when I needed a break from reading, thinking and writing.

My sincere gratitude goes to my mother, Tenagne-work Bitsue, and the entire family.

I wish to dedicate this to my father, *Grazmach* Taddele Maru, my maternal grandparents, *Fitawrari* Bitsue Welde-Georgis and *Wezero* Bafena Atsibiha, as well as my uncle *Kengazmach* Kiros Maru, all of whom were not only displaced from their homes but were also made to forcefully disappear by the then rebel group, and now member of the coalition governing Ethiopia, Tigray Peoples Liberation Front (TPLF).

FOREWORD

In 2012, the African Union (AU) celebrated its tenth anniversary. The African Union Convention on the Protection and Assistance of Internally Displaced Persons commonly referred to as the Kampala Convention is one of the remarkable achievements of the AU during these years. Dr. Mehari Taddele Maru's book, *The Kampala Convention and Its Contributions to International Law*, is an important contribution on an issue that has drawn increasing international and regional attention over the last several decades and with which I was personally engaged for twelve years, from 1992 to 2004, as the Representative of the UN Secretary-General on Internally Displaced Persons, popularly known by the acronym 'IDPs'.

The then Secretary-General Boutros Boutros-Ghali surprised me one day with a phone call to tell me that my name had been proposed for the position of the Secretary-General's Representative on IDPs and that it was his pleasure to offer me the job. I told him that the news was a total surprise to me, that I was of course honoured by the offer, but that I would appreciate knowing from your people more about what the assignment would entail before giving my final response. Boutros-Ghali's response was, "Francis, I know you very well and how concerned with these issues you are". And, indeed, in our capacity as Ministers of State for our respective countries, Egypt and Sudan, we had worked very closely together. Boutros-Ghali continued with his plea: "This is not only a global problem, it is one which affects our Continent of Africa the most, and in Africa, it is your country, the Sudan, that is the most affected and, in the Sudan, it is your people of the South that are the worst hit. I cannot see how you can say 'No'. So, I will tell them that you have accepted and if you still have questions, we can discuss further later".

And, of course, he was right. No region in the world is more familiar with the negative effects of forced internal and external displacement than Africa. Currently, there are more than 26 million internally displaced persons and more than 14 million refugees in Africa. This constitutes roughly half of the world's IDP and refugee populations. The good news is that the number of refugees and asylum seekers in Africa is on the decline. However, this positive long-term trend does not extend to Africa's IDPs, whose count has risen sharply and steadily over the past decade. Their sheer numbers aside, the life-threatening conditions under which IDPs survive cry out for a robust and comprehensive international response. Internal displacement negates the most fundamental human rights of individuals and communities, most notably, freedom of movement and residence, the right to life and livelihood, the right to health, and the right to education and property ownership. Consequently, protracted internal displacement poses a grave challenge to the AU.

Internal, as opposed to external, displacement was for long a neglected subject under international law. In contrast to refugees, there has been a glaring absence of specific

international conventions that confer international protection on IDPs. The development of appropriate legal standards for the protection and assistance of internally displaced persons was one of the main objectives of my UN mandate from its inception. Indeed, the need to examine the applicability of existing international human rights law, humanitarian law, and analogous refugee law to the protection and assistance needs of IDPs was a principal reason that prompted the Commission on Human Rights to request the Secretary-General to designate a representative on the subject of internal displacement. An intensive and broad-based process culminated in the development of the Guiding Principles on Internal Displacement, which I presented to the Commission on Human Rights in 1998. Within a relatively short time after their submission to the Commission on Human Rights, the Guiding Principles gained considerable international recognition and standing among the states, the UN system, regional organizations and NGOs as a useful tool for addressing situations of internal displacement.

With the adoption of the Kampala Convention, Africa played a distinct leadership role in international norm-setting in this area of great concern to the world. The Kampala Convention offers a legal framework for a Pan-African prevention of internal displacement, protection and assistance for IDPs and eventual return, integration or relocation of IDPs. It also stipulates the obligation of states, non-state actors, as well as of the AU and the international community. The Kampala Convention also offers an institutional framework for the dissemination, promotion and implementation as well as monitoring of the implementation of its provisions through cooperation and peer review mechanism. It was also a source of great pleasure and personal pride when I, together with my successor, Professor Walter Kaelin, and Professor Chaluka Beyani, who contributed to the preparation of the AU convention and was later to succeed Professor Kaelin, were invited to attend the adoption of the Kampala Convention. It is indeed fitting that the Convention was adopted in Kampala with the title 'Kampala Convention' since Uganda was among the first countries to adopt a legislation based on our Guiding Principles.

Given this background and my personal association with the development of a normative framework for IDPs, it is with great satisfaction that I salute and strongly endorse this book by Dr. Mehari Taddele Maru, which deals with the Kampala Convention and the efforts of the AU in ensuring the governance of internal displacement. It is also worth noting Dr. Maru's personal background and experience with the crisis of displacement.

Born in the principal site of a protracted, devastating civil war in Ethiopia – the northern region of Tigray – Dr. Mehari witnessed early on the human rights violations of his close family members. His father, maternal grandparents as well as uncle – all of whom were middle-ranking public servants in Emperor Haile Selassie's Ethiopia – were made to disappear, presumed to have been killed by one of the rebel groups in the country. He was seven or so at the time of the trauma and persecution of his entire extended family. Seeking

protection and assistance, he was forced to flee from his birth place in northern Ethiopia. He himself was therefore an IDP. His childhood experience, perhaps more than anything else, shaped his subsequent determination to contribute to a human rights protective regime in Africa. This commitment to human rights was amply reinforced during his first years at Addis Ababa University, and subsequently his advanced education at universities such as Harvard, Oxford and J.L. Giessen.

Dr. Mehari's book, a significant contribution to an area of personal significance to his life, offers a detailed and incisive analysis as well as a thoughtful commentary on the Kampala Convention, identifying its contribution to international law on the subject. This work will surely serve as a principal reference on the Kampala Convention and the management and governance of internal displacement in Africa.

While the book may assist efforts to have a globally binding convention on IDPs, its findings and recommendations will certainly be useful for the AU, RECs, national governments and international institutions with mandates related to internal displacement and IDPs. Recognizing that ratification of binding instruments usually takes time, the book will be a valuable resource for the popularization and speedy ratification, domestication and effective implementation of the Kampala Convention.

I highly commend this book not only as an academic reference but also as a practical guide for policymakers at the AU, RECs and Member States.

Ambassador Francis Mading Deng,

*Permanent Representative of South Sudan to the UN
and former Under-Secretary General Special Adviser
of the Secretary-General on the Prevention of Genocide
New York, United States of America*

INTRODUCTION

Over the years, Africa has had to grapple with multifarious humanitarian situations arising from conflicts and natural disasters that have afflicted the continent, resulting in the massive displacement and flight of millions of peoples both within their territories and across borders. As a result, the continent has earned the reputation of being labelled the region with the highest number of internally displaced persons and refugees. Despite the fact that incidences of inter-state conflicts have been abating, the sad reality is that Africa still remains volatile with looming intra-state conflicts compounded by the effects of climate change, all of which result in new waves of forcibly displaced persons.

What is pleasing is the fact that African nations and their peoples have always demonstrated compassion and solidarity in these circumstances. Indeed it is this sense of magnanimity to those in flight, anchored to strong values of our humanity that has propelled the continental organization to push the frontiers of international refugee law through the adoption of its 1969 Convention on certain aspects of the Refugee Convention and that has also informed the adoption of a convention on internally displaced persons, the first legally binding international instrument of its kind.

The African Union, through the efforts of the Department of Political Affairs (DPA) working closely with Member States, has come up once again with what is perceived as a comprehensive strategy to address the issue of internally displaced persons. Entitled 'The Convention for the Protection and Assistance of Internally Displaced Persons in Africa' or fondly referred to as 'The Kampala Convention', this home-grown initiative was the subject of lengthy discussions and intense negotiations, the final adoption of which constituted a crowning moment for the DPA.

I am therefore not only proud to have been a champion in this process but also pleased and honoured at the opportunity to present this piece of work by Dr. Mehari Taddele Maru, an African scholar, who himself has had first-hand experience in living as a victim of conflict and forced displacement. Through this research project, Dr. Mehari has certainly taken the lead in deepening our common understanding of the Kampala Convention. Providing the full background to the process that led to the adoption of the Kampala Convention, the book focuses on internal displacement and its governance in Africa. In his analysis, Dr. Mehari highlights the importance of the linkages with existing laws, in particular International Humanitarian Law, Human Rights Law, Refugee Law and the United Nations Guiding Principles on Internal Displacement (GPID) to illustrate that the Convention, when applied in tandem with the existing laws, should bring about an improvement in the management of displacement. The book also projects the fundamental synergy between basic humanity, justice and law in protecting and providing for the forcibly displaced.

INTRODUCTION

The Kampala Convention therefore represents a basis on which African countries could enrich their own domestic laws to manage more efficiently the phenomenon of internal displacement.

As an important tool in the popularization of the Kampala Convention, Dr Mehari's book stands to benefit governments and peoples across the Continent, while contributing to the discourse on this very important subject matter. I therefore recommend it to all scholars and those interested in humanitarian affairs in Africa.

Julia Dolly Joiner (Mrs.)

Commissioner for Political Affairs at the African Union Commission

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ABBREVIATIONS AND ACRONYMS

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACHPR	African Commission on Human and People's Rights
ACPMO	African Common Position on Migration and Development
ACRWC	African Charter on the Rights and Welfare of the Child
AFCHPR	African Court of Human and People's Rights
AFISMA	African-Led International Support Mission in Mali
AHRLR	African Human Rights Law Reports
AIDS	Acquired Immune Deficiency Syndrome
AMF	African Migration Fund
AMIS	African Union Mission in Sudan
AP I	The First Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts
AP II	The Second Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts
ASEAN	Association of Southeast Asian Nations
ASIL	American Society of Public International Law
Assembly	African Union Assembly of Heads of State and Government
AU	African Union
AU Constitutive Act	The Constitutive Act of the African Union
Banjul Charter	African Charter on Human and People's Rights
CAR	Central African Republic
CAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on Elimination of Discrimination against Women
CID	Conflict-induced Displacement
CPA	Comprehensive Peace Agreement
CRC	Convention on the Rights of the Child
CSPs	Conference of State Parties
DID	Development-induced Displacement

DFID	United Kingdom Department for International Development
DPA	AU Department of Political Affairs
DRC	Democratic Republic of the Congo
DSA	AU Department of Social Affairs
ECOSOC	United Nations Economic and Social Council
ECOSOCC	Economic, Social and Cultural Council of AU
ECOWAS	Economic Community of West African States
ESIAs	Environmental and Social Impact Assessments
EU	European Union
FGM	Female Genital Mutilation
GAOR	United Nations General Assembly Official Records
GC I	Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949
GC II	Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949
GC III	Convention III relative to the Treatment of Prisoners of War, Geneva, 12 August 1949
GC IV	Convention IV relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949
GoS	Government of Sudan
GoSS	Government of South Sudan
GPID	The UN Guiding Principles on Internal Displacement
Great Lakes Protocol	The Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons
HC	Humanitarian Coordinator
HLP	Home, Land and Property
HRIAs	Human Rights Impact Assessments
HRL	Human Rights Law
IADD	Inter- Agency Internal Displacement Division
IAC	International Armed Conflicts
IASC	Inter-Agency Standing Committee
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights

ICERD	The International Convention on the Elimination of All Forms of Racial Discrimination
ICESR	International Covenant on Economic, Social and Cultural Rights
ICGLR	International Conference on the Great Lakes Region
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
IDMC	Internal Displacement Monitoring Centre
IDPs	Internally Displaced Persons
IFA	Internal Flight Alternative
IFRC	International Federation of Red Cross and Red Crescent Societies
IGAD	Intergovernmental Authority on Development
IHL	International Humanitarian Law
ILO	International Labour Organization
ILA	International Law Association
IOM	International Organization for Migration
IRIN	Integrated Regional Information Networks
Kampala Convention	African Union Convention for the Protection and Assistance of Internally Displaced Persons
LC	Legal Counsel of the AU Commission
MONUC	United Nations Organization Stabilization Mission in the Democratic Republic of Congo
MPFA	Migration Policy Framework for Africa
NDID	Natural Disaster Induced Displacement
NGO	Non-governmental organization
NHRIs	National Human Rights Institutions
NIAC	Non-International Armed Conflicts
OAS	Organization of American States
OAU	Organization of African Unity
OAU Refugee Convention	The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa
OPT	Occupied Palestinian Territory

ABBREVIATIONS AND ACRONYMS

OSCE	Organization for Security and Cooperation in Europe
Ouagadougou Action Plan	The Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children
Ouagadougou Declaration	The Ouagadougou Declaration on Refugees, Returnees and Displaced Persons
PAP	Pan African Parliament
Paris Principles	Paris Principles Relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights
PEV	Post-Election Violence
PRWA	Protocol to the African Charter on Human and Peoples' Rights Relating to the Rights of Women in Africa
PSC	AU Peace and Security Council
PSD	AU Peace and Security Department
RC	UN Resident Coordinator
RL	Refugee Law
RPG	Refugee Policy Group
RSG	Representative of the UN Secretary-General on the Human Rights of IDPs
SAARC	South Asian Association for Regional Cooperation
SP	State Party to the Kampala Convention
SPs	States Parties to the Kampala Convention
Special Rapporteur	Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa of the African Commission on Human and Peoples' Rights
Tripoli Declaration	The Tripoli Joint AU-EU Declaration on Migration and Development
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNAMID	United Nations-African Union Mission in Darfur
UNISFA	United Nations Interim Security Force for Abyei
UN Refugee Convention	The 1951 Convention on the Status of Refugees and its 1967 Protocol
UNCHS	United Nations Commission for Human Settlements
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund

UNGA	United Nations General Assembly
UNHCR	Office of the United Nations High Commissioner for Refugees
UNHRC	United Nations Human Rights Committee
UNIASC	United Nations Inter-Agency Standing Committee
UNICEF	United Nations Children's Fund
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs
UNOHCHR	Office of the High Commissioner for Human Rights
UNSC	United Nations Security Council
UNSCOR	United Nations Security Council Official Records
USD	United States Dollar
UNSG	United Nations Secretary-General
WASH	Water, Sanitation and Hygiene
WFP	United Nations World Food Programme

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