THE RIGHT NOT TO BE DISPLACED IN INTERNATIONAL LAW
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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.
ACKNOWLEDGEMENTS

This book is the fruit of doctoral research undertaken at the Department of Public International Law of Ghent University. I sincerely thank my promotor Prof. Dr Frank Maes and co-promotor Prof. Dr Eva Brems for their support and constructive criticism over the past years. I also thank Prof. Dr An Cliquet and Prof. Dr Chris Peter, members of my guidance committee. This work would not have been possible without the financial support of the Research Foundation Flanders (FWO), which I therefore gratefully acknowledge.

Across the English Channel, I wish to express my gratitude to the Refugee Studies Centre of Oxford University, which has been a stimulating academic environment to me. In particular, I thank Dr Alex Betts, for his invaluable listening ear and the inspiring conversations both research related and far beyond, as well as Mr Jean-François Durieux, whose enthusiasm towards the work of young researchers has been truly encouraging. I am also grateful to Prof. Dr Walter Kälin, Prof. Dr Paulo Sérgio Pinheiro, Ms Maria Stavropoulou and Ms Mayra Gomez for the insights I gained from their useful comments in relation to certain parts of this work. Ms Stavropoulou’s writings and ideas have been a great source of inspiration to me since the start of my research.

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

Compilation and analysis of legal norms, Part II, 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
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Name</th>
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<tbody>
<tr>
<td>CRPD</td>
<td>Convention on the Rights of Persons with Disabilities</td>
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<td>Declaration on Enforced Disappearance</td>
<td>Declaration on the Protection of All Persons from Enforced Disappearance</td>
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<tr>
<td>Declaration on Non-Nationals</td>
<td>Declaration on the Human Rights of Individuals who are not Nationals of the Country in which they Live</td>
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<tr>
<td>ECHR</td>
<td>European Convention on Human Rights</td>
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<td>ECSR</td>
<td>European Committee of Social Rights</td>
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<td>ECtHR</td>
<td>European Court of Human Rights</td>
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<td>ESC</td>
<td>European Social Charter</td>
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<tr>
<td>EU Temporary Protection Directive</td>
<td>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</td>
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<tr>
<td>EU Qualification Directive</td>
<td>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</td>
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<tr>
<td>Fourth Geneva Convention</td>
<td>Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War</td>
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<td>GPID</td>
<td>Guiding Principles on Internal Displacement</td>
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<td>HRC</td>
<td>International Human Rights Committee</td>
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<td>IACmHR</td>
<td>Inter-American Commission on Human Rights</td>
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<td>IACtHR</td>
<td>Inter-American Court of Human Rights</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICC Statute</td>
<td>Statute of the International Criminal Court</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>ICJ</td>
<td>International Court of Justice</td>
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<td>ICRC</td>
<td>International Committee of the Red Cross</td>
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<td>ICTR Statute</td>
<td>Statute of the International Criminal Tribunal for Rwanda</td>
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<tr>
<td>ICTY Statute</td>
<td>Statute of the International Criminal Tribunal for the former Yugoslavia</td>
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IDPs
IDP Protocol to the Great Lakes Pact
ILA
ILC
ILM
ILO
IOM
Kampala Convention
London Declaration
Migrant Workers Convention
NGOs
OAS
OCHA
OECD
OHCHR
Pinheiro Principles
Protocol I to the Geneva Conventions
Protocol II to the Geneva Conventions
Third Geneva Convention
UDHR
UNGA
UNHCR
UNSC
UNTS

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