



# THE KAMPALA CONVENTION AND ITS CONTRIBUTIONS TO INTERNATIONAL LAW

Mehari Taddele Maru, 2014, \$142.50, 400pp ISBN 978-94-6236-102-7

## BOOK REVIEW

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On 26 January 2015, the early mornings of BBC News – Africa reads, “LRA commander Dominic Ongwen appears before ICC in The Hague.”<sup>1</sup> Ongwen, who was abducted in 1988 at the age of 14 by the Lord Resistance Army (LRA) turned himself in the Central African Republic (CAR) 10 years after he was charged by the International Criminal Court (ICC). The arrest was supported by the Ugandan government; having finally given approval for Ongwen to be tried. Alleged of being Deputy to LRA commander Joseph Kony,<sup>2</sup> Ongwen is accused of committing atrocities against civilians in Uganda and parts of the CAR, South Sudan and the Democratic Republic of Congo (DRC), including attacks on internal displaced people (IDPs) camps in Uganda, BBC writes. The onset of Ongwen’s case comes with the publication of Mehari Taddele Maru’s book: The Kampala Convention and its Contributions to International Law, part. In his book, Maru asserts the role of the African Union as a trendsetter in international law having established the first ever *Convention for the Protection and Assistance of Internally Displaced Persons in Africa* (2009) (hereafter the Kampala Convention). Maru argues that, since violent conflict and mass displacement of civilians are the major root causes of forced displacement in Africa, the relevance of the Kampala Convention is key particularly regarding preventing, protecting and devising durable solution for the internally displaced.

Notwithstanding, claims to the African Union’s trendsetting role in international law is a contested one especially as it pertains the efficacy of implementing the law to provide adequate protection for IDPs. To this end, the question of the rationale, purpose and significance behind AU’s desire to establish new trends in international law when mechanisms for enforcement are relatively non-existent is crucial. The case of Ongwen cited above, whereby in spite of AU’s existence of the “defunct” African Court of Justice/African Court of Human Rights and Justice,<sup>3</sup> alleged war criminals from the continent to disproportionately grace Den Haag’s ICC’s court room? Despite these challenges,

<sup>1</sup> BBC News Africa, “LRA commander Dominic Ongwen appears before ICC in The Hague” (26 January 2015) available at: <<http://www.bbc.com/news/world-africa-30976818>>

<sup>2</sup> Joseph Kony, Leader of the Lord’s Resistance Army has been accused by national and international public/private institutions for abducting over 66,000 children to become child soldiers and sex slaves. He was the subject of Invisible Children’s short film “Kony 2012” which went viral on YouTube with over 100 million views (see, Jason Russell, “Kony 2012” (23 January 2015) available at: <<https://www.youtube.com/watch?v=Y4MnpzG5SqC>>).

<sup>3</sup> The AU Constitutive Act provided for an African Court of Justice to be established as one of the AU’s principal organs. The Protocol of the Court was adopted in July 2003. However, the Court did not become operational. The AU Assembly decided at its July 2008 Summit to merge the African Court of Justice and Human Rights with the African Court on Human and Peoples’ Rights into an African Court of Justice and Human Rights. The Assembly adopted the 2008 Protocol on the Statute of the African Court of Justice to merge the courts. Article 28 of the 2008 Protocol provides that the African Court of Justice and Human Rights shall have jurisdiction over all cases and legal disputes that relate to “the interpretation and application of the Constitutive Act, Union treaties and all subsidiary legal instruments, the African Charter and any question of international law” (See: <http://www.au.int/en/organs/cj#sthash.xLZL1BXz.dpuf>).

Maru's book offers a critical look at the Kampala Convention in light of the *Guiding Principles on Internal Displacement* (hereinafter referred to as the Guiding Principles) 1998<sup>4</sup> and the *Convention Relating to the Status of Refugees* 1951 (hereinafter referred to as the UNHCR Refugee Convention).<sup>5</sup>

The *Kampala Convention and its Contributions to International Law* is a dense 398-page glossy hardcover, divided into seven chapters. Chapter one provides an overview of the origin, importance and legislative history of the Kampala Convention. Chapter two lays down the conceptual framework of internal displacement, dissecting the difference between voluntary and forced migration, refugees and IDPs, as well as, identifying protection gaps in international law and teasing out three approaches (unified, separate and integrated) regarding governance of IDPs in Africa. Opting for the author's coined "integrated approach" to assessing the current situation and patterns of internal displacement in Africa, Maru laments the lack of human rights law (HRL) and international humanitarian law's (IHL) provisions of "sufficiently binding rules in a comprehensive manner to prevent internal displacements or protect or assist IDPs" (p.95). Drawing on pre-, post and contemporary vestiges of colonial eras that saw the uprooting of Indigenous Africans from their native land, chapter three dwells on contemporary adverse effect of protracted displacement in Africa and the dire need for effective legal protection of IDPs (p105). Thus, the Kampala Convention (with all intent and purpose) was borne out of a necessity to address Africa's chronic IDPs situation, grounded in the principles of 1) prevention, 2) protection and 3) durable solutions to internal displacement.

The crux of the arguments advanced in the book, as it pertains the above three principles, takes turn in each of chapters 4, 5 and 6. In chapter four, having established the definitions and causes of internal displacement under the Kampala Convention, the author argues that, State Party "have the primary responsibility to respect, protect and fulfil the rights of IDPs" (Article 5(1)) and to "prohibit and prevent arbitrary displacement of populations" (Article 3(1)(a)) (p.159). Notwithstanding the aforementioned, Maru argues that an inherent challenge in State Party's ability to enforce Article 3 of the Kampala Convention, can be seen with conflict-induced displacement – a major cause of internal displacement in Africa. According to the author, situations of generalised violence (e.g., riots and unrest) fall short of the requirements needed to apply the Geneva Conventions and Protocol II, hence obstructing the applicability of IHL in cases of generalised violence (p.170). Therefore, in order to oblige the Kampala Convention to displacements caused by inter-state wars, then armed conflict (or civil wars) must include both be grouped under international and national armed conflicts, with emphasis on prevention rather than exclusively focusing on protection (or emergency relief) (p.196). Since preventing internal displacement is demanding and arduous, after masses have been forced to move, in chapter 5 the author argues that, the onus is now on State Party to protect and assist IDPs during displacement (Article 9 of the Kampala Convention) (p.199). Protection of IDPs under the Kampala Convention draws on a human rights-based approach (e.g., protection from direct and indirect attacks) and the principle of force return – a principle similar to that of *non-refoulement* under the UNHCR Refugee Convention (p.209). Additionally, in subsection 5.9 (pp.286-294), the author delineates further protection of IDPs under the rubric of "accountability and criminal responsibilities":

Given the history of gross human rights violations perpetrated with impunity by state and non-state actors in Africa, the Constitutive Act of the AU places special emphasis on human rights, good governance and the total rejection of impunity. The Banjul Charter, as the primary human rights instrument of Africa,

<sup>4</sup> Section II, Principle 5 of the Guiding Principles on Internal Displacement states, "All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons." Also a side note worth mentioning, Ambassador Francis Deng, former Under-Secretary General Special Adviser of the Secretary-General on the Prevention of Genocide, the brain behind drafting the Guiding Principles, also wrote the Forward to Maru's book.

<sup>5</sup> The emphasis of the UNHCR Refugee Convention definition of refugee (Article 1) is on protection, underpinned by a number of principles including, *non-refoulement* and three durable solutions (voluntary repatriation, resettlement to a safe third country and local integration).

includes most of the fundamental human rights and duties of IDPs...Under the Statute of the International Criminal Court (Rome Statute), displacement may constitute one or more violations of *jus cogens* norms (pp.286 and 289).

Yet, the real issue here is not that the Kampala Convention is well adept to listing, with much clarity, “the major obligations and mandates of the AU and its organs...” (p.294), but whether the enforcement of these “trendsetting” legal mechanisms/organs has capacity to prosecute, convict and punish alleged war criminals responsible for chronically displacing millions in Africa.

In Chapter six, the author discusses the final principal, “durable solutions to internal displacement”. For State Party to achieve this goal, the author suggests, durable solutions for internal displacement must include (in terms of reinforcing other international norms): 1) sustainable return to areas of origin; 2) local integration in areas of destination; and 3) relocation to another area (resettlement) (p.295). He further asserts that, sustainable durable solutions for internal displacements must rely not only on international and national governance, but also relevant financial institutions and synergy of implementing other policies, such as, the African Regional Strategy for Disaster Risk Reduction. The final chapter concludes with a number of recommendations. With particular regard to the efficacy and potency of implementing the Kampala Convention, the following extract leaves unsettling facts as to whether the Kampala Convention is a legitimate trendsetter of international law:

AU policies, legislative frameworks and institutional initiatives on migration in general, as well as the protection and assistance of IDPs in particular, demonstrate that forced migration remains a priority of the AU. Indeed, the AU remains at the forefront of norm-setting in this regard, and is home to several pioneering legislative frameworks and institutional mechanisms related to displacement. However, while adoption, ratification and the entry into force of the Kampala Convention is a milestone in itself, without its effective implementation, the Convention remains another aspirational AU document. Currently, the most binding constraint in the AU system is the gap between the norms contained in treaties and policies on the other hand, and their effective implementation on the other (p.333).

Half a decade after the establishment of the Kampala Convention, is the timely arrival of Maru’s book. A critical analysis of the Kampala Convention, the book will attract the likes of international lawyers, humanitarian aid providers, human rights advocates, policy-makers, students, researchers and scholars interested in forced migration law and internal displacement in Africa.

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