

## THE LEGAL IMPLICATIONS OF CONFLATING THE RIGHTS OF REFUGEES AND INTERNALLY DISPLACED PERSONS

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### Abstract

*The rise in global human mobility and the plight of affected populations have brought the issue of internal displacement to prominence, making it a critical matter of international concern. As demography helps unpack this trend in global mobility, the reality of internal displacement is evolving, and the seriousness and scale of the situation are unfolding. Thus, as more attention is given to IDPs, it should become clearer that it is not only those who have crossed a recognised border that should be of national and international concern. The paper, therefore, explores the debate regarding the appropriateness of recognising IDPs as a category of concern, while highlighting the points of convergence and divergence between refugeehood and internal displacement. It also discusses predominant debates on the pros and cons of subsuming the two systems under one instrument. It argues that there is no harm if the refugee protection mechanism, with appropriate adjustments, is deployed as a valuable resource of principles, concepts, and strategies to enhance the protection of IDPs. This can be achieved without jeopardising the institution of asylum. This paper argues that the focus should be on a broader human rights context rather than on geography or the insider/outsider category. The interest, therefore, should transcend the argument about the suitability of subsuming IDP protection under refugee law and instead*

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*draw attention to the rights of IDPs and the obligation of states to protect and realise those rights.*

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## **1.0 INTRODUCTION**

Human mobility is as old as human history and has undergone profound evolution over the years. From time immemorial, people have migrated for various reasons, including armed conflicts, grave and large-scale human rights violations, natural disasters (such as earthquakes and hurricanes), and climate change. Today, internal displacement has become a significant global feature of human mobility, affecting more than 125 countries due to crises. Crises of internal displacement now constitute a global human rights and humanitarian challenge for the international community; for a variety of factors, no region has been spared from this problem. Internal displacement, if unchecked, becomes an issue of international displacement, i.e., the internally displaced cross borders and become refugees.

The problem of internal displacement, which was merely perceived as a blemish on the international humanitarian scene, appears to have evolved to become a major structural flaw within the UN Charter international system.<sup>1</sup> The rise in the level of human mobility globally and the plight of affected populations have brought the issue of internal displacement to prominence, making it a critical matter of international concern. As demography helps unpack this trend in global mobility, the reality of internal displacement is evolving, and the seriousness and scale of the situation are unfolding. Thus, as more attention is given to IDPs, it should become clearer that it is not only those who have crossed

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<sup>1</sup> Thomas G. Weiss and David A. Korn. *International Displacement: Conceptualisation and its Consequences*. London: Routledge, 2006, 1.

a recognised border that should be of national and international concern.

At the end of 2020, conflict and disasters alone accounted for 40.5 million new IDPs across 149 countries and territories.<sup>2</sup> This increase in the number of people displaced within their own country made it imperative for the international community to act. It was recognised that the world was at the brink of an enormous crisis. Therefore, urgent action had to be taken. The severity, intensity and scope of the problem arguably generated this sense of urgency. Kofi Annan, the former Secretary General of the United Nations,<sup>3</sup> described it as “one of the great human tragedies of our time [...] particularly because of the physical, social and psychological dangers and indignities to which it exposes innocent people”.<sup>4</sup>

This growing awareness within the international community that internal displacement was evolving into a crisis could be attributed to several factors. The first of these is the recognition that internal displacement is not only a humanitarian problem; it provides opportunities and grounds for human rights abuses. These persons, though still within the borders of their countries, have been forced from their homes by trigger events that are traditionally associated with international refugee crises, such as armed conflicts, systematic violations of human rights and other threats to their security as IDPs.

As far as it relates to the responsibility of the state, the situation of IDPs

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<sup>2</sup> Internal Displacement Monitoring Centre. *Global Report on Internal Displacement 2021*. Available at: <https://www.internal-displacement.org/global-report/grid2021/>. Last accessed 24/09/2025.

<sup>3</sup> Kofi Annan was the seventh Secretary General of the United Nations. His tenure lasted from IOM 2015a

<sup>4</sup> Preface to R. Cohen and F.M. Deng *Masses in Flight: The Global Crisis of Internal Displacement*. Washington DC, 1998, p. xix.

can be likened to people who have, for various reasons, been rendered or are considered invisible. On the one hand, this failure can be attributed to the national authorities, who are meant to protect citizens from becoming IDPs in the first place. On the other hand, unlike refugees, there appears to be no international mechanism available to help IDPs with their plight. Almost paradoxically, IDPs live in refugee-like situations that would qualify them for international protection if they were located outside of their country of residence. Yet, unlike refugees, who benefit from an international instrument and a supportive international institution,<sup>5</sup> IDPs have neither a distinct international convention nor an international institution to address their plight.<sup>6</sup> A critical concern, therefore, raised by the particularities of the IDP situation is how they may be effectively protected and assisted within their country of residence. This is particularly the case for women and children, who constitute 70% of the global population of IDPs.<sup>7</sup>

In advancing the discourse in this paper, the themes are divided into four major parts: The first section provides insight into the broad concept of internal displacement. The second section sets out to define the subject of discussion, IDPs, accounting for definitional issues, and outlining the various perspectives on what constitutes an IDP. The third section

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<sup>5</sup> The Office of United Nations High Commissioner for Refugees (UNHCR) was created in 1951, and a UN Convention was adopted to protect persons forced from their homes owing to a well-founded fear of being persecuted, and to seek permanent solutions to their plight. The United Nations Convention Relating to the Status of Refugees, 1951 is available at: <<https://www.unhcr.org/uk/3b66c2aa10>>. Last accessed 12/09/2025.

<sup>6</sup> Balajinaika, S. G. *Internal Displacement and the 2030 Agenda for Sustainable Development: Issues and Challenges*.

<sup>7</sup> Global Education Monitoring 2020 Report, 'No More Excuses – Provide Education to a Forcibly Displaced People'. Available at: <https://www.educationcannotwait.org/no-more-excuses-provide-education-to-all-forcibly-displaced-people/>. Last accessed 26/10/2025.

explores the debate as to the appropriateness of recognising IDPs as a category of concern, while the fourth section highlights the points of convergence and divergence of refugeehood and internal displacement; this is alongside a discussion of predominant debates on the pros and cons of subsuming the two systems under one instrument.

## **2.0 THE CONCEPT OF INTERNAL DISPLACEMENT**

Recent efforts to address the issue of internal displacement can be traced to the seminal study on internal displacement by Francis M. Deng, the first representative of the Secretary-General on the human rights issues related to IDPs, which was presented to the United Nations Commission on Human Rights in 1993. Deng expressed concern that internal displacement, which “constitutes a humanitarian and human rights crisis of major proportions”,<sup>8</sup> does not have “clear guidelines that could be applied to all internally displaced persons regardless of the cause of their displacement, the country concerned or the prevailing legal, social, political or military situation”.<sup>9</sup> Indeed, he went on to argue that “[t]he applicable international law is a patchwork of customary and conventional standards”.<sup>10</sup> Maria Stavropoulou is also of the opinion that over the years, international law provisions seem to have been of marginal help to attempts to deal with the problem of internal displacement in a comprehensive manner.<sup>11</sup>

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<sup>8</sup> Comprehensive study prepared by Mr Francis M. Deng, representative of the Secretary General on the human rights issues related to internally displaced persons, pursuant to the Commission on Human Rights Resolution 1992/73, E/EN.4/1993/35, 1–71 at 20. Available at: <https://undocs.org/E/CN.4/1993/35>. Last accessed 29/09/2025.

<sup>9</sup> *ibid*

<sup>10</sup> *ibid*

<sup>11</sup> Maria Stavropoulou. ‘The Right Not to Be Displaced’, *American University Journal of International Law and Policy*, volume 9, number 3, 1994, 689–749 at 689.

The reality of these challenges provides a valid need for states to explore mechanisms that could extend international protection to IDPs, who are legally within their countries but unable to secure adequate protection and assistance.

However, beyond the broad contours and crystallisation of the problem, there is still a lack of clarity regarding the concept of internal displacement and what constitutes an IDP. Various strands of debate have emerged,<sup>12</sup> and at the core of them are definitional issues as to who should be considered an IDP, the propriety of isolating the IDP as a separate category of concern and the determination of the expiration point or termination of the classification of a person or group as “internally displaced”, i.e., when someone is no longer classed as displaced but remains internal. Thomas Weiss expressed concern that although the plight of IDPs is manifest, “the framing of [the] issues still appears esoteric”.<sup>13</sup> It will therefore be beneficial to clarify some of these issues for proper contextualisation, as follows, to facilitate the discussion in subsequent sections.

### **3.0 WHO IS AN INTERNALLY DISPLACED PERSON?**

The appropriate definition of IDPs has always been a source of debate among scholars and other stakeholders. Indeed, the terminology often gives rise to inconsistent and polarised arguments. As a result, therefore,

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<sup>12</sup> Francis Mading Deng, ‘The Global Challenge of Internal Displacement’, *The Institute of Global Legal Studies Inaugural Colloquium: The UN and the Protection of Human Rights*. *Washington University Journal of Law and Policy*, vol. 15, pp. 141 – 156, 2001; Erin Mooney, ‘The Concept of Internal Displacement and the Case for Internally Displaced Person as a Category of Concern’, *Refugee Survey Quarterly*, volume 24, Issue 3, 2005, pp. 9 – 26; Eni Aloba and Synda Obaji, ‘Internal Displacement in Nigeria and the Case for Human Rights Protection of Displaced Persons’, *Journal of Law, Policy and Globalisation*, vol. 51, 2016, pp. 26–33.

<sup>13</sup> Thomas G. Weiss. ‘Whither International Efforts for Internally Displaced Persons’. *Journal of Peace Research*, vol. 36, no. 3, 1999, 363 at 368.

the recognition<sup>14</sup> by the international community that the crisis of internal displacement ought to be addressed led to the consequential problem of framing a workable definition of what constitutes an IDP. Similarly, the consequential challenge was to attain clarity on a number of conceptual issues relating to internal displacement. Considering the complexity of the problem of IDPs, the scale of the affected populations and the need for “a stable protective regime for the IDPs”,<sup>15</sup> it is imperative for a definition to be agreed to allow for a conceptual understanding of who an IDP is.

Disagreement on the criteria for defining IDPs is not unusual or surprising, as the issue of internal displacement is a developing discourse. Since internal displacement is often a consequence of a range of factors, it becomes problematic to have a common definition to capture the various groups of victims and the various contexts. An important point to note is that there has also been circumspection about formulating a definition in a way that would run the risk of not accurately capturing the variety of causes of displacement.

#### **4.0 INTERNALLY DISPLACED PERSONS AS A CATEGORY OF CONCERN**

Further to definitional issues, there is a debate over whether IDPs is indeed a category of concern and the propriety or impropriety of recognising them as a subject of attention. Objections to the view that IDPs should be categorised as a separate conceptual norm is predicated on the grounds that singling out IDPs for special consideration will

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<sup>14</sup> Internal Displacement Monitoring Centre, ‘An Institutional History of Internal Displacement’. Available at: <https://www.internal-displacement.org/internal-displacement/history-of-internal-displacement>. Last accessed 26/10/2025.

<sup>15</sup> Ahmad Nafees, ‘Internally Displaced Persons and International Refugee Law: Protection Gaps, Challenges and Implementation in Practice’, *The King’s Student Law Review*, volume 8, No 2 (2017), pp. 94–117 at 104.

make them privileged over other internal human rights victims and lead to discrimination against others. The issue is primarily one of fairness compared with others in similar but different situations, especially those who stay behind and are likely to face greater danger than those who manage to flee.<sup>16</sup> The argument is that all those whose rights are violated and are in similar situations, whether they are displaced or not, should receive attention.

Conversely, compelling arguments have been advanced advocating the isolation of IDPs as a separate category deserving of international attention. These arguments are primarily premised on the vulnerability of IDPs. Internal displacement creates circumstances that make those displaced extremely vulnerable. Most obviously, it displaces people from their homes, depriving them of shelter and the most fundamental protection. Refugees are protected distinctly to remedy the problems that arise when a people can no longer rely on their state to protect their most fundamental rights. Also, being an IDP exposes the individual to a broad range of human rights violations and often leaves the individual (as with refugees) without the support and protection of the state, and so they too should have a distinct status. Odhiambo-Abuya contends that “[I]ike their refugee counterparts who receive legal protection in third states, IDPs also need protection against human rights and other abuses committed within their home states”.<sup>17</sup> On this matter, Dennis

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<sup>16</sup> Catherine Phuong. *The International Protection of Internally Displaced Persons*. Cambridge: Cambridge University Press, 2004, 27.

<sup>17</sup> E. Odhiambo-Abuya, ‘Refugees and Internally Displaced Persons: Examining Overlapping Institutional Mandates of the ICRC and the UN High Commissioner For Refugees’, *Singapore Journal of International and Comparative Law*, (2003) 7, pp. 236–266 at 237. Available at <http://www.commonlii.org/sg/journals/SGJIntCompLaw/2003/11.html>. Last accessed 16/09/2025.

McNamara<sup>18</sup> asserts that there is “no doubt that the internally displaced have been among the most vulnerable. Not only that, but they also get the least help”.<sup>19</sup>

Inasmuch as the question of the justification of IDPs as a distinct category is relevant, it should not be overlooked that they have particular needs and suffer disproportionately when compared to the general population. IDPs have distinct needs and face multifaceted vulnerabilities that require special attention, making them a group deserving of attention. The situation of displacement alone, which entails leaving the danger zone and arriving at a safe location, whether inside or outside a camp, exposes them to numerous challenges. There are multiple harmful effects of displacement on individuals, families and communities. Apart from being in a state of “permanent impermanence”, as Mooney puts it, they are confronted by stigmatisation and stripped of their means of survival.<sup>20</sup> Displacement, whether internal or cross-border, disrupts family and community support networks. Displacement also goes on to cause a “massive loss not only of commodities such as the home, income, land or other forms of property, but also of less tangible symbolic goods, such as cultural

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<sup>18</sup> Dennis McNamara was appointed as Special Coordinator heading the UN Senior Inter-Agency Network on IDPs in September last year. He was previously Head of the Humanitarian Pillar of the United Nations Mission in Kosovo (UNMIK). His 25 years with the UNHCR include heading the Department of International Protection and a posting as Head of Human Rights in Cambodia.

<sup>19</sup> Dennis McNamara, ‘Refugees in their Own Lands’, *The Guardian*, 28 June 2005. Available at: <<https://www.theguardian.com/politics/2005/jun/28/immigration.internationalaidanddevelopment>>. Last accessed 18/11/2025.

<sup>20</sup> Erin Mooney, ‘The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern’, *Refugee Survey Quarterly*, Volume 24, Issue 3, 1 January 2005, 15.

heritage, friendship and a sense of belonging to a particular place”.<sup>21</sup> The fact that the UNHCR refers to IDPs and their peculiar circumstances in its materials is perhaps indicative that the global consensus supports IDPs having a distinct status. The UNHCR recognises that IDPs are treated:

As outcasts in their own lands, they often have very limited legal or physical protection and face an uncertain future. In the soulless shorthand of bureaucracy, they are usually categorised as “IDPs” [...] In real life, they are civilians – mostly women and children – who have been forced to abandon their homes because of conflict or persecution.<sup>22</sup>

The UNHCR also notes that:

The internally displaced often face a more difficult situation. They may be trapped in an ongoing internal conflict. Their government, which may view them as ‘enemies of the state’, retains ultimate control of their fate. There are no specific international legal instruments covering the internally displaced, and general agreements such as the Geneva Conventions are often difficult to apply. Donors are sometimes reluctant to intervene in internal conflicts or to offer sustained assistance.<sup>23</sup>

Many IDPs face difficulties and vulnerabilities that are not unique to the displaced but become especially acute in the context of internal displacement. There is evidence that IDPs are more susceptible to sexual and gender-based violence, malnutrition, poor healthcare,

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<sup>21</sup> Ibid.

<sup>22</sup> UNHCR, ‘Internally Displaced Persons: Questions and Answers’, p. 4. Available at: <https://www.unhcr.org/uk/about-us/background/405ef8c64/internally-displaced-people-questions-amp-answers.html>. Last accessed 16/09/2024.

<sup>23</sup> Ibid, p. 10.

increased insecurity and, generally, poor living conditions.<sup>24</sup> The attendant trauma of displacement no doubt accounts for the “high prevalence of psychosocial problems among IDPs”.<sup>25</sup> For instance, in April 2018, the high rate of suicide amongst the Yazidi community living in IDP camps in Iraq was attributed largely to the poor living conditions and the trauma of encountering ISIS.<sup>26</sup> The situation is not different in so many other IDP camps, where high suicide rates have been reported. Nevertheless, it is important to avoid the common trap of conceptualising IDPs and their needs only in terms of assistance. It is, therefore, critical to recognise the fact that the IDP concept is underpinned by protection and has human rights issues at its core, just like the concept of refugees.

## **5. INTERNALLY DISPLACED PERSONS AND REFUGEES**

### **5.1 Divergence and Convergence**

Over the past two decades, authors such as Edwin Odhiambo-Abuya have engaged in debates about the similarities and differences between ‘IDPs’ and ‘refugees’. Persistent discussions focus on the structures and

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<sup>24</sup> Roger Zetta and Camillo Boano, ‘Planned Evacuations and the Right to Shelter During Displacement’, p. 170, in *Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges*, (Walter Kälin, et al., eds.). Available at: [https://www.brookings.edu/wp-content/uploads/2016/06/0119\\_internal\\_displacement\\_complete.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/0119_internal_displacement_complete.pdf) . Last accessed 26/10/2021 Stephen S. Ojo and N. Shedam Fanto, ‘Challenges of Internally Displaced Person (IDPs) and Peace Building Process’, p. 3. Available at: <[https://www.researchgate.net/publication/320614162\\_CHALLENGES\\_OF\\_INTERNALLY\\_DISPLACED\\_PERSONS](https://www.researchgate.net/publication/320614162_CHALLENGES_OF_INTERNALLY_DISPLACED_PERSONS)>. Last accessed 18/11/2025.

<sup>25</sup> Mooney, (n.20) 15.

<sup>26</sup> ‘The high suicide rate amongst the Yazidi community living in IDP camps is largely as a result of poor living conditions and the trauma of ISIS’, Al Shahid News, 26 April 2016.

trends that characterize displacement, whether internal or external. These debates can be divided into two main themes: the first concerns the normative distinction between ‘IDPs’ and ‘refugees’, and the second questions whether the refugee protection regime should be extended to include IDPs. Consequently, an increasing body of literature examines the relationship between internal displacement and cross-border movements of displaced persons.

This section explores the relationship between internally displaced persons and refugees. Attention is given to the conceptual foundations underlying the protection frameworks for each group, along with considerations of the reasons for excluding IDPs from the current refugee definition. The arguments for classifying both groups under a single legal status are also discussed. Overall, this section highlights the similarities and differences to advocate for comparable attention to IDPs as is given to refugees.

There appears to be a growing global consensus that the number of internally displaced persons far exceeds that of refugees. This is despite fragmented data on displaced populations and the near impossibility of obtaining precise statistics. It has been noted that “while global refugee numbers have recently remained stable, the number of internally displaced persons has risen dramatically.” Over the past decade, the worldwide population of internally displaced persons has gradually increased. The Human Security Report 2005 reports that “while the number of refugees around the world has steadily declined in recent years, the number of internally displaced persons has grown considerably.” As of 2020, the United Nations High Commissioner for Refugees’ Annual Global Trends Study reported that 82.4 million people had been displaced globally, including 26.4 million refugees, 4.1 million asylum seekers, 3.9 million Venezuelans displaced abroad, and 48 million IDPs. Similarly, the Global Report on Internal Displacement

2021, issued by the Internal Displacement Monitoring Centre (IDMC), indicated that by 31 December 2020, the total number of internally displaced persons reached a record 55 million. This means there are more than twice as many IDPs as refugees, marking a new high. Of these, 48 million fled conflict and violence, while 7 million fled disasters. Despite these high figures, there are concerns that the estimates may underestimate the true scale due to inadequate data collection. Interestingly, this large 'at-risk' population still lacks an effective international protection regime. Moreover, the rising figures highlight the urgent need for honest discussions led by affected nations and supported by the international community to develop strategies that can reverse the trend of internal displacement.

This discussion suggests that IDPs are comparable to refugees, despite 'displacement' not being included in the refugee definition within the Refugee Convention. Both groups often face similar protection issues, such as lack of shelter, food, and basic services. They struggle with poverty, psychosocial challenges, and difficulties in normalising their legal status. Both groups are vulnerable to violence, abuse, and exploitation following new crises. The primary difference is that IDPs move within their country's borders, whereas refugees cross international borders. Nonetheless, they may be fleeing comparable circumstances. It is therefore unjust and inappropriate that their treatment differs so markedly from that of refugees. Refugees benefit from a recognised system of international protection and assistance, while IDPs lack any formal legal or institutional framework to ensure their protection. This does not mean refugees do not face challenges, but they are at least supported by a legal rationale. There is a critical need to strengthen protection and assistance for IDPs, whose situations are inherently similar to those of refugees.

Both groups often experience similar causes and risks associated with displacement. They flee their homes and seek refuge in often hostile environments. In many aspects, IDPs and refugees share comparable hardships and material conditions. Their reasons for displacement and the resulting consequences are alike—they leave their homes and are displaced into foreign environments where they may encounter different ethnic, religious, or linguistic communities. This is why some experts, like Michael Cernea, refer to them as ‘internal refugees’. Both categories essentially concern victims of forced migration. However, IDPs face the lack of specific international conventions protecting their rights, as none of the myriad international human rights, humanitarian, or refugee treaties explicitly address their plight. This absence of a comprehensive global framework has been criticised for hindering the recognition and support of IDPs. Consequently, IDPs are seen as falling into a protection gap.

The key distinction is that “refugees enjoy a proper legal status [...] represented by the trans-boundary element, which exists only for refugees”. Refugees, simply by crossing state borders, gain a legal status recognized internationally, making them the concern of the global community. The obligation to protect them extends beyond their home state. In contrast, IDPs remain within their country’s borders, and their protection is primarily the responsibility of their national government—whether or not they are able or willing to provide it. The implication is that someone fleeing persecution across an international border may qualify for refugee status and receive international protection. Conversely, individuals displaced internally are under their government’s protection, despite similarities in the causes and vulnerabilities they face. The international system primarily focuses on protecting border-crossers, leaving internal IDPs less protected.

Given that intervention often involves complex issues of sovereignty, IDPs under state protection frequently lose hope of assistance. Leaving IDPs at the mercy of their government—often the oppressor or incapable—leaves them in a position described by Kingston and Datta as “a refugee who has no refuge”. Even international agencies seeking to aid IDPs need permission from the government responsible for their displacement.

While international law recognises the sovereign duty of states to protect their citizens, political, economic, and social realities complicate this obligation. Recognising protection as the core purpose of sovereignty is vital. The uneven and selective treatment of IDPs results in many receiving life-saving aid, while others continue to suffer human rights abuses. Currently, under international law, refugees are entitled to security, human rights protections, and assistance—privileges not extended to those displaced within borders. This creates a stark distinction, making refugees appear privileged among displaced populations. There is an urgent need to address this imbalance by providing proper protections for IDPs and bridging the protection gap.

A comprehensive answer to the global refugee problem must include addressing the status of internally displaced persons, for both pragmatic and ethical grounds. As long as effective human rights protection cannot be guaranteed for the entire global population, the problem of protecting the internally displaced is likely to continue plaguing the international community.<sup>27</sup> This tight adherence to the territorial requirement raises concerns regarding an incongruence between the concept and the actual suffering caused by forced migration. In one view, the exclusion of IDPs is manifestly unjust, as it fails to acknowledge the presence of social,

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<sup>27</sup> Promod Nair, 'Towards a Regime for the Protection of Internally Displaced Persons' (2001) 1 *ISIL YB Int'l Human & Refugee L* 183 at 206.

legal, and economic impediments that make it difficult for everyone to seek international protection. For example, with the outbreak of war in Ukraine on February 24, 2022, both internal and foreign population displacements have occurred simultaneously. Many of the nation's internally displaced were compelled to leave their homes for the same reasons as refugees. It is estimated that almost 12.8 million people have been displaced in Ukraine, the majority of whom have not left the country.<sup>28</sup> Recent estimates by the United Nations Office of the High Commissioner for Human Rights indicate that due to the war, 7.7 million people have been displaced internally, which is equivalent to 17.5 per cent of the total population.<sup>29</sup> Multiple forms of gender-based violence, including sexual exploitation and abuse, sexual violence, and sexual violence associated with armed conflict, are reported. At border crossing points, transit and communal centres, and in bomb shelters, women and girls on the move are particularly vulnerable to assault, including human trafficking. During relocation, numerous families have been divided, and unaccompanied and separated children are particularly susceptible to the dangers of trafficking, violence, abuse, and exploitation.

Since the beginning of the war, civilian populations have relocated in search of safety and security. The forced population migrations that have resulted in enormous exoduses, whether inside or outside of borders, violate international human rights and humanitarian law by their very nature. It would be counterproductive and shortsighted to just care for refugees while ignoring their local compatriots who were

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<sup>28</sup> United Nations Office of the High Commissioner for Human Rights, "Ukraine: Millions of Displaced Traumatized and Urgently Need Help, Says Expert", 05 May 2022. Available at: <https://www.ohchr.org/en/press-releases/2022/05/ukraine-millions-displaced-traumatized-and-urgently-need-help-say-experts> Last accessed 28/10/2025

<sup>29</sup> *ibid*

domestically displaced for similar causes. National boundaries, territory, and space should not dictate the structure and regulatory authority of international law. Border crossings should not form the motivation for international law and its attendant organisations. Considering that the subject of borders is fluid and meaningless, international law should apply regardless of whether a border has been crossed.

## **5.2 EXTENSION OF REFUGEE PROTECTION TO INTERNALLY DISPLACED PERSONS**

The similar experiences shared by the two groups of displaced populations and persons, as noted above, have given rise to a debate as to the propriety of a legal synthesis by extending the protection of refugees to IDPs. Despite arguments in favour of the merger, some refugee commentators, such as Michael Barutciski, still regard it as an “implicit and dangerous logic”.<sup>30</sup> The opponents of the merger argue that the notion was initiated to divert attention from the problems faced by refugees, and have expressed fears, for example, by James Hathaway and Jon Bennett, who insist that a sharp line must be drawn between the two. They argue that the Refugee Convention is triggered not by displacement but by crossing a border.<sup>31</sup> Therefore, “if one foot crosses the border, then refugee rights apply; if the border is not crossed, then the 1951 Refugee Convention cannot be invoked”.<sup>32</sup> The crux of their

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<sup>30</sup> Barutciski, Michael, ‘Tensions Between the Refugee and the Internally Displaced Persons Debate’, *Forced Migration Review*, December 1998, 11–14 at 11.

<sup>31</sup> James C. Hathaway, ‘Forced Migration Studies: Could we Agree Just to ‘Date’?’, (2007) 20, *Journal of Refugee Studies*, 349. <<https://academic.oup.com/jrs/article/20/3/349/1591558>> accessed 08/11/2023, pp.349–369. Jon Bennett, ‘Rights and Borders’, *Forced Migration Review*, vol. 4, April 1999, 33–34, at 33.

<sup>32</sup> Therefore, if one foot crosses the border, then refugee rights apply; if the border is not crossed, then the 1951 Refugee Convention cannot be invoked.

argument is that blurring the distinctiveness of these groups of displaced persons may actually work against IDPs. Doing so would, thus, be “detrimental to the traditional asylum option that is central to refugeehood”<sup>33</sup> and most likely heighten containment.<sup>34</sup> There is concern that in-country activities and containment strategies could de-emphasise the external asylum option, seen as a substitute.<sup>35</sup> The UN General Assembly has warned that “activities on behalf of internally displaced persons must not undermine the institution of asylum”.<sup>36</sup> Sadako Ogata, as the UN High Commissioner, re-echoed this position that care must be taken “not to undermine the unique legal status of refugees or to lend encouragement to strategies aimed at containing displacement. The asylum door has to remain open for people who genuinely need protection”.<sup>37</sup> She expressed the opinion that since refugees and IDPs are not protected by the same legal framework, the talk of mandates and comparative advantages should be stalled.

Roberta Cohen, Richard Holbrooke, and other proponents of a legal synthesis of refugees and IDPs contend that the current distinction between the two groups creates inequitable differences in the human rights protection standards between them. They further contend that this bureaucratic distinction negatively affects the lives of millions of IDPs.<sup>38</sup> The argument is that this emphasis on international borders adds layers of vulnerability and insecurity to the IDPs’ condition.<sup>39</sup> They then

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<sup>33</sup> Barutciski (n. 30)

<sup>34</sup> Barutciski *ibid.*

<sup>35</sup> Catherine Phuong, ‘Improving the United Nations Response to Crises of Internal Displacement’, *International Journal of Refugee Law* 13 (2001): 491–517 at 497.

<sup>36</sup> UNGA res. 49/169, 24 February 1995, para. 10. Available at: <https://undocs.org/en/A/RES/49/169>. Last accessed 16/09/2025.

<sup>37</sup> Sadako Ogata, ‘Protecting People on the Move’, Address delivered at the Centre for the Study of International Organisations, New York, 18 July 2000.

<sup>38</sup> Holbrooke 2000, OCHA 2003, Cohen (2007), 371.

<sup>39</sup> Mooney, (n. 20) 23

propose that, to address these challenges, the two groups must be merged by creating a single legal definition that covers both.<sup>40</sup> Advocacy for the elimination of the border-crossing criterion is premised on the conviction that it has lost its relevance after the end of the Cold War and the supposed breakdown of the ideological divides and politics that characterised that era. The argument notes that the drafters of the 1951 Convention envisaged, somewhat simplistically, a situation where dissidents crossed the Iron Curtain or the Berlin Wall in search of asylum in the West.<sup>41</sup> Another perspective towards providing effective protection for IDPs is L.T. Lee's proposal for an additional protocol to the Refugee Convention to ensure IDP protection.<sup>42</sup> This should create a balance by preserving the status of refugees whilst allowing for a binding legal measure to address IDPs.

These arguments notwithstanding, it may be difficult to wish away the fact that IDPs and refugees share similar experiences, even if they belong to distinct categories. The categories are fluid, because, today, an IDP might become a refugee within a short space of time. In the Nigerian case, for instance, those displaced by the Boko Haram conflict most times circulate within the Chad basin; they live on the border and go in and out of the country. This movement does not take away the immense suffering that characterises the experience of displacement. Therefore, there is nothing harmful if the refugee protection mechanism, with appropriate adjustments, is deployed as a valuable resource of principles, concepts and strategies to enhance the protection of IDPs.

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<sup>40</sup> Marc Vincent, 'Protection and Assistance to IDPs', *Forced Migration Review*, vol. 4 April 1999, p. 34.

<sup>41</sup> Luke T Lee, 'Internally Displaced Persons and refugees: Toward a Legal Synthesis', (1996) 9 *J Refugee Stud* 27, pp. 33 and 34.

<sup>42</sup> Lee, L. T., 'The London Declaration of International Law Principles on Internally Displaced Persons: Its Significance and Implications', *Journal of Refugee Studies*, volume 14, 2001.

This can be achieved without jeopardising the institution of asylum.

A clear example of the potential utility of this strategy is the adoption and adaptation of the principle of non-refoulement contained in Article 33 of the Refugee Convention. This could be adapted for the protection of IDPs from being forcefully returned to areas they feel unsafe and unwilling to live. This application does not, in any way, threaten the institution of asylum. The principle of non-refoulement prohibits any country from expelling or returning a refugee to any country where he or she may be tortured, persecuted or subjected to other forms of ill-treatment. In cases where an asylum seeker refuses to return to his or her home country, forcing them to do so could be based on the premise that there is no existing obstacle to their return. As a result, the concept of protection against refoulement might be compared to the concept of protection against torture.<sup>43</sup> The principle of non-refoulement has been an important legal guarantee not only for refugees, but also for individuals who have not yet been granted refugee status, in order to protect them from human rights breaches or other ill-treatment; this, too, could benefit IDPs.

## **6. CONCLUSION**

Despite the debate in the scholarship, the urgency for the translation of protection standards into tangible protection for IDPs, in particular, protection for internally displaced women in Nigeria from sexual violence, remains the primary concern of this paper. Considering that the mere articulation of standards does not ensure their implementation and compliance, it is pertinent to focus attention not on issues of the location of IDPs but, most immediately, to the core issue of protection

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<sup>43</sup> Lambert, H., 'Protection against Refoulement from Europe: Human Rights Law Comes to the Rescue' 48 No.3 *International and Comparatively Law Quarterly*, 1999, p. 515.

against human rights abuses that confront them. A more straightforward approach towards resolving this impasse will be focusing on a wider human rights context, rather than geography and the insider/outsider category. This is because basing protection in human rights standards will avoid the necessity of considering insider/outsider status. This approach will bring fruitful attention to the rights of the IDPs and the obligation of states to protect and deliver such rights. IDPs are citizens in spite of their situation; it is important to insist that citizens do not forfeit their rights because they are displaced.

International human rights law establishes obligations that states must adhere to. By becoming parties to international treaties, states bind themselves to the obligations and duties of international law to respect, protect, and fulfil human rights. The obligation to respect entails states abstaining from interfering with or restricting the exercise of human rights. States are required to protect individuals and groups against human rights violations under the obligation to protect. The obligation to fulfil requires states to take proactive measures to promote the enjoyment of fundamental human rights. The interest, therefore, should transcend the argument on the suitability of subsuming IDP protection under refugee law. More attention ought to be paid to the available laws and institutions for the protection and assistance of IDPs. Ultimately, the quest should be for the creation of an efficient framework for the protection and assistance of IDPs, both inside and outside displacement camps. Greater focus should be placed on enforcement as a means of demonstrating genuine commitment to addressing the causes and drivers of displacement.