

BUT FOR BORDERS: THE PROTECTION GAP FOR INTERNALLY DISPLACED PERSONS

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Internal displacement, the phenomenon of people who are dislocated from their homes but remain within the border of their countries of origin, was once a forced migratory occurrence interchangeable with cross-border migration. This changed after the Second World War with the promulgation of the 1951 Convention Relating to the Status of Refugees, which was premised on an insistence on drawing a legal line in the sand based on which side of a border displacement transpires upon. Internally displaced persons (IDPs)—both in recent history and in the projected future—far outnumber people displaced across borders. Both rhetorical maneuverings and traditional international legal theories have prevented a robust exploration of normative frameworks that would ensure enhanced protections against the causes of and for those experiencing internal displacement.

This Article places IDPs within the context of the politically charged project of labeling migration in order to determine which populations are deserving of protection within the frameworks of international governance. It provides a comprehensive account of existing international, regional, and domestic displacement instruments, and highlights how international climate change and other migration agreements fail to adequately address the phenomenon of internal displacement. This Article offers a vision of forced movement that treats human mobility not as static but as occurring on a continuum traversing physical nation-state borders. In doing so, it offers a re-framing of people forced to leave their homes so that international legal mechanisms can provide protection to vulnerable communities, regardless of on which side of a border they face displacement.

You only leave home when home won't let you stay.¹

WARSAN SHIRE, *Home*

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I. INTRODUCTION

Displacement within the borders of one’s country of origin—internal displacement—is an ongoing and growing phenomenon,² with people around the globe increasingly forced to leave their homes due to disasters, violence, conflicts and wars, development

2. See generally Internal Displacement Monitoring Centre, *25 Years of Progress on Internal Displacement* (2023) (“The last quarter of a century has brought many achievements, but significant gaps remain as the scale and scope of internal displacement continues to grow.”); U.N. Secretary General, *The United Nations Secretary-General’s Action Agenda on Internal Displacement: Follow-Up to the Report of the UN Secretary-General’s High-Level Panel on Internal Displacement* (June 2022) [hereinafter UN Action Item on Internal Displacement], https://www.un.org/en/content/action-agenda-on-internal-displacement/assets/pdf/Action-Agenda-on-Internal-Displacement_EN.pdf (“The number of internally displaced persons (IDPs) has doubled over the last 10 years, with women, children and marginalized groups often facing the greatest impacts.”). See also Roberta Cohen, *The Global Crisis of Internal Displacement*, BROOKINGS ON THE RECORD (Nov. 11, 1998), [https://www.brookings.edu/on-the-record/the-global-crisis-of-internal-displacement-2/\(naming South Africa’s apartheid regime and the atrocities by Hitler and Stalin as examples of causes for mass internal displacement during the twentieth century; stating that “\[d\]uring the Cold War, both the United States and the Soviet Union contributed to and intensified many of the internal conflicts leading to mass displacement.”\)](https://www.brookings.edu/on-the-record/the-global-crisis-of-internal-displacement-2/(naming%20South%20Africa’s%20apartheid%20regime%20and%20the%20atrocities%20by%20Hitler%20and%20Stalin%20as%20examples%20of%20causes%20for%20mass%20internal%20displacement%20during%20the%20twentieth%20century;%20stating%20that%20“[d]uring%20the%20Cold%20War,%20both%20the%20United%20States%20and%20the%20Soviet%20Union%20contributed%20to%20and%20intensified%20many%20of%20the%20internal%20conflicts%20leading%20to%20mass%20displacement.”)).

projects, and human rights violations.³ In 2022, there were a record 71.1 million internally displaced persons,⁴ or IDPs,⁵ globally. Importantly, often internally displaced persons face an experience of “protracted displacement,” in which “the duration of displacement is . . . measured in decades.”⁶ IDPs comprise of some of the most vulnerable members of a local population,⁷ as many cannot afford,

3. See generally *Internal Displacement Remains One of World's Biggest Human Rights Challenges*—UN.Expert, UNITED NATIONS NEWS (Oct. 24, 2021), <https://news.un.org/en/story/2012/10/424352-internal-displacement-remains-one-worlds-biggest-human-rights-challenges-un>. See also David James Cantor, *Divergent Dynamics: Disasters and Conflicts as “Drivers” of Internal Displacement*, 48 DISASTERS 1 (2024) (conducting a relative comparison of internal displacement caused by conflicts and disasters)

4. Gerald Imray, *War, Natural Disasters Left Record 71 Million People Internally Displaced in 2022, Report Says*, AP NEWS (May 11, 2023), <https://apnews.com/article/ukraine-sudan-internally-displaced-a14f4967ef1295277f9b41b3b170b39a>; *Number of Internally Displaced People Hits Record Due to War, Climate Change*, REUTERS (May 11, 2023), <https://www.reuters.com/world/number-internally-displaced-people-hits-record-due-war-climate-change-2023-05-11/>; David James Cantor & Agnes Woolley, *Internal Displacement and Responses at the Global Level: A Review of the Scholarship*, INTERNAL DISPLACEMENT RSCH. PROGRAMME 4 (June 19, 2021), https://sas-space.sas.ac.uk/9356/1/IDRP%20WPS_No.1.pdf (“On average, though, the overall number of estimated new displacements has been much higher over the last five-year period (47 million for 2015-2019) than for the preceding one (32 million for 2010-2014), or the one before that (20.9 million for 2005-2009).”); The International Organization for Migration reported that there were 59.1 million people internally displaced in 2021, a record at the time. Children and youth accounting for more than 40 percent of this population. *More Than 59 Million Internally Displaced in 2021*, UNITED NATIONS NEWS, (May.19,2021),https://news.un.org/en/story/2022/05/1118602?gclid=Cj0KCQjwbyYBhCdARIsAArC6LILtYn-RczMEqMjZC6ll4s63ESO7NwQ1QURGf6bUNFyf7ESHngdKUaAvCeEALw_wcB.

5. Some have criticized the terminology of “internally displaced person” and the use of “IDP.” See PHIL ORCHARD, PROTECTING THE INTERNALLY DISPLACED: RHETORIC AND REALITY 3 (2019) (“[T]he term ‘internally displaced person’ reflects a bureaucratic and temporalizing form of response. We know who refugees are and the term has been in use for over 300 years. The term ‘IDP,’ by contrast, reflects the ‘soulless shorthand of bureaucracy’ per UNHCR.”).

6. Milica V. Matijević et al., *The Framework on Durable Solutions for Internally Displaced Persons in the Scholarly Literature: A Preliminary Analysis*, 2022 REG’L L. REV. 177, 179-82 (2022) (“Rapid resolution of internal displacement situations rarely takes place The estimates are that, on average, conflict-induced displacement lasts almost twenty years.”).

7. REBECCA HAMLIN, CROSSING: HOW WE LABEL AND REACT TO PEOPLE ON THE MOVE 14 (2021) (asserting that IDPs may arguably be in greater need than border crossers whose refugee status is recognized by a receiving state). The Russian invasion of Ukraine, for example, has caused approximately seven million people displaced

materially or otherwise, to cross their country's border after enduring displacement.⁸ There is no universal, legally binding instrument specifically directed at internal displacement.⁹ IDPs "are on the run at home,"¹⁰ and the protection and aid afforded to them is predominantly at the discretion of the government of their country of origin, which often caused or contributed to their displacement in the first place.¹¹

within Ukraine, more than half of whom are particularly vulnerable women. *See How Many Ukrainian Refugees Are There and Where Have They Gone?*, BBC NEWS (July 4, 2022), <https://www.bbc.com/news/world-60555472>. *See also* Sam Mednick, *With Focus on Refugees, No End in Sight for Ukraine's Internally Displaced*, THE NEW HUMANITARIAN (June 30, 2022), <https://www.thenewhumanitarian.org/news-feature/2022/06/30/Ukraine-refugee-displacement-IDP-aid> (alleging that IDPs in Ukraine are receiving less attention and support from Europe when compared to cross-border refugees); *See* David James Cantor & Jacob Ochieng Apollo, *Internal Displacement, Internal Migration, and Refugee Flows: Connecting the Dots*, 39 REFUGEE SURV. Q. 647, 650 (2020) (noting that IDPs tend to have "lower-than-average education levels," and that "children also tend to be over-represented in IDP populations.").

8. *See* Megan Passey, *Displaced and on the Move Again: Decision-Making Among IDPs who Migrate to Europe*, THE LONDON SCH. OF ECON. & POL. SCI. (Feb. 18, 2018), <https://blogs.lse.ac.uk/mec/2018/02/18/displaced-and-on-the-move-again-decision-making-among-idps-who-migrate-to-europe/> (discussing a study conducted by the IOM of Iraqi IDPs finding that migration was something they could not afford).

9. International Committee of the Red Cross (ICRC), *Internally Displaced Persons and International Humanitarian Law* 2 (Mar. 2022), <https://www.icrc.org/en/document/internally-displaced-persons-and-international-humanitarian-law-factsheet>. Instead, several human rights instruments acknowledge the phenomenon, including populations who are most vulnerable to becoming IDPs, including the Universal Declaration of Human Rights and the International Convention on the Protection of all Migrant Workers. *See, e.g.*, Global Protection Cluster Working Group, *Handbook for the Protection of Internally Displaced Persons* 1 (June 2010), <https://www.unhcr.org/en-us/protection/idps/4c2355229/handbook-protection-internally-displaced-persons.html?query=internally%20displaced>.

10. The U.N. High Commissioner for Refugees (UNHCR), *Internally Displaced People*, <https://www.unhcr.org/en-us/internally-displaced-people.html> (discussing that, IDPs, by definition, are fleeing while remaining within the borders of their home country). *See also* Ann Deslandes, *Homeless at Home: Inside Mexico's Neglected Displacement Crisis*, NEW HUMANITARIAN (Aug. 25, 2020), <https://www.thenewhumanitarian.org/newsfeature/2020/08/25/Mexico-internal-displacement-crisis-conflict> (noting that most internally displaced persons in Mexico are displaced within their own country); *see also* Anne Koch, *On the Run in Their Own Country: Political and Institutional Challenges in the Context of Internal Displacement*, GERMAN INST. FOR INT'L AND SEC. AFFS. (May 2020) (discussing how many internally displaced persons are ineligible for international protection and remain displaced within their home country).

11. *See* Louise Otis & Jeremy Boulanger-Bonnely, *Shelters of Justice in Displaced Persons Settlements: A Proposal for Robingya Camps*, 73 U.N.B.L.J. 42, 44 (2022) (arguing

While historically conflicts and wars have been a significant trigger of internal displacement,¹² environmental-related events have been the leading cause for the past two decades.¹³ The World Bank predicts that internal “climate migration” will displace approximately 216 million people by 2050.¹⁴ Notably, the Inter-American Commission on Human Rights recently held its first hearing “on how climate catastrophe is driving forced migration across the Americas.”¹⁵

Disproportionately focused on cross-border migration, the global community has largely ignored the importance of developing normative frameworks that would extend protections to IDPs.¹⁶

that many internally displaced persons are at risk of persecution by their own governments); *See also* Sarah Miller, *Internal Displacement: An Agenda for Progress*, REFUGEES INT’L (Aug. 10, 2021), <https://www.refugeesinternational.org/reports-briefs/internal-displacement-an-agenda-for-progress/> (explaining that many home states fail to fulfill their duty to protect internally displaced persons).

12. Civil conflicts such as those in Sri Lanka and Turkey were the cause of significant internal displacement, prompting the issue to garner international attention. *See Sri Lanka: A Hidden Displacement Crisis*, INTERNAL DISPLACEMENT MONITORING CTR. (Oct. 31, 2012), <https://www.internal-displacement.org/sites/default/files/publications/documents/201210-ap-srilanka-overview-en.pdf> (describing how prolonged civil conflict in Sri Lanka contributed to widespread internal displacement and drew international attention); Ana Maria Ibanez, *Forced Displacement in Colombia: Magnitude and Causes*, 4 ECON. PEACE & SEC. J. 48, 48 (2009).

13. *See* REUTERS, *supra* note 4 (“The bulk of displacements last year [2022]—32.6 million—was due to disasters including floods, droughts and landslides.”); *see also* Rebecca Hamlin, ‘Migrants’? ‘Refugees’? Terminology Is Contested, Powerful, and Evolving, MIGRATION POL’Y INST., <https://www.migrationpolicy.org/article/terminology-migrants-refugees-illegal-undocumented-evolving> (discussing how terminology surrounding climate- and disaster-induced displacement remains contested and politically charged); *see also* Jayesh Rathod, *Legal Protections for Environmental Migrants: Expanding Possibilities and Redefining Success*, AM. U. CTR. FOR LATIN AM. & LATINO STUD. 1, 5 (2020) (“Given the diffuse factors underlying environmental migration, and its inherently varied nature, stakeholders have had difficulty in building consensus around a singular term to describe persons affected by these forces This proliferation of terms reflects not only technical disagreements among experts, but also divergent views about who should ultimately receive legal protection . . .”).

14. UN Action Item on Internal Displacement, *supra* note 2, at 4.

15. Nina Lakhani, *People Displaced by Climate Crisis to Testify in First-of-Its-Kind Hearing in the U.S.*, GUARDIAN (Feb. 29, 2024), <https://www.theguardian.com/environment/2024/feb/29/hearing-forced-migration-climate-change-us-central-america>.

16. *See* Jamie Draper, *Justice and Internal Displacement*, 71 POL. STUD. 314, 315 (2023) (“[The] narrow focus on refugee movement has obscured the normative significance of internal displacement.”); *see also* Donald Kaberuka & Federica Mogherini, *Internal Displacement Remains an Invisible Crisis in Plain Sight*, REUTERS (Sept. 29, 2021), <https://news.trust.org/item/20210929185141-39oxd> (noting that there are more than twice as many IDPs as refugees).

This disparity is despite the fact that “. . .since the time adequate global records began to be constructed, [IDPs] have consistently outnumbered by a factor of two the world’s refugees.”¹⁷ A report submitted to the United Nations High Commissioner for Refugees (UNHCR) in conjunction with the 70th anniversary of the Convention Relating to the Status of Refugees (the 1951 Refugee Convention) characterized IDPs as “the invisible majority of the world’s displaced people.”¹⁸ The report’s authors supported this depiction in part with statistics comparing media attention given to refugees and internal displacement, noting that “[b]etween 2015 and 2019, the New York Times published 5,204 articles containing the word ‘refugee,’ but only 136 featuring the term ‘internally displaced.’”¹⁹

Forced mass movement within state borders is largely absent from the discourse on migration only because the people displaced in these cases remain inside the borders of their country of origin.²⁰ This omission is premised on weak assumptions and arguably

17. ORCHARD, *supra* note 5, at 1.

18. Bina Desai et al., *On This Side of the Border: The Global Challenge of Internal Displacement: Scale, Impacts and Solutions*, REFERENCE PAPER FOR 70TH ANNIVERSARY OF THE 1951 REFUGEE CONVENTION 2 (June 2021), https://www.unhcr.org/people-forced-to-flee-book/wp-content/uploads/sites/137/2021/10/Bina-Desai-et-al_On-this-side-of-the-border-The-global-challenge-of-internal-displacement-scale-impacts-and-solutions.pdf.

19. *Id.* The authors conclude: “For IDPs, this lack of attention translates into a lack of assistance.”

20. *See generally*, ABIGAIL G. H. MANZELLA, *MIGRATING FICTIONS: GENDER, RACE, AND CITIZENSHIP IN U.S. INTERNAL DISPLACEMENTS* 5 (2018) (Providing an investigation of events of mass displacement in the twentieth century—the Great Migration, the Dust Bowl, Japanese-American internment, the Braceros Program, and Hurricane Katrina—to “fill in the gap left between international and national law by studying patterns of mass movements that are downplayed because a national boundary is not crossed.”).

antiquated notions, namely, the general importance ascribed to physical borders²¹ and the primacy of state sovereignty in international law.²²

This Article challenges the marginalization of internally displaced persons in literature and public discourse, offering a re-framing of forced migration to place IDPs within the responsibility of the international human rights community. Part II of this Article addresses the fact that IDPs are rendered virtually invisible in the context of international migration governance due to the politically charged project of categorizing migrants, particularly in distinguishing between forced and voluntary migration,²³ affecting what rights are accessible to which people on the move. In this part, I address how my project informs international migration governance.

The insistence of labeling migration, based on valuations of what causes migration and how the movement is executed, contributes significantly to the erasure of the plight of IDPs. Part III hones in on the phenomenon of internal displacement by addressing definitional concerns, what this Article refers to as the fiction of state protection, and the multitude of ways populations become IDPs.

Part IV provides a comprehensive overview of international and regional displacement instruments to demonstrate that the majority of climate and migration agreements barely address internal displacement, if at all. It also examines agreements specifically on internal displacement created since the United Nations Guiding

21. There is a growing number of migration scholars calling for the abolition of borders altogether. See, e.g., KANISHKA CHOWDHURY, BORDER RULES: AN ABOLITIONIST REFUSAL 223–246 (2023) (proposing the abolition of borders as a solution to the crisis of the nation state); GRACIE MAE BRADLEY & LUKE DE NORONHA, AGAINST BORDERS: THE CASE FOR ABOLITION (2022) (discussing the roots and implications of borders and border laws and regulations, calling attention to the harms of immigration controls caused by the importance of borders in state governance); Angelica Chazaro, *The End of Deportation*, 68 UCLA L. REV. 1040 (2021) (questioning the underlying assumptions that justify deportation and proposing its abolition).

22. See Vincent Chetail, *Sovereignty and Migration in the Doctrine of the Law of Nations: An Intellectual History of Hospitality from Vitoria to Vattel*, 27 EUR. J. INT'L L. 901, 916–22 (2016) (analyzing the historical and doctrinal foundations of state sovereignty in international law and its role in excluding internal forced migration from contemporary migration discourse).

23. See Marta Bivand Erdal & Ceri Oeppen, *Forced to Leave? The Discursive and Analytical Significance of Describing Migration as Forced and Voluntary*, 44 J. ETHNIC & MIGRATION STUD. 981, 981–82 (2019) (discussing the challenges of distinguishing between forced and voluntary migration).

Principles on Internally Displaced Persons was presented to the UN Commission on Human Rights just over twenty-five years ago.²⁴

Part V envisions conceptual frameworks that could extend international legal protections to address the persistent and emergent problem of internal displacement. Here, the Article explores justifications for extending refugee protection to IDPs, including the reality that a significant number of IDPs ultimately migrate across their home countries' borders,²⁵ rendering them what I call eventual refugees.²⁶ This part concludes with a critical examination of the concept of state sovereignty, and calls for a centering of coercion and precarity in the determination of which displaced populations warrant the attention of the international human rights community.

II. LABELING MIGRATION AND INTERNATIONAL MIGRATION GOVERNANCE

It is key to understand the legal, political, and rhetorical practice of labeling migration²⁷ in order to contextualize the absence of a normative framework to protect internal displaced persons. Generally, the project of labeling people who have left their home is one of grouping and ranking: “[m]igration categories tend to create the assumption, first, that the people within them are all the same, and, second, that the categories themselves are distinct, and there is an implicit hierarchy in the categorization of migration.”²⁸ Race, class,

24. See generally Francis M. Deng, *Guiding Principles on Internal Displacement*, U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11, 1998) [hereinafter the UNGP].

25. See Chloe Sydney, *Stuck in the Middle: Seeking Durable Solutions in Post-Peace Agreement Colombia*, INTERNAL DISPLACEMENT MONITORING CTR. 5 (2019) (“The relationship between internal displacement, cross-border movements and durable solutions is poorly understood, but it is clear that many refugees start their journeys as internally displaced people.”); see also Megan Passey, *supra* note 8 (noting that internal displacement often prompts migration, with Europe seen as a place where these challenges can be overcome).

26. See Chloe Sydney, *The Displacement Continuum: The Relationship Between Internal Displacement and Cross-Border Movement in Seven Countries*, INTERNAL DISPLACEMENT MONITORING CTR. 5 (2020), <https://www.internal-displacement.org/sites/default/files/publications/documents/202006-cross-borderreport.pdf> (explaining how repeated internal displacement often results in IDPs becoming refugees as they cross borders in search of safety). But see Cantor & Apollo, *supra* note 7, at 651–55 (justifying the distinction between internal displacement and external refugee flows).

27. CHOWDHURY, *supra* note 20, at 2–3 (asserting that “the dialectic of border rules” involves the labeling of bordered subjects).

28. Alison Crosby, *People on the Move: Challenging Migration on NGOs, Migrants and Sex Work Categorization*, 50 DEVELOPMENT 44, 45–46 (2007).

and gender inherently influence determinations in which category migrants should be placed.²⁹ While migrants' experiences may be dynamic—the voluntary nature of their movement and/or their vulnerability shifting over time—the category in which they are placed often remains fixed.³⁰ As detailed in the next section, decisions with respect to international migration governance rely on these static migrant categories.³¹

A. *Migrant Categorization*

Migrant categorization is the practice of conferring labels to human mobility based on manner of entry,³² or in the case of IDPs the lack thereof due to the absence of a border crossing.³³ Categorizations also represent a determination of what caused the migration,³⁴ with the two broad classifications of “voluntary” and “involuntary” each implicating “subsequent rights, entitlements, and

29. *Id.* Additionally, and relatedly, privilege also plays a factor: “The privileged who move enjoy access to the more fluid categories: ‘tourists’, ‘travellers’, ‘ex-pats’.” *Id.*

30. See Leila Hadj Abdou & Federica Zardo, *Migration Categories and the Politics of Labeling*, in RESEARCH HANDBOOK ON THE SOCIOLOGY OF MIGRATION 34, 42 (Giuseppe Sciortino & Peter J. Kivisto, eds., 2024) (describing how the categorization of migrants is often fixed and not reflective of any inherent or innate characteristic of migrants); see also MANZELLA, *supra* note 20, at 1 (“I highlight this discrepancy in order to call attention to the ways in which seemingly fixed terms, particularly ‘internal migrant,’ ‘refugee,’ and ‘citizen,’ develop in relation to governmental practices and manipulations.”).

31. Relatedly, scholars have taken issue with the “siloe” approach with respect to forced migration. See RAWAN ARAR & DAVID SCOTT FITZGERALD, *THE REFUGEE SYSTEM: A SOCIOLOGICAL APPROACH* 7–9 (2022) (noting six characteristics of the siloe approach: “the tendency to be ahistorical; the failure to explain—or purposefully neglect—the causes of displacement beyond generic gestures to ‘root causes’ . . . the use of an exclusively legal definition of refugees to define the scope conditions of research and governance . . . ignoring those who do not move, sometimes because they have been killed;” a focus on so-called ‘durable solutions’ of return . . . and the study of a single isolated stage of displacement . . .”).

32. Shanthi Robertson, *Status-Making: Rethinking Migrant Categorization*, 55 J. SOCIO. 219, 220 (2019) (discussing how migrants are increasingly categorized into different “statuses” and “types” that are largely socially, culturally, and politically determined).

33. See Crosby, *supra* note 28, at 45 (describing migrant categorization as reliance upon where people on the move end up).

34. *Id.*

vulnerabilities.”³⁵ Inherent in the exercise of migrant categorization are valuations with respect to who is deserving of protection.³⁶

1. *Definitions and Assumptions*

The categorization of voluntary and involuntary migration creates “the migrant/refugee binary”³⁷—classifying those who seek economic or other opportunities as voluntary migrants and those involuntarily on the move fleeing violence, persecution, and/or environmental events as refugees. The migrant/refugee binary has been reinforced by the UNHCR’s position that refugees are “not migrants” and that its mandate is not to be a “migration

35. Robertson, *supra* note 32, at 220; *see also* Valeria Ottonelli & Tiziana Torresi, *Voluntariness and Migration: A Restatement*, 37 ETHICS & INT’L AFFAIRS 406, 406 (2023) (“[S]erious normative implications for the migrants’ rights and the receiving states’ obligations toward them are thought to follow from the determination of the voluntariness of migration.”); Susan Martin, *Forced Migration, the Refugee Regime, and the Responsibility to Protect*, 2 GLOB. RESP. TO PROTECT 38, 42 (2010) (“Policy makers within and outside of the United Nations have used a classification system that places forced migrants into specific boxes, with the assumption that standards, mandates and programs will follow the designated classification.”).

36. *See* Lamis Abdelaaty & Rebecca Hamlin, *The Politics of the Migrant/Refugee Binary*, 20 J. IMMIGRANT & REFUGEE STUD. 233, 233 (2022) (“While law is central to the construction and perpetuation of these categorical distinctions, these terms also have colloquial meanings and usages that differ in interesting ways from their strict legal definitions, and which are closely linked to concepts of legitimacy and deservingness.”); *see also* Sophia DenUyl, *The Particular Harms of the “Good Immigrant” versus “Bad Immigrant” Construction on Black Immigrants in the United States*, 36 GEO. IMMIGR. L.J. 755 (2022) (noting that the construction of “good” versus “bad” immigrants in U.S. immigration discourse significantly impacts policy and public perception, particularly affecting black immigrants and exacerbating racial disparities within the immigration system); Nora Ratzmann & Nina Sahraoui, *Conceptualising the Role of Deservingness in Migrants’ Access to Social Services*, 20 SOC. POL’Y & SOC’Y 440 (2021) (discussing how the concept of “deservingness” reflects a broader discourse on entitlement and belonging within host societies); Elizabeth Keyes, *Beyond Saints and Sinners: Discretion and the Need for New Narratives in the U.S. Immigration System*, 26 GEO. IMMIGR. L.J. 207 (2012) (discussing how societal discourse surrounding polarized depictions of “good immigrants” and “bad immigrants” impacts individual immigrant’s experiences in the adjudication process).

37. HAMLIN, *supra* note 7, at 9; *see also* Heaven Crawley & Dimitris Skleparis, *Refugees, Migrants, Neither, Both: Categorical Fetishism and the Politics of Bounding in Europe’s ‘Migration Crisis’*, 44 J. OF ETHNIC & MIGRATION STUD. 48, 49 (2018) (“The use of the categories ‘migrant’ and ‘refugee’ to differentiate between the experiences of those on the move and the legitimacy or otherwise of their claims to international protection is reflected in the opening quotations, both of which refer to ‘real refugees’ despite their sources being located at opposite ends of the political spectrum.”).

organization.³⁸ The agency's position, however, belies the use of the category of "migrants" as a general umbrella term to refer to anyone living outside their "place of usual residence."³⁹

The insistence on the migrant/refugee binary has been criticized as ahistorical by critical refugee studies (CRS) scholars who argue that it obscures power imbalances originating from colonialism and neocolonialism.⁴⁰ Specifically, the CRS perspective contends that the binary focuses attention on internal explanations for why people leave countries in the Global South, including war, corruption, and poverty, rather than external forces such as the ongoing effects of colonialism, the impacts of globalization, and the failures of neoliberalism.⁴¹ CRS scholars also have argued that the migrant/refugee binary is an antiquated framework "in a world that seems to have abandoned the notion of protecting vulnerable border crossers."⁴² Nonetheless, the crossing of an international border is

38. *Refugee Protection and International Migration*, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, <https://www.unhcr.org/4a24ef0ca2.pdf>; see also HAMLIN, *supra* note 7, at 93–116 (arguing that the UNCHR is heavily invested in maintaining the binary to reassure the people of the Global North that public sympathy towards refugees is not synonymous with open borders).

39. The United Nations International Organization of Migrants (IOM), *Who is a Migrant?*, <https://www.iom.int/who-migrant-0>; see also Adam Taylor, *Is it Time to Ditch the Word 'Migrant'?* WASH. POST (Aug. 24, 2015), <https://www.washingtonpost.com/news/worldviews/wp/2015/08/24/is-it-time-to-ditch-the-word-migrant/> (presenting the argument that using migrants as an umbrella term "strips suffering people of voice" and that it should be substituted with using "refugee").

40. HAMLIN, *supra* note 7, at 5.

41. *Id.* at 1, 5 (arguing that the migrant/refugee binary obscures power imbalances by shifting focus to internal explanations for migration rather than external forces). Hamlin also argues that academic accounts of the history of the concept of refugees ignore the role of colonialism and thereby portray early international law as far more humanitarian and cosmopolitan than is actually accurate. *Id.* at 34. See also Lamis Abdelaaty, *supra* note 36, at 233 (describing how colloquial meanings and usages of the terms refugee and migrant affect perceptions of their legitimacy and deservingness).

42. HAMLIN, *supra* note 7, at 21. See also LAMIS ELMY ABDELAATY, *DISCRIMINATION AND DELEGATION: EXPLAINING STATE RESPONSES TO REFUGEES* 16 (2021) ("A compelling argument can be made that voluntary and forced migration are not dichotomous, but rather lie on a continuum. In practice, of course, most forced and voluntary migrants have mixed motives for crossing borders. Moreover, elements of coercion and volition are often implicated in both forced and voluntary migration.").

precisely the definitional distinction between /migrants/refugees and IDPs.⁴³

2. *Why Labeling Matters*

The labels attributed to migration directly affect what rights are available to displaced populations. The landmark international human rights instrument drafted in the aftermath of World War II, the 1951 Convention Relating to the Status of Refugees (“the Refugee Convention”), establishes key definitions, the rights of refugees, and the obligations of states.⁴⁴ The definition of “refugee” itself is particularly important; a refugee is defined as a person seeking protection outside their country of origin, given a well-founded fear of persecution on account of “race, religion, nationality,” or “membership of a particular social group or political opinion.”⁴⁵

The 1967 Protocol Relating to the Status of Refugees updated the 1951 Refugee Convention, removing some temporal and geographic restrictions in order to effectively extend the Convention’s protection beyond Eastern European refugees displaced during the Second World War.⁴⁶ Subsequently, “the signatories to these two instruments have carefully distinguished ‘refugee’ flows from other types of cross-border mobility, characterizing the latter as economic or voluntary migration, and not deserving of the heightened protection offered to refugees.”⁴⁷ As a result, the notion of a

43. See Lamis Abdelaaty, *supra* note 36, at 16 (“[T]hese definitions distinguish refugees from internally displaced persons (IDPs) and voluntary migrants. Refugee status requires that an international border be crossed, thereby excluding individuals who flee their homes but remain within the territory of their country. Whereas the movement of refugees and asylum-seekers is conceptualized as flight from persecution or conflict, voluntary migration is assumed to arise from economic motives.”).

44. Convention Relating to the Status of Refugees, Apr. 22, 1954, 189 U.N.T.S. 137; see Anita Sinha, *Transnational Migration Deterrence: A Framework for Accountability*, 63 B.C. L. REV. 1296, 1303-04 (2022).

45. Convention Relating to the Status of Refugees, Apr. 22, 1954, 189 U.N.T.S. 137.

46. Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267; see also DAVID SCOTT FITZGERALD, REFUGEE BEYOND REACH: HOW RICH DEMOCRACIES REPEL ASYLUM SEEKERS 44 (2019) (“An underappreciated explanation for the increase in remote control of asylum seekers is that it grew out of the 1967 Protocol that stripped away the 1951 Convention’s geographic and temporal limitations on who is considered a refugee.”).

47. Rathod, *supra* note 13, at 8; see also Robertson, *supra* note 32, at 220 (“In the migration studies literature, the idea of ‘migrant status’ is usually used primarily to distinguish between differing *legal* statuses, most often to make distinctions between

migrant/refugee binary is premised on the fact that there is a legal definition of a “refugee” that creates a distinct and exceptional category of border crossers under international law, as well as the domestic law of receiving states.⁴⁸ This binary creates a conceptual dichotomy of border crossers that ultimately determines “who should be let in.”⁴⁹

Labeling migration feeds into rhetorical choices that perpetuate restrictive migration policies.⁵⁰ Assertions that waves of new arrivals are “just migrants” or not “real refugees” serve to justify harsher deterrence measures to prevent people from claiming protective status and emphasizes the manner in which refugees are the exception to the rule of state sovereign control over borders.⁵¹ Making legal distinctions based on imposed assumptions of why people leave their homes also leads to the use of dehumanizing and dangerous language, including describing migrants as arriving in “swarms,”⁵²

forced and voluntary migrants or between documented and undocumented migrants.”).

48. HAMLIN, *supra* note 7, at 9. Some have argued that the definition of refugees is itself outdated and is in need of change. *See, e.g.*, Bill Frelick, *It Is Time to Change the Definition of Refugees*,

HUM. RTS. WATCH (Jan. 28, 2020), <https://www.hrw.org/news/2020/01/28/it-time-change-definition-refugee> (arguing that internal displacement due to climate change effects may cause countries to reexamine their refugee laws and policies); Eunice Collins, *The Case for Reforming the Definition of ‘Refugee’ in the 1951 UN Convention Relating to the Status of Refugees*, 6 BRISTOL L. REV. 92, 107 (2019) (arguing the definition of refugee in the Convention needs to be reformed and taken into account if an individual is at risk to their life if they do not leave their country); Andrew I. Schoenholtz, *The New Refugees and the Old Treaty: Persecutors and Persecuted in the Twenty-First Century*, 16 CHI. J. INT’L L. 81, 83 (2015) (examining how the refugee convention can be adapted to changing circumstances of human security).

49. HAMLIN, *supra* note 7, at 1, 9.

50. *Id.* at 3–10 (discussing how the binary logic that a refugee rather than a migrant is more deserving of an international response incentivizes migrants to make riskier journeys to obtain refugee status while also incentivizing powerful states to invest in “preventative measures” to make their travels more dangerous).

51. *Id.* at 3, 11; *see also* Naomi Bartram, *11 Myths and Misconceptions About Refugees Debunked*, INT’L RESCUE COMM., (Aug. 28, 2024), <https://www.rescue.org/uk/article/11-myths-and-misconceptions-about-refugees-debunked> (discussing power of language and rhetoric in the perception of refugees and the myth that people crossing the English Channel are not ‘real’ refugees).

52. BRADLEY & DE NORONHA, *supra* note 20, at 2 (“Borders are always being breached, it seems. Hence the watery metaphors—the ‘deluge,’ ‘waves,’ or ‘floods’ of immigrants—surpassed only by the animalising language of ‘swarms.’”); *see also* Victoria Richards, *“Invasion, Swarm:” Words Matter—When They’re Being Used Like This, They’re Being Used as a Weapon*, INDEPENDENT (Nov. 1, 2022),

bombarding receiving states via an “invasion,”⁵³ and depicting the plight of people on the move as coming in “caravans.”⁵⁴

Distinguishing migrants from refugees, and the rhetoric that comes with this approach, justifies the dubious “ethics of border control.”⁵⁵ In recent decades powerful actors from the Global North, predominantly destination states for migrants, have imposed severe limitations on border crossings.⁵⁶ Some scholars have characterized modern border control practices premised on such migrant categorization as effectively abandoning the refugee protection system.⁵⁷ At the very least, the reliance of international migration governance decisions on labelling migration is the premise of why the international human rights community has avoided the persistent and growing problem of internal displacement.

III. INTERNALLY DISPLACED PERSONS

Internal displacement began receiving attention from the international community in the aftermath of the Second World War, despite the fact that the phenomenon is “likely much older if unheralded”.⁵⁸ In recent years, the IDP crisis has escalated in scope and

<https://www.independent.co.uk/voices/suella-braverman-invasion-migrants-fire-bombing-b2214905.html> (discussing how language around refugees often seeks to describe them as less than human).

53. Joel Rose, *Talk of 'Invasion' Moves from the Fringe to the Mainstream of GOP Immigration Message*, NAT'L. PUBLIC. RADIO (Aug. 3, 2022), <https://www.npr.org/2022/08/03/1115175247/talk-of-invasion-moves-from-the-fringe-to-the-mainstream-of-gop-immigration-mess>; Raul Reyes, *Why Texas Cannot Declare an 'Invasion' at the Border*, THE HILL (May 4, 2022), <https://thehill.com/opinion/immigration/3477083-why-texas-cannot-declare-an-invasion-at-the-border/>.

54. Rev. Gordon C. Stewart, *It's Not a Caravan*, MINNPOST (Nov. 8, 2018), <https://www.minnpost.com/community-voices/2018/11/its-not-a-caravan/>.

55. HAMLIN, *supra* note 7, at 155–56.

56. *Id.* at 3, 127.

57. *Id.* at 7. See also Thomas Gammeltoft-Hansen, *International Cooperation on Migration Control: Towards a Research Agenda for Refugee Law*, 20 EUR. J. MIGRATION & L. 373, 374 (2018) (“...[There is] increasingly disproportionate global distribution of refugees; leaving developing regions to shoulder 85% of the world’s refugees....”); Matthew J. Gibney, *Refugees and Justice Between States*, 14 EUR. J. POL. THEORY 448, 450 (2015) (noting that developing countries receive over 80% of refugees globally, a figure that “is 10% higher than it was a decade ago”); Tally Kritzman-Amir & Yonatan Berman, *Responsibility Sharing and the Rights of Refugees: The Case of Israel*, 41 GEO. WASH. INT’L L. REV. 619, 624 (2010) (stating that the Global South and “the least politically and economically capable countries” have continued to disproportionately bear the burden of hosting migrants as the Global North increasingly restricts immigration).

58. ORCHARD, *supra* note 5 at 1, 68–72.

scale,⁵⁹ while the challenges associated with internal displacement continue to be multifaceted in nature.⁶⁰

Despite the visibility of IDPs after World War II, the population was not included in the 1951 Refugee Convention,⁶¹ rendering their plight virtually ignored for four decades. The international human rights community began to identify the need for a framework to protect IDPs in the 1990s, when the number of people uprooted within the borders of their own countries began rapidly growing.⁶² Since the creation and existence of IDPs does not trigger the provision of international humanitarian assistance, internally displaced persons are dependent upon their home state governments for aid. These governments may be unable to provide IDPs protection or worse,

59. See *supra* notes 3–4 and accompanying text (sources indicating that the IDP crisis has escalated).

60. See CANTOR & WOOLLEY, *supra* note 4 (IDRP report indicating IDP levels rising). The conflict in Sudan has led to 10.7 million people uprooted from their homes, including 9 million displaced internally since the conflict erupted in April 2023. Mohamed Osman, *Sudan Conflict Fuels World's Largest Internal Displacement*, HUM. RTS. WATCH (Jan. 31, 2024), https://www.hrw.org/news/2024/01/31/sudan-conflict-fuels-worlds-largest-internal-displacement?gad_source=1&gclid=Cj0KCQiA5rGuBhCnARIsAN11vgRChgk__3c82kEc5FtF613tjPuxobpU6kcmSz-5Iei4IBgd3Jk32cMaAkCxEALw_wcB. Sudan now surpasses Syria, with its 7.2 million IDPs, marking a grave milestone in global displacement statistics. *Id.*; see also *Situation Report #79 on the Situation in the Gaza Strip and the West Bank, Including East Jerusalem*, UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES IN THE NEAR EAST (Feb. 19, 2024), <https://www.unrwa.org/resources/reports/unrwa-situation-report-79-situation-gaza-strip-and-west-bank-including-east-jerusalem> (estimating that UNRWA is currently housing 1,700,000 IDPs).

61. See *infra* note 122 and accompanying text.

62. *Guiding Principles on Internal Displacement*, INTERNAL DISPLACEMENT MONITORING CTR., <https://www.internal-displacement.org/internal-displacement/guiding-principles-on-internal-displacement> (“The first global IDP estimate compiled in 1982 comprised only 1.2 million people in 11 countries. By 1995, there were an estimated 20 to 25 million IDPs in more than 40 countries, almost twice the number of refugees.”); see also Francis M. Deng & Romola Adeola, *The Normative Influence of the UN Guiding Principles on the Kampala Convention in the Protection of Internally Displaced Persons in Africa*, 65 J. AFR. L. 59, 61–62 (2021) (“While the process that led to the formation of the UNGP emerged in the 1990s, realization of the gap in global governance on internal displacement began in the 1980s with an International Conference in Oslo on the Plight of Refugees, Returnees and Displaced Persons in Southern Africa.”); Cristina Churrua Muguruza & Patricia Garcia Amado, *Internally Displaced Persons: A Vulnerable Group in Need of Protection*, in *THE RIGHTS OF MINORITIES: CULTURAL GROUPS, MIGRANTS, DISPLACED PERSONS AND SEXUAL IDENTITY* 147, 147 (J. Alberto del Real Alcalá ed., 2017) (“[I]t was in the 1990s when the increasing incidence of gross human rights violations and resulting massive human displacement, caused mainly by internal armed conflicts, linked international and national security with the protection of internally displaced persons.”).

may be directly or indirectly complicit in causing their displacement in the first place.⁶³ The majority of IDPs are from particularly vulnerable populations. For example, a disproportionate share are women and girls.⁶⁴ The attention to the plight of IDPs in the 1990s resulted in the United Nations ratifying guiding principles to assist in rendering the issue of internal displacement “a global collective issue.”⁶⁵

A. Definitions and Definitional Concerns

The United Nations defines internally displaced persons as individuals and groups:

who have been forced or obligated to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or

63. The United Nations High Comm’r for Refugees, *Internally Displaced Persons*, REFWORLD (Mar. 10, 2023), <https://www.refworld.org/idps.html> (offering materials and reports to demonstrate how IDPs depend on government even if their government is the reason for the displacement).

64. A report by the United Nations published the following breakdown based on internal displacement statistics from 2020, when 55 million people were estimated to be living in internal displacement: “Women and girls make up over half of the world’s IDPs, 5 million IDPs are living with disabilities and an estimated 2.6 million are elderly. Over 30.5 million are children and youth.” U.N. Sec’y-Gen.’s High-Level Panel on Internal Displacement, *Shining a Light on Internal Displacement: A Vision for the Future*, INTERNAL DISPLACEMENT PANEL (Sept. 2021), <https://internaldisplacement-panel.org/wp-content/uploads/2021/09/HLP-report-WEB.pdf>; see also Marshaley J. Baquiano & Philip Ian P. Padilla, *Unpacking Internal Displacement in Philippine Media Using Social Representation Theory*, J. ETHNIC & MIGRATION STUDS. 1, 3 (2023) (“Forced displacement also bolsters pre-existing discrimination, marginalisation, and socioeconomic disadvantage against particular groups. For example, compared to men, displaced women find it more difficult to secure a decent livelihood, which consequently affects their potential to find safety as well as access healthcare and education. They are less able to participate in decision-making, even on matters affecting them, and thus, are also less able to express their concerns and make their voices heard.”); Asia-Pacific Gender in Humanitarian Action Working Group, *Good Practices Brochure: Internally Displaced People with Intersecting Vulnerabilities*, RELIEFWEB (Nov. 15, 2022), <https://reliefweb.int/report/afghanistan/good-practices-brochure-internally-displaced-people-intersecting-vulnerabilities> (offering evidence from Afghanistan that IDPs are often made up of vulnerable populations).

65. Deng & Adeola, *supra* note 62, at 61.

natural or human-made disasters, and who have not crossed an internationally recognized State border.⁶⁶

This definition was introduced in the United Nations Guiding Principles on Internal Displacement (UNGP), submitted to the United Nations Commission on Human Rights in 1998,⁶⁷ which was unanimously recognized by the UN General Assembly in 2005 as an “important international framework.”⁶⁸ In addition to defining internal displacement, the UNGP outlines guidelines to protect and assist IDPs, however, it does not create or confer a legal status upon them.⁶⁹

Although it is non-binding, the UNGP has gained acceptance as a reflection of binding international humanitarian, international human rights, and refugee law.⁷⁰ It has also informed the enactment of state laws on internal displacement. For example, Kenya and El Salvador are among the states that have modeled their domestic laws protecting IDPs on the UNGP,⁷¹ demonstrating that states may promulgate IDP policies by building on the guiding principles while “develop[ing policies] at their own pace and in response to localized

66. The UNGP, *supra* note 24.

67. *Id.*

68. G.A. Res. 60/1, ¶ 132, U.N. Doc. A/RES/60/1 (Sept. 16, 2005).

69. Global Protection Cluster Working Group, *Handbook for the Protection of Internally Displaced Persons*, U.N. HIGH COMM’R FOR REFUGEES [UNHCR] 1, 32 (June 2010), <https://www.unhcr.org/en-us/protection/idps/4c2355229/handbook-protection-internally-displaced-persons.html?query=internally%20displaced>; Expert Group on Refugee and Internally Displaced Persons Statistics (EGRIS), *International Recommendations on Internally Displaced Persons Statistics (IRIS)*, UNHCR, 3, 17 (Mar. 2020), <https://www.unhcr.org/en-us/statistics/unhcrstats/600188974/international-recommendations-internally-displaced-persons-statistics-iris.html?query=internally%20displaced>.

70. Deng & Adeola, *supra* note 62, at 62; *see also* Expert Group on Refugee and Internally Displaced Persons Statistics (EGRIS), *International Recommendations on Internally Displaced Persons Statistics (IRIS)*, 3, 17 (Mar. 2020), <https://www.unhcr.org/en-us/statistics/unhcrstats/600188974/international-recommendations-internally-displaced-persons-statistics-iris.html?query=internally%20displaced>; *see also* Roberta Cohen, *The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting*, 10 GLOBAL GOVERNANCE 459, 459 (2004) (“Although not a legally binding instrument like a treaty, the Guiding Principles quickly gained substantial international acceptance and authority. From the time they were introduced into the commission, governments, international organizations, regional bodies, and nongovernmental organizations (NGOs) began to cite and apply them.”).

71. Deng & Adeola, *supra* note 62, at 63. In Colombia, “the Constitutional Court drew heavily on the UNGP in articulating what standards are required in the protection of IDPs within the national context.” *Id.*

concerns and events.”⁷² Generally, the UNGP assigns responsibility for IDPs to the persons’ country of origin, but it also calls for “international intervention in case of manifest failure of a state to protect its population.”⁷³

Early efforts by humanitarian agencies to implement the UNGP while also carrying out their respective mandates proved to be overly burdensome, leading to the creation of the “cluster approach” to address displacement:

By definition, these are countries with humanitarian crises which are beyond the scope of one agency’s mandate and where the needs are of a sufficient scale and complexity to justify a multi-sectoral response with the engagement of a wide range of humanitarian actors.⁷⁴

In implementing the cluster approach, humanitarian agencies included the cooperation of national government as key figures to ensure that governments were being educated in and effectively following the guidelines provided by the UNGP.⁷⁵ In analyzing these efforts, one of the lead non-governmental organizations studying the implementation of the UNGP derived specific recommendations, including: “. . . creating disaster mitigation and preparedness plans and training security forces; responding to needs in the immediate displacement phase; and establishing conditions necessary for the achievement of durable solutions.”⁷⁶

In addition to the involuntary nature of the plight of IDPs, the other key element of the definition of internally displaced persons is the fact that they remain within the borders of their country of origin.

72. Angela Williams, *Turning the Tide: Recognizing Climate Change Refugees in International Law*, 30 LAW & POL’Y 502, 511 (2008).

73. Deng & Adeola, *supra* note 62, at 66.

74. INTER-AGENCY STANDING COMM. (IASC), GUIDANCE NOTE ON USING THE CLUSTER APPROACH TO STRENGTHEN HUMANITARIAN RESPONSE 3, (Nov. 24, 2006) <https://interagencystandingcommittee.org/system/files/2021-03/Guidance%20Note%20on%20Using%20the%20Cluster%20Approach%20to%20Strengthen%20Humanitarian%20Response.pdf>.

75. Rhodri C. Williams, *Protecting Internally Displaced Persons: A Manual for Law and Policymakers*, BROOKINGS-BERN PROJECT ON INTERNAL DISPLACEMENT 1, 1 (Oct. 2008). <https://www.refworld.org/pdfid/4900944a2.pdf>.

76. *Id.* at 39.

Described by political scientists as “non-alienage,”⁷⁷ pinning the definition of IDPs on which side of the border they are displaced is, as discussed in *infra* Part IV.B., a reflection of the primacy of state sovereignty in traditional international legal thinking. The definition also presupposes that IDPs are able to access protection and aid from their own state. However, “[i]n some cases..., particularly in conflict situations, states do appear to have lost their standing to act as the guarantor of their members’ human rights.”⁷⁸

Prior to the ratification of the UNGP, the international legal community did not specifically address the phenomenon of internal displacement.⁷⁹ While there is now a definition and specific guidance, there are still discrepancies as to how internal displacement is accounted for by international organizations and agencies. This is evident in cases of certain types of environmentally induced displacement,⁸⁰ including in the context of gradual or slow onset climate changes as opposed to extreme events.⁸¹ In the former, a World Bank study did not count people who were forced to leave their homes and resettle a short distance away:

[They didn’t include people who were displaced within [approximately] 14 kilometers, whilst actually at least in [other] studies . . . , those seem to be amongst the most vulnerable groups, as they don’t have a lot of means to move further away. So they have sort of no other choice than to stay somewhat closer to the area that’s being affected. But they are not included in the numbers because we always want to talk about migration or longer flows.⁸²

77. Draper, *supra* note 16, at 315 (“Those who are inside their state are in a condition of non-alienage, whereas those who are outside the territory of their state are in a condition of alienage.”).

78. *Id.* at 317. For more on the fiction of state protection, see *infra* Part II.B.

79. Tara Polzer & Laura Hammond, *Invisible Displacement*, 21 J. REFUGEE STUD. 417, 419–20 (2008).

80. The term “environmental refugee” was first introduced by the United Nations Environment Program in 1980 to describe those who migrate due to uninhabitable living conditions. Hana Nasser, *Administering an International Climate Migration Lottery*, 4 UNIV. CHICAGO J. INT’L L. 3, 3. Since then, scholars have created various other terms; see Rathod, *supra* note 13, at 5, which notes the use of “environmental migrant,” “environmental emergency migrant,” “environmentally motivated migrant,” “environmentally forced migrant,” “climate migrant,” “eco migrant,” and “climate refugee.”

81. Rathod, *supra* note 13, at 3–4.

82. Migrations: A World on the Move, *Climate Change*, CORNELL UNIV. MIGRATIONS INITIATIVE (Mar. 1, 2021), <https://feeds.acast.com/public/shows/migrations-a-world-on-the-move>.

Another definitional issue impacting the identification and tracking of IDPs involves uncertainty as to when internal displacement ceases to exist,⁸³ in other words ambiguity as to when there has been a “durable solution” to displacement.⁸⁴ Some governments view return as a durable solution to conflict-induced displacement; however, returnee IDPs may continue to experience vulnerabilities and struggle to achieve a durable solution even after return.⁸⁵ IDPs may be returned to their area of residence, but not their original home, rendering them what has been called “in-between IDPs.”⁸⁶ Invisible or in-between IDPs include populations living outside of camps, such as urban IDPs who often are ignored or misconceived as locally integrated.⁸⁷

The question of achieving a durable solution for internal displacement demonstrates the politically charged nature of responding to the situation of certain IDPs, particularly when the government of their country of origin is fully in control of the response. Specifically, what governments present as a solution to internal displacement is in fact forced relocation, as has often been the case in development projects.⁸⁸

Forced relocation also has been justified as an emergency measure, for example in the context of a famine in Ethiopia. In this case, instead of a durable solution the government’s response has

83. Erin Mooney, *The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern*, 24 REFUGEE SURV. Q. 9, 9 (2005) (noting that there is “no consensus on ‘when internal displacement ends’, that is, when an IDP should no longer be considered as such.”).

84. See Dereje Regasa & Ine Lietaert, *In Search of the Invisible People: Revisiting the Concept of “Internally Displaced Persons” in Light of an Ethiopian Case Study*, 41 REFUGEE SURV. Q. 320, 330 (2022), which notes that evidence in Africa demonstrates that governments assume that “conflict-drive displacements are transitory and can be handled once the violence ends.”

85. *Id.*

86. *Id.*

87. *Id.* at 330–31; see also Int’l Comm. of the Red Cross (ICRC), *Displaced in Cities: Experiencing and Responding to Urban Internal Displacement Outside Camps*, (July 2018), <https://www.icrc.org/en/publication/4344-displaced-cities-experiencing-and-responding-urban-internaldisplacement-outside> (reporting on and describing the struggle humanitarian organizations face in adapting approaches developed in rural environments and IDP camps to urban settings); see also Alexandra Fielden, *Ignored Displaced Persons: The Plight of IDPs in Urban Areas*, THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (2008), <https://www.unhcr.org/487b4c6c2.pdf> (finding that livelihoods “for urban IDPs are vital to their survival, since this group is only very rarely supported in food or shelter.”).

88. Regasa & Lietaert, *supra* note 84, at 337.

created a state of “permanent impermanence,” as the displaced population lacks the choice to return but also are not adequately integrated into the resettlement sites.⁸⁹

Generally, populations facing internal displacement who are not counted have been described as “invisible IDPs.”⁹⁰ The reasons for their exclusion from official counts go beyond definitional issues such as the World Bank’s reporting, including governments deliberating avoiding the use of the label for political reasons,⁹¹ difficulties in gathering data in countries undergoing conflict and violence,⁹² and challenges identifying these people because they have assimilated to their new location.⁹³

89. Forced resettlement or relocation of IDPs has also been characterized as “compulsory voluntarism.” Regasa & Lietaert, *supra* note 84, at 329.

90. BROOKINGS INST., *Under the Radar: Internally Displaced Persons in Non-Camp Settings*, BROOKINGS LSE PROJECT ON INTERNAL DISPLACEMENT (Oct. 2013), <https://www.brookings.edu/research/under-the-radar-internally-displaced-persons-in-non-camp-settings/> (supporting the idea that non-camp IDPs are difficult to find for government and international authorities, making them less visible); *see also* Ellie Kemp, *Africa’s Invisible Internal Displacement*, THOMAS REUTERS FOUND. NEWS (Dec. 9, 2016), <https://news.trust.org/item/20161209103739-j9mkr/> (referring to “invisible internal displacement” in terms of inadequate data collection for IDPs located in Africa); *see also* Frederick Muisa Wakhisi, *Surviving Displacement: The Case of “Invisible Internally Displaced Persons” Kisumu County 1991-2011* at iv (Oct. 15, 2015) (M.A. thesis, University of Nairobi), http://erepository.uonbi.ac.ke/bitstream/handle/11295/94576/Muisa_Surviving%20displacement.pdf;sequence=3 (referring to “invisible IDPs” as “displaced persons absorbed by their original communities” who “face similar challenges like IDPs in camps”).

91. *See* Henry Wilkins, *Burkina Faso’s Thousands of Invisible IDPs Cut Off from Support*, VOA (June 20, 2021), https://www.voanews.com/a/episode_burkina-fasos-thousands-invisible-idps-cut-support-4722636/6117292.html (describing IDPs as made invisible by efforts of the government of Burkina Faso to limit international awareness of IDP populations and barring journalists from entering IDP settlements).

92. *See* Bjorn Gillsater, *Forced Displacement is at a Record High—and so Is the Data We Have on It*, JOINT DATA CTR. ON FORCED DISPLACEMENT (Aug. 7, 2023), <https://www.jointdatacenter.org/forced-displacement-is-at-a-record-high-and-so-is-the-data-we-have-on-it/> (“[D]ata on internally displaced people has glaring gaps, and in countries affected by fragility, conflict and violence, such as the Democratic Republic of Congo, Ethiopia, Niger, Sudan, Syria and Yemen, there is also a lot more data needed.”).

93. *See* Zaldy C. Collado, *Determinants of Return Intentions Among Internally Displaced Persons (IDPs) of Marawi City, Philippines*, 30 DEV. IN PRACTICE 113, 114–15 (2020) (referring to “home-based” IDPs to describe displaced persons who have assimilated, or are presumed to have assimilated, into the general population of a host location).

B. *Taxonomy of Internal Displacement*

The previous section examined definitional issues with respect to internal displacement, namely limiting the scope of who counts as IDPs. Given the lack of international attention on internal displacement and that migratory patterns and migration enforcement are increasingly restrictive, this section provides an overview of how migrants become IDPs. It also lays out the causes of mass internal displacement, both within a short time frame or over a longer time span.⁹⁴ Traditionally and currently, conflicts and wars are a significant cause of internal displacement.⁹⁵

More recently, natural disasters have generated mass internal displacement.⁹⁶ In 2021, China had the highest IDP population displaced due to natural disasters globally.⁹⁷ Worldwide, floods and storms⁹⁸ account for over eighty percent of weather-induced

94. See U.N. Sec'y-Gen.'s High-Level Panel on Internal Displacement, *supra* note 64, at 3 ("Many of these threats [causing internal displacement] intersect and compound one another.").

95. See *Number of Internally Displaced People Hits Record Due to War, Climate Change*, *supra* note 4 (citing the war in Ukraine as accounting for the displacement of nearly 17 million citizens). Generally, besides environmentally induced displacement, the civil wars in Iraq and Syria are amongst the leading causes for a spike in internal displacement since 2018. *Displaced People: Why Are More Fleeing Home Than Ever Before?*, BBC NEWS (Sept. 24, 2019), <https://www.bbc.com/news/world-49638793>. The internal conflicts in the Democratic Republic of Congo, Yemen, and South Sudan, and the flow of Rohingya refugees from Myanmar to Bangladesh have also factored into the growing number of IDPs. *Id.*; see also Henry Ngenyam Bang & Roland Azibo Balgah, *The Ramification of Cameroon's Anglophone Crisis: Conceptual Analysis of a Looming "Complex Disaster Emergency"*, 7 J. INT'L HUMANITARIAN ACTION 1, 2 (2022) (describing displacement in Cameroon due to the "Anglophone crisis," i.e., the clash between English and French speakers).

96. See Imray, *supra* note 4 (noting that the impact of natural disasters on displacement cannot be overlooked, with the La Niña weather phenomenon contributing to record levels of flood displacement in countries like Pakistan, Nigeria, and Brazil, as well as severe droughts in Somalia, Kenya, and Ethiopia).

97. *Number of Internally Displaced People (IDPs) Due to Disaster in 2021, By Country*, STATISTA (Aug. 5, 2022), <https://www.statista.com/statistics/546004/number-of-internally-displaced-people-due-to-disaster-worldwide-by-country/> ("In 2021, about 6.04 million people in China were internally displaced due to [natural] disaster[s] – the most out of any country. The Philippines, India, the Democratic Republic of Congo, and Indonesia rounded out the top five.").

98. The flooding in Pakistan is a recent tragic example. See Gibran Naiyyar Peshimam & Syed Raza Hassan, *Death Toll in Pakistan Floods Nears 1,500: Hundreds of Thousands Sleep in Open*, REUTERS (Sept. 15, 2022), <https://www.reuters.com/world/asia-pacific/pakistan-floods-death-toll-nears-1500-2022-09-15/>

displacement.⁹⁹ Earthquakes, such as those that battered Haiti in 2010 and again in 2021,¹⁰⁰ and more recently devastating earthquakes in Turkey and Syria in 2023,¹⁰¹ are another relevant type of sudden-onset natural disaster that creates mass displacement. Generally, there is a causal relationship between natural disasters and climate change, insofar as the latter is impacting the frequency and intensity of the former.¹⁰²

There are also anthropogenic causes of mass internal displacement, particularly development projects that displace Indigenous and other vulnerable land-dependent communities. Examples of

(reporting on the flood). In the United States, Hurricane Katrina disproportionately displaced, many permanently, low-income people of color along the Gulf Coast. Gillian B. White, *A Long Road Home: The Systems In Place to Provide Aid After Natural Disasters Often Fail Those Who Need Help the Most*, ATL. (Aug. 3, 2015), <https://www.theatlantic.com/business/archive/2015/08/hurricane-katrina-sandy-disaster-recovery-/400244/>.

99. Eastern Kentucky University, *Displacements Due to Natural Disasters: Spending and Solutions*, TRUTHOUT (Mar. 16, 2015), <https://safetymanagement.eku.edu/blog/displacements-due-to-natural-disasters-spending-and-solutions-infographic/>; see also World Meteorological Organization, *Weather-related disasters increase over past 50 years, causing more damage but fewer deaths* (Aug. 31, 2021), <https://wmo.int/media/news/weather-related-disasters-increase-over-past-50-years-causing-more-damage-fewer-deaths> (reporting on increasing weather and climate extremes as leading to larger numbers of people being displaced each year by floods, storms, and drought).

100. *Country Profile: Haiti*, INTERNAL DISPLACEMENT MONITORING CTR. (2021) <https://www.internal-displacement.org/countries/haiti/> (last updated May 18, 2022) (estimating 1.7 million Haitians have been internally displaced by earthquakes between 2008-2021).

101. *More Than 850,000 Syrian, Turkish Children Displaced by Earthquakes*, UN NEWS (Mar. 6, 2023), <https://news.un.org/en/story/2023/03/1134182>; Oliver Holmes et al., *Thousands Dead, Millions Displaced: The Earthquake Fallout in Turkey and Syria*, GUARDIAN (Feb. 21, 2023), <https://www.theguardian.com/world/2023/feb/20/thousands-dead-millions-displaced-the-earthquake-fallout-in-turkey-and-syria>.

102. *Climate and Weather Related Disasters Surge Five-Fold Over 50 Years, But Early Warnings Save Lives—WMO Report*, UN NEWS (Sept. 1, 2020), <https://news.un.org/en/story/2021/09/1098662>; Sarah Kaplan, *The Undeniable Link Between Weather Disasters and Climate Change*, WASH. POST (Oct. 22, 2020); Maarten K. van Aalst, *The Impacts of Climate Change on the Risk of Natural Disasters*, 30 DISASTERS 5, 9, 16 (2006).

such projects include the building of hydroelectric dams in India¹⁰³ and Panama.¹⁰⁴

Organized crime is also a significant source of internal displacement. For example, as a transit country for migrants seeking to cross the southern U.S. border, Mexico is typically associated with its refugee population rather than with the phenomenon of internal displacement.¹⁰⁵ The numbers, however, tell a different story: as of December 2020, there were an estimated 50,000 refugees in Mexico and roughly seven times that number of IDPs.¹⁰⁶ In just over ten years, the number of Mexican IDPs increased dramatically: in 2009, there were approximately 8,000 IDPs in Mexico, and by 2020 there were roughly 357,000 people facing internal displacement.¹⁰⁷ The

103. Laraib Qavi, Mohd. Hamza & Mohd. Rehan, *The Need of a Proper Policy for IDPs in India*, 5 INT'L J.L. MGMT. & HUMAN. 720 (2022) (noting India's reticence to develop IDP-centered policy and calling for comprehensive domestic policy to assist IDPs in India which totaled over 5 million in 2019); *see also India: National and State Authorities Failing to Protect IDPs*, INTERNAL DISPLACEMENT MONITORING CTR. (Sept. 2, 2010), <https://www.justice.gov/sites/default/files/eoir/legacy/2014/01/28/India%2B-%2BSeptember%2B2010.pdf> (estimating the internal displacement of 160,000 people in India between 1999 and 2009 due to the construction of development projects, including hydroelectric dams); Paramjit S. Judge, *Response to Dams and Displacement in Two Indian States*, 37 ASIAN SURV. 840, 840–41 (1997).

104. Mary Finley-Brook & Curtis Thomas, *Treatment of Displaced Indigenous Populations in Two Large Hydro Projects in Panama*, 3 WATER ALTS. 269, 271 (2010).

105. Andrew I. Rudman, *Mexico's Internally Displaced Are an Unrecognized Migration Crisis*, HILL (Oct. 5, 2021), <https://thehill.com/opinion/international/575310-mexico-internally-displaced-are-an-unrecognized-migration-crisis> (describing how Mexico's IDP population often goes under-recognized even though it is much greater than the number of refugees in the country); *see also Country Profile: Mexico*, INTERNAL DISPLACEMENT MONITORING CTR. (2021), <https://www.internal-displacement.org/countries/mexico>.

106. Rudman, *supra* note 105.

107. *Id.* (reporting on IDPs in Mexico). IDPs in Mexico have been a growing concern for decades; however, the phenomenon has not been systematically documented. *See* Valeria Uribe, *On the Run at Home: Internally Displaced Persons in Mexico*, MEX. BUS. NEWS: POL'Y & ECON. (June 15, 2021), <https://mexicobusiness.news/policy-andeconomy/news/run-home-internally-displaced-persons-mexico>. It was not until 2019 that the Mexican government legally recognized internal displacement occurring within its borders and acknowledged the need to address this issue through updates to institutional frameworks. Since then, Mexico has made strides to assist IDPs. *Id.* In 2019, the Mexican government provided food and alternative housing for displaced persons in Chichihualco, Guerrero after demands for humanitarian support were made. *Id.* In September of 2020, the lower house of Mexico's Congress passed the Law to Prevent, Attend to, and Repair Forced Internal Displacement. *Id.* This law was designed to "recognize and guarantee the rights of IDPs; assign responsibility among

forced lockdowns in response to the COVID-19 pandemic caused greater tension between criminal organizations, inflaming interorganizational violence and increasing displacement.¹⁰⁸ Interestingly, the Mexican media refers to IDPs as *desplazados*, which translates to “other migrants.”¹⁰⁹

Internal displacement may also be a result of restrictive migration policies that both transit and destination states have implemented in greater measure, such as transnational migration deterrence policies designed to prevent migrants from crossing the border of their desired destination state.¹¹⁰ Faced with the prospect of restrictive and perilous migration routes, an increasing number of displaced persons may be electing to remain displaced in their home countries. Cross-border migration is becoming increasingly dangerous, lethal, and/or unsuccessful,¹¹¹ rendering the decision to migrate beyond one’s border ever more onerous. A characteristic of transnational migration deterrence is what one scholar coined “the politics

federal and municipal organizations to generate durable solutions; create a national mechanism to explicitly address forced internal displacement; and establish a national registry for IDPs.” *Id.* However, the Senate has yet to pass this legislation. *Id.* Outside of recognizing IDPs, Uribe argues that the government needs to provide safe homes for IDPs in host communities, assist them in obtaining gainful employment opportunities, and support education institutions in adapting to integrating new displaced children. *Id.* (describing how violence-caused displacement increased the community’s risk to COVID-19).

108. Rudman, *supra* note 105 (noting that many IDPs in Mexico have trouble finding safe and affordable housing in new areas causing them to flee to other unsafe locations); see also Deslandes, *supra* note 10.

109. Deslandes, *supra* note 10.

110. See Sinha, *supra* note 44, at 1299 (describing transnational migration deterrence as an accountability framework which, building from the concept of externalization, “captures the affirmative steps taken by [destination] states to curb the mobility of migrants . . . [through] arrangements where other, less-resourced states do the work of migration control for them.”); see also HAMLIN *supra* note 7, at 46 (noting how policies of border externalization prevent migrants from access to the asylum systems in the Global North).

111. Tightened border controls in destination countries are also one of the primary reasons migrants find themselves stuck in transit countries. *Living in the Shadows: A Primer on the Human Rights of Migrants*, AMNESTY INT’L 3 (2006). The term “stranded migrant” is used to describe migrants stuck in transit, unable to enter their desired destination country and unable to return home. See Rebecca Dowd, *Trapped in transit: the plight and human rights of stranded migrants*, UNHCR (June 2008), <https://www.unhcr.org/enus/research/working/486c92d12/trapped-transit-plight-human-rights-stranded-migrants-rebecca-dowd.html>. Stefanie Grant, *The Legal Protection of Stranded Migrants*, in INT’L MIGRATION L.: DEVELOPING PARADIGMS & KEY CHALLENGES 30, (R. Cholewinski et al. eds., 2007). There is no agreed or legal definition for the term “stranded migrant.” *Policy Brief No. 5: Stranded Migrants*, MIGRANT F. IN ASIA 1 (2013).

of exhaustion,” a term encompassing the ways in which destination countries endeavor to force migrants to abandon their journey.¹¹² Examples of transnational migration deterrence also include the creation of new border posts¹¹³ and the financing and execution of removal of migrants from transit states by destination states.¹¹⁴

112. Professor Welander describes “the politics of exhaustion” as a “complex deterrence approach with the objective of exhausting asylum seekers, mentally and physically, with the ultimate goal of deterring them from approaching Britain for asylum, or indeed other European asylum systems.” Marta Welander, *The Politics of Exhaustion and the British Sea Crossings Spectacle*, BORDER CRIMINOLOGIES BLOG (Jan. 28, 2019). Extrapolating from her field work outside the United Kingdom border, Welander identifies several categories of practices and methods within the politics of exhaustion: (1) ritualized forms of direct and indirect violence and abuse; (2) the withdrawal of care and manufacturing of vulnerability; (3) acts of dispossession; (4) shrinking and defoliation of living spaces; (5) forced mobility and immobility; and (6) uncertainty and undercurrents of threat. Marta Welander, *The Politics of Exhaustion and the Externalization of British Border Control. An Articulation of a Strategy Designed to Deter, Control and Exclude*, 59 INT’L MIGRATION 29, 31-32 (2020).

113. European states encouraged the creation of a new border post outside the town of Kantchari in the borderland between Burkina Faso and Niger to stop West African labor migration. See Kamal Donko et al., *Migration Control, the Local Economy and Violence in the Burkina Faso and Niger Borderland*, J. OF BORDERLANDS STUD. 235, 236 (2021). In December of 2019, there were also thirteen different checkpoints between Ouagadougou (the capital of Burkina Faso) and Kantchari (near Niger), where military would stop travelers without valid documents and charge fines and subject individuals to searches. *Id.* at 241; see also Juan Montes, *Mexico Steps Up Detentions and Deportations of Migrants*, WALL ST. J. (Apr. 17, 2021, 9:33 PM), <https://www.wsj.com/articles/mexico-steps-up-detentions-and-deportations-of-migrants-11618699790> (detailing Mexico’s deterrence measures to prevent migrants from crossing into the United States, including installing dozens of new checkpoints in its southern states of Chiapas and Tabasco and increasing its presence at the border with Guatemala to prevent children and teenagers from being used by adult migrants to enter the United States).

114. For example, since 2017 the European Union has paid for the flights of approximately 16,000 people back from Libya to Nigeria. Matie Vermeulen, *What Happens to Migrants Who Are Sent Back? I Spent A Year Following 12 People to Find Out*, CORRESPONDENT (Jan. 9, 2020), <https://thecorrespondent.com/213/what-happens-to-migrants-who-are-sent-back-i-spent-a-year-following-12-people-to-find-out/28168874481-35612b42>. Many deportees return with less than they left with, and the shame and depression that comes with returning to home country makes reintegration even harder. *Id.*; see also *USA and Mexico Deporting Thousands of Unaccompanied Migrant Children into Harm’s Ways*, AMNESTY INT’L (June 11, 2021), <https://www.amnesty.org/en/latest/news/2021/06/estados-unidos-mexico-deportan-miles-ninos-migrantes-situaciones-peligro/> (documenting how Mexican immigration authorities shut down the southern border and forcibly returned most of the unaccompanied child migrants they apprehended, specifically of the Central American children who were taken into custody, 90 percent and 70 percent were deported in 2019 and 2020, respectively).

Among the most overlooked causes of internal displacement are internal immigration enforcement policies and modern border enforcement practices by countries hosting migrants with no or precarious status. In the United States, for example, the deportation of non-citizens has skyrocketed over the last two decades,¹¹⁵ including the deportation of lawful permanent residents and others who have little to no ties to their countries of origin.¹¹⁶ Additionally, the U.S. government and countries around the world effectuate deportations in a haphazard and arguably inhumane manner.¹¹⁷ Another factor linking deportation with internal displacement is societal stigma in the country of origin attached to deportees.¹¹⁸

115. See Marc C. Roseblum et al., *The Deportation Dilemma: Reconciling Tough and Humane Enforcement*, MIGRATION POL'Y INST. 1, 3, 43 (Apr. 2014) (explaining that a sharp rise in removals of unauthorized immigrants has taken place in the United States since 1990—rising from approximately 30,000 to nearly 400,000 annually); see also Ana Gonzalez-Barrera & Jens Manuel Krogstad, *U.S. Immigrant Deportations Declined in 2015, But Remain Near Record High*, PEW RSCH. CTR. (Aug. 31, 2016), <https://www.pewresearch.org/fact-tank/2016/08/31/u-s-immigrant-deportations-declined-in-2014-but-remain-near-record-high/> (discussing U.S. Department of Homeland Security data indicating high rates of deportation despite a slight decrease in recent years).

116. *The Deported: Immigrants Uprooted from the Country They Call Home*, HUM. RTS. WATCH (Dec. 5, 2017), <https://www.hrw.org/report/2017/12/06/deported/immigrants-uprooted-country-they-call-home> (discussing the Trump Administration policy repealing Deferred Action for Child Arrivals (DACA) “exposing hundreds of thousands of young immigrants who grew up in the US to potential deportation.”); see also Zolan Kanno-Youngs et al., *As Trump Broadens Crackdown, Focus Expands to Legal Immigrants and Tourists*, N.Y. TIMES (Mar. 21, 2025), <https://www.nytimes.com/2025/03/21/us/politics/trump-immigration-visa-crackdown.html> (discussing Trump Administration arrest and detention of lawful permanent resident, Mahmoud Khalil, and discussion potential deportation under the Immigration and Nationality Act).

117. For example, migrants deported from the United States to Guatemala are often returned to cities they have never been and with often nothing more than their names. David Dow et al., *Biden Wants to Halt Deportations. Here's What Happens When Migrants Are Sent Back*, WASH. POST (Mar. 3, 2021), <https://www.washingtonpost.com/politics/2021/03/03/biden-wants-halt-deportations-heres-what-happens-when-migrants-are-sent-back/>. After three to six months of living in Guatemala, many deportees remain unable to find work and fall victim to gangs and the police. Many deportees often leave family members in the United States as well as savings, property, and other valuables. Many are unable to access any of the assets they left in the United States prior to being deported. *Id.* Of Guatemalans deported from the United States, only a few call Guatemala City home, meaning most return to an area they are unfamiliar with and must choose to remain or where to go next. *Id.*

118. See, e.g., Bernard Headley & Dragan Milovanovic, *Rebuilding Self and Country: Deportee Reintegration in Jamaica*, MIGRATION POL'Y INST. (Aug. 16, 2016), <https://www.migrationpolicy.org/article/rebuilding-self-and-country-deportee->

C. *The Fiction of State Protection*

As discussed above, the key distinction between IDPs and migrants is that the former are inside the border of their country of origin.¹¹⁹ This distinction is partly based on the presumption that IDPs have access to protection from their country of origin's government.¹²⁰ States' duty to provide this protection to its citizens is a central part of having a functioning government—the “protective role is at the heart of an implicit social contract between state and society.”¹²¹

The presumption of state protection is a major reason why the 1951 Refugee Convention ultimately did not include populations who are internally displaced. In voicing her opposition to the inclusion of IDPs in the Convention, then-former First Lady Eleanor Roosevelt, who was a member of the U.S. delegation to the United Nations General Assembly when the Convention was under consideration, stated that cases of internal displacement were:

separate problems of a different character, in which no question of protection of the persons concerned was involved . . . but those problems should not be confused with the problem before the General Assembly, namely, the

reintegration-jamaica. Over 45,000 Jamaicans were deported between 2000 and 2014. Most are deported from the United States, the United Kingdom, and Canada. *Id.* The U.S. government is not alone in causing internal displacement in the removal of migrants. The Swedish government, for example, removes asylum seekers to Iraq and Afghanistan often return to inhumane living conditions. Frey Lindsay, *What Happens When Rejected Asylum Seekers Are Sent Back*, FORBES (June 14, 2021), <https://www.forbes.com/sites/freylindsay/2021/06/14/what-happens-when-rejected-asylum-seekers-are-sent-back/?sh=2094ad667f1d>. Because the Swedish government deems Kabul safe for removals, Afghan returnees are returned to the capital regardless of their internal place of origin. This poses problems because returnees often do not have connections in Kabul and are subject to discrimination and harassment because of their minority status. *Id.* Some returnees actually spent their entire lives in Iran even though they are Afghan nationals. *Id.* Other returnees arrived in Sweden as children and therefore return to Kabul with almost no connections. *Id.*

119. See Williams, *supra* note 75, at 39 and accompanying text.

120. See JAMES C. HATHAWAY & MICHELLE FOSTER, *THE LAW OF REFUGEE STATUS* (2nd ed. 2014) 17–18 (noting that refugee law is principally concerned with providing a remedy to a fundamental breakdown in the relationship between an individual and their state).

121. CHRISTOPHER K. ANSELL, *THE PROTECTIVE STATE* 1 (2019) (noting that “[e]xtensive scholarship exists about the welfare state, the regulatory state, the developmental state, the security state, and even the green state, but the protective state is scarcely recognized as a distinctive idea.”).

provision of protection for those outside their own countries, who lacked the protection of a Government and who required asylum and status.¹²²

The reliance on the assumption of state protection for IDPs, however, in many cases is a false one, with myriad reasons why IDPs' home government may be unable or unwilling to protect them.¹²³ One is that the government is responsible for causing the displacement in the first instance, as in Myanmar where the government since the 2021 coup has targeted resistance groups, journalists, reporters, and protesters, forcing these citizens to flee to other areas within the country.¹²⁴ This political persecution and the ensuing civil unrest, coupled with the government's inadequate responses to significant climate disasters, has caused nearly 3.5 million IDPs in Myanmar.¹²⁵

122. ORCHARD, *supra* note 5, at 63. Prior to the Refugee Convention, refugees and IDPs were termed used interchangeably. *Id.* at 81 ("The debates during the drafting of the Refugee Convention were critical in framing how refugees were understood then and into the present and in excluding IDPs from similar consideration. Practices prior to those debates were not fixed. Both terms 'refugee' and 'displaced person' were used fluidly in different arrangements, conventions, and international organizational practice."); see also Brid Ní Ghráinne, *Time for a Convention on Internal Displacement? The History of the Internal Displacement Protection Regime*, REFUGEE HIST. (July 21, 2022), <https://refugeehistory.org/blog/2022/7/21/time-for-a-convention-on-internal-displacement-the-history-of-the-internal-displacement-protection-regime> (noting that France also opposed the inclusion of IDPs on the grounds of state sovereignty).

123. The language of a state actor "unable or unwilling" to protect is part of the U.S. definition of refugee as applied to asylum law. 8 U.S.C. § 1101(a)(42) ("The term 'refugee' means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion . . .").

124. U.S. Committee for Refugees and Immigrants, *Policy Brief: Myanmar's Human Rights Crisis: In Freefall with Insufficient International Attention*, 7 POL'Y & ADVOC. REP., at 1–2 (Feb. 29, 2024), <https://refugees.org/myanmars-human-rights-crisis-in-freefall-with-insufficient-international-attention/#:~:text=More%20than%202.6%20million%20individuals,food%20insecurity%2C%20and%20safety%20concerns>.

125. U.N. Office for the Coordination of Humanitarian Affairs, *Myanmar Humanitarian Update No. 43: Reflecting on 2024 and Preparing for 2025*, <https://www.unocha.org/publications/report/myanmar/myanmar-humanitarian-update-no-43-reflecting-2024-and-preparing-2025> ("Conflict between the Myanmar Armed Forces (MAF) and various ethnic and resistance groups has persisted in Rakhine, the Northeast, Northwest and Southeast. As a result, the total number of internally displaced persons (IDP) to over 3.5 million at the end of 2024.").

In other cases, certain citizens are not treated as IDPs because they are part of populations who face discrimination by their government. In Ethiopia, for example, the government's practice of ethnic federalism inherently involves a politics of othering,¹²⁶ where "outsider" ethnic groups are forced to flee civil violence and are not afforded state protection.¹²⁷ As stated in the previous section, governments may not treat IDPs as such because of reputational concerns vis-à-vis the international community, while others may be unable to protect IDPs—an example of the latter being governments in certain Central American states where significant displacement is causing rampant gang-related violence.¹²⁸ Governments may be unwilling to protect IDPs because of reputational concerns, not wanting to draw the attention of the international community to what it perceives to be a domestic issue.¹²⁹

The notion that the international community does not need to play a part in safeguarding IDPs because their home governments will provide protections is linked closely to the deference in traditional international law to state sovereignty. As discussed *infra* in Part V.B., this is a concept that has been critically examined by scholars

126. The 1994 constitution under the Ethiopian People's Democratic Revolutionary Front restructured the configuration of Ethiopia's centralized state power to a federalist system comprised of nine semi-autonomous self-governing regional states organized on ethnic lines. Regasa & Lietaert, *supra* note 84, at 332–33.

127. *Id.* at 329, 335; see also Rabel Desalegn, *Inter Communal Conflicts (2017-2018) and the Protection of IDPs in Ethiopia: The Need for Specific Legal and Institutional Regime*, 16 MIZAN L. REV. 59, 67 (2022) (observing lack of, and calling for, a domestic legal or institutional framework to protect inter-communal conflict induced IDPs in Ethiopia).

128. Noah Bullock, *Countering El Salvador's Democratic Backsliding*, HUM. RTS. WATCH (Mar. 21, 2023), <https://www.hrw.org/news/2023/03/21/countering-el-salvadors-democratic-backsliding>; see also Kevin Ackerman et al., "There is No One Here to Protect You": Trauma Among Children Fleeing Violence in Central America, PHYSICIANS HUM. RTS. (June 10, 2019), <https://phr.org/our-work/resources/there-is-no-one-here-to-protect-you/> (discussing research that indicates gang violence is among the most prevalent forms of persecution reported by child asylum seekers from Central America in the U.S.); see also Jane E. Dowd, *A Credible Fear: The Politics of Gang Violence in the Northern Triangle A Case Study* (May 2019) (M.A. thesis, CUNY), https://academic-works.cuny.edu/cgi/viewcontent.cgi?article=4331&context=gc_etds (describing how economic dependence and civil war contributed to an immigration surge from Central America to the U.S.).

129. Anne Koch, *On the Run in Their Own Country: Political and Institutional Challenges in the Context of Internal Displacement*, GERMAN INST. INT'L AND SEC. AFFS. 7 (May 2020), https://www.swp-berlin.org/publications/products/research_papers/2020RP05_InternalDisplacement.pdf ("[M]any governments deny that internal displacement occurs on their territory because they fear international sanctions or a loss of reputation.").

and global humanitarian leaders since the Second World War and the post-Cold War era.¹³⁰

IV. EXISTING DISPLACEMENT INSTRUMENTS

This Part provides a comprehensive analysis of international and regional agreements focused on providing protections for IDPs and addressing the challenges raised by internal displacement. These agreements have largely come into effect after the United Nations recognized the need for specific guidance on internal displacement. This Part also demonstrates how adjacent international agreements, particularly with respect to climate change and migration more generally, typically neither contemplate protections for IDPs nor address the challenges associated with internal displacement.

A. *Twenty-Five Years of Internal Displacement Policies*

The international human rights community neglected the plight of IDPs for decades after the enactment of the 1951 Refugee Convention, which marginalized the problem of internal displacement. As discussed in Part III.A, in 1998 the United Nations ratified the UN Guiding Principles on Internal Displaced Persons (UNGP), during a decade in which internal displacement garnered considerable attention from the global community.¹³¹ To facilitate the critical task of collecting data on IDPs, the Internal Displacement Monitoring Centre (IDMC) was established in 2005.¹³² Subsequently, the United Nations developed additional initiatives to address internal displacement.

130. James Traub, *Absolute Fiction: The Perversion of Sovereignty*, 171 WORLD AFFS. 73, 73, 76, 78 (discussing the impact of the post-World War II concept of a “failed state,” then-U.N. Secretary General Kofi’s comments on humanitarian crises during the 1990s, and the establishment of the International Committee on Intervention and State Sovereignty by the Canadian government).

131. See U.N. Sec’y-Gen.’s High-Level Panel on Internal Displacement *supra* note 64; see also Baquiano, *supra* note 64; see also Asia-Pacific Gender in Humanitarian Action Working Group, *supra* note 64; see also Deng & Adeola, *supra* note 62, at 61; see also The UNGP, *supra* note 24 and accompanying text.

132. See Cantor & Wolley, *supra* note 4, at 4 (“The Internal Displacement Monitoring Centre (IDMC), which is part of the Norwegian Refugee Council, a non-governmental humanitarian agency, collates data from different sources to produce global estimates on internal displacement. In tandem, the [UNHCR] publishes data on the IDPs whom it protects or assists....”).

Although it received considerably less attention from scholars than the UNGP, the United Nations adopted an Inter-Agency Standing Committee (IASC) Framework for Durable Solutions for IDPs (hereinafter “IASC Framework”) in 2009.¹³³ The IASC Framework addresses situations “when internally displaced persons no longer have any specific assistance and protection needs that are linked to their displacement.”¹³⁴ In doing so, it provides guidance for the return or reintegration of IDPs after the incident causing their displacement has passed.¹³⁵ The IASC Framework puts the primary responsibility for IDPs on national governments, characterizing “international humanitarian and development actors [as] hav[ing] complementary roles.”¹³⁶

To mark the twentieth anniversary of the UNGP, in 2018 the UN Special Rapporteur on Internally Displaced Persons conducted an investigation on country-specific solutions to addressing the issues faced by internally displaced persons.¹³⁷ The report urged national

133. See Cantor & Woolley, *supra* note 4, at 7 (describing how the IASC is one such global policy given less scholarly attention); see also Matijević et al., *supra* note 6, at 6 (describing the final version of the Framework and the IASC structure consisting of “executive heads of 18 UN and other organisations”).

134. The Brookings Institution—University of Bern Project on Internal Displacement, *IASC Framework on Durable Solutions for Internally Displaced Persons A-1* (Apr. 2010), <https://www.refworld.org/reference/themreport/brookings/2010/en/89707>.

135. *Id.* at 5; see also Matijević et al., *supra* note 6 (explaining that States have the “duty and responsibility” to help and assist with the reintegration or return of internally displaced persons); Margharita Lundkvist-Houndoumadi & Jasmine Ketabchi, *The Application of the IASC Framework in Somalia and Sudan*, 65 FORCED MIGRATION REV. 1, 80 (2020) (analyzing the IASC Framework in the context of Somali and Sudanese internal displacement); Megan Bradley, *Durable Solutions and the Right of Return for IDPs: Evolving Interpretations*, 30 INT’L J. REFUGEE L. 218 (2018) (tracing the evolution of durable solutions for IDPs).

136. The Brookings Institution—University of Bern Project on Internal Displacement, *supra* note 134, at 11.

137. The U.N. Special Rapporteur also noted a sense of urgency with respect to the “continuing and increasing adverse effects of climate change . . .” U.N. Special Rapporteur on the Human Rights of Internally Displaced Persons, *Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons*, U.N. Doc. A/HRC/38/39 (Apr. 11, 2018); see generally United Nations Human Rights Office of the High Commissioner, International Standards, <https://www.ohchr.org/en/special-procedures/sr-internally-displaced-persons/international-standards>; see also Hannah Entwisle Chapuisat, *Working Together Better to Prevent, Address and Find Durable Solutions to Internal Displacement* (2020), https://www.iom.int/sites/g/files/tmzbd1486/files/documents/GP20_Compilation-Report.pdf (highlighting “practices on preventing, addressing and finding durable solutions to internal displacement” in light of the recent uptake in internally displaced people).

governments to provide protection for internally displaced persons and to re-conceptualize them as “citizens with displacement specific needs.”¹³⁸ More recently, the United Nations Secretary General formed a High Level Panel on Internal Displacement.¹³⁹ The Panel’s findings informed the UN Secretary-General’s Action Agenda on Internal Displacement,¹⁴⁰ which included a call for “go[ing] beyond thinking about phases of action on displacement” and suggesting instead “work[ing] towards prevention, response and solutions simultaneously.”¹⁴¹

Protections for internally displaced persons can also be found in regional agreements and domestic laws.¹⁴² Generally, the agreements and laws that most successfully protect internally displaced persons address “timing; the involvement of independent domestic institutions; clear linkages to other regional and international processes; and, finally, ongoing international support.”¹⁴³

One such example of a regional agreement is the Kampala Convention, which was adopted by a Special Summit of the African Union in October of 2009 and entered into force on December 6, 2012.¹⁴⁴ The Kampala Convention is the first and currently only legally binding regional instrument on internal displacement,¹⁴⁵

138. Chapuisat, *supra* note 137, at 10. For a discussion on the concept of precarious citizenship, see *infra* Part IV.C.

139. U.N. Sec’y-Gen.’s High-Level Panel on Internal Displacement, *supra* note 64, at 61.

140. See United Nations, *The United Nations Secretary-General’s Action Agenda on Internal Displacement: Follow-Up to the Report of the UN Secretary-General’s High Level Panel on Internal Displacement* (June 2022), <https://www.un.org/en/content/action-agenda-on-internal-displacement/>.

141. *Id.* at 7. The U.N. Secretary-General’s Action Agenda also established a Special Advisor on Solutions to Internal Displacement, who will work with a Steering Group on Solutions to Internal Displacement. *Id.* at 11.

142. Philip C. Orchard, *Protecting Internally Displaced Persons: The Role of National Legislation and Policies*, ASIA PACIFIC CTR. FOR RESP. TO PROTECT 1, 1–4 (2018) (discussing how domestic legislation and policies in line with the Guiding Principles helps to protect IDPs).

143. *Id.* at 11.

144. African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), Oct. 23, 2009, 49 I.L.M. 86 (entered into force Dec. 6, 2012).

145. The *Juba Peace Agreement* was another attempt to create a legally binding regional instrument to address IDP return and transitional justice matters. It was signed in 2020 by non-state actors in Sudan, following the fall of Omar al-Bashir in 2019. However, the agreement has faced significant delays and challenges in implementation.

outlining the responsibilities pertaining to the prevention of displacement and recommending efforts to reduce the vulnerabilities of those displaced.¹⁴⁶ The legally binding nature of the Kampala Convention is particularly important; since the Kampala Convention's passage studies have indicated that legally binding frameworks, particularly regional ones, may importantly contribute to shoring up protections for IDPs.¹⁴⁷

Mirroring the language of the UNGP, the Kampala Convention defines IDPs as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual

See Internal Displacement Monitoring Centre, *Global Report on Internal Displacement 2022, Part 2: Children and Youth in Internal Displacement* 41 (2022), https://www.internal-displacement.org/sites/default/files/publications/documents/IDMC_GRID_2022_LR.pdf (citing Zaid Al-Ali, *The Juba Agreement for Peace in Sudan: Summary and Analysis*, INT'L INST. FOR DEMOCRACY & ELECTORAL ASSISTANCE (Dec. 2021), <https://www.idea.int/sites/default/files/publications/the-juba-agreement-for-peace-in-sudan-en.pdf>) (discussing how the Juba Peace agreement was aimed at issues of internal displacement but faces implementation challenges).

146. See Andrew Solomon, *(Re)Introducing the African Union Convention on the Protection and Assistance of Internally Displaced Persons*, BROOKINGS (Feb. 17, 2010), <https://www.brookings.edu/articles/reintroducing-the-african-union-convention-on-the-protection-and-assistance-of-internally-displaced-persons/> (discussing how the Kampala Convention sets forth concrete measures for national authorities to prevent displacement). The Kampala Convention was predated by the *Protocol on the Protection and Assistance to Internally Displaced Persons*, which was adopted by the International Conference on the Great Lakes Region (ICGLR) in 2006, but became binding after eleven ICGLR states adopted the Protocol at a sub-regional level. *Id.* This instrument did not include explicit language pertaining to climate change but refers to “natural or human-made disasters” in defining IDPs and outlining responsibilities of party-states. See, e.g., ICGLR, *Protocol on the Protection and Assistance to Internally Displaced Persons*, Nov. 30, 2006, https://www.library.icglr-lmrc.org/images/Pact-Protocols/ICGLR_2006_Protocol_on_the_Protection_and_Assistance_to_Internally_Displaced_Persons_30th_November_2006.pdf (defining IDPs as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”). Article 3 lists under “Responsibility for Protecting Internally Displaced Persons” that “[m]ember States shall, to the extent possible, mitigate the consequences of displacement caused by natural disasters and natural causes.” *Id.* Other responsibilities include “establish[ing] and designat[ing] organs of Government responsible for disaster preparedness, coordinating protection and assistance to internally displaced persons” *Id.*

147. Adama Dieng, *Protecting Internally Displaced Persons: The Value of the Kampala Convention as a Regional Example*, 99 INT'L REV. OF THE RED CROSS 263, 269 (2017); International Committee of the Red Cross, *Translating the Kampala Convention Into Practice: A Stocktaking Exercise*, 99 INT'L REV. OF THE RED CROSS 365–420 (2017).

residence, in particular as a result of or in order to avoid the effects of . . . natural or human-made disasters . . . and who have not crossed an internationally recognized State border.”¹⁴⁸ Although the Kampala Convention addresses multiple types of displacement, it contains a specific reference to displacement caused by climate change.¹⁴⁹ Its reference to climate change provides that “State Parties shall take measures to protect and assist persons who have been internally displaced due to natural or human made disasters, including climate change.”¹⁵⁰

The recognition of IDPs in Latin America, through the ratification of the 1994 San Jose Declaration, predates the passage of the UN Guiding Principles for Internally Displaced Persons. The San Jose Declaration recognizes “the challenges posed by the new situations of human displacement in Latin America and the Caribbean, including . . . the increase in internal displacement and forced migration”¹⁵¹ While the Declaration concludes that IDPs are “the fundamental responsibility of the States of their nationality,” it describes internal displacement as “nevertheless of concern to the international community because it is a human rights issue which can be linked to prevention of causes which generate refugee flows.”¹⁵²

A decade prior to the San Jose declaration, the region ratified the Cartagena Declaration,¹⁵³ which broadened the definition of

148. Kampala Convention, *supra* note 144, at Art. I(k).

149. *Id.* at Art. IV(4) (obliging party states to prohibit arbitrary displacement “based on policies of racial discrimination” or “displacement used as collective punishment”).

150. *Id.* at Art. V(4).

151. San José Declaration on Refugees and Displaced Persons § 1 ¶15, Dec. 7, 1994, U.N. HIGH COMM’R FOR REFUGEES, <https://www.refworld.org/legal/resolution/rri/1994/en/69659>.

152. *Id.* § 2(16). Among the recommendations in the San Jose Declaration for the protection of IDPs in the region are: The application of human rights norms, humanitarian law, and principles of refugee law such as non-refoulement “by analogy;” access to protection by national authorities and essential assistance “with the support of the international community;” attention to rights “crucial to the survival, security and dignity” of IDPs, and “other rights such as adequate documentation, ownership of land and other assets, and freedom of movement including the voluntary nature of return” and “the possibility of attaining a dignified and safe solution to their displacement.” *Id.* § 2(16).

153. Organization of American States, Cartagena Declaration on Refugees, Nov. 22, 1984, reprinted in Annual Report of the Inter-American Commission on Human Rights, OAS Doc. OEA/Ser.L/V/II.66, doc.10, rev. 1, at 190–93, <https://perma.cc/U7AA-GG39> [hereinafter Cartagena Declaration].

who constitutes a refugee.¹⁵⁴ While making only a few references to IDPs, the Cartagena Declaration does “. . . express its concern at the situation of displaced persons within their own countries.”¹⁵⁵ However, it does not provide protections for or solutions to the problems faced by IDPs aside from a broad recommendation that the Declaration’s conclusions¹⁵⁶ “receive adequate attention in the search for solutions to the grave problems raised by the massive flows of refugees in Central America, Mexico and Panama.”¹⁵⁷

There are two additional regional agreements on displacement in Latin America, both issued in connection with decadal anniversaries of the Cartagena Declaration. However, rather than expanding on the San Jose Declaration’s attention to internal displacement, both instruments make only nominal references to IDPs. For example, the 2004 Mexico Declaration, commemorating the twentieth anniversary of the Cartagena Declaration, notes “with concern that

154. See Timothy E. Lynch, *Refugees, Refoulement, and Freedom of Movement: Asylum Seekers’ Right to Admission and Territorial Asylum*, 36 GEO. IMMIGR. L.J. 73, 82–83 (2021) (explaining that the Cartagena Declaration expands the definition of refugee to include those who flee their country due to threats to their safety from violence, foreign aggression, conflict, human rights violations, or other disturbances to the public order); Timothy Calica, *Improving the Refugee Crisis in Syria: A Comparative Analysis of Regional Refugee Policies*, 40 LOY. L.A. INT’L & COMP. L. REV. 115 (2017) (contrasting the European system of narrowing refugee rights from the Cartagena Declaration’s broadening the scope of state responsibility to focus on a wider spectrum of refugees and safeguarding against refoulment through voluntary repatriation); Carlos Maldonado Castillo, *The Cartagena Process: 30 Years of Innovation and Solidarity*, 49 FORCED MIGRATION REV. 89, 89 (2015), <https://www.fmreview.org/sites/default/files/FMRdownloads/en/climatechange-disasters/maldonadocastillo.pdf> (describing the Cartagena Declaration as a “landmark” refugee instrument, signaling a broader definition of refugee and a new approach to their humanitarian needs).

155. Cartagena Declaration, *supra* note 153, § 3(9). The Cartagena Declaration has otherwise influenced policy for several states in the region. For example, it has been incorporated into the Ecuadoran Constitution, providing a broader framework for addressing the realities of modern displacement. Steve Meili, *The Human Rights of Non-Citizens: Constitutionalized Treaty Law in Ecuador*, 31 GEO. IMMIGR. L.J. 347, 364–66 (2017). This incorporation has had a positive impact on the rights of asylum seekers in Ecuador, demonstrating the potential benefits of adopting a more inclusive definition of refugees. *Id.* at 348–49. However, whether a migrant is granted asylum may vary significantly depending on the legal and political context of the country. See Lynch, *supra* note 154, at 93–94 (pointing out that differences among states on the rights of asylum seekers stems from the fact that protection of asylum seekers falls on the international community as a whole, rather than from a legal obligation on states through international human rights law).

156. *Id.* (including its general call for national and international authorities to offer protection and assistance to IDPs, listed in Section 3 of the Declaration).

157. *Id.* §§ 3–4.

in some parts of Latin America internal displacement of persons as well as refugee flows persist.”¹⁵⁸ Similarly, the 2014 Brazil Declaration and Plan of Action, commemorating the thirtieth anniversary of the Cartagena Declaration, makes few references to IDPs.¹⁵⁹ The Plan of Action does note, however, the significant IDP populations in Guatemala, Honduras, and El Salvador, who were largely displaced because of security concerns, including those raised by transnational organized crime.¹⁶⁰

B. *Climate and Migration/Refugee Instruments*

In addition to international, regional, and domestic guidance on addressing internal displacement, there are more general international instruments focused on climate change and migration more generally. Although relevant to the growth of internal displacement, for the most part they do not substantially address the phenomenon.

For example, the 1992 United Nations Framework Convention on Climate Change (UNFCCC) is silent about environment-induced migration generally.¹⁶¹ This omission unsurprisingly, overlooks internal displacement. Almost a decade later, the 2010 Cancún Agreements, adopted under the UNFCCC,¹⁶² incorporated a broad provision inviting:

158. Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America, Nov. 16, 2004; *see also* William Spindler, *The Mexico Plan of Action: Protecting Refugees Through International Solidarity*, 24 FORCED MIGRATION REV. 64, [page citation] (2005), <https://www.fmreview.org/sudan/spindler>.

159. The Brazil Declaration and Plan of Action, A Framework for Cooperation and Regional Solidarity to Strengthen the International Protection of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean, Dec. 3, 2014 [hereinafter the Brazilian Plan of Action].

160. *Id.* The Brazilian Plan of Action also emphasizes the importance of promoting regional and sub-regional cooperation as a “fundamental element for continuing to develop the legal and institutional framework for the protection of refugees, displaced and stateless persons” and to “promote knowledge and training among . . . States, international organizations and civil society, and ensure the dissemination of regional guidelines, doctrine and jurisprudence.” *Id.* ch. 7.

161. United Nations Framework Convention on Climate Change, May 9, 1992, 1771 U.N.T.S. 107, 31 I.L.M. 849 (entered into force Mar. 21, 1994).

162. The Nansen Initiative builds upon paragraph 14(f) of the 2010 UNFCCC Cancún Agreement. *See* THE NANSEN INITIATIVE GLOBAL CONSULTATION CONFERENCE REPORT 26 (Dec. 2015) [hereinafter The Nansen Initiative or the Initiative], <https://disasterdisplacement.org/wp-content/uploads/2015/02/GLOBAL-CONSULTATION-REPORT.pdf>. Specifically, Paragraph 14(f) of the Cancún

all parties to enhance action on adaptation under the Cancún Adaptation Framework . . . by undertaking . . . [m]easures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels. . .¹⁶³

The Cancún Agreements are the first international instrument to formally recognize displacement as relevant to a framework for climate change adaptation.¹⁶⁴

The 2015 Paris Agreement to the United Nations Framework Convention on Climate Change (the Paris Agreement) neither expressly addresses internal nor cross-border displacement. Article 7 of the Paris Agreement does, however, emphasize the “goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change . . .,” and advises parties to take into account the Cancún Adaptation Framework.¹⁶⁵

The stated objective of another climate change agreement, the Nansen Initiative, as defined by the 2015 Agenda for the Protection of Cross Border Displaced Persons in the Context of Disasters and Climate Change, was to identify effective practices and build consensus on principles to protect and assist persons displaced across borders due to disasters and climate change.¹⁶⁶ Importantly, the

agreement invites States to enhance their action on adaptation including by “[m]easures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels.” United Nations Framework Convention on Climate Change, Decision 1/CP.16, The Cancún Agreements: Outcome of the Work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, U.N. Doc. FCCC/CP/2010/7/Add.1 (Mar. 15, 2011), <http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf>.

163. United Nations, Framework Convention on Climate Change, Report of the Conference of the Parties on its Sixteenth Session, Article 14(f), FCCC/CP/2010/7/Add.1 (Mar. 15, 2011).

164. Rathod, *supra* note 13, at 10.

165. Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104, U.N. Doc. FCCC/CP/2015/L.9/Rev.1, art. 7 ¶ 1, 7 (entered into force Nov. 4, 2016).

166. THE NANSEN INITIATIVE GLOBAL CONSULTATION CONFERENCE REPORT, *supra* note 164, at 8. The Nansen Initiative specifically stated that it was a “state-led,

Initiative explicitly acknowledges the importance of protecting IDPs, noting that most disaster displacement occurs within states' borders.¹⁶⁷ The Initiative recognizes both the significance of the UNGP and the explicit coverage of disaster-induced internal displacement under the Kampala Convention.¹⁶⁸

The Nansen Initiative is largely focused on reducing risk by "building resilience," which includes providing guidance for IDPs' home countries to avoid and/or manage internal displacement.¹⁶⁹ The Initiative articulates broad recommendations, and some relevant practices and future priorities concerning IDPs.¹⁷⁰ For example, it encourages states to establish institutional leadership to coordinate national planning and response efforts, and to ensure meaningful involvement by local authorities and affected communities in the process.¹⁷¹ The Initiative also highlights the role of regional organizations, as well sub-regional mechanisms including Regional Consultative Processes, human rights mechanisms, disaster risk management centers, climate change adaptation strategies, and common markets and free movement of persons arrangements.¹⁷²

bottom-up, consultative process." *Id.* The Initiative's "chairmanship" was led by Norway and Switzerland, who were joined by a "steering group," consisting of Australia, Bangladesh, Costa Rica, Germany, Kenya, Mexico, and Philippines. *Id.* at 228–29.

167. *Id.* at 24–26, 161.

168. *Id.* at 19, 51, 139, 221.

169. *Id.* at 53, 56. At a more granular level, the Initiative identifies effective practices with respect to addressing the needs of IDPs in disaster contexts, including: reviewing domestic legislation or policies on internal displacement to determine whether it includes IDPs in disaster contexts, and if not, consider protection in line with the UNGP and regional and subregional instruments; reviewing domestic legislation and policies on disaster risk management to determine whether they contain specific and adequate provisions to protect IDPs at all stages of a disaster; incorporating IDP protection considerations and clarify the roles and responsibilities of actors in disaster risk reduction and humanitarian response plans; strengthening the capacity of national and local authorities to enhance protection and support for IDPs in disaster contexts; and ensuring programs concerned with humanitarian assistance, early recovery, and durable solutions in disaster contexts "provide meaningful information and opportunities for consultation with and participation by displacement-affected persons or groups of person, those at risk of displacement and host communities." *Id.* at 50.

170. *Id.* at 19. The Initiative details effective strategies that it identifies to address the needs of IDPs in disaster contexts as well as "priority areas for future action." These tactics include reducing vulnerability and building resilience to displacement risk, "migration with dignity," planned relocation, and assisting internally displaced persons. *Id.* at 19, 48–58.

171. *Id.* at 180–81.

172. *Id.* at 20, 180–81.

The 2016 *New York Declaration for Refugees and Migrants*, which reported on the outcomes of the General Assembly's high-level plenary meeting concerning large movements of refugees and migrants,¹⁷³ was the precursor to two Global Compacts adopted by the United Nations in 2018: the Global Compact on Refugees (GCR) and the Global Compact for the Safe, Orderly and Regular Migration (GCM).¹⁷⁴ Importantly, "[t]he fact that there are two global compacts—and not one on global mobility—seems to set the distinction between refugees and migrants in stone."¹⁷⁵ Equally important, internal displacement is "virtually ignored" in both global compacts.¹⁷⁶ Both the perpetuation of the refugee/migrant binary and the omission of the plight of IDPs in the GCR and GCM signal the need for new, or in some cases renewed, normative frameworks to enhance the role of the international community in ensuring protection for IDPs.¹⁷⁷

V. ENVISIONING CONCEPTUAL FRAMEWORKS FOR PROTECTING IDPS

The efforts to protect IDPs outlined in Part IV "demonstrate that the IDP issue is more than just a passing fancy; it has been recognized as a critical international problem."¹⁷⁸ In order to help

173. G.A. Res. 71/1, *New York Declaration for Refugees and Migrants* (Sept. 19, 2016).

174. Elizabeth E. Ferris & Susan F. Martin, *The Global Compacts on Refugees and for Safe, Orderly and Regular Migration: Introduction to the Special Issue*, 57 INT'L MIGRATION 5, 5–8 (2019).

175. *Id.* at 14.

176. *Id.* at 15 (noting that the GCM does not mention IDPs and the GCR "includes a passing mention of IDPs—noting that large movements may involve both refugees and IDPs (para 12) but does not address the serious gaps that remain, notably the need for more robust measures at the national level, for regional actors to play a greater role in supporting IDPs and for a clear international institutional responsibility for IDPs."); see also Desai et al., *supra* note 18, at 4 ("As a result of opposition from participating states wary of undermining national sovereignty . . . , internal displacement received only four mentions and a footnote in the...[GCR]"; Ben Hudson & Brid Ní Ghráinne, *Enhancing State-to-State Dialogue on Internal Displacement: Current Global Fora and Future Prospects*, 39 REFUGEE SURV. Q. 425, 435 (2020) (noting that the GCR "has been criticised for 'virtually' ignoring IDPs.").

177. See Matijević et al., *supra* note 6, at 188 ("Today's internal displacement crisis has collective outcomes which are global in character and do not remain confined to the societies directly affected by displacement. These collective outcomes require collective action, the many aspects of which, sooner or later, might become a subject of international legal regulation.").

178. ORCHARD, *supra* note 5, at 223.

facilitate the translation of this recognition into greater involvement by the global community, the discussion in this Part offers some theoretical justifications for why IDPs constitute a population deserving of international protection.

A. *Extending Refugee Protection to IDPs*

As discussed, prior to the 1951 Refugee Convention the global community had a considerably more fluid notion of the differences between populations displaced inside versus outside the border of their countries of origin.¹⁷⁹ By solidifying the distinction between the two groups, the Convention became an international protection instrument reflecting what has been coined “exilic bias,” namely “the idea that once an individual was granted refugee status, they would stay within the country permanently [as opposed to an objective to a safe return to their country of origin].”¹⁸⁰

The emphasis on resettlement in the Convention was grounded in the legal conception of a refugee:

The definition is quite clearly based on the idea that a refugee is someone who has lost the protection of his or her state, is now located outside that state, and is in need of a new guarantee of protection. That is, the “problem” to be solved is the de jure or de facto loss of membership [i.e. citizenship], as measured by the likelihood of persecution on the specified grounds.¹⁸¹

179. See *supra* note 122 and accompanying text.

180. Harriet Cornell, *Is the International Refugee Regime Fit for Purpose?*, UNIV. EDINBURGH.GLOB.JUST..BLOG.(Dec..3,.2015), <https://www.globaljusticeblog.ed.ac.uk/2015/12/03/refugeecrisis2/>. See also T. Alexander Aleinikoff, *State-Centered Refugee Law: From Resettlement to Containment*, 14 MICH. J. INT’L L. 120, 125–26 (1992).

181. Johannes Servan, ‘*What Justice Requires*’—*A State-Centric Bias in the Ethics of Migration* 131, in *STUDYING MIGRATION POLICIES INTERFACE BETWEEN EMPIRICAL RSCH. & NORMATIVE ANALYSIS* (Matthias Hoesch & Lena Laube, eds., 2019) (quoting T. Alexander Aleinikoff, *State-Centered Refugee Law: From Resettlement to Containment*, 14 MICH. J. INT’L L. 120, 123 (1992)); see also MANZELLA, *supra* note 20, at 3 (quoting human geographer Tim Cresswell: “[The refugee] is founded on the organization of the nation-state at the turn of the [twentieth] century in Europe. The drawing and policing of national borders, the firming up of state sovereignty and the construction of national identities were all necessary conditions for the production of the refugee as a person “out of place.”).

While questioning the primacy of exile as the basis for such a distinction between displaced persons, a framework that revives the pre-1951 Refugee Convention era's treatment of refugees and IDPs as more similar than distinct does not amount to a recommendation that the existing refugee protection system should absorb IDPs.¹⁸² Instead, the underpinning of this project is to encourage involvement from the international human rights community to address the ongoing and growing crisis of internal displacement.

What follows is a discussion of how the status of “refugee” and “IDP” are not fixed categories but rather exist on a continuum, as “[s]ome IDPs go on to cross a border and become refugees, and some refugees return to their countries of nationality and become IDPs. Often IDPs and refugees live side by side, especially where displacement straddles a border.”¹⁸³ Indeed, “[b]order-induced displacement is not equivalent to the original reasons forcing people into exile, but rather functions as a second-order type of (re-) displacement, produced precisely via (the violence implicated in) border control.”¹⁸⁴

1. IDPs as “Eventual Refugees” and Prematurely Returning Refugees

One way to narrow the protection gap for IDPs is by extending refugee protections to the population, requiring the removal of the requirement of cross-border movement in the definition of what constitutes a refugee.¹⁸⁵ While there is no comprehensive data on

182. See, e.g., Catherine Phuong, *Internally Displaced Persons and Refugees: Conceptual Differences and Similarities*, 18 NETHERLANDS Q. HUM. RTS. 215, 224 (2000) (citing Luke T. Lee, *Internally Displaced Persons and Refugees: Toward a Legal Synthesis?*, 9 J. REFUGEE STUD. 27, 31 (1996)). Somewhat conversely, scholars have recommended the application of strategies fashioned for refugees to IDPs. See Christakis Peristianis, *Challenging (Internal) Integration: Debating Internal Displacement and Integration in Greek-Cypriot Refugees' Oral Histories*, 12 CENT. & E. EUR. MIGRATION REV. 31, 32 (2023) (applying refugee integration theory to a prolonged internally displaced population in Greece).

183. Hudson & Ghráinne, *supra* note 177, at 432–433.

184. Violeta Moreno-Lax & Martin Lemberg-Pedersen, *Border-Induced Displacement: The Ethical and Legal Implications of Distance-Creation Through Externalization*, 56 QUESTIONS INT'L L. 5, 6–7 (2019).

185. See Grace Benson, *The Escalating Crisis of Internal Displacement*, REFUGEE L. INITIATIVE (Jan. 11, 2021), <https://rli.blogs.sas.ac.uk/2021/01/11/the-escalating-crisis-of-internal-displacement/> (describing how almost half of all displaced persons are IDPs but lack the same options as refugees for resettlement since they have not crossed an international border and lack any established legal process for demonstrating a history of persecution and seeking international protection). See generally International Refugee Assistance Project, *Expanding Complementary Pathways for Refugees and Displaced*

how many IDPs eventually become refugees,¹⁸⁶ countries with the most IDPs are also amongst the top refugee-producing countries.¹⁸⁷ Moreover, while there is also a lack of data as to why IDPs ultimately decide to cross borders,¹⁸⁸ “many IDPs who are unable to achieve durable solutions in their country of origin are forced to seek refuge abroad.”¹⁸⁹

Cross-border movements are often caused by the home country’s government and/or the international community’s failure to protect and assist IDPs in their country of origin,¹⁹⁰ prompting some

Persons: A Blueprint for the U.S. Government (Nov. 20, 2020), <https://refugeerights.org/wp-content/uploads/2020/12/Expanding-Complementary-Pathways-for-Refugees-and-Displaced-Persons-A-Blueprint-for-the-U.S.-Government.pdf>.

186. See Passey, *supra* note 8 (noting that the correlation between internal displacement and cross-border migration is assumed but difficult to prove); see also Elizabeth J. Rushing, *The Invisible Majority*, INTERNAL DISPLACEMENT MONITORING CTR. 2 (Nov. 2017), https://www.internal-displacement.org/sites/default/files/inline-files/20171113-idmc-intro-cross-border-thematic-series_1.pdf (“A relationship between internal displacement and cross-border movement is widely assumed but difficult to prove.”).

187. See Passey, *supra* note 8 (“[S]tates with the largest numbers of internally displaced persons are also among the top ‘refugee-producing’ countries.”); see also Jon Echevarria-Coco & Javier Gardeazabal, *A Spatial Model of Internal Displacement and Forced Migration*, 65 J. CONFLICT RESOL. 591, 591 (2021) (proposing a spatial model that “delivers predictions about how the fractions of a country’s population that become refugees and IDPs . . . related with the intensity of the shock, country size, terrain ruggedness and the degree of geographical proximity of the country with respect to the rest of the world.”).

188. Echevarria-Coco & Gardeazabal, *supra* note 187, at 596.

189. Bina Desai et al., *supra* note 18, at 2–3. Many of the driving factors for cross-border migration, such as unemployment, insecurity, and discrimination, are also the same barriers that prevent some IDPs from leaving their home countries. *Id.* In a study by the International Organization for Migration (IOM), displaced Iraqi respondents stated that cross-border migration is something that most IDPs cannot afford. See International Organization for Migration Iraq, *Access To Durable Solutions Among IDPs in Iraq: Moving in Displacement* (2019), <https://iraq.iom.int/sites/g/files/tmzbd11316/files/documents/iom-iraq-access-to-durable-solutions-among-idps-in-iraq-moving-in-displacement.pdf>; see also Benson, *supra* note 185 (noting that some IDPs cannot leave “because they live in authoritarian countries that enforce strict border controls.”).

190. See Sydney, *supra* note 26, at 21 (describing how cross-border movements are a symptom of a failure to protect IDPs in their country of origin). Of the approximately 1,500 IDPs, refugees, and returning refugees interviewed, 57% of the refugees and returning refugees were internally displaced prior to leaving their country of origin. *Id.* at 10. Of those, a third endured several internal displacements prior to crossing the border. *Id.* at 5. Many refugees crossed the border as a last resort because they could not find safety in their country of origin. *Id.* at 10. Many faced conflicts, violence, and persecution that forced them to flee their country of origin. *Id.* at 11.

scholars to assert that “[p]rotecting people inside their own countries is therefore key to preventing refugee flows.”¹⁹¹ Importantly, the UNHCR has updated the methods it uses to engage with internal displacement situations.¹⁹² After completing its revised policy, the UNHCR stated its increased emergency preparedness, coordination, data collection, and strategic support for durable solutions with respect to IDPs.¹⁹³

IDPs have reported that financial costs often serve as a barrier to their ability to cross their home country border, a factor exacerbated by the fact that many IDPs suffer financial losses during their internal displacement and cannot afford any further travel.¹⁹⁴ Displaced persons that cannot afford to cross the border are more likely to experience repeated displacement. Approximately forty-seven percent of the IDPs surveyed were displaced more than once.¹⁹⁵

Scholars have posited that it is a fair assumption that many, if not most, refugees were internally displaced in their country of origin before they crossed the border, even if it was only for a brief period or while in transit.¹⁹⁶ While there is little known about the processes that lead from internal to external displacement, developing an understanding the displacement continuum would allow governments and policy makers to better respond to displaced persons’ immediate needs at their points of departure, transit, and arrival.¹⁹⁷

On the other side of the eventual refugee scenario is the phenomenon of prematurely returning refugees.¹⁹⁸ The principle of non-refoulement, which safeguards migrants against being returned

191. Desai et al., *supra* note 18, at 3.

192. UNHCR, UNHCR’s Engagement with Internally Displaced Persons, U.N. Doc. EC/72/SC/CRP.14 (June 14, 2021).

193. *Id.* at 3–6.

194. Sydney, *supra* note 26, at 13; *see also* Cantor & Woolley, *supra* note 4, at 9 (noting that the UNHCR has been increasingly involved in IDPs since 2005, when it adopted a cluster approach).

195. Sydney, *supra* note 26, at 5. Of those surveyed from southeast Myanmar, 77% had been displaced more than three times. *Id.* at 13.

196. Rushing, *supra* note 186, at 2.

197. *Id.*

198. In 2018 and 2019, for example, many Syrian refugees who were residing in Lebanon began prematurely returning to Syria due to a variety of factors, including economic turmoil in Lebanon, and its government’s unjust policies toward them. Amnesty Int’l, *Lebanon: Why Are Returns of Refugees from Lebanon to Syria Premature?*, AI Index MDE 18/0481/2019 (June 12, 2019); *see also* Lori Beaman et al., *When Do Refugees Return Home? Evidence from Syrian Displacement in Mashreq*, 155 J. DEV. ECON. 1 (2022).

to a country where they face serious threats to their life or freedom, serves as a cornerstone of international human rights law.¹⁹⁹ This principle, however, has not been uniformly applied to ensure that refugees returning to their countries of origin do not find themselves in situations that could lead to internal displacement.²⁰⁰ As a result, returning refugees are exposed to conditions of vulnerability, meaning their return home merely constitutes a shift in label, transforming them from refugee to IDP.²⁰¹

A. *Refusing and Reimagining State Sovereignty*

Generally, scholars have suggested that the concept of state sovereignty limits the evolution of refugee law specifically, and international human rights and humanitarian law more broadly.²⁰² However, scholars have also pointed out that states invoke the concept of sovereignty selectively,²⁰³ often doing so to justify state violence.²⁰⁴ A prominent Third World Approaches to International Law (TWAIL) scholar has characterized state sovereignty as a neo-colonial project,

199. Flavia Zorzi Giustiniani, *The Obligations of the State of Origin of Refugees: An Appraisal of a Traditionally Neglected Issue*, 30 CONN. J. INT'L L. 171, 180–82 (2015).

200. *Id.* 180–82, 186–87.

201. *Id.* at 185–86. States of origin bear a proactive duty in creating conditions that not only facilitate the safe, voluntary return of refugees but also ensure their successful reintegration and protection from internal displacement. *Id.* at 208.

202. See Ferris & Martin, *supra* note 174, at 15 (“Addressing internal displacement is more complicated than for refugees as it raises questions of national sovereignty. International engagement with IDPs continues to be perceived as intervention into the internal affairs of a country.”). Scholars have argued via a historical analysis of the nation state that immigration and border systems did not come into existences until two hundred years after the emergence of the post-Westphalia international system. See, e.g., ANDREW S. ROSENBERG, UNDESIRABLE IMMIGRANTS: WHY RACISM PERSISTS IN INTERNATIONAL MIGRATION 40, 58 (2022). Rosenberg contends that the desire of states to “exclude foreigners and secure borders was a consequence of the emergence of the modern nation-state, rather than a primordial feature. *Id.* at 58. States did not inherently receive the right to exclude from “the god of sovereignty; they developed the thirst for exclusion during the post-Enlightenment transition to the modern nation-state form.” *Id.*; see also E. Tendayi Achiume, *Migration as Decolonization*, 71 STAN. L. REV. 1509, 1529–31 (2019).

203. ABDELAATY, *supra* note 42, at 2 (describing two patterns in state responses to refugees: (1) the “discrimination puzzle” where states open their borders to some refugee groups while blocking others; and (2) the “delegation puzzle” where the state gives the United Nations control of asylum procedures and refugee camps on their territory).

204. See CHOWDHURY, *supra* note 20 at 3 (“The juridical language of sovereign states . . . [is a way to use] existing discourses of rights and justice to frame border matters while obscuring the real mechanisms of repression and state violence . . .”).

noting that “[s]overeignty for the non-European world is alienation and subordination rather than empowerment.”²⁰⁵ As discussed throughout this Article, the 1951 Refugee Convention safeguards the primacy of state sovereignty while extending international protections to displaced communities.²⁰⁶ Since IDPs are displaced within the borders of their countries of origin, the issue of state sovereignty has been a significant obstacle to developing international support and solutions.²⁰⁷

Sovereignty, however, does not and has not always been defined merely as a limiting concept. Importantly, the UNGP are based on the concept of “sovereignty as responsibility” and set forth the responsibilities of governments and international organizations to IDPs.²⁰⁸ Francis M. Deng, the first UN Special Representative on the Human Rights of Internally Displaced Persons, advocated for the notion of sovereignty as responsibility,²⁰⁹ thus advancing an alternative understanding of state sovereignty.²¹⁰ A 2005 resolution passed by the United Nations General Assembly introduced the

205. ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* 102 (2005) (arguing that “sovereignty can be understood only in terms of its complex relationship with the colonial encounter and the constellation of racial and cultural distinctions it generated and elaborated.”). Anghie continues: “The basic point is that the development of the idea of sovereignty in relation to the non-European world occurs in terms of dispossession, its ability to alienate its lands and rights.” *Id.* at 105.

206. Richard Ekins, *The State’s Right to Exclude Asylum-Seekers and (Some) Refugees*, in *THE POLITICAL PHILOSOPHY OF REFUGE* 39 (David Miller & Christine Strachle eds., 2020).

207. Martin, *supra* note 35, at 39. Professor Martin notes, however, that there has been a shift: “With the end of the Cold War came changing concepts regarding the responsibility to assist and protect the internally displaced. During the past two decades, classic notions of sovereignty have been placed under considerable pressure when they are used to prevent humanitarian assistance and protection from reaching populations in acute need of aid.” *Id.*

208. Roberta Cohen, *Reconciling R2P with IDP Protection*, 2 *GLOB. RESP. PROTECT* 15, 20 (2010).

209. *Id.* at 29 (“From 1992 to 2004, Deng worked tirelessly to persuade governments that concern for IDPs was not a pretext for international political or military involvement. Indeed, the concept of ‘sovereignty as responsibility’ was intended to allay governmental fears about international programs for IDPs.”).

210. See Francis M. Deng, *Divided Nations: The Paradox of National Protection*, 19 *MACALESTER INT’L* 79, 86–88 (2007) (doing so given the paradox that many United Nations member states are divided and are often the cause of displacement); Roberta Cohen, *Humanitarian Imperatives are Transforming Sovereignty*, *BROOKINGS* (2008) (reviewing Deng’s conceptual framework of sovereignty as responsibility as a “shift in thinking about sovereignty and non-interference in internal affairs.”).

doctrine of the responsibility to protect,²¹¹ offering a reconceptualization of sovereignty that entails a responsibility to protect populations from severe human rights violations, such as genocide and crimes against humanity.²¹² It is a framework that introduces a responsibility of nation-states complementary to the responsibility otherwise borne by the international community.²¹³ This perspective challenges traditional notions of state sovereignty, suggesting a shift towards a more cooperative and collective approach to refugee protection in international law.²¹⁴

Sovereignty as responsibility in the context of internal displacement, provides that, while home country governments are primarily responsible for the wellbeing of IDPs within their borders,²¹⁵ states that are unable to fulfill this duty have to accept aid from the international community. Conversely, a state's refusal or obstruction of IDP-access to aid gives the international community the right to act.²¹⁶ Thus, the notion of sovereignty as responsibility challenges the traditional invocation of sovereignty as a limiting concept²¹⁷ by emphasizing states' accountability with respect to addressing human rights concerns.²¹⁸

211. G.A. Res. 60/1, 2005 World Summit Outcome, ¶¶ 138–39 (Sept. 16, 2005); see E. Tendayi Achiume, *Syria, Cost-Sharing, and the Responsibility to Protect Refugees*, 100 MINN. L. REV. 687, 691 (2015).

212. Achiume, *supra* note 211, at 691.

213. *Id.* at 694.

214. *Id.* at 694, 734.

215. Cohen, *supra* note 208, at 20.

216. *Id.*; see also Francis M. Deng, *From Sovereignty as Responsibility to the Responsibility to Protect*, 2 GLOB. RESP. PROTECT 353, 369 (2010) (noting the comments of UN High Commissioner for Refugees, Sadako Ogata, who stated that “the question of [IDPs] came to challenge state sovereignty as the founding principle of international relations.”).

217. Throughout the 20th century, the principle of state sovereignty often was invoked as a primary justification for non-intervention, particularly concerning internally displaced persons (IDPs). Martin, *supra* note 35, at 39, 47. The Cold War era, marked by ideological battles and geopolitical tensions, saw states frequently invoking their sovereign rights to resist external interference, especially in matters deemed internal or domestic. *Id.* at 47. The end of the Cold War heralded significant shifts in the understanding of state sovereignty. *Id.* at 39. Namely, sovereignty began to be reconceptualized in terms of responsibility. *Id.* at 39–40.

218. See Deng, *supra* note 216, at 370 (discussing how “sovereignty as responsibility” is challenging for the international community because it implies an element of accountability, but individual victims of internal conflict and human rights violations have little capacity to enforce this accountability).

The international refugee regime, far from being a static set of rules and norms, is a dynamic and evolving framework.²¹⁹ It is a space where the age-old principles of state sovereignty encounter the pressing and often conflicting demands of human rights, humanitarian needs, and global justice.²²⁰ As forced migration continues to be a defining challenge of our times, the debates around sovereignty and its limits will remain central to the international community's efforts to address the plight of refugees and IDPs.²²¹ The concept of sovereignty as responsibility is also found in the doctrine of responsibility to protect in the International Commission on Intervention and State Sovereignty, namely in the context of humanitarian intervention, terrorism, and human rights.²²²

Extending responsibility to protect IDPs as a part of state sovereignty would obligate states to accept international assistance.²²³ Importantly, this rhetorical and normative shift would transform global collective action addressing the plight of internal displacement from an infringement on to an advancement of state sovereignty.

B. Centering Coercion and Precarity

Labeling migration to determine how to govern human mobility has diluted the coercion factor of why most people—whether they are categorized as migrants, refugees, or IDPs—leave home. Sociologists have argued that the “[t]heorizing of forced migration and refugees has been paralyzed by excessive reliance on migration

219. Martin, *supra* note 35, at 44–45.

220. *Id.* at 58

221. *Id.*

222. Georg Nolte, *Sovereignty as Responsibility*, 99 AM. SOC'Y INT'L. L. PROC. 389, 390 (2005). Nolte, however, critiques the concept as “highly ambiguous” and highly suspect if used as a legal term, as it may lead to the assertion of enforcement mechanisms beyond those provided under international law. *Id.* at 391; *see also* S. Pandiaraj, *Sovereignty as Responsibility: Reflections on the Legal Status of the Doctrine of Responsibility to Protect*, 15 CHINESE J. INT'L L. 795, 807, 813 (2016) (similarly arguing that the notion of sovereignty as responsibility is in no way a legally binding framework and is significantly ambiguous). Pandiaraj primarily focuses on the lack of international consensus of R2P's applicability in the context of military intervention. *Id.* at 796; ANSELL, *supra* note 121 at 1 (“The protective state even extends to international politics where an international doctrine known as ‘responsibility to protect’ requires states to proactively intervene to protect citizens of other states from genocide or humanitarian disaster.”).

223. Katja Luopajarvi, *Is There an Obligation on States to Accept International Humanitarian Assistance to Internally Displaced Persons under International Law?*, 15 INT'L J. REFUGEE L. 678, 705 (2003) (“[S]tates and governmental authorities cannot arbitrarily refuse to give their consent to humanitarian assistance where international humanitarian law is applicable and must give very good reasons for a refusal.”).

theory]and that we should instead use sociological theories of violence—bringing back the “force” in forced migration.”²²⁴

Coercion is at the crux of forced migration, predominately in the form violence be it selective in the form of persecution or generalized as in the case of war.²²⁵ Centering coercion in the context of migration governance, however, does not have to be limited to violence.²²⁶ Coercion may include scenarios of planned displacement in, for example, environmental-induced movement, given that “. . . people may move before the actual forced displacement in circumstances where the threats are perceived to be unavoidable.”²²⁷ The emphasis should be on the forced nature of displacement, not national borders, when determining the extent to which the international human rights community provides protection particularly to those facing internal displacement.²²⁸

224. Danilo Mandić, *What is the Force of Forced Migration? Diagnosis and Critique of a Conceptual Relativization*, 51 THEORY & SOC’Y 61, 61 (2021).

225. *Id.* at 65.

226. In this respect, I disagree with Mandić’s own characterization of putting forth a “conservative” concept of coercion, namely that it be tied to violence. *Id.* at 63.

227. Regasa & Lietaert, *supra* note 84 at 329. The authors go on to note that “[t]hese people are invisible in the existing IDP scholarship because they are conceived as voluntary migrants.” *Id.* at 329–30.

228. Along this vein, scholars have criticized the definition of “refugees” as unnecessarily restrictive. *See, e.g.*, Luara Ferracioli, *Refugees, Rescue, and Choice*, in THE POLITICAL PHILOSOPHY OF REFUGE 195 (David Miller & Christine Straehle eds., 2020) (arguing that broadening the definition beyond that provided by the 1951 Refugee Convention could expand our view of when humanitarian assistance and legal rights are extended, for example by “conceiv[ing] of a refugee as someone who cannot access her most basic human rights without migration.”); Hiroshi Motomura, *The New Migration Law: Migrants, Refugees, and Citizens in an Anxious Age*, 105 CORNELL L. REV. 457, 458–59 (2020) (noting gaps in the legal framework that fail to sufficiently address “conditions in countries of origin, especially security, governance, human rights, and economic development.”); Eunice Collins, *The Case for Reforming the Definition of ‘Refugee’ in the 1951 UN Convention Relating to the Status of Refugees*, 6 BRISTOL L. REV. 92, 92–93 (2019) (criticizing the Convention’s definition as failing to protect those fleeing from “generalized violence” such as “air strikes” and “militia murders.”); Andrew I. Schoenholtz, *The New Refugees and the Old Treaty: Persecutors and Persecuted in the Twenty-First Century*, 16 CHI. J. INT’L L. 81, 99–100 (2015) (explaining that the Convention’s original conception of nation-states focused on persecution by state actors, however refugees are increasingly being targeted by non-state actors such as gangs and cartels). Yet others have highlighted the complexities and challenges associated with implementing a broader definition of refugees. *See, e.g.*, Timothy E. Lynch, *Refugees, Refoulement, and Freedom of Movement: Asylum Seekers’ Right to Admission and Territorial Asylum*, 36 GEO. IMMIGR. L.J. 73 94–95 (2021) (noting the difficulty of implementing broad asylum obligations due to the “incoherent nature of asylum law” between States);

Vulnerability is another aspect of displacement that is centered in the cases where migrants are outside their countries of origin. Notably, the United States during the deliberations on the 1951 Refugee Convention emphasized the need to provide international protection to those “who lacked the protection of a Government.”²²⁹ This statement, and the limitations within the Convention, are intended to restrict the scope of the Convention to migrants outside the border of their home country and assumes that IDPs, just because they are within their country’s border, have access to protection from their government.

As noted in Part III.B, the assumption that IDPs do not need protection from international human rights law or the international community because they are citizens in the place they are displaced may have dangerous consequences. In fact, IDPs may be displaced in the first instance because they were part of a population of “precarious citizens,” namely individuals subject to “heightened vulnerability and aggression”²³⁰ at the hands of their government or by a group against whom the government is unable or unwilling to protect. Additionally, the experience of internal displacement may change once they become IDPs, namely their displacement may amplify the degree to which they face precarity. Centering the concept of precarity “allow[s] us to see how internal displacement is part of a larger nexus of political and economic forces designed to produce and maintain inequity, particularly in terms of race, gender, and class.”²³¹

VI. CONCLUSION

The current and predicted future state of global human migration, particularly the proliferation of internal displacement, requires an examination and a reorientation of how migration governance is limited by borders. The assumptions underlying the position that those facing internal displacement do not need the assistance of the

Timothy Calica, *Improving the Refugee Crisis in Syria: A Comparative Analysis of Regional Refugee Policies*, 40 LOY. L.A. INT’L & COMP. L. REV. 115, 116 (2017) (explaining how the broad nature of the U.N. Convention has led to “vague and conservative standards” due to a desire to achieve consensus among signatory States).

229. See *supra* note 122 and accompanying text.

230. JUDITH BUTLER, *PRECARIOUS LIFE: THE POWERS OF MOURNING AND VIOLENCE* xi (2004). Butler’s theory of precarity denotes a “politically induced condition in which certain populations suffer from failing social and economic networks of support and become differentially exposed to injury, violence and death.” *Id.*

231. MANZELLA, *supra* note 20, at 9.

international community, including the fiction of state protection and the rigid categorizations of IDPs and refugees, are often dangerously inaccurate. This Article offers frameworks to reconceptualize international migration theory with the objective of bringing IDPs into the realm of global migration governance. Now is a particularly apt time to begin this reconsideration as externalized migration control practices change the centrality of physical nation-state borders and international legal perspectives expand the historically limited notion of state sovereignty.