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## **Displaced indigenous peoples in the Colombian border regions**

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## Introduction

The international community widely acknowledges that ‘indigenous peoples have suffered from historic injustices’ and recognizes ‘the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures’ (United Nations General Assembly 2007). Moreover, the vulnerability of indigenous populations are exacerbated in Colombia due to decades of armed conflict, social marginalization, massacres and environmental degradation that have prompted both the displacement and confinement of many of these communities. It is estimated that between 1997 and 2011, a total of 106,562 members of indigenous communities were displaced in Colombia (UNHCR 2012). Alarming, according to the National Indigenous Organization of Colombia (Organización Nacional Indígena de Colombia, ONIC), there are 102 indigenous communities at risk of extinction (UNHCR 2012). Indigenous peoples have a widespread presence in the border regions between Colombia and Venezuela, and between Colombia and Ecuador, though their populations are under-registered in the asylum process, according to UNHCR statistics; this has often tended to mask the protection challenges these communities faced upon arrival to Venezuela and Ecuador. Thus, greater explicit focus must be centred on the particular vulnerabilities and issues of indigenous Colombian refugees and internally displaced persons (IDP).

While considerable international, regional and domestic legislative and policy attention has been placed on indigenous peoples in the border areas of Colombia, Venezuela and Ecuador, and concurrently to issues of population displacement, significant gaps still remain between existing legislation and its coherent, effective implementation. In the last three decades, much of Latin America has seen significantly progressive advancements in the recognition of legal rights, ratifying such international agreements as the United Nations (UN) Declaration on the Rights of Indigenous Peoples and leading domestic legislative and constitutional changes so as to further incorporate issues of human rights and indigenous peoples’ protection. Indigenous displacement within Colombia and across its borders with Ecuador and Venezuela due to the encroachment of conflict has greatly weakened social and economic structures, while further increasing their marginalization. While indigenous peoples in these countries are granted equal rights as citizens, they also hold collective rights, which though recognized and respected in law, fall short in practice, particularly in situations of displacement. The crux of the issue rests on determining how to bridge the gap between policy measures directed towards this vulnerable group and their actual application and enforcement. Critical to this situational analysis is the outlining of existing gaps and challenges in the protection and assistance to displaced indigenous peoples from Colombia and determining how UNHCR can play a more proactive role in supporting these highly vulnerable groups more effectively.

Indigenous populations have been disproportionately affected by the conflict that has occurred in Colombia. As of 2011, there were about 1.4 million indigenous people forming part of 87 tribes - about 3.1 per cent of Colombia’s total population (IWGIA 2011). However, in the country’s border region, indigenous peoples make up 12 per cent of the population (ICG 2011: 5) According to estimates by the Internal Displacement Monitoring Centre (IDMC), as of 2010, ‘4.5 per cent of the total IDP population [in Colombia] belonged to an indigenous group, compared to 3.4 per cent in 2005’ (IDMC 2011c). Importantly, though minority ethnic groups in Colombia represent a small percentage of the total population, they make up about 26 per cent of displaced people in the country (IDMC 2011a). Violence

against indigenous groups is has also been on the increase and murders have risen sharply from 40 in 2007 to 119 in 2009 (ICG 2011: 5).

About 93 per cent of displacement in Colombia takes the form of individual rather than mass displacement (IDMC 2011a). The majority of mass displacement that takes place occurs amongst indigenous and Afro-Colombian groups, as these communities are likely to flee as units. The ONIC Registry has reported that fourteen mass displacements took place between January and May 2012 as '2,967 indigenous people and 680 indigenous families were forcibly displaced as a result of combat between the armed forces and guerrilla groups, as well as by paramilitary attacks, bombings, anti-personnel landmines, restrictions to free movement, stigmatization, and the presence of armed groups' (ONIC 2012).

### **Continued conflict amidst peace prospects**

On 27 August 2012, the Colombia government officially announced that it would commence peace talks with the Revolutionary Armed Forces of Colombia (FARC), sparking hope that a peace accord might be reached, putting an end to the internal conflict that has lasted nearly 50 years. However, violence has continued to rise despite these peace overtures. Evidence shows that conflict persists among demobilized armed groups, particularly in northern Colombia and this has led to widespread displacement. It has been estimated that about 35,000 people have been displaced since the start of 2012 - a 28 per cent increase compared to the same time period in 2011 (OCHA 2012).

Among the displaced, indigenous peoples continue to be disproportionately affected. For instance, military interventions in September 2012 prompted approximately 580 indigenous and non-indigenous people to flee from their homes in Nariño Department, and though some have returned due to inadequate humanitarian assistance in their destination location, it is expected that security instability and landmine contamination will hinder full return (OCHA 2012). Similarly in September, military activity in Putumayo Department forced about 70 indigenous Siona members to flee their homes and seek safety in Ecuador (OCHA 2012).

Focus on the border zones of Colombia with Ecuador and Venezuela is critical for several reasons. These regions often represent areas of greater poverty and inequalities, in addition to weaker institutional presence. The conflict's strong presence in these areas 'has reinforced the border region's traditional underdevelopment' (ICG 2011: 4). It is estimated that '50 to 60 per cent of residents in Ecuador's rural northern border regions [are classified] as 'extremely poor'. When poverty within these regions was broken down by social group, 39 per cent of persons who self-identified as indigenous were considered 'extremely poor' (McGrath 2011: 15). Not only are much of the designated and protected indigenous ancestral territories located in strategic military zones, but indigenous lands in Colombia are also rich in natural resources, including minerals and water sources, rendering them vulnerable to exploitative extraction. The border zones also encompass areas of intensified illicit activities, such as illegal drug production and arms trafficking. Additionally, as the internal conflict in Colombia has occurred close to its international borders, regional governments have been concerned about the possibility of the conflict spilling over their border and creating regional instability. In the case of Venezuela, for instance, the government has publicly acknowledged the existence of a paramilitary/BACRIM (bandas criminales or criminal groups) along its border with Colombia, raising protection concerns for Venezuelan residents near the border. Importantly, more than one-fifth of those living in Colombia's border municipalities are indigenous and Afro-Colombian (ICG 2011).

The difficult geography and remoteness of the region makes it difficult to determine the precise magnitude of indigenous Colombians' displacement. Much displacement occurs on a temporary basis, during which individuals resettle with family members or communities of the same ethnicity across the Colombian border. The displaced often do not pursue international protection by seeking asylum, either because they are not aware of the possibility or because they prefer to regularize their stay through the migration regime, reflecting more closely situations of labour migration. Consequently, these individuals often confront impediments to accessing basic services, such as health and education, and obtaining work. Confinement also represents a major consequence of the conflict as restrictions on the mobility of indigenous communities have gravely affected their capability to sustainably continue traditional livelihoods practices. OCHA reported, for example, that in September 2012, three instances of confinement, one of which involved the indigenous territory in Chocó Department, forced hundreds of community members to cease their livelihoods activities of farming, fishing and small-scale mining (OCHA 2012).

The displacement of indigenous populations in Colombia raises the following issues which UNHCR needs to address:

- Protection needs, including tackling obstacles to legal documentation, institutional capacity building; awareness raising on human rights and international asylum norms (both for displaced populations and local authorities); consultation with indigenous groups on decisions that affect them and forced recruitment into guerrilla groups.
- Legal barriers to accessing asylum, such as long travel distances to registration sites, costly transportation and restrictive asylum procedures. In Ecuador, for instance, limitations include a limited timeframe to request asylum, admissibility procedures based on credibility of precise details that often are not relevant to the indigenous Cosmo vision<sup>1</sup>, and a cessation clause for individuals leaving Ecuador without authorization, which affects displaced indigenous peoples who may regularly cross the border.
- 'Invisibility' of displaced indigenous communities versus their vulnerability. Many choose not to seek international protection for fear of becoming 'visible' to the authorities.
- Land issues, including confiscation by guerrilla groups and lack of land titles to substantiate territorial claims. The concept of 'borders' must also be taken into account, as present day international borders do not necessarily delineate indigenous territories, but may rather cut through them.
- Gaps in humanitarian assistance, including unmet health, livelihoods and educational needs specific to each indigenous population's culture. These shortfalls are compounded by limited humanitarian space, given the on-going security situation in the border regions and a lack of consistent presence of humanitarian and development actors.

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<sup>1</sup> The term 'Cosmo vision' in this analysis refers to indigenous populations' understanding or view of the world, particularly with regard to time and space.

## **Affected indigenous groups**

Some examples of highly vulnerable indigenous groups in need of protection from the Colombia situation include the following:

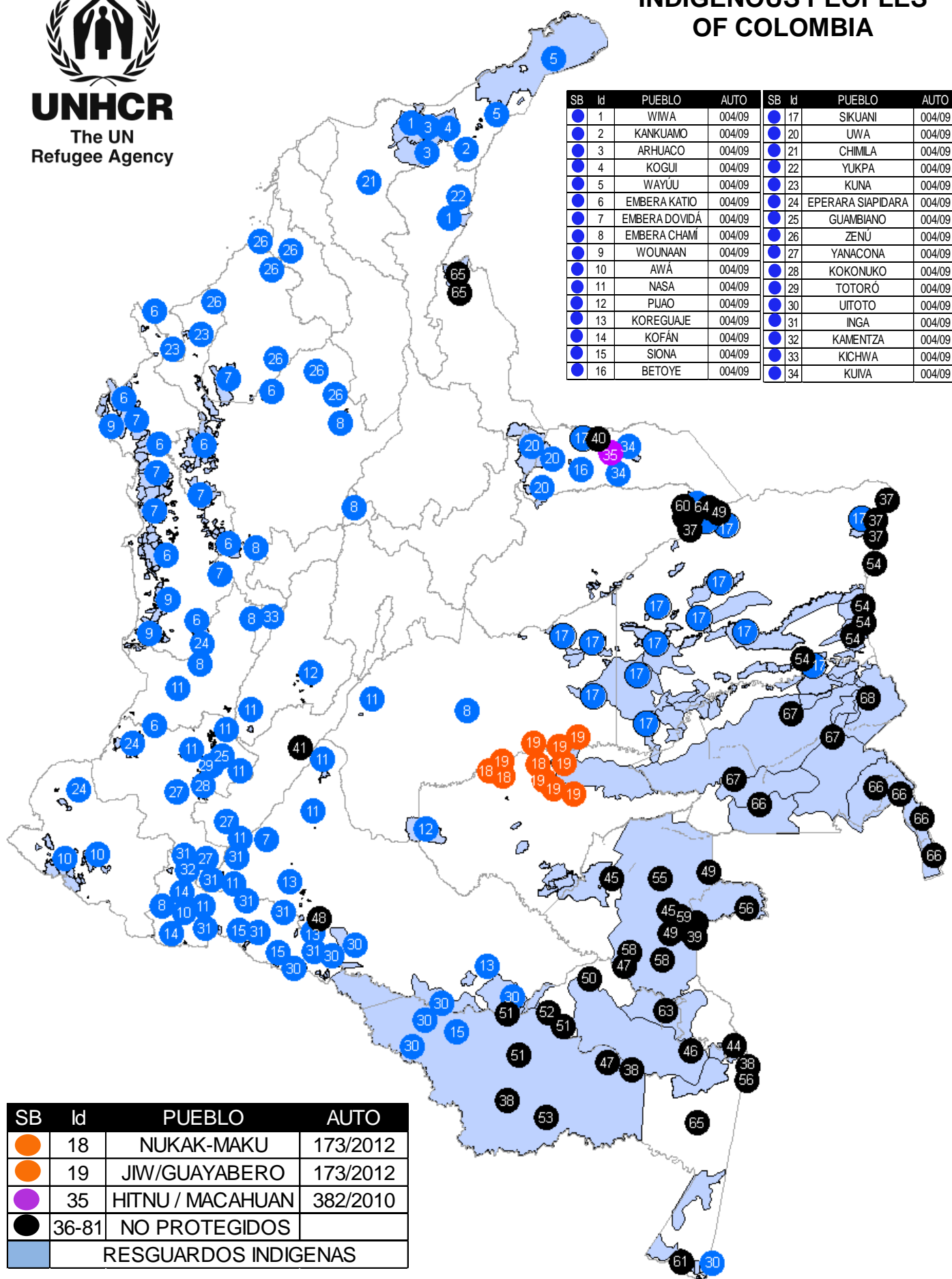
**Awá**—Based in southwestern Colombia along the border with Ecuador, the Awá territories are located primarily in Nariño and Putumayo departments. The Awá population is calculated to be more than 15,300 people in Colombia and another 4,000 in Ecuador. Given their location, the Awá have faced both displacement within Colombia and cross-border into Ecuador, and confinement within their territories due to ongoing conflict in their periphery. Of noted concern is the low level of official documentation among the Awá members and limited delineated protected lands.

**Siona**—As one of the most gravely affected indigenous peoples by the Colombia conflict, the Siona are at risk of extinction. Based in both Colombia and Ecuador, the Siona are currently made up of merely approximately 700 people in Colombia and only 360 in Ecuador.

**Wayúu**—Located along the northeastern Colombian border with Venezuela, the Wayúu are notably one of the numerically larger indigenous groups, totalling more than 144,000 in Colombia and 168,400 in Venezuela. Wayúu displacement is continuing to occur in an ‘invisible’ manner, rather than mass displacement, and is typically characterized by settlement with family or in Wayúu territories in Venezuela (CODENPE 2011; ONIC 2012).

This situational analysis aims to highlight several gaps and challenges with regard to the protection and assistance to refugee and internally displaced indigenous populations of the Colombian border regions with Ecuador and Venezuela. This paper is not intended to be an exhaustive analysis of issues, nor meticulous legal critique. Rather, this analysis is meant to serve as an examination of the most pertinent issues to UNHCR with regards to this vulnerable group, offering recommendations to be considered for greater inclusion of these persons of concern within UNHCR’s work.

## INDIGENOUS PEOPLES OF COLOMBIA



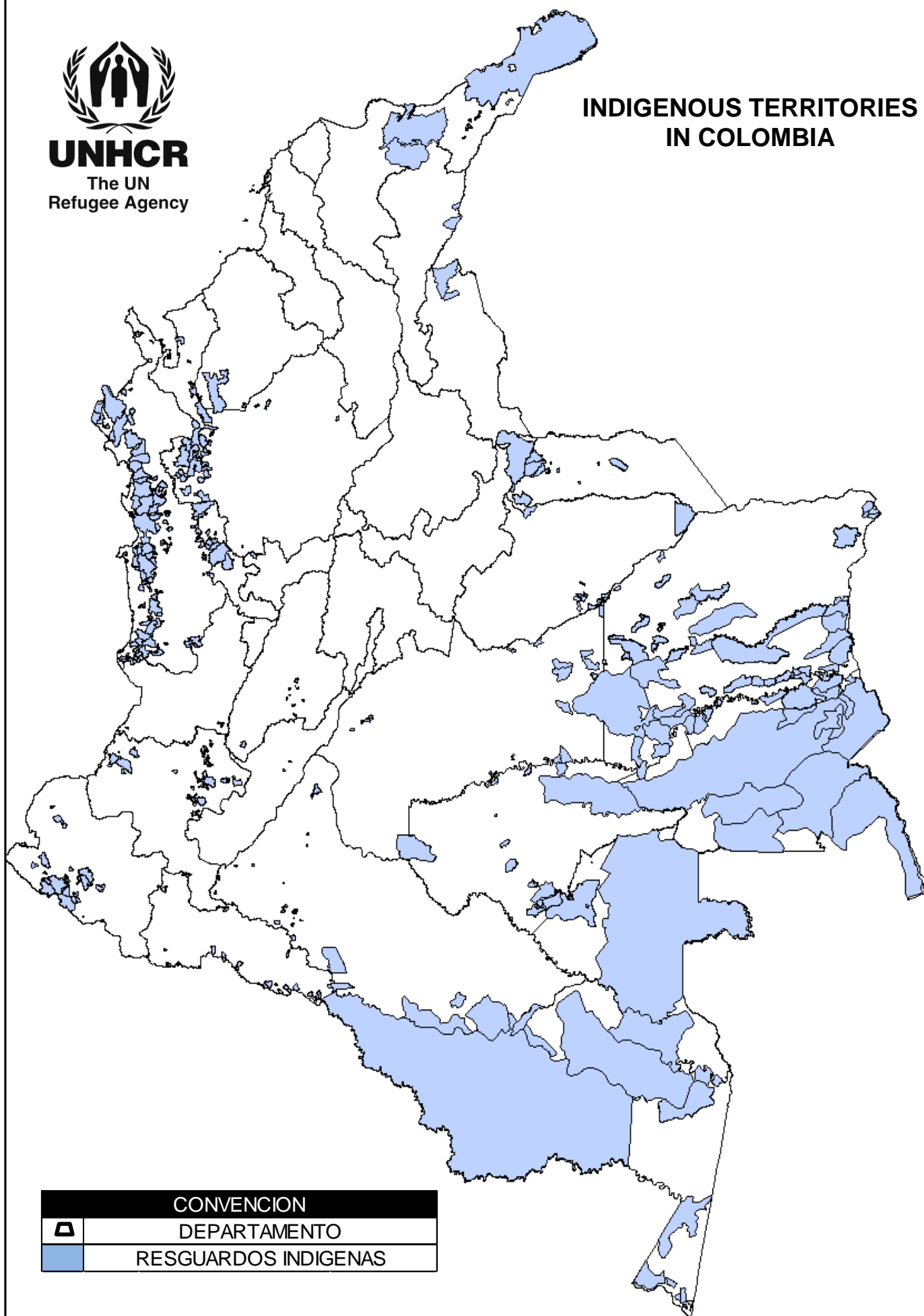
Source: SIGOT-IGAC, Constitutional Court 2009-2012.



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## INDIGENOUS TERRITORIES IN COLOMBIA



CONVENCION	
	DEPARTAMENTO
	RESGUARDOS INDIGENAS

Source: SIGOT-IGAC, 2012.



## **Relevant legal frameworks: international scope**

This chapter assesses certain noteworthy international, regional and domestic frameworks and conventions on indigenous and displacement issues relevant to the Colombia situation.

### *United Nations Declaration on the Rights of Indigenous Peoples (2007)*

The Declaration has been ratified by Colombia, Ecuador and Venezuela. The main principles underpinning the Declaration are non-discrimination, self-determination, cultural integrity, rights to lands and natural resources, and socioeconomic rights. Several articles in the Declaration are thematically relevant to the Colombia situational context, and in some cases, have been incorporated into the respective countries' national constitutions. This includes Article 10, which advocates against the forcible removal of indigenous communities from their territories. Article 30 calls for no military activities to take place on indigenous territories without the consent of the indigenous population. In the Colombia context, the armed conflict within and near indigenous territories is forcibly displacing these populations, thus violating both Articles 10 and 30.<sup>2</sup>

The Declaration supports the autonomy and decision-making responsibilities prescribed to indigenous groups within their designated territories. Article 18 of the Declaration gives them the right to choose their own representatives and institutions and to advance and uphold their traditional political, economic and social institutions (Article 20). Articles 26 and 28 discuss the right to use and control traditional lands and territories owned or occupied by indigenous groups, and the right to redress, including restitution, in instances of confiscation or occupancy without consent. Additionally, Article 32 claims the right to decision-making over the development and utilization of lands and resources by the indigenous communities themselves. Significantly, the state is called upon to guarantee the protection of these rights and to participate in active consultation with indigenous representatives, which, for instance, is recognized in Colombia's Decree 4633 (described further in subsequent sections), yet falls short in actual implementation. Of significant relevance, Article 36 states that indigenous groups, especially those divided by international boundaries, have the right to develop and preserve relations and collaboration with community members across the border.

As a General Assembly resolution, this Declaration is not legally binding on the signatory countries. However, its ratification demonstrates the strong commitment of the international community to the principles it advocates and to its possible incorporation into customary international law.

### *United Nations Permanent Forum on Indigenous Issues*

The Forum, established in 2000, serves as an advisory body to the United Nations Economic and Social Council, delegated to deliberate and offer advice on the following mandated issues: economic and social development, cultural preservation, environmental protection,

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<sup>2</sup> Acknowledgment must be made of competing rights that deserve further examination. The State, for instance, holds particular responsibilities, as per the Geneva Convention's Common Article 3, relating to non-international conflict and international minimum protection towards persons not actively involved in the hostilities. In this case, the State maintains responsibilities that may infringe on certain special rights entitled to indigenous peoples. Additionally, human rights law may pose competing rights worthy of consideration, such as the protection of life and liberty of other persons vis-à-vis military interventions in indigenous territories.

health, human rights and education. However, specific attention to the forced displacement of indigenous populations due to conflict has not, to date, been closely considered. The Forum's mandated areas do not explicitly take displacement into account. However, a clear correlation exists between them and the vulnerabilities experienced through displacement, thus offering a possible opportunity for new focus on this cross-cutting theme.

*International Labour Organization's Convention 169 (1989)*

Ratified by Colombia, Ecuador and Venezuela, this convention offers a framework for granting specific rights to indigenous peoples, as well as 'safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned' and 'enjoyment of the general rights of citizenship, without discrimination' (Article 4, ILO 1989). Of particular note to the Colombia context, Article 16 centres on the displacement of indigenous populations, stating that 'the peoples concerned shall not be removed from the lands which they occupy' (ILO 1989). The Article goes on to state that consent must be given by the relevant indigenous communities in cases where relocation is deemed necessary, and that return to traditional lands and compensation for loss or injury shall be guaranteed. The Article further advocates that when return is not feasible, the affected indigenous communities shall be entitled to the provision of legal status at minimum equal to the prior territories that they inhabited, or should monetary or in-kind compensation be preferred, it would be duly paid under appropriate guarantees.

*United Nations Office of the High Commissioner for Human Rights' Special Rapporteur on the Rights of Indigenous Peoples*

OHCHR appointed the first Special Rapporteur on the Rights of Indigenous Peoples in 2001 with the mandate to investigate and promote the protection of indigenous peoples' rights through legislation, state programmes and international standards. The mandate also required the Special Rapporteur to communicate with governments on information collection and exchange regarding alleged rights violations and to present recommendations on prevention measures to rights violations; and to collaborate with other special bodies working on the protection of indigenous peoples.<sup>3</sup>

In July 2009, the present Special Rapporteur, James Anaya, conducted an official visit to Colombia, specifically to follow up on human rights conditions of indigenous people in the country, based on recommendations from the prior Special Rapporteur. His findings echoed several concerns from the previous 2004 visit, namely that indigenous communities still remained in critical situations of human rights violations. The report acknowledges that while partial progress has been made, overall, 'the precarious human rights situation of Colombia's indigenous peoples reflects the gap between progressive domestic legislation and the ineffectiveness of the institutions responsible for protecting these peoples, against a background of internal armed conflict involving numerous warring parties whose actions directly affect indigenous communities' chances of survival' (UN Human Rights Council 2010: 5). Significantly, the report recognizes that policies aimed at rights protection to this vulnerable group have been inadequately, or not at all, implemented, rendering 'very limited practical impact' (UN Human Rights Council 2010: 6). The Special Rapporteur's

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<sup>3</sup> Full version of the Mandate, Human Rights Council Resolution 6/12, can be found at the following link: [http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_6\\_12.pdf](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_6_12.pdf).

recommendations focus on strengthening the enforcement of rights' protection; creating safeguards to halt displacement; protection of lands and resources; and preservation of economic, social and cultural rights.

On forced displacement, the Special Rapporteur stressed the government's duty to protect indigenous lands where native communities have been displaced, to prevent land seizures in their absence and to ensure 'that displaced indigenous communities can return safely, of their own free will, with dignity and without fear of forced displacement in the future' (Human Rights Council 2010: 19). Based on these observations, UNHCR should determine how it could align its work with these recommendations.

### **Relevant legal frameworks: regional scope**

The *Inter-American Commission on Human Rights* oversees the American Convention on Human Rights of 1969, which all three countries in this analysis have ratified. The Commission also created the position of Rapporteur on the Rights of Indigenous Peoples in 1990, to place emphasis on indigenous peoples in the Americas and to lead and organize the Commission's efforts towards this particularly vulnerable group (IACHR 2011).

In 2009, the Commission approved the Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources, outlining norms and jurisprudence of the Inter-American human rights system. Of particular note, this document makes specific mention of protection from forced displacement from indigenous territories prompted by violence. According to the Commission, in cases of displacement, indigenous communities 'have the right to receive special attention by the state while they are displaced', stating that such forced displacement occasionally leads to the loss of sociocultural identity (IACHR 2010: 62).

#### *Inter-American Court of Human Rights*

The Inter-American Court of Human Rights, an autonomous judicial institution of the OAS that applies and interprets the American Convention on Human Rights, recognizes that indigenous peoples' cultures 'directly relates to a specific way of being, seeing and acting in the world, developed on the basis of their close relationship with their traditional territories and the resources therein, not only because they are their main means of subsistence, but also because they are part of their worldview, their religiosity, and therefore, of their cultural identity' (IACHR 2005: Paragraph 135). Furthermore, the Inter-American Court has determined that the state is responsible to ensure the voluntary return of indigenous communities to their ancestral lands, in cases of displacement caused by violence (IACHR 2005: Paragraph 120). This places onerous responsibility on the Colombian state, though possibly facilitated by the 2011 Law on Victims and Land Restitution (also referred to as the Victims Law).

### **Relevant Legal Frameworks: National Scope**

The Colombian National Constitution of 1991 has 18 articles on the special rights of indigenous peoples covering areas such as the need to protect ethnic and cultural diversity, promote indigenous political participation at the national level, support indigenous autonomy and governance in their territories, and protect natural resources indigenous '*resguardos*', or

collective properties. Article 171 of the constitution calls for indigenous representation in the national Constituent Assembly, through two senators ‘elected in a special national electoral district for indigenous communities’ (Constituent Assembly of Colombia 1991). The Constitution represents the first time in Colombia that constitutional legislation has considered indigenous issues in a ‘comparatively wide-ranging and generous’ manner, coming only four months after ratification of the ILO Convention 169 (Roldán Ortega 2000: 33). The Colombian Constitution adheres and overlaps with Convention 169 on several points, including advocating for the consultation and participation of indigenous communities, and guarantees of non-discrimination and respect for their integrity as equal citizens (Convention 169 Article 2, Colombian Constitution Article 13).

With regards to autonomy and territorial rights, the Constitution grants generous authority to indigenous communities to exercise administrative functions within their territories (Article 246). Furthermore, Article 330 calls for council governance in indigenous territories ‘formed and regulated according to the customs of their communities’ and exercising functions, including the supervision of legal regulations on land use in their territories; design of policies and programmes for social and economic development; oversight of public investments; management of natural resources conservation; and maintenance of public order in accordance with state provisions (Constituent Assembly of Colombia 1991). Extraction and exploitation of natural resources drawn from indigenous territories is meant to ‘be done without impairing the cultural, social and economic integrity of the indigenous communities’ as the government is called upon to consult with representatives of the respective communities (Constituent Assembly of Colombia 1991). Questions arise, however, as to the actual application of these guarantees and state obligations to participatory consultation with indigenous representatives.

The Colombian government issued Decision 219 in October 2011, acknowledging that ‘the government’s failure to address the situation of the internally displaced population, combined with their precarious situation, amounted to a generalized violation of their human rights, creating an unconstitutional situation’ (IDMC 2011). Decision 219 outlines alleviating measures to be led by the state and specifically denotes the lack of rights protection by the state to indigenous populations. Article 182 points out that despite the proposed prevention measures set forth in Decision 004 of 2009, security situations have worsened for indigenous populations and adequate measures have not been undertaken to prevent displacement and other grave human rights violations (Constitutional Court of Colombia 2011). Decision 219 goes so far as to list several mass displacements that occurred between 2010 and 2011, including the Awá, who experienced mass displacement in March 2011 following confrontations with the FARC in resguardos of Nariño Department (Constitutional Court of Colombia 2011).

Specific to displaced indigenous populations, the Constitutional Court has issued various measures focusing on how to appropriately protect and support this particularly vulnerable group. Notably, in 2009, the Constitutional Court issued Decision 004, centred on the rights of indigenous peoples displaced by the conflict and recognizing that the conflict has disproportionately affected these communities. The Decision states that indigenous peoples of Colombia are at risk of cultural and physical extermination by the internal armed conflict and have been victims of grave violations to their individual and collective rights, which has resulted in their forced displacement (Constitutional Court of Colombia 2009). Decision 004 admits that the state has not adequately protected these groups and instructs the government to create and enact a country-wide Programme to Guarantee the Rights of Indigenous Peoples

Affected by Displacement, so as to take protective measures against further displacement. This includes close consultation with indigenous representatives to develop ethnic safeguard plans (Plan de Salvaguarda Étnica) for 34 indigenous peoples classified at high risk of extinction, many of whom resided in the border areas, due to the conflict and their displacement.

The establishment and practical implementation of the Programme and ethnic safeguards have proven arduous. The Permanent Consultative Committee, comprised of state authorities and indigenous representatives, faces several road blocks, as the creation of strategic plans for the Programme and ethnic safeguards requires indigenous representatives to consult authorities at the local, regional and national levels. This cumbersome process, mandated by the Constitutional Court, has been postponed in some instances due to lack of resources, and if ‘the results are not satisfactory and the state objects to them in the Consultative Committee, then the indigenous leaders and organizations that are heading the process will be considered responsible’ (IWGIA 2011). Thus, the state appears to fulfil the Court’s requests in Decision 004, yet in practice, these imposed delays render it ‘difficult to see how those initiatives have been translated into practical actions for ensuring that the indigenous peoples of Colombia are not disproportionately affected’ (UN Human Rights Council 2010: 11).

### *The Victims Law and Inclusion of Indigenous Peoples*

Specific to the issue of the internal conflict and subsequent displacement, the Colombian Constitutional Court most notably issued Law 1448 of June 2011, also known as the Victims Law (Ley de Víctimas y Restitución de Tierras). This legislation has gained predominant attention, as it recognizes the existence of armed conflict in the country and thus accepts the right to protection. The Victims Law intends to compensate an approximated four million displaced people affected by the conflict, through comprehensive assistance measures, property restitution, return programmes and reparation. The Law, estimated at US\$28 billion over 10 years of implementation, acknowledges the state’s responsibility to compensate victims of the armed conflict by coordinating public services to offer financial reparations and facilitate the return of victims to their lands through administrative and judicial processes for claiming land restitution. To facilitate implementation, the law created new institutions, including the Special Administrative Unit for the Attention and Reparations of Victims (Victims Unit) and the Special Administrative Unit for the Management and Restitution of Dispossessed Land (Land Restitution Unit), in addition to calling on local authorities to fund assistance programmes as part of their municipal development efforts.

While the Victims Law was initially lauded as a major step towards compensating Colombians affected by the conflict, it has increasingly faced criticism over its implementation, notably over the issues of granting economic compensation to all victims, guaranteeing that lands are effectively restored to their owners, and developing a comprehensive integration strategy. Article 8 infers an end to the conflict through mentions of transitional justice; however, the conflict is very much still a reality, and the law’s ‘transitional’ stance could preclude victims of current or future violations. Reparations depend on when human rights violations occurred: victimizations prior to 1985 may qualify only for symbolic reparation but not land restitution; violations between 1985 and 1991 could be eligible for financial compensation but not land restitution; and abuses committed following 1991 are eligible for land restitution (Amnesty International 2012). These exclusions and the law’s failure to recognize victims of violence and crimes caused by ‘neo-paramilitaries’ and ‘criminal gangs’ (MRGI 2012: 102) have given rise to doubts. Threats and

killings of many trying to regain their lands suggest that the Victims Law ‘has failed to increase the safety of these people’ (Manriquez 2012).

Specific to this analysis, Law 1448 pays no specific attention to reparation for indigenous and Afro-Colombian peoples, despite their disproportionate victimization during the conflict. Importantly, as the Law refers to only two million hectares that the state officially considers illegally appropriated, other land occupied by people who did not have official land titles are not included in the official restitution estimation. Crucially, ‘much of this land is collectively claimed by indigenous and Afro-descendant communities’ and risks not being returned under the Law (Amnesty International 2012: 13).

Significantly, in December 2011, the Colombian state issued Decree Law 4633, establishing complementary institutions to Law 1448, aiming to ensure successful implementation of the mandated restitution and reparation measures specifically to indigenous peoples through a differential approach. According to ONIC, this legislation ‘builds a strong foundation for ensuring the reparation and respect of indigenous peoples’ rights in Colombia’ (ONIC 2012). The legislation harkens to Article 28 of the UN Declaration on the Rights of Indigenous Peoples, which calls for indigenous peoples’ right to redress for their ancestral territories and resources that have been confiscated, subjugated, utilized or damaged without their consent (UN General Assembly 2007).

Despite the promising differential approach that Decree Law 4633 ensures, actual implementation has stalled. Establishment of the institutional framework envisaged in Law 1448 and the design of differential measures provided in the Decree Law have been developed, but their impact on indigenous communities is yet to be assessed. ONIC have pointed out in July 2012 that coordination is still lacking amongst the institutions designated to enact the Decree Law, namely between the capital and provincial regions, and in communications with indigenous communities themselves. Rightful beneficiaries should be able to ‘understand the Decree Law’s contents in their own language and take ownership of and exercise their rights. However, given the institutional weakness of the state in the border areas and the financial insecurity of the Decree Law, the state’s obligation to disseminate and diffuse the law has been widely neglected (ONIC 2012). Consequently, potential beneficiaries of this Decree Law may not be aware of the protection and restitution afforded to them.

### *Ecuador*

The Ecuadorian National Constitution of 2008 recognizes certain fundamental rights of indigenous peoples, including full and equal Ecuadorian citizenship of indigenous peoples (Article 6). Notably, Article 57 sets out several collective rights of indigenous peoples guaranteed by domestic and international conventions and agreements, including: recognition, reparation and compensation for community groups affected by racism, xenophobia and other forms of discrimination; ownership of their communal lands, which shall be unalienable, immune from seizure and indivisible; development, application and practice of their own legal system or common law, in accordance with constitutional rights; prohibited displacement from ancestral lands; participatory representation in official organizations to draw up policies and state projects concerning their communities; consultation on legislation that affects indigenous collective rights; and restriction of military activities in indigenous territories (Constituent Assembly of Ecuador 2008). Article 57 also explicitly speaks of maintaining and developing ‘contacts, ties and cooperation with other

peoples, especially those that are divided by international borders’, suggesting facilitation of cross-border interaction with members of indigenous communities, whose communities and territories might straddle both sides of the border (Constituent Assembly of Ecuador 2008).

The Constitution recognizes in Article 257 indigenous territorial districts, under which indigenous authorities hold ‘jurisdiction over the respective autonomous territorial government and shall be governed by the principles of inter-culturalism and plurinationalism, and in accordance with collective rights’ (Constituent Assembly of Ecuador 2008). Under such multi-cultural territorial divisions, two or more indigenous communities, or even non-indigenous members, could have claims to and reside in a shared territory. This holds implications for cross-border population displacement, particularly of indigenous groups of the same ethnicity who resettle with fellow community members in Ecuador, or those of different indigenous ethnicity but whose presence contributes to the multi-cultural nature of the territory. Problematically, the Constitution leaves gaps in outlining definitions and mechanisms that would oversee the adjudication of lands to indigenous communities. Though special territorial constituencies are defined, indigenous communities hold little practical autonomy within them, as the territories are still subject to state management. Indigenous territorial divisions are based on the state’s administrative delineations, not cultural or ethnic distribution, hence their multicultural nature (Tarallo 2008). Additionally, while civil code requires land title registration to prove ownership even of communal lands (the state claiming ownership where titles are not held), indigenous groups have denounced the government of preventing their acquisition to such titles in several instances, such as not recognizing indigenous administrative units as official (IACHR 1997).

In an effort towards participation and consultation, the Public Institutions for Indigenous Peoples of Ecuador Act (2007) established the Council for Development of Indigenous Nationalities and Communities of Ecuador (CODENPE). CODENPE is tasked as a technical institution for development, focused on policy and strategy creation for sustainable development and improved economic, social and spiritual conditions of indigenous communities in Ecuador (Constituent Assembly of Ecuador 2007). Article 3, in particular, outlines the primary functions of CODENPE, including implementing development projects in indigenous communities in coordination with state and non-governmental institutions; proposing and promoting laws and agreements to facilitate the economic, social and cultural development of indigenous communities; promoting the execution of collective rights as recognized in the Constitution; strengthening dialogue and consultation amongst indigenous groups; and ensuring consultation and participation of indigenous groups in policies affecting their communities.

Tying in Ecuador’s official stance on asylum and refugee issues, the state recognizes in the National Constitution’s Article 41 the right to asylum, special protection guaranteed to those recognized asylum, and through which refugees are given full access to rights. The Constitution allows for ‘exceptional cases and when the circumstances justify it, shall recognize the refugee status of a collective group’, which could refer to indigenous groups caught in situations of mass displacement (Constituent Assembly of Ecuador 2008). Article 42 further guarantees that ‘persons who have been displaced shall have the right to receive protection and emergency humanitarian aid from the authorities, ensuring access to food, shelter, housing and medical and health services’ (Constituent Assembly of Ecuador 2008). Nevertheless, the remote locations along the border in which indigenous populations often seek refuge renders registration as per Article 41 and actual implementation of Article 42 difficult.

In practice, comprehensive refugee protection faces several challenges, especially in light of recent restrictive policies. Decree 1182 of May 2012 offers a prime example of such recent deterring legislation. Under the Decree, Article 27 dictates that asylum applications must be submitted within 15 days of arrival in Ecuador, proving extremely restrictive given that many asylum-seekers may not be aware of the limited timeframe, may fear confronting the authorities, or due to life-threatening circumstances, might not be able to apply in time (President of Ecuador 2012; Appelbaum 2012). With particular relevance to indigenous groups, the remote areas along the Ecuadorian-Colombian border are void of Refugee Directorate offices, thus gravely hindering the refugee status determination (RSD) process. Long distance travel, costly transportation and risk of detention if no documentation is held are critical concerns for these vulnerable peoples as they seek asylum. The Decree increases the possibility of asylum application revocation due to the shortened appeals timeframe for asylum seekers if denied, from 30 days to now five, and merely three days if originally excluded from applying (Article 33). This proves practically impossible, since the average time to receive an applicant's file from the Refugee Directorate is three days (Appelbaum 2012). Furthermore, Decree 1182 removes the expanded refugee definition of the Cartagena Declaration on Refugees. The Cartagena definition allowed for those displaced by mass violence, which subsequently included significant numbers of Colombians, to seek asylum in Ecuador. These recent restrictions render it immeasurably difficult for asylum-seekers to access an efficient and just refugee rights and protection system.

### *Venezuela*

The Venezuelan National Constitution of 1999 broadly acknowledges the individual and collective rights of indigenous peoples of Venezuela, specifically in Chapter VIII, which is dedicated to the rights of indigenous peoples. Within these rights, the Venezuelan state recognizes the 'habitat and original rights to the lands they ancestrally and traditionally occupy, and which are necessary to develop and guarantee their way of life', placing responsibility on the state to collaborate with indigenous representatives 'to demarcate and guarantee the right to collective ownership of their lands, which shall be inalienable' (Congress of Venezuela 1999: Article 119). Furthermore, Article 125 assures the right to partake in politics, ensuring 'native representation in the National Assembly and the deliberating organs of federal and local entities with a native population' (Congress of Venezuela 1999).

With regards to representation, indigenous peoples possess the constitutional right to elect three deputies to the National Assembly (Article 186), and native representatives hold within their territories 'levels of administration of justice based on their ancestral traditions and affecting their members only, in accordance to their own rules and proceedings, provided the same are not contrary to this Constitution, law and public order' (Congress of Venezuela 1999: Article 260). The Constitution's Article 327 regards border regions as a priority for national security, yet mentions that 'the habitat of the native people settled in the areas concerned' fall under special protection. However, no explicit mention is made of population movement, namely of cross-border indigenous communities, in these areas.

The Law of Demarcation and Guarantee for the Habitat and Lands of Indigenous Peoples (2001) has considerable provisions for consultation with indigenous communities in the demarcation of indigenous territories. Article 8 calls for the active participation of indigenous communities and organizations in the planning, coordination and implementation of the National Demarcation Plan, in conjunction with the General Directorate for Demarcation of



Habitat and Lands of Indigenous Peoples. Notably, Article 12 makes particular mention of indigenous communities that have been displaced from their lands and grants them the right to be considered in new demarcation processes, offering a potential inroad for indigenous groups seeking asylum along the Venezuelan border.

Additionally, the Demarcation and Protection of Indigenous Lands Law, enacted in 2001, prioritizes the submission of plans and policies to demarcate indigenous lands, so as to guarantee the collective ownership of ancestral indigenous territories, as required by the National Constitution. In 2011, a presidential decree created the National Commission for Demarcation of the Lands of Indigenous People, in order to recognize and protect the right to collective ownership. The Commission is headed by the Minister for Indigenous Affairs and counts on ten high-level officials and ten representatives from indigenous communities.

Focusing on indigenous protection to Venezuela's border regions, the Indigenous Peoples and Communities Act (*Ley Orgánica de Pueblos y Comunidades Indígenas*, 2005) dedicates more specific attention to indigenous issues and rights along border areas. In particular, Article 21 speaks to protection in the face of conflict in border zones, under which the state guarantees protection and security to indigenous peoples in those areas. The Article does not, however, make explicit mention of indigenous peoples displaced into Venezuelan territory. Nonetheless, Article 22 stresses interaction between indigenous communities across international borders, allowing for development of and cooperation on social, economic, cultural and spiritual matters. The state takes on responsibility to adopt measures and agreements to facilitate this coordination, exchange, integration, movement and provision of services. One such step has been the creation of the Ministry of Indigenous Affairs in 2007, charged with formulating policies, plans and projects for the protection of the rights of the 44 indigenous peoples residing in Venezuela. The Ministry is divided into eight Regional Deputy Ministries pertaining to the provinces of highest indigenous concentration.

With regards to refugee status, the Venezuelan state recognizes and grants refugee status, as per the Refugee and Asylum Act (2001), with further accompanying regulations in Decree 2491 of 2003. The state prides itself in its non-discrimination between refugees, asylum-seekers and other foreigners, as all are granted access to health and education services. However, these rights prove limiting, given that education degrees cannot be granted with a Venezuelan identification card and Venezuelan nationality is required to access social security benefits. Additionally, no specific provisions are included regarding indigenous peoples in situations of displacement, in particular along the Colombian-Venezuelan border. Nevertheless, among its fundamental principles, the Act includes access to the refugee status determination process, non-refoulement, no sanctions for illegal entry and non-discrimination.

In May 2012, the National Commission for Refugees met with the aim of proposing recommendations for public policies related to refugee issues, including documentation; capacity-building and awareness-raising; and the implementation of a socioeconomic census of the refugee community in Venezuela. This is of particular importance, given that in the most recent estimates dating from 2007, Colombians make up 95 per cent of refugees in Venezuela, 5 per cent of whom are from indigenous communities and 31 per cent are Afro-Colombians (UNHCR 2008b). Given that Venezuela recognizes the right for indigenous peoples to hold national identification documents based on the principles of equality and non-discrimination, as per Article 11 of the Identification Act (2006), an opening could be explored by UNHCR for registration and documentation measures through the recent National Commission, particularly in remote border areas.

## **Relevant legal frameworks: bilateral scope**

### *Colombia-Ecuador*

In 1999, Colombia approved Law 521, with reference to human settlements planning in the border region between Colombia and Ecuador. Law 521 recognizes the need to consider the potentially negative impact on indigenous communities of projects focused on cross-border integration, and therefore, bilateral planning for the border region must take ethnic reserves into account. In 2000, the governments of Colombia and Ecuador established an MoU which called for the establishment of procedures for information exchange on displacement in the border region, coordinated responses from both national authorities, guarantees to basic needs assistance and support to facilitate return in a safe and dignified manner. The MoU also called for the promotion of collaboration with humanitarian actors, making specific mention of UNHCR. Interestingly, it specifically stressed the attempt to keep nuclear families united but did not refer to larger units, such as communities fleeing *en masse*, nor is specific mention made of indigenous populations' displacement.

More recently, bilateral political and representative mechanisms over the shared border is managed through a Colombian-Ecuadorian Neighbourhood and Integration Commission, charged with promoting integration, coordination and development on both sides of the border, and serving to create and implement projects along the border. The Commission aims to work bilaterally in the border region to assist Colombians seeking refuge in Ecuador. However, the Commission's priorities do not place specific emphasis on indigenous communities native to the border areas, despite groups linked across the border.

### *Colombia-Venezuela*

Colombia and Venezuela established a Colombian-Venezuelan Neighbourhood Commission for integration and border issues in 1989, creating a means by which both countries should prepare and oversee agreements related to the economic and social development in the border area. A 2003 MoU between Colombia and Venezuela on the treatment of displaced persons reaching the Venezuelan border is similar to the one in force between Colombia and Ecuador. The MoU acknowledges that IDPs in Colombia can expect protection from the Colombian state, and guarantees that displaced Colombians entering Venezuelan territory shall receive basic protection of their fundamental human rights. It additionally calls on UNHCR to participate in tripartite meetings to offer advice and spur cooperation when called upon by the respective countries. Again, no explicit mention is made regarding displaced indigenous groups. Under this MoU, a joint mission was conducted to La Guajira in 2007 to investigate the possible return of 300 Wayúu members under temporary protection in Zulia state (ICG 2011).

Specific to one predominant indigenous population affected by displacement, Colombia passed Law 992 in 2005, establishing an agreement to support development and basic assistance of the Wayúu population in Colombia and Venezuela. Article 4 suggests conducting a collaborative census of adjacent Wayúu communities across the border and furthermore leading a study into the possibility of creating an identification system to allow indigenous nationals free transit across the Colombo-Venezuelan border. The Law demonstrates a sensitivity to indigenous special protection needs, yet there is an absence of evidence to show effective and thorough implementation.

## **Observations and recommendations for UNHCR's work**

The following chapter outlines observations and recommendations representing some of the most salient issues related to displaced indigenous populations in relation to UNHCR's mandate and work. They are not exhaustive of the vulnerability issues faced by these populations and are meant to raise awareness and attention to areas in which UNHCR is currently or could potentially take action. With regards to recommendations, UNHCR should consider how legislation and policy in the relevant countries might fall short of effective implementation, with particular focus on protection and assistance to vulnerable displaced indigenous populations. In essence, how can UNHCR help bridge the gap between policy and practice?

### *Protection and legal barriers*

Gaps in protection remain prevalent in the border regions of Colombia's border with Venezuela and Ecuador. The Special Rapporteur noted in his assessment of the indigenous situation that 'an insufficient level of attention on the part of the authorities for the administration of justice...with regard to abuses committed by members of the Security Forces and illegal armed groups against members of indigenous communities' continues to be widespread (UN Human Rights Council 2010: 9). Despite an abundant amount of relevant legislation, enactment and enforcement of these laws is lacking.

A critical factor impeding the facilitation of protection rests on documentation, or lack thereof. Absence of registration or documentation compounds invisibility and limits mobility, which can preclude those in need of protection from pursuing asylum. The issuance of identification documents grants access to benefits to refugees, confers legal status and can help guard against abuse and indefinite detention through protection measures that accompany such status. The process of refugee status determination, however, often proves lengthy and cumbersome, due to long distances to access registration locations and language barriers among speakers of only indigenous languages. In Ecuador, for instance, the Refugee Directorate Offices, the state institution responsible for asylum management and status determination, remain difficult to access due to their urban locations, far from the remote border areas. Prior to the entry into force of Decree 1182 in June 2012, the processing time for applications from Sucumbíos, for example, averaged 18 months (McGrath 2011). Such lengthy processing times raise concerns for emergency protection cases and coordinating timely assistance. In Venezuela, despite being present in three critical states (Zulia, Táchira and Apure), neither the National Commission for Refugees nor UNHCR manage a delegation in Amazonas state, where significant numbers of indigenous populations are based. In order to provide support to the existing communities in that region, both institutions have launched joint missions for registration and identification of vulnerable communities in Puerto Ayacucho over the course of 2012 yet full accessibility remains challenging.

The issue of protection and documentation is particularly critical with regards to indigenous peoples living along the Colombian borders. A survey sponsored by UNHCR in 2007 reported that 'indigenous and Afro-Colombian persons were the most likely social groups to lack documentation' (McGrath 2011: 6). For those living on indigenous territories straddling both sides of the border, the question is raised as to whether registration of displacement is applicable, especially when displaced individuals and families resettle and seek assistance from their own indigenous communities across the border but still within their territory. Additionally, 'the lack of documentation (birth certificates and individual identification

documents or cédulas) by many indigenous populations living in border areas' may be leading to a situation of risk of statelessness (UNHCR 2008a). These concerns offer an inroad for UNHCR to more explicitly consider how to help facilitate the acquisition of proper identification in these often extremely remote areas.

Legal barriers to accessing asylum present another challenge to accessing protection. In the case of Ecuador, various steps in the asylum application process greatly inhibit asylum-seekers from efficient access. For instance, a 15-day timeframe after entering the country to request asylum renders it nearly impossible for indigenous peoples to reach registration points from the remote areas from which they enter and where they often remain. An admissibility procedure exists that is largely based on an initial credibility analysis of details, such as exact dates, places and identification of agents where persecution events occurred, details which may not be relevant to or equate to the indigenous Cosmo vision. Additionally, a cessation clause, also utilized to exclude asylum claims, applies to cases that leave the country without prior authorization from the refugee authorities. This particularly affects indigenous refugee populations that regularly cross the border.

### **Recommendations:**

- Consider conducting or leading participatory assessments with indigenous communities to collect up-to-date information on the displacement situation and the shortcomings faced by displaced indigenous groups regarding their protection, registration and local integration.
- Support the protection of collective indigenous rights, including the capacity building of indigenous organizations at regional, national and bilateral levels.
- Support the protection of indigenous leaders to practice the authority, which they are entitled to, including the practice of prior consultation by the state.
- Support further strengthening and capacity building of more robust consultation with displaced indigenous communities. This could be done by reinforcing consultation committees of indigenous representatives and local councils, creating a forum to exercise their right to participate in development planning and implementation that affect their communities. Strengthening consultation is critical to ensuring effective protection, as 'institutions need to recognize the indigenous authorities and the decision-making mechanisms of the various ethnic groups' (UN Human Rights Council 2010: 21). Within UNHCR's operations, for instance, focus has been placed on organizational development of the Awá peoples in Ecuador through negotiations of the Ethnic Protection Plan (UNHCR 2012). UNHCR has focused on capacity building to Awá leaders in negotiating with the state on this plan and in implementing orders from the Constitutional Court.
- Seek alternative measures for access to asylum for indigenous persons. In Ecuador particularly, support an application of Decree 1182 that takes into account indigenous peoples' particular culture, Cosmo vision and dynamics of their displacement. Seek modifications of key dispositions of the Decree that are at odds with international refugee law and which therefore have a disproportionate impact on indigenous asylum-seekers. In order to do so, it would be useful to have a better understanding of how current practices of reviewing, revoking and ceding refugee status has particularly

affected the displaced indigenous population, and thus the results from the aforementioned participatory assessment could offer insight.

- Analyse options of dual nationality as a potentially viable protection measure and advocate for such an option, where applicable. With regards to bilateral agreements, the debate of dual citizenship prevails as a critical issue when considering displaced indigenous populations. No agreement exists, to date, between Colombia and either Ecuador or Venezuela to automatically grant or facilitate the acquisition of dual nationality of indigenous groups living along these particular international borders. Colombian law allows for dual nationality, and as stated in its Constitution's Article 96, and granting of Colombian citizenship to indigenous peoples along border zones can be granted. However, this is only applicable based on reciprocity. Venezuela also recognizes dual nationality under Article 34 of its Constitution. In practice, however, indigenous communities have access to citizenship commonly through mixed marriages and through obtaining national identification cards (*cédula de identidad*) in both Colombia and Venezuela, which can be obtained without submitting a birth certificate. Ecuador, meanwhile, is the only country out of the three that recognizes the right of indigenous peoples living in border zones with Colombia to obtain Ecuadorian citizenship, even if residing outside of Ecuador, as outlined in Article 8 of the Constitution. However, indigenous border communities are unaware of the possibility of applying for this dual documentation as well as the right to dual nationality, both on behalf of municipal authorities and representatives from indigenous organizations, remains a major deterrent to practical application (Tarallo 2008).

Indigenous perceptions of borders must be contextualised. The Wayúu, who inhabit La Guajira along the Colombian-Venezuelan border, offer an example of a fluid interpretation of the international border and informal manners of obtaining dual citizenship. The Wayúu lands in La Guajira stretches over both sides of the border and when Wayúu organizations from both sides of the border come together to discuss pertinent issues affecting communities in both countries and work jointly to present issues to both states. Dual nationality is not inscribed in the law for the Wayúu peoples. However, no systematized approach exists such that obtaining both Colombian and Venezuelan identity cards is common.

The benefit of dual nationality, under these circumstances, can be regarded in terms of protection, considering that it would allow for the ability to freely transit between both countries of citizenship and access state programmes directed to citizens, and particularly indigenous communities, of those respective countries. Conversely, dual nationality can render individuals outside of the realm of international protection, eliminating the possibility of seeking asylum in either countries of citizenship, in addition to potential complexities of qualification for domestic state assistance.

Explore the possibility of bilateral identification documents for indigenous community members in border zones. Preliminarily investigate, potentially with support from the aforementioned bilateral commissions, the feasibility of such an effort, such as whether it would be possible to create and share bilateral databases on citizens holding such joint documents.

- Seek lessons learned and best practices from registration efforts in other Andean and Amazonian countries from the region, such as Brazil and Peru, which may have led registration processes in remote areas for its own indigenous populations. Look into

whether there are examples of registration brigades and information dissemination tactics on registration processes that could be adapted to the Colombia context. In addition, Joint Monitoring Missions in Venezuela should be considered to establish relevant lessons learned.

- Promote protection through awareness raising. UNHCR in Venezuela, for example, has promoted protection measures of displaced indigenous groups and sought to strengthen their traditional identities and values through sensitization projects (UNHCR 2012). This has included radio programming to inform the wider public of refugee issues and their rights in Venezuela.

### *Land and territorial issues*

Indigenous peoples have a deeply significant concept and relationship to their ancestral lands. As of 2010, Colombia had 710 officially recognized indigenous territories, occupying approximately 34 million hectares, or almost 30 per cent of the country (UN Human Rights Council 2010). Reportedly, however, only about 8 per cent of this designated land is located in agricultural regions and hosts approximately 65 per cent of the country's total indigenous population (UN Human Rights Council 2010). The potential exists for land restitution in unproductive agricultural areas and this could lead to further overcrowding and violations of indigenous land rights. The Colombian state should ensure that indigenous lands are safeguarded from seizure in displacement contexts, as well as enable the safe return of these indigenous communities. Challenges include guaranteeing just and complete restitution, given that not all indigenous communities hold land property titles, and ensuring conditions for safe and dignified return, considering the continued presence of illegal armed groups and the ongoing interest in illicit cultivation and mineral extraction in these regions.

As violence continues and land rights represent a central issue to the conflict, apprehensions remain high as to whether and how soon indigenous communities can be assured a safe return to their ancestral territories. This 'ultimately will determine the usefulness of the new legislation' (MRGI 2012: 103). Additionally, Article 132 of the Victims Law grants higher indemnity to victims if they withdraw their claims from the courts than if they pursue court proceedings. This raises concerns as to whether indigenous communities who hold claims to ancestral lands may potentially be encouraged, or coerced, to withdraw their claims for greater indemnity.

Given their longstanding connection to specific tracts of land and the potential cross-border nature of their designated territories, indigenous peoples may hold a distinct perception of displacement. Recognition must be given to the various territorial contexts within which displacement of indigenous peoples can take place: within Colombia, either within indigenous territories or not; between indigenous territories; across international borders, in this case, into Venezuela or Ecuador; or across international borders but within the same ethnic indigenous territory, such as with the Wayúu, Awá, Sikuani and Embera. In addition to displacement directly caused by the internal conflict, many indigenous communities have also faced fumigations on or near their territories that have contaminated water sources and crops, and ostensibly prompted displacement. However, legislation such as the Victims Law does not include such displacement in its provisions.

Consideration must also be given to natural resource extraction and utilization when considering indigenous land issues in Colombia. While the Colombian Constitution

guarantees the participation of indigenous representatives in decision-making in the exploitation of natural resources, gaps exist in the actual practice of such consultation. Questions also arise regarding consultations in areas where indigenous communities are not currently present due to displacement. The state's intents for development in designated indigenous territories should align with indigenous peoples' land and natural resource rights, as per the legislatively mandated consultative processes. However, growing evidence shows that the state sometimes focuses on larger-scale resource extraction and industries, geared towards exportation, thus overriding small-scale, self-sufficient traditional livelihoods of indigenous communities and neglecting respect of such joint review procedures.

### **Recommendations:**

- Lobby states for fulfilment of official land appropriation and titles to indigenous groups, as well as for collective property rights of indigenous communities displaced from their territories.
- Advocate for more effective coordination for registration under the Victims Law with the Colombian government. Given that registration is necessary in order to access benefits under the Law, including the re-acquisition of indigenous lands, greater collaboration is necessary between the national government and local authorities to ensure access to registration in remote areas.
- Collaborate with Colombian government counterparts to determine clear criteria to render areas safe for return. The Victims Law seems to require land restitution claimants to return to the area where their lands are located in order to submit their cases to local judges, thus often risking their security, given that violence often continues in these areas (Amnesty International 2012). Thus, criteria must be established to determine safety for return, and in areas that still face insecurity, displaced persons should be allowed to submit their cases in alternate locations, such as in the districts to which they fled.
- Promote and track normative developments and results from the land restitution and return processes to ensure that standards of security and dignity are enacted and monitored, particularly in the submission of collective claims for land restitution that affect indigenous communities.

### *Humanitarian needs and access to rights*

Displaced indigenous peoples from Colombia continue to face considerable constraints in accessing their special rights, often because of discrimination. Along with protection, the social, economic and cultural rights of indigenous peoples must be reinforced, especially in many isolated areas along the borders inhabited by indigenous communities. Of grave concern also are the increased incidents of sexual and gender-based violence (SGBV), trafficking of women and children, and the forced recruitment namely of indigenous youth.

### *Indigenous resistance to the conflict*

Indigenous protests against the conflict's harmful effects on their communities are gaining greater attention. In July 2012, for instance, the Nasa indigenous group peacefully expelled armed actors from their territory in southwestern Cauca, Colombia. Approximately 100

soldiers were driven out, as Nasa members protested being caught in the crossfire of conflict. The Nasa also dismantled trenches constructed by the police to protect their station and marched on FARC camps demanding their departure.

The Nasa claim that they are tired of being victims of the conflict, given that attacks often fail to hit targets and instead kill indigenous civilians, and they aim to regain control of the area. In the weeks leading up to the recent protests, it was estimated that some 600 Cauca residents had been forcefully displaced from their homes. They assert that the security forces' presence in Cauca actually intensifies the conflict by attracting the rebels' presence. Cauca is particularly important to the FARC, given its position as a key route for narcotics trade.

Although Colombian security forces have remained in the region and continue combating the FARC, the Nasa protests exemplify the resiliency and growing resistance of indigenous peoples caught in the midst of a conflict that they do not wish involvement in but in which yet are disproportionately affected (BBC 2012a, BBC 2012b, Colombia Reports 2012).

Access to basic services such as health, education, employment and social services remains vital and essential. Colombia's Decision 219, for instance, makes specific note in Article 317 that access and availability to health services for indigenous communities remain very low, demonstrating a deficiency in the fulfilment of protection obligations. The Special Rapporteur reinforced this opinion by stating that 'indigenous groups do not appear to have the same access to and enjoy the same quality of health care as the majority of Colombians... Security Forces have occupied healthcare facilities in Nariño Department, leaving the inhabitants reluctant to visit those facilities for fear of stigmatization and retaliation on the part of illegal armed groups' (UN Human Rights Council 2010: 16). Humanitarian assistance is thus vital, yet constraints on humanitarian space have complicated access to vulnerable populations and often prompted delays in implementation.

Status determination and registration can directly contribute to greater protection and more effective basic needs assistance because of the legitimating status that it bestows. Awareness raising and consultation with displaced indigenous communities is necessary, however, so as to ensure cultural appropriateness and effective assistance. For example, a UNHCR study showed that humanitarian assistance in education and health did not appropriately respond to the needs of indigenous refugees in the border region of Ecuador because the assistance was intended for urban refugees (Tarallo 2008). The study also pointed out that first aid kits, for example, were not adapted to the customs of these particular populations and hence proved quite ineffectual.

### **Recommendations:**

- Adopt a differential approach towards displaced indigenous populations in order to effectively take into account the particular needs of indigenous peoples, including their distinctive cultures, ways of life and connections to their territories. Diversity must be taken into consideration, while consultation and coordination with the affected populations must be prioritized to ensure appropriate and timely protection and assistance measures.
- Guarantee that particular needs of indigenous populations are considered and incorporated into UNHCR's efforts, including effective access to recognized rights for refugees, working while with local leaders and adapting assistance materials and programmes to the needs and customs of these communities.



- Ensure that UNHCR external documents raise visibility of the particular situation of displaced indigenous persons and of the ongoing efforts by UNHCR to enhance their access to basic rights and services.
- Ensure that humanitarian needs are met in a culturally appropriate manner. For instance, following the example of the Venezuelan Red Cross, which created differentiated assistance kits to specifically meet the needs of indigenous beneficiary groups (Tarallo 2008). Similarly, in Colombia, Acción Social assisted in the delivery of culturally appropriate aid to displaced indigenous communities in Arauca in 2009-10. This demonstrates innovative ways to adapt to particular needs and better ensure receptivity and effective assistance.
- Draw from case studies from other regions, which could provide a comparative perspective and offer lessons learned to apply to the Colombian context.
- Consider how to address and mainstream indigenous issues within UNHCR's work in the Colombian context, including how to adapt strategies to ensure that displaced and refugee indigenous peoples' rights and cultures are respected and preserved.
- Guarantee that SGBV issues are included in programming to this particular population of concern. Such efforts need to be contextualised to indigenous cultures, taking into account the Cosmo vision of indigenous communities, in order to guarantee suitability and efficacy.
- Focus on capacity building of national and local authorities involved in refugee status determination to incorporate an AGDM approach to their work that incorporates indigenous protection needs.
- Seek ways to strengthen the role of indigenous women and youth, who are often disenfranchised as a result of their forced displacement.
- Consider alternatives to humanitarian assistance in border areas, including the promotion of self-reliance initiatives. Efforts should be made to explore the experiences of displaced indigenous peoples settling in urban settings and to examine the level of cultural appropriateness and feasibility to promote such an option.
- Analyse gaps and determine opportunities to target issues of forced recruitment, both related to prevention and protection, particularly among indigenous youth.
- Draw from and apply existing tools external to UNHCR, such as the OHCHR's United Nations Guide for Minorities; the UN Permanent Forum on Indigenous Issues' Resource Kit on Indigenous Peoples' Issues; ILO's Monitoring Indigenous and Tribal Peoples' Rights through ILO Conventions; and IACHR's annual Report of the Situation of Human Rights for the respective countries.

### *'Invisibility'*

The vulnerability, which indigenous peoples often face in contexts of displacement in the Colombia situation, reveals a notion of 'dual invisibility'. In this regard, indigenous refugee and IDP populations are frequently invisible to the law due to lack of documentation or

legal status, or because they themselves choose to remain ‘invisible’, as they settle with family and/or community members of the same ethnicity.

Moreover, cross-border indigenous population movement in this region is often a habitual and traditional recurrence, so that external analysis may not perceive such mobility to be displacement as such. An example of this can be seen among some indigenous communities in the northern border zone between Colombia and Venezuela, such as the Wayúu, whose semi-nomadic livelihoods traditions interplay with the displacement that they also face (Tarallo 2008). Such situations highlight the possibility of seemingly mixed migration scenarios, not strictly forced displacement, and can further compound their invisibility.

### **Recommendations:**

- Raise awareness among displaced indigenous communities of their rights, protection and services to which they are entitled under national and international human rights legislation. Reinforce community information strategies and seek opportunities to engage already existing community and neighbourhood structures.
- Seek opportunities for specific acknowledgement of displaced indigenous peoples among UNHCR counterparts and partners, to explicitly discuss and strategize on relevant concerns and opportunities within national and regional dialogues. Target those organizations and agencies that are currently working or have the potential to work at the ground level in these pertinent border areas.
- Build capacity of community-based organizations through trainings to encourage and spur proactive and direct focus of efforts on indigenous refugee and IDP populations.
- Facilitate bi-national meetings of indigenous representatives with the aim of strengthening cross-border cohesion so as to promote greater visibility and distinction between traditional migratory patterns from situations of forced displacement.
- Encourage and collaborate with local authorities and indigenous representatives/councils to work towards the development of data disaggregated by indigenous ethnicity, so that the particular needs of the various groups can be better understood and become more visible.
- Lead an in-depth analysis in the border regions to more accurately determine the magnitude of indigenous displacement and needs. This could be conducted through an inter-disciplinary team to carry out assessments in indigenous communities along the relevant borders.

### *Receiving communities*

The profound impact and duration of the conflict in Colombia situation has influenced the behaviour of traditionally welcoming receiving communities. As one UNHCR study pointed out, host communities ‘tended to be more receptive to their fellow nationals because of family ties and their common understanding of the collective nature of their lands...[However] the impact of the Colombian conflict is affecting the perception of nationality among indigenous groups living in both sides of the Colombian border’ (UNHCR 2008a). Displaced communities are often perceived as placing additional pressure on already crowded lands or on scarce resources, particularly in host communities living in constrained

economic circumstances. Resistant receptivity may also sprout from discriminatory sentiments against refugees or minorities or both. Given the seemingly growing opposition of some receiving communities, gaining ‘admission’ has become more complex and difficult for refugees and IDPs, especially those of indigenous origin outside of their territories, some of whom leave their ancestral territory for the first time. The challenge for UNHCR rests on how to access and partner with community networks to facilitate such informal social ‘admissions’.

### **Recommendations:**

- Conduct community outreach to raise awareness on the plight of refugee and internally displaced indigenous peoples to host/receiving communities. Taking into account receiving communities’ perspectives and potentially hostile receptivity, create ways through public information to highlight the benefits of hosting, rather than the perceived burden imposed. Target changes in attitudes, reduction of discrimination and promotion of acceptance towards ethnic and racial differences in hosting communities, fostering a culture of peace.
- Explore the possibility of a pilot project on local integration of indigenous urban IDPs and refugees to seek a potential alternative to return.
- Foment intercultural dialogue and joint activities between displaced and receiving communities.

### *Partnerships*

Collaboration and joint efforts are critical to tackle the multiple and deep-rooted issues of protection and assistance to displaced indigenous populations in these regions, given their particular vulnerabilities and designated special rights. At the regional and global levels, UNHCR has not yet extensively centred on strategies or studies regarding indigenous refugee and IDP populations. At the ground level, the lack of solid partnership networks focusing specifically on displaced indigenous populations in border regions has contributed to the gap in ensuring effective and comprehensive protection and services. Direct interaction and consultations with indigenous communities are critical for ensuring cultural appropriateness and effectiveness of programming, particularly within cross-border indigenous territories that might otherwise go undocumented. In order to do so, strong coordination with partners is essential for ensuring greater access and coverage. Given these areas’ remoteness, however, and the continuously shrinking humanitarian space, the vast institutional and humanitarian void that exists in the border areas presents a major challenge.

Partnerships in this context refer to various collaborations, among humanitarian actors, state authorities, civil society and indigenous organizations. The establishment and reinforcement of coordinating mechanisms are necessary at all of these levels to ensure more effective support to displaced indigenous groups.

### **Recommendations:**

- Strengthen coordination mechanisms, bringing together local organizations, NGOs and indigenous community representatives on a regular basis to collaborate on

outreach, community mobilization, reception and protection. Develop a joint strategy with specific roles set out for each partner on topics of protection and assistance to displaced indigenous groups in the border areas or who are at risk of displacement or secondary displacement. In practical terms, hold regular meetings and workshops to bring together key participants, map out ongoing efforts and create a plan of action.

- Formulate potential partnerships or membership with UN indigenous peoples groups at regional and global policy levels to raise awareness and visibility of UNHCR's ongoing efforts and seek possible opportunities for aligning activities with those of other groups. Such involvement could also serve to raise attention internally within UNHCR to strategically and more widely incorporate indigenous issues into its work.
- Consider more direct collaboration with the OHCHR's Special Rapporteur on the Rights of Indigenous Peoples within the scope of the Colombia situation, particularly based on the recommendations in the Special Rapporteur's report that are relevant to UNHCR's mandate and work.
- Seek further binational, cross-border collaboration in the border zones, including between indigenous councils, civil society organizations and state authorities. Through indigenous councils, seek opportunities for community and direct refugee participation.
- Explore opportunities to collaborate with indigenous organizing bodies, such as the ONIC and the Confederation of Indigenous Nationalities of Ecuador (CONAIE) on issues related to displaced indigenous peoples.
- Seek partnership with organizations equipped to assist with development projects in areas where indigenous groups may remain longer-term or permanently settle. Consider partnerships to implement self-reliance, livelihoods and training programmes.
- Pursue partnerships with other humanitarian actors to ensure that humanitarian needs are met. Discuss and collaborate with humanitarian actors, such as ICRC, on the adaptation of aid to indigenous communities, taking into account their cultural needs, political structures and collective rights.
- Focus on strengthening partnerships with local and national authorities to include particular indigenous issues in their considerations on asylum-seekers and refugees.

### *Solutions*

Much attention and expectations have been placed on the current peace talks that commenced in mid-October 2012 between the Colombian government and the FARC. However, the ongoing tenuous security situation in the border areas will likely not drastically improve in the immediate future, thus hampering the possibility of voluntary repatriation and return. Though the Victims Law and Decree 4633 foresee the design of a return plan, no plan has been submitted at the time of writing this report. In view of this, UNHCR is not promoting the return of Colombian asylum-seekers and refugees to their country of origin at the present time due to the lack of security and to ensure their need for dignity.

With resettlement options remaining quite low in relation to the overall numbers of Colombians displaced per year, expectations continue to rest on settlement and integration, either at locations of greater security within Colombia or in neighbouring countries where asylum might be sought. Given the current reality and taking into account the three notable pillars presented in the Mexico Plan of Action (Borders of Solidarity, Resettlement in Solidarity, Cities of Solidarity), it could be beneficial for UNHCR to seek potential application of these pillars in strategically planning for the border regions, with particular focus to indigenous populations.

### **Recommendations:**

- Consider the pertinence and feasibility of applying the following concepts in relation to Mexico Plan of Action's pillars:
  - How has, if at all, the Borders of Solidarity concept been utilized with regards to assisting specifically indigenous populations in the Colombian border regions with Ecuador and Venezuela? What might be the utility of applying this approach as an initiative linked to the Mexico Plan of Action to spur social and economic development of displaced indigenous communities in the border areas?
  - Has the Resettlement in Solidarity initiative been employed for indigenous populations, given their strong ties to ancestral lands? Is this a feasible or potential solution for this particular population of concern? Would resettlement limit or restrict their right of return and repossession of ancestral territories?
  - Have indigenous communities displaced to urban centres been taken into account in Cities of Solidarity initiatives, and have differential protection needs been considered? Given their strong ties to ancestral territories, are indigenous communities apt to settle in urban areas, far from their lands, and if so, what does this mean for their protection?
- Lead an in-depth study regarding interventions by NGOs and the respective states focused on the voluntary return of the Embera Chami and Katio indigenous groups, seeking insight into best practices and possible examples to draw from.

### **Programmatic examples from Colombia, Ecuador and Venezuela**

The following chapter highlights specific lessons learned and challenges confronted by the UNHCR teams in Colombia, Ecuador and Venezuela as part of programming targeting indigenous populations.

#### *Colombia*

At the local level, UNHCR in Colombia is involved in assisting the development of contingency planning with indigenous communities and local authorities in areas of high risk for displacement.

One example of UNHCR's efforts is demonstrated in the efforts to strengthen indigenous Awá organizations and communities in the municipalities of Ricaurte, Barbacoas, Tumaco, Roberto Payán and Samaniego, focusing on protection, prevention and durable solutions. Since 2009, UNHCR has supported community organizational strengthening, as per Colombia's Ethnic Protection Plan. These efforts have included negotiation training for Awá leaders to assist them in their dealings with the state on ethnic protection planning. With the help of UNHCR's efforts, Awá leaders drafted in 2011 a preliminary proposal, submitted to the Ministry of Foreign Affairs, and initiated negotiations with the Colombian state on the consultation process for the ethnic protection plan. The project has also centred on monitoring the humanitarian situation of the Awá community, and under the guidance of the Protection Working Group, a leading inter-agency coordination of humanitarian issues. The group has collaborated over the last two years to consolidate a strategy for the Humanitarian Permanent Mission of the Awá community, coordinating among eight UN agencies and international NGOs. UNHCR's efforts have also helped to support a registration campaign within the Awá territory.

Additionally, UNHCR has collaborated with the indigenous Bari community in Norte de Santander Province on the development of prevention and protection plans for the preservation of their ancestral territories and culture. This has included a three-day workshop conducted with 50 Bari representatives and chiefs to develop suggestions for public policies to be submitted to local authorities in five municipalities of Catatumbo. UNHCR offers technical support for the inclusion of proposals brought forward by indigenous communities towards municipal development planning.

### *Ecuador*

The northern provinces of Ecuador along the border with Colombia contain a high proportion of displaced and asylum-seeking indigenous peoples affected by the conflict. Sucumbíos Province comprises the indigenous peoples of the Siona, Secoya, Cofan, Kichwa and Shuar. The Awá and Pasto predominantly inhabit Carchi Province, while the Kichwa and Awá also reside in Imbabura Province. Most indigenous communities along the Ecuadorian-Colombian border are located in remote areas with limited access, compounding their lack of basic services.

UNHCR efforts focusing on indigenous beneficiaries have included efforts in the Bajo and Putumayo regions on agricultural production and water projects, in collaboration and under implementation by Oxfam. UNHCR has also utilized livestock (poultry) projects in the border region communities to lead community discussions and awareness-raising sessions on gender issues and roles.

One community in particular, Lorenzo, situated in Putumayo, has a population comprised of 50 per cent Afro-Colombian descent, while the other half is made up of indigenous Kichwa ethnicity. Tensions and mistrust run high between these two groups, and thus, in an effort to avoid tensions, UNHCR is planning an agricultural production project in 2013 to strengthen food security. This participative project will engage both groups in technical capacity-building sessions on crop production and will also seek to obtain a better understanding of the tensions between these two communities and how best to mitigate and improve cooperation between them, while working to reinstate traditional farming practices. UNHCR has also worked with the Epera community in Chocó on integral farming projects to improve living conditions of this indigenous population, while also focusing on local integration. UNHCR

offices in Esmeraldas and Tulcan continue to focus on issues encountered by displaced indigenous populations, aiming to expand on their lessons learned.

### *Venezuela*

The indigenous population of Venezuela comprises 28 ethnic groups, of which five (Añu, Japreira, Bari, Yukpa and Wayuú) live in the state of Zulia. The Bari, Yukpa and Wayuú, specifically, live along the Colombian-Venezuelan border and have been the most directly affected by the conflict in Colombia and subsequent displacement, given their cross-border residence. Displacement comes as a result of the conflict, as well as the cultivation and trade of illicit drugs and major mining projects within indigenous territories. Simultaneously, poverty and scarce resources along the border have generated significant tension and competition between communities, particularly discrimination against displaced populations, including indigenous groups.

Aware of the acute protection needs of displaced indigenous populations in the Colombian-Venezuelan border region, UNHCR has launched a series of culturally appropriate projects in recent years promoting awareness of human rights issues among vulnerable indigenous communities in Zulia state. These projects include:

- Monitoring: UNHCR regularly conducts monitoring in indigenous communities in La Guajira municipality and the region of Sierra de Perijá, where the Wayuú, Yukpa and Bari communities reside. Such monitoring efforts have provided insight into contextual protection needs and displacement trends.
- Strengthening protection networks: Recognizing the effectiveness of utilizing networks to reach and serve persons in need of international protection, UNHCR in Venezuela has developed capacity-building programmes amongst local organizations. This has included activities such as bilateral meetings of the Wayuú, Yukpa and Bari communities to reflect on the conflict (the last of these meetings having taken place in December 2010); trainings targeting community leaders on international protection issues, the right to seeking asylum and refugee status, and women's rights, with a focus on cultural appropriateness; and institutional support to the Wayuú-comprised Human Rights Committee of La Guajira, which has facilitated the identification of several asylum seekers.
- Humanitarian assistance: Given the influx of displaced Wayuú from the Colombian Province of Guajira to Zulia Province in recent years, UNHCR has been involved in humanitarian and legal assistance alongside the National Commission for Refugees, the National Directorate for Civil Protection and Administration of Disasters, the Red Cross and Caritas Maracaibo.
- Protection, community support and integration projects: Recognizing that indigenous communities take in displaced persons within their territories, UNHCR has implemented with partners on projects to promote awareness of refugee rights, aiming to mitigate the impact caused by the influx of refugees, improve living conditions and promote a culture of peace and solidarity. Activities have included, in Machiques de Perijá for example, sport events between displaced Colombians and indigenous Bari communities in 2007, health promotion courses in 2006, and infrastructure improvement of schools and water tanks between 2006 and 2010.

- Information campaigns: Aiming to educate and sensitize remote communities on international protection and pertinent organizations, UNHCR collaborated in 2005 and 2006 with Radio *Fé y Alegría* (Radio 'Faith and Happiness') to produce the radio show entitled 'Crossing the line to live' (*Cruzando la raya para vivir*), which follows the stories of several displaced persons who crossed the border into Venezuela. This project facilitated the promotion of dialogue with indigenous Yukpa and Wayuú, as two of the radio shows were translated into their native languages. The show reached approximately 250,000 indigenous Wayuú and 1,000 Yukpa members, contributing to a reduction in discrimination and xenophobia.

## Conclusion

As demonstrated in this analysis, the vulnerability faced by indigenous populations is further compounded in instances of forced displacement. The analysis aimed to highlight relevant international agreements and domestic legislation pertinent to indigenous peoples in Colombia, Ecuador and Venezuela, particularly in situations of displacement, and to outline pertinent challenges to their protection and assistance needs with relation to UNHCR's work. Taking into account the disproportionate impact of forced displacement in the conflict experienced by indigenous populations, the recommendations presented here are intended to be considered by UNHCR as it formulates programming activities, and drawing increased explicit attention to the needs and vulnerabilities of displaced indigenous peoples.

Looking forward, the issues surrounding displaced indigenous populations offer an opportunity for renewed attention to vulnerable groups often rendered 'invisible' in the face of protection and assistance. Given the ongoing nature of violence in Colombia, emphasis should be placed on measures to strengthen UNHCR's collaboration with and support to indigenous communities displaced in Colombia and those seeking refuge in border areas of Venezuela and Ecuador, particularly for opportunities of local integration and the future potentiality of return upon implementation of the Victims Law and possible peace talk outcomes. Focus on displaced indigenous peoples could also provide a reinvigorated effort at higher decision-making levels towards a potential recognition of dual nationality for indigenous communities, which has constituted much of UNHCR's bi-national objectives for over the past decade. Consideration should be given to possible opportunities for the Borders of Solidarity initiative to serve as an entry point for bringing increased attention to the protection and assistance to displaced indigenous populations in remote border regions. Furthermore, attention should be placed on potentially highlighting collaborative state and UNHCR efforts on issues of displaced indigenous populations as an inroad as part of the Cartagena Declaration at 30 in 2014.

It is fundamental and critical to take into account the grave impact of displacement on indigenous populations from Colombia. At present, several groups face threats to their Cosmo vision, livelihoods and culture. The situation requires urgent strategic action for the immediate and longer-term periods. The relevant states and UNHCR, along with the international community and fellow humanitarian and development actors, must recognize the urgency of the situation and adapt strategies and objectives to effectively and differentially support this highly vulnerable group.



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