

**UNHCR's Contribution
to the IOM and UNPFII Expert Workshop on Indigenous Peoples and Migration**

Session II: Exploring the nexus between indigenous peoples and migration: Indigenous peoples as forced migrants and displaced peoples

Introduction

1. UNHCR wishes to express its gratitude to the organisers to have been invited to this important event. Our interest in the subject matter is firmly embedded in UNHCR's mandate, the migration asylum nexus, the understanding of "the multifaceted linkages between refugee issues and human rights", as well as, the perception "that the refugee experience, in all its stages, is affected by the degree of respect by States for human rights and fundamental freedoms".¹ It must be recalled that refugee protection is a specific, subsidiary form of human rights protection which comes into effect when national protection in the country of origin has failed because its authorities are either unwilling or unable to respect and secure an individual's or a group's enjoyment of fundamental human rights, such as the rights to life or freedom.

UNHCR's Mandate

2. UNHCR received its mandate to provide international protection to refugees from the UN General Assembly (UNGA)². According to its Statute, UNHCR shall assume the function:

*"...of providing international protection (...) to refugees (...) and of seeking permanent solutions for the problem of refugees by assisting Governments and, subject to the approval of the Governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities."*³

3. UNHCR's mandate was further developed by subsequent resolutions of the General Assembly and conclusions of the Executive Committee of UNHCR. Beyond refugees, UNHCR now also has responsibilities for the protection of returnees, stateless persons, and the prevention and reduction of statelessness. More recently, as part of the inter-agency collaborative approach, UNHCR has

¹ UNHCR EXCOM Conclusion No.1995 (2003) para (k).

² Through Resolution 428 (V) of 14 December 1950 and UNHCR's Statute annexed thereto.

³ See Chapter 1, paragraph 1 of the Statute. Elaborating further on the elements of the international protection function, Paragraph 8 of Chapter 2 of the Statute specifies explicitly:

"The High Commissioner shall provide for the protection of refugees falling under the competence of his Office by: (a) Promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto; (b) Promoting through special agreements with Governments the execution of any measures calculated to improve the situation of refugees and to reduce the number requiring protection; (c) Assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities; (d) Promoting the admission of refugees, not excluding those in the most destitute categories, to the territories of States; (e) Endeavouring to obtain permission for refugees to transfer their assets and especially those necessary for their resettlement; (f) Obtaining from Governments information concerning the number and conditions of refugees in their territories and the laws and regulations concerning them; (g) Keeping in close touch with the Governments and intergovernmental organizations concerned. (h) Establishing contact in such manner as he may think best with private organizations dealing with refugee questions; (i) Facilitating the co-ordination of the efforts of private organizations concerned with the welfare of refugees."

enhanced its commitment to assist in addressing situations of internal displacement by taking up the cluster lead role on emergency shelter, camp management and the protection of internally displaced people (IDPs).

4. When looking at and addressing forced displacement of indigenous people, it must be emphasised that UNHCR is not a human rights monitoring agency *per se* and in this context paragraph 2 of UNHCR's Statute should be recollected. This states:

"The work of the High Commissioner shall be of an entirely non-political character; it shall be humanitarian and social and shall relate, as a rule, to groups and categories of refugees."

Serious violations of the human rights and fundamental freedoms of indigenous people as a root cause of displacement

5. This workshop is not the proper forum to undertake a comprehensive analysis of all situations globally in which indigenous people are subject to forced displacement. In view of the vulnerability of these communities, we wish to highlight that forced displacement may significantly impact on the enjoyment of indigenous peoples rights and may - in the worst case - even lead to the extinction of such communities. To give just one recent example of concern, reference is made to UNHCR's press release dated 4 April 2006, entitled '*UNHCR Warns of Looming Humanitarian Emergency in Columbia among Indigenous Communities*'.⁴ UNHCR had repeatedly warned "that some of the world's oldest and smallest indigenous groups are at risk not only of displacement, but even of extinction because of the Columbian conflict. All indigenous communities have close links to their ancestral land, on which their cultural survival depends".

6. Indeed, displacement has affected some of the communities' core values, which are key to their survival. For instance:

- the situation of displacement has had a negative impact on the identity of the community as a collectivity;
- there has been a deterioration of the political autonomy project of their territories; a generalized worsening of their living conditions;
- indigenous communities have lost their basic livelihoods since they are no longer able to exercise traditional production activities, such as hunting and fishing;
- their organizational capacity which is a powerful tool to keep the community together and defend their rights has disappeared;
- their internal governance and control mechanisms have collapsed.

7. In light of the complimentary role of different UN actors, UNHCR has, in this context, developed close co-operation with the UN Human Right machinery including treaty bodies, as well as the Commission on Human Right, and its subsidiary organs. UNHCR sees particular value, for example, in the work of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people in highlighting serious human rights violations against members of indigenous people as a root cause of their displacement.⁵ In Colombia⁶, for instance, this includes, arbitrary killings, forced disappearances, forced recruitment of children, rapes of women and occupation of ancestral land by armed groups. Almost 12 indigenous groups in the Amazonia are at high risk of extinction. His reports, in particular, those relating to his country visits, offer valuable, comprehensive, accurate and differentiated country of origin information, which is essential for both

⁴ Full text attached in Annex 1.

⁵ UNHCR has, therefore, encouraged the Special Rapporteur to continue to follow this approach and expressed UNHCR's appreciation for the important information provided in his past reports, which in combination with the efforts of other Special Procedures may offer a more complete picture of the situation in a specific country of origin of refugees.

⁶ For more information on indigenous persons and IDP protection in Colombia, please refer to Annex 2.

States and UNHCR to conduct refugee status determination procedures and to properly identify persons who are genuinely in need of international protection.⁷

8. We believe also that the work of the NGOs present at this Expert Workshop can contribute to these efforts. Detailed, accurate and professionally edited NGO reports on the Human Rights situation of indigenous people which explicitly address criteria relevant for refugee status determination will allow us and Government partners to better understand situations where members of indigenous people may have a well founded fear of persecution. Such reports can, thereby, contribute significantly to UNHCR's work and to the protection of refugees. NGO support is also important when it comes to creating conditions conducive to the voluntary and sustainable return of refugees and IDPs in safety and in dignity. Your support will be of particular importance in light of UNHCR's enhanced role in the protection of internally displaced persons.

Securing indigenous peoples' rights while in displacement

9. While the 1951 Convention relating to the Status of Refugees, to which presently 145 states are a party to, is the primary global international instrument governing the rights and treatment of refugees, UNHCR explicitly, "[n]otes the complementary nature of international refugee and human rights law as well as the possible role of the United Nations human rights mechanisms in this area..."⁸ and emphasizes the need to fully take into account the development of international human rights norms and standards, including those related to the protection of indigenous peoples, when designing its policies and exercising its international protection mandate. International Human Rights law and national legislation, including Human Rights provisions in national constitutions are the key source in the protection of internally displaced persons.

10. While observing the remaining difficulties in clearly identifying all the groups eligible to take recourse to indigenous rights and acknowledging that the formation of the normative framework governing the treatment of indigenous people is not yet concluded, there is an understanding of the need to design refugee and IDP protection policies vis-à-vis members of indigenous peoples in a way that allows them to retain their identity to the greatest possible extent. NGOs can play a key role in identifying and implementing practical solutions.

11. The experience of UNHCR in Colombia has provided us with useful innovative tools to build up protection strategies of indigenous communities. In Colombia UNHCR is undertaking projects to empower indigenous communities to develop proposals, guidelines and action plans on a short and long-term basis in the framework of their own ways of life and cultural values. UNHCR has also

⁷ In order to illustrate how the work of the Special Procedures is used by UNHCR as a tool when developing positions on and advocating for international protection, we may refer to, a UNHCR document titled; "International Protection Considerations Regarding Colombian Asylum-Seekers and Refugees" (separately, in hard copy), which makes several explicit references to reports by Special Rapporteurs. This document, for example, refers to the Report of the Special Rapporteur on Indigenous Peoples on his mission to Colombia, 10 November 2004, E/CN.4/2005/88/Add.2, para 29. that '*In the report on his visit to Colombia, the UN Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people indicates that this violence is directed against indigenous leaders and spokespersons but also traditional authorities and that these homicides appear to form part of strategies designed to decapitate and disorganise indigenous communities*'.

It also quotes the Report of the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, 24 February 2004, E/CN.4/2004/18/Add.3, observed, for example.: '*Asylum cases of indigenous leaders are rare, but should be taken extremely seriously. While official statistics are unavailable, according to ONIC (the National Indigenous Organisation of Colombia), from 2002 through the first half of 2003 179 indigenous leaders were murdered.*'

⁸ UNHCR EXCOM Conclusion No.1995 (2003) Para (I); the text continues: "...and therefore encourages States, as appropriate, to address the situation of the forcibly displaced in their reports to the United Nations Treaty Monitoring Bodies, and suggests that these bodies may, in turn, wish to reflect, within their mandates, on the human rights dimensions of forced displacement."

facilitated the dialogue between representatives of indigenous communities and State institutions to ensure the incorporation of specific measures to respond to the needs of indigenous peoples into the National System for the Attention of the Internally Displaced.

12. UNHCR has also worked in the prevention front, through working together with the Government and the Indigenous groups the strengthening of local development plans of indigenous communities, as well as projects to protect their autonomy, authority, culture and territory, which are key to lower the risk of displacement. The protection of indigenous ancestral land is essential in the context of armed conflict, since it is usually a target for occupation by armed groups and therefore a major cause of displacement.

13. New efforts by UNHCR to address protracted situations and to search for durable solutions, such as a more strategic use of resettlement and newly considered mechanisms such as resettlement on group basis, may assist in finding solutions for securing the rights of indigenous populations, including those which may become displaced in their entirety.⁹

Prevention and reduction of statelessness and return to historic places of settlement

14. In this context and based on its mandate related to the prevention and reduction of statelessness, UNHCR is closely following the issue of possible complete disappearance of States and other territories for environmental reasons and the related work of the Sub-Commission on the Promotion and Protection of Human Rights.

15. In CIS context and also focusing on citizenship and prevention of statelessness aspects, further mention should be made to UNHCR's ongoing efforts related to the return of formerly deported peoples (some of which claim indigenous status), to their original regions of residence. In Ukraine for example UNHCR has, over a period of years, assisted in the acquisition of Ukrainian citizenship of some 108,000 formerly deported persons (FDPs), mainly Crimean Tatars who returned in large numbers to the Crimea (primarily from Uzbekistan), which they consider as their historic motherland. 28,000 of them had been de-jure stateless, and approximately 80,000 persons had been at risk to become stateless (their acquisition of citizenship was achieved through the UNHCR "citizenship campaign" in Ukraine, which lasted from 1998-2001).

16. As some 2,500 Crimean Tatars continue to arrive in Crimea every year since 2001, UNHCR continues to provide assistance in acquisition of Ukrainian citizenship through its implementing partner NGO. In January 2001 Parliament adopted a new Citizenship Law that incorporated many recommendations by UNHCR and prescribed the simplified procedure to provisionally obtain Ukrainian citizenship for up to one year, during which time previously held citizenship should be renounced. The biggest group of returned FDPs from Uzbekistan could not, however, use this simplified procedure until Ukraine's unilateral revocation of its bilateral treaty with Uzbekistan, on the prevention of dual citizenship, which came into force on 7 October 2004. Following this development, the rate of naturalization has increased sharply from an average of 800-1,000 newly arrived FDPs per year to 4,500 FDPs receiving citizenship between October 2004 and October 2005.

Considerations and Suggestions as to the Possible Conclusions of the Workshop

⁹ To complement this abstract information by some experiences made in country context, namely in Colombia, a note titled "*Indigenous persons and IDP protection in Colombia*", is attached in Annex 2. This document makes particular reference to the "*Guidelines for the Integral Attention of the Displaced Persons*" which were formulated in 2003 by the Social Solidarity Network (agency responsible for coordinating IDP protection and assistance), the Ombudsman's Office, and the Ethnic Populations Directorate of the Ministry of the Interior, with the support of UNHCR and to its implementation and practice.

17. Understanding that the scope of your workshop reaches far beyond forced displacement and the protection of members of indigenous people who have become refugees or internally displaced, we would appreciate if any conclusions of your event would make a cross-reference to international refugee law and the existing mechanisms serving the protection of the refugees and IDPs. Any such conclusions should first acknowledge that human rights and protection responsibilities, including for displaced person, lies first and foremost with States. The conclusions may further make reference to the 2005 World Summit of Heads of States and Governments, which explicitly acknowledged that the international community shares a collective- subsidiary - responsibility to act, where a State is unable or unwilling to fulfill its responsibilities. Where governments capacities are insufficient to meet the needs and to protect the rights of persons on their territory or under their jurisdiction, including those who are internally displaced or seeking international protection, governments should – as the Representative of the Secretary-General on the rights of Internally Displaced Persons rightly suggested – “as an exercise of responsible sovereignty, invite or accept international assistance and work together with international as well as regional organizations in addressing the protection and assistance needs of the displaced and identifying durable solutions to their plight”.¹⁰

18. Based on such principal considerations, in their conclusions the participants of the Workshop may, *inter alia*, wish:

A. To call upon states

- to treat indigenous people fully in line with their obligations under international Human Rights, refugee and humanitarian law; and in particular
- to fully respect Non-Refoulement obligations under international refugee and Human Rights law;
- to take all measures to prevent the forced displacement of members of indigenous people, including, by effectively protecting them against violations of their rights by non-state actors; and
- to fully respect indigenous people’s rights affected by internal displacements, including their right to return to their original places of settlement and to facilitate such return once this is possible in safety and in dignity.

B. Encourage States and international organisations to design assistance, policies and programmes for displaced members of these indigenous people, which respect and secure their indigenous peoples rights and assist them in maintaining their identity.

19. UNHCR stands ready to contribute to the debate on this complex issue and we would like to wish the organisers and participants a fruitful discussion.

Protection Policy and Legal Advice Section
Division of International Protection Services
UNHCR
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¹⁰ SPECIFIC GROUP AND INDIVIDUALS: MASS EXODUSES AND DISPLACED PERSONS
Report of the Representative of the Secretary-General on the human rights of internally displaced persons,
Walter Kälin, Addendum*. Framework for national responsibility, E/CN.4/2006/71/Add.1 23 December 2005:

44. When Governments do not have the capacity to provide for the security and well-being of their displaced populations, they should, as an exercise of responsible sovereignty, invite or accept international assistance and work together with international as well as regional organizations in addressing the protection and assistance needs of the displaced and identifying durable solutions to their plight. Another sign of national responsibility therefore is cooperating with, and giving safe and unimpeded access to, regional and international organizations seeking to undertake efforts on behalf of the internally displaced.

Annex 1

UNHCR Warns of Looming Humanitarian Emergency in Colombia among Indigenous Communities

GENEVA, Apr 4 (UNHCR) – The UN refugee agency is warning of an imminent humanitarian emergency in Colombia after two different groups of indigenous people were forced to flee their ancestral homelands in recent weeks.

"Following a series of very serious incidents in recent days, UNHCR wants to warn of a looming humanitarian emergency among Colombia's indigenous communities," UNHCR spokesman William Spindler told a regular briefing of journalists in Geneva.

Following the murder of two of their leaders last week, in the north-western region of Chocó, more than 1,700 Wounaan indigenous people fled their ancestral homeland. Panic had spread among the Wounaan communities after members of an irregular armed group killed both leaders, who were school teachers, within the space of 24 hours.

On Thursday, armed men had burst into a classroom in Unión Wounaan and left with the school's 37-year-old teacher. The teacher was found dead a few hours later. His body showed signs of torture. The following day, the leader of the Wounaan community was also found dead after being taken away by members of the same irregular armed group. There are fears that more assassinations could follow, as other leaders have received threats.

Already, residents of four river communities have fled, with some 1,100 people arriving in Unión Wounaan, the group's biggest settlement. Along with Unión Wounaan's 640 inhabitants, the displaced Wounaan now want to flee further downriver to the small town of Istmina, but are too scared to do so. "On Monday evening, a first group of 30 people arrived in Istmina saying those still in Unión Wounaan are afraid of coming under attack while fleeing and do not have enough boats to make the trip downriver which is their only means of transport through the jungle," said Spindler.

"We have repeatedly warned that some of the world's oldest and smallest indigenous groups are at high risk not only of displacement, but even of extinction because of the Colombian conflict. All indigenous communities have close links to their ancestral land, on which their cultural survival depends."

Indigenous associations and local authorities in the area are calling for help from the Colombian government and the international community. The director of UNHCR's bureau for the Americas, who is in Colombia this week, is going to Istmina on Wednesday to meet with the newly displaced and with local authorities.

On the other side of the country in the south-eastern department of Guaviare, 77 Nukak indigenous people arrived last week in the town of San José del Guaviare. The Nukak are an indigenous group of very limited numbers who until 1988 were unknown to the outside world and lived a nomadic existence of hunting and gathering. In recent years, they have become targets for irregular armed groups who have taken over large parts of their territory.

The 77 people who arrived in San José last week had been walking for four months after being forced to leave their ancestral territory. They appeared to be in poor health and obviously malnourished. They are now staying at a farm just outside San José with another group that arrived in November. They are getting emergency assistance from the Colombian authorities. Spindler warned, however, that their long-term future is uncertain. "It is crucial to find a solution that will allow them to resume their way of life and preserve their culture."

This new displacement is the third since 2003 and brings to over 220 the number of Nukaks forcibly displaced. This means that about half of the total Nukak population, which is estimated at around 500 people, has been forced out of its ancestral territory.

"UNHCR is working closely with indigenous associations to help them defend the rights of their people and our focus is very much on preventing forced displacement through documentation, capacity-building and training," Spindler said.

Marie-Hélène Verney
UNHCR Bogota

Indigenous Persons and IDP Protection in Colombia

Indigenous People - Current Situation

Colombia is characterized by tremendous rich cultural and ethnic diversity. There are 94 different indigenous peoples, speaking 64 different languages, for a total population of around one million people, living in 27 of the 32 departments. Indigenous populations are victims every day of systematic violations of their individual and collective civil, political, economic, social and cultural rights. Murders of leaders, killings of other community members, restrictions on freedom of movement, blockades (51 communities are currently blockaded), forced recruitment of youths, sexual violence against women, illegal occupation of their territories by armed groups and forced displacement are the most frequent violations of their rights. The trend of systematic violence towards these groups due to political and economic interests (large infrastructure projects, narcotics crops) in their collective territories situated in strategic corridors, especially those located in border areas, increased in the last two years. The growing militarization of the borders, due to the increased presence of the irregular armed groups in their territories and the aerial spraying of herbicides to combat narcotics growing, threatens the very cultural and physical survival of indigenous communities in Sierra Nevada de Santa Marta, Cesar, Magdalena, Guajira, Chocó, Nariño, and particularly in the Amazonia and Orinoquia regions, where at least 12 ethnic groups are in danger of extinction.

Indigenous persons constitute 2% of the Colombian population and 8% of the total internally displaced population. Indigenous people suffered a dramatic increase of numbers of IDP during 2005 (18.602), that represents more than 50% of the indigenous persons displaced between 2000-2005 (30.000). Their usual pattern of displacement is often within their region of origin, to preserve control of their ancestral territory or they displace towards remote areas where they cannot easily be detected, a factor that contributes to making their tragedy invisible. However, it is worth mentioning that during recent years, displacement towards urban areas and municipal centers has increased. The ancestral linkage of these groups to their territories means that there are dramatic consequences when they are forced to displace: loss of control of territory and weakening of their traditional authority and organization structures, loss of traditional and cultural patterns, general deterioration of lifestyle and social links between the different groups and within communities. These changes affect not only individual but also collective rights, wreaking the heaviest toll on the most vulnerable groups, especially women, youth and elderly people, and generating the progressive weakening of capacity to protect territorial and cultural autonomy.

Measures to protect the rights of indigenous peoples who are internally displaced or at risk of displacement

Before 2004 there were few specific state regulations/mechanisms, or measures to address the particular situation of indigenous IDPs. Nonetheless, the “Guidelines for the Integral Attention of the Displaced Persons” were formulated in 2003 by the Social Solidarity Network (agency responsible for coordinating IDP protection and assistance), the Ombudsman’s Office, and the Ethnic Populations Directorate of the Ministry of the Interior, with the support of UNHCR. With few exceptions, these guidelines were not implemented by the National System of Integral Attention to IDPs at either the national or local levels. Two instances where the Guidelines were implemented are the institutional arrangements for guaranteeing access to health services in Bogotá (these arrangements adopt a differential approach) and some of the local durable solutions plans adopted in Bogotá and Nariño Department (in Southern Colombia) which take into account ethnicity.

In its landmark judgment T-025 of January 2004 the Constitutional Court declared that the situation of IDPs in Colombia gave rise to an “unconstitutional state of affairs” and insisted particularly on the absence of policies that facilitate access to state services to those displaced groups whose rights are at

greatest risk of violation, such as women, children and ethnic groups. According to the Court, special programmes do not exist that respond to the specificities of these groups and the IDP registry system is not structured so as to permit the identification of special needs. On August 2005 the Court issued a series of orders relating to the implementation of the orders contained in Judgment T-025 (*Autos* 176, 177 and 178). In this second set of judicial orders of August 2005, the Court instructs the Government i) to evaluate the measures taken by the municipal and departmental relating to assistance and protection of the IDP population, paying particular attention to the situation of indigenous peoples and the afro-Colombian population; ii) to evaluate the measures adopted by the Government to protect the displaced population against discriminatory practices.

At the end of 2004, one of UNHCR's recommendations to the government in the publication "Evaluation of Public Policies 2002-2004", emphasized the challenge of incorporating a differential approach that takes into account ethnicity in public policies. The Office noted that public policy lacks a differential approach and that IDP policy does not guarantee the rights of IDPs and provide adequate solutions to different groups of population affected by forced displacement, according to gender, age and ethnic origin. UNHCR recommended that: i) the Government convoke consultative bodies and guarantee the active and genuine participation of IDP organisations in decision-making *fora*; ii) the Government activate consultative bodies with indigenous peoples (Standing Committee for Consultation with Indigenous Peoples and National Commission on Human Rights of Indigenous Peoples); iii) implement the Guideline for Indigenous IDPs; iv) guarantee the equal treatment for women and men belonging to ethnic groups in the context of determination of IDP status; carry out training to ensure that public officials charged who carry out IDP status determination understand the specific risks which give rise to displacement are well-versed in cross-cultural communication; v) to develop procedures to guarantee that the differential approach is reflected in measures taken during all phases of the displacement cycle.

In response to the Constitutional Court judgment T-025 of 2004 and pursuant to the recommendation of UNHCR, the Government adopted the National Plan for Comprehensive Assistance to the Population Displaced by Violence (Decree 250 of 2005), one of whose governing principles is the differential approach that takes into consideration the specific characteristics and rights of IDP populations in terms of gender, age and ethnicity.

In this context, UNHCR has adopted a two-pronged strategy which seeks, on the one hand, to mainstream a rights-based approach to IDP protection that takes into account the specific needs and rights of Indigenous and afro-Colombians and, on the other hand, supports the Colombian state and the Indigenous and afro-Colombian authorities in the joint construction of policies that focus specifically on protection problems faced by minority communities. Pursuant to the strategy UNHCR has promoted the participative development of public policy that takes into account a differential approach to ethnicity and respects and guarantees individual and collective rights of indigenous groups and afro-Colombian communities in all phases of the displacement cycle. The Office will continue supporting: i) the application and consolidation of a legislative framework, at national and local levels, that responds to the specific protection needs of indigenous and Afro-Colombian minorities; ii) the development of institutional action plans and Local Durable Solutions Plans to operationalise the national guidelines for ethnic groups; and iii) strengthening of a coordinated and unified response to internal displacement by national and local indigenous authorities. The following results of these efforts should be highlighted : (1) Indigenous IDPs and populations at risk of displacement that are affiliated with the National Indigenous Organization of Colombia (ONIC) now actively participate in the design of public policies; ii) Indigenous groups in Nariño, Putumayo , Chocó and Sierra Nevada de Santa Marta have strengthened their autonomy, control over territory and capacity to respond to forced displacement, as well as their internal coordination and participation in the National and Regional IDP Committees (established by the national IDP law) though a participatory assessment and drafting of strategic plans and contingency plans; ii) an inter-institutional network has been established for the assistance and protection of the indigenous IDPs in Bogotá.

