

# The lawless city

**Report of the Buenaventura delegation  
Caravana Colombiana de Juristas - August 2014**



*Buenaventura traditional Afro-Colombian fishing areas  
Photo: Colombian Caravana*

Ten members of the Colombian Caravana International Delegation of Lawyers visited Buenaventura on Colombia's Pacific coast, between 25 and 27 August 2014. Buenaventura lies in the department of Valle del Cauca, a region of concern for the Caravana due to the large numbers of reports we have received alleging killings and violence against those who seek to defend access to justice. The delegation visited the urban centre of Buenaventura, with the aim of investigating threats to lawyers and human rights defenders, and to hear first-hand accounts of the human rights situation in the city<sup>1</sup>. This report highlights key concerns and recommendations<sup>2</sup>.

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<sup>1</sup> Programme: *Monday 25th August* Orientation and context meeting with the Defensoría del Pueblo; Tour of municipalities in Buenaventura; Meeting with the Red Mariposas de Alas Nuevas (a network of women victims of violence); *Tuesday 26th August*; Visit to the Puente Nayero Humanitarian Space ; Meeting with the Proceso de Comunidades Negras (PCN); Meeting with the Legal Network of Buenaventura; Meeting with the Comité de la Marcha; Meeting with Board of Victims; *Wednesday 27th August*; Meeting with various members of the Ministerio Público

<sup>2</sup> The report also includes information from subsequent research and follow-up

## SUMMARY AND RECOMMENDATIONS

In Buenaventura, the local population continues to suffer extreme violence at the hands of paramilitary successor groups. There is also widespread poverty, despite national and international investment in the city's port and coastal areas for trade and tourism. The city of Buenaventura continues to be heavily affected by intra-urban displacement and grave human rights violations, such as killings, disappearances, torture and recruitment of children. Sexual and gender-based violence is commonplace and is used to instil terror and control communities.

The governmental response to the massive and systematic human rights violations in Buenaventura has not resulted in the expected improvement and may constitute a grave violation of Colombia's human rights obligations. Despite the significant increase in the presence of the armed forces in the city, this has not deterred violence and has led to questions on the independence of the military and other local State institutions within the context of widespread violence from paramilitary successor groups. The level of under-resourcing of, and lack of access to basic services in Buenaventura, which is predominantly Afro-Colombian, raises serious questions about systemic racial discrimination in the allocation of resources.

The continuing impunity in Buenaventura shows a breakdown of the rule of law, creating a vicious cycle which ends up in generalised violence and lawlessness. Protection measures offered to human rights defenders are ineffective and inadequate and mean that it is extremely difficult for lawyers and defenders to work in the area, and for communities to publicly resist violence and displacement. At present, women face stigmatisation and particular difficulties in accessing justice, and Buenaventura's institutional framework is ill-adapted to meet their needs.

It is difficult to see how the current Peace Process will bring positive changes to Buenaventura, unless paramilitary successor groups are effectively dismantled as part of this process, and the individual and collective rights of victims to truth, justice and reparation are respected. Significant social investment is also needed to bring the provision of services and employment opportunities to the local population. There is a notable lack of medium and long-term social investment in the community by the corporations in the port. The collective territories of urban afro-descendant communities must also be formally recognized to respect their rights, offer them a long term solution, and prevent further displacement.

### *Recommendations addressed to the Colombian State:*

Convene an independent cross-sector commission of inquiry, to urgently investigate and to ensure that coordinated actions are taken by the authorities responsible for the implementation of the different plans required by Law 70 of 1993, Law 1482 of 2011 (on racial discrimination), Law 1448 of 2011 (victims' and land restitution law) and its accompanying Decree 4635 of 2011, as well as Constitutional Court order 005 of 2009 (to protect the rights of the afro Colombian population) and its follow-up Order 234 on Buenaventura. The Public Ministry and Contraloría General de la República should play a key role in the construction, implementation and follow-up of these plans to ensure they have an ethnic approach and that different sectors of the community can participate fully in the process. Ensure that all authorities involved in the construction of these plans are fully trained on ethnic approach, gender issues and collective rights.

Continue to increase the number of prosecutors and judges serving Buenaventura; establish a gender-based violence unit in Buenaventura, including at least one prosecutor dedicated exclusively to the issue of sexual and domestic violence. All staff working locally within the justice system should receive gender sensitivity and women's rights training, in line with Law 1719 of June 2014;

Given the recent opening of an office in Buenaventura of the National Protection Unit, review protection measures urgently and in consultation with local NGOs, human rights defenders and community leaders, with a view to developing differential measures (collective and individual) adapted to their working and living conditions;

Legally recognise the urban collective territories of Afro-descendant communities in Buenaventura and apply their right to prior consultation before development projects affecting their lands and livelihoods are planned and implemented;

Urgently comply with the Precautionary Protection Measures granted by the IACHR to the Puente Nayero Humanitarian Space in September 2014, in consultation with the community and their accompanying human rights defenders, including a constant police presence maintained at the perimeter of the Humanitarian Space, and the investigation and sanction of all threats against members of the community.

*Recommendations addressed to the UK and EU Parliaments:*

We note the visit of European and USA Ambassadors to Buenaventura in September 2014 and we hope that further visits to hear the concerns of human rights defenders and victims in the municipality can take place in the near future.

In contacts with Colombian authorities, express concern about the protection risks faced by community leaders in Buenaventura calling for their full participation in decisions that affect their communities and for effective protection measures. In addition, express concern about the lack of opportunities for training and employment in Buenaventura and the lack of access to basic services including water provision and healthcare.

Given the importance of Buenaventura in terms of international trade under the EU FTA with Colombia and Peru, take concrete steps to ensure under the monitoring of the agreement via the human rights clause that lawyers, human rights defenders and communities in resistance are free to carry out their work and live without threat or attack in the municipality;

In order to comply with their human rights responsibilities in accordance with the Ruggie Principles, the UK and the EU should take steps to encourage and ensure that any companies investing in or acting in the area undertake thorough, careful and ongoing human rights and environmental due diligence assessments and conduct free prior informed consultations, seeking community consent, before any further expansion. This is in order to ensure their operations are not contributing to the cycle of violence and impunity in Buenaventura.

*To the United Nations and the Organisation of American States:*

Include the specific case of Buenaventura during the examination of the UN Committee on Racial Discrimination in 2015;

Ensure that the UN Special Rapporteurs on minority issues, sexual violence in armed conflict and human rights defenders, to closely monitor the critical situation in Buenaventura and engage with the Colombian State on this specific issue;

Include the specific case of Buenaventura in the follow up activities related to the IACHR's latest country report on Colombia, published in August 2014.

# Part 1. The current situation

## *Geographic and economic importance*

The municipality of Buenaventura is located in the department of Valle de Cauca, on the Pacific coast of Colombia. It comprises both the port city of Buenaventura, home to approximately 90% of the population, as well as less densely inhabited rural areas. Its population is primarily Afro-Colombian (according to the 2005 Census, 84%).



*Traditional wooden houses of Afro-Colombian fishing communities in Buenaventura*  
© Lee Pearman

The urban city of Buenaventura – which was the focus of the Caravana delegation’s visit – is made up of 12 districts (*comunas*) with 105 neighbourhoods (*barrios*)<sup>3</sup>. The city houses Colombia’s largest port and is the economic gateway to Colombia – the port is linked to Cali and the interior through a direct highway, the most direct of only two main roads linking the interior with the Pacific Coast. The city is therefore strategically important, being the economic centre of the Pacific coast and a crucial link with the coast for the larger interior cities.

## *Economic, Social and Cultural rights*

Despite its strategic importance, Buenaventura is characterised by widespread poverty and lack of adequate social provision for the local population. According to human rights organisations, more than 80% of the population lives in poverty, well above the national average<sup>4</sup>. Aside from the joint national and multinational ‘megaprojects’ linked with the port or tourist development, there is a glaring lack of investment in the local population. Buenaventura lacks adequate provision of essential public services such as health and education, and existing services

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<sup>3</sup> <http://www.buenaventura.gov.co/secciones/2/1/1914/comunas-de-buenaventura>

<sup>4</sup> National Department of Planning, “Conpes Document 3410, State Policy for Improving the Living Conditions of the Buenaventura Population,” February 20, 2006, <https://www.dnp.gov.co/Portals/0/archivos/documentos/Subdireccion/Conpes/3410.pdf> (accessed March 1, 2014), p. 5, cited in Human Rights Watch, the crisis in Buenaventura, March 2014: [http://www.hrw.org/sites/default/files/reports/colombia0314webwcover\\_1.pdf](http://www.hrw.org/sites/default/files/reports/colombia0314webwcover_1.pdf)

prioritise economic interests over those of the local population. For instance, the Caravana was told that the port has a 24-hour water supply, yet at least 45% of the local population have no access to potable water and those who do, often only have access for 6 hours per day<sup>5</sup>.

The majority of the local population subsists on the basis of fishing, a traditional local activity, or by working in small-scale local enterprises and the informal economy. The population in the “Bajamar” area near the sea on the Isla Cascajal (Comunas 1, 3, 4, 5 and 6), continue to live in traditional, wooden houses set on stilts. These houses are favoured by the communities because of the suitability of the wood to the local climate and their location by the sea so that the communities can carry out their traditional economic activities. The housing is communally-oriented in accordance with local cultural norms, and is often built on land reclaimed from the sea by the communities themselves over generations, using washed-up silt and rubbish, and as such is considered by them to be their collective territory. Many people are displaced from rural areas and have settled in communities based upon the area they originally came from, thereby maintaining their cultural identity and extended family networks.

Those local people who wish to seek employment in the large-scale megaprojects are reportedly excluded, as the companies tend to mainly employ workers from outside of Buenaventura. The lack of accessible training opportunities in Buenaventura means that there is a lack of qualified labour. Significant social investment is needed to bring the provision of services and training and employment opportunities to the local population.

### ***Violence committed by paramilitary successor groups***

Buenaventura is one of the most violent places in Colombia. Its location is not only strategic for legitimate trade: its long, sparsely-populated coastline, which contains numerous rivers, provides an ideal location for illegal trade in weapons and drugs. The main perpetrators of violence in the city are paramilitary successor groups.

### **Figures related to the violence**

#### ***Homicides and disappearances***

*According to official figures from State forensics agency Medicina Legal, between 1 January and 3 July 2014 in Buenaventura there were:*

- *91 cases of homicide*
- *10 cases of dismemberment in which the victims had been identified*
- *5 cases of unidentified body parts under examination<sup>6</sup>*
- *These figures are undoubtedly higher, due to the high number of forced disappearances in Buenaventura, with more than 150 people are reported as forcibly disappeared in between January 2010 and December 2013<sup>7</sup>.*
- *There is also significant underreporting due to fear of reprisals from paramilitary successor groups operating in the city and alleged to be responsible for the majority of crimes.*

#### ***Forced displacement***

*According to the Personería in Buenaventura, between 1 January and 1 October 2014:*

- *there were 11 instances of mass displacement, affecting 1,424 people who were displaced*
- *The vast majority were Afro-Colombians, followed by indigenous communities*
- *These figures do not include displacements by single families or individuals*

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<sup>5</sup> As told to the Caravana during its visit

<sup>6</sup> Source: INSTITUTO NACIONAL DE MEDICINA LEGAL Y CIENCIAS FORENSES, July 2014

<sup>7</sup> Cited in, Human Rights Watch, the crisis in Buenaventura, March 2014:  
[http://www.hrw.org/sites/default/files/reports/colombia0314webwcover\\_1.pdf](http://www.hrw.org/sites/default/files/reports/colombia0314webwcover_1.pdf)



Although the paramilitaries were officially “demobilised” between 2003 and 2006, and have now been rebranded as BACRIM (short for “*bandas criminales*”, criminal gangs) by the State, all testimonies from those we interviewed coincided that the groups currently operating in Buenaventura are the same paramilitaries, albeit operating under new names. The city is now held in the grip of paramilitary successor groups “Los Urabeños”, “Los Gaitanistas” and “La Empresa”, who fight for control of the city. These successor paramilitaries operate on a territorial basis, setting up “casas de pique” (chop houses) in particular areas from where they exercise a reign of terror. Any community members who stand up to them are threatened, and the stakes for the local population are high: in the *casas de pique*, those who disobey – or their family members – are tortured and killed, often having been dismembered while still alive. Body parts are regularly found in the sea, as well as in other parts of the city.

*It was reported to us that the successor paramilitary groups groom children from the community, using them as scouts or informants from as young as 5 or 6 years of age – and that children of 12 and 13 were being trained for future torture of humans by being forced to dismember animals.*

These illegal armed groups extract protection money from local businesses, hold monopolies of local distribution of basic supplies such as meat and eggs, control the local population, and engage in the illicit trade of arms and drugs. Just days before the visit of the Caravana delegation, three butchers from the local market were murdered, allegedly by paramilitary successor groups because they had refused to pay protection money to them<sup>8</sup>. The groups also forcibly recruit young people under threat of killing them or their family members, they impose invisible borders that restrict movements and employ sexual and gender based violence against women. They groom children from the community, using them as scouts or informants from as young as 5 or 6 years of age – and it was reported to us that children of 12 and 13 were being trained for future torture by being forced to dismember animals. It is clear that the actions of the paramilitary successor groups are deliberately designed to intimidate and terrorize the local population.

Earlier this year, following an unprecedented march on 19 February calling for an end to the violence lead by the local bishop and another one, shortly after, organised by local businesses, the President ordered the deployment of military naval units to the city in an attempt to address the violence. However, although there was an initial reported decrease in murders following the arrival of the military, within three weeks the violence resumed. Locals say the military has not attempted to assume control in the areas most affected by violence. There is, in addition, strong belief of collusion between the police, military and the so-called BACRIM. Indeed, links between paramilitaries, members of the armed forces and politicians throughout the country have been well documented.

Given this situation, it is difficult to see how the current Peace Process between the Colombian government and the FARC guerrilla, can bring real peace to Buenaventura, unless paramilitary successor groups are effectively dismantled as part of this process, and the rights of victims to truth, justice and reparation are respected, with regards to the massive human rights violations committed against them.

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<sup>8</sup> <http://www.elespectador.com/noticias/nacional/menos-de-72-horas-asesinan-tres-comerciantes-buenaventu-articulo-511891>



*The Caravana delegation to Buenaventura, August 2014  
Photo: Colombian Caravana*

### ***Community response and resistance***

#### ***The March Committee (Comité de la Marcha)***

The “Comité de la Marcha”, is a broad alliance of civil society grassroots organisations that agreed a manifesto and backed an unprecedented protest which took place in Buenaventura on 19 February 2014 led by the Bishop, attracting an estimated 30,000 participants and catapulting Buenaventura onto the national agenda after years of being sidelined.

The “Comité de la Marcha” seeks to continue its efforts to coordinate civil action and demands to the authorities in relation to a range of areas, including among others access to basic services such as water and healthcare, restrictions on traditional fishing and the extremely high levels of violence against women. It became a key civil society interlocutor with the two high level advisors<sup>9</sup> appointed by the President to address the critical situation in Buenaventura.

This concerted civil society action is gaining public support; however, Buenaventura has a history of severe reprisals and threats after protests. In one example, after a catholic church led march to celebrate Colombia’s national Semana de la Paz was held in one of Buenaventura’s most affected districts, in September 2013, body parts were subsequently found strewn along the route to terrorise those who had participated. It is vital that the Committee can continue to carry out its work in safety.

### ***Forced displacement and the right to prior consultation***

Between 1997 and 2011, Buenaventura was the fifth-largest receptor of displaced people in the country, the majority fleeing when their lands were taken from them violently, because of paramilitary violence, or due to fighting between the FARC guerrilla and the Colombian Army.<sup>10</sup> More recently, intra-urban displacement (within the city) has become a widespread problem in the city, with reports that more than 13,000 Buenaventura residents fled their homes due to the violence in 2013 alone.<sup>11</sup> Aside from the general terror caused by the violence in Buenaventura, one critical element leading to urban displacement is the lack of formal recognition of the property rights of the local Afro-Colombian population. While Law 70 of 1991 recognises the collective ancestral land rights of rural Afro-Colombian communities, it does not recognise the collective lands of urban-dwelling Afro-Colombian communities,

<sup>9</sup> Alto Consejero de Regiones and Director del Departamento de Prosperidad Social.

<sup>10</sup> See Controloría General de la República, Procuraduría General de la Nación y Defensoría del Pueblo, *Primer Informe de Seguimiento de Ley 1448 de 2011 de Víctimas y Restitución de Tierras*, 2012, pp 88 and 95

<sup>11</sup> Cited in, Human Rights Watch, the crisis in Buenaventura, March 2014: [http://www.hrw.org/sites/default/files/reports/colombia0314webwcover\\_1.pdf](http://www.hrw.org/sites/default/files/reports/colombia0314webwcover_1.pdf)

leaving these communities especially vulnerable to displacement and exploitation. Afro-descendant communities consider their territories as vital spaces in which to maintain ancestral practices including; the respect and recognition of elders as figures of authority; extended families informing the way in which children are raised; spirituality; and mutual respect and solidarity<sup>12</sup>. Despite generations having lived in Buenaventura, and the land on which they live having been literally created by their own efforts, communities generally have no recognised entitlement to the property on which they live, either on an individual or communal basis.

While the paramilitary successor groups operate throughout the city in different *barrios*, it is notable that many of the areas most affected by this violence coincide with areas where future large-scale developments are planned<sup>13</sup>, including expansion of the port and its container zone, and the development of a recreation area called the *Malecón Perimetral del Mar*.<sup>14</sup> As stated by the IACHR in its latest country report on Colombia:

*The Commission received information which indicates that in municipalities like Buenaventura, Soacha and Tumaco, forced displacement could clear areas marked within municipal development plans as areas for growth, the aim of which is not to improve the living conditions of the inhabitants of these marginalised neighbourhoods, but rather to construct large-scale works to encourage foreign investment or the implementation of extractive, housing, tourist or commercial projects.*<sup>15</sup>

The government is seeking to relocate the residents of *comunas* 1, 2, 3, 4 and 5, into a proposed large-scale housing project further inland to make way for the port development, however, residents do not want to move because being close to the sea means that they can continue to carry out their subsistence activities and live in their ancestral lands, benefitting from traditional support networks from their community and extended family. Although the communities feel that their land is collectively owned and that they should therefore have the right to prior consultation before economic projects affecting them are implemented on their lands, they have never been consulted.

*In particular, with respect to the functioning of community councils, it was reported that leaders from Buenaventura and Suárez presented complaints because they had been denied authorisation for their Community Councils, which in practice means denying them the right to claim collective land titles and the right to prior consultation in relation to megaprojects.*<sup>16</sup>

Some communities are being offered low prices for their houses. It was reported to the Caravana that a fire broke out in Comuna 6, very shortly after the local residents had refused proposals for their relocation in order to enable the construction of further port facilities. Locals question whether this was deliberately started by the paramilitaries, working with the port authorities.

The Caravana delegation heard several stories of forcible displacement outside Buenaventura. We heard from the leaders of one community from a rural area of Buenaventura. Despite having obtained formal title to their land in 1992, the community had been forcibly displaced to make

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<sup>12</sup> See: <http://www.afrocolombians.org/pdfs/Defeating%20Invisibility.pdf>

<sup>13</sup> The Caravana received no hard evidence of collusion between the authorities and/or developers and paramilitaries, but local people question whether the efforts of the paramilitaries are designed to force them to move out of their neighbourhoods, and the coincidence of violence with future development plans requires some explanation.

<sup>14</sup> Megaproyecto: Malecón Perimetral del mar (2008), Megaproyecto: Centro de Actividades Económicas de Buenaventura CAEB, Megaproyecto: Terminal de Contenedores de Buenaventura (TCBUEN agosto de 2008), Megaproyecto: CELPA (2 de marzo de 2011), Megaproyecto: Zona de Actividades Logísticas Extraportuarias (ZALESA 2008), Megaproyecto: Puerto Industrial de Agua Dulce (2006). Servicio Jesuita a Refugiados, *¿Cuánto vale la tierra? Minería y megaproyectos. Informe preliminar sobre su impacto en el desplazamiento en Colombia*, junio de 2012, pág. 14, 31-33

<sup>15</sup> IACHR, August 2014, Truth, Justice and Reparation - Report on the Situation of Human Rights in Colombia (in Spanish – translation our own).

<sup>16</sup> Ibid



way for investment projects by third parties, and were now all living in urban Buenaventura. The leaders had been threatened by paramilitaries, who came to their houses and told them to cease working on social issues. The community leaders said local authorities were involved in the investments, and therefore the community could not turn to them. The communities sought the assistance of the environmental protection office, on the basis that environmental laws had not been complied with, but this office had done nothing for over 4 years. The community of La Esperanza created a Community Council, which was recognised by the local authorities. Then others came and claimed the land, creating another Council which was also registered by the authorities. The response of the Ministry of the Interior and INCODER to this problem has been inadequate – the leaders of the community are receiving very serious threats, but they have not been granted protection<sup>17</sup>. These threats must be taken seriously. The Black Communities' Process – PCN, reported in 2013 that Demetrio López had been assassinated on February 23 after previously receiving a threat to stop representing his community as President of the La Caucana Community Council<sup>18</sup>.

*Local or Departmental governments in some cases, as I was informed by the Governor's [sic] office in Buenaventura, may have an ownership share in public-private projects like the expansion of the port there, as well as benefitting from increased tax revenues. This means that when Afro-Colombian communities seek government assistance in regaining their full land rights, they are unclear whether government is acting as a referee or as an interested party.<sup>19</sup>*

Despite the extensive violence which has infiltrated all aspects of the lives of Buenaventura's inhabitants, transnational companies associated in particular with the port, continue to operate. In view of the widespread violence, and in particular, intra-urban displacements, there is a very significant danger that any company investing in or engaging in activities in Buenaventura will, even if well-intentioned, become indirectly complicit in the violence and impunity. In fact, there is a serious question as to whether any responsible investment in Buenaventura can take place before the issues of violence and impunity are resolved.



*Caravana delegates with members of the Puente Nayero Humanitarian Space and the Inter-Church Justice and Peace Commission.*

*Photo: Colombian Caravana*

<sup>17</sup> As told to the Caravana during our visit

<sup>18</sup> <http://justiciaypazcolombia.com/Asesinado-Demetrio-Lopez>

<sup>19</sup> Statement by the United Nations Independent Expert on minority issues, Ms Gay McDougall, on the conclusion of her official visit to Colombia, 1 to 12 February 2010.

### **Community response and resistance**

*The Puente Nayero Humanitarian Space, Playita district, Comuna 3.*

The Humanitarian Space is an area of less than 200m<sup>2</sup>, more or less one street running from a road in the city to meet the sea, together with some small adjoining side streets, set up as a “civilian safe zone” within the city. The humanitarian space is home to 302 families (1028 people in total) and was established on 13 April 2014, the day following the murder and dismemberment of Carlos Andrés Angarita, a local coconut water seller. The community dismantled the “casa de pique” located in the street – which remains now as a shell, with a sign outside stating “sin olvido”, and housing a small exhibition.

Although humanitarian spaces have previously been set up in areas of rural displacement to provide a safe area for communities who wish to return to their lands, the creation of an urban humanitarian space is an unprecedented initiative in an urban area. Its development was led by the community itself, with the support of NGO *Comisión Intereclesial de Justicia y Paz* (the Inter-Church Justice and Peace Commission), to stand up to violence by illegal armed groups, and to fight for the right to life, integrity, use and enjoyment of land as a community.

We heard that the space has had a positive impact on the way that community members relate to each other. Previously suspicion and fear haunted the community in all their daily activities. They knew who the members of illegal armed groups were, and could hear the screams of victims who had been taken into the “casa de pique”. There was a constant air of menace: for example, young local children had ceased even to play football after a football hit a gang member of the armed group and he threatened them. Now, in the humanitarian space, the community can live, share their difficulties, work, fish, their kids can play football and there is no paramilitary presence in the zone.

The perimeter of the humanitarian space is guarded by the police at the request of the community, although there have been lapses in security: firstly, when no police have been there, and secondly, when the police have apparently allowed paramilitaries enter the humanitarian space. On each occasion they have been forcibly removed by the community. Moreover, unlike in rural models where the community may be able to live exclusively within the humanitarian space, members of the Puente Nayero community must regularly leave the humanitarian space to go about their daily lives, for work and school, for example. They are therefore exposed to risk in the wider city. There have been around 50 threats against those associated with the zone, including 7 threats against Justice and Peace.

*17/05/2014 ORLANDO CASTILLO- Paramilitaries entered the humanitarian space and threatened him. He was pressured by the community to leave the space. ORLANDO CASTILLO is a community leader and promoter of the humanitarian space established in Buenaventura in April 2014. He received death threats in May 2014 (on the mobile phone provided to him by the National Protection Unit, which number should not have been publicly available), directed not only to him but to the community as a whole.*

On 15 September 2014, following a request made by the community and supported by Justice and Peace, the Inter-American Commission on Human Rights granted precautionary measures to residents of the humanitarian space, thereby obliging the State to provide protection to the community members in consultation with them. It is essential that there is ongoing and effective provision of security by the Colombian state, as well as continuing political support at an international level.

## ***The situation of human rights defenders in Buenaventura***

Despite the clear need and huge demand for assistance for the victims of the armed conflict and political violence, Buenaventura is characterised by a glaring lack of human rights lawyers. There is a small and committed group of lawyers, defenders and social leaders from local human rights organisations, who provide advice, legal accompaniment and guidance to victims, in coordination with the State human rights body the *Defensoría del Pueblo*. International organisations with a permanent presence are the UN Refugee Agency - UNHCR, the Jesuit Refugee Service, Alianza por la Solidaridad and Help Age International. Some human rights defenders also work with Buenaventura victims from offices in the city of Cali, some three hours away by road. However, the Caravana was told that there was not one lawyer living in Buenaventura who acted for victims, in the sense of *representing* them in administrative or judicial procedures. This is an astounding and extremely worrying absence given the widespread violence and displacement<sup>20</sup>.

The work of human rights lawyers and defenders places them at great risk, because it challenges the actions of paramilitary successor groups who perpetrate the violence in the city. Moreover, the fact that there are so few human rights defenders in Buenaventura makes them easily identifiable, and therefore increases their vulnerability and personal risk. Almost all the human rights defenders we met reported having received threats, and described having to act within certain limitations in order not to expose themselves to greater risks. Victims of human rights violations also receive threats, as they seek to defend their own rights in highly precarious situations, either for their individual cases or in collective complaints, particularly in relation to collective violations.

In these circumstances, responding to threats against human rights defenders requires looking not only at the protection of *professional* human rights defenders, acting on behalf of victims, but also at questions of access to justice for *victims themselves* as they seek to defend their own rights. Barriers to accessing justice not only prevent individuals achieving redress, they also magnify the risks to victims defending their rights.

Under the Victims' and Land Restitution Law 1448, a space has been established for a Victim's roundtable or *Mesa de Participación de Víctimas* in Buenaventura which meets periodically to consider the victims' complaints. There are many issues that need to be addressed with regards to implementing the Victims' roundtable, including:

- Lack of resources to support the work of the *Mesa*
- Lack of confidence in the authorities
- Inadequate protection measures for victims
- Lack of political will and neglect of issues
- Problems with registering as a victim under Law 1448 due to the reclassification of paramilitary groups as "criminal gangs"

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<sup>20</sup> We were also informed that there were criminal defence lawyers acting within Buenaventura (who generally represent members of the criminal gangs arrested by the prosecutor). Although we did not speak directly to any of these lawyers, we were told that they were also often threatened by the armed groups, particularly when working with young gang members, in order to make sure that they did not speak to the police.

## ***Women defenders and gender-based violence***

The issue of sexual and gender-based violence - SGBV, including domestic violence, affects all levels of civil society in every country. In Colombia, a particular difficulty is caused by the degree to which violence against women has been used as a 'weapon of war'. In Buenaventura, the issue must also be considered against the climate of generalised violence and intimidation that pervades the city. SGBV is reported to be a widespread practice used by the paramilitary successor groups to instil terror and control communities, and that women and girls as young as 12 years old have been raped and forced to work as sexual slaves.

Constitutional Court Order 092 (2008) obliges the State authorities to safeguard women's fundamental rights, while the Law on Victims and Land Restitution includes specific reparations for women and girl survivors of sexual violence. More recently, Law 1719 of June 2014 establishes the routes for access to justice for victims of sexual violence.

Despite this regulatory framework, there are numerous barriers to women filing cases and taking crimes of sexual and gender based violence to court<sup>21</sup>, including:

- There is no systemic awareness or understanding of the issues that surround gender-based violence in general, nor the particular measures that are required to ensure the victims have (a) the confidence to report abuse without fear of reprisals (b) a protected, confidential and supportive environment to enable victims to provide the best evidence;
- victims often have to conduct their own investigation and to secure evidence, a job for which they neither have the skills nor resources and which places them at personal risk;
- many women whose husbands have been disappeared in Buenaventura have significant difficulties in accessing support. One woman we spoke to had been attempting to register the case of her husband's disappearance for seven years without success. As she cannot tell the authorities the name of the person(s) who perpetrated this crime the Government agency won't include her husband's name in the national register of victims or give any reasons for not doing so.
- we were told that The Victims' and Land Restitution Law (Law 1448 of 2011) has not prioritised cases involving female-headed households, leaving them marginalised and vulnerable;
- although it makes an important effort to attend victims in a very difficult environment, the forensic medicine unit remains understaffed for a city with a population of more than 400,000; it has just two doctors and one psychologist.

*When one women attempted to report a rape, the security guards at the door of the Fiscalía shouted "there's a raped woman coming", thereby revictimising and humiliating the woman.*

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<sup>21</sup> Norwegian refugee council, Buenaventura Brutal Realities, September 2014: <http://www.nrc.no/arch/ img/9183706.pdf>



*The red Mariposas. Photo: UNHCR*

### **Community response and resistance**

*The Butterflies with New Wings building a Future (Red Mariposas de Alas Nuevas Construyendo Futuro)*

The Red Mariposas (Butterfly Network) is a volunteer network of women, many of whom are victims of sexual violence, domestic violence and forced displacement. Mariposas was formed by the women themselves, in the face of a lack of state presence as a way to offer each other mutual support and protection. The women use “*comadreo*”, an ancestral practice in Afro-Colombian communities of women providing one another mutual support, to enable them to carry out their work raising awareness of women’s rights in some of the most violent areas of Buenaventura.

The Mariposas now have 22 coordinators who accompany women victims of violence (forced disappearances, forced displacement, sexual violence). They offer women training on their rights as well as emotional and practical support. They also accompany women through judicial and administrative processes, and to obtain status of victims of conflict, and gain access to compensation, restitution and protection.

In September 2014 the organisation was presented with the 2014 UNHCR Nansen Refugee Award for its tremendous work in the face of immense difficulty and threats. It is vital that the international community continues to support the organisation and their demands for justice.



## Part 2. State responses to this situation

Colombia is known for its advanced Constitution and legal framework, which recognises important rights for Afro-descendant communities and indigenous peoples. As discussed above, Law 70 of 1991 recognises the collective ancestral land rights of rural Afro-Colombian communities. In December 2011, Law 1482 was passed to penalize all forms of discrimination, and Decree 4635 was passed in 2011 under the Victims and Land Restitution Law, providing reparations and restitution to Afro-descendant victims of the internal armed conflict.

Nevertheless, in practice, this legal framework is not sufficiently implemented in Colombia, and this is even more the case in Buenaventura where levels of violence are so high. The Human Rights Ombudsman's Office (*Defensoría del Pueblo*) has repeatedly alerted the authorities on the situation in Buenaventura through repeated reports issued by its Early Warning System.

*In 2012, the La Carmelita neighbourhood suffered 3 mass displacements (167, 229 & 102 people). The total number of people suffering mass displacements for 2012 in Buenaventura was 7,452 people. A report had been published some months earlier which warned of the difficulties and the imminent risk of mass displacement. It was like "Crónica de una muerte anunciada" – people were further displaced because of the failure of the government to provide even minimal support. There are no shelters for displaced people in Buenaventura, so they were taken to a hotel. Later, they had no option but to return to their homes. Sometimes people do not go back – for example, in Barrio San José, the Alcaldía (the local Administration) took people's houses after they were displaced; that also happened in Viento Libre <sup>22</sup>.*

The Colombian Constitutional Court has legislated, through Sentence T025 of 2004, and Orders 005 of 2009 and 092 of 2008, on the State's obligation to provide differential attention to afro-Colombian communities and women (respectively) in situations of internal displacement, and to address the systemic aggravating factors for displacement in order to prevent it. In 2013, the Constitutional Court passed Order 234<sup>23</sup>, calling for information from the National Government about its compliance in Buenaventura with its previous Court Order 005 of 2009,

The UN Special Rapporteur on minority issues and the Inter-American Commission Rapporteur on the Rights of Afro-Descendants and against Racial Discrimination also both mentioned the case of Buenaventura among cases for specific concern, in their visits to Colombia in 2009 and 2010 respectively<sup>24</sup>.

The government's particular response in Buenaventura has been to set up the *Plan de Atención Buenaventura*<sup>25</sup>, with 13 formal working groups. Nevertheless, it was reported to the Caravana that government initiatives have yet to lead to sufficient rights-based actions, in line with the urgency and magnitude of the situation.

Underlying the totality of the situation in Buenaventura is the spectre of institutional racism. As noted by the IACHR, in August 2014:

*[...] systematically, people of African descent in the region live in the poorest areas with less infrastructure and are more exposed to crime and violence. They also face serious obstacles in accessing health services and education, as well as housing and access to jobs, especially in management and*

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<sup>22</sup> As told to the Caravana during our visit

<sup>23</sup> <http://www.corteconstitucional.gov.co/relatoria/autos/2013/a234-13.htm>

<sup>24</sup> See their reports at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/104/18/PDF/G1110418.pdf?OpenElement> and <http://www.cidh.org/countryrep/ColombiaAfrodescendientes.eng/ColombiaAfros2009cap3-4.eng.htm>

<sup>25</sup> <http://planatencionbuenaventura.presidencia.gov.co/Buenaventura/Busqueda.asp>

*hierarchical levels. In this regard, the Commission concludes that there are major obstacles facing people of African descent in relation to the exercise and guarantee of their civil, political, economic, social and cultural rights. Also, the under representation and low participation of Afro-descendants in politics demonstrate additional impediments to access political power structures and thus actively participate in the design of public policies to improve their situation of structural discrimination<sup>26</sup>*

The examination of Colombia by the UN Committee on the Elimination of Racial Discrimination, set for 2015, would offer an excellent opportunity to examine in-depth the specific situation in Buenaventura.



*There is a lack of access to basic services in the city*  
Photo: Henry Smith

### ***Access to justice***

Access to justice is a significant problem in Buenaventura. As noted above, at the time of our visit there were no lawyers acting in a full representative capacity for victims in Buenaventura, only lawyers able to provide some advice or “accompany” victims in the legal process. This means that those in need of representation are left to navigate the legal system largely by themselves, or with guidance from the few NGOs who are able to work in the city. Given the poverty and poor quality of education in Buenaventura, the lack of legal advisors is a significant barrier to access to justice in and of itself.

Beyond this, however, in Buenaventura there are also specific and significant institutional problems for individuals or communities who are seeking to access legislative mechanisms provided for victims, in particular in relation to forced displacement. Under Law 1448 of 2011 (the Law of Victims and Land Restitution) as well as under Law 387 of 1997, victims are entitled to register as displaced, by giving a declaration, which entitles them to an immediate and effective humanitarian assistance. In Buenaventura, there are often long delays in even getting an appointment to register as a victim. The telephone line to request the appointment

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<sup>26</sup> IACHR, August 2014, Truth, Justice and Reparation - Report on the Situation of Human Rights in Colombia (in Spanish – translation our own)

was open only on Mondays between 9 am and 5 pm, preventing victims of displacement from registering immediately if displacement occurs on any other day. More concerning still, the human rights defenders with whom we spoke said that even during the times at which the telephone registration line was nominally open, they had not once been able to get through and register a case.

*Victims of violence in the city of Buenaventura have not been recognised as victims of the armed conflict because the area has been declared “conflict-free”. The Unidad de Víctimas makes the decision about whether a declaration fits the requirements of the Law and should be included in the National Victims Register and receive reparation. They rely on the advice of the armed forces. If the Army says there is no conflict in the area, then a complaint is rejected. If this decision is made, the complainant has only 5 days to appeal it – but often they are not even advised of the decision until months later. The recourse then is to bring a tutela action for protection of fundamental constitutional rights. Under Law 1448, after you have made your declaration, and while you are waiting to find out whether it has been accepted for reparations under the Act, you are automatically entitled to immediate interim relief. However, the officials who receive the declarations in Buenaventura do not inform the victims of this right, and it is never afforded in practice<sup>27</sup>.*

The Constitutional Court of Colombia has explicitly recognised the problems with the registration, declaration and attention to displacement in Buenaventura, and has stated that it is one of the municipalities with the most problems in this regard<sup>28</sup>. There is an urgent need to increase resources so that victims can safely, effectively and immediately access justice mechanisms, particularly in cases of displacement where communities are likely to be in need of immediate support. More broadly, however, there needs to be a much wider institutional change, to create a state-backed, independent, and sufficiently-resourced institution to provide legal advice and support to victims of human rights violations, to ensure access to justice and bring an end to the cycle of impunity. As one human rights defender commented to us, “if even bringing a complaint puts you at risk, how can we do our job?”

### ***Prosecution and Impunity***

A critical component in addressing the violence and displacement, and the actions by human rights defenders and victims to access justice, is the criminal justice system, comprising both the prosecutor and local judges. Unfortunately, the reports we received suggested that the criminal justice system in Buenaventura is under-resourced and ineffective. Several points were raised in this respect.

Firstly, at a general level there are not enough prosecutors employed in Buenaventura to deal with the level of complaints that are filed in the district office, even bearing in mind the issue of underreporting, which is significant given the risks involved in making complaints. There was simply nowhere near the level of resources needed to allow the complaints system to function effectively. Even after the recent addition of new prosecutorial resources, including the appointment of a ‘juez de ejecución de penas’ (a judge who oversees the proper implementation of sentences and prisoners’ rights), there was an obvious and substantial lack of resources to confront the scale of the problems in Buenaventura.

Secondly, we were told that Buenaventura is seen as an undesirable post, because of the extreme violence. This was exemplified by the fact both that it appeared that prosecutors (working in the *Fiscalía*) were keen to leave and that some of those stationed in Buenaventura were posted as “punishment” after having had poor performance or political issues elsewhere. The result is that there is a high turnover of prosecutors in the region, with corresponding effects on the

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<sup>27</sup> As told to the Caravana during our visit

<sup>28</sup> see paragraph 5(ii) of Auto 234 of 2013.

continuity and follow up of cases. This situation potentially has implications for the quality, competence and interest of the prosecutors working in the city.

Specific issues were raised with regards to the Fiscalía's institutional competence. In particular, we heard from victims who were required to file the same documentation, needed to support their complaint or claim for reparations, with the Fiscalía on numerous occasions, apparently because it had been lost or ignored. Many of those who had filed claims had received no response years later, even in cases of displacement where they were entitled to certain forms of immediate relief.

In addition, on no occasion had any person been prosecuted for making threats to human rights defenders, showing the lack of institutional support for human rights lawyers and defenders despite the high-risk environment in which they were operating.

We note that the delegation was unable to speak to the Fiscalía or any criminal judges (apart from the newly-appointed juez de ejecución de penas) in order to hear their perspective on issues within Buenaventura. We do not wish to suggest that the difficulties reported to us must necessarily be blamed on individual prosecutors. Given the general lack of resources, it is evidently likely that these institutions are overwhelmed. We are also aware that in parts of Colombia judges and prosecutors may also receive threats if they support victims of human rights violations. These issues may also have a bearing on the functioning of the criminal justice system in Buenaventura.

### ***Protection measures for community leaders and Human Rights Defenders***

#### ***Inadequate / ill-adapted protection measures***

The protection measures offered to human rights defenders and social leaders by the National Protection Unit (the UNP, using its Spanish acronym) are often inadequate and ill-adapted for defenders. Measures may comprise a 20kg bulletproof vest. In the tropical climate of Buenaventura, where the temperature is frequently above 30 degrees, this is particularly poorly adapted. Not only is it uncomfortable and difficult for the recipient of protection, it is also indiscreet. For community human rights defenders, not only does this fail to offer protection, it hinders them from carrying out their job, because community members may be reluctant to approach someone obviously identifiable as targeted by the paramilitary successor groups. The national protection system needs to be more adapted to the conditions of Buenaventura, and to be provided in consultation with human rights defenders and local communities, to ensure that local needs are fully met.

In the case of Buenaventura, many of the threats are made against the community as a whole, rather than an individual human rights defender (*see for example the case of the 'Espacio Humanitario' in this report*). The UNP is unable presently to offer any 'community-wide' protection measures, which means that only individuals considered particularly at risk are offered protection.

At the peak of the violence in Buenaventura, approximately 7-10 people per day were being taken out of the city for their own protection. We were informed that leaders in Buenaventura are being threatened not only for political reasons, but also because of specific legal cases in Buenaventura, with the intention to create a climate of fear so that they do not report crimes against them. There is an urgent need to provide protection for community leaders who are being threatened directly as a result of the role that they have taken on, in speaking out about what is happening.

We were told that there is a need to increase the number of prosecutors and to strengthen the prosecution service; including restructuring it to suit the needs of Buenaventura; even with the

additional resources it has recently been granted, it is still very weak. It is also important to provide protection for prosecutors.

### ***Failure to provide timely protection***

Members of the Red Jurídica, a group of local lawyers, reported to Caravana delegates that they have received threats, not only against them personally, but also against their family members. In many cases, even when serious threats are made; it takes several weeks or even months for the UNP to provide protection to human rights defenders, if the request is acceded to at all.

Whilst the human rights defenders know the risks, they also know they will be unlikely to have any or adequate state protection. They therefore have to take measures for self-protection. Human rights defenders said they take these risks because it is part of their life plan, because they are committed and form part of these communities, and have often personally been touched by the violence.

### ***La Defensoría and the Casa de Derechos***

The Human rights Ombudsman's Office or Defensoría del Pueblo, a State body with regional offices responsible for promoting the implementation of human rights policy at the local level, has recently established a "Casa de Derechos" in Buenaventura with the support of the UN Refugee Agency. This is a strategy to bring the Defensoria closer to communities in Colombia's most critical municipalities. The Casa de Derechos allows the different units of the Defensoria del Pueblo to reach the population in a coordinated way and support victims of human rights violations in Buenaventura. The Defensoría is carrying out impressive and essential work in Buenaventura, and there is a clear and urgent need for additional resources to continue and expand its work to meet the needs of victims in Buenaventura.

Our visit would not have been possible without the accompaniment of the Defensoría del Pueblo's Casa de Derechos, and we would like to thank them for this significant support. We would also like to sincerely thank all the organisations and individuals who spoke with us during our visit.

**December 17, 2014**



*Caravana delegates in Buenaventura  
Photo: Colombian Caravana*