

## ***JRS COLOMBIA REPORT***

### ***Buenaventura: An Unanswered Humanitarian Crisis***

In 2012, the department of Valle del Cauca experienced a significant increase in violent actions due to the armed conflict between neo-paramilitaries, guerrillas, and the security forces. From its office in the District of Buenaventura, the Jesuit Refugee Service has monitored and analyzed the situation through its humanitarian work carried out in the region.

This document contains a brief analysis of the dynamics and the configuration of the armed conflict in the area which has caused multiple murders and disappearances as well as the displacement of 5,442 people, mostly in mass displacements. The high number of victims along with the state's inability to control the actions of armed groups, to protect civilians, and to provide humanitarian assistance to the victims, indicates that these events fall within the definition of non-international armed conflict under the terms of Article 3 present in the four Geneva Conventions of which Colombia has signed.

However, the current "National System for the Integral Attention and Reparation of Victims (SNARIV)," created within the boundaries of the 1448 law from 2011 and the application of criteria to determine inclusion in the Registry of Victims (RUV), are leaving without protection thousands of victims due to regressive normative interpretations. The results are a humanitarian crisis and a violation of the victims' rights to truth, justice and reparation.

## The Armed Conflict in Buenaventura and the North of the Valle del Cauca during 2012

A complete view of the dynamics of the armed conflict in the Valle del Cauca indicates that over the past year the conflict has been changing. Based on information gathered by the team SJR Valle del Cauca, violence has increased considerably in towns like Cartago, Ansermanuevo, El Dovio, Zarzal, Roldanillo and La Union.

Violence has also risen substantially in Buenaventura since April 2012 when the first mass displacement occurred. The highest point of displacement occurred in August when multiple cases of mass displacement, as well as smaller and individual movements happened. By the month of October, the Hall for the Humanitarian Situation in Buenaventura OCHA recorded a mass displacement of 3,750 people in four mass urban events. In November, the same group recorded the displacement of 1,104 people in another four mass events for a total of 4854 displaced people from the city. Adding this number to the 588 displaced people from a Rural-Urban mass displacement event, in 2012 alone, 5442 people have been displaced in Buenaventura.

It is worth remembering that Front 30 of the FARC-EP, the 'Rastrojos,' and the 'Urabeños' operate in the District of Buenaventura-- the first with frequent operations in rural areas and the last two with a greater presence in the urban area. The groups control the logistics and territories of illicit crops, the production and commercialization of coca alkaloids, and are part of the struggle for control of the entire urban area of Buenaventura.

All these actions, under the Early Warning System (EWS), prompted the Division for Risk Prevention of Human Rights Violations and IHL to issue a follow-up dictamen, No 012-12 from August 23, 2012, to the risk report No 032 from 2008. In the statement issued on the District of Buenaventura, 59 of the 169 neighborhoods in the District were rated as high-risk sectors. In these sectors, the band called "La Empresa" controls the traffic and distribution of illegal substances, runs illegal businesses, and threatens the civilian populations through extortions and other forms of social control. It is important to highlight that the Early Warning Report from the Ombudsman qualifies 'Urabeños' and 'Rastrojos' as illegal armed groups labeling them as actors in the armed conflict.

## Characterization of the massive forced displacement of 2012

The following table, prepared with information compiled by OCHA and complemented by SJR Colombia reflects the situation of displacement in the District of Buenaventura in 2012.

Type	Neighborhood	Number of Families	Number of Persons	Date of Displacement	Observations
Mass Rural-Urban	Bocas de la cuenca de Mayorquín	135	588	9/04/2012	They received humanitarian assistance. According to the local press, 234 persons returned
Mass Intraurban	Pampalinda	62	263	17/10/2012	The PSD found shelter in three places Aldea Matía Mulumba, a hotel in the middle of the city y Bango Reigio casa de encuentros. Moreover, a good number of families found places to stay in houses of families or friends.
	La Carmelita	111	448	26/10/2012	
Buenaventura	Seis de enero	163	626	30/10/2012	
	Juan XXIII	639	2.413	31/10/2012	
	San Francisco	41	169	01/11/2012	
	San Luis	23	93	01/11/2012	
	Barrio Municipal	45	181	01/11/2012	
	Santa Cruz	161	661	13/11/2012	
	TOTAL	1.245	5.442		

Source: Preliminary information processed by OCHA and complemented with information from cases obtained by SJR.

## Access to rights and the institutional response

In this context of intensified conflict, one of the most critical situations is the lack of attention to people in situations of forced displacement. Victims have denounced that officials have repeatedly denied them registration in the Registry of Victims (RUV) citing 'inconsistencies' in their request, and the time that it takes for the Victims Unit to respond to the applications for registration usually greatly exceeds the 60 day time limit (as stated in the current norm). Thus the unit avoids fulfilling their functions, causing the District, in charge of providing the first humanitarian aid, to bear an excessive fiscal burden which the District states it cannot assume.

Additionally, victims often say that they do not understand the public officials' technical language during the process of receiving information. In several cases, the SJR reported that the public official stated to the victim that the 'inconsistencies' could be solved easily and that the official would call to let the victim know when to send the documents to settle the case. However, in reality, many people were not contacted again by the public official. This situation reflects that not only is the language not appropriately directed to the victim, but that the victims are being met with failure and indifference, which creates a new scenario of re-victimization.

Regarding the RUV, it is important to note that JRS has shown that the situation has become more complex through the establishment of a number of barriers making inclusion increasingly limited. This creates an unprecedented humanitarian crisis due to the increasing number of forced displacement cases in the area.

In addition, the State agencies at the district and departmental levels have shown evidence of incoordination, disarticulation, and clashes between officials responsible for providing services within the SNARIV. Similarly, the subcommittees of prevention and protection have been ineffective in mitigating the risks to which the victims of forced displacement are exposed. There have been cases in which humanitarian aid has been located in a municipality where the victim does not live. Against this backdrop, several victims have filed protective actions to access their rights, which have been ruled in their favor by the judges of the Republic. However, the Valle del Cauca SJR has recorded several cases in which the rulings have not been executed by the administration, creating a situation of absolute vulnerability and hopelessness for the people.

SJR is concerned by the growing number of victims of displacement which reveals the existence of cases of victimization (undoubtedly caused by an unresolved armed conflict) and weak institutional responses by the state agencies and institutions. Non-Governmental Organizations whose mission is to carry out humanitarian relief to victims of displacement are far from responding to and covering all the needs of victims of displacement. In this respect the State's

action is mandatory and compulsory while the participation of civil society organizations is subsidiary. The paradox is that this is happening the other way around. In this context, the failure of the government has exacerbated the humanitarian crisis of the victims of displacement.

### **If there is conflict, humanitarian crisis, and victims, why is there no humanitarian assistance?**

This situation results from the interpretation that the government makes of articles 3 and 60 of Law 1448 of 2011 in which humanitarian aid is linked to the process of inclusion in the Registry of Victims depending on the recognition of the perpetrators (in this case, neo-paramilitary groups) as actors in the conflict. On the latter issue, the Constitutional Court Judgment C-718 of 2012 conceived the need to understand Article 3 of Law 1448 of 2011 in a broad sense, indicating that the expression 'on the occasion of the armed conflict' "describes a complex phenomenon that is not limited to armed confrontations; to violent actions of a particular armed actors; to the use of certain means of combat; or to the occurrence of events in specific geographical areas. Instead, the Court's ruling recognizes the complexity of the phenomenon in its various forms, even in situations where the actions of the armed persons are confused with common criminals or generalized violence."

Similarly the Constitutional Court Judgment C-253A/2012 noted that "the damage caused by the violations of international humanitarian law and international law of human rights committed by armed actors with military structures or territorial control, which are the result of actions closely related to the development of the armed conflict, may be invoked by their victims, under the terms of Act 1448 of 2011, for the purposes provided therein, after the show in question. "

Currently, the evaluation process for inclusion in the RUV is made by applying the "Criteria for assessing applications for registration in the register of victims-RUV-, under the terms of Article 3 of Law 1448 of 2011: 'by introducing measures of care, support and reparations to victims of armed conflict and other provisions,'" which was adopted by the Executive Committee for the Care and reparation for Victims (May 24, 2012 ). However, these criteria have not been adjusted to

the current jurisprudence of the Constitutional Court, which is why serious violations of human rights and international humanitarian law are not being registered as events that occurred 'on the occasion of the armed conflict.'

A complete analysis of the context supports the conclusion that the conflict in the District of Buenaventura is eligible to be considered an internal armed conflict and therefore is governed by the principles of international humanitarian law, particularly Article 3 common to the four Geneva Conventions (of which Colombia is a part). It also complies with the parameters and criteria issued by the Constitutional Court in its Judgment C-718 of 2012 and C-253A, 2012. This requires Colombia to recognize victims of forced displacement as victims of an armed conflict in the region.

On the other hand, the Colombian State has the responsibility to implement the Guiding Principles on Internal Displacement, which by order of the Constitutional Court are part of the constitutional as well as human rights treaties. These include the International Covenant on Civil and Political Rights and the American Convention on Human Rights (instruments that are part of the Colombian constitution). These treaties mandate that the state has an obligation to ensure the human rights of the population.

Additionally, analysis of the situation suggests that the public authorities responsible for ensuring the protection of the rights of victims of forced displacement can apply the definition of victims of forced displacement contained in Article 1 of Law 387 of 1997. This would allow the entry of all the victims of forced displacement into the National System for the Integral Attention and Reparation of Victims (SNARIV).

The SJR defends the thesis that the application of the article is possible since it complies with the constitutional principle of non-regression and because the definition of Article 1 of Act 387 of 1997 is not contrary to the provisions of the law of victims. Under the above interpretation, victims of forced displacement on the occasion of the armed conflict, internal strife, widespread violence, massive violations of human rights, violations of international humanitarian law or other circumstances arising from the above situations, should be recognized and served by the SNARIV.

In this vein, this report will conclude by making two recommendations which will help bring about humanitarian help and assistance to victims of forced displacement and other events caused by neo-paramilitaries, both of Valle del Cauca, and the entire Colombian region.

First, this report recommends the recognition of victims of events caused by neo-paramilitaries and their right to be assisted under warranty protection provided for by the International Law of Human Rights, the Constitution and the constitutional law, and its consequent inclusion in the National System for the Integral Attention and Reparation of Victims (SNARIV).

Second, and in a subsidiary manner, this report recommends the application of the definition of forced displacement contained in Article 1 of Law 387 of 1997, taking into account international law of human rights and the obligations of States to ensure and protect human rights, including the provisions of the Guiding Principles and the constitutional principle of 'prohibition of retrogression.' Hence, the JRS recommends that all victims of forced displacement under the definition of Article 1 of Act 387 of 1997 be included in the RUV and are attended to by the SNARIV.

***Advocacy Team JRS Colombia***

***Bogotá, February 2013***