

## **STATEMENT OF CASE TO RENEW THE DESIGNATION OF EJERCITO DE LIBERACION NACIONAL (ELN) AS A TERRORIST ENTITY**

### **PURPOSE**

1. This paper sets out the case demonstrating Ejercito de Liberacion Nacional (ELN, also known as National Liberation Army (NLA) and Army of National Liberation) meets the statutory criteria for the renewal of its designation as a terrorist entity within New Zealand pursuant to the Terrorism Suppression Act 2002 (TSA).

### **STRUCTURE OF THIS PAPER**

2. This paper sets out updated information about ELN's continued involvement in terrorist activity and covers any relevant changes or developments to the organisation since its original designation in December 2010,<sup>1</sup> and renewals in October 2013 and September 2016,<sup>2</sup> including ELN's objectives, structure, weapons and tactics and includes recent attacks which meet the definition of a terrorist act under the TSA.
3. This updated information, together with the information contained in the original designation paper and previous renewal papers, provide the basis for the conclusion that ELN meets the legal criteria for renewal of its designation as a terrorist entity under the TSA.

### **STATUTORY CRITERIA FOR DESIGNATION RENEWAL UNDER THE TSA**

4. Section 35(1) of the TSA provides that a designation of a terrorist entity expires three years after the date of designation unless it is earlier renewed by the Prime Minister. The original designation is made pursuant to s 22 of the TSA, which provides that the Prime Minister may designate an entity as a terrorist entity if the Prime Minister believes on reasonable grounds that the entity has knowingly carried out, or has knowingly participated in the carrying out of, one or more terrorist acts. Carrying out a terrorist act includes the planning, preparation or credible threat to carry out the act, whether it is actually carried out or not (s 25(1)(a) and (b)) and also includes an attempt to carry out the act (s 25(1)(c)).
5. The Prime Minister may renew that designation for a further three years under s 35(2) if satisfied that there are still reasonable grounds as set out in s 22 for the entity to be designated under that section.
6. Before the expiry of an order made under s 35(2), the Prime Minister may make another order under s 35(3) renewing the designation concerned for a further three years. The Prime Minister may make any number of orders under s 35(3) in respect of the same designation (s 35(5)).

### **CREDIBILITY OF SOURCES**

7. This paper has been prepared using open or unclassified sources which have a reputation for careful and unbiased reporting. These are: Jane's Terrorism and Monitoring series, Control Risks, Reuters, The Guardian, BBC News, Business Insider, Insight Crime, and Open Source Center.
8. Local news sources referenced include El Pais, Caracol Radio, El Universal, Elespectador.com and El Tiempo.

## **EVIDENCE TO SUPPORT DESIGNATION RENEWAL UNDER THE TSA**

### **Continued involvement in terrorist activity**

9. On 19 February 2017 an explosive device was detonated targeting a police unit in Bogota. The explosion injured 24 Police officers and two others, with one officer later dying of his wounds. ELN claimed responsibility for the attack.<sup>3</sup>
10. At the conclusion of a three-month ceasefire in late 2017 between the Colombian government and ELN resumed attacks in January 2018; bombing the Transandino pipeline,<sup>4</sup> bombing an army base (killing one soldier and wounding two),<sup>5</sup> and bombing three police stations (killing a total of seven police officers and injuring dozens, including a civilian).<sup>6</sup> These actions led to the suspension of the 2017 government-ELN peace talks.
11. The ELN continued a pattern of kidnappings, bombings, and expansion into former Revolutionary Armed Forces of Colombia (FARC) territory, including Choco and Narino on Colombia's Pacific coast throughout 2017/18.<sup>7</sup>
12. On 17 January 2019 a truck bomb exploded inside a police academy in Bogota. Twenty-two people died and 68 were injured.<sup>8</sup> ELN claimed responsibility for the attack.<sup>9</sup> The peace talks were suspended again on 18 January 2019.<sup>10</sup>

### **Ideology and objectives**

13. ELN purportedly strives for a Marxist revolution to overthrow the Colombian government and replace it with a socialist administration. ELN continues to strongly oppose privatisation and foreign investment, and has since 2016 continued to target infrastructure and with the objective of economic sabotage.<sup>11</sup>
14. In February 2017 peace talks between the Colombia government and ELN were initiated and eventually led to a ceasefire being signed in September 2017. This ceasefire lasted from 1 October 2017 to 9 January 2018, at which time hostilities were resumed.

### **Organisation and structure**

15. The ELN's organisation and structure has not changed significantly since its first designation in 2010. ELN is arranged into a series of 'war fronts' that operate as the primary unit of organisation, and operate under nominal independence within the overall parameters of ELN objectives.<sup>12</sup> The primary concentrations of ELN fighters are in the Pacific coastal districts of Colombia, and the North-Eastern border districts with Venezuela.
16. ELN is estimated as having 2,400 active guerrillas, 2,300 'militia' who act in support of the guerrilla forces, and an unknown number of active supporters.<sup>13</sup> Since the demobilisation of FARC it is frequently reported that dissident members are transferring to the ranks of ELN,<sup>14</sup> and political crisis in Venezuela has led to recruitment among the influx of refugees to Colombia.<sup>15</sup>

### **Weapons, tactics and capability**

17. While ELN has Marxist-Leninist roots, its contemporary activity is more specifically focussed on kidnapping, extortion, drug manufacturing and other illegal activities. These are ostensibly conducted as revenue-raising activity to support its opposition to the Colombian government.

18. ELN activity typically constitutes attempts to undermine the authority of the Colombian government, demoralise government supporters, and control local populations via ‘armed strikes’ intended to intimidate locals, and to shut down transport networks and commerce.<sup>16</sup>
19. ELN’s tactics have not changed and continue to focus on economic sabotage against the Colombian state and trans-national corporations, including attacks on infrastructure, and guerrilla warfare tactics against security forces.<sup>17</sup> ELN continues to use small arms, IEDs, and vehicle-borne IEDs. For example:
  - 19.1. In November 2016, 76 “soccer-ball” bombs and construction materials were uncovered in an ELN workshop in the Arauca Department. While it was not specifically linked to ELN, a similar type of device killed a child and injured her mother when the child attempted to play with it.<sup>18</sup>
  - 19.2. A military operation in the Bolivar Department in May 2017 uncovered a large cache of explosive-making materiel, including gunpowder, mines, and IEDs.<sup>19</sup>
20. ELN continues to finance itself through extortion, ‘tariffs’ on commercial traffic, mining, contraband gasoline, drug trafficking and kidnapping for ransom.<sup>20</sup>

#### **LAW OF ARMED CONFLICT (LOAC)**

21. The situation continues to be one of disruptive violent activity by ELN, and has not reached a level of intensity and continuity on the part of ELN which would bring the situation within the meaning of “armed conflict” for the purposes of the exemption in section 5(4) of the TSA. Further, ELN’s actual or planned targeting of police officers and civilian infrastructure is in breach of the LOAC principle of distinction. Accordingly, the exemption in s 5(4) cannot apply, and ELN attacks are properly characterised as terrorist acts.

#### **CONCLUSION**

22. On the evidence set out above, this paper concludes that there are still reasonable grounds as set out in s 22 of the TSA for ELN to be designated under that section.
23. Since its designation in October 2010 and renewal in October 2013 and September 2016, ELN has continued to carry out activities which meet the definition of terrorist acts in ss 5 and 25 of the TSA (paragraphs 9-13) including planning, threatening and attempting attacks. Accordingly, given there are still reasonable grounds to believe ELN has knowingly carried out terrorist acts as set out in s 22 of the TSA, ELN meets the legal criteria for renewal of its designation as a terrorist entity under s 35.
24. The designation must be renewed by 26 September 2019 to be effective.

- <sup>1</sup> The statement of case, dated 15 December 2010 can be accessed at: <http://www.police.govt.nz/sites/default/files/publications/statement-of-case-ejército-de-liberación-nacional-terrorist-entity-15-dec-2010.pdf>
- <sup>2</sup> The statements of case, dated 2 October 2013 and 26 September 2016 respectively, can be accessed at: <http://www.police.govt.nz/sites/default/files/publications/renew-eln-2-oct-2013.pdf> and <http://www.police.govt.nz/sites/default/files/publications/renew-eln-terrorist-entity-26sept2016.pdf>.
- <sup>3</sup> (28/02/2017) “El ELN se atribuye el atentado de Bogotá y pone en jaque al Gobierno de Colombia”, accessed via El País [https://elpais.com/internacional/2017/02/27/colombia/1488199151\\_850224.html](https://elpais.com/internacional/2017/02/27/colombia/1488199151_850224.html) on 2/07/2019
- <sup>4</sup> (15 January 2018) “Pumping on Colombia’s Transandino pipeline halted after bomb attack”, Reuters, accessed via <https://www.reuters.com/article/us-colombia-oil-attack/pumping-on-colombias-transandino-pipeline-halted-after-bomb-attack-idUSKBN1F30XN> on 7/07/2019
- <sup>5</sup> (19/01/2018) “Nuevo ataque del ELN deja un soldado muertos y dos heridos mas”, accessed via El Universal <https://www.eluniversal.com.co/colombia/nuevo-ataque-del-eln-deja-un-soldado-muerto-y-dos-mas-heridos-270379-DCEU384513> on 1/7/2019
- <sup>6</sup> (30/01/2018) “Colombia suspends peace talks with ELN rebels after bomb attacks”, accessed via Reuters <https://www.reuters.com/article/us-colombia-rebels/colombia-suspends-peace-talks-with-eln-rebels-after-bomb-attacks-idUSKBN1F11RG> on 20/07/2019
- <sup>7</sup> (31/07/17) “Despite Peace Talks, Colombia’s ELN Guerrillas Continue Expansion” accessed via InSight Crime, <https://www.insightcrime.org/news/analysis/despite-peace-talks-colombia-eln-guerrillas-continue-expansion/> on 20/07/2019
- i. (7/01/2018) “Farc deal opens path for Colombia’s other rebels: ‘The future has to be about war’”, accessed via The Guardian <https://www.theguardian.com/world/2018/jan/07/colombia-eln-rebels-farc> on 5/07/2019
- <sup>8</sup> (18/01/2019) “Carro bomba en Colombia: al menos 21 muertos y 68 heridos tras la explosión en la Escuela de Cadetes General Santander”, accessed via The BBC <https://www.bbc.com/mundo/noticias-america-latina-46910365> on 25/07/2019
- i. (18/01/2019) “Autor de atentado era de Eln y entrenó a explosivistas en Venezuela”, accessed via El Tiempo <https://www.eltiempo.com/justicia/jose-aldeamar-rojas-rodriguez-fue-el-autor-material-del-atentado-en-escuela-de-policia-315766> on 21/07/2019
- <sup>9</sup> (22/01/2018) “Colombia’s ELN rebels claim deadly police academy attack”, Al Jazeera News accessed via Al Jazeera <https://www.aljazeera.com/news/2019/01/colombia-eln-rebels-claim-deadly-police-academy-attack-190121053205318.html> on 23/07/2019
- <sup>10</sup> (18/01/2019) “Duque clausura diálogo con ELN en Cuba y lanza advertencia al gobierno de Venezuela”, La Patilla accessed via, <https://www.lapatilla.com/2019/01/18/duque-clausura-dialogo-con-eln-en-cuba-y-lanza-velada-advertencia-a-venezuela/> on 25/07/2019
- <sup>11</sup> (18/01/2018) “Ejército de Liberación Nacional (ELN)”, accessed via Jane’s World Insurgency and Terrorism on 12/07/2019. Available on subscription.
- <sup>12</sup> (16/10/2018) ELN accessed via InSight Crime, <https://www.insightcrime.org/colombia-organized-crime-news/eln-profile/> on 25/07/2019
- <sup>13</sup> (02/03/2015) “Ejército de Liberación Nacional (ELN)”, accessed via Jane’s World Insurgency and Terrorism on 07/01/2016. Available on subscription.
- <sup>14</sup> (10/12/18) “FARC Dissidents and the ELN Turn Venezuela Into Criminal Enclave”, accessed via InSight Crime <https://www.insightcrime.org/news/analysis/farc-dissidents-eln-turn-venezuela-criminal-enclave/> on 19/07/2019
- <sup>15</sup> (16/02/2018) “Colombia says increasing number of Venezuelans involved in ELN attacks”, accessed via Reuters, <https://www.reuters.com/article/us-colombia-venezuela-rebels/colombia-says-increasing-number-of-venezuelans-involved-in-eln-attacks-idUSKCN1FZ301> on 20/07/2019
- i. (18/02/19) “Fleeing Crisis, Some Venezuelans Are Recruited By Rebel Forces Fighting In Colombia” accessed via <https://www.npr.org/2019/01/18/685850399/fleeing-crisis-some-venezuelans-are-recruited-by-rebel-forces-fighting-in-colomb> on 15/07/2019
- ii. (21/07/2019) “Criminals and rebels in Colombia are trying to get desperate Venezuelans to help them make cocaine and fight the government”, accessed via <https://www.businessinsider.com/colombian-rebels-gangs-trying-to-recruit-fleeing-venezuelans-2019-6/?r=AU&IR=T> on 14/07/2019
- <sup>16</sup> (13/02/2018) “With Armed Strike in Colombia, ELN’s Warmongers Seek Upper Hand”, accessed via InSight Crime <https://www.insightcrime.org/news/analysis/armed-strike-colombia-eln-warmongers-seek-upper-hand/> on 15/07/2019
- <sup>17</sup> (18/01/2018) “Ejército de Liberación Nacional (ELN)”, accessed via Jane’s World Insurgency and Terrorism on 12/07/2019. Available on subscription.
- <sup>18</sup> (2/11/16) “Depósito de explosivos del Eln fue hallado en vivienda de Tame” accessed via Caracol Radio <https://lavozdelcinaruco.com/15739-deposito-de-explosivos-del-eln-fue-hallado-en-vivienda-de-tame#.XRv4sh4zaUk> on 5/07/2019
- <sup>19</sup> (22/05/2017) “Dado de baja en combate alias ‘Fabian’, cabecilla del frente ‘Resistencia Guamocho’”, accessed via Caacol Radio [https://caracol.com.co/emisora/2017/05/22/cartagena/1495459978\\_301852.html](https://caracol.com.co/emisora/2017/05/22/cartagena/1495459978_301852.html) on 5/07/2019
- <sup>20</sup> (17/11/2015) “Colombia ELN: Rebels release two kidnapped soldiers”, BBC News, accessed via <http://www.bbc.com/world-latin-america-34842728> on 07/01/2016.