

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

### **PURPOSE**

1. The purpose of this paper is to set 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 to renew its designation as a terrorist entity within New Zealand pursuant to the Terrorism Suppression Act 2002 (TSA).
2. The paper concludes that the group meets the criteria for renewal as a designated terrorist entity under the TSA.

### **STRUCTURE OF THIS PAPER**

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

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

5. 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)).
6. 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.
7. 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**

8. 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, TIME, BBC News, Reuters, Insight Crime and Open Source Center. Local news sources referenced include Colombia Reports, EFE, Bucaramanga Vanguardia.com, El Herald, El Espectador.com and El Tiempo.

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

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

9. ELN was designated as a terrorist entity on 15 December 2010. The designation was renewed on 2 October 2013.
10. On 1 January 2014, ELN detonated explosives at four crude oil holding pools along the Caño Limon-Coveñas pipeline in North Santander State, Colombia. A large fire caused by the attacks forced locals to flee their homes and authorities were required to take measures to prevent further environmental damage. ELN coordinated this attack and a number of others on Colombia's oil production infrastructure after declaring war against multinational oil companies operating in Colombia in November 2013.<sup>3</sup>
11. On 20 June 2014, a bomb containing 500 grams of pentolite exploded behind a police post in Plaza de Lourdes, Bogota. One civilian and two police officers were wounded. The blast also destroyed most of the windows in nearby apartment buildings.<sup>4</sup> ELN claimed responsibility for the attack days later, stating the attack was a celebration of the 50<sup>th</sup> anniversary of their founding.<sup>5</sup> ELN also attacked a staff complex administering the Caño Limón-Coveñas oil pipeline in Arauca department on 29 June, wounding 13.<sup>6</sup>
12. On 16 December 2014, ELN kidnapped Mayor Fredys Palacios of Alto Baudó, Chocó, reportedly because he stole money from the municipal budget. Palacios was abducted as he arrived in La Playa by boat with 16 others. ELN stated they would release Palacios after an organised corruption trial and once Palacios promised to return what he stole.<sup>7</sup> Palacios was released in March 2015.
13. On 26 October 2015, ELN killed 11 soldiers and one policeman during an ambush in Boyacá, a Colombian state along the Venezuelan border. Another two soldiers were kidnapped by the attackers. The state security personnel were transporting election ballots to Bogotá when ELN used explosives and firearms to attack their caravan.<sup>8</sup> ELN rebels released the kidnapped soldiers three weeks later. ELN claimed the attack did not contradict its wish for peace and it was forced to respond to "intense counter-guerrilla operations". Following the attack, Colombian President Juan Manuel Santos ordered security forces to step up their efforts against ELN.<sup>9</sup>
14. On 9 February 2016, President Santos again ordered the military to intensify operations against ELN following a spate of attacks. In the days leading up to this announcement, ELN had carried out a mortar attack on a military complex in Arauca, and killed a police officer by sniper in San Joaquín.<sup>10</sup>
15. On 3 April 2016, a sniper from ELN's "Comandante Diego Company" shot and killed a police officer in El Tarra, and two bus drivers were kidnapped by ELN rebels on 6 April (subsequently released on 15 April).<sup>11</sup>
16. On 15 July 2016, one police officer was killed and another injured when ELN rebels detonated an improvised explosive device (IED) in a soccer field in Pelaya Municipality, Cesar Department. The police officers had attended the site after being alerted to an ELN flag hanging in the park. The IED was detonated as the police officers attempted to remove the flag.<sup>12</sup> Cesar authorities stated ELN guerrillas had put civilians at risk as the IED was left in a park frequented by children.<sup>13</sup>

### **Ideology and Objectives of ELN**

17. ELN continues to strive 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, particularly focusing on the use of economic sabotage to target infrastructure in an attempt to undermine the authority of the government and demoralise government supporters.<sup>14</sup>
18. On 10 June 2014, the Colombian government and ELN jointly announced they had been holding exploratory peace talks since January and had agreed on some points of an agenda to discuss in formal talks. The statement said negotiations would begin once all discussion points were agreed, and President Santos stated ELN would be subject to the same conditions as the Revolutionary Armed Forces of Colombia (FARC) in its peace talks; the talks would be abroad, without a bilateral ceasefire or creating a demilitarised zone.<sup>15</sup> However on 17 June 2014, ELN criticised the government's statement, claiming it had altered the announcement of the peace talks and both sides had earlier agreed to release a joint communiqué.
19. Despite ongoing attacks, ELN has continued to call for peace talks with the government. On 25 August 2014, ELN attempted to make amends by releasing a statement admitting responsibility for its involvement in the 50 years of confrontation with the state. Nonetheless ELN continued conducting IED, sniper, and kidnapping attacks against security forces, the energy sector and local officials throughout the remainder of 2014.<sup>16</sup>
20. ELN has frequently cooperated with the FARC since 2008. In May 2015, FARC urged the Colombian government to include ELN in peace talks, claiming it was the right and practical thing to do. ELN's Commander Nicolas Rodriguez Bautista (alias Gabino), however, stated it was absurd to think ELN would need to pay with prison sentences to reach a political solution to the conflict.<sup>17</sup>
21. In December 2015, Bautista stated a deal between ELN and the Colombian government to start peace talks was ready, with peace talks to begin in 2016. According to Bautista, both parties had agreed to a negotiation agenda.<sup>18</sup> On 16 January 2016, Colombia's Interior Minister Juan Fernando Cristo stated ELN had to make a clear and forceful decision to lay down arms in order to initiate a peace process, and no final decision had been made on a location for talks with ELN.<sup>19</sup> In February 2016 President Santos stated negotiations would not start until ELN released two hostages it was holding; one a civilian who was kidnapped five months previously, the other a soldier taken the week before.<sup>20</sup> The Colombian government also warned time was running out to begin peace negotiations with ELN.<sup>21</sup>
22. In late March 2016, the Colombian government and ELN representatives signed an agenda to work toward a new peace process to end armed conflict and political violence.<sup>22</sup> ELN leaders Antonio Garcia and Pablo Beltran indicated peace talks should begin within the next two months.<sup>23</sup> Since the agenda was signed, ELN has released a police officer kidnapped on 20 March 2016, and former mayor and governor Patrocinio Sanchez Montes de Oca, held captive since August 2013.<sup>24</sup> Despite these steps toward peace, the refusal of ELN to abandon kidnapping has reportedly strained ongoing peace talks, with President Santos demanding ELN stop kidnapping and committing crimes in order to demonstrate ELN wants peace.<sup>25</sup>
23. On 18 July 2016, three senior ELN officers reportedly stated they had always been committed to peace talks with the Colombian government. However, high ranking ELN officer, Pablo Beltran, stated ELN were still focused on "fighting the dominant classes and the ring-wing paramilitary forces".<sup>26</sup>

## Organisation and structure of ELN

24. The organisation and structure has not changed significantly. ELN is estimated as having 2,000 active fighters and an unknown number of active supporters.<sup>27</sup> Membership continues to be drawn from across Colombian society including students, Catholic priests, and left-wing middle and upper class intellectuals.<sup>28</sup> Recent peace talks between the Colombian government and the FARC have resulted in reports of FARC members transferring to the ranks of other guerrilla groups, including ELN.<sup>29</sup>
25. In November 2015, the deaths of three ELN guerrilla leaders, known by the aliases Tuerto Lucho, Sargento Navas and Marlon, forced the replacement of ELN's middle commands in its two main fronts, the Eastern and Dario Ramirez Castro.<sup>30</sup> ELN commander and military hardliner Gustavo Anibal Giraldo Quinchia, alias Pablito, joined ELN's Central Command in January 2015. Quinchia has coordinated attacks against oil and electrical infrastructure in eastern Colombia, where ELN guerrillas have historically been the most active militarily.<sup>31</sup>

### **Weapons, tactics and capability of ELN**

26. ELN's tactics have not changed and continue to focus on economic sabotage against the state, including attacks on infrastructure and guerrilla warfare tactics against security forces.<sup>32</sup> ELN continues to use small arms, IEDs and vehicle-borne IEDs.<sup>33</sup>
27. ELN continues to finance itself through extortion, drug trafficking and kidnapping for ransom.<sup>34</sup> ELN's role in the Colombian drug trade is increasing after a previous aversion to involvement on moral grounds.<sup>35</sup> This change was evidenced by the finding of a large cocaine processing complex run by ELN in west Colombia in November 2015. ELN's Juan Fernando Porras Martinez front is reportedly now funded entirely by drug trafficking.<sup>36</sup> Quinchia is reportedly a central figure in ELN's push into the illicit drug trade.
28. The ideological basis behind ELN's kidnap-for-ransom is less apparent, with substantial profits appearing to be the main motive.<sup>37</sup> ELN has, for example, been holding civilian Ramon Jose Cabrales since September 2015, and captured soldier Jair de Jesus Villar since February 2016.<sup>38</sup> ELN has also kidnapped for purposes other than extorting funds. On 17 January 2016, the Colombian army rescued 15 fishermen being held by ELN in Bolivar province. According to President Santos, the fishermen were held for over a day as punishment after they disobeyed ELN's orders to not fish in certain areas.<sup>39</sup>
29. On 14 February 2016, ELN attacked a transmission tower in northern Colombia with dynamite, rendering three Colombian municipalities without electricity.<sup>40</sup> On 15 February 2016, ELN bombed the Transandino pipeline, which transports crude oil from oil fields in Putumayo province to the port of Tumaco, sparking a large fire.<sup>41</sup> These actions were part of an "armed strike" announced by ELN to mark the 50<sup>th</sup> anniversary of the death of ELN member Camilo Torres.<sup>42</sup> The armed strike was part of an announced 72 hour armed lockdown which started on 8 February 2016 in areas in which ELN operates, restricting transport and commercial activities.<sup>43</sup>

### **Law of armed conflict (LOAC)**

30. The situation in Colombia has been described as one of the longest low-level conflicts in the world today. The intensity and duration of the fighting appears to be waning and accordingly, the situation may be edging closer to being considered a situation of less than armed conflict. However, in the event the situation is still properly characterised as an armed conflict, and while the October 2015 attack may have been targeted against the

military, ELN's activities targeting energy infrastructure and staff, and police officers, were not in accordance with the LOAC rule of distinction. Further, ELN has engaged in a number of kidnappings in breach of the LOAC rule against hostage-taking and its detonation of an IED at a public park breached the obligation to take precautions to protect civilians. Accordingly, the exemption in section 5(4) does not apply and ELN's activities are properly characterised as terrorist acts.

## CONCLUSION

31. 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.
32. Since its designation in December 2010 and renewal in October 2013, ELN has continued to carry out activities which meet the definition of terrorist acts in ss 5 and 25 of the TSA (paragraphs 10-16). These attacks have continued notwithstanding ELN's purported desire for peace talks. 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.
33. The designation must be renewed by 2 October 2016 to be effective.

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<sup>1</sup> (15/12/2010) "Statement of case to designate the Ejército de Liberación Nacional (ELN) as a terrorist entity", available at <http://www.police.govt.nz/sites/default/files/publications/statement-of-case-ejercito-de-liberacion-nacional-terrorist-entity-15-dec-2010.pdf>.

<sup>2</sup> (02/10/2013) "Statement of case to renew the designation of Ejército de Liberación Nacional (ELN) as a terrorist entity", available at <http://www.police.govt.nz/sites/default/files/publications/renew-eln-2-oct-2013.pdf>.

<sup>3</sup> (02/01/2014) "ELN bomb Colombia oil pipeline infrastructure", Colombia Reports, accessed via <http://colombiareports.com/eln-bomb-oil-pipeline-infrastructure/> on 28/01/2016, and;

(05/11/2013) "ELN declares war on oil companies", Colombia Reports, accessed via <http://colombiareports.com/guerrilla-group-declares-war-oil-companies/> on 28/01/2016.

<sup>4</sup> (20/06/2014) "Bomb explodes at Bogota police post: 3 reported injured", Colombia Reports, accessed via <http://colombiareports.com/bomb-explodes-bogota-police-post-3-reported-injured/> on 16/03/2016.

<sup>5</sup> (10/10/2014) "Colombia: Police Detonate Bomb in Residential Area of Bogota", EFE, accessed via Open Source Centre on 02/02/2016.

<sup>6</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>7</sup> (10/02/2015) "ELN confirms holding west Colombia mayor hostage", Colombia Reports, accessed via <http://www.worldaffairsjournal.org/content/eln-rebel-group-kidnaps-colombian-mayor> on 28/01/2015.

<sup>8</sup> (27/10/2015) "Colombian Rebels Kill 12 Government Troops During Regional Election", TIME, accessed via <http://www.time.com/4088299/colombia-eln-rebel-attack/> on 07/01/2016.

<sup>9</sup> (17/11/2015) "Colombia ELN: Rebels release two kidnapped soldiers", BBC News, accessed via <http://www.bbc.com/news/world-latin-america-34842728> on 07/01/2016.

<sup>10</sup> (09/02/2016) "Colombia will intensify operations against ELN rebels", The World Weekly, accessed via <http://www.theworldweekly.com/reader/view/newswire/2016-02-09/colombia-will-intensify-operations-against-eln-rebels/6648> on 17/02/2016, and;

(06/02/2016) "Colombian policeman killed in rebel attack", EFE, accessed via <http://www.efc.com/efe/english/world/colombian-policeman-killed-in-rebel-attack/50000262-2831728> on 16/03/2016.

<sup>11</sup> (06/04/2016) "Colombia Guerrilla Update: ELN sniper murders police chief in El Tarra (Norte de Santander)", Open Source Center, accessed on 27/05/2016, and;

(03/04/2016) "Muere comandante de la Policía en El Tarra tras hostigamiento del Eln" La Opinion, accessed via <http://www.laopinion.com.co/judicial/muere-comandante-de-la-policia-en-el-tarra-tras-hostigamiento-del-eln-109501#ATHS> on 27/05/2016, and;

(18/04/2016) "Colombia Guerrilla Update: ELN releases two drivers kidnapped in Choco-Risaralda", accessed via Open Source Center on 27/05/2016.

<sup>12</sup> (16/07/2016) "Explosion of ELN IED Leaves 1 Policeman Dead, 1 Injured in Pelaya", Bucaramanga Vanguardia.com, accessed via Open Source Center on 19/07/2016.

<sup>13</sup> (16/07/2016) "Ataque del ELN cobra vida de un policía barranquillero", El Heraldo, accessed via <http://www.elheraldo.co/cesar/ataque-del-eln-cobra-vida-de-un-policia-barranquillero-272078> on 26/07/2016.

<sup>14</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>15</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>16</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>17</sup> (13/05/2015) "Farc rebels says ELN must join Colombia peace process", BBC News, accessed via <http://www.bbc.com/news/world-latin-america-32731754> on 29/01/2016.

<sup>18</sup> (28/12/2015) "Preliminary peace talks deal with Colombia government is ready: ELN rebels", Colombia Reports, accessed via <http://colombiareports.com/preliminary-deal-with-colombia-government-is-ready-eln-rebels/> on 29/01/2016.

<sup>19</sup> (16/01/2015) "Colombia: Interior Minister Says No Final Decision Yet on Site of ELN Talks", El Colombiano.com, accessed via Open Source Centre on 29/01/2016.

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- <sup>20</sup> (12/02/2016) “Colombia’s ELN rebels declare 72-hour lockdown”, Reuters, accessed via <http://www.reuters.com/article/us-colombia-rebels-eln-idUSKCN0VL1K2> on 17/02/2016.
- <sup>21</sup> (09/02/2016) “ELN must free hostages before any peace talks: Govt”, Colombia Reports, accessed via <http://colombiareports.com/eln-must-free-hostages-before-any-peace-talks-govt/> on 17/02/2016.
- <sup>22</sup> (30/03/2016) “ELN talks to take place in several countries”, El Tiempo, accessed via Open Source Center on 27/05/2016.
- <sup>23</sup> (31/03/2016) “Colombia Media Watch: ELN talks to begin ‘within 2 months’”, accessed via Open Source Center on 27/05/2016.
- <sup>24</sup> (04/04/2016) “ELN release former governor after government deal”, Telesurvtv, accessed via Open Source Center on 27/05/2016, and; (02/04/2016) “ELN guerrilla sets free police officer kidnapped on 20 March”, Agence France Presse, accessed via Open Source Center on 27/05/2016.
- <sup>25</sup> (28/04/2016) “ELN stance on hostage jeopardizing peace process”, El Espectador, accessed via Open Source Center on 27/05/2016, and; (09/05/2016) “Santos insists on peace gestures by ELN”, Presidency of the Republic of Colombia, accessed via Open Source Center on 27/05/2016.
- <sup>26</sup> (18/07/2016) “ELN Leader Claims Commitment to Peace Talks”, ElEspectador.com, accessed via Open Source Center on 19/07/2016.
- <sup>27</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, and; (03/07/2015) “Colombia’s ELN rebels likely behind Bogota blasts – president”, Reuters, accessed via <http://www.reuters.com/article/colombia-explosions-eln-idUSL1N0ZJ0VV20150703> on 28/01/2016, and; (14/02/2016) “Ejército de Liberación Nacional (ELN)”, Global Security, accessed via <http://www.globalsecurity.org/military/world/para/eln.htm> on 17/02/2016.
- <sup>28</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>29</sup> (15/02/2016) “5 Challenges Criminal Economies Pose for Post-Conflict Colombia”, Insight Crime, accessed via <http://www.insightcrime.org/news-analysis/five-challenges-criminal-economies-post-conflict-colombia> on 18/02/2016.
- <sup>30</sup> (08/12/2015) “Colombia: ELN Leadership Affected by Recent Military Blows”, eltiempo.com, accessed via Open Source Centre on 29/01/2016.
- <sup>31</sup> (27/10/2015) “ELN Commander flexes military muscle in Colombia ambush”, Insight Crime, accessed via <http://www.insightcrime.org/news-briefs/colombia-guerrilla-commander-flexes-muscle-in-deadly-ambush> on 18/02/2016.
- <sup>32</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>33</sup> (22/03/2015) “Outlook for FARC peace process increasingly positive, but security improvement tentative amid increasing ELN attacks in northeast Colombia”, Jane’s Intelligence Weekly, accessed via <http://www.janes.com/article/50118/outlook-for-farc-peace-process-increasingly-positive-but-security-improvement-tentative-amid-increasing-eln-attacks-in-northeast-colombia> on 18/02/2016.
- <sup>34</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.
- <sup>35</sup> (27/10/2015) “ELN Commander flexes military muscle in Colombia ambush”, Insight Crime, accessed via <http://www.insightcrime.org/news-briefs/colombia-guerrilla-commander-flexes-muscle-in-deadly-ambush> on 18/02/2016.
- <sup>36</sup> (19/11/2015) “Colombia discovers ‘giant’ ELN cocaine lab”, Insight Crime, accessed via <http://www.insightcrime.org/news-briefs/colombia-discovers-giant-eln-cocaine-lab> on 18/02/2016.
- <sup>37</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>38</sup> (09/02/2016) “ELN must free hostages before any peace talks: Govt”, Colombia Reports, accessed via <http://colombiareports.com/eln-must-free-hostages-before-any-peace-talks-govt/> on 17/02/2016.
- <sup>39</sup> (17/01/2016) “Fifteen Colombian fisherman held by ELN rebels freed”, Reuters, accessed via <http://uk.reuters.com/article/uk-colombia-rebels-idUKKCN0UV0SB> on 29/01/2016.
- <sup>40</sup> (14/02/2016) “National Liberation Army Dynamites Energy Tower as Part of ‘Armed Strike’”, Caracol Radio Online, accessed via Open Source Centre on 17/02/2016.
- <sup>41</sup> (16/02/2016) “ELN bomb attack cripples Colombia’s Transandino pipeline”, Reuters Africa, accessed via <http://af.reuters.com/article/energyOilNews/idAFL2N15V0Z7> on 17/02/2016.
- <sup>42</sup> (11/02/2016) “Commentator says failings in ELN process complicate peace with FARC”, El Tiempo, accessed via Open Source Centre on 17/02/2016.
- <sup>43</sup> (12/02/2016) “Colombia’s ELN rebels declare 72-hour lockdown”, Reuters, accessed via <http://www.reuters.com/article/us-colombia-rebels-eln-idUSKCN0VL1K2> on 17/02/2016.