

# Left in the Cold? The ELN and Colombia's Peace Talks

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## *Executive Summary*

Whether the National Liberation Army (ELN) joins the current peace process is one of the biggest uncertainties around Colombia's historic opportunity to end decades of deadly conflict. Exploratory contacts continue, and pressure to advance decisively is growing, as the Havana negotiations with the larger Revolutionary Armed Forces of Colombia (FARC) approach a decisive point. However, hopes fresh negotiations with the second insurgency were imminent were repeatedly dashed in 2013. Agreeing on an agenda and procedures that satisfy the ELN and are consistent with the Havana framework will not be easy. The ELN thinks the government needs to make an overture or risk ongoing conflict; the government believes the ELN must show flexibility or risk being left out. But delay is in neither's long-term interest. A process from which the ELN is missing or to which it comes late would lack an essential element for the construction of sustainable peace. Both sides, therefore, should shift gears to open negotiations soonest, without waiting for a perfect alignment of stars in the long 2014 electoral season.

Paramilitary violence and, to a lesser degree, military action have greatly reduced the ELN's military capabilities, but the smaller of Colombia's two insurgencies is not on the brink of collapse. It has taken advantage of a boom in natural resources to extract new rents from the oil industry in its Arauca stronghold and to fight for control over mining zones in Chocó and elsewhere. It has also broken in some regions its longstanding restriction against engaging in the illegal drugs economy in order to buy weapons and recruit fighters. All this has cost it dearly in its relatively strong local support, but the ELN has taken care not to totally sacrifice relations with communities in the run-up to a possible political endgame. It is maintaining its links to local politics in Arauca, and cooperation with FARC has much improved since 2009, as both groups have taken steps to repair often distrustful and at times violent relations.

The ELN is a regionally confined threat, but its capacity to adapt and resist, together with accrued social and political capital and its strategically important rear-guard in Venezuela mean a military defeat is unlikely in the near term. An intensified offensive would trigger another humanitarian emergency in guerrilla strongholds and might also be counter-productive over the long run, as it would risk breaking the already strongly decentralised ELN into autonomous criminal groups. A negotiation, therefore, is the pragmatic and best choice. Postponing it until a deal is struck with FARC might appear easier to manage than parallel talks with the two insurgencies that would likely take place in different countries. However, sequential talks would have their own problems. Given the territorial overlap between the two groups, implementing a ceasefire with FARC could be problematic if the ELN remains in the conflict, and the ELN's ranks could grow if it offered a harbour for FARC fighters unwilling to demobilise.

This allows the ELN to punch above its weight, but it should use its bargaining power wisely. Even more than the government, it would pay a high price for failing to open talks soon. The longer it remains on the sideline, the less it will be able to shape issues such as transitional justice and political participation and the more it will be under pressure to simply accept the outcomes reached with FARC. The guerrillas risk breathing thinner air in a possible post-Havana context, in particular if accords

with FARC initiate a process of social transformation that further undermines the case for armed struggle and reduces the appetite for negotiating a substantive policy agenda with the ELN. Even if it believes it could survive a government military escalation, therefore, a settlement remains its best strategy to exit the conflict.

While both sides have incentives to move expeditiously to formal negotiations, the way forward will not be easy. Before the May presidential election, the government may shy from opening talks with a guerrilla group widely but inaccurately seen as a negligible threat. The ELN may be tempted to gamble against the odds that the election produces a new president ready to negotiate on more favourable terms. There are also questions about the solidity of the ELN's internal consensus to negotiate. Unsuccessful processes with the last five administrations ran into trouble in part because of the group's internal divisions. Demands for a wide agenda and broad social participation in the negotiations are at odds with the narrow focus and confidential nature of the Havana talks and the stated goal of ending the conflict rather than constructing the peace. There is only limited room to diverge from the Havana model unless the government is prepared to jeopardise the progress made to date with FARC.

But the parties should not let this opportunity slip away. For all the difficulties there is scope to agree on a basic agenda that includes narrowly defined topics related to exploitation of natural resources, the ELN's core grievance, alongside transitional justice and political participation, as well as on an innovative participation scheme with a stronger territorial focus. The broader context has also arguably never been so favourable. Improved relations between FARC and ELN should facilitate parallel talks. Some civil society actors still have influence with which to strengthen moderate elements within the smaller insurgency. They, as well as regional countries with leverage, should be supportive. Audacity, creativity and pragmatism are needed from all if the ELN is not to miss what could be its last chance to exit gracefully from the armed conflict, and Colombia is to have a good chance to sustain peace.

## *Recommendations*

*To open fresh peace negotiations expeditiously*

### **To the government of Colombia and the National Liberation Army (ELN):**

1. Intensify existing preliminary and direct contacts in order to agree without delay to an early opening of formal peace talks.
2. The ELN should accept that talks will concentrate on ending the conflict and that the broader effort to instigate political, economic and social reforms will only get under way in the subsequent post-agreement transition.
3. The government should recognise the ELN as a negotiation partner equal to the FARC, including being prepared to accept some modifications to the Havana model to reflect differences between the two insurgencies; it should also strongly defend the strategic importance of negotiating with the ELN before a potentially indifferent or sceptical public and reassure the private sector over the reach of the agenda.
4. Show flexibility and creativity to agree on an agenda and a methodology that adequately balance the ELN's need to construct a sufficiently robust internal consensus with the basic architecture behind the Havana process and public expectations for swift and efficient negotiations. The agenda and methodology should include the following elements:
  - a) narrowly defined issues related to exploitation of natural resources, leaving a comprehensive discussion of mining and oil policies for the post-conflict period;
  - b) transitional justice, political participation, demobilisation, disarmament, re-integration and other issues related to the termination of the conflict already included in the Havana talks with FARC; and
  - c) an innovative scheme for civil society participation with a stronger territorial focus, taking the forums organised by the UN and the National University in connection with the Havana process for FARC talks as examples and reference.

### **To Colombian civil society:**

5. Build on the peace advocacy that has been intensifying since 2013, using its influence with the ELN to strengthen moderate elements within it.
6. Intensify efforts with both government and the public to build the case for a quick start to negotiations, including by raising awareness of the ongoing security threat the ELN poses and of the continuing adverse humanitarian impact of the confrontation in conflict-affected regions.
7. Make clear that the legitimacy and sustainability of talks with the ELN depends significantly on the willingness of both sides to embrace an encompassing transitional justice agenda.

**To the International Community, including regional states with influence on the ELN, such as Venezuela, Cuba, Ecuador and Brazil, and regional institutions, such as CELAC and UNASUR:**

8. Be prepared to provide facilitation or any other form of direct support for the peace talks, including an adequate venue, technical advice and financial support.
9. Use influence with the insurgency to encourage pro-negotiation elements within it and foster confidence in the process.
10. Continue to prepare for a post-conflict scenario by renewing commitments to contribute to securing peace in a variety of ways, ranging from monitoring and verifying bilateral ceasefires to supporting transitional justice measures and building stronger civilian institutions in peripheral zones of the country.

*To build confidence between the government and the ELN, and within the wider Colombian society*

**To the government of Colombia and the ELN:**

11. Use current contacts to swiftly adopt a set of unilateral measures. In particular, the ELN needs to announce the end of kidnapping and the immediate release of all victims it might still hold; the government should encourage this step by permitting third-party review of confinement conditions of jailed ELN members.

**To the ELN:**

12. Demonstrate commitment to International Humanitarian Law and International Human Rights norms by advancing local humanitarian agreements regarding demining, sexual violence and recruitment of minors.

**Bogotá/Brussels, 26 February 2014**

# Left in the Cold? The ELN and Colombia's Peace Talks

## I. Introduction

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The Havana peace talks between the government and the Revolutionary Armed Forces of Colombia (FARC) show increasing potential to result in a deal ending five decades of conflict with the country's largest guerrilla group.<sup>1</sup> A milestone was reached in May 2013 with a preliminary agreement on agricultural development, the first of five substantive agenda issues. This was followed in November by a partial agreement on political participation. The parties still face highly contentious issues, including transitional justice, the modalities of a disarmament, demobilisation and reintegration (DDR) program and some yet unresolved questions on rural development and political participation; a sizeable domestic opposition is coalescing around former President Álvaro Uribe (2002-2010); and the ongoing hostilities could still derail the talks. But the partial agreements have generated a dynamic that suggests the remaining difficulties can be overcome.

The progress with FARC is a game changer for the National Liberation Army (ELN). The smaller of Colombia's two insurgencies has a long history of unsuccessful peace processes; the last ended in 2007, after three years of exploratory talks with the Uribe administration. There are many reasons why this and previous efforts failed, and the responsibility is not the ELN's alone.<sup>2</sup> Part of the story, however, is that the organisation has not built a sufficiently strong internal consensus in support of laying down weapons. For powerful sectors within the ELN, continuing the war has remained a valid fall-back option, despite an apparently irreversible military disadvantage. This time, however, failure to take advantage of a peace opportunity could be fatal. For its part, the government is under increasing pressure to bring the guerrillas on board as soon as possible, since inability to make peace with the ELN could significantly complicate implementation of an agreement with FARC.

This report explores the constraints and possibilities for fresh negotiations with the ELN. It analyses first the state of the insurgency, highlighting its tentative military recovery, decentralised structure and relations with communities and local politics. It then examines the difficulties that have prevented more rapid progress in preliminary talks. Subsequent sections outline a possibly viable agenda, explain why negotiations should be opened quickly and propose ways for civil society and the international

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<sup>1</sup> For previous analysis of Colombia's peace opportunity, see Crisis Group Latin America Reports N°34, *Colombia: President Santos' Conflict Resolution Opportunity*, 13 October 2010; N°45, *Colombia: Peace at Last?*, 25 September 2012; and N°49, *Transitional Justice and Colombia's Peace Talks*, 29 August 2013.

<sup>2</sup> Crisis Group Latin America Report N°2, *Colombia: The Prospects for Peace with the ELN*, 4 October 2002; and Briefing N°16, *Colombia: Moving Forward with the ELN?*, 11 October 2007. See also León Valencia, "The ELN's Halting Moves to Peace", in Virginia M. Bouvier (ed.), *Colombia: Building Peace in a Time of War* (Washington, 2009), pp. 95-109; and Álvaro Villarraga Sarmiento, "Diálogos exploratorios con el ELN, sin resultados", in Villarraga Sarmiento (ed.), *Diálogos exploratorios de paz Gobierno-ELN* (Bogotá, 2013), pp. 77-96.

community to help them succeed. The report is based on fieldwork in Arauca, Cauca and Nariño, three regions with longstanding ELN presence, and is complemented by interviews with government officials, legislators, ex-ELN members, peace activists, Catholic Church leaders, business representatives and those involved in previous negotiations with the ELN.



## II. The ELN's Fragile Stability

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It would be easy but misleading to consider the ELN a minor problem in Colombia's overall effort to achieve and consolidate peace. Though arguably at one of the weakest points in the last three decades, the ELN is not on the brink of defeat, disintegration or disappearance. Relying on its demonstrated capacity to adapt to changing circumstances and survive, it has halted the military decline and embarked on a timid recovery since about 2009. Increased involvement in crime, including drugs, and closer links with its old rival, FARC, have been instrumental. This has tested its cohesion and identity, but the ELN has remained at its core a guerrilla group with political aspirations and functioning, albeit precarious, command and control over its traditionally decentralised structure. It also still boasts relatively intact community relations, at least in its strongholds.

### A. From Decline to Tentative Recovery

Since its peak in the early part of the century's first decade, the ELN has lost significant military strength. From an estimated 4,700 combatants organised in seven war fronts, comprising 38 rural and seven urban fronts as well as 38 mobile companies, its fighting power had dwindled by the end of 2013 to 1,330 combatants spread over 26 rural and one urban front and thirteen mobile companies.<sup>3</sup> It is significantly smaller than FARC, which, despite its own problems, still has between 7,200 and 11,000 combatants.<sup>4</sup> It may even no longer be the second largest illegal armed group: the Urabeños, which emerged in 2006 from the remains of notionally demobilised right-wing paramilitaries, numbered some 2,400 members in mid-2013.<sup>5</sup>

The decline in military strength is closely linked to the paramilitary expansion since the mid-1990s. The ELN came under severe pressure and eventually lost control over its traditional urban stronghold, Barrancabermeja, home to Colombia's biggest oil refinery, as well as the Southern Bolívar area and San Vicente de Chucurí (Santander), the region from which it emerged in the 1960s. It also lost ground in the strategically important Catatumbo area on the Venezuelan border and in other zones into which it had expanded between the mid-1980s and mid-1990s. By 2003, when their demobilisation began, the paramilitaries' offensive had forced the ELN to retreat into more isolated and less populated zones.<sup>6</sup>

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<sup>3</sup> Camilo Echandía Castilla, "Auge y declive del Ejército de Liberación Nacional (ELN)", Fundación Ideas para la Paz, November 2013, p. 17.

<sup>4</sup> "Las Farc sólo tienen 7.200 guerrilleros: Mindefensa", Colprensa, 25 September 2013; and "¿Cómo es eso de negociar en medio del conflicto", Fundación Paz y Reconciliación, December 2013, p. 24. The numbers underestimate the groups' memberships and must be interpreted cautiously. For every combatant, there are at least an estimated three supporters in other layers of the organisation. Crisis Group interview, senior Colombian government official, Washington DC, 14 November 2013. More specific methodological problems also beset the official count; Daniel M. Rico, "¿En qué estado militar están las FARC?", *Razón Pública*, 21 April 2013.

<sup>5</sup> Crisis Group interview, police intelligence, Bogotá, 20 June 2013.

<sup>6</sup> David Aponte, "Terminando el conflicto con el ELN: de la necesidad de finalizarlo más allá del recurso a las armas", in David Aponte and Andrés R. Vargas (eds.), *No estamos condenados a la guerra. Hacia una estrategia de cierre de conflicto con el ELN* (Bogotá, 2011), p. 45; Ariel Ávila and Luis Eduardo Celis, "ELN: El camino hacia la resistencia pasiva", *Arcanos*, no. 14 (December 2008), pp. 24-39. For background on the ELN, see also Alejo Vargas, *Guerra o solución negociada. ELN: Origen, evolución y proceso de paz* (Bogotá, 2006); *Las verdaderas intenciones del ELN*,

Counter-insurgency during Álvaro Uribe's two administrations (2002-2010) had a more ambivalent effect. Firefights initiated by the army significantly increased until 2006 but then fell off and have stabilised at a low level since 2009. This may reflect the decreasing utility of military action against an already weakened group.<sup>7</sup> However, Uribe's military campaign was overwhelmingly directed against FARC and its strategic rearguards in southern and south-west Colombia. This reflected a calculation that results against FARC yielded higher political pay-offs<sup>8</sup> but perhaps inadvertently opened new space for the ELN. It at least spared ELN the leadership turnover FARC has experienced. While the larger insurgency has lost three members of its steering secretariat to military action since 2008, the ELN's five-member central command (COCE) has remained intact since the 2006 death (from natural causes) of Óscar Santos.<sup>9</sup>

The focus on FARC has also arguably made adaptation easier. Similar to what happened with FARC, the ELN has reacted to the increasingly unfavourable correlation of forces by reorganising and assuming a lower military profile. Lacking capacity for large offensive operations, it has focused on sabotage and extortion and relied on anti-personnel mines.<sup>10</sup> Increasingly its combatants are widely dispersed and seek to blend into the civilian population. But from that base, the group has embarked on a recovery, with the number of both its attacks and its combatants slowly rising since 2009.<sup>11</sup> It has also expanded its presence into Casanare and Boyacá.<sup>12</sup>

The ELN maintains presence in Norte de Santander, Guajira, the Southern Bolívar region and the northern areas of Antioquia, as well as parts of Chocó, Cauca and Nariño, but its traditional military stronghold is in Arauca, where it remains the dominant illegal armed actor. It was able to fend off the paramilitary incursion there in the early 2000s, and it continues to resist a growing military presence, largely deployed to protect the petroleum industry in one of Colombia's most important oil-producing regions.<sup>13</sup> Many ELN operations are in turn directed against oil infrastructure and against workers, who are kidnapping targets.<sup>14</sup> Perhaps in anticipation of

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Corporación Observatorio para la Paz (Bogotá, 2001), Carlos Medina Gallego, *E.L.N. Notas para una historia de las ideas políticas, 1958-2007* (Bogotá, 2007). Miltón Hernández, *Rojo y Negro. Una aproximación a la historia del ELN* (Bogotá, 1998), gives a leading ELN member's perspective.

<sup>7</sup> Echandía Castilla, op. cit., pp. 6, 17.

<sup>8</sup> Crisis Group interview, Arauca, November 2013.

<sup>9</sup> Santos entered the COCE after the 1998 death from natural causes of the ELN's then overall leader, Spanish priest Manuel Pérez. On Santos's death, he was replaced by Lorenzo Alcantuz. The other four members are the present overall leader, Nicolás Rodríguez Bautista (alias Gabino), military leader Antonio García, Pablo Beltrán and Ramiro Vargas. Crisis Group interview, conflict analyst, Bogotá, 17 February 2014.

<sup>10</sup> Crisis Group interview, police officer, Popayán, November 2013; "Impacto de la Política de Seguridad Democrática sobre la violencia y los derechos humanos", Observatorio del Programa Presidencial de Derechos Humanos y DIH, July 2010, pp. 115-131.

<sup>11</sup> Crisis Group interviews, conflict analyst, Bogotá, 9 October; Arauca, December 2013. From a low in 2009, ELN military actions have been edging upwards, to 304 in 2013, the highest since 2003. "¿Cómo llega el ELN a la mesa de negociaciones?", Fundación Paz y Reconciliación, December 2013, p. 15; Echandía Castilla, op. cit., p. 6.

<sup>12</sup> Crisis Group interview, Arauca, November 2013. Ángela Olaya and Sofía León, "¿Qué tanta fuerza tiene el ELN para negociar?", unpublished manuscript, 2013, p. 5.

<sup>13</sup> Crisis Group interviews, Arauca, October, December 2013.

<sup>14</sup> Attacks against oil infrastructure were the second most frequent type of military action carried out by the ELN in 2013. "¿Cómo llega el ELN a la mesa de negociaciones?", op. cit., p. 11. This is part of a bigger trend. By the end of November 2013, there had been 163 attacks against oil infra-

peace talks, there has been a reported increase in attacks in the municipalities of Saravena, Arauca, Fortul and Arauquita. Some local observers believe official sources may deliberately underreport these, as well as military casualties and civilian victims, in an effort to downplay the conflict in Arauca.<sup>15</sup> Additionally, the north-western Chocó department has seen a consolidation of ELN presence over the last years; in 2013, it overtook Arauca as the region with the highest number of military operations.<sup>16</sup>

Since overcoming an existential crisis in the 1970s, when it nearly disappeared, the ELN has developed a decentralised organisation with strong regional and local dynamics.<sup>17</sup> The COCE, its highest command organ, emerged only in 1986, after a long internal reorganisation that began with establishment of a Provisional National Leadership in 1978.<sup>18</sup> Military pressure, the loss of territory and the geographic dispersion of the ELN fronts have made communication increasingly difficult, reinforcing the tendency toward autonomy.<sup>19</sup> Unlike the Secretariat of the far more vertical FARC that gives orders, the COCE gives directives that are interpreted and acted upon according to local realities.<sup>20</sup> The ELN leadership retains, however, some functioning operational control over the organisation. Despite the leeway individual fronts enjoy, COCE directives still tend to be respected.<sup>21</sup> This holds true even for the Domingo Laín front in Arauca, the single most powerful structure, which has long enjoyed considerable independence.<sup>22</sup>

### B. *The Engines of Resistance and Recovery*

One explanation for the ELN's turnaround is its expansion into new financing sources. Military decline accentuated chronic cash problems. The loss of control over some oil-producing regions, such as Casanare and Middle Magdalena, cut extortion income, and the forced retreat from cities has sharply reduced kidnappings, a traditional economic mainstay.<sup>23</sup>

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structure nationwide. "Ataques a los oleoductos le cuestan a Colombia 30.000 barriles diarios", *El Espectador*, 11 December 2013.

<sup>15</sup> Crisis Group interviews, Arauca, October, December 2013.

<sup>16</sup> "¿Cómo llega el ELN a la mesa de negociaciones?", *op. cit.*, pp. 4-6.

<sup>17</sup> The 1973 Operation Anorí dealt the ELN a crushing military defeat that left it severely diminished and with a depleted leadership following the deaths of Manuel and Antonio Vásquez Castaño, brothers of the supreme leader, Fabio Vásquez Castaño, who fled to Cuba in 1974. Alejo Vargas, *Guerra o solución negociada*, *op. cit.*, pp. 231-242.

<sup>18</sup> See Medina Gallego, *E.L.N.*, *op. cit.*, pp. 355-358.

<sup>19</sup> Crisis Group interview, academic, Bogotá, 18 November 2013.

<sup>20</sup> Crisis Group interview, former ELN leader, Bogotá, 9 October 2013.

<sup>21</sup> Crisis Group interviews, conflict analyst, Bogotá, 14 November 2013; Popayán, November 2013.

<sup>22</sup> Crisis Group interview, conflict analyst, Bogotá, 14 November 2013. Ariel Fernando Ávila and Sofía León, "Frontera Arauca-Apure", in Ariel Fernando Ávila (ed.), *La frontera caliente entre Colombia y Venezuela* (Bogotá, 2012), p. 126. The Domingo Laín's relative independence partly reflects that it was not an institutional creation but one that emerged largely from within peasant communities in Arauca's Sarare region. Crisis Group interview, conflict analyst, Bogotá, 17 February 2014.

<sup>23</sup> Between 1970 and 2010, the ELN carried out 7,361 kidnappings, compared to 9,447 for which the much larger FARC is held responsible. ELN kidnappings strongly increased between 1996 and 2000 – the peak year with 1,018 cases – before falling to 39 in 2009. Between 2010 and 2012, the number has remained low, with 22 in 2012. "Una verdad secuestrada: cuarenta años de estadísticas de secuestro (1970-2010)", Centro Nacional de Memoria Histórica, June 2013; the dataset for this study is online at [www.cifrasconceptos.com/secuestro/secuestros\\_autor.php](http://www.cifrasconceptos.com/secuestro/secuestros_autor.php); numbers for 2010-2012 are from the Presidential Program on Human Rights and International Humanitarian Law, provided to Crisis Group, 15 May 2013.

To cover the shortfall, many ELN fronts have gradually turned to illegal drugs, in violation of earlier policy. Unlike FARC, the ELN long rejected the drugs trade as a means to sustain its forces. Since the mid-1980s, it officially prohibited members' involvement in any part of the drug-production chain; it also claims to have limited cultivation of coca in zones under its influence.<sup>24</sup> But this policy has been undermined since the mid-2000s. In several regions, including Cauca, Nariño and the Southern Bolívar and Catatumbo areas, it has progressively taken a role in the drugs trade. The level of involvement has differed across regions, ranging from taxing coca crops to protection of laboratories and trafficking of cocaine. An important exception is Arauca, where ELN has apparently kept away from the business.<sup>25</sup>

This trend has frequently meant forging alliances with New Illegal Armed Groups (NIAGs) that emerged after paramilitary demobilisation ended in 2006. In particular, in regions where the ELN was relatively weak, including Cauca and Nariño, it has worked with paramilitary successors in alliances that have evolved mostly (but not exclusively) around cocaine production and trafficking.<sup>26</sup> However, links with NIAGs are unstable, subject to evolving local power relations, changing conflict dynamics and different political prospects, particularly now that the guerrillas again appear to have a chance for a negotiated settlement. Probably reflecting its recently improved military position, the ELN engaged in 2013 in confrontations with the now severely weakened Rastrojos in Nariño and the Urabeños in Alto Baudó (Chocó).<sup>27</sup>

More broadly, the variety of financial sources still reflects local opportunities. In some regions, kidnapping and extortion remain important or are becoming worthwhile again. The oil and mining boom, much of it in territories with strong guerrilla influence, has contributed to improving ELN finances. For example, the Bicentenary pipeline, a much delayed key project for improving oil infrastructure that cuts across Arauca, reportedly could only progress after an agreement with the guerrillas. The group also continues to profit from burgeoning smuggling activities along the Venezuelan border.<sup>28</sup> In Chocó, it has capitalised on the increase in legal and illegal gold-mining operations that have intensified as international prices have soared.<sup>29</sup>

Accepting a bigger involvement in the drugs trade and other illegal economies has allowed the ELN to step up recruitment and weapons purchasing, but it is a double-edged sword that affects internal cohesion. Thus, in July 2013 some 30 members of a mobile column led by a local commander, "El Tigre", collectively demobilised in Cauca and handed over their weapons. The reason for this unusual event is unclear.

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<sup>24</sup> See "Entrevista al Comandante Ramiro Vargas", *Revista Colombia Rebelde*, no. 6 (December 2013-March 2014), pp. 12-13; also Laura Bonilla, "Dinámicas y tránsitos en la relación Ejército de Liberación Nacional-economías del narcotráfico", unpublished manuscript, Corporación Nuevo Arco Iris, 2008.

<sup>25</sup> Crisis Group interview, Arauca, October 2013. Crisis Group Briefing, *Colombia: Moving Forward with the ELN?*, op. cit., p. 8.

<sup>26</sup> Ariel Fernando Ávila Martínez and Magda Paola Núñez Gantiva, "Expansión territorial y alianzas tácticas", *Arcanos*, no. 14 (December 2008), pp. 52-61.

<sup>27</sup> "Boletín informativo de operativos militares (Junio-Septiembre de 2013)", Frente de Guerra Occidental, 14 October 2013; "Posible emergencia humanitaria en zona chocoana del alto Baudó por enfrentamientos entre grupos armados ilegales", Defensoría del Pueblo, press release, 11 December 2013.

<sup>28</sup> Crisis Group interviews, Arauca, October, December 2013.

<sup>29</sup> "¿Cómo llega el ELN a la mesa de negociaciones?", op. cit., p. 6.

Military pressure played a role, but the incident may also be related to a purge of combatants who joined during the expansion financed with drug-money.<sup>30</sup>

Growing links with criminal interests and related violence have also cost the ELN in community support, though not enough to transform it into yet another purely criminal actor. Despite the ambivalence and the coercion inherent in all relations between civilians and an armed illegal group, ties with locals appear to remain relatively intact or be repairable, in particular in areas where there has been an historical presence. The ELN also maintains its longstanding political influence in Arauca, where alleged links to politicians at both regional and local levels give it significant sway over the budget, including oil exploration royalties.<sup>31</sup>

Care for community ties is consistent with the ELN's strategy since the 1980s of strengthening its power and broadening social support both within and outside state institutions.<sup>32</sup> This has had mixed results. Its stronger reliance on community backing rather than military power alone left the ELN more vulnerable than FARC to paramilitary violence against civilians in areas under its influence. The influence with local and regional state institutions also led to the emergence of patronage networks the ELN used to foster local support but that mirrored the corrupt practices of Colombian politics it officially rejected.<sup>33</sup> At the same time, the significant social and political capital the group nurtured in its strongholds gave it resilience, a network that for all its ambivalence and fragility provides support that goes beyond its military strength.

### C. *Improved Relations with FARC*

The other key to recovery has been a marked improvement in relations with FARC. By the end of 2013, the two groups had taken steps to transform their traditionally distant, at times violent relations into a tentative coalition. With roots stretching back to the agrarian struggles of the 1920s-1930s and the partisan violence of the 1940s-1950s, they are part of the same conflict. Their political platforms reflect similar grievances related to unequal economic development and what the guerrillas consider a narrow and only formally democratic political system. But there has always been much to separate them. FARC's origins are in peasant self-defence forces linked to the Communist Party. The ELN emerged from radicalised sectors within trade unions, in particular in the oil industry, and a student movement impressed by the 1959 Cuban Revolution.<sup>34</sup> The influence in the ELN of Catholic priests and the liberation theology movement later added another difference.<sup>35</sup>

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<sup>30</sup> Crisis Group interviews, conflict analysts, Popayán, 26 November 2013. Ariel Ávila, "El ELN en el suroccidente", *El País* (Colombia), 17 July 2013.

<sup>31</sup> Crisis Group interviews, Cauca and Arauca, October, December 2013; conflict analyst, Bogotá, 14 November 2013. See also "Monografía Político Electoral: Departamento de Arauca, 1997-2007", Misión de Observación Electoral and Corporación Nuevo Arco Iris, 2010.

<sup>32</sup> Mario Aguilera Peña, "ELN: entre las armas y la política", in Francisco Gutiérrez, María Emma Wills and Gonzalo Sánchez Gómez (eds.), *Nuestra guerra sin nombre. Transformaciones del conflicto en Colombia* (Bogotá, 2006), pp. 211-266.

<sup>33</sup> See Andrés Peñate, "El sendero estratégico del ELN: del idealismo guevarista al clientelismo armado", in Malcolm Deas and María Victoria Llorente (eds.), *Reconocer la Guerra para Construir la Paz* (Bogotá, 1999), pp. 55-98.

<sup>34</sup> See Eduardo Pizarro Leongómez, *Las Farc (1949-2011). De guerrilla campesina a máquina de guerra* (Bogotá, 2011), pp. 27-82; *iBasta Ya! Colombia: Memorias de guerra y dignidad*, Grupo de

The divide between the two insurgencies made previous rapprochements difficult. Since the mid-1980s, the ELN has advocated stronger links with other guerrilla groups. In 1985, it joined with the M-19, the Popular Liberation Army (EPL), the Revolutionary Workers Party (PRT), the indigenous Quintín Lame group (MAQL) and the dissident FARC Ricardo Franco Front to form the National Guerrilla Coordination Group (CNG). That was renamed the Simón Bolívar Guerrilla Coordinating Group (CGSB) when FARC joined in 1987, but strong internal differences doomed efforts to negotiate a joint peace deal.<sup>36</sup> The splintering of the CGSB instead reinforced Colombia's tradition of partial peace agreements with individual groups.<sup>37</sup>

In 2005, relations between the two guerrilla groups descended into open conflict. Set against the wider context of the Uribe counter-insurgency, as well as the dynamics of paramilitary demobilisation and partial rearmament, this confrontation pitted not just FARC against ELN. In Cauca, a temporary alliance between the ELN and the NIAG Rastrojos was instrumental in pushing FARC out of important coca fields and trafficking routes.<sup>38</sup> In Arauca, the ELN reportedly worked with the army to fight FARC.<sup>39</sup> Personal rivalries between local ELN and FARC commanders played a role in the dispute, as did competition over drug corridors and key illegal economic activities; deep differences regarding community relations and links to local politics formed the background.<sup>40</sup>

A ceasefire ended hostilities in November 2009. It was well respected, except in Arauca, where fighting did not stop until September 2010.<sup>41</sup> Since then, the groups have divided territory in Arauca, though the border between them appears to have become more permeable as relations continue to improve.<sup>42</sup> This has facilitated joint or at least closely coordinated military actions, including some of the most notable attacks on state forces in 2013; the guerrillas have also claimed responsibility for a

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Memoria Histórica (Bogotá, 2013), pp. 117-125; for the importance of the student movement, see Jaime Arenas, *La guerrilla por dentro* (Bogotá, 1971), pp. 25-40.

<sup>35</sup> Notable Catholic priests included Camilo Torres, Manuel Pérez and Domingo Laín. The ELN sees their legacy as important to its identity and as providing an element of cohesion. Pablo Beltrán, "Medio Siglo de Curas Guerrilleros", *eln-voces.com*, 13 January 2014; Mario Aguilera Peña, "ELN: entre las armas y la política", in Gutiérrez, Wills and Gómez, op. cit., pp. 252-260.

<sup>36</sup> In 1987, the ELN also merged with MIR-Patria Libre to form the UC-ELN; it resumed its original name in 1996. Alejo Vargas, *Guerra o solución negociada*, op. cit., pp. 250-254.

<sup>37</sup> M-19, PRT, MAQL, EPL and the dissident ELN group Socialist Renovation Current (CRS) signed separate peace agreements with the Barco (1986-1990) and Gaviria (1990-1994) administrations. Álvaro Villarraga Sarmiento (ed.), *Acuerdos con el EPL, PRT, MAQL y CRS. Diálogos con la CGSB* (Bogotá, 2009).

<sup>38</sup> Probably most important was the 2006 killing of FARC Front 8 commander Ramírez by the ELN. At the same time, the army operations Sword 1, 2 and 3 helped push FARC toward the Pacific Coast. Crisis Group interviews, conflict analysts, Popayán, 26 November 2013. Ariel Fernando Ávila and Magda Poala Núñez Gantiva, "Las dinámicas territoriales del Ejército de Liberación Nacional: Arauca, Cauca y Nariño", *Arcanos*, no. 15 (April 2010), p. 23.

<sup>39</sup> Ariel Fernando Ávila and Sofía León, "Frontera Arauca-Apure" in Ariel Fernando Ávila (ed.), *La frontera caliente entre Colombia y Venezuela*, op. cit., p. 80; "Cómo el Ejército se alió con el ELN en Arauca", *Semana*, 19 January 2009.

<sup>40</sup> See Omar Jaime Gutiérrez Lemus, "Arauca: espacio, conflicto e institucionalidad", *Análisis Político*, no. 69 (May-August 2010), p. 33.

<sup>41</sup> "A la militancia de las FARC-EP y del ELN", Secretariado del Estado Mayor Central de las FARC-EP and Comando Central del ELN, *eln-voces.com*, November 2009; "No más confrontación entre revolucionarios", *ibid*, Arauca, 14 September 2010.

<sup>42</sup> Crisis Group interview, Arauca, December 2013.

January 2014 helicopter crash in Anorí (Antioquia).<sup>43</sup> In Arauca, where the fighting had a particularly large impact on civilians, the two groups have even begun a joint victims' reparation initiative in an effort to mend ties with communities. While it is difficult to evaluate its scope, it has aided the return of some who had to abandon their homes during the confrontation.<sup>44</sup>

Unlike previous peace talks that often strained relations by intensifying competition for government attention, the Havana process appears to have further deepened ties. FARC leader Timochenko and his ELN counterpart Gabino met in 2012 and twice again in 2013. There is now not just a willingness to fight the war together, but also an increasing determination to seek peace jointly and at least general agreement on what a successful negotiation should look like. There are still deep differences, and the legacy of past confrontations lingers, however, so rather than seek total unity, the two groups appear to have accepted what distinguishes them, while stressing their common origins.<sup>45</sup> This argues for separate, but coordinated political endgames.

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<sup>43</sup> Crisis Group interviews, Arauca, Cauca, Nariño, October, November, December 2013. An example is the August 2013 ambush in Tame that left fourteen soldiers dead; "Emboscada dejó 14 militares y dos guerrilleros muertos en Colombia", Agence France-Presse, 25 August 2013. The helicopter incident is reported in Timoleón Jiménez, "La guerra no es como la pintan ellos", *farc-ep.co*, 23 January 2014. Other sources call the crash an accident or cite other groups as responsible. "Fiscalía indaga rastro narco del helicóptero siniestrado en Anorí", *El Tiempo*, 13 January 2014.

<sup>44</sup> Crisis Group interviews, Arauca, October, December 2013. Juan David Velasco, "¿Juntos pero no revueltos?", *El Espectador*, 1 September 2013.

<sup>45</sup> "We were born from the same seed, the rebellion and the heroic resistance of our people, and we have grown like a gigantic tree with two trunks that have remained loyal to the interests of the marginalised .... Each of our forces will use their energy separately, working arduously with their bases, ... inspired by the conviction that the two torrents will have to join earlier rather than later". Nicolás Rodríguez Bautista and Timoleón Jiménez, "A los integrantes de las dos fuerzas", *farc-ep.co*, 23 December 2013. English translations from Spanish-language sources in this report are Crisis Group's.

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### III. The ELN and the Havana Peace Talks

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Six years after the failure of the last attempt to reach a deal with the ELN, negotiations are again in the cards. Contacts with the government have intensified since the Havana talks opened, though results are mixed. A cycle of progress and setbacks has been followed, since mid-November 2013, by positive gestures and rhetorical advances. Preliminary talks are ongoing, though it is unclear how close formal negotiations are. The uncertainty of final results with FARC, the upheaval caused by social protests and the fast-approaching May 2014 presidential election, as well as the weakness of the consensus within the ELN to abandon the war, all have made it more challenging for the government and insurgents to reconcile diverging views on their architecture and agenda.

#### A. *Two Steps Forward, One Step Back*

Since the start of the Havana talks, it has been clear there should be a place for the ELN in the search for peace. Upon confirming confidential pre-negotiations with FARC in August 2012, President Santos stressed that the door was open also for the ELN; the September 2012 Havana framework agreement with FARC explicitly invited “other guerrilla forces” to join.<sup>46</sup> This echoed repeated ELN expressions of interest since mid-2010 in new peace talks.<sup>47</sup>

Santos confirmed preliminary contacts in August 2013,<sup>48</sup> and at least three times that year the opening of peace talks seemed imminent but did not materialise. Most recently, former Senator and influential peace activist Piedad Córdoba said in December negotiations would be announced before Christmas.<sup>49</sup> President Santos had suggested in April the process would begin “sooner rather than later”, while Vice President Angelino Garzón said in September that the government would start the talks “over the next days”.<sup>50</sup> Such false dawns are not surprising, especially during early stages of a process, when mutual confidence is still low, but the repeated apparently failed deadlines contribute to an impression the process has encountered more serious obstacles than anticipated.

Probably the biggest setback was in October, when the ELN said exploratory talks had not yet started, though its representatives had been on stand-by for a year. This referred to a November 2012 ELN statement (shortly after Havana began) announcing

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<sup>46</sup> “Declaración del Presidente de la República, Juan Manuel Santos”, Sistema Informativo del Gobierno, 27 August 2012; Crisis Group Report, *Colombia: Peace at Last?*, op. cit., p. 34.

<sup>47</sup> “Exclusive: Colombia’s ELN rebels offer peace talks, refuse ceasefire first”, Reuters, 27 August 2012; Nicolás Rodríguez Bautista, “Carta abierta”, eln-voces.com, 26 May 2012, and “Respuesta a la propuesta del gobierno venezolano”, eln-voces.com, 4 August 2010.

<sup>48</sup> “Santos admite contactos con el ELN para eventuales diálogos de paz”, *El País* (Colombia), 8 August 2013. The government has not disclosed who is involved in these contacts.

<sup>49</sup> “Antes de finalizar el año habrá diálogo con el ELN”, Piedad Córdoba”, Colprensa, 2 December 2013.

<sup>50</sup> “Angelino Garzón dice que Gobierno espera iniciar diálogo con ELN en los próximos días”, *El País* (Colombia), 9 September 2013; “Alocución del Presidente Juan Manuel Santos en el Día Nacional de la Memoria y la Solidaridad con las Víctimas del Conflicto Armado”, Sistema Informativo del Gobierno, 8 April 2013. Santos’s comment was followed by intense speculation that the process would begin in May. See “Diálogos de paz con el ELN empezarán en mayo”, *El Espectador*, 22 April 2013.



a commission for talks.<sup>51</sup> According to the ELN, it is composed of two “national” and three “regional” leaders, whose identities are uncertain.<sup>52</sup> The assertion that no exploratory talks were underway also put into perspective an episode in which its negotiators reportedly went to Havana in late 2012 to force the start of a dialogue. They were supposedly turned away in January 2013.<sup>53</sup>

Toward the end of 2013, however, dynamics became more positive. On 1 December, the guerrillas freed an engineer in Antioquia working for a multinational company who had been held hostage since mid-2012; on 24-25 December, they freed a further two kidnap victims in Arauca, including an oil worker. This added to the previous unilateral hostage releases in 2013, including of two German tourists in March, Canadian mining executive Gernot Wober in August and three Colombian oil contractors in November.<sup>54</sup>

Regardless of how advanced the preliminary contacts really are, 2013 was not a lost year for peace with the ELN. Both sides remain committed to talks, and civil society has awoken to the issue. In July, some 100 activists, academics, politicians and civil society organisations urged Santos and the ELN to initiate talks, followed by a similar call in December.<sup>55</sup> Colombians for Peace, an activist group, maintains letter exchanges with ELN (as well as with FARC) on a range of issues, including liberation of hostages, respect for humanitarian norms and urgency of negotiations.<sup>56</sup> Several hostage releases have been facilitated, not only as usual by the International Committee of the Red Cross (ICRC), but also by Catholic Church officials and/or leaders linked to the Civilian Facilitation Commission, a civil society group that has sought to help broker peace with the ELN since 1999.<sup>57</sup>

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<sup>51</sup> “Delegación del ELN para el Diálogo Exploratorio [Segundo Comunicado]”, *eln-voces.com*, 13 October 2013; “Carta Abierta a la Mesa de Diálogos de la Habana”, Delegación del ELN para el Diálogo, *eln-voces.com*, 11 November 2012.

<sup>52</sup> “Listos para el Diálogo”, video, YouTube, 2 December 2013 (NTN24 Interview with Gabino aired on 30 November). There is speculation that the exploratory commission could include COCE members Antonio García and Pablo Beltrán. Both have previously participated in negotiations with the government. Crisis Group interview, former ELN leader, Bogotá, 8 October 2013.

<sup>53</sup> See Vicenç Fisas Armengol, “A possible peace process with the ELN in Colombia”, Norwegian Peacebuilding Resource Centre, August 2013, p. 6.

<sup>54</sup> “Colombia: liberación de un ingeniero en poder del ELN”, press release, ICRC, 1 December 2013; “Nueva liberación de secuestrado en el departamento de Arauca”, *El Tiempo*, 25 December 2013; “El ELN liberó a los dos alemanes que tenía secuestrados”, *Confidencial Colombia*, 8 March 2013; “Canadian Gernot Wober freed by Colombia ELN rebels”, BBC, 27 August 2013; “Liberados tres trabajadores por el ELN en Arauca”, Efe newsagency, 4 November 2013.

<sup>55</sup> “Carta pública al Presidente de Colombia, Juan Manuel Santos, y al Ejército de Liberación Nacional”, Bogotá, 3 July 2013; “Clamor Social por la Paz”, 5 December 2013.

<sup>56</sup> See, for instance, “Carta de Colombianos y Colombianas por la Paz al ELN y Gobierno Nacional”, *justiciaypazcolombia.com*, 28 June 2013, and the response in Nicolás Rodríguez Bautista, “Carta de Respuesta a Colombianos y Colombianas por la Paz”, *eln-voces.com*, 11 July 2013; and “Carta de Colombianos y Colombianas por la Paz del ELN”, 10 August 2013, responded to in Bautista, “Carta Abierta a Colombianas y Colombianos por la Paz”, *eln-voces.com*, August 2013; also, “Carta de Colombianas y Colombianos por la Paz al Presidente Santos y guerrillas del ELN y FARC”, 5 September 2013, and “Carta de Colombianas y Colombianos por la paz a un año de las conversaciones de Paz”, *justiciaypazcolombia.com*, 20 November 2013; responded to in “Compartimos Hacer un Acuerdo Especial Sobre las Hostilidades”, Comando Central, *eln-voces.com*, 2 December 2013.

<sup>57</sup> The commission emerged in response to the apparent stalemate in talks between the ELN and the Pastrana government (1998-2002) and to the mass kidnappings by the guerrillas. Its influence in mediating between the parties is partly owed to its pluralistic membership and commitment to

## B. *A Difficult Context*

The talks with FARC, a wave of social protests and the approaching 2014 electoral cycle have likely had a bearing on ELN and government decisions regarding negotiations. For much of 2013, both may have considered that the moment was not yet right, given the uncertainties around those three factors.<sup>58</sup>

The most important element is the peace process with FARC. For all its insistence on being ready, the ELN has watched the Havana talks with barely concealed scepticism. It criticises what it claims is a lack of substance, and leaders privately call them a surrender, not a political negotiation.<sup>59</sup> For its part, the government may have wanted the FARC process to stabilise before acting decisively on talks with the other insurgency. This point was arguably reached in November with a preliminary agreement on political participation, the second of five substantive points on the Havana agenda. On the back of the rural development agreement announced in May, this signalled that results are possible on issues at the root of the conflict. The ELN has come out in support of this agreement, though it remains sceptical, mostly over government willingness to implement it.<sup>60</sup>

The second important contextual factor is the wave of social protests that have shaken national politics. These included a coffee-growers strike in February-March, mining community protests in July-August, and a 50-day mobilisation in the Catatumbo region, where peasants demonstrated against forced eradication of coca crops, social exclusion and unfulfilled political promises.<sup>61</sup> The high watermark was reached in August-September with a countrywide agrarian strike, during which several people died in clashes with police.<sup>62</sup>

The protests had an ambivalent effect on the ELN. Hardliners within the group have reportedly interpreted the widespread discontent as support for their revolutionary project, thus weakening the case for compromising with the government.<sup>63</sup> However, the leadership appears ultimately to have interpreted the social mobilisations as part of a renaissance of a broad movement committed to fighting for deep social changes, within and outside the institutions, and with a real possibility of

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strict confidentiality. Crisis Group interview, academic, Bogotá, 18 November 2013; Crisis Group Report, *Colombia: The Prospects for Peace with the ELN*, op. cit., p. 15.

<sup>58</sup> Crisis Group interviews, former ELN commander, Bogotá, 8 October; conflict analyst, Bogotá, 9 October 2013.

<sup>59</sup> See, for instance, the declarations of COCE member Antonio García: "Just as FARC and other sectors of society, we have expressed that the agenda is very limited. It does not permit a broader discussion that keeps in mind the whole set of structural problems that need to be tackled". Marisol Gómez Giraldo, "Iglesia puede jugar papel clave en la paz: Eln", *El Tiempo*, 27 October 2013.

<sup>60</sup> "The recent agreement on political participation between the Santos government and the FARC-EP anticipates the Christmas gift that we Colombians traditionally ask for from Little Jesus [Niño Dios] .... The only problem with these gifts is that they are a virtual Christmas basket that requires the touch of a magical wand to become something real". "Estamos de Acuerdo con la Participación Política", Comando Central, eln-voce.com, 11 November 2013.

<sup>61</sup> "Se levanta el paro cafetero", *Semana*, 2 March 2013; "Mineros y Gobierno llegaron a un acuerdo para levantar el paro", *El Colombiano*, 31 August 2013; Yamilé Salinas Abdala, "¿Arde el Catatumbo?: respuesta inadecuada a una protesta legítima", *Razón Pública*, 7 July 2013.

<sup>62</sup> "Por qué hay paro este 19 de agosto", *Semana*, 18 August 2013; also Ana María Restrepo Rodríguez, "Balance de la protestas campesinas en 2013", *Prensa Rural*, 3 January 2014.

<sup>63</sup> Crisis Group interview, conflict analyst, Bogotá, 9 October 2013.

eventually reaching political power.<sup>64</sup> By increasing ELN confidence it can survive as a legal movement, the protests may thus have boosted prospects for a political solution.

Yet, over the short term, the discontent probably contributed to delaying the process. Due to perceived mismanagement of the protests and damaging images of security forces clashing with demonstrators, Santos's approval ratings nosedived from an already relatively weak 48 per cent in June to 21 per cent in August, before slightly recovering to 29 per cent in October.<sup>65</sup> This may have led the government to conclude that it lacked sufficient political capital to pursue a decisive process with the ELN.

The collapse of Santos's approval ratings also compounded uncertainty over the 25 May presidential election. It pits Santos, who announced in November his intention to seek a second term, against five main contenders of all political stripes, including two – Marta Lucía Ramírez of the Conservative Party and Óscar Iván Zuluaga of Uribe's Democratic Centre movement – who seek to capitalise on the widespread rejection of judicial benefits for guerrilla leaders and their political participation.<sup>66</sup> With the incumbent's advantage, slowly recovering approval ratings and no opponent having yet been able to take advantage of his weakness, Santos is the favourite. There is, however, still too much uncertainty to rule out an upset. Victory for either of the two peace critics, in particular, would cast doubt over the sustainability of the entire process.

A strong showing in the 9 March Congressional elections by the peace sceptics around Uribe, who heads the Democratic Centre's Senate list, might breathe new life in Zuluaga's candidacy and carry him into a second-round showdown with Santos in June. If Zuluaga fails to take off, Santos might face Ramírez, possibly in coalition with the Democratic Centre, in the likely runoff. If it encounters a strong challenge from the Havana critics, the government might conclude that opening a peace process with the ELN, widely seen as a negligible threat, would jeopardise its re-election chance. Alternatively, if Santos's Congressional supporters do well in the March voting, the government might wish to position itself as the guarantor of peace and so accelerate talks with the ELN.

The electoral uncertainty also weighs on the ELN. Arguably, a Santos victory that brings stability to the peace process would be in its best long-term interest. However, the guerrillas will hardly want to be seen as handing an important electoral success

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<sup>64</sup> "The reanimation of the mobilisation of popular sectors, above all from rural areas, began as a protest against the negative effects of the Free Trade Agreements, but advanced to formulate alternative solutions as elements of a new development model and integral parts of the construction of peace .... What the Left is lacking is a more comprehensive and shared vision over its identity and its principles so as to become flexible in its alliance with the centre, where it would have a real option of power". "La Izquierda Dejó de ser Marginal (Balance 2013/Parte 6)", Comando Central, eln-voces.com, 23 December 2013. Nicolás Rodríguez Bautista, "Respuesta al Clamor Social por la Paz", eln-voces.com, 13 January 2014: "We think, like you, that today peace is on the way to consolidation, because the majorities in society embrace it and are committed to it; and this will be the guarantee to reach it".

<sup>65</sup> "Gallup Poll #97", Gallup, October 2013, p. 33; "Colombia Opina. Gran Encuesta Elecciones 2014", Ipsos Public Affairs, 25 November 2013.

<sup>66</sup> The field is completed by Clara López Obregón of the leftwing Alternative Democratic Pole and Aída Avella of Patriotic Union. The alliance between the Green Party and the Progressives will hold a primary on 9 March to choose its candidate, with former Bogotá Mayor Enrique Peñalosa the favourite. Of these, only Peñalosa has a realistic chance of reaching the second round of the presidential election. Juanita León, "Así cambian las presidenciales con Ramírez", *La silla vacía*, 27 January 2014.

to its ideological foe. From its perspective, holding back might also seem attractive, given the outside chance for election of a president who might negotiate on more sympathetic terms.<sup>67</sup>

### C. *Diverging Views*

With the ambivalent context causing distractions, the government and ELN have apparently not yet quite solved the problems posed by their diverging views on the design of a peace process. The ELN's concept relies on three basic principles.<sup>68</sup> First, it refuses to discuss only the terms of its demobilisation and disarmament, which it thinks is the government's sole intention, and seeks instead a broad agenda that addresses the structural roots of the conflict.<sup>69</sup> Secondly, it considers that while the government and the movement are important actors in the peace process, they should not be alone in it; instead, there should be a society-wide process in which the insurgents and government alike must listen to communities.<sup>70</sup> Thirdly, a mutual ceasefire should precede negotiation of substantive issues, so as to enable wide societal participation.<sup>71</sup>

These principles sit uneasily with the Havana process and also with the government's views.<sup>72</sup> The agenda with FARC is explicitly focused on ending the conflict. This involves substantial policy issues beyond DDR, but it is not aimed at producing definitive peace. In a sequence the ELN rejects, that is only to be achieved in a third

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<sup>67</sup> "This is why our two forces are fully working to make the peace dialogues happen, which is not easy when dealing with a government that is profoundly reactionary, neoliberal, thoroughly committed to the interests of transnational companies and North American imperialism, militarist, hungry for war and oligarchic .... It would be easier if we managed to contribute to the installation of another government, of democratic nature, open to new perspectives". Bautista and Jiménez, "A los integrantes de las dos fuerzas", op. cit., 23 December 2013.

<sup>68</sup> For background on the evolution of the ELN's thinking about peace, see Carlos Medina Gallego, "Conversaciones con el Eln tienen luz verde", *Confidencial Colombia*, 11 September 2013; "Recopilación posturas del Ejército de Liberación Nacional, ELN", Fundación Ideas para la Paz, 21 November 2013.

<sup>69</sup> "While the government pretends to achieve at the negotiation table demobilisation and disarmament, the ELN considers that the table is for discussing the big economic, political and social problems that originated the social and armed conflict that we have suffered for 60 years ...". "La Paz una Obra Colectiva", Comando Central, eln-voces.com, 30 September 2013.

<sup>70</sup> "The favourite subjects to achieve the necessary changes are the people and the middle-class sectors, organised and mobilised in the permanent exercise of opposition to the regime and its neoliberal policies. The guerrilla is a legitimate expression – among the many that exist – of the organised people, but it can and should not award itself the right to speak for everybody else. The popular Colombian subject has earned itself, with immense sacrifices, with a high share of blood, the right to a major place in whatever peace process". Nicolás Rodríguez Bautista, "Editorial", *Revista Rebelde*, no. 6, December 2013. See also Jaime Zuluaga Nieto, "Diálogos de paz con el ELN: alcances y perspectivas", *Razón Pública*, 9 October 2013.

<sup>71</sup> "Compartimos Hacer un Acuerdo Especial Sobre las Hostilidades", Comando Central, eln-voces, 2 December 2013. "This is why it is necessary that the parties to the conflict make significant steps that generate a favourable atmosphere. ... A bilateral cessation of fire and hostilities is the best thermometer to measure the seriousness and the responsibility with which the process of constructing peace is assumed".

<sup>72</sup> See Sergio Jaramillo, "Transición en Colombia ante el proceso de paz y la justicia", *El Tiempo*, 13 May 2013, and Humberto de la Calle, "Humberto de la Calle habla de los mitos sobre el proceso de paz", *El Tiempo*, 22 January 2014.

phase, after the insurgents disband.<sup>73</sup> The emphasis in Havana is on direct, confidential and bilateral negotiations that leave only limited room for civil society participation. Finally, there is no ceasefire, because the government considers military pressure essential for prodding the guerrillas into a speedy agreement.<sup>74</sup> It also reflects a lesson from past negotiations (with the ELN) that collapsed partly over the difficulties of agreeing on a ceasefire's terms.<sup>75</sup>

Bridging the gap between these concepts is critical if peace talks are to be sustainable. With its decentralised structure and substantially autonomous fronts, the ELN is at much greater risk from internal resistance or even fracture than FARC. Lack of support from the group's military bases and disagreements between ELN negotiators were factors in the collapse of its talks with the Uribe administration.<sup>76</sup> That this remains a problem is suggested by the timing of ELN operations, such as the kidnapping of three oil workers in Arauca a day after Vice President Garzón suggested talks were imminent. To minimise the risks presented by the ELN's relatively weak vertical control, the parties need to ensure that powerful regional commanders, in particular those of Arauca's Domingo Laín Front, fully endorse the talks.<sup>77</sup> Giving some regional commanders a stake in the process through direct participation could help,<sup>78</sup> as might government acceptance of a negotiation model that reflects a number of ELN proposals.

The more credible the negotiation appears to the ELN, the more likely it will ultimately abandon the war. A series of failed attempts to exit the conflict, sometimes after relatively promising negotiations, has earned the ELN the reputation of always wanting to talk but not necessarily being committed to reaching an agreement.<sup>79</sup> Reducing its "stage fright", as one observer put it,<sup>80</sup> requires actively building up the ELN's confidence in the process, during the formal negotiations as well as the exploratory phase.

The government's room to diverge from the Havana format, however, is restricted. Agreeing to a negotiation significantly different in design, style and substance could have serious negative repercussions with FARC.<sup>81</sup> The larger insurgent group only grudgingly accepted the Havana parameters and remains openly critical of the government's narrow interpretation of the agenda, limited civil society participation

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<sup>73</sup> "The gradualist vision that the conflict ends first and then we direct the country to changes is an old and repetitive story that does not have coherence, on top of being a capricious and unsuccessful formula". "Es Mejor la Verdad Aunque Ella Duela Presidente", Comando Central, eln-voces.com, 12 August 2013.

<sup>74</sup> See, for instance, "Palabras del Presidente Juan Manuel Santos en la Convención del Partido Liberal", Sistema Informativo del Gobierno, 1 December 2013.

<sup>75</sup> See Crisis Group Briefing, *Colombia: Moving Forward with the ELN?*, op. cit., pp. 12-13.

<sup>76</sup> Crisis Group interviews, Church leader, Bogotá, 6 November 2013; Arauca, December 2013.

<sup>77</sup> In 2012, Domingo Laín commander Pablo endorsed new talks in a rare public appearance and reaffirmed subordination to the COCE, but doubts about the front's level of commitment linger. See "#Colombia #ELN: entrevista al Comandante Pablo-Frente de Guerra Oriental", video, YouTube, 14 September 2012; Crisis Group interviews, Church leader, Bogotá, 6 November 2013; Arauca, December 2013.

<sup>78</sup> Crisis Group interview, former ELN commander, Bogotá, 8 October 2013.

<sup>79</sup> Crisis Group interview, academic, Bogotá, 20 November 2013.

<sup>80</sup> Crisis Group interview, NGO leader, Bogotá, 29 October 2013.

<sup>81</sup> Crisis Group interview, senior government official, Bogotá, 17 January 2014.

and lack of a ceasefire.<sup>82</sup> The government will not and should not risk the progress achieved with it thus far. The challenge therefore is to incorporate ELN ideas into the framework of the new negotiation without straining the one with FARC.

Given the lack of mutual trust, this will not be easy, but it is within reach. The ELN has a history of engaging with successive governments despite differences over design of the talks. Moreover, at least compared to the incompatible visions over the drivers of conflict and the goals of negotiations between the guerrillas and the Uribe government,<sup>83</sup> ELN's disagreements with the Santos administration are less fundamental. The recognition of an armed conflict in the 2011 Victims' Law, as opposed to framing the guerrillas as a terrorist or criminal threat, and the offer for a political settlement beyond DDR mark significant departures from Uribe's conflict resolution strategy. The ELN might continue to fiercely criticise the government's vision of peace talks publicly, but the existence of substantially more common ground should help both sides to reach a consensus over new talks.

For all the scepticism, there are also elements in the Havana talks that the ELN not just values but considers are borrowed from its own previous talks. These include meeting outside Colombia and the participation of third countries as guarantors and facilitators. Moreover, the ELN has understood that demands for a broad structural agenda are unrealistic.<sup>84</sup> The group's true red line is likely an agenda that does not fall short of the negotiations with FARC, namely one that tackles selected substantial policy issues. It also appears to be slowly coming around to accepting talks while fighting continues. Though it has since repeated its call for a bilateral ceasefire, Gabino said in late November that the ELN had accepted "as a challenge" negotiating without one.<sup>85</sup>

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<sup>82</sup> See, for instance, "Sobre proceso de paz: mitos y mitomanías", Delegación de paz de las FARC-EP, 23 January 2014.

<sup>83</sup> Crisis Group Briefing, *Colombia: Moving Forward with the ELN?*, op. cit., p. 11; Nicolás Chamat and Emilia Frost, "La paz abandonada: experiencia, perspectivas y posibles escenarios para una paz negociada con el ELN", in David Aponte and Andrés R. Vargas (eds.), *No estamos condenados a la guerra*, op. cit., p. 201.

<sup>84</sup> "Saludo Redunipaz", video, YouTube, 24 October 2013; Crisis Group interview, academic, Bogotá, 20 November 2013.

<sup>85</sup> "Listos para el Diálogo", video, YouTube, op. cit.; "Compartimos Hacer un Acuerdo Especial Sobre las Hostilidades", Comando Central, eln-voces.com, 2 December 2013.

## IV. Negotiating with the ELN

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As negotiations with FARC make headway, the delays in starting with the ELN are increasingly problematic. It would not be good for either side to postpone the talks much longer; it would be particularly problematic postponing until after an agreement with FARC is reached, which might be as early as in the second half of 2014. The best option for both is to begin talks as soon as possible. Held in a separate location, these would run simultaneously with the Havana negotiation and be based on an agenda that addresses core ELN grievances without undermining the framework reached with FARC.

### A. *Toward a Viable Agenda*

Differences over the design of peace talks have made it more difficult to reach an agreement on a framework agreement, but the basic elements of a viable agenda are relatively clear. These include discussing carefully selected and limited issues related to exploitation of natural resources, beside topics already in the FARC agenda, such as transitional justice, political participation and DDR. On the procedural level, ELN negotiations would likely need to be more open to civil society participation than those in Havana.<sup>86</sup>

Discussing natural resources is probably ELN's key political demand. Concerns over exploitation have been at the core of the group's campaign, and its attacks on energy infrastructure have intensified since the 1980s, when a major oilfield, Caño Limón in Arauca, came on stream. In recent years, the ELN has also been increasingly vocal over the mining industry's impact on communities and the environment. Similar to rural development for FARC, including energy and mining policy on the agenda would allow the movement to feel vindicated in its struggle and assist its re-invention as a legal political actor.

Even though such issues have been discussed with the ELN during previous sounding-out periods, they do not have a clear place in the Havana architecture. A key government argument for keeping natural resources out of negotiations with FARC was that energy policy is neither a cause of the conflict (unlike political and economic exclusion of the rural poor) nor a consequence (unlike drug trafficking).<sup>87</sup> Including it in talks with the ELN would risk upsetting FARC and potentially undermine the coherence of the Havana process, thus complicating the development of a shared vision of the transition toward peace. The government must also tread carefully because energy companies are reportedly beginning to re-assess their presence in Colombia. A negotiation on the parameters of extractive industries could increase nervousness in sectors that have become important drivers of growth and account for significant foreign investment and public revenue.<sup>88</sup>

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<sup>86</sup> Crisis Group interviews, former ELN member, Bogotá, 8 October 2013; NGO leader, Bogotá, 29 October 2013; lawyer, Bogotá, 18 November 2013; academic, Bogotá, 18 November 2013.

<sup>87</sup> Crisis Group interview, senior government official, Bogotá, 17 January 2014.

<sup>88</sup> Crisis Group interview, private sector consultant, Bogotá, 20 January 2014. In 2012, the hydrocarbon sector accounted for 5.4 per cent of GDP and mining for an additional 2.3 per cent. Revenues from royalty payments (mostly from hydrocarbons) grew from 0.9 per cent of GDP in 2004 to 1.6 per cent in 2012. Combined, the extractive industries represented over 70 per cent of exports in 2012. Astrid Martínez Ortiz, "Estudio sobre los impactos socio-económicos del sector minero en Colombia: encadenamientos sectoriales", *Cuadernos Fedesarrollo*, no. 47, July 2013. Foreign direct

This leaves a narrow space for agreement. In the past, the ELN has asked for an overhaul of energy policy, including nationalisation of natural resources and revision of existing contracts. These and other overly broad demands such as the revision of free-trade agreements are not promising topics, but there are other potentially more suitable ones, such as community development in oil or mining zones or environmental recovery. These are problems in which the ELN has previously been interested and their solution would directly benefit their social bases.<sup>89</sup> At the same time, these issues would mirror the strategy behind the Havana talks, ie, concentrating discussions in sensitive policy questions on topics that already concern the government.<sup>90</sup> Broad agreements in these areas that leave state institutions significant choices for implementation might then become a stepping-stone for wider discussion (in the post-conflict stage) on the full array of political, economic and social concerns triggered by the rise of extractive industries.<sup>91</sup>

Stronger civil society participation is likely to be a particular ELN procedural demand. It has been closely linked to the group's proposal for a national convention. This idea surfaced first in 1996 as a gathering of diverse social sectors, including the Catholic Church, economic lobbies and social and political movements. It was conceived of as an instrument for negotiations with the government only later. After the 1998 Viana pre-agreement with the Samper administration (1994-1998) discussed the convention, efforts to organise it were at the heart of talks with the Pastrana government (1998-2002); the convention was also an issue in the failed talks with the Uribe team.<sup>92</sup>

The ELN remains committed to a convention.<sup>93</sup> Methodology and objectives have never been fully developed, and though the ELN is sceptical, the three forums that the UN and the National University organised in the Havana context may offer a starting point.<sup>94</sup> With a mandate from the government and FARC, these convened thousands of representatives of communities, academia, lobby groups, social movements and the international community to discuss specific agenda items and formu-

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investment (FDI) has more than doubled between 2009 and 2012, when the year closed with a record \$15,7 billion, almost half from the oil and mining sectors. See "Flujos de inversión extranjera en Colombia según actividad económica", Banco de la República, January 2014.

<sup>89</sup> "Una propuesta sobre política energética del ELN, Febrero 13 de 1998", in Álvaro Villarraga Sarmiento (ed.), *En ausencia de un proceso de paz: Acuerdos Parciales y Mandato Ciudadano por la Paz* (Bogotá, 2009), pp. 272-274; "La Liberación del Canadiense Jernoc Wobert", video, YouTube, August 2013; "Comunicado a la Opinión Pública", Frente de Guerra Oriental, 5 November 2013.

<sup>90</sup> Crisis Group email correspondence, conflict resolution specialist, 20 February 2014.

<sup>91</sup> See, for instance, Guillermo Perry and Mauricio Olivera (eds.), *Petróleo y minería: ¿bendición o maldición?* (Bogotá, 2012); also, Alonso Cardona Arango, *De Señores de la Tierra a Señores de las Minas. Minería en Caramanta* (Medellín, 2012); and "La minería de hecho en Colombia", Defensoría del Pueblo, December 2010.

<sup>92</sup> "Propuesta de la UC-ELN: Ante la ilegitimidad del gobierno realizar una Convención Nacional para definir un nuevo gobierno, Febrero 2 de 1996", in Villarraga Sarmiento (ed.), *En ausencia*, op. cit., pp. 217-218; "Declaración de Viana, Febrero 9 de 1998", *ibid.*, pp. 271-272; "Propuesta de integración de textos del Acuerdo Base, Junio 20 de 2007", in Villarraga Sarmiento (ed.), *Diálogos exploratorios*, op. cit., pp. 276-278.

<sup>93</sup> Crisis Group interview, former ELN member, Bogotá, 8 October 2013.

<sup>94</sup> "This problem (of participation) cannot be resolved through forums, where academics invite social organisation and collect inputs for the negotiation table of the government with the guerrillas". "El Movimiento Social y la Construcción de la Paz", Comando Central, eln-voces.com, 13 January 2014.



late recommendations for the negotiators. Their successful conclusion suggests that a national convention with a high number of participants might be feasible.<sup>95</sup>

This could lead to a two-phased strategy. Forum-style events on specific agenda issues might be retained as venues for civil society participation during the negotiations but given a stronger territorial focus. This would correct a shortcoming of the largely Bogotá-based forums used for the Havana process, correspond better to the ELN's largely regional social base and allow negotiators to ground an agreement more firmly in territorial needs.<sup>96</sup> A convention that builds on these regional forums might then be held after signature of a peace deal. Rather than a negotiating mechanism, the convention would thus be a forum for discussing a future peacebuilding agenda, in line with the broad mandate for debate conceived by the ELN.<sup>97</sup> This would also be compatible with the government's notion of peace construction as a participatory exercise with a strong territorial dimension, distinguished from the negotiations to end the armed confrontation.

### B. *The Case for Early Talks*

A compromise on the negotiation agenda should be reached as soon as possible. Failure to engage the ELN quickly in talks could have negative repercussions on the FARC process. With the ELN conflict ongoing, implementation of any ceasefire with the larger insurgency could face considerable practical difficulties, in particular in regions where both groups operate and increasingly conduct joint operations. In those areas, the ELN could strengthen itself by harbouring FARC fighters who defied a demobilisation order.<sup>98</sup> Despite the improved relations between the guerrilla groups, it also unclear what would happen if demobilised FARC members attempted to engage in political activity in ELN territories.<sup>99</sup>

Ongoing violence in regions with ELN presence would also complicate implementation of key aspects of an accord with FARC, such as rural development, transitional justice or coca crop substitution and alternative development programs. It would obstruct efforts to strengthen civilian state presence and boost public services in at least some conflict-affected areas. It would also delay necessary mid-term institutional reforms, including reducing the military's role in internal security. Finally, there would be damaging political effects. As long as the ELN is active, the government will have failed to end the conflict definitively.<sup>100</sup>

With the military balance strongly in its favour, the government has the better bargaining position, but it should not try to avoid negotiation. Despite the army's perception that the ELN could be defeated quickly,<sup>101</sup> a renewed offensive would probably not lead to early collapse, given the group's recovery in some core regions. A military endgame would also be politically unattractive. Because of its close links with local communities, at least in its strongholds, an attempt to drive the group to its

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<sup>95</sup> Crisis Group interview, academic, Bogotá, 22 November 2013.

<sup>96</sup> Crisis Group interviews, ex-ELN leader, Bogotá, 8 October 2013; international organisation official, Bogotá, 14 January 2014.

<sup>97</sup> "Acuerdo de la Puerta del Cielo, Julio 15 de 1998", in Villarraga Sarmiento (ed.), *En ausencia*, op. cit., pp. 275-278.

<sup>98</sup> Crisis Group interviews, Catholic Church leader, Bogotá, 14 January 2014.

<sup>99</sup> Crisis Group interview, conflict analyst, Bogotá, 20 February 2014.

<sup>100</sup> Crisis Group interview, senior government official, Bogotá, 17 January 2014.

<sup>101</sup> Crisis Group interview, Catholic Church leader, November 2013.

knees would lead to increased pressure on civil society and risk many civilian casualties.<sup>102</sup> Moreover, although the ELN largely lacks offensive capabilities, security could worsen if it increases military actions or sabotage as a means for pressing the government to open talks.

The ELN has strong incentives to join the talks promptly. For all the rhetoric that it does not depend on the Havana process, the progress with FARC means the window for the ELN is closing. Once central issues such as transitional justice and political participation are completely negotiated with the larger group, the ELN will be under pressure to adhere closely to their terms.<sup>103</sup> The longer it waits, the more a negotiation is thus likely to be restricted to demobilisation, so have little appeal for significant parts of the group. Some ELN hardliners may speculate that it will grow stronger once it is the only insurgency, but more realistically the group has an interest in avoiding becoming the sole target of military pressure from which until now FARC has partially shielded it. It might resist an offensive better than many anticipate, but to attain at least some of its political goals, it will still need to seek a settlement with the government.

Given the risks in further postponement, the government and ELN should open peace talks quickly, at least as soon as there are reasonable – not necessarily perfect – political circumstances in the long 2014 electoral season. This should allow any accords with FARC and ELN to be implemented more or less at the same time, if not jointly. It would also minimise the potentially serious problems posed by an only partial end of the fighting and give the ELN its best chance for a meaningful political negotiation.

### C. *New Negotiation Dynamics*

Handling parallel and to some degree competing processes has been problematic in the past, and talks with the ELN could significantly change overall negotiation dynamics, partly in ways that will not please the government. Nevertheless, a functioning peace process with FARC and the improved relations between the two insurgencies constitute a more promising environment than ever before.

The government has made clear that ELN negotiations will not be in Cuba, a country that has historic and emotional links with the group and where talks took place in Uribe's time. This is meant to send a clear signal that the government does not intend to combine the two processes.<sup>104</sup> Where they will be held is a matter of speculation. Uruguay is high on the list; President José Mujica, a former member of the Tupamaro insurgency, publicly offered to host them.<sup>105</sup> Other possibilities include Brazil, whose president, Dilma Rousseff, is also an ex-guerrilla, and Ecuador, led by left-wing President Rafael Correa.<sup>106</sup> Geographic separation suggests the ELN negotiations

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<sup>102</sup> This is clear from the sharply deteriorating human rights situation during the military offensive against ELN and FARC in Arauca in the early stages of the first Uribe administration. See "A Laboratory of War: Repression and Violence in Arauca", Amnesty International, April 2004.

<sup>103</sup> A senior politician told Crisis Group, it would "not make sense" to negotiate later a substantially different transitional justice model for ELN, if it fails to join the current effort. Crisis Group interview, Congressperson, Bogotá, 5 February 2014.

<sup>104</sup> Crisis Group interview, senior Colombian government officials, Washington DC, 9 January 2014.

<sup>105</sup> Daniel Valero, "Mujica ofrece a Uruguay para los diálogos con Eln", *El Tiempo*, 23 September 2013.

<sup>106</sup> "¿Los elenos a Ecuador?", *Semana*, 30 January 2014; "Brasil sería sede de las negociaciones con el ELN", *Bluradio*, 31 January 2014.

should be handled by its own dedicated team, with resources and political standing comparable to those of the high-powered unit dealing with FARC. To ensure coherence, the two teams would need to co-ordinate closely with each other under the overall leadership of the Office of the High Commissioner for Peace.

Despite government determination to keep the talks apart, some interaction will occur, especially on issues that need to be discussed with both movements. This includes how to ratify a peace agreement. The ELN has long spoken about a constituent assembly to implement the transformations agreed during the national convention, even though the 1998 Viana declaration explicitly mentioned a referendum with "broad participation" as an alternative ratification procedure.<sup>107</sup> In July 2013, it embraced FARC's earlier request for such an assembly to resolve bilateral discrepancies and discuss broader issues not on the agenda of the talks.<sup>108</sup> The government has categorically rejected this, arguing, *inter alia*, that a new constitution is an instrument for re-founding a state, not ratifying peace accords; instead it has proposed to ratify future accords by a referendum.<sup>109</sup>

The ELN's entry into talks will increase the pressure on the government to revise its position,<sup>110</sup> but this should not become an argument for further delay. The demand for a new constitution partly reflects historical grievances. FARC and ELN argue they were deliberately excluded from the assembly that drafted the 1991 constitution that is often referred to by commentators as a "peace treaty".<sup>111</sup> It also reflects overestimation of a constitution's power to solve political or social problems. The guerrillas consider that a new constitution would, for instance, provide them legal certainty regarding prosecution for serious crimes. But this can only be attained through a comprehensive transitional justice agreement that complies with Colombia's international legal obligations.<sup>112</sup> Instead of concentrating on the intractable question of a constituent assembly, the parties should focus on solving the more concrete issues that motivate the demand for a new constitution.

Transitional justice is the other field where ELN talks could change peace process dynamics. Like FARC, the movement rejects the Legal Framework for Peace, the government's main instrument for balancing victims' rights with the incentives for a negotiated settlement.<sup>113</sup> It also denies any pattern of human rights violations, admitting only individual errors and, like FARC, it considers the state primarily responsible for the conflict.<sup>114</sup> Overall, however, the ELN is less defensive about transitional justice than FARC, accepting, with reservations, the validity of International Humanitarian Law, International Human Rights Law and, in general, the right of victims to

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<sup>107</sup> "Declaración de Viana, Febrero 9 de 1998", in Villarraga Sarmiento (ed.), *En ausencia*, op. cit., pp. 271-272.

<sup>108</sup> Nicolás Rodríguez Bautista and Timoleón Jiménez, "Declaración por la Paz de la Cumbre de Comandantes", *eln-voce.com*, 1 July 2013.

<sup>109</sup> See, for instance, "De la Calle le dice NO a las Farc. ¿Por qué?", *Semana*, 15 June 2013.

<sup>110</sup> Juanita León, "Así cambiaría la negociación con las FARC si entra el ELN", *La silla vacía*, 3 July 2013.

<sup>111</sup> See Julieta Lemaitre Ripoll, *La paz en cuestión. La guerra y la paz en la Asamblea Constituyente de 1991* (Bogotá, 2011).

<sup>112</sup> Crisis Group Report, *Transitional Justice and Colombia's Peace Talks*, op. cit., pp. 13-14.

<sup>113</sup> "Declaración política", Comando Central del ELN and Secretariado del Estado Mayor Central de las FARC-EP, September 2012.

<sup>114</sup> "The ELN has never had a policy of damaging the population, and when we have committed errors and harmed the population we have faced up to it". "Si es para la paz, cuenten con el Eln", interview with Gabino, *El Espectador*, 24 March 2013.

truth, justice and reparation.<sup>115</sup> Its discourse incorporates positive references to concepts such as memory and reconciliation.<sup>116</sup> It is also readier to acknowledge damages and ask for pardon, reflecting both its closer links with (and greater dependence on) local communities, as well as religious influence.<sup>117</sup>

In this context, ELN participation might positively impact the upcoming discussion over how to deal with a past of massive rights violations, helping FARC to overcome its denial and spurring a comprehensive transitional justice solution that includes accountability of state agents. With both insurgencies wary of having only their crimes discussed, unlocking such potentially positive dynamics depends on creating an environment for reciprocal acknowledgement of wrongdoing and acceptance of individual as well as collective responsibilities.

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<sup>115</sup> See Bautista, “Carta Abierta a Colombianas y Colombianos por la Paz”, August 2013, op. cit.: “... the ELN defined in its last Congress in 2006 that it backs and seeks compliance with the principles of truth, justice and reparation for the victims of the conflict, and we are clear that the state cannot pretend to act as judge and party, because it is most responsible in this so delicate phenomenon .... We also reaffirm our respect and compliance with IHL, clarifying that there are specific aspects of the Colombian internal conflict that need to be looked at in the light of reality and its distinctive features”. See also “Democratización del país - Comandante Nicolás Rodríguez Bautista”, video, YouTube, 17 February 2014.

<sup>116</sup> See, for instance, Pablo Beltrán, “Punto de Encuentro”, *eln-voces.com*, 23 September 2013.

<sup>117</sup> Crisis Group interviews, former ELN member, Bogotá, 28 February 2013; academic, Bogotá, 20 November 2013.

## V. The Way Forward

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Given the strict confidentiality of the current contacts, it is difficult to evaluate how close the ELN and government are to opening formal negotiations, but regardless, both should accelerate the effort. They have the main responsibility to formalise not just a preliminary agreement on agenda and methodology but also respective unilateral confidence-building measures. The space for third party support will likely remain limited, but both civil society and the international community can make important contributions to the success of the negotiations.

### A. Government and ELN

The parties need to show flexibility and creativity to establish an agenda and methodology that adequately balance the ELN's need to construct a sufficiently robust internal consensus with the basic architecture of the Havana process and public expectations for swift, efficient negotiations. This will be costly for both. The ELN needs to accept that negotiations will concentrate on ending the conflict and that a broader effort to construct peace can only start in the post-agreement transition. It also must be more realistic about what can and cannot be legitimately negotiated with an armed group, in particular on a sensitive topic like energy policy.

For its part, the government should unambiguously recognise the ELN as a negotiation partner that is equal to FARC, despite the military imbalance between them. It will need to convince its own ranks and the armed forces that engaging the group quickly in talks is wiser than either further delay or trying for battlefield victory. This also includes being prepared to accept some modifications to the Havana model that reflect the historical and political differences between FARC and ELN. Once negotiations open, it must be ready to defend their strategic importance to a likely indifferent or deeply sceptical public and to reassure the private sector over the agenda, if it includes issues related to exploitation of natural resources.

In the meantime, both the ELN and the government should be prepared to execute confidence-building measures. At some point, this will need to include a declaration from the guerillas that kidnapping has been abandoned. That practice has been a bottleneck in previous peace efforts,<sup>118</sup> but given its declining financial importance, giving it up once and for all would seem a relatively cost-free way to demonstrate a disposition for peace. The ELN has so far refused to consider a unilateral gesture, arguing that this would be incompatible with its concept of negotiations without conditions and between equals.<sup>119</sup> Renunciation is also arguably harder for the ELN than it was for FARC, since at least some of its kidnappings are politically motivated actions to press specific demands often tied to local conflict dynamics.<sup>120</sup>

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<sup>118</sup> See Crisis Group Briefing, *Colombia: Moving Forward with the ELN?*, op. cit., pp. 13-14.

<sup>119</sup> Crisis Group interview, former ELN member, Bogotá, 8 October 2013. "La paz, un imperativo para Colombia", Comando Central del ELN, eln-vozes.com, 27 February 2012; Nicolás Rodríguez Bautistas, "Carta Abierta al Presidente Santos", eln-vozes.com, 11 July 2013: "All issues that today could be part of the conflict or an obstacle to peace are the issues that need to be tackled at the negotiation table. Putting them as conditions for the dialogue is putting a stick in the wheel".

<sup>120</sup> Crisis Group interview, conflict analyst, Bogotá, 14 November 2013. A recent example is the kidnapping of Canadian mining worker, Gernot Wober. His release seemed to gather speed only once his company publicly announced the devolution of two mining titles in the Southern Bolívar region. "Las Muestras de Buena Voluntad Canadiense", patriolibre.info, Dirección del Frente Darío Ramírez Castro, 25 July 2013.

Nevertheless, abandonment is essential to building confidence with the public in the context of a conflict in which kidnapping has been one of the most emblematic and widespread crimes against civilians.

The ELN's reluctance regarding pre-conditions may be understandable, but it needs to accept that it would be politically extremely costly for the government to start formal talks without this step, particularly before the presidential elections. Similarly to what probably happened in the case of FARC, which abandoned kidnapping shortly after having initiated exploratory talks with the government,<sup>121</sup> both sides should use the current contacts to agree on a set of unilateral measures. In particular, the ELN should promptly announce the definitive end of the practice and the immediate release of all victims it might still hold. This could be made public simultaneously with the announcement of a final agreement on the agenda, but ideally it should happen before. Such an agreement would build on the ELN's humanitarian commitments in the 1998 Heaven's Gate accords.<sup>122</sup>

To encourage such ELN moves, the government should consider a quid pro quo. This does not need to lead into a bilateral agreement on reducing humanitarian harm. Civil society pressure for such an agreement has been growing, and both insurgencies have endorsed the idea.<sup>123</sup> Though it seems to have gained some traction within sectors of the administration, however,<sup>124</sup> it remains unlikely since the government fears it would distract from the primary goal of stopping the conflict as soon as possible. Nevertheless, Bogotá could still take simple, virtually cost-free unilateral steps to demonstrate its commitment to peace with the ELN. These might include improving the humanitarian conditions of the movement's prisoners, following a 2013 review of prison conditions that revealed, inter alia, substantial security problems and shortcomings in access to health services.<sup>125</sup>

The ELN should also remain committed to advancing local humanitarian agreements to help build confidence and create a climate propitious for successful talks. It has shown itself over the last years more open than FARC to discussing humanitarian issues with local communities, and there are valuable, if limited, precedents of cooperation on demining.<sup>126</sup> It is discussing a range of issues with civil society, in-

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<sup>121</sup> FARC repealed its kidnapping directive on 26 February 2012, three days after it began talks with the government in Havana. This suggests the move was a mutually-agreed confidence-building measure resulting from the confidential exploratory talks, rather than a unilateral gesture as it appeared, since the announcement was made before anyone knew that pre-negotiations had been launched. Crisis Group email correspondence, conflict resolution specialist, 17 February 2014. See also "Sobre prisioneros y retenciones", Secretariado del Estado Mayor Central de las FARC-EP, 26 February 2012; and the general framework agreement in Crisis Group Report, *Colombia: Peace at Last?*, op. cit., p. 34.

<sup>122</sup> In these accords, the ELN pledged, inter alia, to suspend kidnappings for ransom, provided it had sufficient resources to finance itself, and no attempt was made to weaken the movement during the talks. It also promised to stop kidnapping children and persons over the age of 65 as well as pregnant women. "Acuerdo de la Puerta del Cielo, Julio 15 de 1998", in Villarraga Sarmiento (ed.), *En ausencia*, op. cit., pp. 275-278.

<sup>123</sup> See "Compartimos Hacer un Acuerdo Especial Sobre las Hostilidades", Comando Central, eln-voce.com, 2 December 2013; and "Carta pública al vicepresidente Angelino Garzón", Delegación de paz de las FARC-EP, pazfarc-ep.org, 3 February 2014.

<sup>124</sup> "Angelino Garzón plantea acuerdo de 'mínimos humanitarios' con Farc", RCN Radio, 26 January 2014.

<sup>125</sup> Crisis Group interview, human rights lawyer, Bogotá, 26 February 2013.

<sup>126</sup> Crisis Group interviews, NGO leader, Bogotá, 14 November 2013; Cauca, December 2013.

cluding sexual violence, child recruitment and anti-personnel mines.<sup>127</sup> Using the current political opportunity for concrete humanitarian gestures would be in the ELN's best interest, potentially enabling it to undo some of the damage to its local support caused by its involvement in drugs-related activities and the ensuing degradation of the conflict.

The government should assist, where necessary, implementation of such possible local humanitarian agreements, despite its formal position that it is the only actor authorised to seek a dialogue with the guerrillas. Such confidence-building measures by both sides would remain useful for stabilising the process even after negotiations begin.

### B. *Civil Society*

The ELN has long had better relations than FARC with various civilian actors, including some regional bishops, sectors of the Catholic Church with a social justice vocation, academia and NGOs. These actors stand a good chance of persuading the guerrillas precisely because the ELN portrays itself not as the exclusive representative of the oppressed but as one voice (albeit an armed one) among others. At least compared with FARC, it tends to listen more to and be willing to act on the views of its constituencies and civil society.<sup>128</sup> There is a risk that some groups with long ties to the ELN, including radical students, might argue for continued armed struggle,<sup>129</sup> but those with a degree of influence, including the Church and social movements, overwhelmingly try to prod it to negotiate.

Reflecting the ELN's deeper social roots, civil society actors have played significant roles in previous peace efforts. Civil society representatives signed both the Viana declaration and the Heaven's Gate agreement; in 2005, peace activists pushed for the establishment of a Peace House to facilitate the dialogue between the ELN and civil society.<sup>130</sup> The level of communication between civil society and the ELN has declined in recent years due to increased military pressure and the fatigue caused by the repeated failures of peace talks.<sup>131</sup> However, at least part of the original trust appears intact or revived, as shown by participation of civil society leaders in bringing about several of the 2013 unilateral hostage releases. Functioning, trustful relations with credible civilian actors are an asset that could be usefully leveraged in peace negotiations, should both parties wish it. This is the case even though the government's

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<sup>127</sup> Crisis Group interview, peace activist, Popayán, November 2013. See also the written exchange with social organisations from Cauca department in "Declaración de paz de Caloto y Villa Rica al pueblo colombiano", pazdesdelabase.org, Caloto and Villa Rica, 12 May 2012; Nicolás Rodríguez Bautista, "Carta abierta", eln-voces.com, 26 May 2012; "Respuesta del Espacio Regional de Paz del Cauca a Nicolás Rodríguez Bautista", *Prensa rural*, 5 June 2012; and Nicolás Rodríguez Bautista, "Señores y Señoras Espacio Regional de Paz del Cauca", eln-voces.com, 10 September 2012.

<sup>128</sup> Crisis Group interviews, NGO leader, Bogotá, 14 November 2013; peace activist, Popayán, November 2013.

<sup>129</sup> Crisis Group interview, academic, Bogotá, 22 November 2013.

<sup>130</sup> The Viana Declaration was signed by two representatives of the National Conciliation Commission, a 1995 initiative of the Colombian Bishops Conference; the Heaven's Gate accord involved both civil society leaders and the National Peace Committee; for the Peace House initiative, which led to the temporary release from prison of ELN commander Francisco Galán to consult with civil society, see Villarraga Sarmiento (ed.), *Diálogos exploratorios*, op. cit., pp. 207-222.

<sup>131</sup> Crisis Group interviews, academic, Bogotá, 18 November 2013; academic, Bogotá, 22 November 2013.

insistence on direct bilateral contacts implies that the space for formal civil society mediation or facilitation will likely remain limited compared to previous negotiations.<sup>132</sup>

Outside a formal negotiation setting, civil society actors should build on their peace advocacy that has been intensifying since 2013. They should use private and public channels to convince the ELN to engage in new talks and urge on it timely confidence-building measures, including a kidnapping ban. They should also intensify efforts to build the case with the government and public for a quick start of negotiations. This involves raising awareness that the ELN remains a security threat and of the continuing adverse humanitarian impact in conflict-affected regions. At the same time, civil society should make clear that the legitimacy and sustainability of ELN negotiations will depend significantly on both sides' willingness to embrace an encompassing transitional justice agenda.

### C. *The International Community*

Previous peace efforts with the ELN had significant international components. These included the support from a Group of Friends – Cuba, France, Norway, Spain and Switzerland – during the negotiations with the Pastrana administration; a ten-month Mexican facilitation between 2004 and 2005; the assistance of Norway, Spain and Switzerland during the 2006-2007 talks in Cuba; and a short-lived Venezuelan facilitation in 2007. This reflected probably as much the need for third-party support as the ELN's interest in gaining international legitimacy after the European Union and U.S. designated it a terrorist organisation. Rather than echoing the past, however, new negotiations will more likely follow the outlines of the Havana process. This implies involvement of only a few countries that have the confidence of one or both sides. The emphasis would be on direct bilateral negotiations, with the third parties supporting these through clearly defined roles and responsibilities.

Beyond immediate support for the talks, the international community should continue to prepare for a post-conflict stage. Colombia's international partners should renew their commitment to contribute to securing peace.<sup>133</sup> This should include support for monitoring and verifying bilateral ceasefires, as well as technical and financial assistance for transitional justice measures and building stronger civilian institutions in peripheral zones of the country. They can only fulfil this role effectively if the government's post-conflict planning gets seriously underway soon.<sup>134</sup> Otherwise, there will be an increasing risk of duplication, improvisation and delays in bringing the benefits of successful negotiations to communities in conflict zones.

Just as the talks with FARC, a process with the ELN also stands to benefit from a favourable political environment. Regional integration has progressed. Both the Union of South American Nations (UNASUR) and the Latin American and Caribbean Community of States (CELAC) have been supportive of the Colombian peace process

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<sup>132</sup> Crisis Group interviews, academic, Bogotá, 18 November 2013; lawyer, 18 November 2013; academic, Bogotá, 22 November 2013.

<sup>133</sup> See, for instance, "Estados Unidos no va a abandonar este proceso de paz": Kerry", *El Tiempo*, 12 August 2013; "Unión Europea entregará ayuda financiera a Colombia si se firma paz con las Farc", *El País* (Colombia), 12 December 2013.

<sup>134</sup> Crisis Group interviews, international organisation official, 14 January 2014; former government official, 15 January 2014.



and have some degree of leverage over the guerrillas.<sup>135</sup> The rise of the left in several Latin American countries has increased the group's interest in negotiations. Some in ELN see victories of radical alternative political projects in Venezuela, Ecuador, Bolivia and Nicaragua as a sign that profound social transformations can occur through the ballot box and that the time for armed struggle is past. Regional institutions, political leaders and social movements should continue to use their influence to strengthen this view, thus boosting moderate voices within the group and weakening its lingering doubts over the effectiveness of guarantees for political dissent and opposition in Colombia.

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<sup>135</sup> "Unasur manifiesta su 'pleno apoyo' al proceso de paz en Colombia", *El Tiempo*, 30 November 2012; "Declaración de La Habana: II Cumbre de la CELAC", 29 January 2014, para 56. In 2011, FARC and ELN asked CELAC to support a peace process in Colombia. "Farc y Eln piden diálogos de paz, en la cumbre de CELAC", Caracol Radio, 2 December 2011.

## VI. Conclusion

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The peace talks between the government and FARC are at once a risk, an opportunity and a constraint for the ELN. The increasing likelihood they will end in a deal has upped the pressure on the smaller insurgency to engage in new talks as well. The consequences of failure to do so would be dire, as the ELN would likely suffer a precipitous loss of legitimacy and for the first time face the government's full military pressure. At the same time, the FARC process is also a precious opportunity. Joining the current round would allow the ELN to negotiate on a number of its core grievances and shape crucial issues it shares with FARC, such as transitional justice and political participation.

But to get into this position, the group would have to accept the basic architecture and methodology of the Havana talks, since the government cannot substantially divert from them without endangering the process with FARC. This means accepting that the agenda can bear the weight at most of only very narrowly defined issues linked to exploitation of natural resources and that the talks can only end the armed confrontation, not produce the array of reforms Colombia ultimately needs to sustain peace.

This puts the ELN's leaders before tough choices. It is uncertain whether the group's relatively deliberative culture can foster a sufficiently strong consensus on the necessary compromises or whether its decentralised structure and weak vertical control will prove unsurmountable obstacles that could ultimately lead to its fragmentation. The leaders will have to decide whether the political capital the guerrillas have built in their strongholds over the last decades should be used to construct a future without arms, or whether the new revenues from drug-money and illegal mining should be used to prolong an armed resistance that has no realistic chance to succeed. This will ultimately decide whether the ELN shakes off the heavy legacy of previous failed negotiations and elects to abandon the armed struggle or whether it limits itself to repeated intentions of good-will without major practical consequences.

How the ELN handles this situation will shape more than its own path. Continuing and potentially intensifying warfare in ELN strongholds would above all be a tragedy for communities that have already suffered decades of violence. And without the second insurgency on board, the government's stated goal of achieving a definitive end of the conflict would remain elusive. This is why the government and civil society need to do everything they can to boost ELN confidence in the process, and why the international community should engage supportively in that process. That the ELN grasps its possibly last opportunity for leaving the conflict behind is not in its interest alone. It is an essential step toward making peace sustainable in Colombia.

**Bogotá/Brussels, 26 February 2014**

Appendix A: Map of Colombia



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