

**DISMANTLING COLOMBIA'S NEW ILLEGAL ARMED GROUPS:
LESSONS FROM A SURRENDER**

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DISMANTLING COLOMBIA'S NEW ILLEGAL ARMED GROUPS: LESSONS FROM A SURRENDER

EXECUTIVE SUMMARY AND RECOMMENDATIONS

The surrender of the Popular Revolutionary Anti-Terrorist Army of Colombia (ERPAC) in December 2011 risks going down as a failure. Only a fraction of the group took part; leaders may be getting away with short prison sentences; and the underlying criminal and corrupt structures will likely remain untouched. The impact on conflict dynamics in the group's eastern-plains stronghold has been limited. As worrying, the lack of transparency, including of international oversight, has damaged the credibility of the process, leaving the impression that an illegal armed group has again outwitted state institutions to the detriment of the public and particularly of the victims. The authorities need to draw the right conclusions from the process. Otherwise, the lack of appropriate instruments to manage collective surrenders will continue to hamper efforts to combat groups such as ERPAC that have grown into one of the country's top security challenges.

The surrender of 272 members – slightly more than a third of ERPAC's total armed strength – was the first time a New Illegal Armed Group (NIAG) with roots in the demobilised paramilitaries had chosen to give up its weapons. Pressure to surrender had been building, externally and within the group, since police killed its founder, alias "Cuchillo", in December 2010. The former mid-level paramilitary leader had made ERPAC the dominant illegal armed force in parts of Meta, Guaviare and Vichada departments, with a key role in drug trafficking and other organised criminal activities. But with substantial links to the regional and local political elite as well as to parts of the security forces, ERPAC was always more than an ordinary criminal outfit. It exercised strict social control in its strongholds, including through targeted killing of community leaders, and was responsible for displacements, child recruitment and sexual violence.

ERPAC members currently face criminal proceedings before ordinary courts. They may seek benefits provided for by the criminal justice system such as the reduction of sentences in return for accepting charges. But they are not eligible for the benefits of the government's demobilisation, disarmament and reintegration (DDR) program. This is because the government considers groups such as ERPAC

criminal organisations (BACRIMs in the Spanish acronym) and not part of the internal armed conflict. For the same reason, NIAG members are also not eligible for consideration under transitional justice measures such as the 2005 Justice and Peace Law (JPL).

A wholesale extension of DDR and transitional justice mechanisms to NIAGs would be unwarranted, but the exclusive reliance on the ordinary criminal law to try their members has its downsides. First, it leaves victims without legal guarantees and benefits extended to the victims of the guerrillas and the paramilitaries; a March 2012 Constitutional Court ruling might, however, open the door for some NIAG victims to be covered by the new 2011 Victims Law. Secondly, it leaves former fighters without a clear perspective of civilian reintegration, thus increasing risks they will take up arms again. Serious crimes committed by NIAGs need to be fully investigated and prosecuted, but a more expansive approach to dismantling these groups is also required where there is a sufficient link to the armed conflict.

Contrary to government hopes, the ERPAC process revealed the limits of its surrender strategy, rather than vindicating it. The attorney general's office had little choice but to free most of the fighters almost immediately, as only nineteen leaders were originally subjects of an arrest warrant. This obliged prosecutors and the police to recapture ERPAC members one by one, an onerous, still incomplete task. The public outrage was understandable, but more damaging is that the process will likely fail both to punish those responsible for serious crimes and to have a structural impact on ERPAC's business activities as well as its corrupt links with politicians and security forces. Potential information from rank-and-file members on ERPAC operations appears not to have been fully exploited. Leaders do not face a credible threat of serious criminal charges and thus have little incentive to collaborate seriously with the judicial system.

But the problem goes further. The government's sharp conceptual distinction between parts of the conflict and organised crime groups – upon which the logic of the sur-

render was built – poorly reflects on-the-ground complexities. Groups such as ERPAC do not fully replicate the paramilitaries, but they cannot and should not be considered in isolation from the broader context of the internal armed conflict. This means that dismantling the NIAGs involves more than investigating and punishing individual criminals. It also requires dismantling corrupt networks, guaranteeing victims' rights and preventing rearmament. Given its current weakness, reconciling such disparate interests overburdens the judicial system. The Santos administration deliberately left the field to the attorney general's office, but the shortcomings revealed in the ERPAC experience have highlighted the need for an explicit surrender policy that goes beyond individual criminal prosecution and has active government leadership.

After the Uribe administration long downplayed the NIAG threat, President Santos has taken a stronger stand, though results have remained elusive. Combating NIAGs is a complex challenge, involving multiple government agencies and cutting across several policies. But without an explicit surrender policy, the government's anti-NIAG strategy will continue to fall short. Such a policy could also have benefits beyond future exercises with NIAGs. A more credible and encompassing approach to tackling NIAGs might become a crucial part of guarantees for the new peace talks with the guerrillas that the government is slowly preparing the ground for.

RECOMMENDATIONS

To facilitate collective surrenders of NIAGs in a manner that ensures their complete dismantlement, including front structures and corrupt networks, guarantees the protection of victims' rights and prevents rearmament, while avoiding impunity

To the Government of Colombia and the Attorney General and other Judicial System Authorities:

1. Ensure police and judicial institutions have the resources, capacity and career-incentives to investigate and prosecute the full spectrum of NIAG crimes, including serious offences equivalent to grave violations of human rights and international humanitarian law (IHL), and the corrupt networks behind the groups.
2. Strengthen incentives for rank-and-file NIAG members to surrender and cooperate in revealing information about operations, superiors and enabling networks by clarifying whether and how the "opportunity principle" – which permits the attorney general's office to suspend or desist from prosecution in a given case that does not involve grave violation of human rights and IHL – applies to them.
3. Improve the civilian perspective for former NIAGs members by introducing basic reintegration benefits, subject to strict criteria of eligibility, judicial records and behaviour.
4. Clarify the handling of young NIAG members, who should be eligible to enter the Colombian Institute for Family Welfare (ICBF) program for child soldiers, despite the government's classification of NIAGs as criminal organisations rather than part of the armed conflict.
5. Improve institutional guarantees for NIAG victims by an extensive and pro-victim interpretation of Law 1448 (2011), and if this proves ineffective, consider introducing legislation to ensure equal treatment for them.
6. Strengthen victims' rights to truth by introducing an administrative program similar in design to Law 1424 (2010), under which NIAG rank-and-file members would receive legal benefits in return for contributing to the establishment of non-legal truth and historical memory; individuals responsible for serious offences should not be eligible for such a program.
7. Increase the credibility and accountability of surrender processes by inviting international organisations, in particular the Mission to Support the Peace Process in Colombia of the Organisation of American States (Mapp-OAS), to monitor and accompany them.

Bogotá/Brussels, 8 June 2012

DISMANTLING COLOMBIA'S NEW ILLEGAL ARMED GROUPS: LESSONS FROM A SURRENDER

I. INTRODUCTION

With just over a third of fighters participating in the process, the surrender of the Popular Revolutionary Anti-Terrorist Army of Colombia (ERPAC) in December 2011 was a limited event. But it provided the first ever reality check of a central piece of the government's strategy against New Illegal Armed Groups and paramilitary successors (NIAGs). Characterising the groups as criminal organisations, the government has long insisted that it would not enter into any negotiations with them, and the only way forward for NIAG members was to surrender to justice and face criminal prosecution.

A successful process would have strengthened incentives for further NIAGs to follow suit, but the ERPAC experience has laid bare both the institutional and the procedural limitations of this approach. Judicial institutions are too weak to investigate and prosecute ERPAC members for the full range of crimes committed, sharply increasing the risk of impunity. Front structures are therefore likely to survive. On the ground, the surrender has had little effect apart from triggering turf wars between groups seeking to take over what ERPAC was relinquishing. All this has negatively affected victims' rights to truth, justice and reparation.

Combating NIAGs is a complex undertaking which under the current strategy involves intelligence, repression of criminal activities, prevention of recruitment and penal prosecution of the NIAG members. This report is not intended as an evaluation of the government's overall approach. Rather, it focuses on the ERPAC surrender, with a view to contributing to the debate over how to improve possible future collective NIAG surrenders. Following the government's distinction between "demobilisation" and "surrender", the former term is applied only to those groups eligible to enter the DDR program, ie, guerrillas and paramilitaries.

II. ENDING NIAGS: THE GOVERNMENT'S OFFER

Colombia has a large toolbox of legal instruments for demobilising and disarming illegal armed organisations as well as reintegrating fighters into civilian life, stemming from negotiations with different guerrilla groups, individual demobilisations and the collective handover of the paramilitary United Self-Defence Forces of Colombia (AUC). But none of those instruments was applied to ERPAC. Instead, the government insisted that the only way for its members to normalise their situation was to surrender to justice and face prosecution under ordinary criminal law. This position, rooted in the characterisation of the group and others like it as criminal organisations rather than a recognised armed group, has far-ranging consequences, not just for the type of legal benefits disarmed former fighters can claim but also for the access of their victims to truth, justice and reparation.

A. THE GOVERNMENT POSITION ON NIAGS

ERPAC is one of five illegal armed groups that have emerged since the end of paramilitary demobilisation in 2006 and which the government describes as criminal gangs (BACRIMs).¹ According to police estimates, these groups have over 4,800 members in 167 municipalities; alternative estimates suggest membership could be as high as 8,000, with presence in 406 municipalities.² Between

¹ For analysis of post-demobilisation dynamics, see Crisis Group Latin America Reports N°20, *Colombia's New Armed Groups*, 10 May 2007; N°34, *Colombia: President Santos's Conflict Resolution Opportunity*, 13 October 2011; and N°37, *Cutting the Links Between Crime and Local Politics: Colombia's 2011 Elections*, 25 July 2011. In addition to ERPAC, the government recognises the Urabeños, Rastrojos, Renacer and Machos. New illegal armed group – Crisis Group's term for these structures – is not to be confused with the government's legal definition of an armed group "at the margins of the law" as part of the internal armed conflict (see below).

² Crisis Group interview, police, Bogotá, 7 May 2012; "Presencia de los Narcoparamilitares en el 2011", Unidad de Investigaciones, in Punto de Encuentro no. 58, Instituto de Estudios para el Desarrollo y la Paz (Indepaz), March 2012, p. 37. Indepaz

2008 and 2010, NIAGs carried out more unilateral violent actions than the guerrillas; in 2010, they were responsible for over fifteen per cent of total internal displacement, a figure that surpassed 40 per cent in some heavily affected departments such as Magdalena or Córdoba.³ While the Uribe administration (2002-2010) downplayed their relevance, the Santos government has acknowledged NIAGs as the biggest current threat to citizen security⁴ and has tackled them more firmly, though results remain limited. While security forces have captured or killed important leaders, there is little evidence they have been structurally weakened. Major operations have appeared to come in reaction to single events rather than as part of a comprehensive law enforcement effort.

The current government strategy was laid down in a meeting of the Colombian National Security Council in February 2011.⁵ The most important outcome was its definition of NIAGs as organised criminal groups. This followed the basic line of the Uribe government, which had characterised them as a phenomenon of common criminality.⁶ However, Santos has increasingly acknowledged their complex nature, strength and humanitarian impact. In this sense, NIAGs are described as “nationally disjointed criminal structures, with high corrupting, intimidating and armed power that have combined the production and sale of drugs with the violent infringement of civil rights

and liberties in certain rural zones and the periphery of some urban centres”.⁷

While there is consensus on the importance of organised criminal activities for NIAGs, their characterisation as BACRIMs has two controversial implications. First, as civil society groups have long argued, defining them as only a criminal phenomenon deliberately downplays the importance that only notionally demobilised paramilitaries have had in their emergence. Alternative terminology such as “neo-paramilitaries” or “narco-paramilitaries” tends to stress the substantial links with the former paramilitaries, for which evidence abounds. The groups have emerged in regions with previous paramilitary presence, and they have continued practices of social control, including violence against community leaders and other vulnerable groups.⁸ As they have consolidated into five major groups, down from 33 in 2006, NIAGs have also increasingly achieved robust organisational structures. Despite continuities, however, NIAGs rely less on political rhetoric than their paramilitary predecessors and relations with the guerrillas have remained ambivalent, ranging from collaboration in drug trafficking to confrontation.

Secondly, the insistence on the organised criminal nature of NIAGs de-links the groups from the internal armed conflict. However, their combat power, their organisational consolidation and the growing negative humanitarian impact of their operations have fuelled discussions about whether they should be recognised as part of the conflict. Human Rights Watch has stated that some, including ERPAC, could meet the conditions required by international humanitarian law (IHL) to be considered an armed group.⁹ This assessment is shared by some humanitarian organisations and, in a reversal of his previous position, by former President Uribe.¹⁰ Acknowledging NIAGs as part of the internal conflict would have far-reaching strategic consequences, including paving the way for a more active role of the military in combating them, a task now still largely a police responsibility. How-

estimates that at least 271 municipalities, have had a continuous NIAG presence since 2008; these are mostly in the Montes de María, Guajira, Bajo Cauca of Antioquia, Urabá, the Pacific Coast, Catatumbo and the eastern plains. Group names are often used ambiguously, making categorisations or membership estimates unreliable. Additionally, there are various membership levels, including broad social networks that are generally not included in membership estimates.

³ See Jorge A. Restrepo, Juan David González and Alonso Tobón, “Paramilitarismo: la amenaza sigue viva”, *Razón Pública* (online), 7 March 2011, and Angélica Arias Ortiz, “Las Bacrim retan a Santos”, *Arcanos*, 17 (2012), p. 12.

⁴ See the declarations of former police chief General Óscar Naranjo in “Bacrim, una amenaza y hay que contenerlas, dice Naranjo”, *El Colombiano*, Medellín, 26 January 2011.

⁵ Crisis Group interview, Colombian government, Bogotá, 2 May 2012. The council was introduced by Santos as a platform to analyse major security issues and to coordinate a comprehensive state response. “Presidente Santos puso en marcha el Consejo Nacional de Seguridad”, *Sistema Informativo del Gobierno*, 7 February 2011.

⁶ It defined them as “multi-delinquent, mutually independent, lacking any type of ideology, deploying to zones where phases of the drug-trafficking chain converge, and even consolidating alliances with terrorist groups (FARC and ELN) and delinquent organisations in order to advance criminal purposes”. “Decreto número 2374 de 2010”, interior and justice ministry, 1 July 2010.

⁷ “Política integral de seguridad y defensa para la prosperidad”, national defence ministry, May 2011, p. 17.

⁸ See Soledad Granada, Jorge A. Restrepo, Alonso Tobón García, “Neoparamilitarismo en Colombia: una herramienta conceptual para la interpretación de dinámicas recientes del conflicto armado colombiano”, in Jorge A. Restrepo and David Aponte (eds.), *Guerra y violencias en Colombia. Herramientas e interpretaciones* (Bogotá, 2009), pp. 467-499, and Angélica Arias Ortiz, “Las Bacrim retan a Santos”, *op. cit.*

⁹ “Paramilitaries’ Heirs”, Human Rights Watch, February 2010, p. 9.

¹⁰ Crisis Group interviews, Bogotá, 2011 and 2012; “Uribe propone que las Bacrim sean reconocidas dentro del conflicto armado”, RCN Radio (online), 17 May 2012. Uribe’s argument for recognising the groups as parts of the conflict is that the military needs additional guarantees to combat NIAGs.

ever, which groups might satisfy IHL criteria is controversial, and the government categorically rules out any such acknowledgment. Indeed, it defines them as organised criminal gangs and uses the term BACRIM precisely to contrast them with illegal armed groups.¹¹

B. IMPLICATIONS FOR NIAG MEMBERS

Reflecting Colombia's extensive history of partial peace agreements with illegal armed groups, there is no shortage of DDR and transitional justice experience.¹² Laws 35 (1982) and 77 (1989), for instance, offered, respectively, presidential amnesties and pardons to guerrillas for political offences, while excluding certain serious crimes and requiring reintegration and dismantlement of the illegal organisation in question. In the early 1990s, the M19 and EPL guerrillas demobilised, following negotiations that provided for pardons. Legal benefits were, however, not confined to peace processes with guerrilla groups. For example, although they lacked a clear political character, authorities demobilised armed groups in Medellín in 1994 and sought to reintegrate them as a private security cooperative.¹³

In 2005, Congress passed the Justice and Peace Law (JPL), the most comprehensive legal framework to date for demobilising, disarming and reintegrating illegal armed groups. It served in particular as the main framework for the demobilisation of right-wing paramilitaries. But it did so by also making use of transitional justice mechanisms, breaking with the tradition of direct pardons. An alternative sentence scheme it introduced allowed perpetrators of serious crimes to benefit from reduced sentences in exchange for cooperation in establishing truth and for their contribution to victim reparations.¹⁴ Under Law 1424 (2010), rank-and-file members not included in JPL are

eligible for the suspension of arrest warrants or execution of sentences, provided they contribute to truth, reparations and the construction of historical memory, and have not committed serious crimes.¹⁵

Under a reformed DDR program run by the Colombian Agency for Reintegration (ACR), created in 2006, demobilised fighters can claim a range of reintegration benefits. These include a monthly stipend; health insurance, education and job training; psycho-social care; and support for developing a productive project.¹⁶ These benefits apply equally for fighters who have demobilised collectively as a result of a peace negotiation with the government or individually; the bulk of those who demobilise individually are combatants from the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN), the two major guerrilla groups.

However, neither such reintegration support nor transitional justice measures are available to NIAG members. Under Law 782 (2002), the government is authorised to negotiate with and to award legal benefits to members of armed groups, which are defined in accordance to criteria laid down in international humanitarian law (IHL).¹⁷ By eliminating the prior existing requirement to recognise the "political" character of a group, the law opened the door to negotiations with paramilitaries.¹⁸ The government considers neither paramilitaries nor NIAGs politically motivated but, contrary to what was done with the paramilitaries, it is determined not to recognise NIAGs as illegal armed groups in the sense of Law 782. They therefore remain ineligible for the application of reintegration and other benefits. Rather than an unavoidable consequence of the existing legal framework, this reflects a political decision to consider the chapter of paramilitarism definitively closed by the demobilisation that was concluded in 2006.

¹¹ "Criminal gangs are just this: criminal gangs To be very clear: they are not illegal armed groups". "Declaración del Presidente Juan Manuel Santos al concluir el Consejo Nacional de Seguridad en la Casa de Nariño", Sistema Informativo del Gobierno, 7 February 2011.

¹² Crisis Group interview, DDR specialist, Bogotá, 9 March 2012. See also Gonzalo Sánchez G., "Raíces históricas de la amnistía o las etapas de la guerra en Colombia", in Gonzalo Sánchez G., *Ensayos de historia social y política del siglo XX* (Bogotá, 1984), pp. 217-275; Gabriel Turriago Piñeros and José Bustamante Mora, *Estudio de los procesos de reinserción en Colombia* (Bogotá, 2003); and Álvaro Villarraga Sarmiento (ed.), *La reinserción en Colombia* (Bogotá, 2006).

¹³ The local initiative ended in failure, and three years later Medellín's mayor demanded it be disbanded. Clara Isabel Vélez Rincón, "La voluntad de paz no se pierde, pero los procesos no arrancan", *El Colombiano*, Medellín, 16 May 2002.

¹⁴ The government has proposed some 4,000 persons to be included in the alternative sentence program; for a recent evaluation, see "Diagnóstico de Justicia y Paz en el Marco de la Justicia Transicional en Colombia", Mapp-OAS, October 2011.

¹⁵ Application of this law has just begun. Former AUC combatants had until 28 December 2011 to register their interest in it. By that date, the Colombian Agency for Reintegration (ACR) had received some 24,800 applications, many more than it had expected. Crisis Group interview, ACR, Bogotá, 11 January 2012. See also "Comienzan indagatorias de postulados a la Ley 1424", ACR press release, 25 January 2012.

¹⁶ Paula Torres, Yaneth Giha, Sergio Jaramillo, "Transitional Justice and DDR: The Case of Colombia", International Center for Transitional Justice, June 2009, p. 14.

¹⁷ To qualify as a group "at the margins of the law", Law 782 requires that it exercise control, under a responsible command, over a part of a territory that allows it to carry out sustained and concerted military operations. This concept was extracted from the 1977 Second Additional Protocol to the Geneva Conventions.

¹⁸ "Política nacional de reintegración social y económica para personas y grupos armados ilegales", Documento Conpes 3554, 1 December 2008, p. 5.

Surrender thus does not entail any special legal consideration. If they want to lay down arms, NIAG members face criminal investigations and proceedings before an ordinary court; in institutional terms, surrender processes are led by the attorney general's office, not the presidency. The only benefits they can claim are those foreseen under the criminal code and the criminal procedural code.¹⁹ Those who voluntarily turn themselves in receive no greater legal benefits in effect than any individual suspect who cooperates with justice after being captured.²⁰

These benefits are not insubstantial. They include accepting charges that can reduce possible sentences by as much as 50 per cent; sentences may also be lowered in return for active collaboration with the judicial system. NIAG members might further be eligible for the "opportunity principle", which empowers the attorney general's office, under certain circumstances, to suspend or desist from prosecution. Law 1312 (2009) stipulates that a defendant who supplies "effective information" for the dismantlement of an organised criminal group can benefit from it; however, it cannot be applied for group leaders or cases involving IHL violations, crimes against humanity, war crimes and grave violations of human rights, *inter alia*.²¹ Whether it can be applied to NIAG members at all remains uncertain. The debate goes back to a 2010 Constitutional Court decision that struck down application of the principle to demobilised rank-and-file paramilitaries, in part because it would violate victims' rights.²² Beyond the legal dimension, application of the principle is further complicated by its relative recent introduction into criminal law, so that prosecutors are still generally hesitant to make use of it.

C. IMPLICATIONS FOR VICTIMS

Since the JPL was adopted, Colombia's legal framework has included specific attention to victims' rights. The law spells out rights for truth, justice, rehabilitation, compensation, restitution and satisfaction, as well as guarantees

of non-repetition.²³ The Constitutional Court has affirmed that preserving rights of the victims is the main goal of JPL.²⁴ Victims' rights were strengthened in 2011 by Law 1448, better known as the Victims Law, under which the state provides a set of measures for victims of the armed conflict on a non-discriminatory basis.

Whether NIAG victims are covered by this law, however, remains somewhat unclear. The text says it applies only to violations of IHL or grave violations of international human rights that have occurred in the context of the armed internal conflict; it specifically rules out recognition as victims persons whose rights have been infringed as a consequence of "acts of common delinquency".²⁵ Given the government's characterisation of NIAGs as criminal gangs, this appears to exclude NIAG victims from benefiting under Law 1448. Social Action, the agency formerly responsible for running an administrative reparations program, has not followed a clear line, admitting the claims of some NIAG victims while refusing others.²⁶

The issue has been controversial within the government, not least because of the possible practical difficulties in differentiating between victims of paramilitaries and of NIAGs.²⁷ However, in March 2012, the Constitutional Court opened the door to recognising the rights of NIAG victims under Law 1448. It argued that it is reasonable to impose restrictions on the range of possible victims, but that violations of international human rights and of IHL caused by armed actors with military structure or territorial control that "keep a close or sufficient relation" with the development of the armed conflict are covered by the law.²⁸ This implied that NIAG victims might have access to 1448 benefits if a link between the armed conflict and the armed actor who committed the violation could be demonstrated.

¹⁹ Relevant legal norms for the surrender process include Article 250 of the constitution, the criminal code (Law 599) and the criminal procedure code (Law 906); some ERPAC members might need to be judged under the previous criminal procedure code (Law 600), according to the attorney general's office. "Inicia judicialización de integrantes del Erpac", Caracol, 22 December 2011.

²⁰ Crisis Group interviews, NGO, Villavicencio, 6 March 2012; attorney general's office, Bogotá, 12 March 2012.

²¹ Law 1312 (2009), Article 2, paragraphs 1 and 3, Diario Oficial, no. 47,405, 9 July 2009.

²² "Sentencia C-936/10", Corte Constitucional, 23 November 2010. In reaction to this sentence, the government passed Law 1424 (2010).

²³ Torres, Giha and Jaramillo, "Transitional Justice and DDR", *op. cit.*, p. 40. "Guarantees of non-repetition" comprise all actions of the state aimed at preventing the repetition of human rights violations. This includes, *inter alia*, the demobilisation of fighters, the full dismantlement of the illegal armed structure concerned and the punishment of those involved in human rights violations. See "Justicia transicional. Aportes para construir un lenguaje unificado de transición en Colombia", interior and justice ministry, May 2011, pp. 34-35.

²⁴ See "Sentencia C-370/06", Corte Constitucional, 18 May 2006.

²⁵ Law 1448 (2011), Article 3, Gaceta del Congreso 479/2011, 1 July 2011.

²⁶ Juanita León, "¿Y ahora quién responde por las víctimas de las Bandas Criminales?", La Silla Vacía, Bogotá, 8 February 2011.

²⁷ Crisis Group interview, government official, Bogotá, 29 February 2012. See also opinions quoted in "¿Se deben incluir las víctimas de las Bacrim en la Ley de Víctimas?", La Silla Vacía, 22 March 2011.

²⁸ "Sentencia C-253/12", Corte Constitucional press release, 29 March 2012. The full text of the ruling has not yet been published.

III. ERPAC'S PROFILE

Until its partial demise in 2011, ERPAC exerted practically uncontested social and territorial control in parts of the vast but thinly populated eastern plains and had an at least intermittent presence far beyond.²⁹ Both membership and modus operandi underscored a high level of continuity with its paramilitary predecessors in the region, the AUC's Centauros Bloc. To consolidate its position, it drew on significant knowledge of the region, a stable social base and ties with security forces and local governments. It engaged in sundry criminal activities, including serving as broker and security contractor for key drug-trafficking actors. But ERPAC has always been more than an ordinary criminal gang. Reflecting its paramilitary legacy, it enforced strict social control in its areas of influence and was responsible for forced recruitment, displacements, targeted killings and other serious offences.

A. SOCIAL AND TERRITORIAL CONTROL

ERPAC's emergence is tied to shortcomings in the process of disbanding the AUC. Its founder, Pedro Oliveira Guerrero Castillo (alias "Cuchillo"), had a prominent paramilitary past as a leader in the AUC's Centauros Bloc. That group had a large presence in the departments of Meta, Guaviare and Casanare but fragmented in 2004, after Cuchillo killed its leader, Miguel Arroyave (alias "Arcángel"), presumably to gain dominance over regional drug-trafficking routes. In April 2006, Cuchillo demobilised with 1,765 members of his subgroup, the Héroes del Guaviare, and another dissident faction of Centauros Bloc, the Héroes del Llano, but he refused detention.³⁰

Reports of former paramilitaries organising and rearming in the region started to emerge just two months later. Cuchillo had established a private security company that reportedly gathered in some of his former trusted associates. When the company was shut down on suspicions of criminal operations, Cuchillo took the group underground.³¹ By 2007, the fledgling ERPAC had grown from about

150 fighters to some 750, partially recruited by force.³² It was marked by particularly high participation – possibly up to half its membership – of ex-paramilitaries, who either rearmed or never demobilised.³³ Reflecting this legacy, in its stronghold region of Mapiripán (Meta), Puerto Concordia (Meta) and San José de Guaviare (Guaviare), it operated as an identifiable group, wearing uniforms and carrying AK-47 assault rifles.³⁴

The group's first notable military action came in September 2006, when it attacked a ranch in Guamal (Meta) and killed four persons close to paramilitary leader Ever Veloza García (alias "H.H.").³⁵ Its fast-growing military capacity enabled it to withstand in 2006-2007 efforts of a rival, the Security Cooperative Meta and Vichada, to break into its region; that group was led by proxies of Carlos Mario Jiménez (alias "Macaco"), the demobilised leader of the Central Bolívar Bloc that had been active there through its Vichada Front. Following the police and military "Operation Ocaso", which led to its rival's dismantlement, ERPAC emerged victorious from the fight between the "Cuchillos" and the "Macacos" (as it is known in the region). This allowed Cuchillo to expand control into strategic drug corridors between Meta and Vichada. Casualties in those clashes may have been as high as 800.³⁶ The success left ERPAC practically unchallenged, able to consolidate its grip and temporarily with less need to maintain a large armed wing, which dropped to around 530.³⁷

Relations with FARC have been complex. ERPAC's expansion in southern Meta (Puerto Lleras, Puerto Rico, and Vistahermosa) took advantage of an intensified govern-

²⁹ Police calculate that in 2011 the group had a presence in ten municipalities in the departments of Meta, Vichada and Guaviare, while Indepaz reports operations in 45 municipalities of fourteen departments. "Bandas criminales narcotraficantes 2011", Policía Nacional, Dirección de Carabineros y Seguridad Rural, unpublished presentation, 7 February 2011; and "Cartografía del conflicto", op. cit., p. 18. Generally, ERPAC members captured outside the plains belonged to its lower echelons. Crisis Group phone interview, analyst, 9 March 2012.

³⁰ "Monografía – Región Llanos Orientales", III Informe Nacional, Área DDR de la Comisión Nacional de Reparación y Reconciliación, December 2011, p. 6.

³¹ Crisis Group interview, analyst, Villavicencio, 2 March 2012.

³² Crisis Group interview, police, Villavicencio, 7 March 2012.

³³ Crisis Group interviews, analyst, Villavicencio, 2 March 2012; journalist, Villavicencio, 6 March 2012. Ex-paramilitary participation in the surrender, however, was comparatively low. Fifteen ex-AUC members, some six per cent of that category, did so. "Director de Fiscalías explicó por qué miembros del Erpac están libres", *El Tiempo*, 26 December 2011. This is lower than the percentage of ex-AUC in police arrests: around fifteen per cent (1,772 of 12,162 NIAG members detained between 2006 and 2012). Crisis Group interview, police, Bogotá, 7 May 2012.

³⁴ "Monografía", op. cit., p. 23.

³⁵ Cuchillo's brother, Dumar de Jesús Guerrero Castillo (alias "Carecuchillo"), is under investigation for involvement in the attack, "'Carecuchillo' atendió en Villavicencio audiencia por asesinato de 4 personas", Noticias de Villavicencio, 14 January 2011. See also Kyle Johnson, "FARC, ERPAC, Cuchillo y Caracho: un mundo de amenazas cruzadas", Razón Pública, 20 November 2011.

³⁶ "Policía desarticuló banda criminal al servicio de alias 'Macaco'", Secretaría de Prensa, Presidencia de la República, 17 September 2007. Crisis Group interview, international organisation, Villavicencio, 2 March 2012.

³⁷ Crisis Group interviews, police, Villavicencio, 7 March 2012.

ment crackdown that weakened FARC fronts 27 and 43.³⁸ After the government in 2007 killed alias “El Negro Aca-cio”, commander of FARC front 16, ERPAC gained and consolidated control of drug-trafficking routes in Vichada.³⁹ While direct confrontation has since been relatively limited, this has not been due to an explicit pact. Rather, the groups have sought to avoid disputes in order to es-cape government attention and reduce mutual damage. Territorial competition has not prevented some FARC fronts from cooperating with ERPAC in drug-trafficking activities.⁴⁰

Ties to the security forces were crucial for maintaining the position of Cuchillo. He reportedly paid bribes to members of the police, the military and DAS (the now disbanded presidential intelligence agency, the Adminis-trative Department of Security) in order to conduct his activities and repeatedly elude capture.⁴¹ In 2008, Presi-dent Uribe publicly rebuked the military for its failure to pursue ERPAC and discharged three generals of the 4th army division, including its top commander, General Guil-lermo Quiñónez Quiroz.⁴² In a declaration to the attorney general, a professional soldier denounced the supposed collaboration of members of the army's 43rd battalion with ERPAC.⁴³

ERPAC also had links with the local and regional political elites. In its strongholds, it has reportedly vetted candidates for local office, thus ensuring that its interest remains un-touched.⁴⁴ The most significant political link that has come to light was with the former Guaviare governor,

Oscar López, whom the Supreme Court convicted in 2011 for his ties with paramilitaries.⁴⁵ That the full extent of ERPAC's political support is unknown might well partly reflect the continuing power that politicians suspected of ties with criminals are thought to have to block investiga-tions.⁴⁶ While ERPAC's political links may have been less than those of the AUC's Centauros Bloc, it has oper-ated in a region with historically deep levels of criminal infiltration into politics. How deep may be indicated by the recently seized USB memory stick of a key alleged associate of Daniel Barrera Barrera (alias “Loco Barre-ra”), a drug lord and close Cuchillo collaborator, that re-portedly contained a detailed monthly payroll of over \$1.5 million for 890 politicians, military and justice officers and informants.⁴⁷

ERPAC's narco-business gave it a stable social base,⁴⁸ but it also capitalised on Cuchillo's charisma and capacity to intimidate, reportedly including manipulation of local fears of black magic.⁴⁹ Some rural parts of Mapi-ripán (Me-ta) were virtually dependent on him economically. This allowed him to cast himself as a social benefactor in an area where jobs in the legal economy and functioning civil-ian state institutions have been traditionally scarce.⁵⁰

But the tide has been turning since 2009, when police op-erations began to hit ERPAC's structure and leaders. Se-cond-in-command Martín Farfán (alias “Pijarbey”) was detained in December 2009 and José Covey Romero Zá-rate (alias “Covey”), the military leader in the region bor-dering Venezuela, in May 2010. Competition from other groups also appears to have risen, triggering a recruitment drive that may have boosted the number of fighters to around 1,100 to 1,200. Héctor Germán Buitrago (alias “Martín Llanos”), leader of the paramilitary Peasant Self-Defence Forces of Casanare (ACC) and long-term Cuchil-lo rival, reportedly formed an alliance with the Águilas

³⁸ “Violaciones a los Derechos Humanos e Infracciones al De-recho Internacional Humanitario: Análisis de 18 Municipios del Departamento del Meta, entre los años 2006 y 2009”, *Observa-torio del Territorio*, Universidad de los Llanos, March 2011, p. 16.

³⁹ “Monografía”, op. cit., p. 9.

⁴⁰ There is even a report that one faction took advantage of its cooperation on drug trafficking with the FARC to defect to the guerrilla group following Cuchillo's death; Crisis Group phone interview, analyst, 9 March 2012. Fronts 1, 7, 22, 31, 9, 51, 53 are said to have cooperated with ERPAC, while Fronts 16, 27, 40, 43 and 44 have engaged in confrontation with the group. “Monografía”, op. cit., p. 26.

⁴¹ “Cayó ‘Cuchillo’, ¿ahora qué?”, *Semana*, 8 January 2011. On 27 October 2008, Cuchillo escaped an assault that took six months to prepare. After the combat, a satellite transmission intercept reportedly heard Cuchillo yelling: “I'm safe now, but how did you SOBs not report to me that Black Hawks were going to enter?” See “Operación fallida contra ‘Cuchillo’ encen-dió dudas sobre la IV División del Ejército”, *El Tiempo*, 1 No-vember 2008.

⁴² The 4th Division covers the departments of Meta, Guaviare, Vichada, Guainía, Vaupés, Caquetá and Amazonas. “Llaman a calificar servicios al general del Ejército Guillermo Quiñónez Quiroz”, *El Espectador*, 20 December 2008.

⁴³ “¿Quién era alias ‘Cuchillo’?”, *Semana*, 29 December 2010.

⁴⁴ Crisis Group interviews, Villavicencio, March 2011.

⁴⁵ “Proceso n° 33260”, Corte Suprema de la Justicia, Sala de Casación Penal, 19 January 2011.

⁴⁶ Crisis Group interview, journalist, Villavicencio, 6 March 2012.

⁴⁷ Some of those on the alleged payroll have reportedly surren-dered as part of ERPAC; see “Los pagos de alias ‘el loco Barre-ra’ y alias ‘cuchillo’ a funcionarios públicos”, La FM, 19 January 2012.

⁴⁸ See Kyle Johnson, “FARC, ERPAC, Cuchillo and Caracho”, op. cit.

⁴⁹ Crisis Group interview, international organisation, Villavi-cencio, 2 March 2012.

⁵⁰ Cuchillo's social action included giving groceries to and buy-ing cable TV subscriptions for many families in Mapi-ripán and financing housing in El Águila hamlet. Crisis Group interview, analyst, Villavicencio, 2 March 2012.

Negras and led the confrontation with ERPAC to gain control of drug-trafficking routes.⁵¹

The decisive event was the killing of Cuchillo on 25 December 2010 in Operation Diamond, conducted by special police from the Jungla unit and the Commando for Special Operations (COPEs).⁵² This operation also led to the detention of other key ERPAC members, including the second-in-command and head of the security detail, Harold Humberto Rojas (alias "El Loco Harold"), another former paramilitary of the Centauros Bloc.⁵³ The new leader, Eberto López Montero (alias "Caracho"), also had a history in the Centauros Bloc but lacked Cuchillo's military skills and social capital to guarantee the cohesion of the group.

B. ECONOMIC INTERESTS

ERPAC has been a major player in a core drug-production and trafficking region, mainly as a security contractor and owner or protector of cocaine laboratories, rather than directly controlling coca cultivation or international trafficking.⁵⁴ To manage communications over a vast and sparsely populated terrain, it established a chain of informants ("puntos") in strategic locations. This also ensured its integration in the community, reducing the need for armed intimidation.⁵⁵

For drug trafficking, Cuchillo worked closely with Loco Barrera, who facilitated his contacts with otherwise adversaries, such as alias "John 40" and other FARC leaders

with control over coca cultivation.⁵⁶ ERPAC supervised movement of the refined coca paste to Venezuela and Brazil via rivers or small planes. In 2009, officials estimated that Loco Barrera and Cuchillo were responsible for the monthly export of two to three tons of cocaine.⁵⁷ After Cuchillo's death, coca paste purchases reportedly ground to a temporary halt, causing economic problems for growers in some rural areas of Mapiripán. Purchases reportedly restarted in 2011, but by an unidentified criminal organisation that has supposedly refused to pay in cash and is suspected of killing peasants after acquiring the product.⁵⁸

ERPAC's additional income sources have included kidnapping, extortion, racketeering and contraband, but its economic interests have stretched far beyond the criminal. Its consolidation temporarily coincided with a boom in a range of endeavours, including oil exploration and African palm cultivation, that previously had been limited due to insecure conditions.⁵⁹ In this respect, it continued the Centauros role as a facilitator of certain economic activities.⁶⁰ In particular, it took part in grabbing land for extensive agro-industrial palm cultivation.⁶¹ Cuchillo was also briefly a shareholder in a mineral exploitation company in which former Governor Oscar López had a stake, an arrangement that highlighted both his acceptance by key members of the local elite and the NIAG impact on the formal economy of the region.⁶² Cuchillo's economic interests have only slowly come under investigation, but

⁵¹ "Quién era alias 'Cuchillo'?", *Semana*, 29 December 2010. "Cuchillo ya tiene más de 1.100 paramilitares y 'Martín Llanos' reorganizó sus autodefensas", *El Tiempo*, 19 September 2009 and "Monografía", op. cit., p. 9. Cuchillo was involved in the 2002-2004 confrontation between Llanos and Miguel Arroyave, triggered because the latter supposedly tried to encroach on the territory of the former. Llanos was captured by Venezuelan authorities in February 2012 and extradited to Colombia. The status of the Águilas Negras is unclear: while the police do not recognise them as a NIAG in their own right, they are frequently so referred to in field interviews and press articles.

⁵² "Policía revela detalles de Operación Diamante, en la que cayó alias 'Cuchillo'", Sistema Informativo del Gobierno, 29 December 2010.

⁵³ "Ebrio y enredado entre la maraña de un caño murió 'Cuchillo'", *El Tiempo*, 29 December 2010.

⁵⁴ Crisis Group interviews, police, Villavicencio, 7 February 2012; analyst, by phone, 9 March 2012. In the first half of 2011, the armed forces identified twenty reportedly ERPAC labs in Puerto Gaitán, Mapiripán and San Martín municipalities. "Veinte laboratorios de la banda de 'Caracho' estaban en Puerto Gaitán, Mapiripán y San Martín", *Llano Siete Días*, 14 July 2011.

⁵⁵ Crisis Group interview, international organisation, Bogotá, 27 February 2012.

⁵⁶ Crisis Group interview, analyst, Villavicencio, 2 March 2012; "Cayó 'Cuchillo', ¿ahora qué?", *Semana*, 8 January 2011. Géner García Molina (alias "John 40"), was the leader of FARC Fronts 39 and 43 and a top drug trafficker. Due to perceived excesses in his "narco" lifestyle and mismanagement, he has been relieved and indefinitely detained by FARC since 2008. "John 40", pasó de ser un capo de las Farc a ser prisionero de la guerrilla", *El Tiempo*, Bogotá, 11 September 2010.

⁵⁷ "Colombia: Cuchillo y el Loco Barrera sacan al mes de 2 a 3 toneladas de coca", *El Nuevo Siglo*, 21 April 2009.

⁵⁸ Crisis Group interview, analyst, Villavicencio, 2 March 2012.

⁵⁹ Crisis Group interview, analyst, Villavicencio, 7 March 2012.

⁶⁰ See José Jairo González, "Los paramilitares y el colapso estatal en Meta y Casanare", in Mauricio Romero (ed.), *Parapolítica. La ruta de la expansión paramilitar y los acuerdos políticos* (Bogotá, second edition 2007), pp. 309-339.

⁶¹ Fundación Social, *Los retos de la justicia transicional en Colombia* (Bogotá, 2009), p. 68. See also "'Don Mario' dice que 4 mil hectáreas de palma están en poder de 'paras'", *Verdad Abierta*, 14 February 2012.

⁶² Cuchillo and Diego Fernando Rendón Laverde (alias "Pipe"), another paramilitary leader, joined the company in May 2006, shortly after their demobilisation. Between August and September 2006, they transferred their shares to persons of their confidence; see "Proceso n° 33260", Corte Suprema de la Justicia, Sala de Casación Penal, 19 January 2011, paragraphs 5, 6, 99-111.

he is suspected to have acquired large areas of land with the support of front men and corrupt public officials.⁶³

C. HUMANITARIAN IMPACT

Heinous crimes such as massacres and mass displacements at the hands of NIAGs have generally declined from the levels experienced during the period of their paramilitary predecessors.⁶⁴ However, ERPAC has engaged in a range of actions equivalent to grave violations of human rights and IHL. These include child recruitment, forced displacements, killing of community leaders, and sexual violence, among others. There is little evidence that the humanitarian impact has declined in the aftermath of the surrender.

Boys and girls as young as thirteen have been recruited for sexual exploitation, criminal activities or military training and operations.⁶⁵ Girls were reportedly lured with gifts and trips, made dependent on drugs to facilitate control and sexually exploited.⁶⁶ In late 2010, one was stabbed to death in Puerto Rico (Meta); a week later another was similarly killed in Vistahermosa (Meta).⁶⁷ Children are also recruited to conduct intelligence, traffic drugs, and conduct other lower-level criminal activities in schools and impoverished neighbourhoods.⁶⁸

Military recruitment of children takes place through false promises of jobs at palm plantations or explicit offers to join ERPAC, with monthly salaries of \$250-\$350.⁶⁹ If they refuse the offer, under-perform in training or try to escape, they reportedly are generally killed.⁷⁰ Most reported cases come from impoverished areas of cities such as Villavicencio and Granada, though NGOs suspect there are many unreported cases in the countryside.⁷¹ In a 2011 case, a sixteen-year-old who denounced his own recruitment to the authorities and said about ten other minors had been similarly recruited in San Martín (Meta) was found bru-

tally killed. As recently as 14 January 2012, four of eight children from Granada suspected to have been recruited for military training in Vichada by a fragment of ERPAC were found dead.⁷²

ERPAC has justified crimes with counter-insurgency rhetoric reminiscent of the paramilitaries. In late 2007, the ombudsman's office noted that communities in Vistahermosa and Puerto Rico municipalities were at risk over allegations from ERPAC that they were collaborating with FARC guerrillas.⁷³ Much like the AUC before it, ERPAC has repeatedly engaged in mass displacements of peasants and indigenous communities in order to extend territorial control. On 10 August 2007, for example, 112 members of the Sikuni indigenous group were forcibly displaced from Punta Bandera reservation in Cumaribo (Vichada) due to the Cuchillos-Macacos violence. In February 2008, ERPAC displaced at least 196 people in Puerto Alvira (Mapiripán, Meta), after an armed incursion.⁷⁴ Targeted displacements in Mapiripán are said to have been used to buy land for as little as 0.1 per cent of real value.⁷⁵

Other paramilitary legacies are the killing or displacement of community leaders suspected of supporting the guerrillas or posing obstacles to the group's consolidation and "social cleansings" of persons suspected of prostitution, drug addiction and petty crime.⁷⁶ "Cleansings" can be better understood as internal purges, since those killed are often suspect group members, potential competitors or persons affected by ERPAC's criminal activities.⁷⁷ Killings of presidents of Communal Action Boards by ERPAC have been reported in La Uribe and Macarena municipalities of Meta.⁷⁸

⁶³ See "Así le titulaban los terrenos a 'Cuchillo'", *Llano Siete Días*, 25 May 2011.

⁶⁴ "Cartografía del conflicto", op. cit., p. 38.

⁶⁵ Over 60 per cent of displacements in the region are thought to be caused by fear or the threat of forced recruitment. Crisis Group interview, research centre, Villavicencio, 7 March 2012.

⁶⁶ Crisis Group interview, NGO, Villavicencio, 7 March 2012.

⁶⁷ The girls were presumably killed because they were perceived as liabilities, perhaps because they had become addicts or offered sexual services outside the group. Crisis Group interview, NGO, Villavicencio, 7 March 2012.

⁶⁸ Crisis Group interview, Villavicencio, 2 March 2012.

⁶⁹ "Las Siete Plagas", *Semana*, 11 December 2010.

⁷⁰ "Desertores de las filas de alias 'Cuchillo' narraron las masacres cometidas por el narcotraficante", *Cambio*, 4 February 2009.

⁷¹ Given considerable under-reporting, particularly in rural areas, there is no reliable number for children recruited by ERPAC, but NGOs estimate there are at least three times as many cases as reported. Crisis Group interview, Villavicencio, 7 March 2012.

⁷² "Aterrorador relato de niño que escapó de las escuelas de sicarios de 'Cuchillo'. Aceptan o los degüellan. Las autoridades reciben sus testimonios", *Noticiero del Llano*, 21 November 2011. Crisis Group interview, NGO, Villavicencio, 7 March 2012.

⁷³ "Plan de Consolidación Integral en la Macarena", Ideas para la Paz, September 2011, p. 7.

⁷⁴ "Territorios en Confrontación: Impacto del conflicto armado sobre la población civil en la Orinoquía y Amazonía Colombiana", CODHES, 2011, p. 74. "V Informe de Seguimiento a la aplicación en Colombia de las Recomendaciones del Representante Especial del Secretario General de las Naciones Unidas sobre los derechos humanos de las personas internamente desplazadas", Comisión Colombiana de Juristas, March 2009, paragraph xi.

⁷⁵ "Las plagas que le han caído a Mapiripán", *El Tiempo*, 27 February 2011.

⁷⁶ Crisis Group interview, research centre, Villavicencio, 7 February 2012.

⁷⁷ This includes persons perceived or depicted as drug addicts and prostitutes who may have been involved with ERPAC and been considered a threat to the group's security or local reputation. Crisis Group interview, journalist, Villavicencio, 6 March 2012.

⁷⁸ Crisis Group interview, analyst, 7 February 2012.

IV. THE SURRENDER

The ERPAC surrender seemed almost to come out of the blue. The group's intention to turn itself in virtually escaped public notice. When it finally happened just before Christmas 2011, it also wrong-footed state institutions, in particular the attorney general's office, which had been left with almost all responsibility after the government – in an effort to clearly separate the surrender from a negotiated DDR process – declined to play a lead role. This contrasted starkly with meticulous preparations by ERPAC, which took several steps that reduced its exposure to prosecution and helped the majority of its members walk away free, albeit temporarily. The result was a process that suffered from a lack of transparency, unresolved questions about impunity and doubts over the long-term impact on conflict dynamics.

A. THE RUN-UP

The decision to submit to justice appears to have been taken within the group soon after the death of Cuchillo, who reportedly had resisted internal pressure to lay down arms and seek an arrangement with the authorities.⁷⁹ First contacts were initiated in early 2011, but the group's intention became public only in October, when a national newspaper, *El Tiempo*, reported a Caracho letter to a prosecutor in Villavicencio in which the new ERPAC leader requested demobilisation benefits.⁸⁰ The next month, Caracho gave a first-ever interview to the weekly magazine *Semana*, declaring he and 500 members would surrender under the ordinary criminal procedure. According to Caracho, behind-the-scenes talks were held with the Catholic Church, UN, Red Cross and ombudsman's and attorney general's offices.⁸¹

Why Caracho chose to surrender and the reasons for the timing are unclear. He has claimed he “got tired of the war, and realised that this is a conflict without winners or losers”,⁸² but most observers are unconvinced and believe that, more to the point, he was in a tight spot. Cuchillo's death had generated instability within the group, and he

lacked the power to keep it united.⁸³ Following failure to protect a large cocaine laboratory in Puerto Gaitán that the police destroyed in October 2011, he was also fast losing Loco Barrera's backing.⁸⁴ In his increasingly precarious position, surrender might have appeared an attractive option. An alternative explanation – reportedly supported by a source close to Caracho but denied by police – involves an arrangement with authorities under which he supposedly had given intelligence against Cuchillo and pledged to dismantle the organisation within a year of his death.⁸⁵

Caracho said he would accept responsibility only for what was done during his time as leader and, in preparation for surrender, ERPAC tried to clean up its act by cutting back on abuses and crimes.⁸⁶ Seeking to avoid charges for child recruitment, a crime that carries a long sentence, it released all minors before the surrender, but apparently told them they would be called back later.⁸⁷ The Colombian Institute for Family Welfare (ICBF) had heard of three such suspected cases by March 2012, but the true number of ERPAC child soldiers is unknown, not least because families hesitate to report the crime, given the security risks involved.⁸⁸ The children are thus highly vulnerable to renewed recruitment or violence from active group members and FARC militias.⁸⁹

Following delays, reportedly due to mutual distrust, discussions over the conditions intensified in November.⁹⁰ However, as no date had been agreed, the decision to sur-

⁷⁹ Crisis Group interview, analyst, Villavicencio, 2 March 2012. Cuchillo did once signal an intention to give up arms and submit to JPL, in a letter to then Presidential Peace Commissioner Luis Carlos Restrepo, supposedly because of threats to his life; “Inminente sometimiento a la justicia de narcoparamilitar ‘Cuchillo’; dice que lo quieren matar”, *El Tiempo*, 29 July 2008.
⁸⁰ “Una ‘bacrim’ quiere beneficios para dejar las armas”, *El Tiempo*, 20 October 2011.

⁸¹ “Nos vamos a someter”, *Semana*, 19 November 2011.

⁸² *Ibid.*

⁸³ Crisis Group interview, police, Villavicencio, 7 February 2012. Local press reports suggest that several deaths of ERPAC members are attributable to an internal power struggle after Cuchillo's death. See for instance “La disputa en el Erpac deja otros tres muertos”, *Llano Siete Días*, 16 June 2011.

⁸⁴ Crisis Group interviews, police, Villavicencio, 7 March 2012; police, Bogotá, 7 May 2012. See also “Cayó megalaboratorio de cocaína más grande de los últimos años”, RCN, 14 October 2011.

⁸⁵ Crisis Group interview, Villavicencio, March 2012.

⁸⁶ “Nos vamos a someter”, *Semana*, 19 November 2011; Crisis Group interview, NGO, Bogotá, 23 March 2012.

⁸⁷ Crisis Group interview, NGO, Villavicencio, 6 March 2012.

⁸⁸ Crisis Group interview, ICBF, Villavicencio, 7 March 2012.

⁸⁹ Crisis Group interview, analyst, Villavicencio, 7 March 2012.

⁹⁰ “‘Caracho’ también se entregará”, *Llano Siete Días*, 19 December 2011; “Así fue el engaño del sometimiento a la justicia del Erpac”, *Caracol*, 29 December 2011. As a confidence-building measure, Caracho reportedly handed over Cristian Camilo Rodríguez (alias “Junior”), a nephew of Cuchillo and ERPAC's head of finance, to the Technical Investigation Unit (CTI); he also reportedly told police the location of a weapon cache but became angry when authorities portrayed the seizure as an intelligence operation. The attorney general's office was said to have been expecting the handover of Óscar Fabián Guerrero (alias “Caribe”) since June 2011; he surrendered in December 2011, with the other leaders of the group. “‘Caracho’ quiere colgar el fusil y entregar al Erpac”, *Llano Siete Días*, 21 October 2011.

render just before Christmas took the authorities by surprise, forcing them to prepare within eight days the place in which to hold those surrendering, transport and meals for group members and officials. Despite the holiday season, the attorney general's office mobilised 250 Technical Investigation Unit (CTI) officials, a number reportedly lowered to 150 at the last moment, and sent fifteen prosecutors with experience in dealing with NIAGs to Villavicencio.⁹¹ Additional supervisory judges were named to handle the expected high volume of arrest warrants, while the prison of Acacías (Meta) was prepared to receive inmates. The office of the High Councillor for National Security gave key logistical help, but ministers and officials have insisted there was no further government involvement in the process.⁹²

B. LIMITS OF THE CURRENT APPROACH

The surrender started with each ERPAC member signing a certificate acknowledging his membership and that he was voluntarily leaving the group and turning himself in to the attorney general's office. To guarantee individual rights, CTI officials were accompanied by members of the public prosecutor's office.⁹³ ERPAC members were then brought to the coliseum of Las Malocas, a theme park in Villavicencio that the departmental government had prepared to host them for up to ten days. Between 22-23 December, 272 persons, less than the 500 announced by Caracho and much less than ERPAC's total armed strength of over 700 in August 2011, arrived there from rural areas of Mapiripán, Puerto Gaitán and Cumaribo municipalities.⁹⁴ The army was in charge of transport; at Caracho's demand, the police were not involved, as they had led the campaign against ERPAC.⁹⁵ Caracho, who surrendered in Pueblo Seco (Mapiripán) on 23 December, was held separately at CTI installations in Villavicencio

alongside four other leaders, including Germán Ramírez Devia (alias "Vacafiada") and Caribe.⁹⁶

Upon arrival in Villavicencio, ERPAC members signed a second individual declaration that confirmed their ERPAC membership and their voluntary decision to surrender. It also included the time members had spent in the group and their rank. This process was again accompanied by officials from the judicial police and the public prosecutor's office, as well as a defence lawyer.⁹⁷ The attorney general's office then checked identities, individualised criminal charges and verified any prior criminal records. Only nineteen had pending arrest warrants; the others had no prior records.

The process went off the rails on the morning of 24 December, when the attorney general's office did nothing to prevent ERPAC members without pending arrest warrants from going home, provided only that they kept themselves available. Defence lawyers had insisted on this, as technically there had been no arrests.⁹⁸ This foiled the plans of the attorney general's office, which had counted on later hearings to collectively indict and arrest the entire group. That many persons who had confessed to membership in a criminal group could walk away seemingly in freedom triggered fierce criticism but was apparently legally defensible, as they had no prior records and were not considered to have been detained *in flagranti* or to meet the requirements of preventive detention, including danger of escaping.⁹⁹

ERPAC tactics further complicated the situation for the attorney general's office. Reflecting legal advice, members arrived without uniforms and weapons, thus reducing the risk of being considered to have been detained *in flagranti*. ERPAC also did not comply with a requirement set by the attorney general's office to submit a list of names, thus making identification more cumbersome; 41 members are reported not to have possessed identification documents, and a further thirteen were listed as disappeared.¹⁰⁰

⁹¹ Crisis Group interview, attorney general's office, Bogotá, 12 March 2012.

⁹² Crisis Group interview, Colombian government, Bogotá, 2 May 2012; "Gobierno no participó en sometimiento de ERPAC: Vargas Lleras", *Semana*, 26 December 2011.

⁹³ Crisis Group email correspondence, attorney general's office, 30 April 2012.

⁹⁴ Crisis Group interview, police, Bogotá, 7 May 2012. There is some confusion on numbers. A Crisis Group source confirmed that 272 presented themselves; the attorney general's office claims 268 (nineteen leaders, 249 members) surrendered; the press frequently reported 267, 269 or 284; for the numbers of the attorney general's office, see "Informe de Gestión 2011", Fiscalía General de la Nación, February 2012, p. 54.

⁹⁵ Crisis Group interview, police, Villavicencio, 7 March 2012.

⁹⁶ "Cinco jefes de la banca criminal Erpac se sometieron a la justicia", *El Tiempo*, 23 December 2011.

⁹⁷ Crisis Group email correspondence, attorney general's office, 30 April 2012.

⁹⁸ Crisis Group interviews, attorney general's office, Bogotá, 12 March 2012; journalist, Villavicencio, 6 March 2012.

⁹⁹ Criminal procedure code, article 308. Crisis Group interviews, NGO, Bogotá, 28 February 2012; attorney general's office, Bogotá, 12 March 2012. Some legal experts say there were sufficient grounds to consider they had been caught *in flagranti*, triggering detention and need to legalise an arrest within 36 hours. Crisis Group interview, penal law expert, Bogotá, 2 May 2012.

¹⁰⁰ "Fiscalía explicó normatividad jurídica y consolidado de sometimiento a la justicia de miembros de la erpac", Fiscalía General de la Nación, 28 December 2011; "Director de Fiscalías

Members also came with prepared statements and uniformly declared that they had been forcibly recruited, expected immediate release as part of a demobilisation process and were civilians without prior engagement in criminal activity, except for membership in an illegal armed group.¹⁰¹

What rank-and-file members actually expected is indeed unclear. Sources participating in the process confirm that some sought to claim support for clothing and housing, typical benefits through a demobilisation process but that have no place in an ordinary criminal procedure. When the standard charges and minimum sentences for conspiracy were explained, tension mounted, and many reportedly showed surprise – some violently – and said they would not surrender.¹⁰² It may well be that leaders had persuaded such members they were participating in a demobilisation process giving them access to legal benefits and support for reintegration. This is hard to prove, but raises questions about whether these men fully understood the process and whether they surrendered with informed consent; the attorney general's office, however, maintains that all did understand the process.

The decision not to detain fighters upon surrender did not invalidate the entire process or lead in and of itself to blanket impunity. By the time ERPAC members went home, identification and individualisation of charges were almost completed, permitting the swift issuance of many arrest warrants in the following days. By the end of April, 177 of the 253 released members had again been detained, either after voluntarily returning or being arrested by the police. Of those, 155 have accepted the charges. However, police were obliged to capture members one by one, thus using resources that could arguably have been put to better use. That the bulk of ERPAC members initially walked away also had a high political cost: it irreparably damaged the legitimacy of the surrender, with experts privately calling it a “disaster”, “catastrophe” or “swindle”.¹⁰³

The biggest risks are less visible. All ERPAC members face charges of aggravated conspiracy and possibly illegal possession of arms and wearing army uniforms. Leaders, with more extensive criminal records, may face additional charges. This means many members will spend some time in prison; by the end of April, thirteen of the nineteen originally detained leaders had already been convicted, though they will likely receive low sentences for a reduced set of crimes. Accepting aggravated conspiracy charges will halve sentences that can range from eight to eighteen

years. Sentences can be further reduced by work, education, and good behaviour in prison. While the attorney general's office says it is investigating the full range of crimes and may bring additional charges, the probability of this happening is low.¹⁰⁴ All options remain, but there is a risk leaders will not be prosecuted for more egregious crimes, underlying economic structures and corruption networks will not be dismantled, and victims' rights to truth and non-repetition will not be realised.

Such concerns are justified by the weak judicial history with regard to NIAGs, including ERPAC. A prime example is the case of Pijarvey, whose 2009 arrest signalled the start of the group's decline. He was released in January 2012, after serving only part of the four-year sentence he had received for aggravated conspiracy. He has since returned to the eastern plains to head an illegal armed group.¹⁰⁵ More broadly, the increasing capacity to detain NIAG members has not led to less impunity. By 2011, just twelve per cent of captured NIAG members had been sentenced, mostly for illegal arms possession, not NIAG membership.¹⁰⁶

Questions also remain over the disarmament component of the process. According to the attorney general's office, information from ERPAC members led to seizure of 27 machine guns, 432 additional guns, 278,000 cartridges and 1,716 grenades, among other arms.¹⁰⁷ This is substantially more than the figures published directly after the surrender, when just 123 rifles, two mortars, two M60 machine guns, 404 grenades, and some 53,000 cartridges were said to have been seized.¹⁰⁸ It remains unclear whether the additional weapons were found due to cooperation of surrendered fighters, but apparently ERPAC members deliberately did not report all weapons in their possession, and the police seized substantial arms as a result of ongoing

explicó por qué miembros del Erpac están libres”, *El Tiempo*, 26 December 2011.

¹⁰¹ Crisis Group interview, Villavicencio, March 2011.

¹⁰² *Ibid.*

¹⁰³ Crisis Group interviews, Bogotá and Villavicencio, February and March 2012.

¹⁰⁴ Crisis Group interview, penal law specialist, Bogotá, 2 May 2012. In 2011, the attorney general's office brought 908 charges against NIAG members for aggravated conspiracy; by contrast, there were just five charges for forced disappearance and 30 for forced displacement. Not all NIAG members may be guilty of those two serious crimes, of course, but the numbers seem to suggest a systemic neglect of more aggravated crimes. “Informe de Gestión 2011”, Fiscalía General de la Nación, February 2012, pp. 52-53.

¹⁰⁵ Crisis Group interview, police, Bogotá, 7 May 2012. See also “Pijarvey’ ya está en libertad”, *Llano Siete Días*, 21 March 2012; and “Misión humanitaria salvó a tres ‘exparas’”, *Llano Siete Días*, 17 April 2012. The charges against Pijarvey had initially also included illegal possession of arms.

¹⁰⁶ “Declaración del Presidente Juan Manuel Santos”, *op. cit.*

¹⁰⁷ “Informe de Gestión 2011”, Fiscalía General de la Nación, February 2012, p. 55.

¹⁰⁸ “Con entrega de dos cabecillas, finaliza sometimiento de la banda Erpac”, *El Tiempo*, 23 December 2011.

intelligence rather than help from those who surrendered.¹⁰⁹ A source close to the process has also claimed that ERPAC leaders exchanged some newer, high-quality weapons for older ones during the run-up to the surrender.¹¹⁰

C. THE POST-SURRENDER SCENARIO

Five months after the surrender is too soon to definitively assess the effects on the ground. However, preliminary evidence suggests there has not been a sustainable security improvement. Instead, violence may have increased, as illegal armed actors compete to fill the vacuum. There are three main concerns: the operations of the remaining ERPAC members; the reactions of other NIAGs; and efforts of FARC to regain territory.

ERPAC members who did not participate in the surrender organised in two competing groups that by February 2012 mustered together some 560 fighters.¹¹¹ The Bloque Meta is led by Rubber Antonio Navarro Caicedo (alias “Flaco Freddy”) and operates mainly in the Ariari area of Meta department.¹¹² In March, police identified a laboratory in San Martín (Meta) he reportedly controlled that had a capacity of processing more than two tonnes of cocaine chlorhydrate per month.¹¹³ The other group, Libertadores del Vichada, is in Cumaribo (Vichada) and parts of northern Meta along the border to Casanare. It was first led by Albert Narváez Mejía (alias “Careto”), but was taken over by Pijarbey after his release from prison. It is believed to be absorbing a splinter group of 150 in Vichada led by alias “El Tigre”, a not fully identified former mid-level ERPAC commander.¹¹⁴ The groups are fighting over territory as well as drug-cultivation and trafficking zones in Meta and Vichada departments; incidents have been registered in San Martín, Puerto Gaitán and Primavera (Vichada).

While ERPAC factions seek to consolidate, there are persistent rumours that other NIAGs, in particular Urabeños and Rastrojos, could be entering the region in an effort to

fill any possible power vacuum.¹¹⁵ Though firm evidence is lacking, this could be linked to the sale, ahead of the surrender, of Caracho’s business to one or more competitors.¹¹⁶ In that case, the most likely scenario would be partition, granting access to Urabeños in Meta and Rastrojos in Vichada.¹¹⁷ This would be in line with a reported wider deal between those two to divide control countrywide, so as to stop a bloody confrontation.¹¹⁸ If these NIAGs enter the fray, they might, however, find it difficult to settle in a region that has long shown hostility toward outside-led illegal armed groups – a factor Cuchillo, a native, skilfully exploited.¹¹⁹

These movements could also be part of a larger paramilitary reconfiguration in the eastern plains, as the remnants of the Centauros Bloc try to expand control over the region. In this sense, a source said, “our problem comes from the prisons”. Although unproven, Libertadores del Vichada are suspected by some of receiving the backing of several imprisoned paramilitary leaders with a strong economic interest in the region, including Carecuchillo, Cuchillo’s brother, and Daniel Rendón Herrera (alias “Don Mario”), the founder of the Urabeños and former right-hand man of Arroyave in the Centauros Bloc.¹²⁰ Don Mario is currently in a dispute with Manuel de Jesús Pirabán (alias “Pirata”), the imprisoned leader of the AUC’s Héroes del Llano Bloc, whom rumours link to support of ERPAC’s Meta Bloc.¹²¹ Based in San Martín, Pirata is allegedly expanding to Mapiripán and Puerto Gaitán, formerly strongholds of Cuchillo.¹²² Authorities suspect that four bodies found in Puerto Gaitán (Meta) were one outcome of this struggle.¹²³

¹⁰⁹ Crisis Group interview, police, Bogotá, 7 May 2012; “Policía frustra rearme del ‘ERPAC’”, *El Espectador*, 28 January 2012. Other weapons seizures have been based on the information of surrendered ERPAC fighters; see “Con información del Erpac CTI se incautó de armamento”, Fiscalía General de la Nación, press release, 30 April 2012.

¹¹⁰ Crisis Group interview, Villavicencio, March 2011.

¹¹¹ Crisis Group interviews, journalist, Villavicencio, 6 March 2012; police, Bogotá, 7 May 2012.

¹¹² Crisis Group interviews, journalist, Villavicencio, 6 March 2012; police, Villavicencio, 7 March 2012.

¹¹³ “Hallan gigantesco laboratorio de ‘coca’ avaluado en \$800 millones”, *El Espectador*, 27 March 2012.

¹¹⁴ Crisis Group interview, police, Bogotá, 7 May 2012. See also “Narco del Vichada es el nuevo jefe de la banda Erpac”, *El Tiempo*, Bogotá, 27 January 2012.

¹¹⁵ Crisis Group interviews, police, Villavicencio, 7 March 2012.

¹¹⁶ Crisis Group interviews, NGO, Bogotá, 27 January 2012; journalist, Villavicencio, 6 March 2012; analyst, phone interview, 9 March 2012; also “‘Caracho’ negocia el Erpac con ‘Rastrojos’”, *Llano Siete Días*, 10 November 2011. The 2001 sale of the Centauros Bloc by top AUC leader Vicente Castaño to Miguel Arroyave for \$5 million set a strong precedent for such speculation.

¹¹⁷ Crisis Group interview, journalist, Villavicencio, 6 March 2012.

¹¹⁸ “‘Urabeños’ y ‘Rastrojos’ se repartieron las narcozonas de Colombia”, *El Tiempo*, 15 February 2012.

¹¹⁹ Crisis Group interview, police, Villavicencio, 7 March 2012.

¹²⁰ Crisis Group interview, Bogotá, May 2012. See also “‘Don Mario’, Daniel Rendón Herrera”, *Verdad Abierta*, and “Te ordeno desde la prisión”, *Semana*, 21 January 2012.

¹²¹ Crisis Group interview, Bogotá, May 2012; also “¿Quién miente entre ‘Don Mario’ y ‘Pirata’?”, *Verdad Abierta*, 8 March 2012.

¹²² Crisis Group interview, analyst, Villavicencio, 7 March 2012. There are widespread claims that Pirata was involved in the 2011 election of the new mayor of San Martín, Meta, among others. Crisis Group interviews, Villavicencio, March 2012.

¹²³ Crisis Group interviews, police, Villavicencio, 7 March 2012; human rights organisation, 2 March 2012.

As the oldest group in the region, FARC has been especially forceful in regaining its foothold. It is surveying populations in key areas and reportedly retroactively demanding extortion fees for the several years when it was absent.¹²⁴ It is deploying several fronts to cover a larger territory, with a focus on the municipalities of Cumaribo, Puerto Concordia and Mapiripán, and has reestablished a presence close to the centre of the latter.¹²⁵ FARC is also exerting social control by restricting movement of people, coca cultivation or fishing in some communities, while pressing others, such as those in Vistahermosa (Meta), to grow higher-yield coca strains.¹²⁶ Its increasing activity is not exclusively a result of ERPAC's splits and partial demise but has been underway since 2010, when the killing of the insurgents' military leader, Mono Jojoy, by the security forces, freed up fighters who had been dedicated to protecting him.¹²⁷

V. TOWARDS A SURRENDER POLICY

In mid-2011, the former Bishop of Montería, Julio César Vidal, said several groups had communicated a desire to give up their arms. While this seemed to be going nowhere after his relocation to the diocese of Cúcuta, the surrender in May 2012 of top Rastrojos leader Javier Antonio Calle Serna (alias "Comba") to U.S. authorities and the reported plans of other top drug leaders to hand themselves in suggest that ERPAC may not be the last NIAG to seek a deal.¹²⁸ But the problems of the ERPAC process show that the country is ill-prepared for possibly much larger and logistically more complex surrenders. Correcting this is important, not just for the handovers themselves. As the government slowly prepares the ground for new talks with the guerrillas, a credible strategy on how to dismantle NIAGs would be a critical part of wider guarantees to boost confidence in any future peace process.

The government thus should adopt an explicit NIAG collective surrender policy. This must be done in a way that avoids buttressing impunity, in particular for serious crimes, while increasing the chances criminal networks will be fully dismantled. Such a policy would not be a silver bullet, however. If the government is to make real strides in combating NIAGS, it also needs to clarify the respective roles of police and military, beef up the fight against corruption within the security forces and act more decisively against emerging local micro drug-trafficking networks.

A. DEALING WITH THE GREY ZONE

That Colombia's first experiment with a NIAG surrender risks failing is partly a result of institutional weaknesses. But it also reflects problems inherent in the distinction between organised crime and the armed conflict. Contrary to what the government suggests, it is notoriously difficult to distinguish between purely criminal groups and those that have a part in the fighting. Groups such as ERPAC, but also the Rastrojos and the Urabeños, are not simple reincarnations of the AUC, but they also cannot be considered completely independent from the former paramilitaries. They have strong economic motives but also continue illicit structures with sufficient power to partially control specific areas and have a substantial, adverse

¹²⁴ Crisis Group interview, analyst, Villavicencio, 2 March 2012.

¹²⁵ Crisis Group interviews, journalist, Villavicencio, 6 March 2012; analyst, 7 March 2012.

¹²⁶ Movement restrictions are especially harmful to nomad indigenous communities, which traditionally roam sparse areas to secure food. Crisis Group interview, analyst, Villavicencio, 2 March 2012.

¹²⁷ Ibid.

¹²⁸ See Jeremy McDermott, "'Comba' cuts a deal and the Rastrojos lose ground", Insight Crime (online), 8 May 2012. Reportedly, the military leader of the Rastrojos, Diego Pérez (alias "Diego Rastrojo"), Loco Barrera and Henry de Jesús López (alias "Mi Sangre"), another former paramilitary NIAG leader, would also consider turning themselves in to the U.S.; see "En tres meses, cuatro capos colombianos estarían en EE. UU.", *El Tiempo*, 18 April 2012.

humanitarian impact. Between the organised criminal activity and the conflict, there are large grey zones, and it is precisely the groups operating in those areas that pose the greatest challenges.

This means that ending the NIAGs is not just a matter of punishing crimes. It also means safeguarding victims' rights and effectively dismantling criminal and corrupt networks that sustain the groups. Multiple and partially conflicting interests, including of NIAG members, victims and society at large, therefore, are involved when dealing with these groups. The ERPAC surrender strongly suggests that the judicial system is a weak agent for balancing and reconciling such disparate interests satisfactorily. Rather than outsourcing responsibility for the complex process to an overwhelmed judicial system, the state response has to be proportionate to the threat in all its dimensions, as high government officials privately admit.¹²⁹ By giving the ERPAC process logistical support, the government has in effect already crossed the line between the judicial and political spheres, but it needs to push the envelope by designing an explicit surrender policy.

There are concerns within the government that a stronger and more visible involvement of the executive would make the process look like a negotiation rather than a surrender to justice, leaving the state vulnerable to extortion and giving criminal groups an incentive to increase violence so as to obtain more favourable terms at the table.¹³⁰ That trap can be avoided. NIAGs are not homogenous. Some groups (and in particular some of their urban collaborators) may indeed be closer to common criminal gangs. Following the logic set out by the Constitutional Court in its ruling on the applicability of the Victims Law to NIAG victims, special legal and administrative instruments to strengthen the surrender process should only be applied if there is a sufficient link to the armed conflict.

B. GETTING INCENTIVES RIGHT

The ERPAC surrender has relied on a set of perverse incentives that allowed leaders to turn themselves in and expect to receive low sentences for a reduced set of crimes. This may boost incentives for further surrenders, but at a high cost. The relative certainty of regaining freedom comparatively quickly undermines the conditions for surrender by reducing the incentives to cooperate with pros-

ecuting authorities who lack bargaining power. This increases risks that the complex economic front structures and political ties will remain untouched, and truth will remain narrowly circumscribed. Low sentences for NIAG leaders are acceptable only if they are based on effective collaboration with the judicial system in dismantling the groups and do not reflect impunity, violate victims' rights or undermine the social legitimacy of the process.

The incentive structure reflects deeper problems. Both police intelligence and the attorney general's office have increased their capacity to cope with NIAGs over the years. Intelligence is coordinated through the police-led Integrated Intelligence Centre against the BACRIM (CI2 BACRIM), operating since 2006. Since 2010, the attorney general's office has had a unit specialising in prosecuting NIAGs; it has grown to over 70 prosecutors.¹³¹ But the ERPAC surrender experience suggests there is room for improvement. This has been apparent from the fact that just nineteen of 272 ERPAC members (about seven per cent) had criminal records prior to surrender.

Strengthening the deterrence of prosecution and building a credible threat that NIAG members will be comprehensively investigated should, therefore, be at the core of a surrender policy. The executive and legislature also need to ensure that the police and the judicial system have the resources and the capacity to investigate and prosecute a full spectrum of NIAG crimes, including grave violations of human rights and IHL. It is also important to encourage the emergence of a culture of investigation in which prosecutors have career incentives to concentrate on long-term investigations that lead to the dismantlement of NIAGs and their front structures, rather than merely settle the maximum number of individual cases.

A stronger bargaining position of prosecuting institutions should help avoid or at least mitigate a range of problems that have beset the ERPAC process. In future, there should be full prior identification of those considering surrendering, and authorities should consider the possibility of postponement if identification requests are not met. They should also assume greater control over timing to ensure appropriate preparation, not just of human and material resources but also of judicial charges. To prepare encompassing charges, the attorney general's office should make extensive use of detailed information collected within the JPL regarding the operations and humanitarian impact of paramilitaries in areas with NIAG presence.¹³² This is particularly important in the event of large-scale surrenders. Finally, more commitment from group leaders is needed

¹²⁹ Crisis Group interview, Colombian government official, Bogotá, 2 May 2012.

¹³⁰ Ibid. One of several hypotheses to explain a May 2012 bomb attack on former Foreign Minister Fernando Londoño is that the Urabeños committed the assault in an effort to press the government into a negotiation; see Ariel Ávila, "Las hipótesis sobre lo ocurrido en Bogotá", *El Espectador* (online), 15 May 2012.

¹³¹ Crisis Group interview, police, Bogotá, 7 May 2012.

¹³² Crisis Group phone interview, penal law specialist, 16 May 2012.

so NIAG members do not walk away in the middle of the process.

Incentives for rank-and-file members also need to be rethought. The apparent lack of clarity surrounding the legal consequences of surrendering may have a negative impact on their willingness to participate. In particular, it should be clarified whether and under what circumstances the “opportunity principle” can be applied to NIAG members in exchange for giving prosecuting authorities relevant information regarding criminal operations and networks. Conditions for applying this principle should be wide enough to ensure that rank-and-file members have an incentive to disclose relevant information, but strict enough to impede impunity for grave crimes.

There should also be discussion over the introduction of some reduced reintegration benefits. Given the high incidence of crimes in Colombian prisons, just locking up NIAG members who often have spent considerable time in illegal armed structures is unlikely to lead to a sustained reduction of crime and violence. Greater efforts to ensure the reintegration into civilian life of former NIAG members could therefore be justified as necessary to prevent rearmament. Such benefits could be inspired by the ACR’s program for demobilised fighters and should be strictly conditional on the judicial situation and effective surrender, as well as contributions to truth and victim reparations.

C. BEYOND CRIMINAL PROSECUTION

The ERPAC process has clearly marked the limits of an approach that offloads the entire responsibility to the attorney general’s office and judges. To ensure that conflicting interests are appropriately balanced, the government needs to assume more responsibility and also to take an active role in conducting the process far beyond logistics. In particular, the juridical component of the handover needs to be complemented by an administrative program based on clear political decisions. Alongside reintegration benefits adapted for eligible NIAG members, this should provide stronger guarantees for truth-finding and clearer provisions on child soldiers, as well as international monitoring.

Given the continuity between paramilitary groups and NIAGs and their substantial negative humanitarian impact, more robust safeguards for victims are needed. The Constitutional Court’s March 2012 ruling has paved the way for NIAG victims to be eligible for benefits under the Victims Law. In line with the law’s overall goal, this ruling should be interpreted in a pro-victim manner, so as to minimise the burden on proving a connection to the armed conflict. The government should monitor the law’s application, and if broadening access via interpretation proves impractical or ineffective for advancing victims’

interests, it should consider introducing specific measures to ensure that NIAG victims are treated on an equal footing with victims of paramilitaries or guerrillas.

To further bolster guarantees for victims, it could design an administrative procedure similar to the one laid down for rank-and-file paramilitaries in Law 1424 (2010). This would give NIAG members not responsible for grave violations of human rights and of IHL access to additional benefits in return for contributing to a non-judicial truth process and the reparation of victims.

There must be more clarity regarding the handling of child soldiers, an issue returned to the fore by the ERPAC process. Because NIAGs have been classified as criminal groups, it should be clarified that child soldiers can enter the program for former fighters from illegal armed groups run by ICBF. The legal handling of NIAG members who have been forcefully recruited but by the time of surrender have reached the age of full legal responsibility should also be reconsidered, given that present practice risks turning victims into perpetrators.

Finally, greater efforts need to be made to ensure transparency and accountability of the process. Similar to the effort already made by the JPL prosecutors, the attorney general’s office should publish updated information online regarding the progress of NIAG members’ criminal trials, including aggregated information on charges and sentences. There is also a need to introduce international observation to boost credibility. The Mission to Support the Peace Process in Colombia of the Organisation of American States (Mapp-OAS), which has been closely involved in monitoring NIAGs throughout the country but can only offer support if officially requested, should be invited to any future surrender.¹³³ Its mandate should include supervising preparations, handover of arms and reporting on the progress of trials.

¹³³ Mapp-OAS was established in 2004 through an agreement between the Colombian government and the OAS secretary general. It has a broad mandate for contributing to peacebuilding in the country. This includes verifying and monitoring the ceasefire with paramilitaries and cessation of hostilities, DDR initiatives and accompanying victims of violence.

VI. CONCLUSION

Transitional justice and DDR can be key instruments for dismantling illegal armed groups and reducing crime and violence, as well as protecting the interests of victims. But benefits of such processes appear to be decreasing. For all its contributions to reducing the intensity of the conflict, paramilitary demobilisation, which ended in 2006, was riddled with problems including a weak record of sentences for leaders and the emergence of successor groups. The surrender of ERPAC, the first mass handover of a NIAG, however, faces potentially even more severe problems, albeit on a much smaller scale than the AUC demobilisation. There is little evidence of a positive impact on conflict dynamics after the surrender, and exclusive reliance on criminal procedures before ordinary courts has, perversely, increased the risks of both impunity and survival of the economic structures and political links behind ERPAC.

The government needs to correct these shortcomings. Otherwise, after a process that seems to have benefited the leaders of ERPAC more than anybody else, incentives for rank-and-file members to participate in any future surrender will likely remain low. Given the controversy stoked by the temporary releases and the lack of transparency, including of independent monitoring, any future process that abides by the same rules is likely to suffer from similar low credibility and legitimacy. At the same time, the absence of adequate legal instruments and institutional support to prevent rearmament would likely also mean exposing communities to new cycles of violence, as illegal armed actors vie to fill power vacuums.

The government should, therefore, consider implementing an explicit surrender policy for NIAGs, one based on recognition that it is difficult to clearly separate organised criminal groups from parts of the internal armed conflict and that the prosecuting institutions, and the judicial system in general, currently do not have the capacity to shoulder a process that would satisfy victims' rights to justice, truth and non-repetition. To safeguard such rights, the judicial component needs to be strengthened, but also complemented by administrative procedures or new legislation that would extend additional guarantees for victims and improve incentives for NIAG members to lay down arms, while avoiding impunity. Deciding how to balance such potentially contradictory goals would doubtless be controversial. But the shortcomings of the ERPAC surrender suggest that this is a debate the country should no longer postpone.

Bogotá/Brussels, 8 June 2012

APPENDIX A MAP OF COLOMBIA



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Courtesy of The General Library, The University of Texas at Austin

APPENDIX B

MAP OF THE EASTERN PLAINS



APPENDIX C

GLOSSARY OF TERMS AND ABBREVIATIONS

ACC

Peasant Self-Defence Forces of Casanare (Autodefensas Campesinas del Casanare), paramilitary group in Casanare department which did not join the AUC.

ACR

Colombian Agency for Reintegration (Agencia Colombiana para la Reintegración), office in charge of implementing the government's reintegration program for demobilised guerrillas and paramilitaries; until 2011 called Office of the High Councillor for Reintegration (Alta Consejería para la Reintegración).

AUC

United Self-Defence Forces of Colombia (Autodefensas Unidas de Colombia), umbrella body of paramilitary groups whose demobilisation started in 2003 and officially ended in 2006.

BACRIMs

Criminal Gangs (Bandas Criminales), generic term used by the government to refer to illegal armed groups which have emerged after the end of paramilitary demobilisation; called NIAGs by Crisis Group.

CTI

Technical Investigation Unit (Cuerpo Técnico de Investigación), body linked to the attorney general's office exercising the function of judicial police.

DAS

Administrative Department of Security (Departamento Administrativo de Seguridad), intelligence agency under the presidency that was liquidated in 2011.

DDR

Disarmament, Demobilisation and Reintegration.

ELN

National Liberation Army (Ejército de Liberación Nacional), Colombia's second largest guerrilla group.

EPL

Popular Liberation Army (Ejército de Liberación Popular), Colombia's smallest guerrilla group, the bulk of whose fighters demobilised in 1991.

ERPAC

Anti-Terrorist Popular Revolutionary Army of Colombia (Ejército Revolucionario Popular Antiterrorista de Colombia), a NIAG operating in the eastern plains that partially surrendered to justice in December 2011.

FARC

Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia), Colombia's largest guerrilla group.

ICBF

Colombian Institute for Family Welfare (Instituto Colombiano de Bienestar Familiar), government agency tasked with promoting child, youth and family protection.

IHL

International Humanitarian Law.

JPL

Justice and Peace Law (Ley de Justicia y Paz), legal framework for transitional justice in Colombia.

Mapp-OAS

Mission to Support the Peace Process in Colombia of the Organisation of American States (Misión de Apoyo al proceso de paz en Colombia de la

Organización de los Estados Americanos).

M19

19th of April Movement (Movimiento 19 de abril), Colombian guerrilla group that demobilised in 1991 and formed a political party.

NIAGs

New Illegal Armed Groups; generic term used by Crisis Group to describe illegal armed groups that have emerged since the end of the demobilisation of paramilitaries in 2006 and are successors to that phenomenon; called BACRIMs by the government.

APPENDIX D

PARAMILITARY WHO'S WHO IN THE EASTERN PLAINS

<p>Miguel Arroyave, alias "Arcángel"</p>	<p>Leader of the AUC's Centauros Bloc; he was assassinated in 2004 by Cuchillo. After his death, Centauros splintered into two dissident and one loyal structures, the latter led by alias "Mauricio". Arroyave had bought the franchise of the bloc from AUC top leader Vicente Castaño in 2001. Like Castaño, he was originally from Amalfi, Antioquia.</p>
<p>Héctor Germán Buitrago, alias "Martín Llanos"</p>	<p>Leader of the Peasant Self-Defence Forces of Casanare (ACC), he was detained in 2012 in Venezuela and extradited to Colombia. Between 2002-2004, he fought a bloody war against Miguel Arroyave, reportedly because the latter wanted to encroach on ACC territory; Arroyave finally emerged victorious, supposedly also thanks to the tacit support of the army.</p>
<p>Martín Farfán, alias "Pirjarbey" or "Pija Arbey"</p>	<p>Supposed leader of the Libertadores del Vichada, a dissident fraction of ERPAC that did not take part in the surrender. Previously the former professional soldier was the second in command of ERPAC. He was captured in 2009 and released in 2012, after serving much of his four-year prison sentence.</p>
<p>Eberto López Montero, alias "Caracho"</p>	<p>Took over the leadership of ERPAC after Cuchillo's death in 2010 and led the group into the 2011 surrender process. Like Cuchillo, he was a former professional soldier and paramilitary, but lacked his leadership qualities.</p>
<p>Pedro Oliveiro Guerrero Castillo, alias "Cuchillo" or "Didier"</p>	<p>Founder and leader of ERPAC until his death in 2010 at the hands of special police forces; prior to that, Cuchillo was the commander of the Héroes del Guaviare, a dissident substructure of the AUC's Centauros Bloc; he demobilised in April 2006 but rearmed months later. He is originally from San Martín, Meta.</p>
<p>Daniel Rendón Herrera, alias "Don Mario"</p>	<p>Head of finances of the Centauros Bloc under Miguel Arroyave. He demobilised in 2006 with the AUC's Élmer Cárdenas Bloc, led by his brother, but rearmed as head of the Urabeños. He was captured in 2009 and is currently processed under JPL. He is originally from Amalfi, Antioquia.</p>
<p>Carlos Mario Jiménez, alias "Macaco"</p>	<p>Head of the Central Bolívar Bloc, which has been operating through its Vichada Front in the Eastern Plains. He demobilised in 2006 but was extradited to the U.S. in 2008 on drug-trafficking charges. In 2006-2007, his proxies fought and lost a bloody turf war with the emerging ERPAC.</p>
<p>Manuel de Jesús Pirabán, alias "Pirata"</p>	<p>Leader of the Héroes del Llano, a dissident fraction of the Centauros Bloc. He demobilised in April 2006 and is currently processed under the JPL. He supposedly continues to wield influence in Meta from within the prison. He is originally from San Cayetano, Cundinamarca.</p>
<p>Dumar de Jesús Guerrero Castillo, alias "Carecuchillo"</p>	<p>Brother of Cuchillo and former member of the Héroes del Guaviare. He demobilised in 2006 but then disappeared before surrendering in 2008. He escaped from prison in 2010 but was soon recaptured.</p>

APPENDIX E

ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 130 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

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CRISIS GROUP REPORTS AND BRIEFINGS ON LATIN AMERICA AND THE CARIBBEAN SINCE 2009

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- Haiti 2009: Stability at Risk*, Latin America/Caribbean Briefing N°19, 3 March 2009.
- Ending Colombia's FARC Conflict: Dealing the Right Card*, Latin America Report N°30, 26 March 2009 (also available in Spanish).
- Haiti: Saving the Environment, Preventing Instability and Conflict*, Latin America/Caribbean Briefing N°20, 28 April 2009.
- The Virtuous Twins: Protecting Human Rights and Improving Security in Colombia*, Latin America Briefing N°21, 25 May 2009 (also available in Spanish).
- Venezuela: Accelerating the Bolivarian Revolution*, Latin America Briefing N°22, 5 November 2009 (also available in Spanish).
- Uribe's Possible Third Term and Conflict Resolution in Colombia*, Latin America Report N°31, 18 December 2009 (also available in Spanish).
- Haiti: Stabilisation and Reconstruction after the Quake*, Latin America/Caribbean Report N°32, 31 March 2010.
- Guatemala: Squeezed Between Crime and Impunity*, Latin America Report N°33, 22 June 2010 (also available in Spanish).
- Improving Security Policy in Colombia*, Latin America Briefing N°23, 29 June 2010 (also available in Spanish).
- Colombia: President Santos's Conflict Resolution Opportunity*, Latin America Report N°34, 13 October 2010 (also available in Spanish).
- Haiti: The Stakes of the Post-Quake Elections*, Latin America/Caribbean Report N°35, 27 October 2010.
- Learning to Walk without a Crutch: The International Commission Against Impunity in Guatemala*, Latin America Report N°36, 31 May 2011 (also available in Spanish).
- Guatemala's Elections: Clean Polls, Dirty Politics*, Latin America Briefing N°24, 17 June 2011 (also available in Spanish).
- Post-quake Haiti: Security Depends on Resettlement and Development*, Latin America Briefing N°25, 28 June 2011.
- Cutting the Links Between Crime and Local Politics: Colombia's 2011 Elections*, Latin America Report N°37, 25 July 2011 (also available in Spanish).
- Violence and Politics in Venezuela*, Latin America Report N°38, 17 August 2011 (also available in Spanish).
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- Guatemala: Drug Trafficking and Violence*, Latin America Report N°39, 11 October 2011 (also available in Spanish).
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