IFIT

INSTITUTE FOR INTEGRATED TRANSITIONS

Negotiating with Violent Criminal Groups

Lessons and Guidelines from Global Practice

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About the project

The Institute for Integrated Transitions (IFIT) is an international think tank that brings together under one roof the best of theory and practice in relation to successful negotiations and transitions out of violent conflict, crisis or authoritarian rule. This publication is part of a project developed by IFIT's Law and Peace Practice Group to fill a major gap in policy making: whether and how to negotiate amnesty and accountability questions with two kinds of unconventional armed actors: 1) 'violent extremist' groups, such as jihadists; and 2) 'violent crime' groups, such a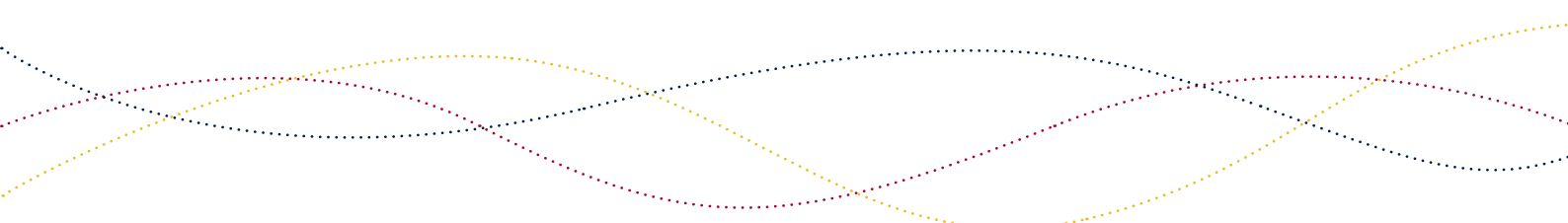s mafias, gang networks, pirates and drug cartels. IFIT's work on the former is complete. Its work on the latter, begun in 2017, has encompassed three years of academic and field research; eight expert workshops; dozens of first-person interviews; and publication of an initial discussion paper on cases from Latin America and the Caribbean, elements of which are incorporated here.

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Executive Summary

The idea of negotiating with violent criminal groups is not theoretical. Governments do it; police do it; religious and community leaders do it; and criminal groups do it with each other. Some of the negotiations even have justifiable goals or intentions. Yet, most of the attempts are unknown, whether because they were secretly conducted, publicly denied or both.

This paper takes such negotiations out of the shadows, examining over two dozen actual cases in order to understand what has been tried, as well as why, how, and with what range of results. The aim is to identify practical lessons about how to lower the risks and increase the benefits for any negotiations with violent criminal groups that might take place, whether openly or covertly, now or in future. The salience of the research lies in the need for more diverse policy options to deal with the serious (and in some cases extreme) social, political, and economic harms associated with violent criminal groups.

One of the most prominent discoveries of this research – which focuses on cases of negotiation intended to reduce or end widespread violence by or between violent criminal groups – is how the best of theory and practice regarding peace talks with militant groups appears largely absent from consideration or application. The gap is striking and counterproductive, but also heralds an opportunity to achieve potentially greater results in future.

A linked discovery is that the answers to questions about the origins, nature, identity and operations of violent criminal groups; the contexts in which they flourish; what leads them and any state or non-state counterparts to the negotiation table; and the scope, formats and methods of the talks cover the widest spectrum, just as they do for negotiations with militant groups.

What appears to be more elusive with violent criminal groups is how to define the endgame. With militant groups, the point of negotiations is typically to end the use of organised political violence, by exchanging disarmament (and/or incorporation into the army) for some form of political empowerment and rehabilitation. With violent criminal groups, the endgame is harder to pin down, because their motivations are understood to be mainly pecuniary, leaving it unclear what they could transform into. A militant group can 'stay political' at the end of the talks (e.g., by becoming exclusively a political party), but criminal groups cannot 'stay criminal'.

However, the examined cases suggest that the quandary is surmountable – and under a surprising variety of conditions. As such, what is offered here is a pragmatic synthesis of ideas derived both from the researched cases, and from an imagined but realistic application of relevant lessons from the longstanding field of peace mediation, as well as related areas such as transitional justice.

Introduction

Negotiations with mafias, cartels, gangs, pirates and other violent crime groups (hereafter, 'criminal groups') are uncommon but occur more often than imagined. This paper brings to light what can be learned from a global set of actual cases, with the benefit of the first-hand insights of dozens of direct participants.

Criminal groups are a concern in any society, more because of their violence than their criminality. In some cases, the violence is so widespread and brutal that a country, or parts of it, can experience the equivalent to conditions of war (e.g., Mexico); in others, the violence is troublesome but manageable (e.g., France). A host of factors influence the scope of the problem, not least the degree of institutional capacity and integrity. Yet, despite great variety in conditions across country contexts, the problem of criminal groups exists in some form everywhere.

The same is not true for political violence. There are places where violent militant groups (whether political, jihadist, revolutionary or other) do not exist, and organised political violence has effectively been overcome. Many peace talks have deliberately aimed to achieve just that: a permanent end to political violence. The question thus arises whether the same goal could or should exist for negotiations with criminal groups.

The way any negotiation is organised of course depends on many variables, including the identity, unity, structure and interests of the group that one is bargaining with. But whereas militant groups can 'stay political' at the end of the talks (e.g., by becoming a political party), criminal groups cannot 'stay criminal'.

This research finds that a justification for negotiating with criminal groups can nevertheless be identified – and in highly diverse environments. It centres mainly on: 1) the degree of violence reduction and transformation that is achievable, which depends intimately on the depth of the group's cohesion and its desire to continue existing in another form; and 2) the proportionality, from a public-interest perspective, of the scope of expected accommodations and foreseeable risks. The negotiation logic thus tends more toward piecemeal deals that have the potential to produce gradual change, rather than blockbuster accords ushering in a capital-T transition.

By design, the cases examined in this study are highly varied in terms of process design, scope of objectives and type of criminal groups involved. Negotiating objectives range from national-level grand bargains to limited truces, reduced criminality and physical access to or across controlled areas. The criminal groups vary from mafias to pirates, and from youth gangs to drug trafficking cartels – in some cases intersecting with paramilitaries or militant groups. The motivations of the parties to negotiate may range from desperation, such that talks are understood as a necessary evil, to a sense of opportunity or advantage.

Yet, few cases evidence the kind of sophisticated preparatory measures, methodological discipline, breadth of expert technical support or attention to victims' interests that are common to modern peace talks with militant groups. This is so notwithstanding the highly overlapping set of strategic and tactical calculations in such negotiations, including maximising sources of leverage before and during the process; managing spoilers; setting out an agenda with clear objectives and ground rules; identifying redlines; developing a common public message; combining incentives and threats; paying attention to questions of group identity, dignity and honour and not merely substantive elements; and taking victims' interests into account.

The analysis and guidelines in this paper draw primarily from a global set of actual cases of negotiation with criminal groups, but also from decades of scholarship and practice on issues commonly associated with classic peace talks. The main sections cover: methodology and cases; the range of criminal group types and characteristics; the range of contexts in which criminal groups flourish; the range of ways in which negotiations with criminal groups start; why criminal groups negotiate; why governments or other actors negotiate with criminal groups; formats and methods of negotiation; victims' and perpetrators' interests; and the range of negotiation results. The paper concludes with observations and recommendations. The ultimate aim is to give policymakers a clearer picture of the possible pitfalls and possibilities of negotiations with criminal groups, as well as creative and practice-informed ideas for improved outcomes.

DEFINITIONS

The term '*criminal group*' is used here as an abbreviation for violent organised crime groups, encompassing mafias, gangs, pirates, cartels and similar groups (all defined differently in academic literature). Article 2a of the 2004 UN Convention against Transnational Organised Crime defines an "organized criminal group" as "... a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit". On an exceptional basis, some of these groups may also be the subject of international humanitarian law (e.g., under Article 1 of Additional Protocol II to the Geneva Conventions).

The term '*negotiation*' is undefined in international law. It is used here to refer to a process whereby two or more parties attempt to reach an amicable settlement or reduced intensity of their dispute or conflict, whether through direct talks or facilitated ones. Excluded from this definition is any process in which one side is a de facto victor able to dictate terms to the other.
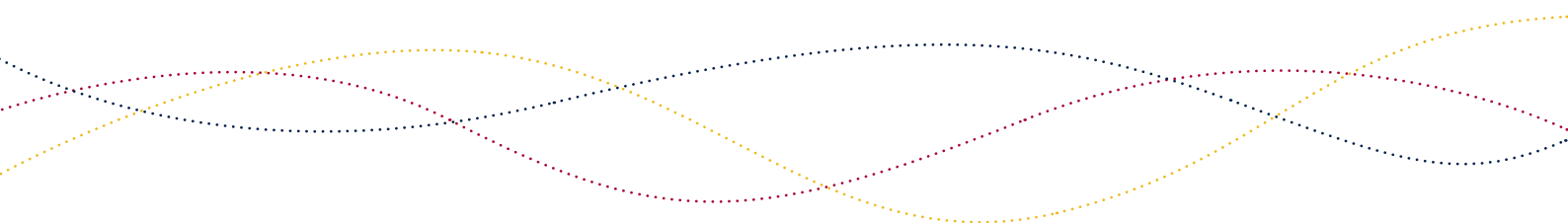
Methodology and Cases

This paper examines a global set of cases of negotiation with criminal groups in which there was a deliberate goal of reducing or ending widespread violence through truces, ceasefires, demobilisation, disarmament, legalisation or other outcomes. 'Collusive negotiations' geared toward self-serving pacts or nefarious alliances to enable continued (or increased) violence, extortion, illegal activity and corruption were excluded; they cannot answer the questions at the heart of this inquiry, which seeks to understand the potential utility of negotiation with criminal groups as an intentional, peacebuilding option for policymakers and societies.

To identify actual instances of such negotiations requires the skills of a professional investigator. Case studies are sparse, and those that do exist mainly revolve around the same small subset (El Salvador is a favourite), thus producing an unhelpful availability bias. Moreover, the peace mediation sector pays scant attention to the study of negotiation with criminal groups. IFIT's research thus required hiring four experienced regional analysts to complement what could be identified through desk study. The effort uncovered many additional cases, leading to an in-depth global set comprising relevant examples from Latin America (Brazil, Colombia, Ecuador, El Salvador, Honduras, Mexico), the Caribbean (Belize, Haiti, Jamaica, Trinidad and Tobago), Africa (South Africa), Asia (Bangladesh, Pakistan, Timor-Leste) and Europe (Denmark, Italy, Norway, Spain).

The project research team compiled lengthy reports on each case; what follows are one-paragraph summaries, in alphabetical order. Overall, this constitutes the most diverse set of negotiations with criminal groups ever examined in one place.

> **Bangladesh – Pirates of the Sundarbans:** Following local communities' demands for a reduction of violence and harassment by pirates, a local journalist led a mediation process in the Sundarbans in 2016. This involved the journalist shuttling between meetings with the pirate gang leaders and the Bangladesh government. Through him, the government offered the pirates judicial and economic incentives in exchange for surrendering their guns and ceasing their violent and illicit activities. Following the negotiation, several pirate gangs demobilised and publicly surrendered their weapons, leading to a decline in violence, kidnapping and piracy activity – thus improving the living conditions of local communities. However, the government has only partly complied with its undertakings, and legal proceedings against the pirates are ongoing. Other groups continued to operate and engage in violence.
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> **Belize – Multi-Gang Truce:** A truce was reached between government representatives and thirteen Belize City gangs in early September 2011, following several days of negotiations. In exchange for agreeing to quell violence, the gang members were offered social and economic incentives, including employment opportunities. Violence decreased considerably in the short term, but the deal collapsed after

several months when public controversy grew, donor support waned, and government resources to finance the agreement ran out.

Brazil – Gang Violence in Prisons: Gangs in Brazil have continuously organised violence from inside prisons. Some have expanded into large international drug trafficking operations. In Paraná state in 2014 and Amazonas state in 2017, there were negotiations between the state and gang leaders after several violent prison riots. Prison conditions improved, and violence inside was temporarily reduced.

Colombia – Pablo Escobar and the 'Extraditables': In 1990-1991, Colombia negotiated more lenient terms with the world's drug kingpin, Pablo Escobar, and other traffickers. In order to reduce the brutal and debilitating violence that Escobar and his fellow Extraditables inflicted, the government agreed to change laws to stop extradition of traffickers to the U.S. and allow Escobar to serve time in a prison he could renovate. In exchange, it demanded the end of his violent campaign against the state. The pervasive sense of desperation across the political spectrum vis-à-vis the Extraditables allowed the deal to survive even the scandal of Escobar's escape from his customised prison.

Colombia – Gulf Clan Negotiations: In 2017-2018, Colombia negotiated with the Gulf Clan (also referred to as Los Urabeños), a drug trafficking organisation encompassing former paramilitaries and guerrillas. The process focused on a justice deal. Acting from a position of comparative institutional strength, the government refused to consider the suspension of extradition the cartel sought, but engaged in lengthy negotiations about many other aspects of possible legal leniency. The controversial process provoked extensive opposition and powerful spoilers, and did not result in a deal.

Denmark – Motorcycle Gang Truce: An unprecedented wave of inter-gang violence, which resulted in the deaths of twelve gang members and more than 70 wounded between 1994 and 1997, led to a journalist's request of a defence attorney to mediate a truce between two motorcycle gangs, the Hells Angels and the Bandidos. The mediation was approved by Danish authorities and considered an important effort to end what was known as the 'Nordic Motorcycle Gang War'. The truce, which established nonviolent dispute resolution mechanisms, was announced on national television. Upon implementation, attacks between the gangs halted for the long term.

Ecuador – Gang Legalisation: The case involved negotiations at two levels: one local and one national. The first took place in Guayaquil in 2006, when the local police brokered a peace deal with the Latin Kings and the Ñetas to reduce violence. Soon after, the national government began a dialogue process that, as part of a much larger transformation in policing and citizen security, culminated after two years in the legalisation of both groups as youth cultural associations.

El Salvador – *Mara* Truce: The government secretly negotiated a truce in 2012 among violent *maras* (gangs) and a decrease and cessation of other criminal behaviour by them. Iron-fisted law enforcement was widely perceived as having failed, and the majority of deaths in the country were attributed to gang confrontation. The government ultimately agreed to better prison conditions and selected transfers for imprisoned gang members, as well as socio-economic packages for their reintegration and for community development. A one-year 52 percent drop in homicides resulted, but parts of the deal were not fulfilled by the parties; and when the deal was revealed to the public, strong political opposition formed. Along with other factors, this led to a collapse in implementation and a spike in violence.

Honduras – *Mara* Truce: With initial support by the government, the branches of the Mara Salvatrucha (MS-13) and Barrio 18 gangs called for negotiations and publicly declared a truce in May 2013 in exchange for a future negotiated path of reintegration into society. However, as homicides increased immediately following the declaration, the government reconsidered its options and the negotiations failed to advance.

Haiti – Bargaining with Gangs: Two NGOs bargained repeatedly with criminal gangs from 2000-2010. One merely sought access to gang-controlled neighbourhoods so as to provide humanitarian assistance and medical care safely. It focused on building its own legitimacy with local populations and threatened withdrawal of services if attacked. The talks succeeded, with the indirect benefit of reducing violence in the area. The other NGO sought to use material incentives to negotiate a deliberate reduction in violence, but was unable to generate long-term behavioural change once material incentives ended.

Italy – *Trattativa Stato-Mafia:* In the late 1980s, as part of its larger strategy to combat mafia groups, the state undertook legal reforms pertaining to prosecution of mafia members and their prison conditions, eventually convicting 338 in the 'maxi' trial of 475 suspected members of the Cosa Nostra. This unleashed an unprecedented wave of terror, as the mafia retaliated against members of the state and civil society. Seeking to reduce the wave of violence, members of the Special Operative Forces of the Carabinieri (i.e., the national gendarmerie) purportedly negotiated with the Cosa Nostra leadership. The government denounced this, and, many years later, judges sentenced some of the main negotiators to prison, characterising their efforts as criminal corruption.

Jamaica – August Town Truce: Leaders from six different gangs in the August Town neighbourhood of Kingston signed a truce in 2008 after a 24-day negotiation process mediated by the Peace Management Initiative (PMI), a national non-profit organisation promoting non-violent dispute resolution. Members of local and national law enforcement forces were aware of the talks and publicly supported the ultimate deal. Despite sporadic inter-gang incidents, the truce held for three years before it broke down, and violence returned.

Mexico – Territorial Access: Representatives of the Mexican Catholic church have often negotiated with criminal groups engaged in drug trafficking and extortion. Since 2018, in Guerrero state, a clergyman has negotiated temporary reductions in attacks against certain sectors of local society, as well as improved access by politicians to territories controlled by the criminal groups and delivery of services such as health care and schooling in crime-ridden areas. These small-scope negotiations have been controversial with Guerrero officials, who have repeatedly warned against them.

Norway – Oslo Police Dialogue Model: Inspired by Denmark's Motorcycle Gang Truce, the Oslo Police District initiated a dialogue-based strategy in 1997 with the bikers' chapters in the city in order to maintain the agreed peace and prevent future violent outbreaks. The dialogue, controversial within police ranks, prevented the resurgence of violence between the participating gangs and between the gangs and the police.

Pakistan – Gang Boss Truce: Due to pressure exerted by local communities seeking reduced violence, representatives of the two main gang bosses of the Lyari Town neighbourhood in Karachi reached a ceasefire in May 2014, mediated by local political and religious leaders. The agreement included creation of a peacekeeping body and resulted in a temporary lessening of violence. The authenticity of the truce was questioned because of the intimate relationship between gang bosses and certain political parties and leaders in Pakistan.

South Africa – Westbury Peace Process: The Westbury neighbourhood of Johannesburg has endured gang violence for decades. Many of the gangs emerged as a result of racial segregation laws dating to the apartheid era. In the 1990s, local community organisers, some of whom were former gang members released from prison, began mediation processes to reduce and prevent violence. They engaged new gang leaders to discuss a possible truce, which eventually led to a formal negotiation mediated by the Together Action Group (TAG), a community-based NGO that works with troubled youth in Westbury. In February 1999, gang leaders announced they had reached a peace agreement. Violence fell as an immediate outcome, though some drug trafficking and gangsterism persisted.

South Africa – Covid-19 Gang Truce: At the onset of the coronavirus pandemic in 2020, a religious leader convinced gangs in Cape Town's Manenberg neighbourhood to cooperate in the distribution of food and sanitary supplies to confined residents. He later sought to leverage this success to broker a broader gang ceasefire. The overall effort was denounced by some analysts, who considered that it allowed the gang leaders to burnish their image and enhance their drugs and weapons smuggling activities. The transactional truce resulted in an initial drop in violence, but the status quo ante resumed with the lifting of Covid-19 restrictions.

Spain – Gang Legalisation: In 2003, due to the increasing turf war between the Latin Kings and the Ñetas, the Barcelona municipal government commissioned academics to analyse the gangs. Their research revealed the gangs to be composed mostly of migrant youth with a strong sense of cultural identity rather than organised crime groups engaged in serious illicit activity and major violence. As a result, the Catalan government authorised the academics to launch a transformative mediation process, leading to legal recognition of the gangs as cultural associations. Both are now duly registered entities, allowing their members to receive educational and socio-economic benefits and avoid hostile confrontations with police.

Timor-Leste – Martial Arts Groups: After Indonesia occupied East Timor in the 1970s, some local martial arts groups mimicked the structures of violent crime groups and became increasingly involved in illegal activity. In September 2006, the regional peacebuilding NGO Action Asia, international NGOs Concern and Oxfam and the local organisation Yayasan Hak initiated a peacebuilding initiative to reduce violence by such groups. As part of the effort, Action Asia and the partner organisations involved members of the martial arts groups in a one-year peacebuilding course. Two of the main groups concluded a peace agreement with each other, officially ending their long conflict. This helped reduce violence, though tensions between them remained high and periodic clashes occurred.

Trinidad and Tobago – Gonzalez and National Gang Negotiations: In the 2000s, a variety of actors, including religious leaders, academics and political parties, sought to mediate ceasefires among local gangs in Port of Spain. In 2006, the efforts produced two gang truces. The first, mediated by a religious leader with the support of an international academic in the neighbourhood of Gonzalez, produced a temporary reduction in violence and greater freedoms for local communities. Later, the prime minister urged a larger set of gangs to negotiate with the government. However, the resulting national truce – decried by opposition parties, burdened by personal rivalries between gang members and weakened by unsustainable contract payoffs to the gangs – was short lived.

For all of these cases, the aim was to conduct first-person interviews with those who actually negotiated. Although finding interlocutors willing to acknowledge and discuss their direct role in negotiations with or on behalf of a criminal group was challenging, ultimately 36 such interviews were conducted. To protect interviewees – some of whom required strict confidentiality – all are reported here without names. These interviews were supplemented by twelve with experts and government officials who witnessed negotiations with criminal groups but did not conduct them.

In addition to interviews, the research took account, inter alia, of Freeman's and IFIT's prior work on peace negotiations and Felbab-Brown's work on criminal violence. The research also drew upon conceptual and comparative literature on greed versus grievance, the economic objectives of militant actors, the nexus of crime and militancy, and negotiations with violent extremist groups.

Additionally, the research incorporated expert feedback from eight closed-door workshops over the last four years, including two organised to discuss IFIT's prior publication: Bargaining with the Devil to Avoid Hell? A Discussion Paper on Negotiations with Criminal Groups in Latin America and the Caribbean. Among that paper's findings were that negotiations with criminal groups 1) tend toward pragmatic and limited goals, not abstract and transformational ones; 2) replicate most process design choices, internal dynamics and policy dilemmas associated with more classical peace talks involving politically-motivated militant groups; 3) arise more often out of necessity and lack of deterrence capacity than political or moral preference; and 4) tend to operate secretly and informally in light of expected public opprobrium.

The aim at the heart of this IFIT project has been to 1) go beyond the interesting but insufficiently comparative or overly theoretical inquiries that prevail on the topic of negotiation with criminal groups; and 2) distil from actual practice the key variables, lessons and guidelines of relevance for policymakers and practitioners considering or conducting such negotiations.

Range of Criminal Group Types and Characteristics

The term 'criminal group', as used here, is not all-encompassing, but limited to cases of groups that have engaged in formal negotiations seeking to increase peace and reduce violence. The term is also an archetype, and thus an approximation for a reality that is necessarily more complex. The same is true for the term 'militant group'. Yet, the distinction goes to the heart of why negotiation with one group is rare and counterintuitive and with the other common and intuitive.

The international community generally understands why at critical junctures a government may choose to negotiate not merely with the Revolutionary Armed Forces of Colombia (FARC), the Palestinian Liberation Organisation (PLO) or the Irish Republican Army (IRA), but also with religiously-inspired groups like the Taliban, the Lord's Resistance Army or Boko Haram. The choice will always be highly controversial, but it will also be rhetorically defensible by governments, which typically frame it as a strategic necessity and public good in order to end carnage and war.

However, substitute the names Sinaloa Cartel or Cosa Nostra in the above sentences and expect to be met with particular incredulity. The reason has little to do with differences in the violent tactics of militant versus criminal groups, or in their respective structures, internal rules or external environment, all of which can easily overlap. Instead, it is mainly due to prevailing understandings about core organisational aims. Unlike militant groups, criminal groups are understood primarily to pursue profit, not revolution, using violence as a key tool by which to influence and/or weaken the state, control institutions or turf, and fight off competitors so as to maximise their gains and self-protection. Any blurring of the lines (e.g., a criminal group that actively supports a political party, or a militant group that thieves more than preaches) only reinforces the salience of each archetype.

What can nevertheless easily be overlooked is a critical variable for the prospect of meaningful negotiation with any type of violent group: the degree of internalisation of organisational culture and identity. It is indeed notable the degree to which many criminal groups actively foster a deep sense of emotional attachment and self-identification through origin stories, internal codes, symbols, rituals, emblems, mottos, traditions, branding, clothing, tattoos, graffiti, group jargon, hand signs and more. Shared race, ethnicity, blood ties, personal histories, geography and hobbies (like motorcycles or martial arts) are also sometimes integral to group identity and promoted as binding factors. The same is true for gender, since the world of criminal groups – despite its apparent diversity – is almost uniformly one of adult and adolescent males.

The point is that, when negotiating with criminal groups, organisational culture and identity are highly relevant factors vis-à-vis any serious bargaining effort. In this respect, the strategic approach required of practitioners who seek in good faith to build confidence and reach consequential and viable accords with a criminal group is not so much about the choice of labels (e.g., whether group 'x' is best described as a criminal or a militant group) as about how to leverage the particular group's mix of salient variables – the profit-making motive and the use of violence being central but insufficient criteria. Just as Fortune 500 companies routinely promote a specific corporate culture and narrative with their employees in which profit is played down and mission and values are played up, criminal groups often want their operatives, as well as target communities, to feel identified with something larger. Recognising this reality, especially evident when criminal groups govern territories, economies and populations, is critical to any serious negotiation.

Digging deeper into the criminal group archetype, variety rather than sameness stands out, both within and beyond the cases in this study.

- In *size*, criminal groups range from esoteric neighbourhood gangs with dozens of members to transnational cartels with thousands.

- In *structure*, they span highly centralised operations like the Extraditables in Colombia; to deliberately splintered or devolved ones that more closely resemble franchises; to confederations of chapters like the Latin Kings in Ecuador and Spain or the *maras* in the Northern Triangle of Central America and the U.S. It is also notable how some criminal groups, despite being strongly hierarchical, display high levels of disorganisation and fungibility in their leadership (e.g., the *maras* in El Salvador); and how some have high levels of internal democracy and consensus-based decision-making (e.g., motorcycle gangs in the Nordic countries) while others have none at all (e.g., pirates in Bangladesh).

- In *sophistication*, criminal groups can range from brutal but efficient crime and profit machines able to secure significant and enduring degrees of state capture, like the Cosa Nostra; to brutal but less competent ones like those operating in Guerrero, Mexico; to one-dimensional enterprises partially dependent on and easily co-opted by third parties for their continued existence.

- In their range of *territorial and population control*, the examined groups include some which rule very small areas; others which control vast territories, fill the governance gap and achieve a competitive advantage vis-à-vis the state (e.g., the Gulf Clan in Colombia or the *maras* in El Salvador); and others that control neither territory nor population (e.g., the martial arts groups in Timor-Leste).

- Regarding questions of *identity*, some criminal groups have a strong collective nature based on their origins, codes of conduct and sense of belonging – from the family bonds in the Cosa Nostra mafia in Italy, to the immigrant history of the Latin Kings in Spain and Ecuador, to the biker pride of the Hells Angels and the Bandidos in Denmark and Norway. Others completely lack these elements, basing their association merely on pecuniary interests or coercion, like the Colombian and Mexican cartels.

- In the *modes of crime and violence* used by criminal groups in the examined cases, the range can span from extortion to kidnapping, murder, illegal mining, drug production, and trafficking of persons, narcotics and precious minerals. However, not all groups diversify their portfolio (e.g., the pirates in Bangladesh mainly stick to maritime robbery, kidnapping and the control of fishing areas on behalf of their patrons), and the intensity of participation in a particular illicit activity likewise varies (e.g., while Mexican cartels control drug production and trafficking from Colombia to the U.S., urban gangs in Jamaica, Belize, Trinidad or South Africa are mostly local enterprises).

- In terms of the *targets of crime and violence*, some groups afflict broad swaths of society, while others are more narrowly focused on members of rival groups, state agents (including for revenge or self-protection) or some combination of these.

The particular mix of these and other group characteristics plays into a central determinant of whether or how to negotiate with criminal groups: public sentiment. All else being equal, the more far-reaching and sadistic the violence of the group, the more opposed the public will be to any negotiation – and thus the more risk-averse any interested government will be.

The same point could naturally be made regarding sadistic militant groups; but there is an important difference. While the public in Colombia, for example, may have broadly despised the FARC for its violent actions, a large segment could accept the rationale for negotiation because the endgame – in which, among other things, the rebels would disarm in exchange for political empowerment – was intelligible. By contrast, what kind of acceptable exchange could be intuitively conjured and advocated for the Cosa Nostra?

In this regard, the pecuniary drive embedded in the criminal group archetype is, itself, an extra hurdle to public support. It is one that exists even in the context of a mutually hurting stalemate that would otherwise help shape the public rationale for negotiation; and one that is aggravated in some places by a corresponding perception or reality of state capture.

This doubly antagonistic public mindset is very difficult to overcome. However, a deliberately humanising narrative and public education effort about the members of criminal groups could perhaps affect this. For example, there is usually an important share

of members who enter criminal groups from abusive home environments and grinding poverty and hopelessness; and another share that is brought in coercively and obliged to thieve, maim and kill, thus reducing their exit options. Theoretically, the public could be sensitised to these and other realities, if doing so was considered necessary and useful for the purpose of explaining the choice to negotiate violence reduction. Yet, even if public opinion could be shifted so that a critical mass of the rank-and-file members of a criminal group were viewed more sympathetically – thus lowering the first hurdle – the second hurdle would remain: namely, imagining what future socially-acceptable organisational form the criminal group could take.

This underscores the degree to which the challenge of negotiation with criminal groups combines problems of reality with gaps in public imagination, together amounting to a kind of third hurdle. In negotiations with militant groups, the public's overall expectation is that once negotiations are successfully concluded, the main problem (i.e., political violence) will be resolved. In contrast, for negotiations with criminal groups, there is a void in the public imagination; and in places where governments and politicians have repeatedly negotiated self-interested pay-off deals with criminal groups (e.g., to obtain votes in marginalised areas), what dominates is a presumption of negotiation for private rather than public interest, producing cynicism rather than imagined possibilities of peace or sustained violence reduction.

All of these hurdles – both the real and the imagined – foster distrust and public fears of moral hazard. Yet, the expectation of once-and-for-all solutions in negotiations with militant groups can also be misplaced. Even comparatively successful deals with such groups can be accompanied or followed by more rather than less violence, as dissident groups arise, former militants join criminal or paramilitary groups, and vacuums in state presence remain unfilled.

Range of Contexts in Which Criminal Groups Flourish

Criminal groups exist all over the world, including in the most peaceful, democratic and affluent places. For example, this study includes cases of negotiation with groups in Denmark, Norway and Spain. In these countries, criminal groups rarely resort to violence (e.g., Norway had a total of 35 homicides in 2019). In contrast, there have been more than 30,000 homicides annually in Mexico during the last several years, most attributed to criminal groups and the related state response.

The prospect of negotiation is arguably most relevant, if inauspicious, in the places where criminal groups *flourish*, as opposed to merely operate. Typically, these are places in which institutions are weak, absent or predatory. The state's legitimacy and its deterrence and/or coercive capacity will be low, creating an especially attractive ecosystem for corruption, impunity and criminal group activity – including, in extreme cases,

the replacement of key state functions. Criminal groups then sometimes control sizable territories and large segments of the population. Mexico, El Salvador, Honduras, Brazil, Colombia, Trinidad and Tobago, Jamaica and South Africa are places where, for example, criminal groups govern large rural areas and/or poor urban neighbourhoods. That does not mean the state is completely absent, but rather that it has more pockets of weakness or dysfunction, thus creating greater opportunities and scope for criminal group activity.

These realities are highly germane to the challenge of negotiation, for which the capacity not only to offer incentives but also to make credible threats is necessary to increase leverage, and not merely to prompt talks but also to carry them out. Without such leverage, there is little prospect – absent highly sophisticated negotiation skills – of minimally defensible outcomes. Even the application of 'focused deterrence', effective in many U.S. cities to reduce gang violence, depends always on the credibility of the corresponding law enforcement capacity.

Yet, where criminal groups flourish the most, even basic levels of deterrence are not an option. Instead, there is the discretionary margin of peace or violence the groups allow, as a function of their tactical choices (and their capacities to establish stable balances of power against rivals). Deterrence and coercive capacity – a sine qua non for effective negotiation – thus needs sometimes to come from the outside, through foreign allies or intergovernmental bodies with the power to sanction, indict and more. Alternatively, the state can put off negotiations until it has revamped its deterrence capacities, or enter a deal that creates breathing space for future institutional strengthening, as Colombia did through its 1990 talks with the Extraditables. What is certain – and highlighted in several of the examined cases – is that negotiation should never be conceived as a replacement for state deterrence capacity.

# Range of Ways in Which Negotiations With Criminal Groups Start

Negotiations between criminal groups, or between them and the government, can be initiated by the groups themselves or by the state. Frequently, however, an outside actor initiates them. It is indeed striking how often in the examined cases the impetus lay in a single, well-intentioned third party, such as an activist, a religious leader, an academic team, an NGO or even a solo police officer, sometimes without any direct government involvement. In the negotiations with the Bangladeshi pirates, it was a journalist with an understanding of the region who suggested the process and became its architect and facilitator. In the cases of the gangs in Guerrero state (Mexico) and the Gonzalez neighbourhood in Port of Spain (Trinidad), religious authorities took the initiative. In Denmark's mediation with motorcycle gangs, a criminal defence lawyer emerged early as the key actor, while in both cases in Haiti, NGOs instigated the dialogues with local gangs. Women, often acting behind the scenes, were also often influential in prompting negotiations.

Nobility of intention tended to exceed depth of preparation in the examined cases. With few exceptions, there was little evidence of the kind of rigorous actor mapping, data mining, interest analysis, contingency planning or negotiation infrastructure that are common in the development and design of a modern peace negotiation. Instead, what stood out was the idiosyncratic ability – at times quite remarkable – of neutral mediators or facilitators to build confidence and to show understanding and empathy toward the criminal group's circumstances, often leveraging their individual reputations, skills and first-hand knowledge of the context.

Ecuador was the biggest outlier among the cases in terms of the initiator dynamic and planning process. The engagement with criminal groups was a subset of a much larger national transformation process which, arguably, is a central explanatory variable of the engagement's perceived success. From 2007 to 2017, the country undertook a broad agenda of reforms to citizenship and state institutions in which the approach to public safety shifted from a coercion-centred to a citizen-centred concept. New gun laws were passed and the police underwent significant reforms. The dialogue and accords reached with criminal groups (i.e., *pandillas* such as the Latin Kings, the Ñetas and the Masters of the Street) were part of this larger agenda, as the Rafael Correa government (2007-2017) actively sought to expand the inclusiveness of state institutions and reduce their repressive nature, including vis-à-vis those on the fringes of society. Watching this broader institutional transformation take place, the *pandillas* came to understand that the government was willing to work in earnest to enable their own transformation from ostracised to legitimate members of society.

Starting conditions of this scope and promise are nevertheless rare. Negotiations with criminal groups more often reflect an esoteric mix of starting points, underscoring Hamlet's maxim that "the readiness is all". Sometimes there will be a trigger event (e.g., an especially controversial or dramatic killing). Other times, the stimulus may be negotiations elsewhere. For example, El Salvador's negotiations with the *maras* in 2012 prompted Honduras to consider similar talks with its own groups. Likewise, the successful negotiations with the Latin Kings and Ñetas in Barcelona had a positive demonstration effect vis-à-vis Ecuador. In other cases, negotiations can be instigated by a new institutional leader committed to a different approach. More prosaically, a negotiation can begin simply because of an unexpected offer of talks by the adversary, or an overture by an insider mediator. The simple power of suggestion is often enough.
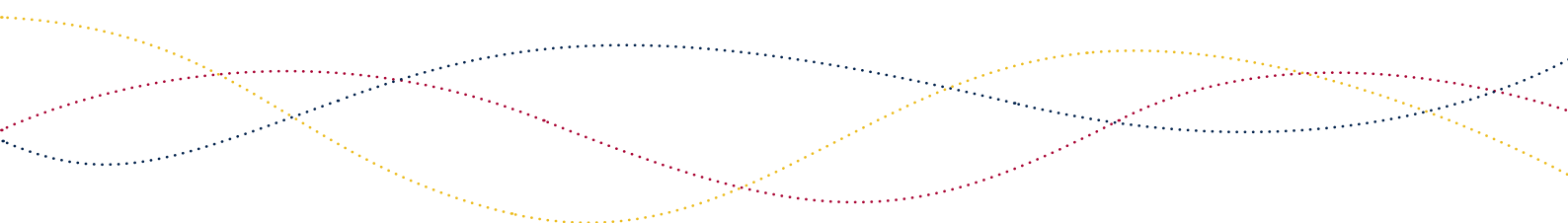
Why Criminal Groups Negotiate: Motivations and Expectations

The starting point for a negotiation may be arcane or unforeseen, but what forces would ultimately motivate a criminal group to talk, and what expectations might it have? Naturally, the answers vary from case to case; but once again the similarities rather than the differences with peace negotiations stand out. This may partly be explained by this study's focus on cases of negotiation with criminal groups in which there was an explicit or underlying peacebuilding or violence reduction focus.

Identifiable motivations in the examined cases include exhaustion and miserable conditions on the lam, such as for Bangladeshi pirates; fear of state security agencies, as in Jamaica; a time-limited opportunity, like the Gulf Clan in 2017-2018 in the wake of Colombia's negotiations with the FARC; lifestyle disillusionment, as in many city gangs; family or community pressure, like the *maras* in El Salvador or the Danish motorcycle gangs, where wives of some members allegedly threatened to withhold sex; bad prison conditions, as in Brazil; or any combination of these or other common motivations, such as a mutually hurting stalemate, fear of other violent groups, or the threat of being banned.

A separate but related question is what criminal groups expect to attain *in* the negotiation. This is partly a function of what motivates them to bargain in the first place, and partly a function of what they perceive as achievable in the process vis-à-vis their negotiation counterpart (since some groups arrive at the talks comparatively weak, and others strong). The diversity of demands or entreaties in the examined cases was multifaceted, often including one or more of the following:

- Legalisation (e.g., *maras* in El Salvador);
- Safe passage through rival territories for the group's members or for members of the community living under the group's control (e.g., Pakistan's Lyari Town talks);
- Temporary ceasefire (e.g., the gang truce in Jamaica);
- Jobs or apprenticeships (e.g., negotiations in Belize);
- Legal leniency (e.g., negotiations between the Colombian government and the Urabeños);
- The right of association (e.g., *pandillas* in Spain);
- Better public services for marginalised communities (e.g., negotiations with gangs in Brazil);
- Cultural and identity recognition (e.g., martial arts gangs in Timor-Leste);
- An end to humiliating forms of arrest (e.g., motorcycle gangs in Norway);
- Education and training opportunities (e.g., the Latin Kings and the Ñetas in Ecuador);
- An end to extradition (e.g., Colombia's negotiation with the Extraditables); and
- Suspension of arrests or the weakening of anti-crime laws and institutions (e.g., the Trattativa Stato-Mafia).

Understanding the motivations and expectations of a criminal group with early, maximal precision is obviously vital in a negotiation. Nevertheless, the objectives will tend to shift as the negotiations progress, whether because of internal pressures, new expectations, or tactical adjustments.

Why Governments or Other Actors Negotiate: Motivations and Expectations

The examined cases cover a wide range of bargaining counterparts. There are negotiations in which government, state institutions or some combination of these are the main counterparts. But there are also cases in which a government 1) appoints or designates an agent to act on its behalf, 2) accepts a self-appointed negotiator or mediator, or 3) refrains from entering agent-principal relationships yet is regularly consulted or receives courtesy briefings from those mediating or directly negotiating. In other cases, government is simply bypassed.

When government, state institutions, or both were directly involved in the negotiation, or acting under a principal-agent format, the observed motivations overlapped at times with those of the criminal group. The motivations – beyond a general eagerness to reduce violence – included unexpected opportunity, as in Trinidad's national gang truce; exhaustion of alternative policy options, as in El Salvador and Honduras after years of unsatisfactory *mano dura* policies; an interest in increased law enforcement, as in Denmark; a larger social transformation agenda, as in Ecuador; and public or community urging, such as the case of Lyari Town in Pakistan.

In the cases in which government or state institutions and officials were merely consulted and briefed about the process, the motivations tended to be more personalistic. They encompassed a sense of moral or religious duty, compassion for criminal group members, sympathy for an affected community, or a mix of these. Such cases mainly corresponded to the ones in which the negotiation was initiated or facilitated by a principled solo mediator, such as Bangladesh (journalist), Denmark (lawyer), Haiti (NGOs) and the Gonzalez case in Trinidad (cleric).

On the separate but related question of expectations, a wide spectrum of goals is observable in the cases in which government and state institutions and officials were involved as negotiators or as principals. These included everything from temporary ceasefire to demobilisation, disarmament, law enforcement cooperation, ending the clandestine nature of the group, restoration of utilities and public services, disclosure of hidden cemeteries and an end to particular crimes such as extortion or forced recruitment.

What is striking across the cases is that government and state actors will be involved directly or indirectly in negotiations with criminal groups 1) not only when the state is comparatively strong, as in Norway and Denmark, but also when it is comparatively weak, as in Colombia (with the Extraditables) or El Salvador and Honduras (with the *maras*);

and 2) not only when its expectations and agenda are ambitious and wide ranging, like Ecuador's negotiations to transform and legalise the *pandillas*, but also when they are modest and narrow, as in Jamaica. Naturally, these variables of strength/weakness and ambition/restraint strongly influence the results. Other variables, however, are likewise influential – not least the methodological know-how and resources deployed in the negotiation itself.

Format and Management of Negotiations

The success or failure of any complex negotiation can depend significantly on planning. Process design is often perceived as a merely technical and thus comparatively minor matter, but it is indispensable for a viable negotiation and the possibility of eventual agreement and implementation. Indeed, *how* a negotiation is designed and managed deserves as much of the parties' time and attention as the substance of what they are negotiating. Key variables of good design include, among others:

- Clearly establishing the negotiation's ultimate objective;
- Agreeing on a limited and precise agenda and set of procedural rules;
- Defining the composition of delegations and the location and frequency of negotiation sessions;
- Envisaging robust technical and operational support teams and expert support;
- Encouraging unilateral and bilateral confidence-building measures;
- Clarifying the scope and role of any facilitators, mediators and guarantors; and
- Creating procedures for internal confidentiality and any external communication or public engagement.

In most of the examined cases, the absence of public support for or awareness of the negotiation partly contributed to insubstantial process design. The parties' small margin of manoeuvre often curbed any hypothetical expansion of the process. Yet, another factor undoubtedly was the scarcity of mediation support by the specialised global NGOs, multilateral institutions and foreign governments that one habitually sees crowding around the tables and corridors of standard peace negotiations (both secret and public). This lack of support and engagement leads to a host of avoidable errors and makes it far less likely that peace-oriented negotiations with criminal groups can arise and survive; progress to viable and well-structured accords; or succeed at implementation. At the same time, this research reveals that the absence of support can also engender intriguing experiments that could inform future negotiation practice with violent groups of all types.

When government or state institutions are formally involved in talks with criminal groups (or indeed with militant ones), legal recognition commonly arises as a threshold issue. Terrorist designations and national or international bans on talking or even meeting may exist – an outgrowth of already strong public repudiation. One of two approaches thus tends to prevail: direct but secret talks, or reliance on one or more trusted third parties.

The choice turns on the government's or institution's self-assessment of its political, legal or strategic interests – including recognition of the level of public disregard in which it, too, may be held.

Provided they are not exposed, secret talks to some extent bypass the challenge of legal recognition and enable a more protected space for confidence-building between the parties, while also helping prevent early sabotage by outsiders and destabilising forms of public backlash. Yet, secrecy has its costs, as the examined cases highlight. For example, their set-up tends to be operationally complex, requiring special logistical measures that public negotiations may not, including covert transportation of the parties, arrangement of secret meeting sites, and formal suspension of arrest and capture orders (though the latter was surprisingly uncommon in the examined cases). In addition, because secret talks by necessity involve small numbers of people and thus exclude important actors from direct participation, the legitimacy and political sustainability of the outcomes can be more vulnerable to criticism if the final results become public – whether intentionally, as in Denmark, or because of accidental or third-party disclosure, as in El Salvador. Nevertheless, secrecy is sometimes a necessity if any kind of talks are to take place.

When outsourcing to trusted parties is the preferred option, the process may likewise need to be secret. Yet, how any negotiation begins and how it looks by the end is rarely the same: whether in terms of the shifting balance between secrecy and publicity, as in Belize where the negotiation and its agreement became public only in the final stage; the number of actors involved, as in Trinidad and Tobago (Gonzalez), where the number of gangs who wanted to be part of the truce grew over time; the sequencing and diversity of actors involved, as in Ecuador and Spain, where the processes involved everything from academics to police officials, lawyers, journalists, and politicians; the mix of face-to-face and shuttle methods, as in Bangladesh; and scores of other process variables.

Given the nature and characteristics of criminal groups, security dilemmas are especially salient – not only for government negotiators, third-party mediators and observers who may be the subject of threats or violence during or after the talks, but also for the participating criminal groups. In all the settings where more than one criminal group was active in the relevant area, the group engaged in the talks feared agreeing a violence reduction with the government or community and being left vulnerable to other groups seeking to exploit a ceasefire and conduct attacks. These security fears and risks afflicted negotiations in El Salvador, Honduras, Jamaica and South Africa (Covid-19 truce). But regardless of the case specifics, actions such as sealing off a protective perimeter, ensuring safe transport, using undisclosed meeting locations and similar measures are often requisites for generating a general sense of security in secret or high-risk talks – as reflected in several of the examined cases.

The types of spoilers and risks are nevertheless broader than many imagine. For example, spoilers of a negotiation can as easily come from within the engaged criminal groups and their splinter factions as from other criminal or militant groups operating in the area. Potent spoilers can likewise emerge from within the business community, such as magnates in the fishing industry in Bangladesh who use pirate gangs to protect

their maritime turfs, coercing fishers to accept poor salaries and vassal-like conditions. Spoilers can also appear within the political system in the form of rival political parties or institutional factions, as in the *mara* negotiations in Honduras and the national gang truce in Trinidad and Tobago. Spoilers can even come from rival law enforcement institutions: in Norway, though dialogue with the motorcycle gangs was succeeding, some units of the police actively sought to undermine the mechanism. International actors objecting to negotiations can similarly become spoilers or at least significant obstacles in and to negotiations (e.g., U.S. Drug Enforcement Administration objections to El Salvador's negotiation with the *maras*).

The capacity to prevent or manage risks of criminal groups' internal fragmentation is limited for any government or third party in the negotiation. Yet, the existence of such risks should be a crucial consideration as to whether and how to engage in negotiations. In some of the examined cases, the government or third party took steps to reduce the fragmentation risk. For example, to pre-empt subversion of the process and preserve future implementation possibilities, Colombia's government demanded a video from Otoniel, the top leader of the Gulf Clan, affirming his commitment to the talks. At the same time, some kinds of fragmentation (e.g., between moderates and radicals) will occur naturally, and without necessarily obviating the negotiation effort. In Ecuador, some 30 percent of *pandilla* members did not accept the terms of the deal and persisted in violence and criminality, while some even joined transnational crime groups that later spread in the country; but that did not preclude the important results in violence reduction and transformation that were achieved and sustained with the majority of members.

In format, a few of the examined cases resembled something more akin to an open-ended dialogue or permanent bargaining process than a traditional negotiation. Examples include the Oslo police's special dialogue scheme with the motorcycle gangs, and the multi-gang engagement process of the international humanitarian NGO in Haiti. These models contrast with the majority of examined cases, in which, like classic peace talks, negotiation was a means to an end, not an end in itself, and was expected to culminate in a formal accord marking the passage into implementation (regardless of whether the accord contemplated dispute settlement and dialogue mechanisms for the implementation phase). The difference is significant. The first approach is premised on a 'manage the problem' logic, which can be appropriate as part of a broader strategy vis-à-vis the violence of criminal groups; by contrast, the second aims at some form of conclusion such that, independent of any beneficial change in mindset or habits that may occur along the way, failure to produce an accord ends the negotiation.

In either scenario, when the negotiation process or dialogue mechanism is meant to become public, an effective communications and outreach strategy is indispensable. Negotiations with any criminal group, if known, are bound to produce substantial controversy, in no small measure because such groups normally have caused much suffering and long been vilified (e.g., the *maras* in El Salvador and Honduras). Likewise, as many of the cases show, the pervasive corruption that undermines public trust in politics and state institutions can also undermine support for negotiations with criminal groups, poisoning initiatives and feeding conspiracy theories. Those involved in the Jamaica

negotiations, for example, warned against the visible engagement of politicians with participating criminal groups in the absence of anything less than the promise of full demobilisation and/or disarmament.

Provided it is handled by the right spokespersons, a simple but persuasive public narrative regarding the what, how and why of the negotiations or their outcome is vital. Yet, so is private outreach to influential but excluded actors who, for prudential reasons, may need to be made aware of the talks early on. Early community engagement may likewise be provident, as in the gang negotiations in South Africa (Westbury) and in both truces in Trinidad and Tobago. Making explicit that certain forms of legal leniency are off the table (as several cases reflect) can similarly help mitigate adverse opinion, especially if the public is more used to seeing politicians deliver handouts to criminal groups in exchange for their cooperation in coercing electoral support.

In the face of necessity, much procedural innovation arose in the examined cases. Three especially intriguing examples stand out. First, in Ecuador and Spain, respected members of the academic community played direct and important roles in the design and execution of negotiations with the *pandillas*. Among other things, they mediated expectations between the government and gangs and advised the latter on realistic pathways to social reintegration. Overall, their involvement helped reduce the political risks of the process; bring analytic rigor; increase neutrality and confidence; and ensure sophisticated monitoring and use of data and evidence. A second novelty in the examined cases was the deliberate use of symbolically powerful acts during the negotiation process. Examples include the burning of gang flags in South Africa (Westbury); televised statements and public commitments in Denmark and Jamaica; and a publicised lunch with Ecuador's president after the legalisation of the *pandillas*. A third intriguing innovation concerned use of music, art, dance, culture and sport (e.g., soccer matches arranged for and played between former rivals) to build trust, increase engagement and facilitate the overall bargaining process at critical junctures. These and other inventive tactics partly compensated for the notable lack of peace mediation support.

Balancing Victims' and Perpetrators' Interests and Demands

Victims' interests loomed in the background in some cases but were rarely in the foreground. Even less prominent were any signs of active consideration of the theory, practice and lessons of transitional justice – despite being a growing expectation in modern peace deals. Much like the absence of the peace mediation sector, the absence of transitional justice experts from negotiations with criminal groups laid bare additional risks and unexplored possibilities in the examined cases, above all for victims.

As a technical term, transitional justice concerns whether and how societies confront a legacy of mass violence and atrocity, in particular when emerging out of civil war or authoritarian rule. At the same time, its key ideas (e.g., the need to balance punishment and

prevention; accountability and reconciliation) and its key mechanisms (e.g., conditional amnesties, investigation, truth-telling bodies, victim reparations, vetting processes, criminal sanctions, reduced and suspended sentences, restorative justice, peace monuments and memorials, healing and rehabilitation programmes) can also be applied to negotiation settings – albeit with obvious and greater constraints, as the choices cannot be decided unilaterally but must be agreed between hostile sides.

Although attention to victims' interests and rights was minimal in the examined cases, it was not absent. In highly localised negotiations with criminal groups, the negotiators developed ways of at least partially responding to victims' needs and demands – sometimes pre-emptively, other times in response to crises. In Jamaica, for example, a female victim of robbery had property restored by a gang leader as a result of the mediator's intervention; and the perpetrator was punished in the context of ceasefire negotiations to demonstrate to the community the scope of benefits it could expect from a truce. In some Ecuadorian neighbourhoods, former gang members were brought to apologise to their victims. Likewise, in Westbury (South Africa), apologies and restorative justice mechanisms figured in the process and negotiated outcome.

Nonetheless, victims were mostly not direct participants in the negotiations with and among criminal groups. Nor were material or other types of reparation provided to them, individually or collectively, as part of the negotiation. Yet, it is important to note that those afflicted by violent criminality, both directly and indirectly, are not merely victims; they can also be important agents. They can act as peace mobilisers, behind-the-scenes peace brokers, negotiation allies, messengers and more – as many of the cases highlighted. Alternatively, victimised communities can shut down a negotiation, as in El Salvador's and Honduras's negotiations with the *maras*, where victims of crime and their advocates fiercely criticised the negotiations and any prospect of leniency.

As for the criminal groups, it has been noted how in the cases their legal demands ranged from the limited (such as improvements to prison conditions and shorter prison terms in Brazil) to the expansive (such as Cosa Nostra's push for changes to fundamental laws in Italy or the Gulf Clan's demands for amnesty in Colombia). A structural explanation for the variance is that the more a group is willing or expected to concede in the negotiation, the greater its demands for legal leniency; and vice versa, when less is expected. For example, all else being equal, a criminal group's demands of legal leniency will be higher when they are expected to demobilise and disarm at the conclusions of a negotiation, as opposed to remaining armed as part of a temporary truce. However, the attainable scope of legal leniency is also a function of 1) the degree of liberty of the group's leaders (already being in jail or under arrest tends to be inconvenient); 2) its capacity for perpetrating or credibly threatening ongoing violence (only partly deterred by jail and arrest for especially powerful criminal groups); and 3) the relative strength of the state and its law enforcement powers.

These factors help explain why governments and public institutions in a number of cases felt no need to offer legal leniency (e.g., Jamaica and Denmark), insisting that they would continue to investigate, arrest and prosecute criminal group members where necessary, notwithstanding undertakings by the criminal groups to reduce violence or

abide by ceasefires. This lack of leniency for serious crimes, such as homicides, might have been expected to result in the criminal groups' repudiation of the negotiations, but surprisingly that happened in no case. Instead, the denial of leniency allowed the state to support the negotiations by preventing or neutralising public complaints or fears that key law enforcement deterrent capacities would be undermined, hollowed out or corrupted by virtue of the negotiation. The tough stance also served as an effective counter to moral attacks about amnesty for killers.

For the great many cases when a modicum of legal leniency is nevertheless necessary in a negotiation with criminal groups, transitional justice teaches that conditionalities (with accompanying monitoring systems) can serve as effective commitment mechanisms. Specifically, agreements on legal leniency work better when there are clearly stated 1) conditions of eligibility, such as truth telling, apology, victim compensation and/or demobilisation; and 2) conditions of retention, such that breach results in revocation of the legal benefit. This approach reduces the risk that the criminal group will take the implementation of the accord lightly, since the negotiated benefits can be removed.

Conditionalities should ideally be complemented by adequate rehabilitation and reintegration schemes. Reintegration programmes that offer legal employment and psychosocial support to ex-offenders can be especially critical in determining the success of violence and criminality reduction (with criminal and militant groups alike). Yet, in several of the examined cases there was a marked inability to generate sufficient jobs and support for group members – due not only to limited resources, but seemingly also to the fear of public rebuke.

Overall, a greater attention to the interests of victims – one of the core emphases of transitional justice – might have brought better results in many cases. Indeed, unless the implementation of a deal with criminal groups is complemented by parallel attention, support or potential reparation for individual and collective victims – involving meaningful dialogue with them – then victim and public support for leniency and negotiation with the criminal group predictably suffers. In this regard, peace-oriented negotiations represent an important opportunity to foster stronger community organisational capacities, as in Trinidad and Tobago (Gonzalez), and thus could be a purposeful side objective of negotiations with criminal groups, especially when the community has been severely intimidated by violence, social activists have been assassinated and an atmosphere of fear has shredded the social fabric.

Range of Negotiation Results

As with the other discussed dimensions of negotiating with criminal groups, the outcomes were wide ranging. They reflect variables such as the balance of power of the actors involved, their bargaining skills and capacities to neutralise spoilers, and other previously-mentioned elements. Yet, the array of outcomes also reflect variation in the scope of ambitions and objectives across, and sometimes within, the negotiations. Some processes involved big goals, such as an end to particular forms of criminality and/or

the transformation of criminal groups, while others focused on more limited objectives, like temporary violence reduction. Yet, by design, *all* the examined negotiations sought to reduce violence in some way – whether countrywide, as in El Salvador with the *maras*, or even in a few square neighbourhood miles, as in the Haitian cases.

In assessing outcomes, it is important to understand that objectives for both the criminal group(s) and any government or third party frequently evolve through the negotiating process. Mediators and conflict parties cannot comprehensively predict at the outset what is feasible or bound to happen, and hence cannot fully establish which objectives are worth pursuing or not. There is, in this respect, an irreducibly iterative dimension to any negotiation; all are subject to myriad contingencies and possibilities, both within and outside the negotiation room. Failure to achieve successful outcomes cannot therefore be casually explained, e*x post facto*, as an inevitable and predictable outcome.

In the examined cases, the most capacious outcomes were those in Spain and Ecuador, where clandestine groups were transformed into legal associations, with many members eschewing further participation in violence and criminality as a result of the accords reached. Ecuador's process of negotiating with and transforming the street gangs into legal associations was notably comprehensive, multi-sectoral and methodologically rigorous. Its ten-year transformation and integration plan included providing former group members with education and legal employment opportunities, creating rehabilitation centres and using purposeful outreach to the public to generate broad confidence. The process was also enabled by GDP growth, fuelled by the commodities boom, which gave the state resources to fund the effort over many years and mitigate pressures from other sectors to devote those resources elsewhere.

Other cases of predominantly positive outcomes include those with the motorcycle gangs in Denmark and Norway, which produced a lasting reduction of violence, as well as innovative dispute resolution mechanisms that critically undergirded the achievement. In several other cases, negotiated deals – even when brought to fruition – were important but more limited in their outcomes, regardless of the original ambition. They mostly consisted of temporary ceasefires and violence reduction that lasted a few months or years, such as in Belize and Guerrero, Mexico. There were also cases, such as Bangladesh, in which the pirate gangs that negotiated with the government disengaged from piracy in a very high percentage, even as the state fulfilled only some of its commitments and new groups emerged in the area.

In the vast majority of the cases examined in this research, the criminal groups were unwilling to agree to full or significant disarmament. To the extent that any weapons were surrendered, they tended to be few and old. A key explanation was the overriding fear of being attacked by defectors, traitors or criminal groups not involved in the negotiations. Meaningful disarmament could realistically be expected only if the group secured more lenient prison terms (e.g., the Extraditables in Colombia), if the group was fully transformed into a legal entity (e.g., the Latin Kings and Ñetas in Spain and Ecuador) or if the conditions of remaining a criminal group were so inhospitable that any alternative seemed better (e.g., the Bangladeshi pirates).

Yet, even negotiations with more limited objectives, such as interim truces among criminal groups, can be advantageous. In addition to providing some relief from violence and greater freedom of movement and coping mechanisms to local communities, such truces can positively change the expectations of affected parties and demonstrate that different modes of dispute resolution and coexistence are possible. They can also create a positive sense of agency among ordinary citizens, government officials or criminal group members, instilling in them the vision and methods needed for bringing about a less violent reality. Some of these benefits can last even when a truce collapses, as happened in Trinidad and Tobago (Gonzalez).

Some negotiations, as in Bangladesh and Norway, brought other interesting results, such as increased cooperation of ex-members of criminal groups with law enforcement in capturing defector or dissident members who violated the deal's terms or became members of rival groups. In South Africa (Westbury), this extended to facilitating local communities' collaboration with law enforcement in a way that reduced the stigma and risk of being seen as informants and facing retaliation from the criminal groups. When combined with community dialogue, early intervention policies and violence interruption programmes, these kinds of approaches are further reinforced.

Of course, not all temporary truces and ceasefires include such measures or lend themselves to positive outcomes. For example, the peace may be merely a temporary lull in violence that exists at the discretion of criminal groups, helping local communities escape the ravages of violence for a moment, but leaving them dependent and at the mercy of the criminal groups (and separated from the state). Alternatively, the ephemeral nature of government socio-economic support may frustrate members of the criminal group, as in Belize; while simultaneously the agreement to adopt less heavy-handed police responses can anger affected communities, as in El Salvador. Such dynamics are as likely to create lasting distrust as motivate a desire to try negotiating a better deal. This can become very costly for the politicians and law enforcement officials who sometimes sponsor talks, in terms of political capital, re-election prospects, career advance and authority.

The negotiation of enforcement mechanisms might have helped improve outcomes in some cases but they were rarely included in the agreements. Sometimes – such as in the gang truces in South Africa (Westbury) and Jamaica – dispute resolution mechanisms and monitoring systems could be mounted. In Denmark and Norway, where crime is the exception, law enforcement is already highly effective, so special new enforcement measures were unnecessary elements of the dialogue process. Elsewhere, however, the absence of effective enforcement mechanisms was a major vulnerability.

In the absence of accompanying enforcement mechanisms, communities, mediators and sometimes the criminal groups themselves may seek other forms of commitment to enhance the credibility and enforceability of the deals. In the gang truce in Jamaica, this included a signing ceremony held in a stadium and covered by media; in South Africa (Westbury), there were pledges and representations made to and by local communities; and in Haiti, the international peace and social inclusion NGO held weekly community

celebrations and reward ceremonies that helped reduce violence. When combined with other measures – such as apologies, restorative justice, reintegration programmes, education and job training services and legal job opportunities for members of criminal groups and marginalised communities – the credibility of the effort can be increased further still, even without group transformation or lasting violence reduction.

It is, however, noteworthy that in several of the examined cases, the criminal groups that agreed to ceasefires did not explicitly agree to forgo all criminal activities. Many persisted in local extortion, robberies, and drug retail (although pre-existing conditions on the ground and their established involvement in such activities often determined how much they intensified or reduced activities in the wake of ceasefires). For example, in the months after El Salvador's *maras* deal, when violence radically dropped, gang extortion and control of local populations increased. In contrast, during temporary ceasefires in Jamaica, both cases in South Africa and both cases in Trinidad and Tobago, violent robberies, rapes and extortion sometimes also temporarily declined.

Overall, the ability to successfully conclude negotiations and at least temporarily change criminal group behaviour tended to be easier in the case of criminal groups whose rivalries, antagonisms and violent exchanges were motivated principally by matters of honour. In the Nordic motorcycle gang cases, but also in places like South Africa (Westbury), the negotiation fostered lasting changes in groups' behaviour. By contrast, where drug trafficking was central to a group's operations, behaviour modification was far more difficult – and the differential patterns played out in microscale, even within cases. For example, in several of the Latin American and Caribbean cases, those most involved in drug trafficking were the most resistant to deals, in many cases refusing to participate or defecting afterwards. The most plausible explanation is that the stakes generated by drug trafficking or other major illicit economies can be much higher than those related to micro-territories, honour and fights over girlfriends. Yet, law enforcement with strong deterrence capacity can trump violence proclivities and lack of susceptibility to negotiated outcomes even in the drug trade. In the U.S., the same Mexican drug trafficking groups that create warlike conditions in Mexico behave strikingly peacefully, rarely resorting to homicides. In the Nordic countries, motorcycle gang members were involved in drug trafficking, but potent institutional actions stimulated their interest in negotiations, as they sought to reduce the weight of law enforcement bearing on them, even as they did not eschew involvement in drug trafficking.

Beyond group or system-level outcomes, positive results can also materialise at an individual level. Even if criminal groups withdraw from a negotiated truce or violence reduction programme, gang members can acquire valuable conflict and anger management techniques. Indeed, even if the group is not disarmed, a mind can be disarmed and retrained away from violence as the first or sole response. Since violence can produce contagion effects (much like a virus according to the influential work of Dr. Gary Slutkin), developing disruptors and enabling individual members to adopt less violent behaviour patterns can generate cumulative benefits and virtuous cycles. In the examined cases, a focus on teaching members – often habituated from a young age to violence and a disregard for rules – to adopt patterns of responsibility and nonviolence

was a purposeful element, among others, of the ceasefire and violence reduction deals in Timor-Leste and Jamaica.

Public health responses to chronic and gang violence can also operate in the absence of the group-level negotiations examined in this paper. There is a long practice of such approaches from Chicago to Los Angeles, to cities in the UK and Central America. When these are mounted in the context of broader group deals, the leadership and membership of criminal groups will likely be less prone to act as spoilers, and individual and group-level dynamics can be synchronised and amplified.

Negative spillover effects were nevertheless noteworthy in some of the examined cases. For example, in Trinidad and Tobago (Gonzalez), an inadvertent side effect of the inter-gang mediation was the formation of an alliance among two of the gangs, which saw them violently attack a rival group and murder several of its members. Negotiations can also generate the splintering of criminal groups, with whole factions breaking off. While this can remove some members from the dispute and the violence (at least if they make a deal with the government, as in Ecuador), it can also provoke more fighting and further fragmentation among the remaining ones, as in Guerrero, Mexico.

The larger concern of any negotiation with a criminal group is that the process may increase various dimensions of its power, unless it is fully disbanded or transformed. Whether the negotiating counterpart is the government, the international community, an NGO or some other third party, the talks – unless they remain entirely secret – will implicitly accord the criminal group a level of recognition and status. This can strengthen it vis-à-vis other criminal groups and local populations, and perhaps even politicians and law enforcement actors. This undesirable strengthening does not imply that negotiations should not take place, as the new dynamics or secured objectives may well trump problematic side effects. However, negotiators need to be cognisant of these effects and active in mitigating them (e.g., by purposefully and continuously strengthening local communities and civil society, so they can better counter the criminal group's increased power).

A similar concern is the moral hazard of criminal groups learning to increase violence to generate repeated payoffs from government actors, politicians and business persons, in the form of new temporary contracts or public or private sector handouts. This is a familiar outcome of collusion with any armed group; one which can motivate new recruits and habituate political actors and entire institutions to rely on criminal groups to deliver votes, temporarily pacify neighbourhoods or extract rents. Politicians thereupon lose an interest in genuinely pacifying communities, reducing violent criminality, removing criminal groups' territorial dominion and bringing an accountable, inclusive and responsive state into the area. Instead, their interest becomes to perpetuate a criminal group's control of marginalised territories and populations. Such highly problematic alliances, while not the focus of this study, can nevertheless taint sincere negotiation efforts.

In this regard, the more piecemeal and limited the negotiation process and outcome, the more corporatist-handout any deal will appear and the greater the moral hazard. The challenge, however, is that even well-meaning governments and third parties – including

several in the examined cases – may lack the economic resources and capacity to deliver properly on bona fide accords with criminal groups that could assist crime-ridden areas. An alternative might be to build in systemic tools to sanction politicians and others who might be tempted to use negotiations to co-opt criminal groups for electoral and patronage purposes. Any such revealed alliance should not only land the persons in court, but also result in sanctions for the political party, as in Colombia's empty-seat law that emerged in the wake of the *parapolítica* scandal.

Conclusion and Recommendations

That negotiations with criminal groups can collapse, produce negative outcomes upon implementation or generate moral hazards along the way does not imply that they should be ruled out *a priori* as a tool for mitigating crime and violence. Equal or worse problems can stem from perpetuating exhausted, unproductive law enforcement policies that fail to curb violence; consign communities to systems of criminal violence and governance; and fail to respond innovatively to changing circumstances.

What this research shows is that, if well designed and managed, negotiation can be an important tool for reducing the violence associated with criminal groups. This is especially so when it part of a comprehensive local or national strategy involving multiple, synchronised interventions that balance prevention and punishment goals – much as transitional justice teaches. Negotiation with criminal groups can also produce significant outcomes even when not part of such a comprehensive strategy, though they will then tend to carry greater dangers.

While transformative settlement negotiations that seek to end participation in illegality and violence altogether are possible and desirable with criminal groups, conditions are rarely auspicious enough. Even when such conditions exist and a deal is reached, the chance that it will be sustained and executed effectively depends upon robust infrastructure for implementation and constant monitoring. Nevertheless, even negotiations with more limited goals, such as temporary or sustained reductions in violence, can be worthwhile, delivering important benefits to local communities and the state and serving as confidence-building measures or starting points for broader transitions to lawful order.

In both scenarios – transformative and limited – the likelihood of successful outcomes increases when state-of-the-art practices of modern peace negotiations inform the process and are adopted as guiding principles. Indeed, much of the theory and practice of peace negotiations with militant groups can, and thus should, be applied directly and productively to negotiations with criminal groups. Relevant also are the axiomatic rules: the smaller the risk, the smaller the potential reward and the lower the cost of failure; and the larger the risk, the larger the potential reward and the higher the cost of failure.

Either way, preparation and planning for negotiation must distinguish between cases in which the goal is to get the criminal group to disarm or transform and those that have the goal of temporarily pausing the violence and related pernicious practices (e.g.,

recruitment of children). These different objectives imply different negotiation choices, and will shape the intensity of the demands the criminal groups will make. The resulting balance will also shape the extent to which governments may need to make larger concessions, such as greater legal leniency or the provision of meaningful socio-economic benefits to members of the criminal group upon disbandment or legalisation.

In the case of narrower deals, even greater care needs to be taken to minimise moral hazard and perverse side effects. Failure to reach agreement or deliver subsequent benefits can be costly, as knowledge of the failure spreads not only within the locality of the negotiations but also beyond. Moreover, deals that do not result in a group's transformation or dismantling tend to increase the group's social and political capital vis-à-vis rivals, local populations and politicians and governments. Every time negotiators sit down with criminal groups, they should thus seek to walk away with some gain, especially in terms of institutional strengthening, victim support and/or community empowerment. Anchoring nonviolent dispute resolution mechanisms and rules for addressing breaches into a negotiated agreement is another way to reduce moral hazards and manage foreseeable risks.

The implication of the challenges and downsides of negotiating with criminal groups, of course, is not that all negotiations should be rejected. Instead, the examined cases underscore above all the need to strategise with exceptional care. In some cases, this might imply waiting for a riper moment, such as when a hurting stalemate is reached; when the state has been able to strengthen institutions, including local enforcement power; when the group has become more unified, so its leaders can impose the agreed deal; or when security dilemmas or spoilers can be addressed successfully. The paradox is that, while "getting to yes" may be hard with cohesive criminal groups precisely because of their cohesion, the deals with them have a better chance of lasting implementation than ones with groups prone to splintering and fragmentation.

The cases also demonstrate that the potency of law enforcement and the increase in its ability to impose significant costs in terms of arrests and incapacitation can play a key role in driving criminal groups to the negotiation table. Effective state presence, law enforcement and rule-of-law systems also reduce the concessions governments need to make to reach an agreement. In this regard, negotiations should complement and fit within broader institutional strategy rather than seek to replace or displace it. Indeed, if negotiations with criminal groups take place without parallel efforts to strengthen the state and make institutions more effective, accountable and inclusive, they run a greater risk of empowering criminal groups and/or increasing corruption. As the Extraditables case in Colombia highlights, however, negotiations may also provide an urgent breathing space, allowing for a process of strengthening institutions over time.

Honour, identity and dignity should also be actively taken into account when negotiating with criminal groups. To a surprising degree, these can serve as building blocks for transformation-oriented deals when the concerned group is strongly cohesive, allowing a kind of sidestep of the endgame impossibility of the group 'staying criminal'. Likewise, any strategic use of sticks (law enforcement and effective prosecution) and carrots (negotiated deals) should be complemented with crime prevention and diversion strategies.

These may include 1) making it more difficult for crime to take place, such as by hardening targets, reducing opportunities for crime or establishing community policing and better protections to victims; and 2) adopting non-coercive persuasion and interruption strategies that seek to divert potential recruits from interactions with criminal groups, thus disrupting the contagion of criminal violence.

Ultimately, unlike peace talks (which literally aim to end wars, not merely reduce their occurrence), negotiations with criminal groups are unlikely to end all major crime in an area. They can reduce violence and particular types of criminal behaviour, or even result in disarmament or the conversion of groups into legal associations. However, some types of crime are likely to persist or return. As such, the minimal objective of reduced violence must always be accompanied by the reinforced goals of institutional strengthening and civic empowerment. Indeed, as with all anti-crime interventions, a key purpose of negotiations with criminal groups should be to help citizens and communities be less dependent on criminal groups, while creating a dynamic fostering greater public trust in the state and greater dialogue across stakeholder groups.

To this end, the vast field of peace mediation – as well as the theory and practice of transitional justice – can serve as important repositories of knowledge and lessons for improved negotiations with criminal groups in future. These improvements will be critical to overcoming the pervasive social, political and economic problems associated with criminal groups – and leveraging the substantial scope for greater outcomes in future negotiations with such groups. The key takeaways revealed in this IFIT project aim merely to provide a strong, evidence-informed starting point for the hard work ahead.