

COUR PÉNALE INTERNATIONALE

BUREAU
DU PROCUREUR

INTERNATIONAL CRIMINAL COURT

OFFICE OF
THE PROSECUTOR

To	Judge Tomoko Akane , President; Judge Rosario Salvatore Aitala , First Vice-President; Judge Reine Alapini-Gansou , Second Vice-President	From	Mr Mame Mandiaye Niang Deputy Prosecutor Officer-in-charge Office of the Prosecutor 
Date	21 August 2026	Attachment(s)	1 (copy of the referral inc. 3 annexes)
Ref.	OTP2026/005926	Copies	Mr Osvaldo Zavala Giler, Registrar
Subject	Notification Referral from the Republic of Colombia pursuant to articles 13(a) and 14(1) of the Rome Statute regarding the situation in the Republic of Colombia		

1. In accordance with regulation 45 of the Regulations of the Court, I hereby formally notify you that, on 7 August 2026, the Office of the Prosecutor (“the Office”) received from the Government of the Republic of Colombia a State Party referral pursuant to articles 13(a) and 14(1) of the Rome Statute (“Statute”). The referral was signed by Mr Gustavo Petro Urrego, who was at that time the President of Colombia. Later on that same day, after the referral was received, Mr Abelardo de la Espriella was sworn in as the current President of Colombia.
2. The referral alleges the occurrence of “past, and ongoing[,] crimes [...] committed on the territory of Colombia or by its nationals” (see Annex). Specifically, it recalls the Office’s previous finding of a “reasonable basis to believe” that crimes against humanity and war crimes had been committed including in the context of “forced displacement, sexual and gender-based crimes, and killings of civilians presented as combat casualties (‘false positives’).” It also refers to ongoing “violence affecting former FARC-EP combatants, social leaders and human rights defenders” and expresses concern about potentially “heightened risk” including of “political persecution and incitement to violence”.
3. The referral requests the Office to “urgently reconsider the assessment of complementarity that underpinned the closure of the preliminary examination in October 2021 and proceed, should the statutory threshold be met, to open an investigation”, in light of its “view of a significant change in circumstances affecting the capacity of the

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Colombian State to genuinely investigate, prosecute and sanction those most responsible” for alleged crimes under the Statute.

4. As the referral recognises, the Office had previously conducted a detailed preliminary examination of the situation in Colombia, initiated *proprio motu* by the Prosecutor in June 2004 under article 15 of the Statute. That preliminary examination was closed in October 2021, in light of the steps taken by the Republic of Colombia to address alleged Rome Statute crimes.¹ This included the Cooperation Agreement of 28 October 2021, in which the Office and the Colombian authorities agreed appropriate modalities for mutual cooperation and support. The Office takes this opportunity to note with appreciation the exemplary cooperation with the Colombian authorities to date.
5. Nevertheless, since the Government of the Republic of Colombia has now submitted a valid referral under articles 13(a) and 14(1) of the Statute—and there is neither a relevant open investigation, nor any Pre-Trial Chamber already assigned—regulation 45 states materially that “[t]he Prosecutor *shall* inform the Presidency” in order to “facilitate the timely assignment” of the situation to a Pre-Trial Chamber. The Office hereby complies.
6. Likewise, in these circumstances, the Office must proceed to conduct a preliminary examination of the information received, strictly guided by the requirements of the Statute. Given the lengthy previous engagement of the Office with the Republic of Colombia, this will be focused on the requirements of article 53(1)(b) of the Statute. Consistent with the Statute and the established practice of the Court, the Office’s assessment will be carried out objectively, on the basis of the available factual information. Within the framework of the Cooperation Agreement, to date, the Office has taken the view that Colombia is taking concrete and progressive steps genuinely to investigate and prosecute alleged crimes falling within the jurisdiction of the Court.
7. Since the inauguration of President Abelardo de la Espriella, the Office has held positive consultations with relevant Colombian authorities in which they have reiterated that they will maintain their constructive engagement with the Office in line with the Cooperation Agreement. This could form the basis to resolve the preliminary examination expeditiously, returning to the state of affairs preceding the referral.
8. I attach the referral dated 7 August 2026, which was transmitted to the Office by e-mail from the Ministry of Foreign Affairs of Colombia.

¹ See e.g. [ICC Office of the Prosecutor, Report on the Situation in Colombia, 30 November 2023](#)

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Ms. Nazhat Shameem Khan and Mr. Mame Mandiaye Niang

Deputy Prosecutors
Office of the Prosecutor
International Criminal Court
The Hague, Kingdom of the Netherlands

Referral by the Republic of Colombia pursuant to Articles 13(a) and 14 of the Rome Statute, and request to reconsider complementarity and open an investigation in light of a significant change in circumstances affecting genuine national proceedings in Colombia

Mister Prosecutor, Madam Deputy Prosecutor,

1. The Republic of Colombia, acting pursuant to Articles 13(a) and 14 of the Rome Statute, hereby refers to the Prosecutor the situation in Colombia within the jurisdiction of the Court and respectfully requests that the Office of the Prosecutor urgently reconsider the assessment of complementarity that underpinned the closure of the preliminary examination in October 2021 and proceed, should the statutory threshold be met, to open an investigation into past, and ongoing crimes, in addition to the prevention of future crimes within the jurisdiction of the Court committed on the territory of Colombia or by its nationals in relation to the serious circumstances that will be later explained.
2. This referral is made in view of a significant change in circumstances affecting the capacity of the Colombian State to genuinely investigate, prosecute and sanction those most responsible for crimes under the Rome Statute, including circumstances expressly contemplated by Article 1 and 6 of the Cooperation Agreement signed on 28 October 2021 between the Office of the Prosecutor and the Government of Colombia.
3. This Cooperation Agreement was a result of the preliminary investigation previously made by the Office of the Prosecution. the 2023 Report shows that the Office of the Prosecutor's assessment evolved through three distinct stages. First, during the preliminary examination, the Office identified the principal accountability gaps in Colombia. These included proceedings

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relating to the promotion and expansion of paramilitary groups, forced displacement, sexual and gender-based crimes, and killings of civilians presented as combat casualties ("false positives"). On that basis, the Office concluded that there was a reasonable basis to believe that crimes against humanity and war crimes within the jurisdiction of the Court had been committed in Colombia. At the same time, the Office considered that domestic proceedings remained insufficient with respect to several of the potential cases identified during the examination. Second, the Office closely monitored the implementation of the Colombian transitional justice process, particularly following the 2016 Peace Agreement. While initially expressing concerns that legislative or institutional developments could undermine genuine criminal proceedings, the Office gradually shifted its assessment as the Comprehensive System of Truth, Justice, Reparation and Non-Repetition, and particularly the Special Jurisdiction for Peace (SJP - JEP), became operational. Throughout this period, the Prosecutor maintained continuous engagement with Colombian authorities and other stakeholders while assessing whether the new institutions were capable of genuinely investigating and prosecuting Rome Statute crimes. Third, between 2019 and 2021, the Office concluded that Colombia had made significant progress in fulfilling its duty to investigate and prosecute conduct relevant to the potential ICC cases. In 2019, it acknowledged measurable progress and announced that it would identify benchmarks to determine whether the preliminary examination could be concluded. In 2020, it recognized that Colombian authorities had taken meaningful steps to address conduct amounting to Rome Statute crimes, paying particular attention to the progress achieved in the SJP's macro-cases. Finally, in 2021, the Office concluded that the scale and pace of domestic proceedings, particularly before the SJP, demonstrated that the Colombian authorities were no longer inactive and that there was insufficient evidence to conclude that they were unwilling or unable to genuinely investigate and prosecute Rome Statute crimes. Consequently, the preliminary examination was closed.

4. The previous context is especially important because it shows an evident advance in the domestic proceedings in Colombia after the Peace Agreement signed in 2016 and, with it, the creation of the System of Truth, Justice, Reparation and Non-Repetition, with all its institutions including the Search Unit for Persons Reported Missing and, especially the Special Jurisdiction of Peace. As a result, the determination was reached within the context of a cooperative

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framework designed to support and sustain domestic accountability efforts, including through continued engagement with the Special Jurisdiction for Peace (SJP), the ordinary justice system, and other relevant national institutions, while noting that, prior to the establishment of the System of Truth, Justice, Reparation and Non-Repetition, Colombia faced persistent difficulties in addressing Rome Statute crimes due to the complexity of its armed conflict and institutional context, which ultimately led to the adoption of a specialized transitional justice framework.

4. Taking the previous context into account, it is important to note that, despite of the decision to close the examination, the Prosecutor expressly preserved the power of the Office of the Prosecutor to revisit that assessment. Article 6 of the Cooperation Agreement provides that the Office may reconsider its assessment of complementarity in light of any significant change in circumstances, including any measures that might significantly hamper the progress and/or genuineness of relevant proceedings and the enforcement of effective and proportionate penal sanctions of a retributive and restorative nature; initiatives resulting in major obstructions to the mandate and/or proper functioning of relevant jurisdictions; or any suspension or revision of the judicial scheme set forth in the peace agreement in a manner that might delay or obstruct the conduct of genuine national proceedings. Furthermore, the Government also pledge to continue: (i) safeguarding their established constitutional and legislative framework and structure; (ii) allocating the budget required for their implementation; and (iii) preventing any interference with their functions. The Government further commits to: (iv) ensuring the safety and security of judicial and prosecutorial personnel as well as participants appearing before the different accountability mechanisms, and (v) promoting full cooperation and coordination between the different State entities assigned with discharging duties with respect to accountability, in particular between the Attorney General's Office and the Special Jurisdiction for Peace.

5. The present referral is based on such developments. Credible and serious information presently available to the Republic indicates announced, initiated and/or imminent measures that threaten to dismantle, defund, obstruct, paralyze or otherwise materially weaken key institutions and processes on which the 2021 admissibility and complementarity assessment

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relied, including the Special Jurisdiction for Peace, the wider Comprehensive System of Truth, Justice, Reparation and Non-Repetition, the implementation of restorative sanctions, institutions linked to the search for disappeared persons, and structures supporting the reincorporation of former combatants and the broader peace architecture, all of which constituted central components of the institutional framework upon which the Office relied in its 2021 assessment of admissibility under the principle of complementarity, as previously noted.

7. The Office's 2023 report confirms that the closure of the preliminary examination did not terminate scrutiny but marked the beginning of a new phase of cooperative complementarity, expressly intended to ensure that relevant domestic proceedings would be sustained and to guard against reversals of circumstances that could later justify renewed action by the Office. The same report underlines that the Office has continued to monitor, among other matters, violence affecting former FARC-EP combatants, social leaders and human rights defenders, the implementation of Special Jurisdiction for Peace sanctions, the proper functioning of relevant jurisdictions, and any factors that may hinder the progress or genuineness of national proceedings.

8. Information transmitted with this referral indicates a serious and imminent risk that the institutional, financial, normative and operational foundations of those proceedings may be materially impaired. Among the principal concerns are announced intentions to dismantle or severely weaken the transitional justice architecture created pursuant to the 2016 Final Peace Agreement; to undermine the autonomy, financing or functioning of the Special Jurisdiction for Peace; to discontinue or neutralize institutions supporting the reincorporation of former combatants, such as the Agency for Reincorporation and Normalization (ARN); institutions supporting victims' reparation such as Victims' Unit (UARIV); institutions carrying out the search for persons reported missing, such as the Search Unit for Persons Deemed as Missing (UBPD), established in response to one of the most serious humanitarian consequences of the Colombian armed conflict; and institutions supporting the coordination and implementation of

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the Peace Agreement, such as the Unit for Implementation of the Peace Agreement¹. Additionally, public statements indicated an intention to replace rights-based and accountability-based approaches with coercive security policies, creating a substantial risk of renewed grave violations and renewed impunity. These actions would effectively reverse the institutional and legal developments that underpinned the Office's decision to close the preliminary examination, recreating institutional conditions comparable to those that existed when the Office initiated the preliminary examination, as outlined above. By dismantling the institutional framework established to address the Office's initial concerns regarding the progress of domestic proceedings, the prioritization of investigations, and advances in holding those most responsible accountable, they would undermine the very foundations upon which the Office's 2021 assessment of admissibility under the principle of complementarity relied. This is particularly true with respect to investigations concerning forced displacement, sexual and gender-based crimes, and so-called "false positives", which the Office consistently identified throughout the preliminary examination as priority areas requiring particular attention.⁹ Information transmitted with this referral further raises concern that public rhetoric and announced policy orientations may place victims, human rights defenders, social leaders, former combatants, judicial officers, witnesses and participants in accountability proceedings at heightened risk. This is of particular relevance because the Cooperation Agreement specifically identifies the safety and security of judicial and prosecutorial personnel and participants as a core commitment of the Colombian State, while the Office has stressed that such guarantees are essential to the viability of genuine proceedings.

10. Information transmitted with this referral further indicates a serious risk of stigmatization, political persecution and incitement to violence against particular social and political sectors, including progressive and left-wing movements, human rights defenders and other actors historically exposed to violence in Colombia. Public statements attributed to the incoming leadership include language portraying such sectors as enemies to be eradicated, together with rhetoric grounded in an "internal enemy" conception of national security. In the Colombian

¹ See Annex III for a detailed overview

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context, and having regard to the country's history of political violence, including the persecution suffered by the *Unión Patriótica* as recognized by the Inter-American Court of Human Rights, such discourse is relevant as a factor that may heighten the risk of persecution, undermine civic space and judicial participation, and impair the conditions necessary for the conduct of genuine national proceedings.

11. The Republic emphasizes that this referral is not founded upon mere political disagreement or divergence. It is grounded on the factual and institutional premises upon which the Office deferred to domestic proceedings in 2021 are now under serious threat. The structures, resources, independence and effective operation of the very jurisdictions relied upon for complementarity are under serious threats of being dismantled, obstructed or deprived of the means necessary to function genuinely. **As a consequence, the basis for continued deference is correspondingly called into question under Articles 17 and 53 of the Rome Statute, as read together with Article 6 of the Cooperation Agreement.**

12. The Office has already determined that, in the situation in Colombia, there is a reasonable basis to believe that crimes against humanity under Article 7 and war crimes under Article 8 of the Statute were committed by different actors, including murder, forcible transfer, imprisonment or other severe deprivation of physical liberty, torture, rape and other forms of sexual violence, attacks against civilians, hostage-taking and the conscription, enlistment and use of children under fifteen in hostilities. The Office has likewise identified, throughout its long engagement with Colombia, accountability gaps and priority areas including proceedings relating to the promotion and expansion of paramilitary groups, forced displacement, sexual and gender-based crimes, and extra-judicial killings (so-called false positive cases).

13. The present concern is therefore concrete and immediate. It concerns the serious risk that existing and developing domestic proceedings relating to some of the gravest crimes under international law may be delayed, obstructed, frustrated or rendered ineffective; that sanctions may not be enforced in an effective and proportionate manner; and that those most responsible may, in practice, be shielded from accountability through the dismantling or incapacitation of the institutional framework that currently sustains the relevant proceedings, in a broader

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environment of stigmatization and political persecution that further undermines the security and participation of affected sectors in those proceedings.

14. The risk is especially acute in relation to the Special Jurisdiction for Peace and the wider Comprehensive System of Truth, Justice, Reparation and Non-Repetition, which the Office regarded as central to Colombia's accountability architecture and as a principal basis for its 2021 admissibility assessment. The announced rollback of that architecture, including threats to its autonomy, financing and implementation capacity, creates a serious prospect of de facto impunity, particularly in contested proceedings, in the implementation of restorative sanctions, and in processes designed to secure truth, justice, reparation and guarantees of non-repetition for victims. All this is furthermore accompanied by stigmatization and threats of political persecution against sectors whose participation and protection are essential for those processes to remain genuine and effective².

15. The Republic of Colombia therefore respectfully requests the Office of the Prosecutor to treat this communication and the accompanying annexes as a formal referral under Articles 13(a) and 14 of the Rome Statute and as a request that the Prosecutor exercise the authority expressly preserved by Article 6 of the Cooperation Agreement in order urgently to reconsider the 2021 assessment of complementarity. The Republic recalls that, when closing the preliminary examination in October 2021, the Prosecutor's determination under Article 53(1) of the Statute not to proceed with an investigation rested on his assessment that the relevant potential cases no longer appeared admissible under Article 17 in light of genuine domestic proceedings, a factual assessment which did not yet take into account the subsequent announced rollback of the peace and transitional justice architecture, nor the emerging environment of stigmatization and possible political persecution affecting sectors whose protection and participation are essential to those proceedings.

16. In particular, the Republic respectfully requests the Office to assess whether the information now available demonstrates one or more of the following:

² See Annex III for a detailed overview

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- (a) measures significantly hampering the progress or genuineness of relevant proceedings;
- (b) measures impairing the enforcement of effective and proportionate penal sanctions of a retributive and restorative nature;
- (c) initiatives resulting in major obstructions to the mandate and/or proper functioning of relevant jurisdictions;
- (d) suspension or revision of the judicial scheme set forth in the peace agreement in a manner that delays or obstructs the conduct of genuine national proceedings;
- (e) patterns of stigmatization, intimidation or possible political persecution directed at sectors whose protection and participation are essential to the conduct of genuine national proceedings and the functioning of the relevant accountability institutions.

17. Should the Office conclude that the requirements of the Statute are met, the Republic of Colombia respectfully requests the Prosecutor to reconsider in light of Article 6 of the Cooperation Agreement and the current situation in Colombia in order to determine whether the statutory conditions are satisfied and that the potential case would be admissible under Article 17.

18. Pursuant to Article 14(2) of the Statute, the Republic further specifies that the circumstances relevant to this referral include, but are not limited to:

- (a) legislative, executive, administrative, budgetary and institutional measures that dismantle, suspend, revise, obstruct or materially weaken the operation of the Special Jurisdiction for Peace and other relevant accountability bodies;
- (b) conduct impairing the implementation or enforcement of sanctions, restorative measures, or judicial orders issued in relation to crimes under the jurisdiction of the Court;
- (c) acts or omissions placing victims, witnesses, former combatants, judicial personnel, prosecutors, human rights defenders and other participants in accountability mechanisms at heightened risk;
- (d) measures that undermine cooperation and coordination between the Attorney General's Office, the Special Jurisdiction for Peace and other institutions tasked with accountability; and
- (e) any acts, omissions or policies that may lead to shielding, unreasonable delay, obstruction, paralysis or de facto frustration of proceedings concerning those most responsible for Rome Statute crimes, including acts, omissions, public policies, institutional measures or patterns of intimidation that may contribute to renewed impunity, political persecution, violence against protected sectors, or obstruction of genuine national proceedings.

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19. The Republic of Colombia respectfully recalls that the Prosecutor's own 2023 report notes that the complementarity assessment cannot be postponed indefinitely and must be carried out on the basis of the facts as they exist, and that the Cooperation Agreement was specifically designed to reduce the risk that a closed preliminary examination would later need to be revisited as a consequence of a reversal of circumstances. Such a reversal is now credibly at issue.
20. The current Colombian government reaffirms its commitment to cooperate fully with the Court, in accordance with the Rome Statute and the Cooperation Agreement, including by providing any further records, documentation, witness information, official acts, public statements and institutional materials that the Office may require for the proper discharge of its mandate.
21. The Republic respectfully requests, consistently with the Court's legal framework governing referrals, that the Office proceed with urgency and inform the Presidency as appropriate so as to facilitate the timely handling of this referral.
22. The Republic submits this referral in the interest of safeguarding the integrity of genuine proceedings, preserving the rights of victims, preventing renewed impunity, and ensuring that the object and purpose of the Rome Statute are not defeated by regression in domestic accountability.
23. With regard to the threats to the progress of domestic proceedings, this Referral also seeks to preserve the existing cooperation with the Court in relation to Colombia's fulfilment of its obligations under the Rome Statute.
24. In support of this referral, the Republic transmits the following annexes, each of which forms an integral part of the present referral:
- Annex I:** Cooperation Agreement between the Office of the Prosecutor of the International Criminal Court and the Government of Colombia, signed on 28 October 2021.
- Annex II:** Office of the Prosecutor, *Report on the Situation in Colombia*, dated 30 November 2023.

*Presidencia de la República de Colombia***Annex III:** Record of Elements Giving Rise to Concern and Evidentiary References

24. Please accept, Mr. Prosecutor and Madam Deputy Prosecutor, the assurances of the Republic's highest consideration.



Gustavo Petro Urrego

President of the Republic of Colombia

Presidencia de la República de Colombia

Bogotá, Colombia 06 de agosto de 2026

Srs.

Nazhat Shameem Khan and Mr. Mame Mandiaye Niang

Fiscales

Oficina del Fiscal

Corte Penal Internacional

La Haya, Reino de los Países Bajos

Referido presentado por la República de Colombia con fundamento en los artículos 13(a) y 14 del Estatuto de Roma, y solicitud de reconsideración de la complementariedad y de apertura de una investigación en vista de un cambio significativo en las circunstancias que afectan la genuinidad de los procesos nacionales en Colombia

Señor Fiscal, señora Fiscal Adjunta,

1. La República de Colombia, actuando de conformidad con los artículos 13(a) y 14 del Estatuto de Roma, refiere por la presente al Fiscal la situación de Colombia dentro de la jurisdicción de la Corte y solicita respetuosamente que la Oficina del Fiscal reconsidere con urgencia la evaluación de complementariedad que sustentó el cierre del examen preliminar en octubre de 2021 y proceda, de cumplirse el umbral estatutario, a abrir una investigación sobre crímenes pasados y en curso, además de la prevención de crímenes futuros dentro de la jurisdicción de la Corte, cometidos en el territorio de Colombia o por sus nacionales, en relación con las graves circunstancias que se explicarán más adelante.

2. Este referido se presenta en vista de un cambio significativo en las circunstancias que afecta la capacidad del Estado colombiano de investigar, enjuiciar y sancionar genuinamente a los principales responsables de los crímenes previstos en el Estatuto de Roma, incluidas circunstancias expresamente contempladas en los artículos 1 y 6 del Acuerdo de Cooperación suscrito el 28 de octubre de 2021 entre la Oficina del Fiscal y el Gobierno de Colombia.

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3. Este Acuerdo de Cooperación fue resultado del examen preliminar previamente realizado por la Oficina del Fiscal. El informe de 2023 muestra que la evaluación de la Oficina del Fiscal evolucionó a través de tres etapas diferenciadas. Primero, durante el examen preliminar, la Oficina identificó las principales brechas de rendición de cuentas en Colombia. Estas incluían procesos relacionados con la promoción y expansión de grupos paramilitares, el desplazamiento forzado, los crímenes de violencia sexual y de género, y los homicidios de civiles presentados como bajas en combate ("falsos positivos"). Sobre esa base, la Oficina concluyó que existía una base razonable para creer que se habían cometido crímenes de lesa humanidad y crímenes de guerra dentro de la jurisdicción de la Corte en Colombia. Al mismo tiempo, la Oficina consideró que los procesos internos seguían siendo insuficientes respecto de varios de los casos potenciales identificados durante el examen. Segundo, la Oficina supervisó de cerca la implementación del proceso de justicia transicional colombiano, particularmente tras el Acuerdo de Paz de 2016. Si bien inicialmente expresó preocupación por que los desarrollos legislativos o institucionales pudieran socavar procesos penales genuinos, la Oficina fue modificando gradualmente su evaluación a medida que el Sistema Integral de Verdad, Justicia, Reparación y No Repetición, y en particular la Jurisdicción Especial para la Paz (JEP), se volvieron operativos. Durante este período, el Fiscal mantuvo un compromiso continuo con las autoridades colombianas y otras partes interesadas, evaluando si las nuevas instituciones eran capaces de investigar y enjuiciar genuinamente los crímenes del Estatuto de Roma. Tercero, entre 2019 y 2021, la Oficina concluyó que Colombia había logrado avances significativos en el cumplimiento de su deber de investigar y enjuiciar la conducta relevante para los posibles casos ante la CPI. En 2019, reconoció un progreso medible y anunció que identificaría parámetros de referencia para determinar si el examen preliminar podía concluirse. En 2020, reconoció que las autoridades colombianas habían tomado medidas significativas para abordar conductas constitutivas de crímenes del Estatuto de Roma, prestando especial atención a los avances logrados en los macrocasos de la JEP. Finalmente, en 2021, la Oficina concluyó que la escala y el ritmo de los procesos internos, particularmente ante la JEP, demostraban que las autoridades colombianas ya no permanecían inactivas y que no existía evidencia suficiente para concluir que no tuvieran voluntad o capacidad de investigar y enjuiciar genuinamente los crímenes del Estatuto de Roma. En consecuencia, se cerró el examen preliminar.

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4. El contexto anterior es especialmente importante porque muestra un avance evidente en los procesos internos en Colombia tras el Acuerdo de Paz firmado en 2016 y, con él, la creación del Sistema de Verdad, Justicia, Reparación y No Repetición, con todas sus instituciones, incluida la Unidad de Búsqueda de Personas dadas por Desaparecidas y, especialmente, la Jurisdicción Especial para la Paz. Como resultado, la determinación se alcanzó en el contexto de un marco de cooperación diseñado para apoyar y sostener los esfuerzos internos de rendición de cuentas, incluido el compromiso continuo con la Jurisdicción Especial para la Paz (JEP), el sistema de justicia ordinaria y otras instituciones nacionales relevantes, señalando que, antes del establecimiento del Sistema de Verdad, Justicia, Reparación y No Repetición, Colombia enfrentaba dificultades persistentes para abordar los crímenes del Estatuto de Roma debido a la complejidad de su conflicto armado y su contexto institucional, lo que finalmente condujo a la adopción de un marco especializado de justicia transicional.

5. Teniendo en cuenta el contexto anterior, es importante señalar que, pese a la decisión de cerrar el examen, el Fiscal se reservó expresamente la facultad de la Oficina del Fiscal de revisar dicha evaluación. El artículo 6 del Acuerdo de Cooperación dispone que la Oficina puede reconsiderar su evaluación de complementariedad a la luz de cualquier cambio significativo en las circunstancias, incluida cualquier medida que pueda obstaculizar significativamente el progreso y/o la genuinidad de los procesos relevantes y la ejecución de sanciones penales efectivas y proporcionadas de naturaleza retributiva y restaurativa; iniciativas que resulten en obstrucciones importantes al mandato y/o al funcionamiento adecuado de las jurisdicciones relevantes; o cualquier suspensión o revisión del esquema judicial establecido en el acuerdo de paz de manera que retrase u obstruya el desarrollo de procesos internos genuinos. Además, el Gobierno también se comprometió a continuar: (i) salvaguardando su marco y estructura constitucional y legislativa establecida; (ii) asignando el presupuesto requerido para su implementación; y (iii) previniendo cualquier interferencia con sus funciones. El Gobierno se compromete además a: (iv) garantizar la seguridad del personal judicial y fiscal, así como de los participantes que comparecen ante los distintos mecanismos de rendición de cuentas, y (v) promover la plena cooperación y coordinación entre las distintas entidades estatales encargadas de cumplir funciones relacionadas con la rendición de cuentas, en particular entre la Fiscalía General de la Nación y la Jurisdicción Especial para la Paz.

6. El presente referido se basa en dichos desarrollos. La información creíble y seria actualmente disponible para la República indica medidas anunciadas, iniciadas y/o

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inminentes que amenazan con dismantelar, desfinanciar, obstruir, paralizar o debilitar materialmente instituciones y procesos clave sobre los cuales se sustentó la evaluación de admisibilidad y complementariedad de 2021, incluida la Jurisdicción Especial para la Paz, el Sistema Integral de Verdad, Justicia, Reparación y No Repetición en su conjunto, la implementación de sanciones restaurativas, las instituciones vinculadas a la búsqueda de personas desaparecidas, y las estructuras que apoyan la reincorporación de excombatientes y la más amplia arquitectura de paz, todos los cuales constituyeron componentes centrales del marco institucional en el que se basó la Oficina en su evaluación de admisibilidad de 2021 bajo el principio de complementariedad, como se señaló anteriormente.

7. El informe de la Oficina de 2023 confirma que el cierre del examen preliminar no puso fin al escrutinio, sino que marcó el inicio de una nueva fase de complementariedad cooperativa, destinada expresamente a garantizar que los procesos internos relevantes se mantuvieran y a prevenir reversiones de las circunstancias que pudieran justificar posteriormente una acción renovada por parte de la Oficina. El mismo informe subraya que la Oficina ha continuado monitoreando, entre otras cuestiones, la violencia que afecta a excombatientes de las FARC-EP, líderes sociales y defensores de derechos humanos, la implementación de las sanciones de la Jurisdicción Especial para la Paz, el correcto funcionamiento de las jurisdicciones relevantes, y cualquier factor que pueda obstaculizar el progreso o la genuinidad de los procesos nacionales.

8. La información transmitida junto con este referido indica un riesgo serio e inminente de que los fundamentos institucionales, financieros, normativos y operativos de dichos procesos puedan verse materialmente afectados. Entre las principales preocupaciones se encuentran las intenciones anunciadas de dismantelar o debilitar gravemente la arquitectura de justicia transicional creada en virtud del Acuerdo Final de Paz de 2016; socavar la autonomía, financiación o funcionamiento de la Jurisdicción Especial para la Paz; interrumpir o neutralizar instituciones de apoyo a la reincorporación de excombatientes, como la Agencia para la Reincorporación y la Normalización (ARN); instituciones de apoyo a la reparación de víctimas, como la Unidad para las Víctimas (UARIV); instituciones encargadas de la búsqueda de personas dadas por desaparecidas, como la Unidad de Búsqueda de Personas dadas por Desaparecidas (UBPD), creada en respuesta a una de las consecuencias humanitarias más graves del conflicto armado colombiano; e instituciones de apoyo a la coordinación e

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implementación del Acuerdo de Paz, como la Unidad de Implementación del Acuerdo de Paz. Adicionalmente, declaraciones públicas indicaron la intención de sustituir los enfoques basados en derechos y en la rendición de cuentas por políticas de seguridad coercitivas, generando un riesgo sustancial de violaciones graves renovadas e impunidad renovada. Estas acciones revertirían efectivamente los avances institucionales y jurídicos que sustentaron la decisión de la Oficina de cerrar el examen preliminar, recreando condiciones institucionales comparables a las existentes cuando la Oficina inició el examen preliminar, como se señaló anteriormente. Al dismantlar el marco institucional establecido para atender las preocupaciones iniciales de la Oficina respecto del progreso de los procesos internos, la priorización de investigaciones y los avances en la rendición de cuentas de los máximos responsables, se socavarían los mismos fundamentos en los que se basó la evaluación de admisibilidad de la Oficina en 2021 bajo el principio de complementariedad. Esto es particularmente cierto respecto de las investigaciones relativas al desplazamiento forzado, los crímenes de violencia sexual y de género, y los denominados "falsos positivos", que la Oficina identificó de manera constante durante el examen preliminar como áreas prioritarias que requerían especial atención.

9. La información transmitida con este referido plantea además la preocupación de que la retórica pública y las orientaciones de política anunciadas puedan poner en riesgo elevado a víctimas, defensores de derechos humanos, líderes sociales, excombatientes, funcionarios judiciales, testigos y participantes en los procesos de rendición de cuentas. Esto es de particular relevancia porque el Acuerdo de Cooperación identifica específicamente la seguridad del personal judicial y fiscal y de los participantes como un compromiso central del Estado colombiano, mientras que la Oficina ha subrayado que dichas garantías son esenciales para la viabilidad de los procesos genuinos.

10. La información transmitida con este referido indica además un riesgo serio de estigmatización, persecución política e incitación a la violencia contra determinados sectores sociales y políticos, incluidos los movimientos progresistas y de izquierda, los defensores de derechos humanos y otros actores históricamente expuestos a la violencia

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en Colombia. Declaraciones públicas atribuidas al liderazgo entrante incluyen un lenguaje que presenta a dichos sectores como enemigos a erradicar, junto con una retórica basada en una concepción del "enemigo interno" de la seguridad nacional. En el contexto colombiano, y teniendo en cuenta la historia de violencia política del país, incluida la persecución sufrida por la Unión Patriótica según lo reconocido por la Corte Interamericana de Derechos Humanos, dicho discurso es relevante como un factor que puede aumentar el riesgo de persecución, socavar el espacio cívico y la participación judicial, y afectar las condiciones necesarias para el desarrollo de procesos internos genuinos.

11. La República subraya que este referido no se funda en un simple desacuerdo o divergencia política. Se basa en que las premisas fácticas e institucionales sobre las cuales la Oficina difirió a los procesos internos en 2021 se encuentran ahora bajo seria amenaza. Las estructuras, los recursos, la independencia y el funcionamiento efectivo de las mismas jurisdicciones en las que se basó la complementariedad están bajo serias amenazas de ser desmanteladas, obstruidas o privadas de los medios necesarios para funcionar genuinamente. Como consecuencia, la base para la deferencia continua queda correspondientemente cuestionada en virtud de los artículos 17 y 53 del Estatuto de Roma, leídos junto con el artículo 6 del Acuerdo de Cooperación.

12. La Oficina ya ha determinado que, en la situación de Colombia, existe una base razonable para creer que se cometieron crímenes de lesa humanidad conforme al artículo 7 y crímenes de guerra conforme al artículo 8 del Estatuto por parte de distintos actores, incluidos homicidio, traslado forzoso, encarcelamiento u otra privación grave de la libertad física, tortura, violación y otras formas de violencia sexual, ataques contra civiles, toma de rehenes, y el reclutamiento, alistamiento y utilización de niños menores de quince años en hostilidades. La Oficina ha identificado igualmente, a lo largo de su prolongado compromiso con Colombia, brechas de rendición de cuentas y áreas prioritarias, incluidos los procesos relacionados con la promoción y expansión de grupos paramilitares, el desplazamiento forzado, los crímenes de violencia sexual y de género, y los homicidios extrajudiciales (los llamados casos de falsos positivos).

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13. La preocupación actual es, por tanto, concreta e inmediata. Se refiere al riesgo serio de que los procesos internos existentes y en desarrollo, relativos a algunos de los crímenes más graves conforme al derecho internacional, puedan verse retrasados, obstruidos, frustrados o ineficaces; que las sanciones no se hagan cumplir de manera efectiva y proporcionada; y que los máximos responsables puedan, en la práctica, quedar protegidos de la rendición de cuentas mediante el desmantelamiento o la incapacitación del marco institucional que actualmente sostiene los procesos relevantes, en un entorno más amplio de estigmatización y persecución política que socava aún más la seguridad y la participación de los sectores afectados en dichos procesos.

14. El riesgo es especialmente agudo en relación con la Jurisdicción Especial para la Paz y el más amplio Sistema Integral de Verdad, Justicia, Reparación y No Repetición, que la Oficina consideró central para la arquitectura de rendición de cuentas de Colombia y como base principal de su evaluación de admisibilidad de 2021. El anunciado desmonte de dicha arquitectura, incluidas las amenazas a su autonomía, financiación y capacidad de implementación, genera una seria posibilidad de impunidad de facto, particularmente en los procesos en curso, en la implementación de sanciones restaurativas, y en los procesos diseñados para garantizar la verdad, la justicia, la reparación y las garantías de no repetición para las víctimas. Todo esto viene además acompañado de estigmatización y amenazas de persecución política contra sectores cuya participación y protección son esenciales para que dichos procesos sigan siendo genuinos y efectivos.

15. La República de Colombia solicita, por tanto, respetuosamente a la Oficina del Fiscal que trate esta comunicación y sus anexos como un referido formal en virtud de los artículos 13(a) y 14 del Estatuto de Roma, y como una solicitud para que el Fiscal ejerza la facultad expresamente reservada en el artículo 6 del Acuerdo de Cooperación, a fin de reconsiderar con urgencia la evaluación de complementariedad de 2021. La República recuerda que, al cerrar el examen preliminar en octubre de 2021, la determinación del Fiscal conforme al artículo 53(1) del Estatuto de no proceder con una investigación se basó en su evaluación de que los posibles casos relevantes ya no parecían admisibles conforme al artículo 17, a la luz de procesos internos genuinos, una

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evaluación fáctica que aún no tomaba en cuenta el posterior desmonte anunciado de la arquitectura de paz y justicia transicional, ni el entorno emergente de estigmatización y posible persecución política que afecta a los sectores cuya protección y participación son esenciales para dichos procesos.

16. En particular, la República solicita respetuosamente a la Oficina que evalúe si la información actualmente disponible demuestra uno o más de los siguientes supuestos:

(a) medidas que obstaculizan significativamente el progreso o la genuinidad de los procesos relevantes;

(b) medidas que afectan la ejecución de sanciones penales efectivas y proporcionadas de naturaleza retributiva y restaurativa;

(c) iniciativas que resulten en obstrucciones importantes al mandato y/o al funcionamiento adecuado de las jurisdicciones relevantes;

(d) suspensión o revisión del esquema judicial establecido en el acuerdo de paz de manera que retrase u obstruya el desarrollo de procesos internos genuinos;

(e) patrones de estigmatización, intimidación o posible persecución política dirigidos contra sectores cuya protección y participación son esenciales para el desarrollo de procesos internos genuinos y el funcionamiento de las instituciones de rendición de cuentas relevantes.

17. En caso de que la Oficina concluya que se cumplen los requisitos del Estatuto, la República de Colombia solicita respetuosamente al Fiscal que reconsidere, a la luz del artículo 6 del Acuerdo de Cooperación y de la situación actual en Colombia, con el fin de determinar si se satisfacen las condiciones estatutarias y si el caso potencial sería admisible conforme al artículo 17.

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18. De conformidad con el artículo 14(2) del Estatuto, la República precisa además que las circunstancias relevantes para este referido incluyen, entre otras:

(a) medidas legislativas, ejecutivas, administrativas, presupuestales e institucionales que dismantelen, suspendan, revisen, obstruyan o debiliten materialmente el funcionamiento de la Jurisdicción Especial para la Paz y otros organismos de rendición de cuentas relevantes;

(b) conductas que afecten la implementación o el cumplimiento de sanciones, medidas restaurativas u órdenes judiciales dictadas en relación con crímenes dentro de la jurisdicción de la Corte;

(c) actos u omisiones que expongan a víctimas, testigos, excombatientes, personal judicial, fiscales, defensores de derechos humanos y otros participantes en los mecanismos de rendición de cuentas a un riesgo elevado;

(d) medidas que socaven la cooperación y coordinación entre la Fiscalía General de la Nación, la Jurisdicción Especial para la Paz y otras instituciones encargadas de la rendición de cuentas; y

(e) cualquier acto, omisión o política que pueda conducir a proteger de la justicia, retrasar injustificadamente, obstruir, paralizar o frustrar de facto los procesos relativos a los máximos responsables de los crímenes del Estatuto de Roma, incluidos actos, omisiones, políticas públicas, medidas institucionales o patrones de intimidación que puedan contribuir a una impunidad renovada, persecución política, violencia contra sectores protegidos, u obstrucción de los procesos internos genuinos.

19. La República de Colombia recuerda respetuosamente que el propio informe de la Fiscalía de 2023 señala que la evaluación de complementariedad no puede posponerse indefinidamente y debe realizarse sobre la base de los hechos tal como existen, y que el Acuerdo de Cooperación fue diseñado específicamente para reducir el riesgo de que un examen preliminar cerrado tuviera que ser revisado posteriormente como consecuencia de una reversión de circunstancias. Dicha reversión está ahora fundadamente en cuestión.

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20. El actual Gobierno colombiano reafirma su compromiso de cooperar plenamente con la Corte, de conformidad con el Estatuto de Roma y el Acuerdo de Cooperación, incluso mediante el suministro de cualquier registro, documentación, información de testigos, actos oficiales, declaraciones públicas y materiales institucionales adicionales que la Oficina pueda requerir para el debido cumplimiento de su mandato.

21. La República solicita respetuosamente, de conformidad con el marco jurídico de la Corte que rige los referidos, que la Oficina proceda con urgencia e informe a la Presidencia según corresponda, a fin de facilitar el tratamiento oportuno de este referido.

22. La República presenta este referido en interés de salvaguardar la integridad de los procesos genuinos, preservar los derechos de las víctimas, prevenir una impunidad renovada, y garantizar que el objeto y fin del Estatuto de Roma no se vean frustrados por un retroceso en la rendición de cuentas interna.

23. En relación con las amenazas al progreso de los procesos internos, este referido también busca preservar la cooperación existente con la Corte respecto del cumplimiento por parte de Colombia de sus obligaciones conforme al Estatuto de Roma.

24. En apoyo de este referido, la República remite los siguientes anexos, cada uno de los cuales forma parte integral del presente referido:

Anexo I: Acuerdo de Cooperación entre la Oficina del Fiscal de la Corte Penal Internacional y el Gobierno de Colombia, suscrito el 28 de octubre de 2021.

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Anexo II: Oficina del Fiscal, Informe sobre la Situación en Colombia, de fecha 30 de noviembre de 2023.

Anexo III: Registro de Elementos que Dan Lugar a Preocupación y Referencias Probatorias.

25. Sírvanse aceptar, señor Fiscal y señora Fiscal Adjunta, las seguridades de la más alta consideración de la República.



Gustavo Petro Urrego
Presidente de la República de Colombia



**COOPERATION AGREEMENT BETWEEN
THE OFFICE OF THE PROSECUTOR OF THE
INTERNATIONAL CRIMINAL COURT AND
THE GOVERNMENT OF COLOMBIA**

**COOPERATION AGREEMENT BETWEEN THE OFFICE OF THE PROSECUTOR
OF THE INTERNATIONAL CRIMINAL COURT AND THE GOVERNMENT OF
COLOMBIA**

The Office of the Prosecutor of the International Criminal Court (hereinafter referred as “the Office of the Prosecutor” and “the Court”), and the Government of the Republic of Colombia (hereinafter referred as “the Government”), hereinafter referred to as the “Parties”;

Based on the Rome Statute of the International Criminal Court and the obligations arising under this instrument for the Colombian State;

Inspired by the principle of complementarity, which constitutes the cornerstone for the exercise of the jurisdiction of the International Criminal Court;

Recalling that, in 2004, the Office of the Prosecutor opened a preliminary examination into the situation in Colombia;

Highlighting that over the last 17 years, Colombia and the Office of the Prosecutor have developed a cooperative relationship that has effectively strengthened the country’s capacity to administer justice for the most serious crimes of concern to the international community as a whole, which constitutes a valuable experience that may be replicated in other situations around the world;

Emphasizing the commitment of the Colombian State to allow international scrutiny of its progress in the administration of justice, as part of its efforts to combat impunity;

Recognizing the strength and resilience of the institutions in Colombia, its people, its Governments and civil society, as well as the progress achieved by judicial authorities in accountability, both through ordinary justice and transitional justice systems, including the Justice and Peace Law and the Special Jurisdiction for Peace, noting in particular its positive role; as well as successive voluntary reports presented by the Office of the Vice-president of the Republic, the Ministry of Foreign Affairs and the National Agency for the Legal Defense of the State;

Recalling that the Comprehensive System of Truth, Justice, Reparation and Non-Repetition created by the 2016 Peace Agreement, enjoys constitutional status under Colombian law;

Noting with appreciation the steadfast commitment of the Government of Colombia towards different but inter-connected jurisdictions comprising the ordinary justice system, the Justice and Peace Law mechanism and the Special Jurisdiction for Peace, and in particular in safeguarding the established legislative framework and the budgetary allocations required for their implementation;

Taking into consideration the challenges and obstacles that have arisen throughout the process and *recalling in particular* the recent achievements of the transitional justice in Colombia in pursuing the objectives of retribution, rehabilitation, restoration and deterrence;

Bearing in mind that domestic accountability processes are not completed yet, nor all sentences enforced, and proceedings are likely to continue to evolve over a significant period of time, as well as the permanent nature of the International Criminal Court;

Recalling the invitation extended by the Office of the Prosecutor to all stakeholders to provide their views on the role the Office should play in a preliminary examination that faces a long-term, multi-layered domestic accountability processes, in the context of its recent benchmarking consultation concerning the situation in Colombia, and *considering* the responses received;

Noting the demonstrated ability and willingness of Colombia to date to genuinely administer justice related to crimes under the jurisdiction of the International Criminal Court, and *noting* the requirement for the Office of the Prosecutor to determine, in the context of its preliminary examination, admissibility against the applicable legal test set out in article 17 of the Rome Statute on the basis of the facts as they presently exist;

Emphasising the commitment of the Office of the Prosecutor to engage in a long term process of both supporting and learning from national accountability processes in Colombia;

Noting the possibility for the Office of the Prosecutor to close the preliminary examination, subject to possible later reconsideration, while also entering into a new and fruitful stage of cooperation between the Colombian authorities and the Office of the Prosecutor;

Highlighting the genuine ability and willingness of the Colombian State to continue cooperating with the Office of the Prosecutor, in particular in issues related to transitional justice, pursuant to the Rome Statute; and the commitment of the Office of the Prosecutor to continue to encourage genuine judicial proceedings in Colombia.

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Without prejudice to the separation of powers, the Government commits to continue supporting relevant proceedings falling under the competence of the different but inter-connected jurisdictions, comprising the ordinary justice system, the Justice and Peace Law mechanism and the Special Jurisdiction for Peace, following anticipated procedural timelines. In particular, the Government will continue: (i) safeguarding their established constitutional and legislative framework and structure; (ii) allocating the budget required for their implementation; and (iii) preventing any interference with their functions. The Government further commits to: (iv) ensuring the safety and security of judicial and prosecutorial personnel as well as participants appearing before the different accountability mechanisms, and (v) promoting full cooperation and coordination between the different State entities assigned with discharging duties with respect to accountability, in particular between the Attorney General's Office and the Special Jurisdiction for Peace.

ARTICLE 2

The Government will continue to keep the Office of the Prosecutor informed of the progress of the investigations and prosecutions undertaken in Colombia and will facilitate access to relevant records and documentation, as requested, subject to the requirements of Colombian law and the Rome Statute.

ARTICLE 3

The Office of the Prosecutor commits to continue supporting Colombia's accountability efforts within its mandate and means.

ARTICLE 4

With a view that the Parties may mutually benefit from the experience of Colombia's transitional justice mechanisms and the experience of the Court, the Parties will encourage exchanges of lessons learned and best practices between the Office of the Prosecutor and the relevant national institutions. To this end, with the support of the Government, annual visits and exchanges will be organized between the Office of the Prosecutor and national justice mechanisms.

ARTICLE 5

The Office of the Prosecutor commits, within its mandate and means, to participate in projects and programmes aimed at Colombian legal professionals, to promote awareness raising and familiarisation with the latest developments before the International Criminal Court, and in particular the decisions issued by different Chambers of the Court that contain authoritative interpretations of the Rome Statute including its complementary provisions.

ARTICLE 6

In line with the Rome Statute, the Office of the Prosecutor may reconsider its assessment of complementarity in light of any significant change in circumstances, including any measures that might significantly hamper the progress and/or

genuineness of relevant proceedings and the enforcement of effective and proportionate penal sanctions of a retributive and restorative nature; initiatives resulting in major obstructions to the mandate and/or proper functioning of relevant jurisdictions; or any suspension or revision of the judicial scheme set forth in the peace agreement in a manner that might delay or obstruct the conduct of genuine national proceedings. In this context, and to ensure information flows about these and other related matters, lines of communication between the Office of the Prosecutor and the Government of Colombia and judicial actors, including with the Special Jurisdiction for Peace, will be maintained and reinforced.

ARTICLE 7

This Agreement will enter into force on the date of its signature and will have an indefinite duration. It may be denounced by either party giving three (3) months prior notice to the other.

The present Agreement is concluded in the English and Spanish languages, it being understood that in case of discrepancy the English version will prevail.

Signed in the city of Bogotá, D.C., on the 28th day of October 2021.

KARIM A.A. KHAN QC
Prosecutor of the International
Criminal Court

IVÁN DUQUE MÁRQUEZ
President of the Republic of Colombia



**Cour
Pénale
Internationale**
**International
Criminal
Court**

Le Bureau du Procureur
The Office of the Prosecutor



REPORT ON THE SITUATION IN COLOMBIA

30 November 2023

A. The Preliminary Examination into the Situation in Colombia - Overview

1. This report describes the nature and scope of the Office of the Prosecutor's ("Office") engagement in the situation in Colombia during the course of a 17 year-long preliminary examination. It also provides additional information underlying the reasons for the Prosecutor's determination in October 2021 to conclude the preliminary examination with a decision not to proceed with an investigation on the basis of the Office's admissibility assessment. Finally, the report addresses the envisaged trajectory of the Office's current activities as it both cooperates with and learns from Colombia's experience as part of the common effort – enjoined on both States Parties and the ICC - to ensure that the goal of the Rome Statute are given effect.
2. From the early establishment of the Court, the Office began to receive and gathered information on a large number of alleged crimes within the jurisdiction of the Court alleged to have been committed in Colombia, including widespread acts of murder, rape and other forms of sexual violence, forcible transfer, severe deprivation of physical liberty or hostage taking, enforced disappearance, torture, and the conscription, enlistment and use of child soldiers. The alleged victims of such crimes include human rights defenders, public officials, trade unionists, teachers as well as members of indigenous and Afro-Colombian communities, among others.¹ In June 2004 the Office decided to subject such communications to a preliminary examination, in order to determine whether there was a reasonable basis to proceed with a request for authorisation to open an investigation pursuant to article 15(3), under the Prosecutor's *proprio motu* powers.
3. On 16 February 2005, the Prosecutor informed the Colombian authorities that he had received information on alleged crimes committed in Colombia within the jurisdiction of the Court involving paramilitary organisations, the FARC-EP and ELN and official agents of the Colombian police and military forces. The Office invited the Government of Colombia to provide additional information in relation to the crimes alleged, as well as information on related national proceedings, including the extent to which such proceedings focussed on those who may have played a leadership role in the commission of such crimes. The Office also invited the provision of information on pending legislation at the time to establish mechanisms to investigate and prosecute serious crimes in Colombia.
4. Since that time, the Office conducted numerous missions, meetings, exchanges and roundtable discussions with the Colombian authorities, members of the judiciary, as well as with members of civil society, international organisations and

¹ ICC-OTP, [Situation in Colombia: Interim Report](#), November 2012.

academia. The Office received multiple updates from the judicial authorities on national proceedings addressing possible ICC crimes. The Office also participated in consultations on a range of issues, including those relating to legislative and other developments relevant to the preliminary examination. The Office both encouraged and engaged in public discourse on the principle of complementarity in Colombia and conveyed its views and concerns with respect to aspects of the domestic legislative framework that could impact domestic investigation and prosecution of conduct constituting Rome Statute crimes.

5. In November 2012, the Office issued an Interim Report setting out its findings on alleged crimes committed by members of the Colombian armed forces, paramilitary groups, the FARC-EP, and the ELN.² The Interim Report observed that the Colombian authorities had carried out and were conducting a large number of proceedings relevant to the preliminary examination against different actors in the conflict for conduct that constituted crimes within the jurisdiction of the Court, including against persons who appeared most responsible. In particular, the Office noted that potential cases against guerrilla groups and paramilitary groups would not be admissible before the ICC, since the main leaders of these groups had been or were being prosecuted genuinely by the competent national authorities.³ Nonetheless, the Office identified a number of gaps or shortfalls which indicated insufficient or incomplete activity in relation to certain categories of persons and certain categories of crimes. This included domestic proceedings relating to the promotion and expansion of paramilitary groups; proceedings relating to forced displacement; proceedings relating to sexual crimes; and to killings of civilians staged to look like combat kills, commonly known as 'false positive' killings.⁴ The Office further noted a need for prioritisation, without prejudice to Colombia's broader duties under national and international law.⁵

² ICC-OTP, [Situation in Colombia: Interim Report](#), November 2012. For updates see annual ICC-OTP [Report on Preliminary Examination Activities](#), setting out the Office's determination that, on the basis of the information available at the time, there was a reasonable basis to believe that members of the FARC- EP, ELN, paramilitary groups and State actors had, since 1 November 2002, committed underlying acts constituting crimes against humanity of murder under article 7(1)(a); forcible transfer of population under article 7(1)(d); imprisonment or other severe deprivation of physical liberty under article 7(1)(e); torture under article 7(1)(f); and rape and other forms of sexual violence under article 7(1)(g); and a reasonable basis to believe that members of the FARC- EP, ELN and State actors had, since 1 November 2009, committed underlying acts constituting the war crimes of murder under article 8(2)(c)(i); attacks against civilians under article 8(2)(e)(i); torture and cruel treatment under article 8(2)(c)(i); outrages upon personal dignity under article 8(2)(c)(ii); taking of hostages under article 8(2)(c)(iii); rape and other forms of sexual violence under article 8(2)(e)(vi); and conscripting, enlisting and using children to participate actively in hostilities under article 8(2)(e)(vii).

³ ICC-OTP, [Situation in Colombia: Interim Report](#), November 2012, paras. 198, 208. The Office further noted that the Colombian judicial authorities had extended investigations and prosecutions to a number of politicians and officials suspected of links with the paramilitaries and other armed groups.

⁴ ICC-OTP, [Situation in Colombia: Interim Report](#), November 2012, para. 224. For updates see annual ICC-OTP [Report on Preliminary Examination Activities](#).

⁵ ICC-OTP, [Situation in Colombia: Interim Report](#), November 2012, paras. 198-200.

6. The Office's conclusions with respect to the underlying acts and contextual elements of these crimes are set out in its detailed the Office's Interim Report of 2012.⁶ In particular, the Office determined that the information available provides a reasonable basis to believe that crimes against humanity under article 7 of the Statute have been committed in the situation in Colombia by different actors, since 1 November 2002. These include murder under article 7(1)(a); forcible transfer of population under article 7(1)(d); imprisonment or other severe deprivation of physical liberty under article 7(1)(e); torture under article 7(1)(f); and rape and other forms of sexual violence under article 7(1)(g). The Office further assessed that there was a reasonable basis to believe that since 1 November 2009 war crimes under article 8 of the Statute have been committed in the context of the non-international armed conflict in Colombia, including murder under article 8(2)(c)(i); attacks against civilians under article 8(2)(e)(i); torture and cruel treatment under article 8(2)(c)(i); outrages upon personal dignity under article 8(2)(c)(ii); taking of hostages under article 8(2)(c)(iii); rape and other forms of sexual violence under article 8(2)(e)(vi); and conscripting, enlisting and using children under 15 to participate actively in hostilities under article 8(2)(e)(vii).⁷ At the same time, the Office continued to keep its subject-matter assessment under review.
7. In terms of complementarity, the Office's subject-matter findings set out in its 2012 Interim Report formed the basis of the potential cases it identified, and which remained the focus of the Office's admissibility assessment throughout the course of the preliminary examination.⁸
8. During the course of the preliminary examination, the competent domestic authorities, grappling with an ongoing armed conflict, and struggling to design an adequate transitional justice response for the multitude of actors who had been involved in the decades long civil war, appeared to be engaged on multiple fronts, with varying levels of success, in efforts to provide victims with genuine redress. The Office was also aware that, in the absence of other indicators suggesting a lack of genuineness, the setting up transitional justice mechanisms would take time, involving the passing of legislation, constitutional amendments, the testing of laws before the Constitutional Court, and other ancillary processes, as well as a wider national discussion on justice and peace.
9. As such, the Office decided to encourage Colombia's efforts to the extent this appeared genuine and helping the authorities to prioritise their work. To foster these efforts, the Office undertook periodic in-country missions, received

⁶ ICC-OTP, [Situation in Colombia, Interim Report](#), November 2012.

⁷ ICC-OTP, [Situation in Colombia, Interim Report](#), November 2012, paras. 30-153.

⁸ ICC-OTP, [Situation in Colombia, Interim Report](#), November 2012, paras. 197-225.

technical visits at the seat of the Court, participated in trainings and seminars, exchanged best practices and exchanged with domestic counterparts on the Office's findings and its interpretation of certain provisions of the Rome Statute. Such efforts were not without challenges, both for the Colombian national system and for the Office. Nonetheless, operational interaction, cooperation and dialogue enabled fruitful exchanges to support Colombia in its accountability efforts.

10. Between 2011 and 2020, the Office issued annual updates on the activities of the situation in Colombia, which included developments in its admissibility assessment, as well as summaries of the nature and type of information assessed.⁹ The Office also reported on its positions on a number of domestic legal issues that appeared relevant to its admissibility assessment by various means. This was done through bilateral meetings and written correspondence with the authorities and other stakeholders both in Bogotá and in The Hague, public engagements and speeches, during the OTP bi-annual roundtable with local and international non-governmental organizations, and through participation in external events. The Office also responded to an invitation from the Colombian Constitutional Court to submit an *amicus curiae* brief on the scope and impact of national legislation relevant for the implementation of the Special Jurisdiction for Peace ("SJP").
11. Topics on which the Office expressed its views during the course of the preliminary examination included overarching concerns with respect to prioritisation and/or inactivity and on the thoroughness and delays in certain investigations. The Office also drew a specific focus on developments that appeared to present risks of hampering the conduct of relevant proceedings or obstructing the mandate and/or proper functioning of jurisdictions dealing with crimes within the areas of focus of the preliminary examination in a manner that could have resulted in delay or obstruction of the conduct of genuine criminal proceedings;¹⁰ on the definition of command responsibility applicable to members of the armed forces under domestic law, in the light of customary international law and the Rome Statute as well as on the notion of "active or determinative" participation;¹¹ the compatibility with the Rome Statute of amnesties, pardons and

⁹ See ICC-OTP *Report on Preliminary Examination Activities 2011* (paras. 61-87), *2012* (paras. 97-119), *2013* (paras. 118-152), *2014* (paras. 103-131), *2015* (paras. 136-167), *2016* (paras. 231-263), *2017* (paras. 121-155), *2018* (paras. 125-165), *2019* (paras. 84-133), *2020* (paras. 105-154); *Situation in Colombia - Interim Report*, November 2012; *Benchmarking Consultation*, 15 June 2021.

¹⁰ ICC-OTP, *Report on Preliminary Examination Activities 2013*, para. 149; ICC-OTP, *Situation in Colombia: Interim Report*, November 2012, paras. 160 and 161.

¹¹ ICC-OTP, *Escrito de Amicus Curiae de la Fiscal de la Corte Penal Internacional Sobre la Jurisdicción Especial Para La Paz, Ante la Corte Constitucional de la República de Colombia*, 18 October 2017, RPZ-0000001 y RPZ-003, paras. 4-28 and paras. 40-48. See also, ICC-OTP, *Report on Preliminary Examination Activities 2017*, 4 December 2017, para. 145; ICC-OTP, *The Role of the ICC in the Transitional Justice Process in Colombia*, 30-31 May 2018, paras. 96-122; *Transitional Justice in Colombia and the Role of the International Criminal Court*, Remarks by the Deputy Prosecutor, Mr. Stewart, 13 May 2015.

similar measures;¹² issues related to sentencing;¹³ as well as proposals to create a special chambers for the military forces within the existing structure of the SJP.¹⁴

12. During the course of the preliminary examination, a number of these issues were addressed or taken up by relevant legislative developments or were otherwise considered by the Constitutional Court of Colombia.¹⁵
13. After the 2016 Final Peace Agreement for Ending the Conflict and Building a Stable and Lasting Peace and the establishment of the Comprehensive System of Truth, Justice, Reparation and Non-Repetition, and subject to the fulfilment of its potential, it became clear that it would be necessary to revisit the trajectory of the preliminary examination. The establishment of the SJP as the justice component of this system merited special attention in view of its objective to address the rights of victims of the armed conflict to justice and truth as well as to meet Colombia's international obligations to ensure accountability for grave international crimes. To this end, the Office paid closed attention to concrete developments and major milestones within three separate judicial streams of the SJP, the ordinary criminal justice system, and the Justice and Peace Law ("JPL").
14. In its 2019 annual report, the Office noted that the Colombian authorities appeared to have made progress towards the fulfilment of their duty to investigate and prosecute conduct relevant to the potential cases identified by the Office.¹⁶ The Office noted that given the scale, complexity and long-term nature of the domestic proceedings being undertaken, it would seek to identify benchmarks to complete its preliminary examination, while identifying factors that could warrant a revision of that assessment. The Office furthered this process in January 2020, during the context of a mission to Colombia, where it held meetings with multiple stakeholders.¹⁷
15. In its December 2020 report on preliminary examination activities, the Office announced that during the previous reporting period the Colombian authorities,

¹² ICC-OTP, [Situation in Colombia: Interim Report](#), November 2012, paras. 160 and 161; ICC-OTP, [Report on Preliminary Examination Activities 2013](#), para. 149; ICC-OTP, [Report on Preliminary Examination Activities 2017](#), 4 December 2017, para. 146; ICC-OTP, *Escrito de Amicus Curiae de la Fiscal de la Corte Penal Internacional Sobre la Jurisdicción Especial Para La Paz, Ante la Corte Constitucional de la República de Colombia*, 18 October 2017, RPZ-0000001 y RPZ-003, paras. 29-39; ICC-OTP, [The Role of the ICC in the Transitional Justice Process in Colombia](#), 30 – 31 May 2018, paras. 123-131.

¹³ See e.g. ICC-OTP, [Transitional Justice in Colombia and the Role of the International Criminal Court](#), Remarks delivered by the Deputy Prosecutor, Mr. James Stewart, 13 May 2015, pp. 10-13. See also, ICC-OTP, *Escrito de Amicus Curiae de la Fiscal de la Corte Penal Internacional Sobre la Jurisdicción Especial Para La Paz, Ante la Corte Constitucional de la República de Colombia*, 18 October 2017, RPZ-0000001 y RPZ-003, paras. 49-52; and ICC-OTP, [The Role of the ICC in the Transitional Justice Process in Colombia](#), 30 – 31 May 2018, paras. 132-155.

¹⁴ ICC-OTP, [Presentación del Fiscal Adjunto, James Stewart, sobre complementariedad](#), 1 November 2018, paras. 52-65.

¹⁵ ICC-OTP, [Benchmarking Consultation](#), 15 June 2021, para. 17.

¹⁶ ICC-OTP, [Report on Preliminary Examination Activities 2019](#).

¹⁷ ICC-OTP, [The Office of the Prosecutor concludes mission to Colombia](#), 23 January 2020.

in overall, had taken meaningful steps to address conduct amounting to ICC crimes.¹⁸ The 2020 report observed that the information available indicated that the Colombian authorities appeared to have made progress in the investigation of conduct underlying the potential cases identified by the Office, in the course of relevant national proceedings before the ordinary justice, the JPL and the SJP systems.¹⁹ The Office further announced that during 2021, it would continue engaging with the Colombian authorities to seek additional details on the activities leading to the initiation of proceedings that should arise from relevant macro cases under the SJP, as well as the identification of cases selected.²⁰ Finally, the 2020 annual report noted that the Office would continue to engage with the Colombian authorities and relevant stakeholders in the development of a framework to enable the Office to identify the indicators that could enable it to conclude whether it should either proceed to open an investigation or defer to national accountability processes as a consequence of relevant and genuine domestic proceedings.

16. On 15 June 2021, the Office invited stakeholders to provide their views,²¹ with the expressed intention to enable the Office, under the leadership of incoming Prosecutor, to develop a roadmap for reaching a determination on whether the time had come to proceed with investigations or close the preliminary examination.²²
17. Upon assuming office, Prosecutor Karim A. A. Khan initiated a comprehensive survey of the status of domestic proceedings as well as the information received from multiple stakeholders. It became clear that the proposed benchmarking process first announced in December 2019 had been overtaken by events. In particular, the scale and pace of activity and progress, in particular before the SJP, meant that a determination was now in sight. Accordingly, the Office engaged in a series of internal and external consultations with different stakeholders and international experts to review the status of the most recent progress achieved by the national authorities, in particular in the 'macro cases' before the SJP and developments by the judicial entities of the ordinary justice system.
18. In October 2021, the Prosecutor travelled to Bogotá to undertake a series of in person meetings with the President of Colombia, members of the SJP, Attorney General, civil society and victims organisations, members of the diplomatic corps, UN and international organisations. In the light of these consultations, the

¹⁸ ICC-OTP, [Report on Preliminary Examination Activities 2020](#), para. 152.

¹⁹ ICC-OTP, [Report on Preliminary Examination Activities 2020](#), para. 153.

²⁰ ICC-OTP, [Report on Preliminary Examination Activities 2020](#), para. 153.

²¹ ICC-OTP, [Benchmarking Consultation](#), 15 June 2021.

²² ICC-OTP, [Statement of ICC Prosecutor, Fatou Bensouda, inviting stakeholders to consult on the development of a benchmarking framework for the Situation in Colombia](#), 15 June 2021.

information available and the progress made by the competent jurisdictions, on 28 October 2021 the Prosecutor announced his determination that the national authorities were neither inactive, unwilling nor unable to genuinely investigate and prosecute Rome Statute crimes.²³ This determination was accompanied by signing of a Cooperation Agreement between the Office and the Government of Colombia under which both parties committed to a series of undertakings to support and sustain Colombia's accountability processes.²⁴ The Cooperation Agreement recalled that the Prosecutor may reconsider his assessment in light of any significant change in circumstances.

19. Since October 2021, the Office and the Colombia authorities have continued interacting, both in person and virtually, to exchange information and provide detailed updates and submissions on the latest proceedings that have been initiated before the competent jurisdictions. This has included high level interactions in Bogotá and at the seat of the Court, working level meetings and in-person missions to exchange with different national institutions, international partners and civil society organisations. The Office has continued this engagement to give practical realisation to the complementarity principle enshrined in the Rome Statute.

B. The Office's admissibility determination in October 2021 - considerations for closure

20. As reported by the Office in 2012, although Colombia had instituted a wide range of different accountability mechanisms addressing a wide array of actors, the Office identified in particular certain categories of cases which required prioritisation, namely: (i) proceedings relating to the promotion and expansion of paramilitary groups; (ii) proceedings relating to forced displacement; (iii) proceedings relating to sexual crimes; and (iv) false positive cases. The Office also indicated it would follow closely the Legal Framework for Peace and other relevant legislative developments, as well as jurisdictional aspects relating to the emergence of "new illegal armed groups".²⁵
21. The admissibility determination reached in October 2021 involved the two step assessment of examining the degree to which ongoing domestic investigations and prosecutions sufficiently mirrored the potential cases that might form the focus of any investigation initiated by the Office; as well as the extent to which such

²³ [Press Release](#), 28 October 2021, ICC Prosecutor, Mr Karim A. A. Khan QC, concludes the preliminary examination of the Situation in Colombia with a Cooperation Agreement with the Government charting the next stage in support of domestic efforts to advance transitional justice.

²⁴ Cooperation Agreement between the Office of the Prosecutor of the International Criminal Court and the Government of Colombia, ("[Cooperation Agreement](#)").

²⁵ ICC-OTP, [Situation in Colombia: Interim Report](#), November 2012, paras. 22, 197-224.

proceedings appeared to be vitiated by an inability or unwillingness to carry them out genuinely. This assessment considered all of the information available, whether from official bodies or from other stakeholders.

22. This assessment was carried out against and guided by the case law of the Court as well as the Office's previously articulated policy and practice with regard to complementarity.²⁶ A key principle of this case law is that an assessment of complementarity should not, and cannot, be postponed indefinitely pending the completion of all possible domestic proceedings. As the Court's case law made clearly, the assessment must be carried out on the basis of the facts as they exist.²⁷
23. In terms of the legal requirement for this assessment, the article 15 process requires the Prosecutor to consider, *inter alia*, whether relevant cases that it might subject to investigation in the context of an authorised situation (i.e. potential cases) would be admissible.²⁸ The Office recalls that this serves a two-fold purpose: to fulfil the Prosecutor's duty, under rule 48, of being satisfied that all the factors relevant to the opening an investigation, including admissibility, are met; as well as to anticipate litigation that may result from a possible deferral request under article 18 of the Statute.²⁹
24. In this context, the Office has in recent years increasingly been called upon to assess not just whether the State in question is active in relation to a particular set of allegations (article 17(1) of the Statute), but also considerations of genuineness (articles 17(2) and (3) of the Statute). The practice that has been followed by the Office across different situations and cases has to date brought out several strands to the nature of and approach towards the genuineness assessment.
25. First, the Appeals Chamber has observed that the case law of human rights bodies may assist in defining the contours of certain terms set out in article 17, since the chapeau of article 17(2) calls upon the Court to determine unwillingness "having regard to the principles of due process recognized by international law".³⁰ As such, the Office has adopted a practice of examining relevant human rights

²⁶ See e.g. ICC-OTP, [Policy Paper on Preliminary Examinations](#); ICC-OTP, [Situation in Iraq/UK - Final Report](#), 9 December 2020.

²⁷ *Prosecutor v. Germain Katanga*, Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case, [ICC-01/04-01/07-1497](#), 25 September 2009, para. 78; [Press Release](#), 28 October 2021.

²⁸ This requirement stems from rule 48, which provides "[i]n determining whether there is a reasonable basis to proceed with an investigation under article 15, paragraph 3, the Prosecutor shall consider the factors set out in article 53, paragraph 1 (a) to (c)." Article 53(1)(b) requires the Prosecutor to consider whether "[t]he case is or would be admissible under article 17".

²⁹ ICC-OTP, [Situation in Iraq/UK - Final Report](#), 9 December 2020, para 153; and at paras 116 and 501. See also [Afghanistan AJ](#), paras. 35-40, 42-43.

³⁰ [Al-Senussi Admissibility AJ](#), paras. 220, 229. The Appeals Chamber has also repeatedly held that the Statute as a whole is underpinned by the requirement in article 21 (3) that the application and interpretation of law under the Statute "must be consistent with internationally recognized human rights"; see e.g. [Lubanga Admissibility AJ](#), paras. 36-39.

jurisprudence to the extent it may assist in the interpretation of relevant terms in article 17(2), adjusted to context.³¹ However, as the Appeals Chamber has emphasised, in doing so the ICC is not acting as a human rights court nor directly applying human rights standards.³² Nor is the ICC being asked to assess whether the State has complied with its procedural obligations under those standards.³³

26. Second, as to the scope of the assessment undertaken under article 17(2), the Office understands the term 'proceedings' to embrace both the investigative and judicial phases, given the reference in article 17(1) to both 'investigation' and 'prosecution'. In this context, the Office recalls that the Court's assessment must be made in the light of the 'particular case' before it and considering the 'circumstances' of that case, and accordingly cannot be carried out in the abstract.³⁴ Moreover, the Office recalls that evidence relevant to substantiate the first step of the complementary assessment as to the existence of relevant ongoing proceedings may also be relevant to assess their genuineness under the second step.³⁵
27. Third, the Office observes that while article 17 directs the Court's analysis to the unwillingness or inability of the 'State', different national institutions may demonstrate varying and inconsistent degrees of willingness/unwillingness.³⁶ As such, when analysing the response of a given domestic body in a specific case, the Office will need to also consider the activities of any other component or components of the national system that have a bearing on the proceedings at hand.
28. Fourth, as to the nature of the genuineness assessment itself, when assessing unwillingness under article 17(2), the Office considers that the relevant test is not whether the Prosecutor, or a Chamber of this Court, would have come to a different conclusion than the competent national jurisdiction, or proceeded differently, but whether the facts, on their face, demonstrate an intent to shield

³¹ This approach is consistent with rule 51, which provides that in assessing the matters in article 17(2), the Court may consider "in the context of the circumstances of the case", inter alia, information on how a State's "courts meet internationally recognized norms and standards for the independent and impartial prosecution of similar conduct". This approach is further consistent with article 21(3) which applies to all provisions of the Statute.

³² [Al-Senussi Admissibility AJ](#), paras. 190 and 219, stressed that "in the context of admissibility proceedings, the Court is not primarily called upon to decide whether in domestic proceedings certain requirements of human rights law or domestic law are being violated" and that "the Court was not established to be an international court of human rights, sitting in judgment over domestic legal systems to ensure that they are compliant with international standards of human rights".

³³ See also ICC-OTP, [Informal expert paper: The principle of complementarity in practice](#) (2003).

³⁴ The chapeau of article 17(2) calls for the assessment to be made in the context of "a particular case". Although only subparagraphs (b) and (c) of article 17(2) use the phrase "in the circumstances", this requirement would appear to be axiomatic also for the factual assessment under subparagraph (a). See also [Al-Senussi Admissibility Decision](#), para. 202.

³⁵ [Al-Senussi Admissibility Decision](#), para. 210.

³⁶ See also Inter-American Court of Human Rights, [Moiwana Community v. Suriname](#), Judgment, 15 June 2005, paras. 86(27) and 162; [García Prieto et al. v. El Salvador](#), Judgment, 20 November 2007, paras. 112-116; [Gudiel Álvarez et al. \(Diario Militar\) v. Guatemala](#), Judgment, 20 November 2012, paras. 248-252.

persons from criminal responsibility. And since the 'proceedings' referred to in article 17 occur in the context of the domestic legal framework and domestic investigative and prosecutorial practice of the State in question, the assessment must be made against this domestic backdrop, rather than an abstract assessment of how the ICC Prosecutor might have proceeded under the Rome Statute.³⁷

29. This however does not mean that the ICC must accept at face value propositions made by domestic authorities. Based on the information provided by the State, the Office has to conduct its own examination in order to assess whether the application by national authorities of the relevant legal tests under national law resulted in outcomes that appear manifestly inconsistent with the material available. As such, for the purpose of article 17 it is irrelevant whether the Office disagrees with a particular approach adopted by the national authorities or particular decision taken. What matters is whether this was so unreasonable or deficient in the circumstances as to constitute unwillingness by the domestic authorities to carry out relevant investigations or prosecutions genuinely, in the sense of showing an intent to shield perpetrators from criminal justice.³⁸
30. The Office has adopted this approach given the necessity of ensuring that its assessment can withstand judicial scrutiny, whether in the context of proceedings under article 18 or 19 of the Statute. To satisfy this requirement, mere disagreement or conflicting opinion is not enough: irrespective of the burden of proof the Office will need to be able to substantiate its position before Chambers of the Court as to why it should be permitted to proceed in a particular instance, based on considerations set out in article 17 of the Statute.
31. Finally while the Office will have regard to the practice of human rights bodies to the extent it may assist in the interpretation of relevant terms in article 17(2), the Office considers that its role under article 17 of the Statute is not to pronounce on whether a State has complied with its duties to provide an effective remedy and fulfilled a procedural obligation to give effect to fundamental human rights enshrined in particular human rights instruments to which it may be bound. Instead, the Office's role is to determine whether there is evidence to establish that the State concerned was unwilling or unable genuinely to investigate or prosecute. Nonetheless, for the same reason, the Office's findings pursuant to article 17 are also without prejudice to a State's duty to provide an effective remedy to the victims or to fulfil a particular procedural obligation under national or international law more generally.

³⁷ ICC-OTP, [Situation in Iraq/UK - Final Report](#), 9 December 2020, paras.10, 347

³⁸ ICC-OTP, [Situation in Iraq/UK - Final Report](#), 9 December 2020, para. 348.

32. For the purposes of its admissibility assessment in the Situation of Colombia, the Office considered the ongoing and progressive nature of relevant domestic proceedings and the prospects for domestic efforts to prioritise the investigations and prosecutions of relevant and genuine cases concerning these categories of conduct. In consultation with the Colombian authorities and other stakeholders, the Office focussed its efforts in fostering accountability for such crimes by channelling the existing will and ability of domestic actors to prioritising the investigation and prosecution of conduct the Office was considering investigating and prosecuting in the potential cases it had identified.
33. The determination reached by the Office in October 2021 was based on the significant body of information before it that allowed it to assess both steps relevant to the Office's admissibility assessment (inaction and genuineness). This assessment was possible on the basis of the material available to the Office, including information submitted by the Colombian authorities, during consultations and in-person missions to Colombia and in the course of interactions with multiple stakeholders during which the Office solicited their view on the status and quality of national proceedings in Colombia.
34. The Office also had particular regard to the significant developments made in relevant national proceedings, including notably in the first seven macro cases brought before the SJP. By October 2021, the SJP's workload included macro case 1 concerning the taking hostages and grave deprivation of liberty; macro case 2 prioritising the situation in the department of Nariño, Colombia, concerning a wide range of alleged crimes committed by FARC-EP and State agents from 1990 to 2016; macro case 3 concerning false positive killings; macro case 4 prioritising the situation in Urabá, concerning a wide range of crimes allegedly committed by FARC-EP and State agents between 1990 and 2016, including killings, enforced disappearances, forced displacement, SGBC, severe deprivation of liberty, usage of prohibited means and methods of war; macro case 5 prioritising the situation in Cauca and Valle del Cauca, concerning a wide range of crimes allegedly committed by FARC-EP and State agents between 1993 and 2016, including killings, forced displacement, SGBC, torture, and child recruitment; macro case 6 prioritising victimisation of members of *Unión Patriótica*; and macro case 7 prioritising the recruitment and use of children in the conflict, including both crimes against children and SGBC, divided into two sub-cases concerning the recruitment and use of children by FARC-EP and by the Colombian armed forces respectively.
35. The Office sought and received multiple responses from civil society organisations and representatives of victims, members of international

organisations, members of the diplomatic corps, and country and thematic experts on the relevance and genuineness on these and other national proceedings.

36. Among the concerns that were expressed to the Office at the time were the delays in investigations carried out by the AGO, despite having received thousands of copies from JPL tribunals containing information about the alleged responsibility of third parties. Concerns were also expressed about the delay in obtaining the extradition of members of paramilitary groups who have served sentences in the United States, as this has a detrimental effect on their contribution to the truth and, in some cases, a delay on the execution of their sentences. Sectors of civil society also identified concerns with respect to SGBC and the lack of examination of its alleged structural character as part of the Colombian armed conflict.
37. The OTP had also received concerns at the time from civil society organisations with respect to the voluntary nature of third parties' participation before the SJP which, in their view, hindered the capacity of the State to establish the true scale of crimes committed by State agents, businessmen and civilians in support of paramilitary and guerrilla groups and reduces the prospects of accountability for conflict-related crimes.³⁹ The Office further received concerns over the purported lack of coordination and cooperation between the different national jurisdictions; the need for standardisation of investigative activities among all macro cases, as well as for clear criteria to assess truth contributions; capacity challenges within the ordinary justice system to investigate and prosecute civilian third parties; and the alleged *de facto* suspension of investigative activities by the AGO for conflict-related crimes deemed to be part of the SJP's analysis.⁴⁰ Other concerns voiced by civil society included a perceived leniency and/or vagueness of the SJP sanctions regime, past legislative and executive steps to hinder the progress of transitional justice and a sense of uncertainty as to the future results the SJP may achieve.
38. The Office also continued to receive information related to violence against human rights defenders, former FARC-EP combatants and communities affected by the ongoing armed conflict; in the context of violence in rural areas, including locations formerly occupied by the FARC-EP; in the context of the violence between multiple criminal groups and transnational criminal organisations; as well as in the context of political protests and social disturbances throughout the country.⁴¹ Although the Office was not able to qualify such conduct as constituting war crimes or crimes against humanity due to lack of nexus, the Office had regard to the impact of such ongoing violence for the ability of persons to participate in accountability processes. In particular, the Office heard multiple concerns with

³⁹ ICC-OTP, [Report on Preliminary Examination Activities 2020](#), para. 150.

⁴⁰ *Ibid.* See below para. 55, on concrete actions to be undertaken under the Action Plan.

⁴¹ See also ICC-OTP, [Report on Preliminary Examination Activities 2020](#), para. 151.

respect to the safety and security of those participating in proceedings before the SJP, including victims, accused persons, as well as judicial personnel.

39. Turning to the two-step assessment of complementarity, in terms of inaction the Office recalls that its 2012 Interim Report had noted gaps or shortfalls which indicated insufficient or incomplete activity in relation to certain categories of persons and certain categories of crimes.⁴² Moreover, in relation to a number of potential cases, the focus initially had been on investigations and prosecutions and/or disciplinary measures against physical perpetrators and/or their immediate superiors.
40. By October 2021, despite the many challenges that remained, the Office could no longer credibly assert that the authorities were inactive in relation to the potential cases it had identified, relating to the promotion and expansion of paramilitary groups; proceedings relating to forced displacement; proceedings relating to sexual crimes; and, so called 'false positive' cases. Based on the information available, the Office assessed that these were being investigated and/or prosecuted in a manner which sought to capture patterns of criminality, uncover relevant criminal policies, identify alleged perpetrators and situating underlying acts as part of a widespread or systematic occurrence of such crimes. By October 2021, it was also clear that the judicial authorities were seized of allegations concerning those who appeared to bear criminal responsibility at the highest command levels.
41. The Office was also satisfied that, despite the breadth of cases to be fully investigated and/or prosecuted, cases concerning the systematic use of sexual and gender based violence against all categories of victims were increasingly being taken up before the accountability mechanisms, including as part of existing macro cases before the SJP and in the preparation of new macro cases.
42. This assessment in this regard was reinforced by the October 2021 Prosecutor's in-person mission to Colombia to speak directly with the competent authorities and other affected stakeholders. The mission confirmed that despite the long path ahead, the facts as they existed demonstrated that the competent domestic jurisdictions were taking concrete and progressive steps in relation to the potential cases the Office had identified, such that these cases could not be held to be admissible before the ICC, bearing in mind the two steps of the complementarity assessment under article 17.

⁴² ICC-OTP, [Situation in Colombia: Interim Report](#), November 2012, paras. 199, 204-205 (JPL), 211-214 (forced displacement), 218-219 (SIBC) and 220 ("false positive" cases).

43. Moreover, having surveyed the information available and independently assessed domestic proceedings, the Office could not identify factors which would tend to suggest that the proceedings being undertaken in Colombia were marred by an inability or unwillingness to carry them out genuinely, in accordance with the test set out under article 17(2) and 17(3).
44. On the basis of the information available in October 2021, and while multiple domestic proceedings in different accountability venues continue their course, the Office did not find a reasonable basis to believe that the competent authorities had undertaken efforts to shield perpetrators from criminal accountability within the meaning of article 17(2) of the Rome Statute. Nor was the Office satisfied that, due to a total or substantial collapse or unavailability of its national judicial system, the authorities were unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings, within the meaning of article 17(3) of the Rome Statute.
45. With respect to the Office's concerns regarding the imposition of penal sanctions that were effective and/or proportionate in serving appropriate sentencing objectives, the principles adopted by the Constitutional Court when assessing the sentencing framework available to the SJP will guide the Office's ongoing engagement on this issue.⁴³
46. The Office recalls in this regard that the ICC, unlike human rights bodies, is not tasked under the Rome Statute to determine whether a State has complied with its duties to provide an effective remedy or fulfilled the procedural obligation to give effect to a fundamental human right.⁴⁴ The relevant test under the Statute is not framed to answer the question whether the State has fully discharged its duty under national and international law to provide full and effective redress to victims, utilising the full range of processes and mechanisms associated with transitional justice processes. As acknowledged by all stakeholders involved, in this context, work remains to be done.
47. Having concluded that the Office's potential cases no longer appeared admissible, the Prosecutor decided to announce his determination and conclude the preliminary examination, subject to the possibility to review his assessment under

⁴³ República de Colombia, Corte Constitucional, [Sentencia C-674 de 2017](#), 14 November 2017, pp. 376-381. See also, [Comunicado No. 55 \(Fe de Erratas\)](#), 14 November 2017, p. 23.

⁴⁴ [Al-Senussi Admissibility AJ](#), para. 190; see also at para. 219: "the Court was not established to be an international court of human rights, sitting in judgment over domestic legal systems to ensure that they are compliant with international standards of human rights" and at para. 229: "... the Appeals Chamber considers that article 17 was not designed to make principles of human rights *per se* determinative of admissibility."

article 15(6).⁴⁵ This decision flowed from a legal requirement pursuant to the standard set out by the Statute and by the case law of the Court, and was not amenable to the exercise of prosecutorial discretion.

C. The Cooperation Agreement - implementation and way forward

48. Notwithstanding the closing of the preliminary examination, the Office has continued its engagement with Colombia within a novel framework that fosters support for genuine accountability efforts upon concluding the preliminary examination. After consultations with the Government of Colombia and key judicial institutions involved, the Prosecutor and the Government of Colombia agreed to conclude a Cooperation Agreement involving a series of mutual undertakings that seek to ensure that relevant measures are taken and sustained in support of genuine domestic criminal proceedings in Colombia. At the same time, the Cooperation Agreement identifies factors that might cause the Office to revisit its assessment pursuant to article 15(6) of the Rome Statute.⁴⁶ In this manner, the Cooperation Agreement seeks to fulfil the Statute's objectives in combatting impunity through complementary international and national efforts.
49. Under the Cooperation Agreement, the Government of Colombia has committed to: (1) safeguard the structure and legislative framework of the judicial systems dealing with ICC crimes, including the SJP; (2) allocate the financial means necessary for the effective delivery of justice; (3) prevent undue interference on the administration of justice; (4) ensure the application of protective measures for judicial actors and participants appearing before accountability mechanisms; and (5) promote full cooperation and coordination among State entities, and in particular between the AGO and the SJP. The Government of Colombia has further committed to continue to keep the Office informed of the progress of domestic proceedings and to facilitate access to relevant documentation, as needed.
50. For the Office's part, the Prosecutor has committed to continue supporting Colombia's accountability efforts and to participate in projects and programmes that promote awareness and familiarisation of developments before the ICC, in particular with regard to decisions and authoritative interpretations issued by Chambers of the Court. The cooperation agreement also recalls that under the

⁴⁵ [Press Release](#), 28 October 2021: "the Prosecutor emphasised that an assessment of complementarity should not, and cannot, be postponed indefinitely pending the completion of all possible domestic proceedings. To the contrary, the Statute and the Court's case law are clear that the admissibility assessment must be carried out on the basis of the facts as they exist".

⁴⁶ Preamble, [Cooperation Agreement](#).

Statute the Prosecutor's admissibility assessment can be reconsidered if there is a significant change of circumstances.⁴⁷

51. In terms of the legal basis for the agreement, the Statute envisages that the Prosecutor is able to receive information relating to any situation, including situations that were previously under preliminary examination, under article 15, and it is also able to revisit its prior assessment in the light of any significant change in circumstances. The Prosecutor may also enter into such agreement or arrangements, not inconsistent with the Statute, as may be necessary to facilitate the cooperation of a State.⁴⁸ Moreover, the Statute provides for cooperation and support between the ICC and States may be provided irrespective of whether a situation is under preliminary examination, investigation or prosecution by the Court.⁴⁹
52. In this context, the agreement is an innovative approach towards complementarity by the Office. Concluding such an agreement supports national authorities in their efforts to fulfil their primary responsibility for investigating and prosecuting such crimes. It equally supports the Court's mandate by helping ensure that a closed preliminary examination is not re-opened, possibly leading to an investigation, as a result of a reversal of circumstances. As such, the agreement enables the Office to continue having a positive impact on a long-term, multi-layered domestic accountability process and to assist a State in achieving the objectives of the Rome Statute to ensure that genuine national proceedings are undertaken and sustained.⁵⁰
53. Since the signature of the cooperation agreement, the Office and the Colombian authorities have engaged in multiple activities to ensure its implementation. In December 2021, a month after its conclusion, the Office participated in a capacity building exercise supported by an international organisation (International Center for Transitional Justice) and a Colombian university (*Universidad Nacional de Bogotá*), in coordination with the SJP. The event gathered International Criminal Law experts from different national and international entities. The purpose of this exercise was to exchange with investigators and prosecutors from the SJP

⁴⁷ Article 6, [Cooperation Agreement](#), referring *inter alia* to any measures that might significantly hamper the progress and/or genuineness of relevant proceedings and the enforcement of effective and proportionate penal sanctions of a retributive and restorative nature; initiatives resulting in major obstructions to the mandate and/or proper functioning of relevant jurisdictions; or any suspension or revision of the judicial scheme set forth in the peace agreement in a manner that might delay or obstruct the conduct of genuine national proceedings.

⁴⁸ Article 54(3)(d), Rome Statute.

⁴⁹ Article 93(10), Rome Statute.

⁵⁰ See similarly [Statement](#) by ICC Prosecutor Karim A.A. Khan KC regarding the opening of the trial related to events of 28 September 2009 in Guinea, signature of Agreement with Transitional Government on complementarity and closure of the Preliminary Examination, 29 September 2022.

Investigation and Accusation Unit on best practices relating to advocacy skills, legal and procedural knowledge and feedback sessions.

54. In February 2022, the Prosecutor received H.E. President Duque at the premises of the Court where they exchanged on different matters including specific proposals made by the Colombian authorities to ensure implementation of the different provisions of the cooperation agreement. In September 2022, the Prosecutor met with H.E. Álvaro Leyva, Foreign Minister of Colombia, on the margins of the UN General Assembly to discuss continued engagement as well as an official visit to Bogotá.
55. In June 2023, H.E. President Gustavo Petro received the Prosecutor in Colombia. During their meeting, both reconfirmed the shared commitment to cooperate under the October 2021 Cooperation Agreement, in order to promote further progress in Colombia and set it as an example for those seeking new ways to deliver impactful, comprehensive justice.⁵¹ The Prosecutor's visit allowed the Office to deepen cooperation with Colombian national authorities under the Cooperation Agreement and to consider the status of its implementation. The visit also provided the opportunity for the Prosecutor to receive first-hand information on Colombia's ongoing accountability efforts, and to provide support for the work of the JEP. The Prosecutor also engaged with civil society, and heard their views on the justice process in Colombia, in the context of efforts to bring the OTP's work closer to affected communities. To further implement the Cooperation Agreement, on 7 June 2023, the Prosecutor and the Government of Colombia signed an Action Plan articulating a series of common objectives for deeper collaboration..⁵² The Plan represents the renewed common commitment of the OTP and Colombia to build new ways to deliver impactful, comprehensive justice. The Action Plan set up agreed objectives and activities of the OTP in support of justice and accountability efforts in Colombia, and a timetable to deliver specific actions on these objectives in cooperation with Colombian national authorities. Concrete examples of these actions include the provision of technical expertise and support by the OTP to relevant Colombian authorities, and the exchange of good practices in priority thematic areas, such as gender-based crimes ("GBC"), and crimes against and affecting children ("CAC"). The Action Plan also includes a commitment of providing assistance in coordinating action across justice institutions and working towards the establishment of a continuous OTP presence in Colombia. This will materialise with the establishment of an OTP in-country

⁵¹ ICC-OTP, [ICC Prosecutor Karim A.A. Khan KC concludes visit to Colombia, signing Action Plan for renewed cooperation with national authorities in pursuit of accountability](#), 9 June 2023

⁵² Cancillería Colombia, [Canciller Álvaro Leyva Durán y Fiscal de la Corte Penal Internacional firman el plan de trabajo conjunto con compromisos puntuales para seguir avanzando en alcanzar la justicia y la verdad](#), 7 June 2023; ICC-OTP, [ICC Prosecutor Karim A.A. Khan KC concludes visit to Colombia, signing Action Plan for renewed cooperation with national authorities in pursuit of accountability](#), 9 June 2023.

office in Bogotá in early 2024, thus allowing the OTP to continuously engage in these cooperation and complementarity activities with domestic actors *in situ*.

56. The Office also continued its direct meetings and exchanges with Colombian institutions, including a meeting with the SJP President and the plenary of SJP magistrates, as well as with the Attorney General of Colombia. In this context, the Office also signed a Joint Workplan with the SJP so to enable the provision of assistance in addressing the continued challenges the SJP faces with its ambitious workload, as well as to provide support in the near term with respect to, among other, the investigation and prosecution of SGBC. The Workplan also envisages a two-way dialogue to enable the SJP to share its best practises and lessons learnt with both the Office and other States Parties.⁵³ The Office further received information on the status of relevant proceedings led by the AGO which, pending a more detailed analysis, indicate advances in ongoing proceedings regarding civilian third parties, SGBC and forced displacement.
57. The Prosecutor's visit of June 2023 was preceded by a technical level mission by the Office to Bogotá in October 2022. The technical visit was conducted to assess progress made and any challenges and needs as regards the domestic efforts to ensure accountability in Colombia. The Office's technical level team met with key domestic authorities including the Ministry of Foreign Affairs, the Ministry of Justice, the Office of the Attorney General, the Special Jurisdiction for Peace, the Inspector General's Office and the National Agency for the Legal Defence of the State; the UN Verification Mission in Colombia and representatives of the diplomatic community; as well as representatives from civil society organisations.⁵⁴
58. The Office has also continued to follow relevant national proceedings and has received written updates from the Colombian authorities. In this context, the proceedings before the competent jurisdictions in Colombia have both been sustained and continued to progress – a key objective of the Cooperation Agreement. There have been several notable developments before the competent jurisdictions since October 2021, including public acknowledgements of responsibility before the SJP, as well as a significant level of activity by the AGO and in proceedings before the ordinary criminal jurisdiction and JPL tribunals on various matters of priority, including on crimes committed by third-party civilians. During the visit of the Prosecutor in June 2023, the AGO reported on its

⁵³ SJP, [La JEP y la Fiscalía de la Corte Penal Internacional profundizan cooperación](#), 6 June 2023; ICC-OTP, [ICC Prosecutor Karim A.A. Khan KC concludes visit to Colombia, signing Action Plan for renewed cooperation with national authorities in pursuit of accountability](#), 9 June 2023.

⁵⁴ ICC-OTP, [Statement of ICC Prosecutor Karim A.A. Khan KC on conclusion of technical visit of the Office of the Prosecutor to Colombia](#), 25 October 2022.

progress since 2021, including in cases involving third-party civilians or State agents for alleged promotion, support or financing of illegal armed groups. The AGO reported on an inventory of nearly 3000 cases identified, including an investigation and imminent trial of the senior management of a multinational company, and provided an overview of those that had reached the sentencing stage, the number of conviction decisions and those that had resulted in judgments of acquittal.

59. The SJP also continued to pursue new investigative and prosecution avenues with the announcement of new macro cases, including with respect to accountability gaps identified by victims and civil society, in particular with respect to SGBC and crimes against ethnic peoples and territories, as well as for other crimes committed by former FARC-EP, security forces and third parties. The Office has paid particular attention to accountability efforts before each of the competent jurisdictions in relation to SGBC and gender persecution, including at the intersections of gender, race and ethnicity, and has also included this area as a particular priority in the Action plan with the government as well as the Work Plan with the SJP. In this regard, the Office welcomes, in particular, the much anticipated SJP announcement on 27 September 2023 regarding the opening of the macro case 11, on SGBC related to the Colombian armed conflict. The Office intends to follow closely this case, in line with its reviewed policy on gender crimes. The Office also met with members of indigenous communities who expressed concerns for their safety and security when participating in and benefiting from accountability processes, an area the Office will continue to follow and raise within the framework of the Cooperation Agreement.
60. One of the manifestations of the OTP's continued support was materialised in August 2023, when the SJP received a training by the Prosecutor's Special Adviser on Gender Persecution, Professor Lisa Davis and OTP staff, on the crime of gender persecution and the OTP's gender persecution policy. The engagement also allowed for an exchange with relevant national authorities and civil society not only on the crime of gender persecution, but also on how to prove the different elements in a context where discriminatory policies are not acknowledged; on the intersectionality of different discriminatory grounds; on the relationship between SGBC and gender persecution; on responsibility by omission, including command responsibility; and on the issue of cumulative charging and cumulative convictions. More specialised workshops and discussions were also held with relevant SJP prosecutors and other officials. In September 2023, the Office participated remotely in an event in Bogotá on the topic of environmental crimes while, in November 2023, OTP staff joined an event in The Hague on transitional justice and the work of the SJP and participated in sessions dedicated to the impact

on the environment, SGBC and the participation of civilian third parties in international crimes.

61. Pursuant to article 7 of the Cooperation Agreement, the Office has also been closely monitoring factors that might hinder the progress or genuineness of Colombia's national proceedings. Relevantly, these include, *inter alia*, the violence suffered by former FARC-EP combatants, social leaders and human rights defenders; the definition and implementation of eventual SJP special sanctions, and the current peace efforts led by the Government of Colombia.
62. The Office has also been encouraged by the heightened efforts to improve cooperation and coordination between the transitional justice system and other state actors and UN verification mission,⁵⁵ as well as the national policy guidance for the implementation of SJP sanctions.⁵⁶ The Office will continue to pay close attention to how these mechanisms and guidelines operate in practice.
63. The Office observes that a key challenge ahead is the effective functioning of the SJP in the area of contested proceedings, where the parties do not admit to their responsibility. It will be essential that the cases are prosecuted effectively; that the required information and case management tools are utilised; the safety and security of judicial and prosecutorial personnel as well as participants appearing before the SJP are ensured and that any unlawful interference is prevented; that the proceedings are not only conducted independently and impartially, but are also overseen effectively and efficiently, with due regard to the rights of both victims and accused persons involved. The Office stands ready to support Colombia's efforts in this regard, by means of sharing knowledge and exchanging best practices.
64. Looking ahead, in consultation with the Colombian authorities and other stakeholders, the Office is working on developing its activities in the framework of implementing the Cooperation Agreement, on a number of areas as set out in the Action Plan between the Office and Government of Colombia as well as the Joint Workplan between the Office and SJP. These include the provision of technical expertise and support by the Office; exchange of good practices in priority thematic areas; assistance in coordinating action across justice institutions; and work towards the establishment of a continuous presence of the

⁵⁵ SJP, [La JEP y la Misión de Verificación de las Naciones Unidas en Colombia firman protocolo que activa el Mecanismo de Monitoreo y Verificación de las Sanciones Propias \(MMVSP\)](#), 16 August 2022; AGO, [Fiscalía General de la Nación y Jurisdicción Especial para la Paz \(JEP\) firman acuerdo de cooperación contra la impunidad](#), 10 October 2022; SJP, [JEP y Procuraduría suscriben acuerdo de cooperación para optimizar las actuaciones judiciales](#), 3 November 2022.

⁵⁶ DNP, [Documento Conpes de Lineamientos de política para implementar el arreglo institucional del Estado para la ejecución de los componentes de las sanciones propias y medidas de contribución a la reparación](#), 29 June 2022.

Office in Colombia to support and sustain these efforts.⁵⁷ The Office will continue to seek out opportunities to receive first-hand information on Colombia's ongoing accountability efforts, and to provide support for the work of its national institutions, most notably the SJP, which the Office views as a global model for transitional justice efforts. Throughout his interactions in Colombia and beyond, Prosecutor has emphasized the global significance of the transitional justice work currently underway in Colombia, and reiterated the OTP's commitment to support Colombian authorities in this process.

D. Conclusion

65. It is clear that Colombia has embarked upon an ambitious, long term, multi-layered accountability process, involving multiple jurisdictions and mechanisms. Based on an assessment of the progress made, the Prosecutor announced in October 2021 that the national authorities of Colombia were not inactive, unwilling or unable to genuinely investigate and prosecute Rome Statute crimes. In this respect, the Prosecutor emphasised that the Statute and the Court's case law are clear that the admissibility assessment must be carried out on the basis of the facts as they exist. Accordingly, the Prosecutor determined that the preliminary examination had to be closed.
66. The conclusion of the preliminary examination, however, did not mean an end to the Office's engagement with Colombia or its support to the accountability processes underway. To the contrary, it marked the beginning of a new chapter of support, engagement and mutual collaboration – an example of positive complementarity in action.
67. The work ahead of all accountability actors in Colombia is not without challenges and requires sobriety and long term engagement. Looking forward, the Office will continue, within its permanent, independent mandate and means, to sustain and welcome innovative avenues and opportunities to engage with relevant stakeholders, including the national authorities, international institutions, third States and observers, victims and their legal representatives and civil society partners so that it can best keep abreast and support the progress in relevant domestic accountability efforts. It will also seek to learn from and facilitate opportunities for sharing Colombia's experiences in particular those achieved by the SJP, in the field of transitional justice, as potential best practises in the global collective work towards justice, in Colombia and beyond.

⁵⁷ ICC-OTP, [ICC Prosecutor Karim A.A. Khan KC concludes visit to Colombia, signing Action Plan for renewed cooperation with national authorities in pursuit of accountability](#), 9 June 2023.

Annex III - Record of Elements Giving Rise to Concern and Evidentiary References

1. This Annex forms an integral part of the Referral by the Republic of Colombia pursuant to Articles 13 (a) and 14 of the Rome Statute and the request that the Office of the Prosecutor reconsider its 2021 assessment of complementarity in light of a significant change in circumstances.
2. Its purpose is to set out the principal elements giving rise to concern and the evidentiary references relevant to the legal framework identified in the referral, namely Articles 14(2), 17 and 53(1) of the Rome Statute, read together with Articles 1 and 6 of the Cooperation Agreement between the Office of the Prosecutor and the Government of Colombia, signed on 28 October 2021.
3. The issues recorded in this Annex are relevant as the Cooperation Agreement expressly preserved the authority of the Office of the Prosecutor to reconsider its assessment of complementarity in light of any significant change in circumstances, including measures that might significantly hamper the progress or genuineness of relevant proceedings and the enforcement of effective and proportionate penal sanctions of a retributive and restorative nature; initiatives resulting in major obstructions to the mandate and/or proper functioning of relevant jurisdictions; or any suspension or revision of the judicial scheme set forth in the peace agreement in a manner that might delay or obstruct the conduct of genuine national proceedings.¹
4. The Office's Report on the Situation in Colombia, dated 30 November 2023, further confirms that the closure of the preliminary examination in October 2021 was based on the facts then available and on the assessment that the competent national authorities were not inactive, unwilling or unable genuinely to investigate and prosecute Rome Statute crimes, in the context of a cooperative framework intended to sustain domestic accountability and guard against reversals of circumstances.²

¹ Cooperation Agreement between the Office of the Prosecutor of the International Criminal Court and the Government of Colombia, 28 October 2021, Article 6.

² Office of the Prosecutor, *Report on the Situation in Colombia*, 30 November 2023, especially sections concerning the basis for the October 2021 closure of the preliminary examination and the cooperative complementarity framework thereafter.

I. Threats to the autonomy, continuity and functioning of the Special Jurisdiction for Peace and the Comprehensive System

5. A principal element giving rise to concern is the announced rollback of the institutional architecture of transitional justice established pursuant to the 2016 Final Peace Agreement, including threats directed at the autonomy, financing, implementation capacity and continuity of the Special Jurisdiction for Peace (SJP - “JEP”) and the wider Comprehensive System of Truth, Justice, Reparation and Non-Repetition.³

6. These concerns are legally relevant because the 2021 Cooperation Agreement records Colombia’s commitment to continue supporting relevant proceedings, to safeguard the established constitutional and legislative framework and structure of the competent jurisdictions, to allocate the budget required for their implementation, and to prevent interference with their functions.⁴ They are equally relevant because the Office, in its 2023 Report, identified the SJP-JEP and the broader accountability architecture as central to the admissibility assessment that underpinned closure of the preliminary examination in 2021.

7. The information presently available indicates a risk that the dismantling, weakening or obstruction of the SJP-JEP and related institutions may create de facto impunity, frustrate the implementation of sanctions, impair contested proceedings, and undermine victims’ rights to truth, justice, reparation and guarantees of non-repetition.⁵ This concern is reinforced by publicly reported statements attributed to the incoming Minister of Justice indicating that the new administration does not intend to extend the SJP-JEP beyond the time limits fixed in law and will review its budgetary structure, as well as by reporting that key institutions for implementation of the Peace Agreement face the prospect of budgetary asphyxiation.⁶ Such risks correspond directly to the categories identified in Article 6 of the Cooperation Agreement.

³ EFE, 14 July 2026, “El presidente de Colombia, Abelardo de la Espriella, eliminará la oficina de comisionado de Paz como parte de sus reformas”, [here](#).

⁴ Cooperation Agreement between the Office of the Prosecutor of the International Criminal Court and the Government of Colombia, 28 October 2021, Article 1.

⁵ Caracol, 9 June 2026, La JEP no es un tribunal judicial, lava las manos de narcoterroristas de las Farc”: De la Espriella”, [here](#).

⁶ El Heraldo, 8 July 2026, “Iván Cancino, ministro de Justicia entrante, descarta prorrogar la JEP y anuncia revisión de su presupuesto,” [here](#) and El País, 20 July 2026, “De la Espriella amenaza la implementación de la paz con una asfixia presupuestal,” [here](#).

II. Threats to the implementation of sanctions and restorative justice measures

8. A second element of concern is related to the effective enforcement of sanctions of a retributive and restorative nature, including sanctions and restorative projects linked to the SJP-JEP process.⁷ The Cooperation Agreement expressly identifies interference with the enforcement of effective and proportionate penal sanctions as a ground on which the Office may reconsider complementarity.

9. The available information indicates that attacks on the autonomy of the SJP-JEP, its defunding, or the discontinuity of restorative projects may compromise the proper implementation of sanctions and undermine the legitimate expectations of victims, communities and those who have submitted to the transitional justice process. This concern is further supported by recent reporting describing announced review and restructuring of the SJP-JEP's resources, and warning that budgetary strangulation of peace implementation may affect the JEP, reincorporation structures and protection mechanisms for social leaders.⁸ The Office's 2023 Report likewise makes clear that the implementation of special sanctions and their operation in practice remain matters of continuing importance within the cooperative complementarity framework.

10. It is important to note that the effectiveness of the SJP-JEP's own sanctions extends beyond the courtroom. Unlike traditional criminal sanctions, restorative sanctions require comprehensive implementation through public policies capable of delivering meaningful reparative outcomes for victims and communities. For this reason, the National Government plays an indispensable role in ensuring that judicial decisions are translated into concrete administrative actions, institutional coordination, public investment, and territorial implementation. However, in a context where the State is pursuing institutional restructuring and reductions in the size and capacity of public entities, an essential question emerges: how can the State guarantee the public policies and institutional capabilities necessary to implement restorative sanctions in a manner that preserves their intended transformative impact? This question is particularly significant because the SJP-JEP's own sanctions were conceived under the 2016 Final Peace Agreement with the FARC-EP as instruments with both symbolic and redistributive effects, seeking not only to acknowledge victims' suffering and restore affected communities but also to address the structural inequalities that fueled the armed

⁷ Ibid.

⁸ El Herald, 8 July 2026, "Iván Cancino, ministro de Justicia entrante, descarta prorrogar la JEP y anuncia revisión de su presupuesto," [here](#) and El País, 20 July 2026, "De la Espriella amenaza la implementación de la paz con una asfixia presupuestal," [here](#).

conflict. Their implementation therefore requires a robust institutional architecture capable of sustaining coordinated action across multiple sectors and levels of government. The success of Colombia's transitional justice model ultimately depends on a strong partnership between the Judicial and Executive Branches, in which judicial decisions establish the legal framework for accountability while executive institutions provide the operational capacity necessary to transform those decisions into concrete and lasting realities for victims and conflict-affected territories.

11. For instance, in 2025, the Special Jurisdiction for Peace (JEP) estimated that the implementation of the restorative measures ordered in two of its first Proper Sanction judgments (TP-SeRVR-RC-ST No. 001 of 2025 and TP-SeRVR-RC-ST No. 002 of 2025) would require approximately COP 121.858 billion. Securing the financial and institutional resources necessary to implement these decisions remains a significant challenge for the Colombian State. This is not merely a question of funding; it is also about recognizing the profound social, cultural, environmental, and economic value of restorative sanctions as instruments for repairing victims, rebuilding communities, and consolidating peace in territories historically affected by the armed conflict. As the SJP-JEP is expected to issue more than a dozen additional Proper Sanction judgments in the coming years, ensuring their effective implementation will require sustained institutional commitment and innovative financing strategies. In this context, the support of international partners becomes particularly important. In this order of ideas, the International Criminal Court possess the political influence, technical expertise, and convening capacity to support the Colombian State in mobilizing resources, strengthening institutional coordination, and advocating for the effective implementation of the SJP-JEP's restorative sanctions, thereby contributing to the fulfillment of the commitments undertaken in the 2016 Final Peace Agreement through the recognition of the positive complementary faculties.

III. Ensuring the Sustainability of Transitional Justice Public Policies for the Effective Adjudication of the Special Jurisdiction for Peace Created under the 2016 Final Peace Agreement.

12. The Special Jurisdiction for Peace (SJP- JEP) is the cornerstone of Colombia's transitional justice system and plays a fundamental role in addressing the consequences of the country's prolonged armed conflict. Colombia has experienced the longest internal armed conflict in South

America, leaving profound social, political, and humanitarian impacts. According to the National Victims Unit, more than 9.8 million⁹ people have been officially recognized as victims of the armed conflict, while more than 14,000 victims¹⁰ have been formally accredited before the JEP to actively participate in judicial proceedings, additionally more than 20,000 victims today have a legal representative in the judicial actions of this transitional justice mechanism. Established under the 2016 Peace Agreement, the SJP-JEP represents a constitutional and legal mechanism designed to investigate, prosecute, and sanction the most serious crimes committed during the conflict while promoting restorative justice as a pathway to truth, reparation, reconciliation, and guarantees of non-repetition.

13. A defining feature of the SJP-JEP is its victim-centered approach. Victims participate not only through formal accreditation in judicial cases, where they play an active procedural role, but also by submitting reports, requesting precautionary measures, and accessing free legal representation provided by the jurisdiction. Within restorative proceedings, victims contribute by sharing their experiences, describing the harms they have suffered, and engaging with the truth-telling processes carried out by those acknowledging responsibility. Their participation directly informs the design of restorative measures, ensuring that sanctions respond to the needs and expectations of affected communities. Furthermore, through its differentiated approaches, the JEP recognizes the rights of Indigenous Peoples and Black, Afro-Colombian, Raizal, and Palenquero (NARP) communities. To date, the Chamber for the Acknowledgment of Truth has conducted 174 proceedings dedicated to collaborative truth-building, intercultural dialogue, and interjurisdictional coordination, reinforcing an inclusive and participatory model of transitional justice. In this sense, it is important to recognize the unprecedented effort of this corporation to offer a bottom-up approach to peace building and more important to the search of truth and justice through the full recognition of Colombia's most vulnerable communities and their bounden traditional cultural beliefs.

14. The sustainability of access to justice within Colombia's transitional justice system is therefore intrinsically linked to the Executive Branch's ability to accompany and implement the public

⁹ Jurisdicción Especial para la Paz. Informe estadístico RC 2025. Bogotá, D.C.: Jurisdicción Especial para la Paz, 2026. Ver.

https://www.jep.gov.co/rendiciondecuentas/2025/docs/20260205%20Informe%20estadístico%20RC%202025_.pdf

¹⁰ Defensoría del Pueblo. 2026. Más de 10 millones de víctimas del conflicto armado en Colombia: un llamado a avanzar en la reparación y la no repetición. April 9, 2026. Defensoría del Pueblo. Ver. <https://www.defensoria.gov.co/-/commemoración-día-de-las-victimas>

policies required to enforce the decisions issued by the JEP. Judicial rulings alone cannot achieve restorative justice if they are not supported by coordinated action across government institutions responsible for infrastructure, land restoration, environmental protection, education, health, and rural development, among others. Ensuring compliance with the JEP's sanctions requires sustained political commitment, adequate financial resources, and effective interinstitutional cooperation at both the national and territorial levels. In this sense, the implementation of restorative sanctions should be understood not only as a judicial responsibility but also as a shared State obligation that guarantees the effective realization of victims' rights.

15. Due to the current political context, Colombia faces an urgent need to continue strengthening the institutional architecture that supports the implementation of the Peace Agreement and the JEP's restorative justice model. The State bears the enormous responsibility of ensuring that the measures identified by the SJP-JEP as necessary to guarantee truth, justice, reparation, and guarantees of non-repetition are effectively implemented, particularly in rural and historically marginalized territories where the armed conflict had its greatest impact. These regions continue to experience limited institutional presence, weak public service delivery, poor connectivity, and persistent public policy deficits. Strengthening the capacity of executive institutions to operate in these contexts is therefore essential to transforming judicial decisions into tangible improvements in the lives of affected communities. Only through a coordinated and sustainable institutional effort will Colombia be able to consolidate restorative justice as an effective instrument for building lasting peace and restoring public trust in the rule of law.

16. The successful implementation of the SJP-JEP's Proper Sanctions requires more than financial resources and administrative capacity; it also demands a coherent and sustained institutional commitment across all branches and levels of government. Public institutions should consistently articulate a discourse that recognizes restorative sanctions as a legitimate and essential component of Colombia's constitutional commitment to peace, victims' rights, and the rule of law. Such an institutional narrative is fundamental to safeguarding the rights of victims to truth, justice, reparation, and guarantees of non-repetition, while reinforcing public confidence in the transitional justice system. In this regard, the implementation of the JEP's decisions should be understood not as the policy agenda of a particular administration or political ideology, but as a long-term State commitment derived from the 2016 Final Peace Agreement and Colombia's constitutional

framework. Framing transitional justice as a cross-cutting pillar of sustainable public policy—one that transcends electoral cycles and political differences—is essential to ensuring the continuity, legitimacy, and effectiveness of restorative justice, particularly in those territories where the legacy of the armed conflict continues to shape everyday life.

III. Threats to the wider peace architecture, including the UBPD and reincorporation structures

17. The concerns giving rise to this Referral also extend beyond the JEP itself. Information presently available indicates announced or anticipated dismantling of institutions created pursuant to the 2016 Peace Agreement, including the *Unidad de Búsqueda de Personas dadas por Desaparecidas* (“UBPD”) and the *Agencia para la Reincorporación y la Normalización* (“ARN”).¹¹

18. The weakening or dismantling of these institutions may interrupt efforts to secure truth for families of the disappeared, undermine guarantees of non-repetition, increase risks of recidivism and renewed violence, and adversely affect the broader conditions under which victims, former combatants and communities participate in accountability processes.¹² These concerns are reinforced by the Office’s continued attention, recorded in its 2023 Report, to violence affecting former FARC-EP combatants, social leaders, human rights defenders and communities affected by ongoing conflict dynamics.

19. One manifestation of this risk is that the President-elect has asserted that the Special Jurisdiction for Peace (JEP) “is not a court” but instead “whitewashes FARC narcoterrorists”¹³ Such statements reflect open hostility towards the objectives and achievements of the SJP-JEP while disseminating misinformation about its role. In the Colombian context, this rhetoric may contribute to heightened security risks for judges, officials, victims, and other individuals actively participating in its proceedings.

¹¹ El País, 14 July 2026, “De la Espriella inicia los recortes con las entidades de la paz”, [here](#).

¹² Ibid.

¹³ Caracol Radio, 09 July 2026, <https://caracol.com.co/2026/06/09/la-jep-no-es-un-tribunal-judicial-lava-las-manos-de-narcoterroristas-de-las-farc-de-la-espriella/>

20. The President-elect has also described the Comprehensive System for Peace as a "perverse system of impunity"¹⁴ that must be dismantled and identified its dismantling as one of the objectives of his administration, presenting this measure as necessary "to ensure the people's security."

21. This rhetoric has also extended to other key institutions within Colombia's transitional justice framework. The President-elect has already announced the closure of the Office of the High Commissioner for Peace and three agencies established to support the implementation of the Peace Agreement of 2016¹⁵. Furthermore, with respect to future negotiations with active armed groups in Colombia, he has declared that there will be no more "sham peace processes," characterizing them as a form of impunity that "hides behind the illusion of false peace."

IV. Risks to participant safety, judicial functioning and the genuineness of proceedings

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22. A further element of concern lies in the increased risk faced by victims, human rights defenders, social leaders, former combatants, judicial officers, witnesses and other participants in accountability proceedings. Article 1 of the Cooperation Agreement specifically commits the Government to ensure the safety and security of judicial and prosecutorial personnel as well as participants appearing before the different accountability mechanisms, and to prevent interference with their functions. Yet, the elected president have said previously that the "Special Jurisdiction for Peace is not a judicial tribunal, it whitewashes FARC narcoterrorists".

23. The viability of genuine proceedings depends not only on the formal existence of jurisdictions, but also on the practical possibility for victims, witnesses, judicial personnel and participants to engage with those mechanisms in conditions of safety and independence. Information currently available indicates that the broader environment created by the announced rollback of the peace architecture, together with inflammatory rhetoric and coercive policy orientations, may materially undermine those conditions. Additionally, there have been previous declarations of the elected president referring to the "the potential disarticulation of the Comprehensive System for Peace".

V. Stigmatization, threats of political persecution and incitement against protected sectors

¹⁴ El Tiempo, 13 July 2026, <https://www.facebook.com/watch/?v=27579229368393900>

¹⁵ El País 14 July 2026, <https://elpais.com/america-colombia/2026-07-15/de-la-espriella-inicia-los-recortes-con-las-entidades-de-la-paz.html>

24. Another serious element giving rise to concern consists in repeated public statements and policy orientations that stigmatize particular social and political sectors, threaten direct persecution, and portray sectors as enemies to be eradicated.¹⁶ The information available identifies repeated hostility toward progressive and left-wing sectors, human rights defenders and other actors historically exposed to violence in Colombia.

25. Among the statements supporting the Referral are remarks from Mr. Abelardo de la Espriella to the effect that he would do “*todo lo posible para destripar a la izquierda*”¹⁷ and that “*a esa plaga hay que erradicarla*.”¹⁸ which means “I will do everything possible to gut the left and that plague must be eradicated”. The same materials further refer to rhetoric grounded in an “internal enemy” conception of national security and to statements that may objectively be understood as heightening the risk of political violence and persecution¹⁹. Additionally, the elected president has stated regarding UN, OAS and the ICHR “*They are left-wing political bodies that have been of no use*”²⁰.

26. In the Colombian context, these statements are relevant not merely as a matter of political discourse, but as warning indicators of a deteriorating environment affecting the security, participation and civic space of sectors whose protection is essential to the conduct of genuine national proceedings. They are also relevant in light of Colombia’s history of political violence, including the persecution suffered by the Unión Patriótica, as recognized by the Inter-American Court of Human Rights in its Judgment of 27 July 2022²¹. In relationship to Colombia’s participation in the Inter-American Court of Human Rights, De la Espriella stated that the Court “is another farce”

¹⁶ Canal de oficial Abelardo de la Espriella Style, 6 April 2025, Petro es el Sida de Colombia, here on youtube; Infobae 17 July 2026, Gustavo Petro respondió anuncio de Abelardo de la Espriella de suspender mesas de trabajo con “el gobierno más corrupto de la historia”: “El empalme es con el pueblo”, [here](#).

¹⁷ Canal oficial Abelardo de la Espriella, De La Espriella Style, 3 November 2025, on YouTube [here](#).

¹⁸ Canal oficial Abelardo de la Espriella, Espriella Style, 3 November 2025, YouTube; see also El Espectador, 21 August 2025, “Exterminar la plaga.”

¹⁹ El País, 22 June 2026, “Abelardo de la Espriella, el showman que promete venganza contra la izquierda”; see also El País, 3 June 2026, “Abelardo de la Espriella refuerza su bandera contra la izquierda: ‘No creo que haya empalme con esos bandidos’”.

²⁰ Revista Semana, 16 November 2025, https://www.semana.com/politica/articulo/abelardo-de-la-espriella-anuncia-que-si-es-presidente-retira-a-colombia-de-la-onu-la-oea-y-la-cidh-son-directorios-politicos-de-la-izquierda-que-no-han-servido/202528/#google_vignette and Vélez por la mañana, 04 June 2026, <https://x.com/lvelez/status/2062732844531691706>

²¹ Inter-American Court of Human Rights, Miembros y Militantes de la Unión Patriótica v. Colombia, Judgment of 27 July 2022.

[that has only served] "to support the left and to persecute members of our security forces and those who do not share left-wing ideas"²².

27. Additionally, statements affirming that "peace imposed through the use of force by the State"²³ and that "we must be relentless in the fight against crime" are particularly concerning in the Colombian context. Historically, the pursuit of an "armed peace" has served to justify massacres, forced displacement, and serious human rights violations. Similarly, the "war against crime" has, in the past, resulted in millions of victims, including human rights defenders, indigenous communities, and other vulnerable groups who were frequently stigmatized, without evidence, as "guerrilla collaborators."

VI. Threats to international oversight and hostility toward external scrutiny

28. Statements also indicate hostility toward international human rights oversight and possible withdrawal from international bodies or systems, including the United Nations, the Inter-American Human Rights System and the International Criminal Court.²⁴ While such statements do not by themselves engage the jurisdiction of the Court, they are relevant because they suggest a broader policy orientation hostile to external scrutiny, international cooperation and institutional safeguards.

29. That orientation is relevant to the present Referral because the 2021 closure of the preliminary examination was expressly situated within an ongoing relationship of cooperative complementarity, reinforced by commitments to maintain information flows and cooperation between national authorities and the Office of the Prosecutor.

30. The current President-elect has described the international organizations that have cooperated with the Colombian State to protect and promote human rights as "left-wing political bodies that have been of no use."²⁵ Additionally, during the election campaign, he referred to Colombia's participation in the Inter-American Court of Human Rights, stating that the Court "is another farce"

²² Revista Semana, 16 November 2025, https://www.semana.com/politica/articulo/abelardo-de-la-espriella-anuncia-que-si-es-presidente-retira-a-colombia-de-la-onu-la-oca-y-la-cidh-son-directorios-politicos-de-la-izquierda-que-no-han-servido/202528/#google_vignette

²³ De la Aspriella Style, Canal Oficial, 10 October 2025, <https://www.youtube.com/shorts/alRuNcxHLIQ>

²⁴ El Heraldó, 8 July 2026, "Iván Cancino, ministro de Justicia entrante, descarta prorrogar la JEP y anuncia revisión de su presupuesto," [here](#) and

²⁵ Revista Semana, 16 November 2025, https://www.semana.com/politica/articulo/abelardo-de-la-espriella-anuncia-que-si-es-presidente-retira-a-colombia-de-la-onu-la-oca-y-la-cidh-son-directorios-politicos-de-la-izquierda-que-no-han-servido/202528/#google_vignette

that has only served "to support the left and persecute members of our security forces and those who do not share left-wing ideas." These statements reveal a significant risk of withdrawal from, or disengagement with, the international human rights system. That risk is not merely speculative but has a high likelihood of materializing, as it is reinforced by repeated statements that disseminate misinformation and hostile rhetoric regarding the role of international human rights institutions in Colombia.

VII. Return to coercive security models and risk of renewed grave violations

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31. The available information further points to a policy orientation favouring coercive security models and the dismantling of ongoing peace efforts, with express admiration for approaches associated with mass detention and harsh punitive responses²⁶ (expressed public admiration for the President of Salvador, Mr. Nayib Bukel).²⁷ In the Colombian context, such proposals are alarming because they recall historical periods in which security doctrines contributed to large-scale human rights violations and grave crimes, including the period in which thousands of extrajudicial executions (7.837, the so-called "false positive"), later recognized in judicial proceedings, were committed.

32. The significance of this element for the present Referral lies in the high possibility that accountability-based and rights-based approaches may be displaced by coercive models carrying a substantial risk of renewed grave violations and renewed impunity.

VIII. Overall relevance to Article 6 of the Cooperation Agreement

33. Taken together, the elements recorded in this Annex indicate a serious and credible risk of a significant change in circumstances affecting the progress, genuineness and practical viability of domestic proceedings that formed the basis of the Office's admissibility assessment in 2021. They bear directly on whether the institutional, legal, financial and security conditions required for genuine proceedings are being maintained, or whether they are being weakened in a manner that may justify renewed action by the Office under Article 6 of the Cooperation Agreement and Article 53 of the Rome Statute.

²⁶ El País, 07 July 2026, <https://elpais.com/america-colombia/2026-07-07/la-propuesta-de-de-la-espiella-de-crear-bloques-de-seguridad-urbana-se-estrella-con-el-fantasma-del-paramilitarismo.html>

²⁷ La Silla Vacía, 16 July 2026, [here](#).

34. The matters set out in this Annex are therefore submitted as relevant to the circumstances referred by the Republic of Colombia, including legislative, executive, administrative, budgetary and institutional measures affecting the JEP and related accountability bodies; conduct impairing the implementation of sanctions and restorative measures; acts or omissions placing victims, witnesses, former combatants, judicial personnel, defenders and other participants at heightened risk; measures undermining cooperation and coordination among relevant institutions; and patterns of stigmatization, intimidation or possible political persecution contributing to renewed impunity, violence against protected sectors, or obstruction of genuine national proceedings.