

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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No.: **ICC-RoC46(3)-01/22**

Date: **6 June 2022**

**PRE-TRIAL CHAMBER I**

**Before:** Judge Péter Kovács, Presiding Judge  
Judge Reine Alapini-Gansou  
Judge María del Socorro Flores Liera

**REQUEST UNDER REGULATION 46(3) OF THE REGULATIONS OF THE  
COURT**

**Public**

**Prosecution response to FIDH and CAJAR requests ICC-RoC46(3)-01/22-3 and  
ICC-RoC46(3)-01/22-1-Red**

**Source:** Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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**Unrepresented Applicants for  
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**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the  
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**States' Representatives**

Colombia

**Amicus Curiae**

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**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

Mr Emmanuel Daoud (FIDH and  
CAJAR)

## INTRODUCTION

1. On 28 October 2021, the Prosecutor announced his decision to close the preliminary examination and not to open an investigation in Colombia, given his assessment on admissibility on the basis of the facts as they exist.<sup>1</sup> Specifically, the Prosecutor announced that as a result of the recent progress that had been made before the competent domestic jurisdictions, the Colombian national authorities could not be assessed to be inactive, or otherwise unwilling or unable to genuinely investigate and prosecute crimes under the Rome Statute.

2. Given the statutory differentiated regime for situations opened *proprio motu* by the Prosecutor (regulated by article 15) from situations referred by a State Party or the United Nations Security Council (regulated by article 53), the Prosecutor's decision not to proceed in the *proprio motu* situation in Colombia is not subject to judicial review. Rather, the Prosecutor must provide notice of, and the reasons for, his decision not to proceed, and advise senders of the possibility to submit further information in light of new facts and evidence. The Prosecutor has provided such notice, as well as his reasons for not proceeding, by way of his statement on 28 October 2021 and by the terms of the Cooperation Agreement between the Office and the Government of Colombia, which accompanied his statement.<sup>2</sup>

3. Accordingly, since there are no judicial proceedings in the situation, the requests of the International Federation for Human Rights ("FIDH") and of the *Corporación Colectivo de Abogados Jose Alvear Restrepo* ("CAJAR") to review the Prosecutor's Decision (or in the alternative to provide his analysis) and to hold a

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<sup>1</sup> 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: [Press Release](#) or "[Prosecutor's Decision](#)".

<sup>2</sup> [Press Release](#), 28 October 2021; Cooperation Agreement between the Office of the Prosecutor of the International Criminal Court and the Government of Colombia, ("[Cooperation Agreement](#)").

hearing on this matter should be summarily dismissed because of the Applicants' lack of standing.<sup>3</sup>

4. The fact that the Prosecutor has closed the preliminary examination in Colombia does not mean that victims cannot engage with the Court. To the contrary, victims may continue communicating and providing information to the Office under article 15(6) of the Statute, which is expressly referenced in the Cooperation Agreement.<sup>4</sup> The Prosecutor has greatly valued the constructive engagement that the Office has had with victims and civil society during the preliminary examination and has acknowledged their extraordinary contribution to the progress of the Colombian domestic proceedings. He looks forward to further engagement with them within the terms of Statute and in the context of the Cooperation Agreement. The concerns that the FIDH and CAJAR express, as to the risk of regression in view of the closure of the preliminary examination, are adequately addressed by ensuring full implementation of the Cooperation Agreement, to which the Office remains committed.

5. Should the Pre-Trial Chamber wish to consider the requests, the Prosecution seeks leave to provide further observations.

## SUBMISSIONS

6. On 27 April 2022, FIDH and CAJAR requested that a Pre-Trial Chamber be assigned to review the Prosecutor's Decision.<sup>5</sup> The Applicants submit that they

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<sup>3</sup> ICC-RoC46(3)-01/22-1-Red ("[Review Request](#)"); ICC-RoC46(3)-01/22-3 ("[Hearing Request](#)"). FIDH and CAJAR are referred to as the "Applicants". The Prosecution has awaited judicial guidance as to the procedure before responding to the Review Request. However, since the Hearing Request is the second motion on the same matter, in order to assist the Chamber the Prosecution hereby responds to the Hearing Request and the inextricably linked Review Request. To the extent that it is considered that the Prosecution should have responded to the Review Request within ten days of its notification under regulation 34(b) of the Regulations of the Court because the two requests are not inextricably linked, the Prosecution respectfully requests leave to extend the time limit to respond to the Review Request under regulation 35 and to consider this filing as responding to the two requests.

<sup>4</sup> [Cooperation Agreement](#), article 6 (noting that the Office may reconsider its assessment of complementarity in light of any significant change in circumstances).

<sup>5</sup> [Review Request](#).

represent victims of crimes against humanity in the situation,<sup>6</sup> and request that a Pre-Trial Chamber reviews and reverses the Prosecutor's Decision because it is based on interests of justice pursuant article 53(1)(c) and the Pre-Trial Chamber has an authority to review it under article 53(2)(b).<sup>7</sup> In the alternative, they request that the Prosecutor be instructed to present the victims and the international community with a rigorous and reasoned analysis of the Prosecutor's Decision.<sup>8</sup> On 6 May 2022, the Presidency of the Pre-Trial Division assigned the Review Request to Pre-Trial Chamber I.<sup>9</sup> On 25 May 2022, the Applicants requested Pre-Trial Chamber I to convene a public hearing in order to provide additional information to the Chamber under article 68(3) of the Statute regarding the Prosecutor's Decision.<sup>10</sup>

7. The Applicants appear to mischaracterise the Prosecutor's Decision and misapply the Court's legal texts. First, the Prosecutor decided not to seek authorisation to open an investigation in Colombia on admissibility grounds. Second, the Statute does not envisage judicial review of a Prosecutor's decision not to proceed with an investigation in a *proprio motu* situation, like Colombia. Accordingly, there are no judicial proceedings in which the Applicants can express their views and concerns under article 68(3) or any other provision of the Statute; nor can the Applicants request the Chamber to review the Prosecutor's Decision. Finally, beyond providing notice of, and the reasons for, the Prosecutor's decision to close a preliminary examination, the Statute does not regulate the manner and scope in which these reasons must be provided.

8. For the reasons further developed below, the Applicants lack standing and their requests must be summarily dismissed.

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<sup>6</sup> [Review Request](#), para. 1.

<sup>7</sup> [Review Request](#), paras. 19-74, 85.

<sup>8</sup> [Review Request](#), para. 85.

<sup>9</sup> [ICC-RoC46\(3\)-01/22-2](#). Pre-Trial Chamber I is also referred to as the "Chamber".

<sup>10</sup> [Hearing Request](#).

## A. The Prosecutor's Decision was based on admissibility considerations

9. The Applicants acknowledge that the Prosecutor publicly stated that his Decision was based on admissibility considerations under article 17.<sup>11</sup> Indeed, in his statement on 28 October 2021 the Prosecutor explained that “[f]ollowing a thorough assessment, the Prosecutor is satisfied that complementarity is working today in Colombia”. He referred to the “ordinary courts, the Justice and Peace Law Tribunals, the Special Jurisdiction for Peace” and “the civil society and people of Colombia [...] demanding justice and accountability” and noted that “[t]he progress made has led the Office to determine that the Colombian national authorities are neither inactive, unwilling nor unable to genuinely investigate and prosecute Rome Statute crimes”.<sup>12</sup> The Cooperation Agreement likewise refers to “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”.<sup>13</sup> It recalls “the recent achievements of the transitional justice in Colombia in pursuing the objectives of retribution, rehabilitation, restoration and deterrence”.<sup>14</sup>

10. Despite these clear statements, the Applicants “infer”<sup>15</sup> that the Prosecutor has not conducted a rigorous complementary analysis<sup>16</sup> and that the Prosecutor’s Decision is in fact “solely [based] on the interest of justice, [...] political grounds and/or considerations about the peace process”.<sup>17</sup> They rely on the fact that the Prosecutor did not use certain terminology (*i.e.* potential cases or groups of persons)<sup>18</sup> but instead used

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<sup>11</sup> [Review Request](#), paras. 21 (“While the public statements and the Cooperation Agreement [...] use language of complementarity, on a closer look, the Applicants conclude that the Prosecutor’s decision was based solely on the interests of justice”), 22 (“the language used by the Prosecutor refers to complementarity under the Rome Statute”), 23 (quoting the Prosecutor’s 28 October statement), 24 (selectively referring to extracts of the Cooperation Agreement).

<sup>12</sup> [Press Release](#), 28 October 2021.

<sup>13</sup> [Cooperation Agreement](#), p. 2.

<sup>14</sup> [Cooperation Agreement](#), p. 2.

<sup>15</sup> [Review Request](#), para. 19.

<sup>16</sup> [Review Request](#), paras. 22, 25, 34, 38.

<sup>17</sup> [Review Request](#), paras. 39-47,

<sup>18</sup> [Review Request](#), paras. 34-35, 38, 45.

other terms in his press statement and interviews.<sup>19</sup> However, the Applicants improperly speculate and offer mere conjecture.

11. The Prosecutor’s Decision is the result of a thorough assessment conducted over a period of 17 years and strictly guided by the Court’s legal texts. As Chambers have consistently held, the Court must assess complementarity on the basis of the relevant facts *as they exist*,<sup>20</sup> and national proceedings need not be completed for cases (or potential cases) to be deemed inadmissible under article 17(1)(a). The Office has continued to follow proceedings before the relevant Colombian jurisdictions over the course of the preliminary examination, which in recent years have made significant advances, in particular in the context of the Special Jurisdiction for Peace (“JEP”). Accordingly, in deciding to close the preliminary examination the Office conducted its admissibility assessment on the basis of the same criteria that it had applied throughout its preliminary examination, which consistently referred to potential cases concerning different categories of persons and different categories of conduct.<sup>21</sup> This led the Prosecutor to conclude that, on the basis of facts as they existed, the national authorities did not appear inactive or otherwise unwilling or unable genuinely to carry out proceedings relevant to the admissibility assessment. Having concluded this, the Prosecutor determined that the preliminary examination should be closed.

12. It was in this context that, on 28 October 2022, the Prosecutor announced that the preliminary examination in Colombia was closed on admissibility grounds.<sup>22</sup> The

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<sup>19</sup> [Review Request](#), paras. 41-44.

<sup>20</sup> ICC-01/04-01/07-1497 (“[Katanga Admissibility AD](#)”), para. 56 (“Generally speaking, the admissibility of a case must be determined on the basis of the facts as they exist at the time of the proceedings concerning the admissibility challenge”); *see also* [Press Release](#).

<sup>21</sup> As rule 48 provides, at the article 15(3) stage the Prosecutor shall apply, *inter alia*, the factor in article 53(1)(b) to determine whether there is a reasonable basis to proceed, namely whether “[t]he case is or would be admissible under article 17”. *See* ICC-01/09-19-Corr (“[Kenya Article 15 Decision](#)”), paras. 48-50.

<sup>22</sup> The Prosecutor referred to the admissibility assessment to be conducted according to the relevant provisions during preliminary examination: [Cooperation Agreement](#), pp. 4-5 (“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”); *see also* [Press Release](#) (“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

Prosecutor also noted that he may reconsider his complementarity assessment in light of any significant change of circumstances.<sup>23</sup> The Cooperation Agreement further specified undertakings adopted by the Colombian Government to ensure support for continued progress by the competent domestic authorities of relevant national proceedings, and for access by the Office to records and documents relevant to assessing domestic proceedings.<sup>24</sup> Finally, the Cooperation Agreement specified factors that the Prosecutor would apply if he were to reconsider his admissibility assessment.<sup>25</sup> The Prosecutor's statement and the Cooperation Agreement are thus underpinned with admissibility considerations throughout.

13. Moreover, the Office's engagement with Colombia—and its support to the Colombian accountability processes in the context of the Cooperation Agreement, including to support their continued and genuine progress—is fully consonant with the complementarity principle, which seeks to reinforce States' primary responsibility in this area and to avoid overburdening the Court with proceedings that can be appropriately conducted at the national level. As this Chamber has noted in another situation, these approaches must be pursued where feasible, provided they “do[...] not risk validating national proceedings or tainting any possible admissibility proceedings in the future”.<sup>26</sup>

### **B. The Prosecutor's Decision is not subject to review**

14. The Applicants further argue that Pre-Trial Chambers may, under article 53(3)(b) of the Statute, review decisions by the Prosecutor not to proceed on the basis of the interests of justice for *all* preliminary examinations, both those opened *proprio*

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Court's case law are clear that the admissibility assessment must be carried out on the basis of the facts as they exist”).

<sup>23</sup> [Press Release](#) (“because the ICC is a permanent institution, the Agreement recalls that the Prosecutor may reconsider his assessment of complementarity in light of any significant change in circumstances”); [Cooperation Agreement](#), preamble, art. 6.

<sup>24</sup> [Cooperation Agreement](#), arts. 1, 2.

<sup>25</sup> [Cooperation Agreement](#), art. 6.

<sup>26</sup> ICC-02/18-9-Red (“[Venezuela Review Decision](#)”), paras. 19-20; *see also* [OTP Policy Paper on Preliminary Examinations](#), para. 102.

*motu* and those referred by a State Party or the Security Council.<sup>27</sup> Despite the Appeals Chamber's ruling in *Afghanistan* that the Prosecutor's decisions not to proceed in *proprio motu* situations are not subject to judicial review,<sup>28</sup> the Applicants argue that this finding was *obiter dicta*.<sup>29</sup>

15. The Court's legal texts do not support the Applicants' interpretation. The Statute and the Rules clearly distinguish between on the one hand, decisions made by the Prosecutor to investigate (or not) in situations referred by a State Party or the Security Council, and on the other hand, similar decisions made in situations initiated *proprio motu* by the Prosecutor.<sup>30</sup> While the former are regulated by article 53, the latter follow article 15,<sup>31</sup> which afford greater discretion to the Prosecutor in deciding whether to trigger *proprio motu* an investigation.<sup>32</sup>

16. Accordingly, for article 15 situations, if the Prosecutor concludes that there *is* a basis to initiate an investigation following his *proprio motu* assessment, his decision is subject to judicial authorisation before the investigation may be opened.<sup>33</sup> Although the Prosecutor must consider the factors set out in article 53(1)(a) to (c) when considering whether to make an application under article 15(3)—by virtue of rule 48<sup>34</sup>—the remaining text and sub-sections of article 53 do not apply, including, notably, the article 53(3) provisions regulating the Pre-Trial Chamber's power to review certain

<sup>27</sup> [Review Request](#), paras. 11-13, 16-18.

<sup>28</sup> ICC-02/17-138 ("[Afghanistan AD](#)"), para. 30.

<sup>29</sup> [Review Request](#), paras. 14-15.

<sup>30</sup> [Afghanistan AD](#), paras. 33 ("the content and placement of articles 15 and 53(1) of the Statute make it clear that these are separate provisions addressing the initiation of an investigation by the Prosecutor in two distinct contexts. Article 15 of the Statute governs the initiation of a *proprio motu* investigation, while article 53(1) concerns situations which are referred to the Prosecutor by a State Party or the Security Council").

<sup>31</sup> The rules also reflect the differentiated regime: *see* rules 105(1), (3)-(5) to rule 110 for situations resulting from a State Party and Security Council referrals, and rules 46-50 (and rule 105(2)) for *proprio motu* situations.

<sup>32</sup> [Afghanistan AD](#), para. 30 ("it is for the Prosecutor to determine whether there is a reasonable basis to initiate an investigation"); *compare* Statute, art. 15(1) ("The Prosecutor *may* initiate investigations *proprio motu* on the basis of information on crimes within the jurisdiction of the Court") with art. 53(1) ("The Prosecutor *shall*, having evaluated the information made available to him or her, initiated an investigation unless he or she determines that there is no reasonable basis to proceed under this Statute") (emphasis added).

<sup>33</sup> [Afghanistan AD](#), para. 32.

<sup>34</sup> [Afghanistan AD](#), para. 35.

decisions.<sup>35</sup> Further, as the Appeals Chamber has stated, while article 15(4) requires the Pre-Trial Chamber to determine, on the basis of the information contained in the Prosecutor's request, whether there is a reasonable factual basis to proceed with an investigation, and whether the potential case(s) arising from such investigation would appear to fall within the Court's jurisdiction,<sup>36</sup> it is not called upon to review the Prosecutor's internal assessment of the factors set out in article 53(1)(a) to (c).<sup>37</sup>

17. Conversely, if the Prosecutor decides *not* to proceed with an investigation, the legal framework does not envisage judicial review of the Prosecutor's decision.<sup>38</sup> Instead, the Prosecutor must provide notice and reasons for his decision, to those who provided the information.<sup>39</sup> As the Appeals Chamber has held "it would be contrary to the very [nature of the power accorded to the Prosecutor under article 15] to suggest that a duty to investigate could be imposed by the pre-trial chamber in the absence of a request for authorisation of investigation by the Prosecutor".<sup>40</sup>

18. The situation is reversed in the case of a State Party or Security Council referral: the Prosecutor is not obliged to seek judicial authorisation to proceed, but he is potentially subject to judicial review if he decides not to proceed, as set out in article 53(3).

19. Thus, as a result of the differentiated procedure for article 15 and article 53 situations, there is greater judicial control both: (i) where the Prosecutor acted without an explicit State Party or Security Council request to investigate (i.e. *proprio motu*) and

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<sup>35</sup> See similarly H. Friman, 'Investigation and Prosecution', in Roy Lee *et al.* (eds.), *The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence*, (Ardsey: Transnational, 2001) ('Friman'), p.496 (noting that the cross-reference in rule 48 was "carefully crafted" in order not to capture other elements of article 53(1) which could point to judicial review of the Prosecutor's determination that an investigation would not serve the interests of justice).

<sup>36</sup> [Afghanistan AD](#), para. 34.

<sup>37</sup> [Afghanistan AD](#), para. 45.

<sup>38</sup> [Afghanistan AD](#), para. 30.

<sup>39</sup> [Afghanistan AD](#), para. 30; see article 15(6) and rule 49(1).

<sup>40</sup> [Afghanistan AD](#), para. 31.

(ii) where the Prosecutor acted contrary to an explicit State Party or Security Council request to investigate (*i.e.* in effect, rejecting a referral).

20. While the Appeals Chamber in *Afghanistan* assessed these matters in the context of its ruling on the correctness of the Pre-Trial Chamber’s decision not to authorise the Prosecutor’s investigation, this does not detract from its reasoning or render it *obiter dicta*. On the contrary, the Appeals Chamber’s detailed assessment of the clear distinction in the regimes and applicable provisions for *proprio motu* situations (article 15) and those resulting from a State Party and Security Council referral (article 53) was inextricably linked to the question before it and its resolution. The Appeals Chamber’s approach in this regard has also been followed by this Pre-Trial Chamber in authorising the investigation in the Philippines,<sup>41</sup> and is consistent with the view expressed in another situation where this Chamber held that the Court’s legal texts do not provide the Chamber with judicial control over the Prosecution’s preliminary examination as requested by an applicant.<sup>42</sup>

### C. The Applicants have no standing to bring the Requests

21. Because of the foregoing, the Prosecutor’s decision to conclude the preliminary examination following his admissibility assessment is not subject to judicial review under article 53(3)(b) because it was based on admissibility grounds and because the review powers set out therein do not apply to decisions in *proprio motu* situations. Instead, under the regime applicable to article 15 situations, article 15(6) and rule 49(2) provide that the Applicants could submit further information to the Prosecutor regarding the same situation in the light of new facts and evidence.<sup>43</sup> However, they

<sup>41</sup> ICC-01/21-12 (“[Philippines Article 15 Decision](#)”), paras. 9-11, 14-16.

<sup>42</sup> [Venezuela Review Decision](#), para. 11 (“Nothing in these legal instruments provides the Chamber the power to exercise Judicial Control over the Prosecution’s preliminary examination in the manner sought by Venezuela. Such a power cannot be derived from Article 15”).

<sup>43</sup> ICC-01/18-2 (“[Palestine Outreach Decision](#)”), para. 10 (recalling that the victims’ rights before the Court “are not limited to their legal participation within the context of judicial proceedings under article 68(3)”, but “victims also have the right to provide information to, and receive information from, and communicate with the Court,

cannot request the Pre-Trial Chamber to review the Prosecutor’s decision not to open an investigation into a *proprio motu* situation.<sup>44</sup> Further, since there are no judicial proceedings in the situation in Colombia, the victims are also not granted the right to provide, directly or through the Applicants, their views and concerns to the Chamber under article 68(3) or under any other statutory provision.<sup>45</sup>

22. Accordingly, the Applicants lack standing and the two requests must be summarily dismissed.

#### **D. The Prosecutor is not required to publish reports of his legal analysis**

23. Finally, and in the alternative to their Review Request, the Applicants request the Chamber to order the Prosecutor “to justify his decision” to the victims and the international community and to provide a “public and reasoned explanation of the grounds for the closure of the preliminary examination”.<sup>46</sup> They rely on articles 53(1)(c) and 15(6), rule 49, and their view of the implications of the right of access to justice, and refer to the Office’s previous practice.<sup>47</sup>

24. The Court’s legal texts do not support the Applicants’ request. While article 15(6) and rule 49 do require the Prosecutor to provide notice and the reasons for his decision to those who communicated with the Office, the Statute and the Rules do not

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regardless and independently from judicial proceedings including during the preliminary examination”); *see also* ICC-01/19-28 (“[Bangladesh/Myanmar Outreach Decision](#)”), para. 7.

<sup>44</sup> Friman, p. 498 (observing that the Court’s legal texts do not allow victims to seek review of the Prosecutor’s decision, but that victims can submit further information). Nor do Chambers have a *proprio motu* power that the victims could trigger: *compare with* ICC-01/09-159 (“[Kenya Review Request Decision](#)”), para. 7; ICC-01/19-38-Corr (“[Bangladesh/Myanmar Hearing Decision](#)”), paras. 22-23.

<sup>45</sup> The victims’ right to provide views and concerns under article 68(3) has been recognised in the context of judicial proceedings (including proceedings affecting investigations) but only when the victims satisfy the requirements under rule 85, their participation is deemed appropriate and their personal interests are affected by issues arising that require judicial determination: ICC-01/04-556 (“[DRC Victims AD](#)”), paras. 45, 56; ICC-01/09-24 (“[Kenya Victims Decision](#)”), paras. 9-16; ICC-02/04-01/05-252 (“[Uganda Victims Decision](#)”), para. 8; [Palestine Outreach Decision](#), para. 10; [Bangladesh/Myanmar Hearing Decision](#), para. 19.

<sup>46</sup> [Review Request](#), paras. 7, 75-76, 78, 85.

<sup>47</sup> [Review Request](#), paras. 75-85.

otherwise regulate the manner in which such notice is to be provided.<sup>48</sup> The Prosecutor has provided such notice by way of his statement and the accompanying Cooperation Agreement.<sup>49</sup> Further, given the abundance of reporting by the Office concerning the situation in Colombia, making it perhaps the Office's most reported on preliminary examination, it should have been clear to any observer that this assessment and conclusion was made against the backdrop of the assessment previously conducted and documented in detail by the Office in its situation-specific and annual reports, in its submissions before the Colombian Constitutional Court as well as in key statements setting out the Office's position.<sup>50</sup> The Cooperation Agreement expressly places the Prosecutor's determination reached in the context of the 17 years of preliminary examination undertaken by the Office since 2004.<sup>51</sup>

25. Nor as the Applicants argue, does the publication of the Bolivia report in January 2022 provide a comparable reference point.<sup>52</sup> This was a situation referred by a State Party which has the right to request a review by the Pre-Trial Chamber of the Prosecutor's decision under article 53(3)(a). Furthermore, this report is the sole substantive report made by the Office on that particular preliminary examination.

26. Finally, the Prosecutor remains mindful of the legitimate interest of victims and affected stakeholders to ensure the ongoing engagement of the Court in Colombia. The

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<sup>48</sup> Rule 49 requires that (i) notice and reasons be provided in a manner that prevents any danger to the safety, well-being and privacy of those who provided information or the integrity of the investigations or proceedings, and that (ii) notice advises of the possibility of submitting further information regarding the same situation in the light of new facts and evidence.

<sup>49</sup> See similarly rule 50(1) (indicating that notice to victims may also be given by general means, when the Prosecutor intends to seek authorisation to open an investigation).

<sup>50</sup> See OTP Preliminary Examination reports: [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*, 14 November 2012; *Situation in Colombia – Benchmarking Consultation*, 15 June 2021; *Transitional Justice in Colombia and the Role of the International Criminal Court*, Remarks by the Deputy Prosecutor, Mr. Stewart, 13 May 2015; *The Role of the ICC in the Transitional Justice Process in Colombia*, 30-31 May 2018; *Presentación del Fiscal Adjunto, James Stewart, sobre complementariedad*, 1 November 2018; *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.

<sup>51</sup> [Cooperation Agreement](#), preamble.

<sup>52</sup> [Review Request](#), para. 20.

Prosecutor further acknowledges his appreciation for the continued engagement and the work of FIDH and CAJAR in the course of the preliminary examination. Both organisations, as well as other civil society actors, have played a profound role in representing victims before the different but inter-connected jurisdictions in Colombia. The Prosecutor also understands the perceived risk of regression, held by some stakeholders, in view of the closure of the preliminary examination. However, in the Prosecutor's view, at this stage these concerns are better addressed by ensuring full implementation of the Cooperation Agreement, as well as the continued submission of relevant information to the Office pursuant to article 15(6). The Prosecution continues to be actively engaged with the competent domestic authorities in Colombia.

### RELIEF SOUGHT

27. For all the above reasons, the Prosecution respectfully requests the Pre-Trial Chamber to summarily dismiss the Applicants' requests because of lack of standing and to instruct the Registry not to file into the record further requests from the Applicants.<sup>53</sup> Alternatively, should the Chamber decide to consider the requests, the Prosecution respectfully seeks leave to provide further observations.



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Karim A.A. Khan QC, Prosecutor

Dated this 6<sup>th</sup> day of June 2022  
At The Hague, The Netherlands

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<sup>53</sup> Pre-Trial Chamber II has issued a similar instruction in the context of article 18(2) proceedings in the situation in *Afghanistan*: [ICC-02/17-171](#), para. 11 (“the Chamber instructs the Registry to refrain from filing into the record of the situation in Afghanistan, including by the way of transmission, any document emanating from persons or entities other than the Prosecutor and the relevant State, unless those persons and entities can be considered as enjoying legal standing in these proceedings on the basis of a decision of the Chamber, including pursuant to rule 103”).