



**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 (SGBC) 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.