



**Cour
Pénale
Internationale**

**International
Criminal
Court**

Le Bureau du Procureur
The Office of the Prosecutor

Report on Preliminary Examination Activities 2020

14 December 2020



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INTRODUCTION

1. The Office of the Prosecutor (“Office” or “OTP”) of the International Criminal Court (“Court” or “ICC”) is responsible for determining whether a situation meets the legal criteria established by the Rome Statute (“Statute”) to warrant investigation by the Office. For this purpose, the OTP conducts a preliminary examination of all communications and situations that come to its attention based on the statutory criteria and the information available in accordance with its Policy Paper on Preliminary Examinations.¹
2. The preliminary examination of a situation by the Office may be initiated on the basis of: (i) information sent by individuals or groups, States, intergovernmental or non-governmental organisations; (ii) a referral from a State Party or the United Nations (“UN”) Security Council; or (iii) a declaration lodged by a State accepting the exercise of jurisdiction by the Court pursuant to article 12(3) of the Statute.
3. Once a situation is thus identified, the factors set out in article 53(1) (a)-(c) of the Statute establish the legal framework for a preliminary examination.² This article provides that, in order to determine whether there is a reasonable basis to proceed with an investigation into the situation, the Prosecutor shall consider: jurisdiction (temporal, either territorial or personal, and material); admissibility (complementarity and gravity); and the interests of justice.
4. *Jurisdiction* relates to whether a crime within the jurisdiction of the Court has been or is being committed. It requires an assessment of (i) temporal jurisdiction (date of entry into force of the Statute, namely 1 July 2002 onwards, date of entry into force for an acceding State, date specified in a UN Security Council referral, or in a declaration lodged pursuant to article 12(3) of the Statute); (ii) either territorial or personal jurisdiction, which entails that the crime has been or is being committed on the territory or by a national of a State Party or a State not Party that has lodged a declaration accepting the jurisdiction of the Court, or arises from a situation referred by the UN Security Council; and (iii) subject-matter jurisdiction as defined in article 5 of the Statute (genocide; crimes against humanity; war crimes, and aggression).
5. *Admissibility* comprises both complementarity and gravity.
6. *Complementarity* involves an examination of the existence of relevant national proceedings in relation to the potential cases being considered for investigation by the Office. This will be done bearing in mind the Office’s prosecutorial strategy of investigating and prosecuting those most responsible for the most serious

¹ See [ICC-OTP, Policy Paper on Preliminary Examinations](#), November 2013.

² See also rule 48, ICC Rules of Procedure and Evidence (“Rules”).

crimes.³ Where relevant domestic investigations or prosecutions exist, the Office will assess their genuineness.

7. *Gravity* includes an assessment of the scale, nature, manner of commission of the crimes, and their impact, bearing in mind the potential cases that would likely arise from an investigation of the situation.
8. The “*interests of justice*” is a countervailing consideration. The Office must assess whether, taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would *not* serve the interests of justice.
9. There are no other statutory criteria. Factors such as geographical or regional balance are not relevant criteria for a determination that a situation warrants investigation under the Statute. As the Office has previously observed, “feasibility is not a separate factor under the Statute as such when determining whether to open an investigation. Weighing feasibility as a separate self-standing factor, moreover, could prejudice the consistent application of the Statute and might encourage obstructionism to dissuade ICC intervention”.⁴ As long as universal ratification is not yet a reality, crimes in some situations may fall outside the territorial and personal jurisdiction of the ICC. This can be remedied only by the relevant State becoming a Party to the Statute or lodging a declaration accepting the exercise of jurisdiction by the Court or through a referral by the UN Security Council.
10. As required by the Statute, the Office’s preliminary examination activities are conducted in the same manner irrespective of whether the Office receives a referral from a State Party or the UN Security Council, or acts on the basis of information on crimes obtained pursuant to article 15 of the Statute. In all circumstances, the Office analyses the seriousness of the information received and may seek additional information from States, organs of the UN, intergovernmental and non-governmental organisations and other reliable sources that are deemed appropriate. The Office may also receive oral testimony at the seat of the Court. All information gathered is subjected to a fully independent, impartial and thorough analysis.
11. It should be recalled that the Office does not possess investigative powers at the preliminary examination stage. Its findings are therefore preliminary in nature and may be reconsidered in the light of new facts or evidence. The preliminary

³ See OTP Strategic Plan – 2019-2021, para. 24. When appropriate, the Office will consider bringing cases against notorious or mid-level perpetrators who are directly involved in the commission of crimes, to provide deeper and broader accountability and also to ultimately have a better prospect of conviction in potential subsequent cases against higher-level accused.

⁴ [ICC-OTP, Policy Paper on Preliminary Examinations](#), November 2013, para.70. Contrast ICC-OTP, Policy paper on case selection and prioritisation, 15 September 2016, paras. 50-51 noting that, in the light of the broad discretion enjoyed in deciding which cases to bring forward to investigation and prosecution, the Office may consider a range of strategic and operational prioritisation factors,

examination process is conducted on the basis of the facts and information available. The goal of this process is to reach a fully informed determination of whether there is a reasonable basis to proceed with an investigation. The 'reasonable basis' standard has been interpreted by Pre-Trial Chamber ("PTC") II to require that "there exists a sensible or reasonable justification for a belief that a crime falling within the jurisdiction of the Court 'has been or is being committed'".⁵ In this context, PTC II has indicated that all of the information need not necessarily "point towards only one conclusion."⁶ This reflects the fact that the reasonable basis standard under article 53(1)(a) "has a different object, a more limited scope, and serves a different purpose" than other higher evidentiary standards provided for in the Statute.⁷ In particular, at the preliminary examination stage, "the Prosecutor has limited powers which are not comparable to those provided for in article 54 of the Statute at the investigative stage" and the information available at such an early stage is "neither expected to be 'comprehensive' nor 'conclusive'".⁸

12. Before making a determination on whether to initiate an investigation, the Office also seeks to ensure that the States and other parties concerned have had the opportunity to provide the information they consider appropriate.
13. There are no timelines provided in the Statute for a decision on a preliminary examination. The Office takes no longer than is necessary to complete a thorough assessment of the statutory criteria to arrive at an informed decision. At the same time, as noted below at paragraph 17, the Office has taken several measures in recent years to enhance the efficiency of preliminary examination process, which it will continue to foster. Moreover, to avoid preliminary examinations remaining under consideration for long periods without an outcome, the Office has adopted the approach of articulating its findings as early as possible in the process. This includes providing communication senders a detailed reasoning of the Office findings in Phase 1 communications that are dismissed, to enable early identification of relevant factual and/or legal gaps, as well as to facilitate a more focussed reconsideration request in any subsequent submission under article 15(6). In some situations, the Office has in recent years sought rulings from the Pre-Trial Chamber to resolve complex jurisdictional questions that have arisen during preliminary examinations, whose resolution is necessary to progress to the

⁵ Situation in the Republic of Kenya, "Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya", [ICC-01/09-19-Corr](#), 31 March 2010, para. 35 ("Kenya Article 15 Decision").

⁶ Kenya Article 15 Decision, para. 34. In this respect, it is further noted that even the higher "reasonable grounds" standard for arrest warrant applications under article 58 does not require that the conclusion reached on the facts be the only possible or reasonable one. Nor does it require that the Prosecutor disprove any other reasonable conclusions. Rather, it is sufficient to prove that there is a reasonable conclusion alongside others (not necessarily supporting the same finding), which can be supported on the basis of the evidence and information available. Situation in Darfur, Sudan, "Judgment on the appeal of the Prosecutor against the 'Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir'", ICC-02/05-01/09-OA, 3 February 2010, para. 33.

⁷ [Kenya Article 15 Decision](#), para. 32.

⁸ [Kenya Article 15 Decision](#), para. 27.

next stage. In other more advanced preliminary examinations, where the factual and legal assessment indicate projections of a likely positive determination, the Office has begun an early process of assembling advance teams staffed by future investigative team leaders, trial lawyers, and cooperation advisors to contribute to and support the work of the Preliminary Examination Section and to prepare for the operational roll-out of possible future investigations.⁹

14. In order to promote transparency of the preliminary examination process, the Office issues regular reports on its activities, and provides reasons for its decisions either to proceed or not proceed with investigations.
15. In order to distinguish the situations that do warrant investigation from those that do not, and in order to manage the analysis of the factors set out in article 53(1), the Office has established a filtering process comprising four phases. While each phase focuses on a distinct statutory factor for analytical purposes, the Office applies a holistic approach throughout the preliminary examination process.
 - Phase 1 consists of an initial assessment of all information on alleged crimes received under article 15 ('communications'). The purpose is to analyse the seriousness of information received, filter out information on crimes that are outside the jurisdiction of the Court and identify those that appear to fall within the jurisdiction of the Court.
 - Phase 2 focuses on whether the preconditions to the exercise of jurisdiction under article 12 are satisfied and whether there is a reasonable basis to believe that the alleged crimes fall within the subject-matter jurisdiction of the Court. Phase 2 analysis entails a thorough factual and legal assessment of the alleged crimes committed in the situation at hand, with a view to identifying potential cases falling within the jurisdiction of the Court. The Office may further gather information on relevant national proceedings if such information is available at this stage.
 - Phase 3 focuses on the admissibility of potential cases in terms of complementarity and gravity. In this phase, the Office will also continue to collect information on subject-matter jurisdiction, in particular when new or ongoing crimes are alleged to have been committed within the situation.
 - Phase 4 examines the interests of justice consideration in order to formulate the final recommendation to the Prosecutor on whether there is a reasonable basis to initiate an investigation.

⁹ In this respect, the Office is also giving close consideration to the recommendations in the [Independent Expert Review](#) Report on advancing the preliminary examination process, some of which were already in process, some of which the Office will need to consider further moving forward; *Independent Expert Review of the International Criminal Court and the Rome Statute System, Final Report*, 30 September 2020, pp. 225-238.

16. In the course of its preliminary examination activities, the Office also seeks to contribute to two overarching goals of the Statute: the ending of impunity, by encouraging genuine national proceedings, and the prevention of crimes, thereby potentially obviating the need for the Court's intervention. Preliminary examination activities therefore constitute one of the most cost-effective ways for the Office to fulfil the Court's mission.

Summary of activities performed in 2020

17. During 2019 and 2020, at the request of the Preliminary Examination Section, the preliminary examination process within the Office was re-organised to promote closer Office-wide integration, enhance the transition from preliminary examinations to investigations, and further deepen internal harmonisation of standards and practices and internal knowledge transfer. A senior lawyer was placed in charge of the Preliminary Examination Section, overseeing a staff of analysts and legal officers assigned to different situations. In addition, a lawyer from the Prosecution Division, a senior investigator from the Investigation Division and an international cooperation advisor from the International Cooperation Section were assigned to support each preliminary examination team, in addition to their regular duties as members of Integrated Teams conducting investigations and trials. Other sections and units of the Office also continued to provide *ad hoc* support in such areas as forensics, protection, evidence preservation, as well as operational and logistical support.
18. As a result, during the reporting period, the Office sought to substantially progress the Prosecutor's intention, signalled during the 2019 session of the Assembly of States Parties, to reach determinations with respect to all situations under preliminary examination under her tenure; namely to decide: (1) whether the criteria are met to open investigation, (2) whether a decision should be taken not to proceed with an investigation as the statutory criteria have not been met, or (3) if, exceptionally, a situation is not ripe for a determination, to issue a detailed report stating why a particular situation should remain under preliminary examination and to indicate relevant benchmarks that would guide the process.¹⁰
19. This report summarises the preliminary examination activities conducted by the Office between 6 December 2019 and 11 December 2020.
20. During the reporting period, the Office completed four preliminary examinations with respect to the situations in Palestine, Iraq/UK, Ukraine and Nigeria. The Office also commenced two new preliminary examinations following State Party referrals received from the Government of Venezuela and from the Government of Bolivia.

¹⁰ [Remarks of ICC Prosecutor Fatou Bensouda at the Presentation of the 2019 Annual Report on Preliminary Examination Activities](#), 6 December 2019, p. 9.

21. On 13 February 2020, the Office of the Prosecutor of the ICC received a referral from the Government of the Bolivarian Republic of Venezuela a referral under article 14 of the Rome Statute regarding the situation in its own territory.
22. On 4 September 2020, the Office of the Prosecutor of the ICC received a referral from the Government of Bolivia regarding the situation in its own territory.
23. With respect to the situation in Afghanistan, which remained under preliminary examination pending an appeal, on 5 March 2020, the Appeals Chamber decided unanimously to authorise the Prosecutor to commence an investigation into alleged crimes under the jurisdiction of the Court in relation to the situation. The Appeals Chamber's judgment amended the decision of Pre-Trial Chamber II of 12 April 2019, which had rejected the Prosecutor's request for authorisation of an investigation of 20 November 2017 and had found that the commencement of an investigation would not be in the interests of justice. The Appeals Chamber found that the Prosecutor is authorised to investigate, within the parameters identified in the Prosecutor's request of 20 November 2017, the crimes alleged to have been committed on the territory of Afghanistan since 1 May 2003, as well as other alleged crimes that have a nexus to the armed conflict in Afghanistan and are sufficiently linked to the situation in Afghanistan and were committed on the territory of other States Parties to the Rome Statute since 1 July 2002.
24. With respect to the situation on the registered vessels of the Union of the Comoros ("Comoros"), the Hellenic Republic and the Kingdom of Cambodia, on 16 September 2020, Pre-Trial Chamber I rejected Comoros' request for judicial review of the Prosecutor's decision not to open an investigation with respect to crimes allegedly committed in the context of the 31 May 2010 Israeli interception of the Humanitarian Aid Flotilla bound for the Gaza Strip. On 22 September 2020, the Government of Comoros sought for leave to appeal the Pre-Trial Chamber decision of 16 September 2020, a decision on which remains pending.
25. The Office further continued its preliminary examinations of the situations in Colombia, Guinea, the Philippines, and Venezuela I. Despite the restrictions caused by the COVID-19 pandemic, during the reporting period the Office continued to hold numerous consultations at the seat of the Court or virtually with State authorities, representatives of international and non-government organisations, article 15 communication senders and other interested parties.
26. Pursuant to the Office's Policy Paper on Sexual and Gender-based crimes and Policy on Children, during the reporting period, the Office conducted, where appropriate, an analysis of alleged sexual and gender-based crimes and crimes against children that may have been committed in various situations under preliminary examination and sought information on national investigations and prosecutions by relevant national authorities on such conduct.

I. SITUATIONS UNDER PHASE 1

27. Phase 1 consists of an initial assessment of all information on alleged crimes received under article 15 ('communications'). The purpose is to analyse the seriousness of information received, filter out information on crimes that are outside the jurisdiction of the Court and identify those that appear to fall within the jurisdiction of the Court.¹¹ Although the nature of this assessment has generally tended to focus on questions of subject-matter jurisdiction, the Phase 1 assessment may also consider questions of gravity and complementarity where they appear relevant.¹²
28. In practice, the Office may occasionally encounter situations where alleged crimes are not manifestly outside the jurisdiction of the Court, but do not clearly fall within its subject-matter jurisdiction. In such situations, the Office will first consider whether the lack of clarity applies to most, or a limited set of allegations, and in the case of the latter, whether they are nevertheless of such gravity to justify further analysis. In such situations, the Office will consider whether the exercise of the Court's jurisdiction may be restricted due to factors such as a narrow geographic and/or personal scope of jurisdiction and/or the existence of national proceedings relating to the relevant conduct. In such situations, it will endeavour to give a detailed response to the senders of such communications outlining the Office's reasoning for its decisions.
29. In terms of the threshold applied by the Office at this stage, its Policy Paper on Preliminary Examinations provides that "[t]he Office will only open a preliminary examination on the basis of article 15 communications when the alleged crimes *appear* to fall within the jurisdiction of the Court" (emphasis added).¹³ Similarly, the policy paper observes that "[c]ommunications deemed to require further analysis will be the subject of a dedicated analytical report which will assess whether the alleged crimes *appear* to fall within the jurisdiction of the Court and therefore warrant proceeding to the next phase" (emphasis added).¹⁴ The terminology 'appears' was adopted by the Office for this purpose in order to approximate to the terms set out in articles 13(a), 13(b) and 14(1) of the Statute with respect to State Party and UN Security Council referrals. Under those provisions, the referring State Party or the UN Security Council may refer a situation in which "one or more of such crimes *appears* to have been committed" (emphasis added), which is then subjected to a determination by the Prosecutor whether there is a reasonable basis to proceed. As to the applicable standard that the Office applies, there is no guiding case law before the Court. Nonetheless, it must necessarily be lower than the "reasonable basis" standard, which has been interpreted to mean that "there exists a sensible or reasonable justification for a

¹¹ [ICC-OTP, Policy Paper on Preliminary Examinations](#), paras. 78-79.

¹² See similarly [Report on Preliminary Examination Activities 2019](#), p.6.

¹³ *Ibid.*, para. 75.

¹⁴ *Ibid.*, para. 79.

belief that a crime falling within the jurisdiction of the Court ‘has been or is being committed’.¹⁵ Accordingly, the information available must *tend to suggest* that the alleged acts *could* amount to crimes within the jurisdiction of the Court. In this context, the overall goal of the Phase 1 process is to provide an informed, well-reasoned recommendation to the Prosecutor on whether or not the alleged crimes (could) fall within the Court’s jurisdiction.

30. Between 1 November 2019 and 31 October 2020, the Office received 813 communications pursuant to article 15 of the Statute. Per standard practice, all of such communications received were carefully reviewed by the Office in order to assess whether the allegations contained therein concerned: (i) matters which are manifestly outside of the jurisdiction of the Court; (ii) a situation already under preliminary examination; (iii) a situation already under investigation or forming the basis of a prosecution; or (iv) matters which are neither manifestly outside of the Court’s jurisdiction nor related to an existing preliminary examination, investigation or prosecution, and therefore warrant further factual and legal analysis by the Office. Following this filtering process, the Office determined that of the communications received in the reporting period, 612 were manifestly outside the Court’s jurisdiction; 104 were linked to a situation already under preliminary examination; 71 were linked to an investigation or prosecution; and 26 warranted further analysis.
31. The communications deemed to warrant further analysis (“WFA communications”) relate to a number of different situations alleged to involve the commission of crimes. The allegations are subject to more detailed factual and legal analysis, the purpose of which is to provide an informed, well-reasoned recommendation on whether the allegations in question appear to fall within the Court’s jurisdiction and warrant the Office proceeding to Phase 2 of the preliminary examination process. For this purpose, the Office prepares a dedicated internal analytical report (“Phase 1 Report”).
32. Since mid-2012, the Office has produced over 60 Phase 1 reports relating to WFA communications, analysing allegations on a range of subjects concerning situations in regions throughout the world. At present, such further Phase 1 analysis is being conducted in relation to several different situations, which were brought to the Office’s attention via article 15 communications.
33. During the reporting period, the Office responded to the senders of communications with respect to five situations that had been subject to further analysis. Following a thorough assessment in each of these situations, the Office concluded that the alleged crimes in question did not appear to fall within the Court’s jurisdiction, and thus the respective communication senders were informed in accordance with article 15(6) of the Statute and rule 49(1) of the Rules. Such notice nonetheless advises senders, in line with rule 49(2) of the Rules, of the

¹⁵ [Kenya Article 15 Decision](#), para 35.

possibility of submitting further information regarding the same situation in the light of new facts and evidence.

34. The relevant conclusions reached by the Office in those five Phase 1 situations during the course of the reporting period are included below chronologically, along with a brief summary of the reasoning underlying them, with due regard to its duties under rule 46 of the Rules. The Office intends to provide a fuller articulation of its reasoning in Phase 1 reports that have warranted further analysis by issuing public versions of its underlying reports.
35. The Office is also finalising its response to senders of communications with respect to a number of other communications that have warranted further analysis, which will be issued during 2021, including with respect to Mexico, Cyprus (settlements), Yemen (arm exporters), Cambodia (land grabbing) and Syria/Jordan (deportation).
36. Consistent with article 15(6) of the Statute and rule 49(2) of the Rules of Procedure and Evidence, the conclusions summarised below may be reconsidered in the light of new facts or information.

(i) Uganda (Kasese)

37. In 2016 and 2017, the Office received several communications relating to events in Kasese in western Uganda on 26 and 27 November 2016 said to amount to genocide, war crimes and crimes against humanity.
38. Based on the information available, it appears that members of the Uganda People's Defence Force and the Uganda Police Force, and other persons, in Uganda's Rwenzururu Kingdom on 26 and 27 November 2016, participated in an operation that resulted in the killing of reportedly around 150 persons, including at least 14 police officers. Specifically, it appears that, on 26 November, soldiers under the command of then-Brigadier General Peter Elwelu entered into the kingdom's administration offices in Kasese town, killing eight members of the volunteer Royal Guards. That afternoon, it appears that civilians, including some Royal Guards, attacked six small police posts with machetes, several kilometres from Kasese town, which resulted in at least 14 police constables being killed by the assailants and 32 civilians being shot dead by security forces in response. Towards the evening of the same day, soldiers and police surrounded the kingdom's palace compound in Kasese town. It appears that at around 1pm on 27 November, following attempts to negotiate a disbandment of the Royal Guards, King Mumbere was taken into custody, and security forces stormed the palace compound. Over 100 people were killed while a further, approximately, 150-200 people were subsequently arrested and kept in detention pending trial.
39. The Office found that there was credible information that multiple killings were committed by Ugandan security forces in Kasese on 26-27 November 2016. The Office notes that there were incidents of violence, including violent clashes,

between the Uganda security forces and various militants groups immediately before the events in question as well as in the region more generally. Nonetheless, in the absence of the required threshold of intensity and organisation, the Office has concluded that the alleged acts could not be appropriately considered within the framework of article 8 of the Statute as a non-international armed conflict. The alleged conduct also did not satisfy the contextual elements of the crime of genocide, under article 6 of the Statute. Accordingly, the Office has undertaken its analysis within the framework of alleged crimes against humanity, under article 7 of the Statute.

40. In order to determine whether the operation could be considered an attack against a “civilian population” for the purpose of article 7 of the Statute, the Office observes that the operation appears to have been aimed at dismantling the Royal Guards, who are understood to have undertaken certain security-like functions on behalf of the king and were armed with instruments such as machetes. The Office is also aware that some members of the Royal Guards are alleged by the Uganda authorities to have been members of the *Kirumiramutima* militia, which the authorities assessed as an increasingly regional security threat. Nonetheless, the Office recalls its assessment that the situation cannot be properly classified as a non-international armed conflict. Accordingly, even if members of the Royal Guards were deemed a security threat, the actions of the security forces had to be conducted within a law enforcement paradigm, which requires that the use of lethal force be restricted to those situations where it is “strictly unavoidable” to protect life.¹⁶ Additionally, the information available indicates that a large number of other civilians were present in the kingdom’s administration offices and/or palace compound at the time of the operation, including palace domestic staff, local business enterprises, women, children and various other visitors. As such, the Office has assessed that the persons inside the kingdom’s administration offices and the palace compound were entitled to be treated according to the applicable regime that regulates law enforcement operations, and accordingly should be deemed civilians for the purpose of the Rome Statute.
41. While members of the Ugandan security forces appear to have come under attack and sustained fatalities in localised incidents in the region more generally in the preceding period, the level of force that was used in the operation does not appear to have been justifiable in terms of self-defence or the defence of other persons, in the sense of an imminent threat of death or serious injury. Nor does the use of force appear to have been reasonably necessary in the circumstances in effecting the lawful arrest of offenders or suspected offenders within the palace compound. Rather, the information available indicates that the operation was carried out in an indiscriminate and disproportionate manner. In this regard, the Office notes

¹⁶ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, General Provisions: 4, Special Provisions 9. See also example generally Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law* (Geneva: ICRC, 2009), pp. 24, 76.

with concern the types of means used, including live ammunition and rocket-propelled grenades; the anticipated knowledge that, beyond the member of the Royal Guards, a large number of civilians would have been present inside the palace compound at the time; information indicating that after the palace compound was stormed, some members of the Ugandan security forces appear to have shot at and/or beaten captured persons with hands tied behind their backs; and consideration that, in the circumstances, other means would appear to have been reasonably available to accomplish the objective of securing the surrender of the persons inside, whether by less lethal means or by, for example, disconnecting the palace's water and electricity supply.

42. Taking into account the foregoing, the Office therefore concluded that members of the Ugandan security forces appear to have committed in Kasese on 26-27 November 2016 underlying acts constituting the crime of murder, under article 7(1)(a) of the Statute. Nonetheless, the Office was ultimately unable to determine that the said acts occurred pursuant to or in furtherance of a State or organisational policy, as required by article 7(2)(a) of the Statute.
43. The fact that the alleged crimes occurred in the context of the implementation of a State-approved operation, or that high-ranking State officials had knowledge of or were involved in its authorisation, does not demonstrate, in and of itself, that the operation necessarily required or entailed the commission of crimes. Having assessed the information available, notwithstanding the Office's concern that the use of force in the circumstances appears to have been both indiscriminate and disproportionate, it has been unable to satisfy itself that the underlying acts were committed pursuant to or in furtherance of a State policy. Accordingly, based on the information available at the time, the Office determined that the alleged acts do not amount to crimes against humanity under article 7, or any other crimes under the Statute.

(ii) Australia (offshore processing centres)

44. From 2016 to 2017 the Office received several communications alleging that the Australian government may have committed crimes against humanity against migrants or asylum seekers arriving by boat who were interdicted at sea transferred to offshore processing centres in Nauru and Manus Island, and detained there for prolonged periods under inhuman conditions since 2001. It was further alleged that these acts were committed jointly with, or with the assistance of, the governments of Nauru and Papua New Guinea, as well as private entities contracted by the Australian government to operate the centres of the islands.
45. In assessing the allegations received, as is required by the Statute, the Office examined several forms of alleged, or otherwise reported, conduct and considered the possible legal qualifications under article 7 of the Statute.
46. Although the situation varied over time, the Office considers that some of the conduct at the processing centres on Nauru and on Manus Island appears to

constitute the underlying act of imprisonment or other severe deprivations of physical liberty under article 7(1)(e) of the Statute.¹⁷ The information available indicates that migrants and asylum seekers living on Nauru and Manus Island were detained on average for upwards of one year in unhygienic, overcrowded tents or other primitive structures while suffering from heatstroke resulting from a lack of shelter from the sun and stifling heat. These conditions also reportedly caused other health problems—such as digestive, musculoskeletal, and skin conditions among others—which were apparently exacerbated by the limited access to adequate medical care. It appears that these conditions were further aggravated by sporadic acts of physical and sexual violence committed by staff at the facilities and members of the local population. The duration and conditions of detention caused migrants and asylum seekers — including children — severe mental suffering, including by experiencing anxiety and depression that led many to engage in acts of suicide, attempted suicide, and other forms of self-harm, without adequate mental health care provided to assist in alleviating their suffering.

47. These conditions of detention appear to have constituted cruel, inhuman, or degrading treatment, and appears to have been in violation of fundamental rules of international law.
48. Furthermore, taking into account the duration, the extent, and the conditions of detention, the alleged detentions in question appear to have been of sufficient severity to constitute the crime of imprisonment or other severe deprivation of physical liberty under article 7(1)(e) of the Statute. By contrast, based on the information available, it does not appear that the conditions of detention or treatment were of a severity to be appropriately qualified as the crime against humanity of torture under article 7(1)(f) of the Statute, or of a nature and gravity to be qualified as the crime against humanity of other inhumane acts under article 7(1)(k) of the Statute.
49. With respect to the alleged acts of deportation under article 7(1)(d) of the Statute, it does not appear that Australia's interdiction and transfer of migrants and asylum seekers arriving by boat to third countries meets the required statutory criteria to constitute crimes against humanity. The Office's analysis of whether the transfer of migrants and asylum seekers amounts to deportation has focused primarily on whether the persons in question – intercepted either in international waters or in Australia's territorial waters – could have been considered 'lawfully present' in the area from which they were displaced. Taking into account relevant domestic legislation, international refugee law, the law of the sea, and human rights and international law principles generally, the Office was not satisfied that

¹⁷ This is without prejudice to an assessment of the required contextual elements, which is discussed separately below. In this context, the Office notes that it appears that once the facilities on Nauru and Manus Island were converted into "open centres" as of October 2015 and May 2016, respectively, the migrants and asylum seekers can no longer be considered, under the particular circumstances presented, to have been severely deprived of their physical liberty, as required by article 7(1)(e) of the Statute.

there was a basis to conclude that the migrants or asylum seekers were lawfully present in the area(s) from which they were deported, within the scope and meaning of this element of the crime of deportation under the Statute.

50. The Office considers that while the removal of migrants or asylum seekers to territories where they would be subjected to cruel, inhuman, or degrading treatment would engage a State's human rights obligations, this does not affect the distinct legal question of whether the persons to be so removed were 'lawfully present' for the purpose of international criminal law and the crime of deportation. To consider otherwise would render the question of lawful presence under that provision relative to, or dependent on, the legality of a person's subsequent treatment. Such a circular approach would arguably be the opposite of the logic of the elements of the crime under article 7(1)(d), which seeks to ensure that only if persons are lawfully present are they protected from deportation or forcible transfer without grounds permitted under international law.
51. Finally, with respect to the crime against humanity of persecution under article 7(1)(h) committed in connection with other prohibited acts under the Statute, the Office considers that the above identified conduct of imprisonment or severe deprivation of liberty does not appear to have been committed on discriminatory grounds.
52. With respect to remaining alleged or otherwise reported relevant conduct, based on the information available, it did not appear to the Office that any other acts constituted crimes within the jurisdiction of the Court.
53. Bearing in mind the Office's finding with respect to imprisonment or other severe deprivations of physical liberty under article 7(1)(e), the Office proceeded to assess whether the requisite contextual elements were also met since, notably, the identified conduct was committed as part of governmental border control policies.
54. The Office concluded that there is insufficient information available at this stage to indicate that the multiple acts of imprisonment or severe deprivation of liberty were committed pursuant to or in furtherance of a State (or organisational) policy to commit an attack against migrants or asylum seekers seeking to enter Australia by sea, as required by article 7(2)(a) of the Statute. Specifically, the information available at this stage does not provide sufficient support for finding that the failure on the part of the Australian authorities under successive governments, whose policies varied over time, to take adequate measures to address the conditions of the detentions and treatment of migrants and asylum seekers seeking to enter Australia by sea, or to stop further transfers, was deliberately aimed at encouraging an 'attack', within the meaning of article 7. Although the information available suggests that Australia's offshore processing and detention programmes were intended to deter immigration, it does not support a finding that cruel, inhuman, or degrading treatment was a deliberate, or purposefully designed, aspect of this policy.

55. The Office could not otherwise establish a State or organisational policy to commit the acts described by the governments of Nauru and Papua New Guinea or other private actors. As such, based on the information available, the crimes allegedly committed by the Australian authorities, jointly with, or with the assistance of, the governments of Nauru and Papua New Guinea, and private actors, as set out in the communication, do not appear to satisfy the contextual elements of crimes against humanity under article 7 of the Statute. Accordingly, the Prosecutor has determined that there is no basis to proceed at this time.

(iii) Madagascar

56. In 2013, the Office dismissed allegations of crimes against humanity committed by the Presidential guards of former President of Madagascar Marc Ravalomanana on 7 February 2009 in Madagascar's capital Antananarivo. It was alleged that the crimes were committed against demonstrators supporting then opposition leader and current President of Madagascar, Andry Rajoelina. On that occasion, the Office concluded that the available information did not indicate the existence of a State policy to commit an attack or, in any case, that any such alleged attack was widespread or systematic in nature.
57. In 2018, the Office received further information regarding these events, which caused it to reconsider the matter to determine whether it should revise its conclusions.
58. In assessing the allegations received, as is required by the Statute, the Office examined several forms of alleged or otherwise reported conduct and considered the possible legal qualifications under article 7 of the Statute.
59. Following thorough review and consideration, the Office found that the newly received materials appeared to corroborate the Office's previous findings on the commission of multiple acts of violence during the incident in question that may collectively be considered to amount to a course of conduct carried out against the protestors. Nonetheless, the Office has concluded that the new material did not provide information on additional crimes, or otherwise any relevant new information or arguments, that would require the Prosecutor to modify her previous decision that the alleged crimes committed on 7 February 2009 in Antananarivo, Madagascar do not appear to fall within the Court's subject-matter jurisdiction.
60. The communication alleged that an attack against a civilian population took place in furtherance of a "criminal policy". While the existence of a 'course of conduct' against a civilian population consisting of peaceful demonstrators is supported by open sources and was qualified as such in the Office's 2013 assessment, the existence of a State policy could not be demonstrated. The communication did not provide any additional information or facts supporting a finding that the multiple acts of violence were carried out pursuant to or in furtherance of a State policy

beyond the reference to a “criminal policy” which is not further supported by factual information provided (or otherwise publicly available).

61. Nor did the information provided allow for the conclusion that the alleged attack was conducted in a systematic manner, as it was limited to information on the presence, hierarchy and official role of some actors in the Presidential Palace on 7 February 2009. This information alone does not enable any conclusions to be drawn regarding either the alleged systematicity of the attack, or the existence of a State policy to attack the civilian population.
62. The claim that the killings and injuries were committed pursuant to a State policy to attack a civilian population could not be corroborated by other sources. The Office could not identify any other open source information that would support claims of the purported “criminal policy” or systematic nature of any alleged attack. The open source documents provided as part of the supporting documentation were either not relevant to the assessment or had already been taken into consideration during the 2013 examination.
63. Ultimately, the Office was not satisfied that the new material affected the previous legal analysis conducted and conclusions reached by the Office, namely those concerning the apparent lack of a State policy to commit an attack against a civilian population. Consequently, at this stage, there appears to be no basis for the Office to reconsider its previous conclusion that the alleged acts do not amount to crimes against humanity under article 7, or any other crimes under the Statute.

(iv) Canada/Lebanon (dual national)

64. In 2016, the Office received a communication requesting the Office to assert personal jurisdiction over a Canadian national for foiled attacks that were to have taken place in Lebanon in 2012, alleged to amount to crimes against humanity and war crimes.
65. The Office accepts that that personal jurisdiction as set out in article 12(2)(b) is satisfied on this basis. The Office also considered whether the alleged *attempted* attacks could constitute crimes against humanity and/or war crimes under the Statute. Based on the available information, however, it does not appear that the respective contextual elements of either of these crimes are met and thus that the alleged acts fall within the Court’s subject-matter jurisdiction.
66. With regard to crimes against humanity, the Office considered whether the attempted attacks took place within the context of, or constituted, an attack on a civilian population, understood as a ‘course of conduct’ made up of multiple acts under article 7 of the Statute. The planned bombings cannot in themselves alone constitute a ‘course of conduct’ within the scope of article 7(2)(a), given that a course of conduct requires the multiple commission of acts under 7(1) of the Statute and in this case, the relevant acts did not in fact ultimately occur. Further, there is no information available to suggest that such attempted acts otherwise

formed part of a broader or existing 'course of conduct' against a civilian population. Accordingly, it does not appear that the attempted alleged crimes formed part of an 'attack' against the civilian population within the meaning of article 7(2)(a)), and therefore the attempted conduct could not amount to crimes against humanity under the Statute.

67. Likewise, the attempted acts do not appear to amount to war crimes. Specifically, there is no information available to suggest that the attempted attacks took place in the context of and were associated with an armed conflict, as required for the application of article 8 of the Statute.
68. Even if the attempted acts could be determined as falling within the Court's subject-matter jurisdiction, it appears that any potential case(s) arising from the alleged situation would nonetheless be inadmissible pursuant to article 17 of the Statute. The alleged criminal conduct resulted in a conviction and a sentence of thirteen years. There is no information available to suggest that this proceeding was not genuine.
69. Further, it is highly unlikely that any potential case concerning the foiled attacks would be of sufficient gravity to justify further action by the Court. In this context, the gravity assessment would be confined to the attempted crimes only. Even if a nexus existed between the attempted crimes and an armed conflict in Lebanon or Syria, the Court's jurisdiction would not extend to other alleged crimes committed in the context of such conflict(s) because neither Syria nor Lebanon is a party to the Statute. For the same reason, if the alleged attempted crimes *were* part of broader attack against a civilian population and thereby qualified as crimes against humanity, the Court's jurisdiction would not extend to other previous or subsequent similar acts allegedly constituting the attack against the civilian population. Moreover, given that the intended attacks ultimately were never carried out, the gravity of the relevant potential case appears to be relatively low, taking into account relevant quantitative and qualitative considerations.

(v) Tajikistan/China, Cambodia/China (deportation)

70. On 6 July 2020, the Office received a communication alleging that Chinese officials are responsible for acts amounting to genocide and crimes against humanity committed against Uyghurs falling within the territorial jurisdiction of the Court on the basis that they occurred in part on the territories of Tajikistan and Cambodia, States Parties to the Rome Statute.
71. The communication contended that genocide and crimes against humanity (murder, deportation, imprisonment or other severe deprivation of liberty, torture, enforced sterilisation, persecution, enforced disappearance and other inhumane acts) were committed by Chinese officials against Uyghurs and members of other Turkic minorities in the context of their detention in mass internment camps in China. It was alleged that the crimes occurred in part on the territories of ICC States Parties Cambodia and Tajikistan as some of the victims

were arrested (or ‘abducted’) there and deported to China as part of a concerted and widespread of persecution and destruction of the Uyghur community.

72. Pre-Trial Chamber I of the ICC has previously held that “the Court may assert jurisdiction pursuant to article 12(2)(a) of the Statute if at least one element of a crime within the jurisdiction of the Court or part of such a crime is committed on the territory of a State Party to the Statute”.¹⁸ Likewise, Pre-Trial Chamber III concluded, for the purpose of the Court’s exercise of jurisdiction under article 12(2)(a), “at least part of the conduct (i.e. the *actus reus* of the crime) must take place in the territory of a State Party.”¹⁹
73. This precondition for the exercise of the Court’s territorial jurisdiction did not appear to be met with respect to the majority of the crimes alleged in the communication (genocide, crimes against humanity of murder, imprisonment or other severe deprivation of liberty, torture, enforced sterilisation and other inhumane acts), since the *actus reus* of each of the above-mentioned alleged crimes appears to have been committed solely by nationals of China within the territory of China, a State which is not a party to the Statute.
74. The Office separately assessed the alleged crimes for which the part of the *actus reus* appears to have taken place in Cambodia and Tajikistan, in particular alleged acts of deportation. The Office observes that while the transfers of persons from Cambodia and Tajikistan to China appear to raise concerns with respect to their conformity with national and international law, including international human rights law and international refugee law, it does not appear that such conduct would amount to the crime against humanity of deportation under article 7(1)(d) of the Statute within the jurisdiction of the Court.
75. In particular, the crime of deportation is associated with a particular protected legal interest and purposive element. As the International Criminal Tribunal for the former Yugoslavia (“ICTY”) held in the *Popović et al.* case, “[t]he protected interests underlying the prohibition against these two crimes [forcible transfer and deportation] include the right of victims to stay in their home and community and the right not to be deprived of their property by being forcibly displaced to another location”. The Trial Chamber’s judgment went on to observe that this reflects the “[t]he clear intention of the prohibition against forcible transfer and deportation [which] is to prevent civilians from being uprooted from their homes and to guard against the wholesale destruction of communities.”²⁰ Similarly, ICC Pre Trial Chamber I has observed: “The legal interest commonly protected by the

¹⁸ *Request under Regulation 46(3) of the Regulations of the Court, Decision on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute” (“Bangladesh/Myanmar Jurisdictional Decision”)*, [ICC-RoC46\(3\)-01/18-37](#), para. 72.

¹⁹ *Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, ICC-01/19-27*, para. 61; see also paras. 46-60, 62.

²⁰ *Prosecutor v. Popović et al.*, Trial Judgment, [IT-05-88-T](#), 10 June 2010, para. 900.

crimes of deportation and forcible transfer is the right of individuals to live in their area of residence” and that “the legal interest protected by the crime of deportation further extends to the right of individuals to live in the State in which they are lawfully present.”²¹

76. Accordingly not all conduct which involves the forcible removal of persons from a location necessarily constitutes the crime of forcible transfer or deportation, absent the above legal interest. For example, in the *Naletilić et al.* case, the ICTY Trial Chamber concluded that the forced removal of Bosnian Muslim civilians from their homes and subsequent transfer to a detention centre did not constitute unlawful transfer as a crime under the ICTY Statute. The Trial Chamber found that “even though the persons, technically speaking, were moved from one place to another against their free will [...] [t]hey were apprehended and arrested *in order to be detained and not in order to be transferred.*”²² In the present situation, from the information available, it does not appear that the Chinese officials involved in these forcible repatriation fulfilled the required elements described above. While the conduct of such officials may have served as a precursor to the subsequent alleged commission of crimes on the territory of China, over which the Court lacks jurisdiction, the conduct occurring on the territory of States Parties does not appear, on the information available, to fulfil material elements of the crime of deportation under article 7(1)(d) of the Statute. Accordingly, the Office determined that there was no basis to proceed at this time. Since the issuance of its decision, the senders have communicated to the Office a request for reconsideration pursuant article 15(6) on the basis of new facts or evidence.

²¹ [Bangladesh/Myanmar Jurisdictional Decision](#), para. 58. This is also reflected in the elements of the crime of deportation, which require that “[s]uch person or persons were lawfully present in the area from which they were so deported or transferred”.

²² *Prosecutor v. Naletilić et al.*, Trial Judgment, [IT-98-34-T](#), 31 March 2003, paras. 535-537 (emphasis added).

II. SITUATIONS UNDER PHASE 2 (SUBJECT-MATTER JURISDICTION)

BOLIVIA

Procedural History

77. On 9 September 2020, the Office of the Prosecutor of the ICC received from the former Government of the Plurinational State of Bolivia (“Bolivia”) a referral pursuant to article 14(1) of the Rome Statute regarding the situation in its own territory.²³
78. In its referral, the former Government of Bolivia alleges that crimes potentially falling within the jurisdiction of the Court were committed in the territory of Bolivia in August 2020.²⁴ Bolivia requested the Prosecutor to initiate an investigation with the view to determining whether one or more persons should be charged with the commission of such crimes.
79. On 9 September 2020, the Office notified the ICC Presidency of the receipt of the referral. On 15 September 2020, the Presidency assigned the situation in the Plurinational State of Bolivia to Pre-Trial Chamber III.²⁵

Preliminary Jurisdictional Issues

80. Bolivia deposited its instrument of ratification to the Statute on 27 June 2002. The ICC may exercise jurisdiction over Rome Statute crimes committed on the territory of Bolivia or by its nationals from 1 September 2002 onwards.

Subject-Matter Jurisdiction

81. The Office’s subject-matter assessment of the Bolivia situation is focused on the allegations of crimes against humanity made in the referral by the former Government of Bolivia.
82. According to the referral, in August 2020, members of political party *Movimiento al Socialismo* and associated organisations engaged in a course of conduct pursuant to an organisational policy to attack the Bolivian population by coordinating hundreds of blockades at various points throughout the country that connected different cities to prevent the passage of convoys, transport and communications. Against the backdrop of the COVID-19 pandemic, the referral asserts that among the goals of this blockade was “to prevent them [the civilian population in those

²³ ICC-OTP, [Statement of the Prosecutor of the International Criminal Court, Mrs Fatou Bensouda, on the referral by Bolivia regarding the situation in its own territory](#), 9 September 2020.

²⁴ ICC Presidency, Annex I to the Decision assigning the situation in the Plurinational State of Bolivia to Pre-Trial Chamber III, [ICC-02/20-1-AnxI](#), 15 September 2020.

²⁵ ICC Presidency, Decision assigning the situation in the Plurinational State of Bolivia to Pre-Trial Chamber III, [ICC-02/20-1](#), 15 September 2020.

cities] from accessing public health supplies and services with the direct consequence of causing the death of several people and anxiety in the rest of the population due to the possibility of dying without being able to be treated in public hospitals, or in conditions that allow them to access to medical supplies, treatments and, above all, medical oxygen”.

83. With respect to these allegations, the referral states that, on 3 August 2020, leaders of the *Movimiento al Socialismo* summoned their followers and other organisations “to block the roads [...] and impede the normal supply of food, services and especially medicines and medical supplies that in those days were of vital necessity given that the public health system was on the verge of collapse with the large number of patients.” The referral further states that the alleged conduct was deliberately committed to cause “serious suffering in the physical integrity and physical mental health of the population, as a means to force a serious social upheaval that would induce the authorities to take a decision [...] setting the date of suffrage for the presidential elections.”
84. The referral further indicates that the blockades lasted 9 days during which “more than 40 people died deprived of medical supplies and medical oxygen, due to the impossibility of movement of those supplies.” Government institutions reportedly failed in their attempts to evade the blockades by carrying the oxygen tanks. Although some oxygen tanks reached their destination, “these were late because the blockers themselves chased the trucks escorted by the military.”
85. According to the referral, the blockades were coordinated and synchronised, and they “did not respond to unreflective, hasty and disconnected measures carried out by groups of people spontaneously gathered, but to a vertical structure of organization and complex logistics management.”
86. The referral further submits that these actions amount to the crime against humanity of other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health under article 7(1)(k) of the Statute. According to the referral, the alleged perpetrators inflicted great suffering on those who died, as “dying from suffocation is one of the forms of suffering that does not need to be described to provoke in any person an anguish and reflex shudder”. The referral notes “this type of suffering is magnified by the effects of lack of supplies and medical oxygen.”
87. The referral further asserts that the criteria of admissibility (comprising complementarity and gravity) required for the opening of an investigation are met. With respect to complementarity, the referral indicates that Bolivia has not incorporated in its Criminal Code or any special criminal law, crimes against humanity consisting of “inhuman acts to the population that provoke death, attacks against health and others”, and, in addition, judicial institutions “are co-opted by officials who support the MAS who obey its slogans.” The referral further states that no investigation or parliamentary control has been initiated to clarify the alleged conduct.

OTP Activities

88. Upon reception of the referral, the Office initiated a thorough and independent examination of the information provided by the former Government of Bolivia. The Office has focused on the collection of information of relevance to the situation with regard to the specific elements of crimes under the Rome Statute, with a view to inform its subject matter assessment.

Conclusion and Next Steps

89. The Office intends to conclude its assessment of subject matter jurisdiction in the first half of 2021, in order to determine whether there is a basis to proceed to an admissibility assessment.

VENEZUELA II

Procedural History

90. On 13 February 2020, the Office of the Prosecutor of the ICC received from the Government of the Bolivarian Republic of Venezuela (“Venezuela”) a referral pursuant to article 14(1) of the Rome Statute regarding the situation in its own territory.²⁶
91. In its referral the Government of Venezuela alleges that crimes against humanity have been committed on the territory of Venezuela, “as a result of the application of unlawful coercive measures adopted unilaterally by the government of the United States of America (“US”) against Venezuela, at least since the year 2014”, and requests the Prosecutor to initiate an investigation with a view to determining whether one or more persons should be charged with the commission of such crimes.²⁷
92. On 17 February 2020 the Office notified the ICC Presidency of the receipt of the referral. In its notification to the ICC Presidency the Office noted that the two referrals related to Venezuela received by the Office appeared to overlap geographically and temporally and may therefore warrant an assignment to the same Pre-Trial Chamber, but that this should not prejudice a later determination on whether the referred scope of the two situations is sufficiently linked to constitute a single situation.
93. On 19 February 2020, the Presidency assigned the Situation in the Bolivarian Republic of Venezuela II to Pre-Trial Chamber III, and reassigned the Situation in the Bolivarian Republic of Venezuela I to Pre-Trial Chamber III.²⁸
94. On 23 March 2020 and 23 June 2020 Venezuela provided additional information in support of its referral.

Preliminary Jurisdictional Issues

95. Venezuela deposited its instrument of ratification to the Statute on 7 June 2000. The ICC therefore has jurisdiction over Rome Statute crimes committed on the territory of Venezuela from 1 July 2002 onwards.

²⁶ ICC-OTP, [Statement of the Prosecutor of the International Criminal Court, Mrs Fatou Bensouda, on the referral by Venezuela regarding the situation in its own territory](#), 17 February 2020.

²⁷ [Referral submitted by the Government of Venezuela](#), 12 February 2020 and [Supporting document submitted by the Government of Venezuela](#).

²⁸ ICC Presidency, Decision assigning the situation in the Bolivarian Republic of Venezuela II and reassigning the situation in the Bolivarian Republic of Venezuela I to Pre-Trial Chamber III, [ICC-02/18-2](#), 19 February 2020.

Subject-Matter Jurisdiction

96. The Office's subject-matter assessment has focused on determining whether the allegations set out in the referral by the Government of Venezuela constitute crimes within the jurisdiction of the Court.
97. The referral alleges that crimes against humanity have been committed in Venezuela as a result of the application of "unilateral coercive measures" imposed on Venezuela primarily by the US Government. According to the referral, the consequences of these measures have contributed to "very significant increases in mortality in children and adults, and negatively affected a range of other human rights, including the right to food, to medical care and to education, thus causing, in turn, a migration phenomenon from the country".
98. The referral asserts that since the measures taken by the US have consequences on the territory of a State Party (Venezuela), the ICC may exercise its territorial jurisdiction with respect to alleged ICC crimes of relevance to the situation occurring on Venezuelan territory. The referral states that the economic sanctions imposed by the US Government constitute a widespread or systematic attack upon a civilian population pursuant to article 7(1) of the Rome Statute.
99. The referral also asserts that sanctions were imposed by the US for the purpose of promoting regime change and that the consequences of the sanctions can be qualified as crimes against humanity. In particular, the referral alleges that the additional deaths caused by the sanctions constitute killing under article 7(1); the deprivation of access to food and medicine caused were calculated to bring about the destruction of part of the population, constituting extermination under article 7(1); that the unilateral coercive measures created an environment which triggered mass migration from Venezuela, constituting deportation or forced displacement under article 7(1); that the sanctions caused severe deprivations of fundamental rights contrary to international law, including the right to self-determination, and the right to life, food, work, health and medical care, education, and property, constituting persecution under article 7(1); and that the forcible grounding of the entire aircraft fleet of CONVIASA, Venezuela's flag carrier, has *inter alia* prevented Venezuela from repatriating its citizens, constituting other inhumane acts under article 7(1). The referral further states that Venezuela's inability to punish those responsible for the imposition of these measures, together with their gravity and consequences, would render any potential case admissible.
100. In March and June 2020 respectively the Government of Venezuela provided to the Office two further notes verbales transmitting a total for four additional supporting documents to the referral.
101. In support of its referral, the supporting information provided by the Government of Venezuela refers to an increase of 31 per cent in general mortality, equivalent to 40,000 additional deaths, from 2017 to 2018; an increase in infant mortality from

14.66 in 2013 to 20.04 per 100,000 live births in 2016 and in maternal mortality from 68.66 in 2013 to 135.22 in 2017; a decrease in food imports from US\$11.2 billion to US\$2.46 billion from 2013 to 2018; an increase in the undernourishment prevalence index from 2.0 per cent in 2013 to 13.4 per cent in 2018; and a decrease in volume of water per inhabitant from 466m³ in 2013 to 263 m³ in 2018. The Government of Venezuela further states that the national economy lost an estimated US\$17 billion per year as a result of the first round of economic sanctions (in 2017) and a further US\$10 billion as a result of the latest round of sanctions (in 2019).

OTP Activities

102. Upon receipt of the referral, the Office initiated a thorough and independent examination of the information provided by the Government of Venezuela. The Office has focused during this period on the collection of information of relevance to the situation, as defined in the referral, with regard to the specific elements of crimes under the Rome Statute, with a view to inform its subject matter assessment.
103. On 4 November 2020, the Prosecutor held a meeting with a high level delegation from Venezuela, including the Attorney General, Mr Tarek William Saab, and the Venezuelan Ombudsperson, Mr Alfredo Ruiz, at the seat of the Court.²⁹ The meeting, which encompassed matters of cooperation in relation to both the situation in Venezuela I and Venezuela II, provided an opportunity for the Office, *inter alia*, to request information from the Attorney General on relevant domestic proceedings and their conformity with Rome Statute requirements. During the meeting, the Prosecutor provided an update on the status of the Office's ongoing subject-matter assessment in relation to the situation referred by Venezuela.

Conclusion and Next Steps

104. The Office intends to conclude its assessment of subject matter jurisdiction in the first half of 2021, in order to determine whether there is a basis to proceed to an admissibility assessment.

²⁹ ICC Press release, [ICC Prosecutor, Mrs Fatou Bensouda, receives high-level delegation from the Bolivarian Republic of Venezuela in the context of its ongoing preliminary examinations](#), 5 November 2020.

III. SITUATIONS UNDER PHASE 3 (ADMISSIBILITY)

COLOMBIA

Procedural History

105. The situation in Colombia has been under preliminary examination since June 2004. During the reporting period, the Office continued to receive communications pursuant to article 15 of the Rome Statute in relation to the situation in Colombia.
106. In November 2012, the OTP published an Interim Report on the Situation in Colombia, which summarised the Office's preliminary findings with respect to jurisdiction and admissibility.³⁰

Preliminary Jurisdictional Issues

107. Colombia deposited its instrument of ratification to the Statute on 5 August 2002. The ICC therefore has jurisdiction over Rome Statute crimes committed on the territory of Colombia or by its nationals from 1 November 2002 onwards. However, the Court may exercise jurisdiction over war crimes committed since 1 November 2009 only, in accordance with Colombia's declaration pursuant to article 124 of the Statute.

Subject-Matter Jurisdiction

108. As set out in previous reports, the Office has 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) of the Statute.
109. There is also 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-

³⁰ The OTP identified the following potential cases that would form the focus of its preliminary examination: (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. In addition, the OTP decided to: (v) follow-up on the Legal Framework for Peace and other relevant legislative developments, as well as jurisdictional aspects relating to the emergence of 'new illegal armed groups'. See ICC-OTP, [Situation in Colombia, Interim Report](#), November 2012, paras. 197-224.

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 to participate actively in hostilities under article 8(2)(e)(vii) of the Statute.³¹

Admissibility Assessment

110. During the reporting period, the Attorney General's Office ("AGO") and SJP provided responses to requests for information relating to the status of national proceedings addressing "false positives" killings, sexual and gender-based crimes ("SGBC") and forced displacement. In addition, the authorities provided information relating to proceedings addressing the promotion and expansion of paramilitary and guerrilla groups. An overview of the status and steps taken in relation to these proceedings is provided below.
111. As of November 2020, the SJP reported that it had issued 35,015 decisions related to seven macro cases concerning representative conflict-related crimes and to other procedural matters. The SJP states that 12,625 people had signed pledges of commitment ("*actas de sometimiento*") before it, including 9,767 members of the former FARC-EP, 2,733 members of the armed forces, and 115 other State agents. The SJP stated that it continued its work on seven macro cases, ruled on the participation of victims in proceedings before the Panel for Acknowledgement of Truth, Responsibility and Determination of Facts and Conduct ("Panel for Acknowledgement of Truth"), transmitted copies of voluntary submissions ("*versiones voluntarias*") to victims and initiated preparatory activities for the issuance of resolutions of conclusions ("*resoluciones de conclusiones*"). In addition, the SJP stated that it had received 311 reports relating to conflict-related crimes from victims' organisations, civil society organisations and State entities, including more than 30 reports addressing sexual violence committed in the context of the armed conflict.

Proceedings relating to the promotion and expansion of paramilitary groups

112. The AGO provided the following information on the status and progress of its proceedings as of October 2020. The AGO stated it was conducting a total of 2,683 cases against civilians or state agents not members of the public forces for crimes related to the promotion, support or financing of illegal groups. Of those cases, AGO reported that 1,329 were active, while a further 1,354 were inactive. In relation to active cases, the AGO reported that 703 concern crimes allegedly committed by civilians, 283 by State agents combatants and 343 by State agents non-combatants. According to the AGO, 1,325 cases are at the investigation stage, and four are at trial stage. It reported that judgments had been rendered in relation

³¹ See ICC-OTP, [Situation in Colombia, Interim Report](#), November 2012, paras. 30-153.

to 15 cases: ten cases had resulted in convictions, two in acquittals and three reached the sentencing phase after plea agreements ("*sentencia anticipada*").

113. In relation to 29 prioritised representative cases against civil third parties and State agents linked to illegal armed groups ("*actores armados al margen de la ley*"), the AGO reported that 25 of the 29 cases had been prioritised after considering the evidence, feasibility, viability of the investigation and effectiveness of prosecution. Of the 25 cases, reportedly 20 are under investigation stage and five are at trial stage. The AGO further reported that convictions had been reportedly rendered in relation to two cases and one case reached the sentencing phase after a plea agreement.
114. The AGO also reported on multiple investigative and procedural steps carried out in relation to cases concerning the alleged support and promotion of the paramilitary front "*Arlex Hurtado*" and "*Bloque Calima*", as well as on the case against former executives and employees of the company Chiquita Brands.
115. For example, during the reporting period, the AGO stated that it had ordered the initiation of the investigation ("*apertura de instrucción*") related to the support and promotion of the paramilitary front "*Arlex Hurtado*" after considering allegations of an agreement to commit criminal acts ("*concierto para delinquir*") to finance the paramilitary front. The AGO further reported having linked ("*vinculado*") 19 persons to the case. In addition, the AGO reportedly took statements, carried out questionings ("*indagatorias*") and conducted other procedural activities in relation to the investigation of individuals who allegedly promoted or supported the "*Bloque Calima*". In relation to the case against employees of the company Chiquita Brands, the AGO further reported that it had requested evidence ("*petición probatoria*"). As of October 2020, the date for a preparatory hearing was pending.
116. The SJP also provided the information on the status and progress of its proceedings as of October 2020. According to the information provided, the SJP accepted requests from non-military State agents and civilians to participate in proceedings before the jurisdiction for conduct relating to the promotion of paramilitary and guerrilla groups. The SJP reported that, as of 30 August 2020, the Panel for the Definition of Legal Situations ("*Sala de Definición de Situaciones Jurídicas*") had processed 1,273 of such requests.
117. In addition, the SJP reported that the Panel for the Definition of Legal Situations prioritised requests from civil third parties related to conduct committed by: (i) the Northern bloc of the AUC ("*Bloque Norte*"); (ii) the *Autodefensas Campesinas de Córdoba y Urabá*; and (iii) the macro-criminality pattern of civilian recruiters or those involved in extrajudicial executions. The SJP reported that, as of October 2020, 50 civil third parties had been identified in the context of those criminal structures and pattern. The SJP also stated that the Panel is working on a strategy to group 23 cases concerning civil third parties involved with the "*Autodefensas Unidas de Córdoba and Urabá*", nine of which are related to Case No. 004.

118. Further, the SJP reported having taken a number of investigative and procedural steps in relation to three cases reported by the Office in 2019. In relation to the case against former Congressman Mr. David Char Navas, the Panel reportedly conducted hearings for the contribution to the truth; and requested the SJP's Group of Information Analysis (*Grupo de Analisis de Informacion* or "GRAI") to provide information about the context in which the events took place, including the identification of the most affected areas, the sub-groups involved in conflict-related crimes, and damages caused by members of the paramilitary bloc "*Norte del Frente José Pablo Díaz*" from 2006 to 2010. The SJP also reported that the Panel ordered the verification ("*contraste*") of the information received.
119. With respect to the case against Mr. Álvaro Ashton Giraldo, the SJP reported that the Panel conducted hearings for the contribution to the truth and ordered the collection of evidence. In relation to the case against Mr. Ramiro Suárez Corzo, the Panel reportedly ordered the transmission of his pledge of commitment to contribute to the truth to the victims and transmitted it to the Public Ministry ("*Ministerio Público*"). The SJP also reported that the Panel acknowledged indirect victims of a murder reportedly committed by members of the AUC in 2003. The SJP further stated that the Appeals Chamber made a final request to Mr. Suárez Corzo to provide a detailed document containing his commitment to the truth in relation to alleged killings previously investigated under the ordinary justice system, in order to determine his participation before the SJP.
120. In addition to proceedings against civil third parties allegedly responsible for supporting or promoting paramilitary groups, the SJP reported that since October 2019, the Panel of Amnesty and Pardons initiated proceedings against eight civil third parties who allegedly collaborated with the former FARC-EP.

Proceedings relating to forced displacement

121. According to information provided by the AGO, JPL Tribunals issued five convicting sentences against members of paramilitary groups for various conflict-related crimes, including forced displacement. Reportedly, three judgements were enforced ("*ejecutoriadas*") and two are pending of appeal ("*en términos para recurrir*"). In four cases, it was reported that JPL tribunals had established macro criminal patterns of forced displacement. The Office was further informed that the AGO's Directorate of Transitional Justice has formulated an action plan ("*Estrategia/2020*") to devise a timeframe to complete JPL proceedings based on technical indicators. In this regard, the AGO reported that as of 30 September 2020, JPL Tribunals were yet to adjudicate 122,219 criminal acts attributed to paramilitary groups, and that victims' registration remained open.
122. Regarding prioritised cases against those allegedly "most responsible" under the JPL system, in July 2020 the AGO reported to the Office that it had completed the phase of formulation and acknowledgement of charges ("*etapa de formulación y aceptación de cargos*") in the case against former paramilitary leader, Rodrigo Pérez

Alzate (a.k.a. *Julián Bolívar*), and other 245 mid- and low-ranking members of the bloc "*Central Bolívar*". The AGO reported that the charges include 702 counts of forced displacement committed between 1994 and 2006 in the departments of Santander, Norte de Santander, Bolívar, Antioquia, Boyacá, Caldas, Risaralda, Huila, Caquetá, Nariño and Putumayo.

123. The AGO stated that on 11 August 2020 it requested an extension of the arrest warrants issued in 2019 against ten ELN commanders, including five members of its Central Command ("*COCE*"), for 26 acts of forced displacement committed in the region of Catatumbo since March 2019. The AGO reportedly ordered additional measures to facilitate their arrest.
124. In relation to proceedings concerning forced displacement, the SJP reported in relation to Cases No. 002, 004 and 005 that the Panel for Acknowledgement of Truth adopted a number of measures to facilitate victims' observations to voluntary submissions. These measures reportedly included ensuring the transmission of copies of voluntary submissions to accredited victims and, where necessary, requesting protective measures to victims.
125. With respect to Case No. 002, "*Prioritizing the grave human rights situation in the municipalities of Tumaco, Ricaurte and Barbacoas (Nariño) between 1990 and 2016*", the SJP reported that the Panel for Acknowledgement of Truth formally identified 18 former members of the FARC-EP and convened 44 voluntary statements' hearings. In these hearings, 17 former FARC-EP members reportedly rendered 31 voluntary submissions.
126. In relation to Case No. 004, "*Prioritizing the grave human rights situation in the municipalities of Turbo, Apartadó, Carepa, Mutatá, Dabeiba, Chigorodó (Antioquia) and El Carmen del Darién, Riosucio, Unguía and Ancadí (Chocó) between 1986 and 2016*", the SJP reported that the Panel identified 94 members of the military and 146 former members of the FARC-EP allegedly responsible for conflict-related crimes. The SJP also reported that the Panel held 17 voluntary statements' hearings with 14 members of the armed forces. In addition, the SJP reportedly received 29 requests from civil third parties to participate in Case No. 004.
127. Regarding Case No. 005, "*Situation of Human Rights against the population of the municipalities of Santander de Quilichao, Suárez, Buenos Aires, Morales, Caloto, Corinto, Toribío y Caldono, in the department of Cauca*", the SJP reported that the Panel identified 2,308 criminal acts, including forced displacement, involving 117 former members of the FARC-EP and the army and four civil third parties. Of these, 39 former members of the FARC-EP were formally linked to the macro case. According to the information received from the SJP, the Panel is planning to complete the reception of voluntary submissions, initiate hearings for acknowledgement of truth and responsibility and issue a resolution of conclusion in relation to this case in 2021.

Proceedings relating to sexual and gender-based crimes

128. In relation to the information included in the AGO report entitled “Gender based violence by State agents”, which documented 206 cases of SGBC against 234 members of the armed forces and the police, the AGO reported that the information analysed failed to demonstrate the existence of crime patterns attributable to specific military or police units. Of these 206 cases, 43 were assigned to the AGO’s Specialised Directorate on Human Rights Violations (“*Dirección Especializada contra las Violaciones a los Derechos Humanos*”) of which 27 remain inactive.
129. Regarding the prioritised case against Rodrigo Pérez Alzate (a.k.a. *Julián Bolívar*) and other 245 former members of the paramilitary bloc “*Central Bolívar*” under the JPL system, the AGO reported that charges brought against Pérez in July 2020 include 84 counts of SGBC (“*violencia basada en género*”) committed between April 1994 and 2006.
130. In relation to macro cases concerning SGBC before the Panel for Acknowledgement of Truth, the SJP reported that as of October 2020, the Panel had accredited 41 victims of sexual violence in relation to Case No. 002; 18 victims in relation to Case No. 004; and 14 victims (including 13 members of the LGBTI community) in relation to Case No. 007. According to official sources, the Panel received 30 reports from victims’ organisations focusing specifically on conflict-related sexual violence in relation to Cases No. 002, 004, 005 and 007.
131. With respect to Case No. 002, the SJP reported that the Panel for Acknowledgment of Truth had initiated the verification process (“*proceso de contrastación*”) of information contained in 13 reports, 4 of which specifically focused on sexual violence, against information gathered during judicial inspections. The SJP reported that the Panel is investigating acts of sexual violence allegedly committed by former members of the FARC-EP and the armed forces mentioned in 44 voluntary submissions. According to the SJP, the Panel introduced an SGBC perspective in the process of taking voluntary submissions and resorted to electronic means to ensure the participation in proceedings of victims of indigenous and Afro-Colombian descent.
132. In relation to Case No. 004, the SJP reported that the Panel adopted a number of investigative and analytical steps to advance its investigation, including by conducting judicial inspections and collaborating with the SJP’s Investigation and Prosecution Unit (“*Unidad de Investigación y Acusación*”). According to the SJP, the Panel is working on developing an action plan to further proceedings relating to sexual violence.
133. With respect to Case No. 005, the SJP reported that the Panel is carrying out judicial inspections related to acts of conflict-related sexual violence.

134. Regarding Case No. 007, “Recruitment and use of girls and boys in the armed conflict”, the SJP reported that the Panel for Acknowledgement of Truth formally linked 85 former members of the FARC-EP to the case and summoned 37 of them to provide voluntary submissions. On 19 August 2020, the Panel initiated voluntary statement’s hearings of 15 former members of the FARC-EP, including of its Central Mayor State (“*Estado Mayor Central*”) and Secretariat (“*Secretariado*”).

Proceedings relating to “false positives” cases

135. The AGO reported having continued with its investigative activities relating to “false positives” killings, including with respect to the five potential cases likely to arise from an investigation into the situation identified by the Office in previous reporting.³² The AGO noted to the Office that this was notwithstanding the challenges presented by the COVID-19 pandemic and the investigative dynamic generated by article 79 (j) of the Statutory Law of the Administration of Justice in the Special Jurisdiction for Peace (Law 1957 of 6 June 2019).
136. The AGO also reported having conducted 36 investigative and judicial activities in relation to “false positives” cases, including judicial inspections, as well as issuing orders to the judicial police, orders of information to the SJP and orders under the AGO’s assessment. In addition, the AGO reported having taken 155 procedural steps (“*actuaciones relevantes*”) in relation to alleged false positives cases, such as initiation of investigations (“*aperturas de instrucción*”), joinder of cases (“*conexidades*”), among others. The AGO clarified that the majority of substantive decisions were taken in relation to cases against individuals non-members of the armed forces.
137. As of September 2020, the AGO was reportedly conducting a total of 2,314 active cases³³, against 10,949 members of the army, involving 3,966 victims of “false positive” killings, including cases initiated in earlier reporting periods. This represents 46 cases more than those reported to the Office in October 2019. The AGO stated that the increase in the number of cases corresponds to the assignment of investigations previously carried out by the Military Jurisdiction as well as to the reactivation of cases where procedural steps, such as sentences, were introduced. As of September 2020, 1,749 members of the army had been reportedly convicted. The AGO reported that since October 2019, nine persons were convicted.

³² The Office identified five potential cases relating to hundreds of “false positives” killings allegedly committed by members of brigades acting under five divisions of the Colombian armed forces in specific regions of the country between 2002 and 2009. Each potential case identified by the Office represents one division of the National Army and one or more brigades attached to it, namely: First Division (10th Brigade), Second Division (30th Brigade and 15th Mobil Brigade), Fourth Division (7th, 16th and 28th Brigades), Fifth Division (9th Brigade) and Seventh Division (4th, 11th and 14th Brigades). See ICC-OTP, [Report on Preliminary Examination Activities 2017](#), paras. 131-132.

³³ According to the AGO, active cases should be understood as “cases in which decisions that imply inactivity of the process have not been made”. The AGO uses the following categories: decisions to close investigations, whether provisional (as with “*archivos*”, or “*inhibitorios*”), or final (“*preclusiones*”), joinder of cases (“*conexidades*”), indictments (“*acusaciones*”) and sentences.

138. Further, during 2020, the AGO provided the Office with updated information about the number of proceedings relevant for the assessment of the potential cases identified by the Office. The information provided by the AGO reported on proceedings carried out by the Specialised Directorate on Human Rights Violations (“DECVDH”), which investigates and prosecutes members of the army up to the rank of colonel.

- *Potential case 1:* concerning false positives killings allegedly committed by members of the First Division (10th Brigade) between 2004 and 2008 in the department of Cesar.

According to the AGO, as of September 2020, the DECVDH was conducting 78 active cases in relation to “false positives” killings against 544 individuals, including against 3 colonels and 12 majors.³⁴ Of the 78 cases, 31 are at the preliminary investigation stage (“*indagación previa*”), 42 at the investigation phase (“*con imputación o apertura de instrucción*”), four are at the trial stage and one at the execution of sentence stage (“*ejecución de penas*”).

- *Potential case 2:* concerning false positives killings allegedly committed by members of the Second Division (30th Brigade and 15th Mobil Brigade) between 2002 and 2009 in the departments of Norte de Santander and Magdalena.

The AGO reported that, as of September 2020, the DECVDH was conducting 145 active cases in relation to “false positives” killings against 1,045 individuals, including against 15 colonels and 22 majors.³⁵ Of the 145 cases, 48 are at the preliminary investigation stage (“*investigación previa*”), 90 at the investigation phase (“*con imputación o apertura de instrucción*”) and 7 are at the trial stage. On 23 October 2019, one captain was convicted and sentenced to 360 months of imprisonment for homicide of protected person.

- *Potential case 3:* concerning false positives killings allegedly committed by members of the Fourth Division (7th, 16th and 28th Brigades) between 2002 and 2008 in the departments of Meta, Casanare and Vichada.

As of September 2020, the AGO reported that the DECVDH was conducting 265 active cases in relation to “false positives” killings against 1,533

³⁴ The AGO explained that the increase in the number of cases reported in 2019, corresponds to the reactivation of two cases and the assignment of two cases to the DECVDH. In addition, the AGO noted that the decline in the number of colonels facing proceedings is due to updates of information relating to persons facing proceedings (“*indiciados*”), which established the rank of those concerned at the time of the alleged crimes, as well as duplication of records.

³⁵ According to the AGO, the increase in the number of cases reported in 2019, corresponds to the initiation of two new cases and the reactivation of four cases. In addition, one case at the trial stage was reactivated.

individuals, including against 28 colonels and 57 majors.³⁶ Of the 265 cases, it stated that 128 were at the preliminary investigation stage (*“indagación previa”*), 132 were at the investigation stage (*“con imputación o apertura de instrucción”*) and five at the trial stage.

- *Potential case 4:* concerning false positives killings allegedly committed by members of the Fifth Division (9th Brigade) between 2004 and 2008 in the department of Huila.

According to the AGO, as of September 2020, the DECVDH was conducting 83 cases against 243 individuals, including against 1 colonel and 4 majors. Of the 83 cases, 48 were at the preliminary investigation stage (*“indagación previa”*), 30 were at the investigation stage (*“con imputación o apertura de instrucción”*) and five at the trial stage.³⁷

- *Potential case 5:* concerning false positives killings allegedly committed by members of the Seventh Division (4th, 11th and 14th Brigades) between 2002 and 2008 in the departments of Antioquia and Cordoba.

As of September 2020, the DECVDH was reportedly conducting 614 cases in relation to *“false positives”* killings against 2,976 individuals, including against 33 colonels and 51 majors. Of the 614 cases, 252 were at the preliminary investigation stage (*“indagación previa”*), 332 were at the investigation stage (*“con imputación o apertura de instrucción”*), 24 at the trial stage and six at the execution of sentence stage. The AGO stated that on 29 April 2020 four soldiers were convicted and sentenced to 16 years of imprisonment for homicide of protected person.

139. In addition, the AGO indicated, without further specification, that as of September 2020, the Directorate of Prosecutors before the Supreme Court (*“Fiscalía Delegada ante la Corte Suprema de Justicia”*) was conducting 29 cases against 22 army generals.
140. The SJP reported that continued its investigative activities in relation to Case No. 003 concerning *“Deaths illegitimately presented as casualties during combat by agents of the State”*. In this regard, the SJP reported that the Panel for Acknowledgement of Truth conducted several analytical, investigative and procedural activities in relation to the case, although with some COVID-19 and operational challenges.³⁸

³⁶ The AGO stated that the increase in the number of cases reported in 2019, corresponds to the initiation of a new case. In addition, one case at the trial stage was reactivated.

³⁷ According to the AGO, the decrease in the number of cases at trial stage, corresponds to the deactivation of a case which, as of September 2020, was at the execution of sentence stage.

³⁸ Reported challenges included issues with processing voluminous information; resource limitations; difficulties to apply certain legal standards and ensuring guarantees to protect individuals participating in the proceedings.

141. According to the information provided to the Office, the Panel broadened the scope of Case No. 003 to include crimes committed in the department of Huila; coordinated activities between SJP and the Special Indigenous Jurisdiction ("*Jurisdicción Especial Indígena*"); received victims' observations and conducted informative sessions in Cesar, Casanare, Meta, Huila and the east of Antioquia.
142. In addition, the SJP reported that the Panel received additional reports from victims' and civil society organisations; carried out judicial inspections; provided psychosocial and legal support to victims participating in hearings; and conducted exhumation activities. The SJP further stated that, as of October 2020, the Panel had accredited the participation of 582 victims and granted the requests of at least 26 representatives of victims' organisations to participate during the voluntary statements' hearings.
143. The SJP reported having received 144 voluntary submissions related to Case No. 003 between October 2019 and October 2020. Voluntary submissions were reportedly provided by members of prioritised military units, including from one General, two Brigadier Generals, seven Colonels and nine Lieutenant Colonels. The SJP also stated that, as of October 2020, voluntary submissions had been provided by members of military units responsible for high numbers of false positives killings in six departments of Colombia, namely Antioquia, Cesar, Norte de Santander, Casanare, Meta and Huila.³⁹
144. The SJP also reported that the Panel for Acknowledgement of Truth received several victims' observations to voluntary submissions and conducted observations hearings. Hearings were reportedly attended by victims' relatives, including the *Madres de los Falsos Positivos de Soacha – MAFAPO*, as well as members of the Kankuamo and Wiwa indigenous groups. Observations' hearings were conducted in relation to false positives killings committed in Valledupar, department of César, La Guajira and Huila.
145. According to the information provided by the SJP, the Panel is planning to reach conclusions about parts of Case No. 003 in the coming period.

OTP Activities

146. During the reporting period, the Office engaged in discussions with national authorities, intergovernmental and non-governmental organisations, in relation to the status of relevant national proceedings and to the development of a benchmarking framework to assess national efforts to provide accountability for Rome Statute crimes. The Office received responses to requests for information

³⁹ These include, members of 15th Brigade Mobile, Second Division; Artillery Battalion No 2 "*La Popa*", 10th Brigade, First Division; 16th Brigade, Fourth Division; ; Infantry Battalion No. 15 "*General Francisco José de Paula Santander*"; Artillery Battalion No. 4 "*Jorge Eduardo Sánchez*" 4th Brigade ("*Cuarta Brigada*"); Infantry Battalion No. 27 "*Magdalena*", 9th Brigade, Fifth Division; Infantry Battalion No. 21 "*Batalla del Pantano de Vargas*"; Infantry Battalion No. 26 "*Cacique Pigoanza*"; Battalion of "*Contraquerillas*" No. 79, 11th Mobil Brigade and the Third Division.

sent to the SJP and the AGO, and continued to evaluate the progress of relevant national proceedings carried out under the ordinary justice system, the JPL tribunals and the SJP.

147. From 19 to 23 January 2020, the Office conducted a mission to Colombia to engage in constructive discussions with different stakeholders to assess progress of national proceedings relevant to the preliminary examination. During the engagements, the Office stressed that its assessment of the national accountability efforts is ongoing and will continue alongside the development of the above mentioned framework.⁴⁰
148. On 29 October 2020, the Deputy Prosecutor delivered a presentation on the impact of international courts with complementary jurisdiction in the context of the international virtual conference “Emerging Responses to Contemporary Atrocities”, organised by the SJP and the Swiss Embassy in Bogotá. During his presentation, the Deputy Prosecutor referred to the application of the principle of complementarity in situations involving transitional justice measures, such as Colombia, and restated the Office’s expectations and support for the accountability efforts of the Colombian authorities. In this regard, the Deputy Prosecutor stressed the importance of having the SJP discharge its mandate in a robust and independent way, with the concerted support of national authorities. The Deputy Prosecutor further stated that the preliminary examination of the situation in Colombia continues its course, in accordance with the jurisdictional and complementarity requirements under the Rome Statute, in parallel to the development of a benchmarking framework to fine-tune its assessment of the State’s efforts to provide accountability for Rome Statute crimes.⁴¹
149. In addition, on 9 October 2020, the Office delivered remarks about the preliminary examination in Colombia and the importance of complementarity in the virtual conference “Colombia before the International Criminal Court: 15 years of preliminary examination” organised by the Colombian Commission of Jurists and the *Universidad de los Andes*. On 26 May 2020, the Office also participated in the virtual conference entitled “Fighting Impunity? The situation in Mexico and Colombia” organised by the International Federation of Human Rights (FIDH), IDHEAS – *Litigio Estratégico en Derechos Humanos, A.C.* and *Colectivo de Abogados José Alvear Restrepo (CAJAR)*.
150. Further, the Office received submissions from civil society organisations expressing concerns about certain aspects of national proceedings relevant to the preliminary examination. Among the concerns expressed are the purported lack of coordination and cooperation within the Colombian jurisdictions and among one another; the need for standardisation of investigative activities among all

⁴⁰ ICC-OTP, [The Office of the Prosecutor concludes mission to Colombia](#), 23 January 2020.

⁴¹ ICC-OTP, [Presentación del Fiscal Adjunto, James Stewart, durante la conferencia Internacional “Respuestas emergentes ante atrocidades contemporáneas”](#), presentation by Mr James Stewart, Deputy Prosecutor of the ICC, 29 October 2020.

macro cases carried out by the SJP, as well as for clear criteria to assess truth contributions. In addition, the Office received submissions describing capacity challenges to investigate and prosecute civil third parties within the ordinary justice system. Civil society organisations also ascertained concerns about an alleged *de facto* suspension of investigative activities by the AGO for conflict-related crimes deemed to be part of the SJP's analysis. The Office has taken note of these concerns and will include them within the scope of its assessment.

151. The Office also followed several contextual developments related to the situation in Colombia; including developments at the political and judicial level both within the country and abroad, and a reported decline in the security situation of human rights defenders and communities affected by the armed conflict. The Office also noticed that the level of violence in rural areas, including locations formerly occupied by the FARC-EP, has significantly increased. On-going disputes over the control of illicit economies between multiple criminal groups and transnational criminal organisations are reportedly among the main causes for the increased violence.

Conclusion and Next Steps

152. The Office has continued to assess the progress of domestic proceedings related to the commission of crimes that form the potential cases that would form the focus of its preliminary examination. The information assessed since November 2019 indicates that the Colombian authorities, in overall, have taken meaningful steps to address conduct amounting to ICC crimes, as outlined in the 2012 Interim Report.⁴²
153. The information available indicates that the Colombian authorities have continued to carry out national proceedings relevant to the Office's admissibility assessment under the ordinary justice, the JPL and the SJP systems. The Colombian authorities appear to have made progress in the investigation of conduct underlying the potential cases identified by the Office. During 2021, the Office will continue engaging with the Colombian authorities to seek additional details on the activities leading to the initiation of individual proceedings that should arise from relevant macro cases under the SJP, as well as the identification of cases selected for further steps, including investigations and prosecutions.
154. Alongside its assessment of the national proceedings relevant to the preliminary examination, the Office will also continue to engage with the Colombian authorities and relevant stakeholders in the development of a benchmarking

⁴² The OTP identified the following potential cases that would form the focus of its preliminary examination: (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. In addition, the OTP decided to: (v) follow-up on the Legal Framework for Peace and other relevant legislative developments, as well as jurisdictional aspects relating to the emergence of 'new illegal armed groups'. See ICC-OTP, [Situation in Colombia, Interim Report](#), November 2012, paras. 197-224.

framework. The purpose of the framework is to enable the Office to identify the indicators that could in principle enable it, at the appropriate time, 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. The Office hopes to share the benchmarking framework in draft form with the Colombian authorities and other stakeholders for comments during the first half of 2021.

GUINEA

Procedural History

155. The situation in Guinea has been under preliminary examination since 14 October 2009. During the reporting period, the Office continued to receive communications pursuant to article 15 in relation to the situation in Guinea.

Preliminary Jurisdictional Issues

156. Guinea deposited its instrument of ratification to the Statute on 14 July 2003. The ICC therefore has jurisdiction over Rome Statute crimes committed on the territory of Guinea or by Guinean nationals from 1 October 2003 onwards.

Subject-Matter Jurisdiction

157. In December 2008, after the death of President Lansana Conté, who had ruled Guinea since 1984, Captain Moussa Dadis Camara led a group of army officers who seized power in a military coup. Moussa Dadis Camara became the Head of State, established a military junta, the *Conseil national pour la démocratie et le développement* (“CNDD”), and promised that the CNDD would hand over power to a civilian president upon the holding of presidential and parliamentary elections. However, subsequent statements that appeared to suggest that Captain Camara might run for president led to protests by the opposition and civil society groups. On 28 September 2009, the Independence Day of Guinea, an opposition gathering at the national stadium in Conakry was violently suppressed by the security forces, leading to what became known as the “28 September massacre.”
158. In October 2009, the United Nations established an international commission of inquiry (“UN Commission”) to investigate the alleged gross human rights violations that took place in Conakry on 28 September 2009 and, where possible, identify those responsible. In its final report of December 2009, the UN Commission confirmed that at least 156 persons were killed or disappeared, and at least 109 women were victims of rape and other forms of sexual violence, including sexual mutilations and sexual slavery. Cases of torture and cruel, inhuman or degrading treatment during arrests and arbitrary detentions, and attacks against civilians based on their perceived ethnic and/or political affiliation were also confirmed. The UN Commission considered that there was a strong presumption that crimes against humanity were committed and determined, where it could, possible individual responsibilities.
159. The *Commission nationale d’enquête indépendante* (“CNEI”), set up by the Guinean authorities, confirmed in its report issued in January 2010 that killings, rapes and enforced disappearances took place, although in slightly lower numbers than documented by the UN Commission.

160. As set out in previous reports, the Office has concluded that the information available provides a reasonable basis to believe that the following crimes against humanity were committed in the national stadium in Conakry on 28 September 2009 and in the immediate aftermath: murder under article 7(1)(a); imprisonment or other severe deprivation of liberty under article 7(1)(e); torture under article 7(1)(f); rape and other forms of sexual violence under article 7(1)(g); persecution under article 7(1)(h); and enforced disappearance of persons under article 7(1)(i) of the Rome Statute.

Admissibility Assessment

161. On 8 February 2010, in accordance with the recommendations of the reports of the UN Commission and of the CNEI, the General Prosecutor of the Appeals Court of Conakry appointed three Guinean investigative judges (“panel of judges”) to conduct a national investigation into the 28 September 2009 events. Since national proceedings have been ongoing, the Office’s assessment has focused on whether the national authorities are willing and able to conduct genuine investigations and prosecutions, including the question of whether there has been unjustified delay which in the circumstances is inconsistent with an intent to bring the persons concerned to justice.
162. On 29 December 2017, the panel of judges completed its investigation and referred the case to trial. The panel formally identified 13 of the 15 individuals indicted in the course of the investigation, including the former Head of State, Moussa Dadis Camara, as well as other former and current high-level officials. Charges against the accused include various counts of murder, rape, looting, torture, abduction and illegal restraint, obstruction and failure to help a person in danger, and illegal supply of war material, both as direct and indirect perpetrator. On 25 June 2019, the Supreme Court of Guinea dismissed a series of appeals against the scope of the national investigation and upheld the panel’s decision to initiate the trial phase.
163. On 29 October 2019, the then Minister of Justice of Guinea, Mohamed Lamine Fofana, announced that the trial of the 28 September 2009 events would take place at the latest in June 2020. The announced timeline was subsequently confirmed by the former Minister of Justice during Guinea’s Universal Periodic Review before the UN Human Rights Council in January 2020. To date, however, the trial has not yet started and no timeline or action plan for the opening of the trial has been communicated by the Government of Guinea. In this regard, while the Guinean authorities attributed initial delays to procedural and logistical issues, more recently the spread of the COVID-19 pandemic and the volatile political and security situation in the country further hindered the prospects of holding the trial by June 2020.
164. On 13 January 2020, the Prime Minister of Guinea, Ibrahima Kassory Fofana, laid the foundation stone of a new courtroom located within the premises of the Appeals Court of Conakry to host the trial. Construction works are ongoing, but

the information available suggests that it is unlikely that the new courtroom will be finalised and adequately equipped in the short term. On the other hand, according to some members of the steering committee tasked with the logistical organisation of the 28 September 2009 events case (“the steering committee” or “the committee”), the existing main courtroom of the Conakry Appeals Court is a suitable venue and fully operational.

165. During the reporting period, the steering committee held no working level meetings. Despite the reforms introduced in May 2019 by the former Minister of Justice to expedite its decision-making process, the committee’s contribution to the trial organisation appears limited. Following its inauguration on 1 June 2018, the steering committee has met on seven occasions and held its last meeting in August 2019. To date, the chair of the committee, the current Minister of Justice, Mory Doumbouya, has not convened any meeting, thus hampering the committee’s ability to effectively fulfil its mandate.
166. In addition to identifying a suitable courtroom, there are a number of practical and procedural aspects that require swift action from the Guinean authorities, including under the operational framework of the steering committee, prior to the commencement of the trial. As judicial activities in Guinea have partially resumed under strict sanitary conditions and the presidential election process is over, the Office will take stock of the concrete and tangible steps adopted by the Guinean authorities to prosecute the accused without further delay.

OTP Activities

167. Given the travel restrictions in place for the most part of the year due to the COVID-19 pandemic, the Office could not travel to Guinea as part of its regular activities and has therefore, from The Hague, gathered and received updated information on the status of the trial organisation and other matters of relevance to the preliminary examination from key partners in Guinea.
168. The Office remains in regular contact with representatives of Guinean and international civil society organisations, victims’ counsel and the diplomatic community in Conakry. Despite the constraints to set up meetings in Conakry or The Hague, the Office held a number of virtual meetings, at working and senior level, to exchange with key partners on various aspects relevant to the preliminary examination, including specific areas of technical cooperation to expedite national proceedings. The Office has also continued liaising with the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, the UN Team of Experts on the Rule of Law and Sexual Violence in Conflict and its senior judicial expert deployed to support national proceedings under the framework of the joint communiqué signed between the UN and the Guinean Government in 2011.
169. On 23 January 2020, the Prosecutor issued a public statement welcoming the beginning of the construction of a new courtroom to host the 28 September 2009

case trial and stressed the importance of respecting the announced timeline of June 2020.⁴³ However, in light of reported delays in the construction works, the Office has sought to obtain information on alternative locations to host the trial within a reasonable time frame.

170. In accordance with its positive complementarity approach in this situation, the Office has continued to encourage relevant stakeholders to support national efforts to hold genuine national proceedings. In this regard, the Office sought and received inputs to devise a roadmap laying down a set of required actions to be implemented by the steering committee and the Guinean authorities within a specific time frame. In light of the recurrent delays in national proceedings, this roadmap aims at streamlining the implementation of pending and ongoing preparatory steps as well as ensuring a fair and impartial trial, in accordance with international standards of justice. Considering the current status of the trial organisation, these required actions may include: designation of a suitable courtroom for the trial; appointment and training of magistrates of the competent jurisdiction, including on sexual crimes; implementation of a comprehensive security scheme for the protection of victims, witnesses and justice officials; and establishment of a broad communication plan.
171. The Office has further analysed the impact of relevant contextual developments on the effective holding of the trial. In particular, the Office has monitored upsurges of violence reported in the context of the referendum for the adoption of a new Guinean constitution and the presidential election held on 22 March and 18 October 2020, respectively. On 9 October 2020, following reports of electoral and ethnic-related violence, the Prosecutor issued a public statement calling for calm and restraint from all political actors and their supporters and condemning the use of inflammatory rhetoric by some political actors during their electoral campaign.⁴⁴
172. The Prosecutor's statement also emphasised the Office's continuing commitment to prioritising the carrying out of genuine national proceedings, close to the victims and affected communities, stressing that this has the potential to contribute to the two overarching goals of the Rome Statute: ending impunity, and preventing the recurrence of the most serious crimes. However, given the current stage of proceedings, while recognising the serious constraints caused by the COVID-19 pandemic on the Guinean judicial system, the Prosecutor insisted that neither the recurrent setbacks in the material organisation of the trial, nor the current political context, should be used as a pretext to prevent the opening of this long-awaited trial.

⁴³ ICC-OTP, [Statement of ICC Prosecutor, Fatou Bensouda, regarding the situation in Guinea: "Construction of the new courtroom in Conakry is an important step towards holding long-awaited trial and to see justice done"](#), 23 January 2020.

⁴⁴ ICC-OTP, [Statement of ICC Prosecutor, Fatou Bensouda, on pre-election violence and growing ethnic tensions: "Guinea can and must demonstrate its will and ability both to combat impunity and to prevent renewed cycles of violence"](#), 9 October 2020.

173. Furthermore, given the length of the preliminary examination and the particular challenges posed by this situation in terms of complementarity, the Office will seek to develop a framework conceptualising benchmarks and indicators, adapted to the situation of Guinea, to fine-tune its admissibility assessment. In addition to the above-mentioned roadmap, the conceptualisation of this framework aims at enabling the Office to reach a fully-informed determination on admissibility in the course of 2021.

Conclusion and Next Steps

174. Since the Office previous report, no concrete and tangible steps have been adopted by the Guinean authorities towards the organisation of the trial of the 28 September 2009 events. The steering committee has not met since August 2019 and no time frame for the beginning of the trial has been communicated by the Guinean authorities after failing to meet the timeline announced in October 2019. The time and effort given by the Office to ensure that the national authorities are able to make concrete progress in organising domestic proceedings has been unprecedented, but it cannot be indefinite. As the Prosecutor stressed in her last statement of 9 October 2020, the Guinean authorities must demonstrate, in the coming months, their will and ability both to combat impunity and to prevent renewed cycles of violence.
175. Alongside its assessment of steps to organise the trial, the Office will engage with the Guinean authorities and relevant stakeholders in the development of a benchmarking framework. The purpose of the framework is to enable the Office to identify the indicators that could in principle enable it, at the appropriate time, 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. The Office hopes to share the benchmarking framework in draft form with the Guinean authorities and other stakeholders for comments during the first half of 2021.

REPUBLIC OF THE PHILIPPINES

Procedural History

176. The situation in the Republic of the Philippines (“the Philippines”) has been under preliminary examination since 8 February 2018. During the reporting period, the Office continued to receive communications pursuant to article 15 in relation to this situation.
177. On 13 October 2016, the Prosecutor issued a statement on the situation in the Philippines, expressing concern about the reports of alleged extrajudicial killings of purported drug dealers and users in the Philippines.⁴⁵ The Prosecutor recalled that those who incite or engage in crimes within the jurisdiction of the Court are potentially liable to prosecution before the Court, and indicated that the Office would closely follow relevant developments in the Philippines.
178. On 8 February 2018, following a review of a number of communications and reports documenting alleged crimes, the Prosecutor opened a preliminary examination of the situation in the Philippines since at least 1 July 2016.⁴⁶

Preliminary Jurisdictional Issues

179. The Philippines deposited its instrument of ratification to the Statute on 30 August 2011. The ICC therefore has jurisdiction over Rome Statute crimes committed on the territory of the Philippines or by its nationals since 1 November 2011.
180. On 17 March 2018, the Government of the Philippines deposited a written notification of withdrawal from the Statute with the UN Secretary-General. In accordance with article 127, the withdrawal took effect on 17 March 2019. The Court retains jurisdiction over alleged crimes that have occurred on the territory of the Philippines during the period when it was a State Party to the Statute, namely from 1 November 2011 up to and including 16 March 2019. Furthermore, the exercise of the Court’s jurisdiction (i.e. the investigation and prosecution of crimes committed up to and including 16 March 2019) is not subject to any time limit.⁴⁷

⁴⁵ ICC-OTP, [Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda concerning the situation in the Republic of the Philippines](#), 13 October 2016.

⁴⁶ ICC-OTP, [Statement of the Prosecutor of the International Criminal Court, Mrs Fatou Bensouda, on opening Preliminary Examinations into the situations in the Philippines and in Venezuela](#), 8 February 2018.

⁴⁷ Situation in the Republic of Burundi, “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi”, [ICC-01/17-9-Red](#), 25 October 2017, para. 24 (“Burundi Article 15 Decision”).

Subject-Matter Jurisdiction

181. The subject-matter assessment has examined the nationwide anti-drug campaign by the Philippine National Police (“PNP”), following President Duterte’s pronouncement to eradicate illegal drugs during the first six months of his term. In the context of the campaign, PNP forces have reportedly conducted tens of thousands of operations to date, which have reportedly resulted in the killing of thousands of alleged drug users and/or small-scale dealers. It is also reported that, since 1 July 2016, unidentified assailants have carried out thousands of attacks similarly targeting such individuals.
182. In conducting its subject-matter assessment, the Office has examined several forms of alleged conduct and considered the possible legal qualifications open to it under the Rome Statute. The Office has focused in particular on whether the alleged conduct amounts to crimes against humanity. The descriptions below are without prejudice to the identification by the Office of any further alleged crimes.
183. The preliminary examination has focused on crimes allegedly committed in the Philippines between 1 July 2016 and 16 March 2019 in the context of the so-called “war on drugs” (“WoD”) campaign launched nationwide by the government to fight the sale and use of illegal drugs. In particular, it focuses on allegations that President Duterte and senior members of law enforcement agencies and other government bodies actively promoted and encouraged the killing of suspected or purported drug users and/or dealers, and in such context, members of law enforcement, including particularly the PNP, and unidentified assailants have carried out thousands of unlawful killings throughout the Philippines.
184. Based on the information available, since the launch of the anti-drug campaign on 1 July 2016, thousands of individuals have been killed purportedly for reasons related to their alleged involvement in the use or selling of drugs, or otherwise due to mistaken identity or inadvertently when perpetrators opened fire on their apparent intended targets. Reportedly, over 5,300 of these killings were committed in acknowledged anti-drug operations conducted by members of Philippine law enforcement or in related contexts (such as while in custody or detention). Philippine officials have consistently contended that such deaths occurred as a result of officers acting legitimately in self-defence in the context of violent, armed confrontations with suspects. However, such narrative has been challenged by others, who have contended that the use of lethal force was unnecessary and disproportionate under the circumstances, as to render the resulting killings essentially arbitrary, or extrajudicial, executions.
185. Thousands of killings were also reportedly carried out by unidentified assailants (sometimes referred to as ‘vigilantes’ or ‘unknown gunmen’). According to the information available, authorities have often suggested that such killings are not related to the WoD, contending that they occurred in the context of love triangles or, alternatively, feuds or rivalries between drug gangs and criminal organisations. Nevertheless, other information available suggests that many of the

reported killings by unidentified assailants took place in the context of, or in connection with, the government's anti-drug campaign. In this regard, it has also been alleged that some of these vigilante-style executions purportedly committed by private citizens or groups were planned, directed and/or coordinated by members of the PNP, and/or were actually committed by members of law enforcement who concealed their identity and took measures to make the killings appear to have instead been perpetrated by vigilantes.

186. In addition to killings, it has been alleged that some individuals have been subjected to serious ill-treatment and abuses prior to being killed by state actors and other unidentified assailants, such as after being arrested or abducted and while being held in custody prior their deaths. It has also been alleged that in several incidents, relatives (such as spouses, parents or children) of the victims witnessed the killings, thereby sustaining serious mental suffering. Further, it has been reported that in at least a few incidents, members of law enforcement raped women who were apparently targeted because of their personal relationships to individuals alleged to have been involved in drug activities.
187. Overall, most of the victims of the alleged crimes in question were persons reportedly suspected by authorities to be involved in drug activities, that is, individuals allegedly involved in the production, use, or sale (either directly or in support of such activities) of illegal drugs, or in some cases, individuals otherwise considered to be associated with such persons. The majority of the victims have notably been from more impoverished areas and neighbourhoods, especially those within urban areas, such as in locations within the Metro Manila, Central Luzon, Central Visayas, and Calabarzon regions, among others. In addition, it has been reported that some public officials, including civil servants, politicians, mayors, deputy mayors and barangay-level officials, and current and former members of law enforcement were allegedly killed because of their purported links to the illegal drug trade.
188. According to the information available, many of the persons targeted overall by the alleged acts had been included on drug watch lists compiled by national and/or local authorities, and some of those targeted also included persons who had previously 'surrendered' to the police in connection with Oplan Tokhang. In a number of cases, notably, the alleged acts were committed against children or otherwise affected them. For example, reportedly, a significant number of minors (ranging in age from a few months old to 17 years old) were victims of apparent WoD-related killings, and in this respect, were killed in a number of circumstances, including as direct targets, as a result of mistaken of identity or as collateral victims.
189. The Office is satisfied that information available provides a reasonable basis to believe that the crimes against humanity of murder (article 7(1)(a)), torture (article 7(1)(f)) and the infliction of serious physical injury and mental harm as other inhumane Acts (article 7(1)(k)) were committed on the territory of the Philippines

between at least 1 July 2016 and 16 March 2019, in connection to the WoD campaign launched throughout the country.

Admissibility Assessment

190. During the reporting period, the Office continued to collect, receive and review information from a variety of sources on investigations and prosecutions at the national level. The Office has also mapped out the various investigative and prosecutorial authorities conducting investigations and proceedings relevant to the potential cases that would likely be the focus of any investigation.
191. Open source information indicates that a limited number of investigations and prosecutions have been initiated (and, in some cases, completed) at the national level in respect of direct perpetrators of certain criminal conduct that allegedly took place in the context of, or connection to, the WoD campaign. For example, Philippine government officials and bodies have provided sporadic public updates on the number of investigations conducted by various authorities into killings that occurred during law enforcement operations. The information available also indicates that criminal charges have been laid in the Philippines against a limited number of individuals – typically low-level, physical perpetrators – with respect to some drug-related killings. Based on the information available, one WoD-related case has proceeded to judgment in the Philippines; that of three police officers who were convicted by the Caloocan City Regional Trial Court in November 2018 for the murder of 17-year-old Kian Delos Santos.
192. In June 2020, Justice Secretary Menardo Guevarra announced the creation of an inter-agency panel to reinvestigate deaths in police WoD operations. The Office has been and will continue to closely monitor developments relating to this body.
193. While in principle, only national investigations that are designed to result in criminal prosecutions can trigger the application of article 17(1)(a)-(c) of the Statute,⁴⁸ out of an abundance of caution the Office is also examining national developments which appear to fall outside the technical scope of the term ‘national criminal investigations’, including Senate Committee hearings into extrajudicial killings, administrative cases against policemen allegedly involved in WoD-related killings, writ of amparo cases and cases brought in front of the Office of the Ombudsman.
194. During the reporting period, the Office has analysed qualitative and quantitative open source information as well as information received from a variety of stakeholders relevant to the Office’s gravity assessment.

⁴⁸ [Burundi Article 15 Decision](#), para. 152.

OTP Activities

195. During the reporting period, the Office finalised its subject-matter analysis and collected and assessed open source information on any relevant national proceedings being conducted by Philippine authorities. The Office has also collected and analysed information relevant to gravity. Throughout the reporting period, the Office continued to engage and consult with relevant stakeholders in order to address a range of matters relevant to the preliminary examination and to seek further information to inform its assessment of the situation.
196. The Office has also been following with concern reports of threats, killings and other measures apparently taken against human rights defenders, journalists and others, including those who have criticised the WoD campaign. The Office will continue to closely monitor such reports, as well as other relevant developments in the Philippines.

Conclusion and Next Steps

197. The Office's goal, announced last year,⁴⁹ to bring the preliminary examination to a conclusion during the reporting period was impacted by the COVID-19 pandemic and capacity constraints. Nonetheless, the Office anticipates reaching a decision on whether to seek authorisation to open an investigation into the situation in the Philippines in the first half of 2021.

⁴⁹ [Report on Preliminary Examination Activities 2019](#), para. 254.

VENEZUELA I

Procedural History

198. The situation in the Bolivarian Republic of Venezuela (“Venezuela”) has been under preliminary examination since 8 February 2018. During the reporting period, the Office continued to receive communications pursuant to article 15 in relation to this situation.
199. On 8 February 2018, the Prosecutor opened a preliminary examination of the situation in Venezuela since at least April 2017.⁵⁰ On 27 September 2018, the Office received a referral from a group of States Parties to the Statute, namely the Argentine Republic, Canada, the Republic of Colombia, the Republic of Chile, the Republic of Paraguay and the Republic of Peru (the “referring States”), regarding the situation of Venezuela. Pursuant to article 14 of the Statute, the referring States requested the Prosecutor to initiate an investigation for crimes against humanity allegedly committed in the territory of Venezuela since 12 February 2014, with a view to determining whether one or more persons should be charged with the commission of such crimes.⁵¹
200. On 28 September 2018, the ICC Presidency assigned the situation in Venezuela to Pre-Trial Chamber I.⁵² On 19 February 2020, the Presidency reassigned the situation in Venezuela I from Pre-Trial Chamber I to Pre-Trial Chamber III.⁵³

Preliminary Jurisdictional Issues

201. Venezuela deposited its instrument of ratification to the Statute on 7 June 2000. The ICC therefore has jurisdiction over Rome Statute crimes committed on the territory of Venezuela or by its nationals from 1 July 2002 onwards.

Subject-Matter Jurisdiction

202. During the reporting period, the Office completed its subject-matter assessment in relation to the situation in Venezuela I. Following a thorough assessment and analysis of the information available, the Office concluded that there is a

⁵⁰ ICC-OTP, [Statement of the Prosecutor of the International Criminal Court, Mrs Fatou Bensouda, on opening Preliminary Examinations into the situations in the Philippines and in Venezuela](#), 8 February 2018.

⁵¹ ICC-OTP, [Statement of the Prosecutor of the International Criminal Court, Mrs Fatou Bensouda, on the referral by a group of six States Parties regarding the situation in Venezuela](#), 27 September 2018.

⁵² ICC Presidency, Decision assigning the situation in the Bolivarian Republic of Venezuela to Pre-Trial Chamber I, [ICC-02/18-1](#), 28 September 2018.

⁵³ ICC Presidency, Decision assigning the situation in the Bolivarian Republic of Venezuela II and reassigning the situation in the Bolivarian Republic of Venezuela I to Pre-Trial Chamber III, [ICC-02/18-2](#), 19 February 2020.

reasonable basis to believe that crimes within the jurisdiction of the Court have been committed in Venezuela since at least April 2017.

203. In particular, given the scope and range of the different alleged crimes within the context of the situation, the Office focused its analysis on a particular sub-set of allegations related to the treatment of persons in detention, for which a sufficiently detailed and reliable information was available with regard to the specific elements of Rome Statute crimes.
204. Specifically, and without prejudice to other crimes that the Office might determine at a later stage, the Office has concluded that the information available at this stage provides a reasonable basis to believe that since at least April 2017, civilian authorities, members of the armed forces and pro-government individuals have committed the crimes against humanity of imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law pursuant to article 7(1)(e); torture pursuant to article 7(1)(f); rape and/or other forms of sexual violence of comparable gravity pursuant to article 7(1)(g); and persecution against any identifiable group or collectivity on political grounds pursuant to article 7(1)(h) of the Rome Statute.
205. The information available to the Office provides a reasonable basis to believe that the members of the security forces allegedly responsible for the physical commission of these alleged crimes include: the Bolivarian National Police (*Policía Nacional Bolivariana* or “PNB”), the Bolivarian National Intelligence Service (*Servicio Bolivariano de Inteligencia Nacional* or “SEBIN”), the Directorate General of Military Counterintelligence (*Dirección General de Contrainteligencia Militar* or “DGCIM”), the Special Action Forces (*Fuerza de Acciones Especiales* or “FAES”), the Scientific, Penal and Criminal Investigation Corps (*Cuerpo de Investigaciones Científicas, Penales y Criminalísticas* or “CICPC”), the Bolivarian National Guard (*Guardia Nacional Bolivariana* or “GNB”), the National Anti-Extortion and Kidnapping Command (*Comando Nacional Antiextorción y Secuestro* or “CONAS”), and certain other units of the Bolivarian National Armed Forces (*Fuerza Armada Nacional Bolivariana* or “FANB”).
206. Further, the information available indicates that pro-government individuals also participated in the repression of actual opponents of the Government of Venezuela or people perceived as such, principally by acting together with members of the security forces or with their acquiescence. With regard to the alleged role of the aforementioned actors, the Office’s potential case(s) would not be limited to these persons or groups of persons and would seek to examine the alleged responsibility of those who appear most responsible for such crimes.

Admissibility

207. During the reporting period, the Office sought to advance its admissibility assessment in terms of complementarity and gravity. In this respect, the Office requested the Venezuelan authorities to provide information from the competent national authorities on the nature, scope and progress of domestic

proceedings corresponding to the Office's subject-matter findings, as set out above.

208. On 4 November 2020, the Prosecutor met with a high-level delegation which included the Attorney General, Mr Tarek William Saab, and the Venezuelan Ombudsperson, Mr Alfredo Ruiz, at the seat of the Court in The Hague, The Netherlands.⁵⁴ The meeting provided an opportunity to exchange with the delegation on a number of aspects relating to the preliminary examination process and sought information on relevant domestic proceedings and their conformity with Rome Statute requirements. The Venezuelan delegation assured their willingness to cooperate in the framework of the Rome Statute with the work of the Office.
209. On 30 November 2020, the Venezuelan authorities provided an initial response to the Office's request for information on relevant domestic proceedings. The information submitted includes a report by the Venezuelan authorities providing responses to the detailed set of questions asked by the Office in its request for information. The Venezuelan authorities also submitted four large annexes providing a concrete set of data of national proceedings carried out under the ordinary and military jurisdictions, and by the Supreme Court of Justice ("*Tribunal Supremo de Justicia*"), as well as copies of judicial documents detailing domestic proceedings. The material received has been incorporated within the scope of the Office's assessment, including for the purpose of assessing its relevance for the preliminary examination and to inform the ongoing admissibility analysis. The Venezuelan authorities committed to providing the further information requested by the Office by January 2021.

OTP Activities

210. During the reporting period, the Office continued to engage with the Venezuelan authorities, international organisations, and multiple other stakeholders and information providers in order to address a number of aspects relevant to its subject-matter assessment of the situation as well as admissibility issues. The Office also took note of the report of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela published on 15 September 2020⁵⁵, and the report of the Government of Venezuela entitled "The Truth of Venezuela against Infamy. Data and Testimonies of a Country Under Siege".⁵⁶
211. The Office has also taken note of the recently published report of the General Secretariat of the Organisation of American States ("OAS") entitled "Fostering Impunity: The Impact of the Failure of the Prosecutor of the International

⁵⁴ ICC Press release, [ICC Prosecutor, Mrs Fatou Bensouda, receives high-level delegation from the Bolivarian Republic of Venezuela in the context of its ongoing preliminary examinations](#), 5 November 2020.

⁵⁵ UN HRC, [Report of the independent international fact-finding mission on the Bolivarian Republic of Venezuela](#), 15 September 2020, A/HRC/45/33 (advanced unedited version).

⁵⁶ Government of Venezuela, [La verdad de Venezuela contra la infamia. Datos y testimonios de un país bajo asedio](#), 25 September 2020.

Criminal Court to open an investigation into the possible commission of crimes against humanity in Venezuela".⁵⁷ The OAS report criticises the Office for the pace of the preliminary examination, for not expediting its consideration on the basis of the group referral, and alleges that the Office has not acted impartially and objectively in accordance with its mandate and own strategic and policy guidance, including with respect to the scope of its findings to date.

212. The Office regrets the tone and manner of the report issued by the General Secretariat of an international organisation with which the Office and the Court as a whole expect to cooperate in a spirit of good faith and mutual collaboration. The Office understands the frustrations that appear to motivate the report, which arise out of an expressed expectation that the Office prioritise consideration of the alleged crimes in this situation over alleged crimes committed in others. Similar sentiments calling for the prioritisation of particular situations have been expressed to the Office in each preliminary examination, corresponding to the legitimate expectations of victims for justice. However, the Office must also be allowed to carry out its work independently and impartially without aspersions being cast over the integrity of the Prosecutor or of the Office. The Office has recently made public its subject-matter determinations, which were reached in the first part of this year, and has indicated its goal to bring the preliminary examination to a conclusion in the first half of 2021 in order to determine whether there is a reasonable basis to initiate an investigation.
213. With respect to the scope of its findings on alleged crimes to date, the Office wishes to recall that the primary purpose of a preliminary examination is to determine whether the threshold has been met to open investigations. The Office's task is not to report or engage in a comprehensive mapping of all alleged crimes within a situation – a task for which other competent bodies are not only better suited, but would also make the preliminary examination process highly inefficient. To reach that threshold-setting determination the Office has, across all situations, consistently focused on a cluster of alleged criminality which both appears representative of a broader pattern of victimisation warranting investigation and are also best supported by the information available at this time. As the Office has consistently stated across all situations, and the Appeals Chamber has recently confirmed, the examples of criminality identified by the Prosecutor for this threshold-setting purpose are without prejudice to the future scope subsequent of any subsequent investigation, if and when opened, which may encompass any alleged crimes within the scope of the situation.⁵⁸ As such,

⁵⁷ OAS, [“Fostering Impunity: The Impact of the Failure of the Prosecutor of the International Criminal Court to open an investigation into the possible commission of crimes against humanity in Venezuela”](#), 2 December 2020.

⁵⁸ See Appeals Chamber, *Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan*, (Afghanistan Appeals Judgment) [ICC-02/17-138](#), 5 March 2020, para. 61; Pre-Trial Chamber III, *Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar*, [ICC-01/19-27](#), 14 November 2019, paras. 126-130; [Kenya Article 15 Decision](#), paras. 74-75, 205; Pre-Trial Chamber I, *Decision on the Prosecutor's request for authorization of an investigation*, [ICC-01/15-12](#), 27 January 2016, paras. 63-64. Such differentiation also serves to ensure that the direction, scope, and parameters of

the Office's positive findings with respect to the subject-matter threshold at the preliminary examination stage should not be construed as dismissal of other alleged crimes that may warrant investigation.

Conclusion and Next Steps

214. The Office anticipates concluding the preliminary examination in order to determine whether there is a reasonable basis to proceed during the first half of 2021.

any future investigation will not be pre-determined on the basis of the limited information available at the preliminary examination stage, and permit the Prosecution to conduct an independent and objective investigation and prosecution, pursuant to articles 42, 54, and 58 of the Statute; see e.g. [Afghanistan Appeals Judgment](#), paras. 60-61.

IV. COMPLETED PRELIMINARY EXAMINATIONS

PALESTINE

Procedural History

215. The situation in Palestine has been under preliminary examination since 16 January 2015.⁵⁹
216. On 22 May 2018, the Office received a referral from the Government of the State of Palestine regarding the situation in Palestine since 13 June 2014 with no end date. With reference to articles 13(a) and 14 of the Statute, the State of Palestine requested the Prosecutor “to investigate, in accordance with the temporal jurisdiction of the Court, past, ongoing and future crimes within the court’s jurisdiction, committed in all parts of the territory of the State of Palestine.”⁶⁰
217. On 24 May 2018, the Presidency of the Court assigned the Situation in Palestine to Pre-Trial Chamber I (“PTC I”).⁶¹
218. On 13 July 2018, PTC I issued a decision concerning the establishment, by the Registry, of “a system of public information and outreach activities among the affected communities and particularly the victims of the situation in Palestine.”⁶²

Preliminary Jurisdictional Issues

219. On 1 January 2015, the State of Palestine lodged a declaration under article 12(3) of the Statute accepting the jurisdiction of the ICC over alleged crimes committed “in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014.” On 2 January 2015, the Government of the State of Palestine acceded to the Statute by depositing its instrument of accession with the UN Secretary-General. The Statute entered into force for the State of Palestine on 1 April 2015.

OTP Activities

220. On 20 December 2019, the Prosecutor announced that following a thorough, independent and objective assessment of all reliable information available to her Office, the preliminary examination into the Situation in Palestine had concluded

⁵⁹ ICC-OTP, [The Prosecutor of the International Criminal Court, Fatou Bensouda, opens a preliminary examination of the situation in Palestine](#), 16 January 2015.

⁶⁰ State of Palestine, [Referral Pursuant to Article 13\(a\) and 14 of the Rome Statute](#), 15 May 2018, para. 9. See also ICC-OTP, [Statement by ICC Prosecutor, Mrs Fatou Bensouda, on the referral submitted by Palestine](#), 22 May 2018.

⁶¹ Presidency, Decision assigning the situation in the State of Palestine to Pre-Trial Chamber I, [ICC-01/18-1](#), 24 May 2018.

⁶² PTC I, Decision on Information and Outreach for the Victims of the Situation, [ICC-01/18-2](#), 13 July 2018, para. 14.

with a determination that all the statutory criteria under the Rome Statute for the opening of an investigation had been met.⁶³ The Prosecutor announced that she was satisfied that: (i) war crimes have been or are being committed in the West Bank, including East Jerusalem, and the Gaza Strip; (ii) potential cases arising from the situation would be admissible; and (iii) there are no substantial reasons to believe that an investigation would not serve the interests of justice.⁶⁴

221. In particular, the Office found there was a reasonable basis to believe that members of the Israel Defense Forces (“IDF”) committed the war crimes of: intentionally launching disproportionate attacks in relation to at least three incidents which the Office has focused on (article 8(2)(b)(iv)); wilful killing and wilfully causing serious injury to body or health (articles 8(2)(a)(i) and 8(2)(a)(iii), or article 8(2)(c)(i)); and intentionally directing an attack against objects or persons using the distinctive emblems of the Geneva Conventions (article 8(2)(b)(xxiv), or 8(2)(e)(ii)). In addition, Office found there was a reasonable basis to believe that members of *Hamas* and Palestinian armed groups (“PAGs”) committed the war crimes of: intentionally directing attacks against civilians and civilian objects (articles 8(2)(b)(i)-(ii), or 8(2)(e)(i)); using protected persons as shields (article 8(2)(b)(xxiii)); wilfully depriving protected persons of the rights of fair and regular trial (articles 8(2)(a)(vi) or 8(2)(c)(iv)) and wilful killing (articles 8(2)(a)(i), or 8(2)(c)(i)); and torture or inhuman treatment (article 8(2)(a)(ii), or 8(2)(c)(i) and/or outrages upon personal dignity (articles 8(2)(b)(xxi), or 8(2)(c)(ii)).⁶⁵
222. With respect to the admissibility of potential cases concerning crimes allegedly committed by members of the IDF, the Office noted that due to limited accessible information in relation to proceedings that have been undertaken and the existence of pending proceedings in relation to other allegations, the Office’s admissibility assessment in terms of the scope and genuineness of relevant domestic proceedings remained ongoing and would need to be kept under review in the context of an investigation. However, the Office concluded that the potential cases concerning crimes allegedly committed by members of *Hamas* and PAGs would be admissible pursuant to article 17(1)(a)-(d) of the Statute.⁶⁶
223. In addition, the Office found there was a reasonable basis to believe that in the context of Israel’s occupation of the West Bank, including East Jerusalem, members of the Israeli authorities have committed war crimes under article 8(2)(b)(viii) in relation, *inter alia*, to the transfer of Israeli civilians into the West Bank since 13 June 2014. The Office further concluded that the potential case(s)

⁶³ ICC-OTP, [Statement of ICC Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination of the Situation in Palestine, and seeking a ruling on the scope of the Court’s territorial jurisdiction](#), 20 December 2019.

⁶⁴ *Ibid.*

⁶⁵ ICC-OTP, Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine, [ICC-01/18-12](#), 22 January 2020, para. 94.

⁶⁶ *Ibid.*

that would likely arise from an investigation of these alleged crimes would be admissible pursuant to article 17(1)(a)-(d) of the Statute.⁶⁷

224. Finally, the Office observed that the scope of the situation could encompass an investigation into crimes allegedly committed in relation to the use by members of the IDF of non-lethal and lethal means against persons participating in demonstrations beginning in March 2018 near the border fence between the Gaza Strip and Israel, which reportedly resulted in the killing of over 200 individuals, including over 40 children, and the wounding of thousands of others.⁶⁸
225. As there had been a referral from the State of Palestine, the Prosecutor is not required to seek the Pre-Trial Chamber's authorisation before proceeding to open an investigation, and she announced that she would not seek to do so.⁶⁹ However, given the unique and highly contested legal and factual issues attaching to this situation, namely, the territory within which the investigation may be conducted, on the same day the Prosecutor requested an expeditious ruling under article 19(3) of the Statute to resolve this specific issue. This request, which was refiled on 21 January 2020,⁷⁰ following the PTC decision on procedural issues,⁷¹ sought confirmation that the "territory" over which the Court may exercise its jurisdiction under article 12(2)(a) comprises the Occupied Palestinian Territory, that is the West Bank, including East Jerusalem, and Gaza.⁷² The Prosecutor asserted that, following the deposit of its instrument of accession with the United Nations Secretary-General pursuant to article 125(3) on 2 January 2015, Palestine became a State Party to the Rome Statute under article 12(1). The Court therefore does not need to conduct a different assessment regarding Palestine's Statehood to exercise its jurisdiction in the territory of Palestine in accordance to article 12(2)(a). Alternatively, the Prosecutor argued that if the Chamber deems it necessary to assess whether Palestine satisfies the criteria of statehood under international law, it could conclude that Palestine is a State under the relevant principles and rules of international law for the sole purposes of the Rome Statute.⁷³
226. On 28 January 2020, PTC I issued an order setting out the procedure and schedule for the submission of observations on the Prosecutor's request, inviting the State of Palestine, the State of Israel and victims in the Situation in the State of Palestine to submit written observations on the Prosecutor's request. It further invited other States, organisations and/or persons to submit applications for leave to file written

⁶⁷ *Ibid.*, para. 95.

⁶⁸ *Ibid.*, para. 96.

⁶⁹ *Ibid.*

⁷⁰ ICC-OTP, Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine, [ICC-01/18-12](#), 22 January 2020.

⁷¹ PTC I, Decision on the Prosecutor's Application for an extension of the page limit, [ICC-01/18](#), 21 January 2020.

⁷² ICC-OTP, Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine, [ICC-01/18-12](#), 22 January 2020, paras. 2, 18.

⁷³ *Ibid.*, para. 218.

observations.⁷⁴ Subsequent to this order, PTC I received a large number of submissions from approved participants.

227. The Prosecution responded to these observations on 30 April 2020, noting that it had carefully considered the observations of the participants and remained of the view that the Court has jurisdiction over the Occupied Palestinian Territory.⁷⁵

228. On 26 May 2020, PTC I requested that Palestine provide additional information regarding a statement issued by President Abbas on 19 May 2020. It ordered the Prosecution to respond and invited Israel to do so.⁷⁶ On 5 June 2020, Palestine provided its observations,⁷⁷ and on 8 June 2020, the Prosecution responded.⁷⁸ The Prosecution did not consider that the statement had a bearing on the status of Palestine as a State Party and on the exercise of the Court's jurisdiction in the situation in Palestine, and renewed its request for an expeditious ruling.⁷⁹

Conclusion and Next Steps

229. The Office will continue to assess any new allegations concerning alleged Rome Statute crimes in the Situation in Palestine, as well as any information relevant to complementarity and gravity, pending a decision by the PTC on its request.

⁷⁴ PTC I, Order setting the procedure and the schedule for the submission of observations, [ICC-01/18-14](#), 28 January 2020.

⁷⁵ ICC-OTP, [Prosecution Response to the Observations of Amici Curiae, Legal Representatives of Victims, and States](#), 30 April 2020, para. 4.

⁷⁶ PTC I, Order requesting additional information, [ICC-01/18-134](#), 26 May 2020.

⁷⁷ State of Palestine, The State of Palestine's response to the Pre-Trial Chamber's Order requesting additional information, [ICC-01/18-135](#), 4 June 2020.

⁷⁸ ICC-OTP, Prosecution Response to "The State of Palestine's response to the Pre-Trial Chamber's Order requesting additional information", [ICC-01/18-136](#), 8 June 2020.

⁷⁹ *Ibid.*, para. 5.

IRAQ/UK

Procedural History

230. The situation in Iraq/the United Kingdom (“UK”) has been under preliminary examination since 13 May 2014. During the reporting period, the Office continued to receive communications pursuant to article 15 of the Statute in relation to the situation in Iraq/UK.
231. On 10 January 2014, the European Center for Constitutional and Human Rights (“ECCHR”) together with Public Interest Lawyers (“PIL”) submitted an article 15 communication alleging the responsibility of UK (or “British”) officials for war crimes involving systematic detainee abuse in Iraq from 2003 until 2008.
232. On 13 May 2014, the Prosecutor announced that the preliminary examination of the situation in Iraq, previously concluded in 2006, was re-opened following submission of further information on alleged crimes within the 10 January 2014 communication.

Preliminary Jurisdictional Issues

233. Iraq is not a State Party to the Statute and has not lodged a declaration under article 12(3) accepting the jurisdiction of the Court. In accordance with article 12(2)(b) of the Statute, acts on the territory of a non-State Party will fall within the jurisdiction of the Court only when the person accused of the crime is a national of a State that has accepted jurisdiction.
234. The UK deposited its instrument of ratification to the Statute on 4 October 2001. The ICC therefore has jurisdiction over Rome Statute crimes committed on UK territory or by UK nationals from 1 July 2002 onwards.

Subject-Matter Jurisdiction

235. The crimes allegedly committed by the UK forces occurred in the context of an international armed conflict in Iraq from 20 March 2003 until 28 June 2004, and in the context of a non-international armed conflict from 28 June 2004 until 28 July 2009. The UK was a party to these armed conflicts over the entire period. UK military operations in Iraq between the start of the invasion on 20 March 2003 and the withdrawal of the last remaining British forces on 22 May 2011 were conducted under the codename Operation Telic (“Op TELIC”).
236. The Office has found that there is a reasonable basis to believe that various forms of abuse were committed by members of UK armed forces against Iraqi civilians in detention. In particular, there is a reasonable basis to believe that from April 2003 through September 2003 members of the British armed forces in Iraq committed the war crime of wilful killing/murder pursuant to article 8(2)(a)(i) or

article 8(2)(c)(i), at a minimum, against seven persons in their custody. The information available additionally provides a reasonable basis to believe that from 20 March 2003 through 28 July 2009 members of the British armed forces committed the war crime of torture and inhuman/cruel treatment (article 8(2)(a)(ii) or article 8(2)(c)(i)); and the war crime of outrages upon personal dignity (article 8(2)(b)(xxi) or article 8(2)(c)(ii)) against at least 54 persons in their custody. The information available further provides a reasonable basis to believe that members of British armed forces committed the war crime of rape and/or other forms of sexual violence article 8(2)(b)(xxii) or article 8(2)(e)(vi), at a minimum, against the seven victims, while they were detained at Camp Breadbasket in May 2003.

237. These crimes, while not exhaustive, were sufficiently well supported to enable a subject-matter determination on crimes within the jurisdiction of the Court. In this respect, although the Office's findings may not be fully representative of the overall scale of the victimisation, they appear to correspond to the most serious allegations of violence against persons in UK custody.
238. The Office did not identify evidence of an affirmative plan or policy on the part of the Ministry of Defence (MoD) or UK Government to subject detainees to the forms of conduct set out in this report. Nonetheless, the Office found that several levels of institutional civilian supervisory, and military command, failures contributed to the commission of crimes against detainees by UK soldiers in Iraq.

Admissibility Assessment

239. During the reporting period, the Office finalised and announced its conclusion on admissibility.⁸⁰

Gravity

240. In terms of gravity, the Office concluded that the crimes in respect of which it made findings at the reasonable basis to believe standard were sufficiently grave to justify further action before the Court, having regard in particular to their scale, nature, manner of commission, and impact. The Office considered as an aggravating factor, *inter alia*, the fact that the underlying conduct arose, in part, from institutional factors related to unclear doctrine, training programmes that encouraged maintaining or prolonging the "shock of capture" without sufficient regard for humane treatment, and from command and supervisory failings across the Ministry of Defence and the British army, particularly in the early phases of Operation Telic, to prevent the occurrence of such crimes.

⁸⁰ [Statement of the Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination of the situation in Iraq/United Kingdom](#), 9 December 2020; [Situation in Iraq/UK - Final Report](#), 9 December 2020.

Complementarity

241. In terms of complementarity, the Office found that the initial measures taken by the British army to investigate and prosecute alleged crimes in the midst and immediate aftermath of the armed conflict fell below the standards set out in article 17(1)(a)-(b) and article 17(2) of the Statute, both in terms of inaction and unwillingness to genuinely carry out the relevant investigations. In terms of subsequent steps taken by the UK authorities to establish an independent investigative body to re-examine all historical allegations against members of the UK armed forces arising from the conflict in Iraq, the Office noted that the UK authorities had initiated a number of criminal proceedings, involving pre-investigative assessment of claims, investigations, and a more limited number of referrals for prosecution. The Office concluded that this process appeared to include the most serious incidents which would likely arise from an investigation of the situation by the Office. Accordingly, the Office concluded that the UK authorities had not remained inactive in relation to the allegations assessed by the Office.
242. Accordingly, the Office proceeded to assess whether the UK authorities were unwilling genuinely to carry out relevant investigative inquiries and/or prosecutions (article 17(1)(a)) or that decisions not to prosecute in specific cases resulted from unwillingness genuinely to prosecute (article 17(1)(b)).
243. In carrying out its assessment, the Office applied the criteria in article 17(2)(a)-(c) and the factors in its own Policy Paper on Preliminary Examinations to the decisions on investigations made by the Iraq Historic Allegations Team (“IHAT”) and its successor, the Service Police Legacy Investigations (“SPLI”), and by the Service Prosecuting Authority (“SPA”) on the cases referred to it for prosecution. In this context, the Office also considered the impact of various other domestic processes which either directly impacted on IHAT/SPLI and the SPA’s work or helped frame the broader context in which case-specific determinations were rendered. Since the very high volume of allegations submitted to the domestic authorities (over 3,000 claims) resulted in a significantly smaller number of cases being submitted to full investigation and only a handful being referred for prosecution, the Office focused in particular on three sets of filtering criteria that significantly impacted on the way IHAT and the SPA processed the numerous Iraq related claims. These included: (i) filtering criteria set out by the High Court; (ii) filtering criteria applied after the findings of the Solicitors Disciplinary Tribunal against Phil Shiner/PIL; and (iii) filtering criteria based on an assessment of the severity of the offences. The Office also considered the extent to which IHAT/SPLI examined systemic issues and questions of command and supervisory responsibility.
244. During 2020, the Office also undertook a specific inquiry, within the scope of the preliminary examination, to independently assess allegations made by a number of former IHAT staff members to the BBC Panorama and Sunday Times, that there

had been intentional disregarding, falsification, and/or destruction of evidence, as well as impeding or prevention of certain investigative inquiries and premature termination of cases. This process was overseen by a small team within the OTP led by a Senior Trial Lawyer and a Senior Investigator and supported by staff from the Preliminary Examination Section and the Investigation Division. It involved hearing from former IHAT personnel who were willing to speak to the Office, as well as hearing from the now former Director of IHAT, the former Deputy Head of IHAT, the Officer in Command of SPLI and the Director of Service Prosecutions.

245. The Office further examined whether the UK authorities unjustifiably delayed proceedings, or whether relevant proceedings were marred by a lack of independence and impartiality to carry them out genuinely, in a manner that was inconsistent with an intent to bring the person(s) concerned to justice. In this respect, the Office noted its concerns about the impact of the initial failings by the UK authorities to conduct independent and impartial investigations into allegations in the midst and immediate aftermath of the conflict in Iraq, as well as the delay in conducting relevant investigative inquiries that resulted from this failure, since those failings had a direct impact on the later effectiveness and pace of IHAT and SPLI investigations. The Office concluded that those initial responses were vitiated by unjustified delay as well as a lack of independence and impartiality which in the circumstances was inconsistent with bringing the person(s) concerned to justice, pursuant to articles 17(2)(b)-(c) of the Statute. However, with respect to unjustified delay and lack of independence and impartiality on the part of IHAT/SPLI and SPA, while the Office identified various issues relating to delay, it could not attribute a lack of willingness to carry out the proceedings genuinely within the terms of articles 17(2)(b)-(c).
246. Finally, the Office set out its concerns with respect to the scope and potential impact of proposed legislation that would introduce a presumption against prosecution for the crimes set out in this report (currently excluding SGBC).⁸¹ As several of its proponents have stated, among the principal aims of the proposed legislation is “to end vexatious claims” against current and former service personnel. Nonetheless, for the reasons set out in the report, and supported by the numerous findings made by UK domestic bodies across the entire spectrum of criminal, civil, institutional and regulatory reviews, the Office’s report dismissed the proposition that the entire body of underlying claims were vexatious. Since the adoption of any such legislation in the UK remains prospective, the Office noted that it would only be able to factor in its impact, once it is adopted, on the ability of the UK authorities to address ongoing cases or any historical allegations that may arise in the future, and thereafter assess whether there is a basis for the Office to reconsider its determination under article 15(6) of the Statute.

⁸¹ UK Parliament, [Overseas Operations \(Service Personnel and Veterans\) Bill 2019-21](#).

Conclusion

247. On 9 December 2020, the Office issued a detailed report setting out its findings. The report identified numerous concerns about IHAT/SPLI or SPA's decision-making and in how they had interpreted certain facts or applied the legal test at various stages of the evidentiary assessment. Nonetheless, on the basis of the information available, the Office could not conclude that there was or had been an intent by the UK authorities to shield persons from criminal responsibility, within the meaning of article 17(2). In these circumstances, having exhausted all avenues available and assessed all information obtained, the Office determined that the only appropriate decision was to close the preliminary examination and to inform the senders of communications.

NIGERIA

Procedural History

248. The preliminary examination of the situation in Nigeria was announced on 18 November 2010. During the reporting period, the Office continued to receive communications pursuant to article 15 in relation to the situation in Nigeria.
249. On 5 August 2013, the Office published the Article 5 report on the Situation in Nigeria, presenting its preliminary findings on jurisdictional issues.⁸²
250. On 12 November 2015, on the basis of an updated subject-matter assessment, the Office identified eight potential cases involving the commission of crimes against humanity and war crimes under articles 7 and 8 of the Statute.⁸³
251. On 5 December 2019, the Office published further findings on subject-matter jurisdiction and identified two additional potential cases involving the commission of war crimes and crimes against humanity.⁸⁴

Preliminary Jurisdictional Issues

252. Nigeria deposited its instrument of ratification to the Statute on 27 September 2001. The ICC therefore has jurisdiction over Rome Statute crimes committed on the territory of Nigeria or by its nationals from 1 July 2002 onwards.

Subject-Matter Jurisdiction

253. The Office has examined information regarding a wide range of alleged crimes committed on the territory of Nigeria. In the reporting period it further updated and concluded its subject-matter assessment. In line with its previous findings on subject-matter jurisdiction the Office found a reasonable basis that Boko Haram and its splinter groups⁸⁵ (“Boko Haram”) as well as the Nigerian security forces (“NSF”) committed war crimes and crimes against humanity. While the Office’s preliminary examination has primarily focused on alleged crimes committed by Boko Haram since July 2009 and by the NSF since the beginning of the non-international armed conflict (“NIAC”) between the NSF and Boko Haram since June 2011, it has also examined alleged crimes committed in Nigeria falling outside the context of this NIAC.
254. In particular, the information available provides a reasonable basis to believe that since July 2009, Boko Haram committed the following crimes against

⁸² See ICC-OTP, [Situation in Nigeria: Article 5 Report](#), 5 August 2013.

⁸³ See ICC-OTP, [Report on Preliminary Examination Activities 2015](#), paras. 195-216.

⁸⁴ See ICC-OTP, [Report on Preliminary Examination Activities 2019](#), paras. 182-187.

⁸⁵ This includes *Jama'atu Ahlis-Sunnah Lidda'awati Wal Jihad* (Salafi Muslim Group for Preaching and Jihad) and the *Islamic State in West Africa Province*.

humanity: murder pursuant to article 7(1)(a); enslavement pursuant to article 7(1)(c); imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law pursuant to article 7(1)(e); torture pursuant to article 7(1)(f); rape, sexual slavery, and forced pregnancy pursuant to article 7(1)(g); other inhumane acts, including forced marriage pursuant to article 7(1)(k) and persecution on gender and religious grounds pursuant to article 7(1)(h). These crimes were committed pursuant to or in furtherance of an organizational policy by Boko Haram and as part of a widespread and systematic attack against the civilian population composed of those considered “unbelievers” or perceived supporters of the Nigerian Government.

255. Based on the information available, there is furthermore a reasonable basis to believe that within the context of the NIAC between the NSF and Boko Haram, members of Boko Haram and its splinter groups committed the following war crimes: murder, torture, and cruel treatment pursuant to article 8(2)(c)(i), and outrages upon personal dignity pursuant to article 8(2)(c)(ii); taking of hostages pursuant to article 8(2)(c)(iii); intentionally directing attacks against the civilian population and against individual civilians not taking direct part in hostilities pursuant to article 8(2)(e)(i); intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance pursuant to article 8(2)(e)(iii); intentionally directing attacks against buildings dedicated to religion and education which were not military objectives pursuant to article 8(2)(e)(iv); rape, sexual slavery, and forced pregnancy pursuant to article 8(2)(e)(vi); conscripting and enlisting children under the age of fifteen years into armed groups and using them to participate actively in hostilities pursuant to article 8(2)(e)(vii).
256. With respect to the NSF, according to the information available, there is a reasonable basis to believe that from April 2013 onwards, members of the NSF committed the crimes against humanity of murder pursuant to article 7(1)(a); unlawful imprisonment pursuant to article 7(1)(e); torture pursuant to article 7(1)(f); persecution on gender and political grounds pursuant to article 7(1)(h); enforced disappearance of persons pursuant to article 7(1)(i); and other inhumane acts pursuant to article 7(1)(k). In addition to the above crimes there is a reasonable basis to believe that from 2015 onwards in Borno State, members of the NSF committed the crimes against humanity of forcible transfer of population pursuant to article 7(1)(d); and rape pursuant to article 7(1)(g). These crimes were committed pursuant to or in furtherance of a policy of an organ of the Nigerian State, namely the NSF deployed to fight Boko Haram in Adamawa, Borno, and Yobe states and as part of a widespread and systematic attack against the civilian population.
257. According to the information available, there is furthermore a reasonable basis to believe that within the context of the NIAC between NSF and Boko Haram, members of the NSF committed the following war crimes: murder, torture, and cruel treatment pursuant to article 8(2)(c)(i); outrages upon personal dignity pursuant to article 8(2)(c)(ii); intentionally directing attacks against the civilian

population as such and against individual civilians not taking direct part in hostilities pursuant to article 8(2)(e)(i); rape pursuant to article 8(2)(e)(vi); and conscripting and enlisting children under the age of fifteen years into armed forces and using them to participate actively in hostilities pursuant to article 8(2)(e)(vii).

Admissibility Assessment

258. During the reporting period, the Office completed its admissibility assessment, in terms of complementarity and gravity, and determined, based on the information available, that the potential cases likely to arise from an investigation into the situation would be admissible.
259. In particular, since 2013, the Office has sought to encourage relevant and genuine domestic proceedings. Based on the information provided by the Nigerian authorities, the Office identified at least several national cases against Boko Haram members, including cases involving membership of a terrorist organisation. None of these cases, however, were found to create a potential conflict of jurisdiction with the Court, either because they did not cover substantially the same alleged conduct or where they appear to concern substantially the same or similar conduct, are against low level perpetrators. With respect to the NSF, the national authorities are deemed inactive because of the absence of relevant proceedings or, where proceedings are asserted to have been conducted, the information available did not demonstrate any tangible, concrete, and progressive steps by the authorities to address allegations against members of the NSF.
260. With respect to gravity, the Office found that the potential cases it identified were of sufficient gravity with due regard to their scale, nature, manner of commission and impact, considering both quantitative and qualitative factors.

OTP Activities

261. In order to arrive at the determinations above, the Office collected and reviewed information from a variety of sources about alleged crimes and national proceedings related to the broadly-defined potential cases identified by the Office. In this regard, the Office recalled the detailed requests to national authorities to provide information on proceedings of relevance to its assessment, including during a meeting between the Prosecutor and the Nigerian Attorney-General of the Federation in December 2019. During the reporting period the Office did not receive any additional information from the Nigerian authorities on relevant national proceedings.
262. The Office received information from other stakeholders and collected information relevant to the subject-matter and admissibility assessment from a variety of public sources that was reviewed accordingly and further informed its assessment.

263. The Office maintained contact with relevant partners and stakeholders in the situation in Nigeria, including international and Nigerian NGOs, communication senders, as well as diplomatic actors. The Prosecutor discussed her findings on SGBC with the Special Representative of the Secretary-General on Sexual Violence in Conflict during the reporting period.
264. Having completed its subject-matter and admissibility assessments, as set out above, the Office did not otherwise identify substantial reasons to believe that an investigation would not serve the interests of justice.

Conclusion and Next Steps

265. The Office has concluded its preliminary examination of the situation in Nigeria with a determination that the criteria to proceed with an investigation are met with respect to subject-matter, admissibility, and the interests of justice. For the next steps, in the light of the operational capacity of the Office to roll out new investigations, the fact that several preliminary examinations have reached or are approaching the same stage, as well as operational challenges brought on by the COVID-19 pandemic, the Prosecutor intends to consult with the incoming new Prosecutor, once elected, on the strategic and operational issues related to the prioritisation of the Office's workload and the filing of necessary applications before the Pre-Trial Chamber. In the interim, the Office will continue to take measures to seek to ensure the integrity of any future investigation.
266. As the Office undertakes this work, it will count on the full support of the Nigerian authorities. In the independent and impartial exercise of its mandate, the Office also looks forward to a constructive and collaborative exchange with the Government of Nigeria to determine how justice may best be served under the shared framework of complementary domestic and international action.

UKRAINE

Procedural History

267. The situation in Ukraine has been under preliminary examination since 25 April 2014. During the reporting period, the Office continued to receive communications under article 15 of the Statute in relation to crimes alleged to have been committed since 21 November 2013.
268. On 17 April 2014, the Government of Ukraine lodged a declaration under article 12(3) of the Statute accepting the jurisdiction of the Court over alleged crimes committed on its territory from 21 November 2013 to 22 February 2014.
269. On 25 April 2014, in accordance with the Office's Policy Paper on Preliminary Examinations, the Prosecutor opened a preliminary examination of the situation in Ukraine relating to the so-called "Maidan events."⁸⁶
270. On 8 September 2015, the Government of Ukraine lodged a second declaration under article 12(3) of the Statute accepting the exercise of jurisdiction of the ICC in relation to alleged crimes committed on its territory from 20 February 2014 onwards, with no end date. On 29 September, based on Ukraine's second declaration under article 12(3), the Prosecutor announced the extension of the preliminary examination of the situation in Ukraine to include alleged crimes occurring after 20 February 2014 in Crimea and eastern Ukraine.⁸⁷

Preliminary Jurisdictional Issues

271. Ukraine is not a State Party to the Statute. However, pursuant to the two article 12(3) declarations lodged by the Government of Ukraine on 17 April 2014 and 8 September 2015 respectively, the Court may exercise jurisdiction over Rome Statute crimes committed on the territory of Ukraine from 21 November 2013 onwards.

Contextual Background

Maidan events

272. At the start of the events that are the subject of the Office's preliminary examination, the Government of Ukraine was controlled by the Party of Regions, led by former President Viktor Yanukovich. Mass protests began on 21 November 2013 in the area of Independence Square (*Maidan Nezalezhnosti*) in Kyiv, prompted

⁸⁶ ICC-OTP, [The Prosecutor of the International Criminal Court, Fatou Bensouda, opens a preliminary examination in Ukraine](#), 25 April 2014.

⁸⁷ ICC-OTP, [ICC Prosecutor extends preliminary examination of the situation in Ukraine following second article 12\(3\) declaration](#), 29 September 2015.

by the decision of the Ukrainian Government not to sign an Association Agreement with the European Union (“EU”).

273. Violence over the following weeks, in the context of the demonstrations, resulted in injuries both to protesters and members of the security forces, as well as deaths of some protesters. From 18-20 February violence escalated sharply and scores of people were killed and hundreds injured, mostly on the side of the protesters. On 21 February 2014, under EU mediation, President Yanukovich and opposition representatives agreed on a new government and scheduled the presidential election for May 2014. On 22 February 2014, the Ukrainian Parliament voted to remove President Yanukovich.

Crimea and eastern Ukraine

274. From late February 2014 onwards, protests against the new Ukrainian Government began to grow, notably in the eastern regions of the country and in Simferopol, the capital of the Autonomous Republic of Crimea. From the night of 26-27 February 2014, armed and mostly uniformed individuals, whom the Russian Federation later acknowledged to be its military personnel together with locally-resident militia members, progressively took control of the Crimean peninsula. On 18 March 2014 the Russian Federation announced the formal incorporation of Crimea into Russian territory. Russia has continued to exercise effective control over the territory since that time.
275. In parallel to the events in Crimea, over the course of March and early April 2014, armed persons took control of key government buildings in several eastern provinces. The situation deteriorated rapidly into violence: on 15 April 2014, the Ukrainian Government announced the start of an “anti-terror operation” in the east and by the end of April, the acting Ukrainian President announced that the Government was no longer in full control of the eastern provinces of Donetsk and Luhansk, declared that the country was on “full combat alert”, and reinstated conscription to the armed forces. On 2 May 2014, 40 people were killed in Odessa when a fire started inside a building in which pro-federalism (anti-government) protesters had taken refuge from counter protesters.
276. Armed conflict, involving the persistent use of heavy military weaponry by both sides, including in built-up areas, has since persisted in eastern Ukraine for more than six years, killing at least 3,000 civilians and wounding thousands more. The highest numbers of casualties were recorded in the first year of the conflict, prior to the implementation of the February 2015 Minsk II ceasefire agreement, though casualties, including of civilians, have continued to occur as a result of both shelling and light-arms fire.

Subject-Matter Jurisdiction

277. As set out in last year's report, the Office concluded its preliminary analysis of subject-matter jurisdiction in early 2019, finding a reasonable basis to believe that crimes under the Statute had been committed both in the context of the situations in Crimea and in eastern Ukraine. In conducting this analysis, the Office examined several forms of alleged conduct and considered both the context of international armed conflict and occupation in Crimea, and the different possible classifications of the armed conflict in eastern Ukraine.
278. More specifically the Office found a reasonable basis to believe that, from 26 February 2014 onwards, in the period leading up to, and/or in the context of the occupation of the territory of Crimea, the following crimes were committed: wilful killing, pursuant to article 8(2)(a)(i); torture, pursuant to article 8(2)(a)(ii); outrages upon personal dignity, pursuant to article 8(2)(b)(xxi); unlawful confinement, pursuant to article 8(2)(a)(vii); compelling protected persons to serve in the forces of a hostile Power, pursuant to article 8(2)(a)(v); wilfully depriving protected persons of the rights of fair and regular trial, pursuant to article 8(2)(a)(vi); the transfer of parts of the population of the occupied territory outside this territory (with regard to the transfer of detainees in criminal proceedings and prisoners), pursuant to article 8(2)(b)(viii); seizing the enemy's property that is not imperatively demanded by the necessities of war, with regard to private and cultural property, pursuant to article 8(2)(b)(xiii) of the Statute.
279. In addition, the Office considered the information available with regard to alleged offences under article 7 of the Statute, and found a reasonable basis to believe that acts amounting to crimes had occurred in the context of the period leading up to and during the (ongoing) occupation of Crimea: murder, pursuant to article 7(1)(a); deportation or forcible transfer of population (with regard to the transfer of detainees in criminal proceedings and prisoners), pursuant to article 7(1)(d); imprisonment or other severe deprivation of physical liberty, pursuant to article 7(1)(e); torture, pursuant to article 7(1)(f); persecution against any identifiable group or collectivity on political grounds, pursuant to article 7(1)(h); and enforced disappearance of persons, pursuant to article 7(1)(j) of the Statute.
280. In addition, the Office concluded in 2019 that the information available provides a reasonable basis to believe that, in the period from 30 April 2014 onwards, at least the following war crimes were committed in the context of the armed conflict in eastern Ukraine: intentionally directing attacks against civilians and civilian objects, pursuant to article 8(2)(b)(i)-(ii) or 8(2)(e)(i); intentionally directing attacks against protected buildings, pursuant to article 8(2)(b)(ix) or 8(2)(iv); wilful killing/murder, pursuant to article 8(2)(a)(i) or article 8(2)(c)(i); torture and inhuman/cruel treatment, pursuant to article 8(2)(a)(ii) or article 8(2)(c)(i); outrages upon personal dignity, pursuant to article 8(2)(b)(xxi) or article 8(2)(c)(ii); rape and other forms of sexual violence, pursuant to article 8(2)(b)(xxii) or article 8(2)(e)(vi) of the Statute.

281. In addition, if the conflict was international in character, there is a reasonable basis to believe that the following war crimes were committed: intentionally launching attacks that resulted in harm to civilians and civilian objects that was clearly excessive in relation to the military advantage anticipated (disproportionate attacks), pursuant to article 8(2)(b)(iv); and unlawful confinement, pursuant to article 8(2)(a)(vii) of the Statute.

Admissibility

282. During the reporting period, the Office completed its admissibility assessment, in terms of complementarity and gravity, and determined that the potential cases likely to arise from an investigation into the situation would be admissible.

283. The Office's determination on complementarity falls into two categories with respect to both the level of domestic activity by the competent Ukrainian authorities and the competent Russian authorities: (i) potential cases where the relevant competent authorities are inactive, in the sense of an absence of "tangible, concrete and progressive investigative steps" to identify the criminal responsibility of those alleged to have committed the crimes;⁸⁸ or (ii) potential cases where the national judicial system was deemed unavailable within the meaning of article 17(3), resulting in the inability of the authorities to obtain the accused or the necessary evidence and testimony or otherwise their inability to carry out their proceedings.

284. With respect to gravity, the Office found that the potential cases it identified were of sufficient gravity with due regard to their scale, nature, manner of commission and impact, considering both quantitative and/or qualitative factors.

OTP Activities

285. In order to arrive at the determination above, the Office collected and reviewed information from a variety of sources about national proceedings related to the broadly-defined potential cases identified by the Office in its subject matter assessment. In this regard, the Office made detailed requests to national authorities to provide information on proceedings of relevance to its assessment. It received responses from Ukraine regarding national proceedings but no response was received to requests sent to the Russian Federation.

286. During the reporting period, the Office also received information from other stakeholders and collected information relevant to the admissibility assessment from a variety of public sources. In this regard the Office held a number of meetings with stakeholders both at the seat of the Court and during a mission to Ukraine in February 2020, to discuss existing proceedings and a range of issues of other relevance to the preliminary examination.

⁸⁸ [Simone Gbagbo Admissibility Decision](#), para. 65. See also [Simone Gbagbo Admissibility Appeal Judgment](#), para. 122.

287. Information related to the Maidan events, which took place during the period specified in Ukraine's first declaration under article 12(3) of the Statute continued to be subject to review by the Office to the extent that it remains within the scope of the preliminary examination. New information received by the Office related to these events, including some received in 2020, continues to be assessed to determine whether the Office's preliminary assessment, as reported in its 2015 report, warrants revision.
288. Having completed its admissibility assessment, as set out above, the Office did not otherwise identify substantial reasons to believe that an investigation would not serve the interests of justice.

Conclusion and Next Steps

289. The Office has concluded its preliminary examination of the situation in Ukraine with a determination that the criteria for proceeding with an investigation are met with respect to subject-matter, admissibility and the interests of justice. For the next steps, in the light of the operational capacity of the Office to roll out new investigations, the fact that several preliminary examinations have reached or are approaching the same stage, as well as operational challenges brought on by the COVID-19 pandemic, the Prosecutor intends to consult with the incoming new Prosecutor, once elected, on the strategic and operational issues related to the prioritisation of the Office's workload and the filing of necessary applications before the Pre-Trial Chamber. In the interim, the Office will continue to take measures to seek to ensure the integrity of any future investigation.
290. As the Office undertakes this work, it will count on the full support of all parties involved. In the independent and impartial exercise of its mandate, the Office also looks forward to a constructive and collaborative exchange with the Government of Ukraine, and equally, with the Government of the Russian Federation, to determine how justice may best be served under the shared framework of complementary domestic and international action.

