

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/14**

Date: **7 May 2025**

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Presiding Judge
Judge Sergio Gerardo Ugalde Godinez
Judge Haykel Ben Mahfoudh

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

Public Document

with Public Redacted Annex A

**Public Redacted Version of "Supplementary Observations of Mr Edmond Beina
on the Central African Republic's Admissibility Challenge", ICC-01/14-214-Conf,
20 March 2025**

Source: Counsel for Mr Beina

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

☒ The Office of the Prosecutor

☒ Counsel for the Defence

Counsel for Mr Beina

☐ Legal Representatives of the Victims

☐ Legal Representatives of the Applicants

☐ Unrepresented Victims

☐ Unrepresented Applicants
(Participation/Reparation)

☒ The Office of Public Counsel for Victims

☐ The Office of Public Counsel for the Defence

☐ States' Representatives

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Reparations Section

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I. INTRODUCTION

1. The Defence of Mr Edmond Beina ('the Defence' and 'Mr Beina', respectively), pursuant to the Order of Pre-Trial Chamber II ('the Chamber') dated 4 February 2025¹ and further to its initial Written Observations dated 17 March 2025 ('Defence Observations'),² submits the following Supplemental Observations on the admissibility challenge lodged by the Central African Republic ('CAR') on 22 October 2024 ('Admissibility Challenge')³ to call to the Chamber's attention information that was not available at the time of the filing of the Defence Observations.

2. In supplement to its submissions in the alternative that the Admissibility Challenge should be dismissed on the basis of the fact that his fair trial rights will be subject to egregious violation should he be prosecuted in the CAR,⁴ the Defence submits that Mr Beina's fair trial rights are being further violated through the denial of his right to counsel in domestic proceedings before the Special Criminal Court of the CAR ('SCC').

II. CLASSIFICATION

3. The present filing and Annex A are classified as confidential, pursuant to Regulation 23 *bis* (1) of the Regulations of the Court ('Regulations'), as they contain confidential information related to exchanges between Mr Beina and his Counsel before the ICC.

III. TIMING OF THE PRESENT FILING

4. While acknowledging that the Chamber set 17 March 2025 as the deadline for observations on the Admissibility Challenge,⁵ the information comprising the substance of this supplemental filing was not available to the Defence at the time of its filing of the Defence Observations for reasons outside of its control within the meaning of Regulation 35(2) of the Regulations.

5. The scanned document contained in Annex A, which the present submission principally concerns and which is described in further detail below, is dated 19 March 2025 and was

¹ Order on the conduct of the proceedings following the Central African Republic's challenge to the admissibility of the case against Edmond Beina, 4 February 2025, [ICC-01/14-203](#), p. 6.

² Written Observations of Mr Edmond Beina on the Central African Republic's Admissibility Challenge, 17 March 2025, ICC-01/14-213-Conf (public redacted version: [ICC-01/14-213-Red](#)) ('Defence Observations').

³ Requête de la République Centrafricaine en irrecevabilité de l'affaire contre M. Emond BEINA, 22 October 2024, ICC-01/14-189-US-Exp-AnxII (under seal and ex parte, only available to the Prosecution and Registry), public redacted version notified on 14 November 2024: [ICC-01/14-194-AnxI](#); 232 confidential annexes transmitted on 1 November 2024: ICC-01/14-191-Conf ('Admissibility Challenge').

⁴ See Defence Observations, paras 51–61.

⁵ Email from Pre-Trial Chamber II to Participants, 21 February 2025, 11:54.

transmitted by email to Counsel for Mr Beina by the Head of the CAR Country Office of the ICC on the same day.⁶ Given this, and in light of the pertinence of the information contained in the present submission to the proceedings concerning the Admissibility Challenge, the Defence submits that it is in the interests of justice for the Chamber to consider the present submission validly filed.

IV. MR BEINA'S RIGHT TO COUNSEL BEFORE THE SCC IS BEING VIOLATED

a) Applicable Law

6. Under international human rights law, Mr Beina enjoys the right to defend himself in person or through legal assistance of his own choosing, to be informed, if he does not have legal assistance, of this right, and to have legal assistance assigned to him, in any case where the interests of justice so require, without payment by him in any such case if he does not have sufficient means to pay for it.⁷ This right is also guaranteed under Article 67(1)(d) of the Rome Statute ('the Statute') and has been recognized by the Appeals Chamber as 'a universally recognized human right' within the meaning of Article 21(3) of the Statute.⁸

7. Furthermore, pursuant to Article 5(D)(d) of Law No. 18-010 of the CAR on the establishment of the SCC Rule of Procedure and Evidence, Mr Beina enjoys, under CAR domestic law, '*le droit d'être présent à son procès et d'être assisté d'un avocat de son choix; s'il n'a pas d'avocat, le droit d'être informé de son droit d'en avoir un et, s'il est indigent, le droit de se voir commettre d'office un avocat par le Greffier en chef adjoint, sur recommandation du Chef du Corps spécial d'avocats*'.⁹ This guarantee mirrors that provided under international human rights instruments and Article 67(1)(d) of the Statute.

8. While human rights instruments generally refer to such protection as being enjoyed by the 'accused', it is well-established that the right to counsel applies during pre-trial proceedings,¹⁰

⁶ Email from ICC Representative/Head of Office, ICC Central African Republic Country Office, to Counsel for Mr Beina, 19 March 2025, 10:30.

⁷ [International Covenant on Civil and Political Rights](#), 16 December 1966, 999 UNTS 171, Art. 14(3)(d). *See also* [European Convention on Human Rights](#), 4 November 1950, 213 UNTS 221, Art. 6(3)(c); [American Convention on Human Rights](#), 21 November 1969, 1144 UNTS 123, Art. 8(2)(d); [African Charter on Human and Peoples' Rights](#), 27 June 1981, 1520 UNTS 271, Art. 7(c).

⁸ *Prosecutor v. Lubanga*, Reasons for "Decision of the Appeals Chamber on the Defence application 'Demande de suspension de toute action ou procédure afin de permettre la désignation d'un nouveau Conseil de la Défense' filed on 20 February 2007" issued on 23 February 2007, 9 March 2007, [ICC-01/04-01/06-844](#), para. 12.

⁹ [Loi n° 18-010 portant règlement de la procédure et de la preuve devant la Cour Pénale Spéciale de la République Centrafricaine](#), 2 July 2018, Art. 5(D)(d).

¹⁰ *See* A. Clooney and P. Webb, *The Right to a Fair Trial in International Law*, Oxford University Press, 2021, pp. 335–36, and references cited therein. *See also* *Referral of the Rules of Procedure and Evidence Pursuant to*

as soon as an individual is substantially affected by a criminal investigation against them.¹¹ This has also been affirmed by the Appeals Chamber in the context of pre-trial proceedings.¹²

9. While the right to counsel is not absolute and may be subject to valid limitations in certain circumstances,¹³ no such circumstances presently exist with respect to Mr Beina and the proceedings against him before the SCC.

b) Mr Beina's Declaration of 19 March 2025

10. The Defence hereby submits into the case record a declaration made by Mr Beina on 19 March 2025 ('Declaration'). The Declaration was made by Mr Beina while on a video-link call with his Counsel before the ICC and was translated from Sango to French by an ICC interpreter who then transcribed the French version of the Declaration.

11. In this Declaration, Mr Beina states that he is not represented by counsel in proceedings before the SCC.¹⁴ He states that, at one time, he had been represented by a [REDACTED] before the SCC, but since the appointment of Counsel to represent him in proceedings before the ICC, he has had no communication with [REDACTED].¹⁵

12. At the time of signing the declaration, Mr Beina stated that he does not have a lawyer currently representing him before the SCC.¹⁶

13. As a result of the absence of counsel, Mr Beina has received no information or news regarding the current status of the proceedings against him before the SCC during this time.¹⁷

Article 19(5) of the Law, Judgment on the Referral of the Rules of Procedure and Evidence Adopted by Plenary on 17 March 2017 to the Specialist Chamber of the Constitutional Court Pursuant to Article 19(5) of Law no. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 26 April 2017, [KSC-CC-PR-2017-01/F00004](#), para. 156, and references cited therein.

¹¹ *Ibrahim v. United Kingdom*, App. Nos. 50541/08, 50571/08, 50573/08, and 40351/09, [Judgment](#), European Court of Human Rights ('ECtHR') (Grand Chamber), 13 September 2016, para. 253. *See also* UN Human Rights Committee, *General Comment No. 32: Article 14, Right to Equality before Courts and Tribunals and to Fair Trial*, 23 August 2007, UN Doc. [CCPR/C/GC/32](#), para. 31.

¹² *Prosecutor v. Kony et al.*, Judgment on the appeal of the Defence against the "Decision on the admissibility of the case under article 19 (1) of the Statute" of 10 March 2009, 16 September 2009, [ICC-02/04-01/05-408](#), paras 66–68.

¹³ *See, e.g., Prosecutor v. Mokom*, Judgment on the appeal of Maxime Jeoffroy Eli Mokom Gawaka against the decision of Pre-Trial Chamber II of 25 March 2022 entitled "Order to the Registry concerning the appointment of Mr Nicholas Kaufman as counsel for Mr Maxime Jeoffroy Eli Mokom Gawaka", 19 July 2022, [ICC-01/14-01/22-70-Red](#), paras 58–59, and references cited therein.

¹⁴ Declaration, para. 4.

¹⁵ Declaration, para. 5.

¹⁶ Declaration, para. 8.

¹⁷ Declaration, para. 6.

14. The Defence recalls that his present Counsel before the ICC was appointed for the sole purpose of representing him before the ICC.¹⁸ The representation of Counsel before the ICC should have had no effect on Mr Beina's enjoyment of his right to counsel in domestic proceedings before the SCC.

15. The new information conveyed through the Declaration raises serious concerns that the CAR authorities are either willfully depriving Mr Beina of his right to counsel or are otherwise unable to guarantee his enjoyment of this right. Whichever the case, Mr Beina's lack of counsel before the SCC and his resultant inability to meaningfully follow the proceedings against him occasion a breach of rights that goes to the very heart of the principle of a fair trial.

16. Accordingly, the Defence submits that the Chamber must take into account the breach of Mr Beina's right to counsel in assessing if the proceedings against him in the CAR are 'genuine' within the meaning of Article 17(1)(a) of the Statute and if they are 'inconsistent with an intent to bring the person concerned to justice' within the meaning of Article 17(2)(b) of the Statute.¹⁹

V. CONCLUSION

17. The Defence respectively reaffirms its request that the Chamber dismiss the Admissibility Challenge *in limine* pursuant to Article 19(5) of the Statute, or, alternatively, dismiss the Admissibility Challenge in its entirety and declare the case against Mr Beina before the ICC admissible. The Defence further reiterates its request that, in either case, the Chamber order the CAR to immediately surrender Mr Beina to the custody of the Court in accordance with the ICC Arrest Warrant and pursuant to Article 89 of the Statute.

Respectfully submitted,



Mr Philippe Larochelle
Counsel for Mr Edmond Beina

¹⁸ See Order on the reclassification of the warrant of arrest for Edmond Beina and on other procedural matters, 7 November 2024, [ICC-01/14-192](#), para. 9; Notification of the appointment of Mr Philippe Larochelle as Counsel for Mr Edmond Beina for the limited purposes of the current article 19 proceedings, 7 January 2025, [ICC-01/14-200](#), p. 3.

¹⁹ See *Prosecutor v. Gaddafi and Al-Senussi*, Judgment on the appeal of Mr Abdullah Al-Senussi against the decision of Pre-Trial Chamber I of 11 October 2013 entitled "Decision on the admissibility of the case against Abdullah Al-Senussi", 24 July 2014, [ICC-01/11-01/11-565](#), para. 230(3).

Dated this 7 May 2025

At Montreal, Canada