

**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 Gódinez
Judge Haykel Ben Mahfoudh

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

Public

Public redacted version of “Prosecution response to ‘Request of the Central African Republic challenging the admissibility of the case against Mr Edmond Beina’ (ICC-01/14-194-AnxI)”, ICC-01/14-212-Conf, 17 March 2025

Source: Office of the Prosecutor

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**
Central African Republic

☐ **Amicus Curiae**

REGISTRY

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Mr Osvaldo Zavala Giler

☐ **Counsel Support Section**

☐ **Victims and Witnesses Unit**

☐ **Detention Section**

☐ **Victims Participation and Reparations
Section**

☐ **Other**

I. INTRODUCTION

1. The Office of the Prosecutor is committed to the principle of complementarity underlying the Statute.¹ It cooperates closely with the Special Criminal Court (“SCC”) of the Central African Republic (“CAR”), and supports its exercise of jurisdiction in accordance with domestic law over persons allegedly responsible for serious crimes on the territory of the CAR. As the CAR authorities describe in their challenge to the admissibility of the case against Mr Beina, the Prosecution has provided long-term and substantial assistance to the operations of the SCC, and will continue to do so.²

2. In relation to the question of admissibility, it is clear that the SCC proceedings against Mr Beina involve substantially the same conduct as alleged in the case pending against him at the ICC.³ However, the Prosecution provides the following limited observations regarding the applicable legal frameworks to ensure that the grave allegations concerning Mr Beina are properly addressed in accordance with the Statute and mandate of the Court.⁴

II. CONFIDENTIALITY

3. This response is filed confidentially consistent with regulation 23bis(2) of the Regulations of the Court, since it refers to documents with the same classification. A public redacted version will be filed as soon as practicable.

III. OBSERVATIONS ON THE APPLICABLE LEGAL FRAMEWORKS

4. While deferring to the Chamber’s disposition, the Prosecution considers that two procedural issues⁵ may require further clarification from the CAR authorities to resolve the matters arising from the Challenge: (i) the reasons for the apparent delay in bringing the Challenge and; (ii) the impact of article 37 of CAR’s Organic Law 15/003 on the domestic proceedings against Mr Beina.

¹ See e.g. [ICC OTP, Policy on Complementarity and Cooperation](#).

² See [ICC-01/14-194-AnxI](#) (“Challenge”), paras. 128-132, 138, 142.

³ Compare [ICC-01/14-32](#), para. 16, and p. 22, with [ICC-01/14-208-AnxI](#), para. 8, and [ICC-01/14-208-AnxII](#), pp. 184-185, para. 1150.

⁴ See Preamble to the [Rome Statute](#) (noting that “effective prosecution must be ensured”).

⁵ The Prosecution only addresses *procedural* matters in these observations and takes no position on any *substantive* issues which may affect the domestic proceedings, although these may be important for the Chamber’s assessment under article 17 and article 21(3). See also [ICC-01/11-01/11-565 OA6](#), para. 230.

5. *First*, article 19(5) requires States to challenge the admissibility of a case “at the earliest opportunity” after a “conflict of jurisdictions has actually arisen.”⁶ While the Challenge confirms the Prosecution’s formal notification to the SCC Prosecutor of its advanced investigation into the Guen incident on 6 November 2019,⁷ [REDACTED],⁸ it does not mention the Registry’s earlier 28 August 2019 formal notification to the CAR authorities of the warrant of arrest against Mr Beina issued by this Chamber.⁹ CAR’s recent *Observations supplémentaires*,¹⁰ and the appended *Ordonnance de non-lieu et de renvoi*,¹¹ similarly do not address the Court’s formal notification of the warrant. Accordingly, to assess the timeliness of the Challenge, the Chamber may benefit from further clarity from the CAR authorities and the Registry as to the relevant circumstances.

6. *Second*, article 37 of the Organic Law¹² requires that the SCC desist in favour of the ICC in cases of concurrent jurisdiction.¹³ Already in September 2014 the ICC Prosecution referenced the Guen incident in its report on the *Situation in the Central African Republic II* and filed an application for the issuance of a warrant of arrest against Edmond Beina on 30 October 2018.¹⁴ Given that the Organic Law’s conferral of primacy¹⁵ upon the ICC has not been tested and/or settled before CAR’s high courts, the impact of ICC proceedings on the legality of national proceedings in the *Beina* case may require clarification from the CAR authorities.¹⁶

⁶ [ICC-01/09-01/11-307 OA](#), para. 100. See also [ICC-01/11-01/11-547-Red OA4](#), para. 84 (“as soon as a State can present its challenge in such a way that it can show a conflict of jurisdictions, [the admissibility challenge] *must be submitted*”, emphasis added); [ICC-01/09-02/11-274 OA](#), para. 45 (providing that a State is required “to challenge admissibility as soon as possible once it is in a position to actually assert a conflict of jurisdictions”).

⁷ [Challenge](#), paras. 7, 85. See [ICC-01/14-191-Conf-Anx3](#) (DI33).

⁸ [REDACTED].

⁹ See e.g. [ICC-01/14-210-Conf](#), para. 3 (citing [ICC-01/14-57-US-Exp](#)); [ICC-01/14-189-Conf-Red](#), para. 5 (indicating a notification date of 29 August 2019 and citing [ICC-01/14-57-US-Exp](#)); but compare [Challenge](#), paras. 3-20 (“Facts and proceedings”) (omitting reference to the Registry’s Request for Arrest and Surrender).

¹⁰ See [ICC-01/14-208-AnxI](#).

¹¹ See [ICC-01/14-208-Conf-AnxII](#), para. 1 et seq. (« *Du rappel de la procédure* »).

¹² *Loi organique No. 15-003 portant création, organisation et fonctionnement de la Cour Pénale Spéciale* (“Organic Law”), 2015.

¹³ *Organic Law*, art. 37 (« *Lorsqu[e] ... il est établi que le Procureur de la Cour Pénale Internationale s’est saisi d’un cas entrant concurremment dans la compétence de la Cour Pénale Internationale et de la Cour Pénale Spéciale, la seconde se dessaisit au profit de la première* », emphasis added).

¹⁴ [ICC OTP, Situation in the Central African Republic II, Article 53\(1\) Report, 24 September 2014](#), para. 202 (referencing the GUEN incident); [ICC-01/14-189-Conf-Red](#), para. 5; [ICC-01/14-32](#), para. 2.

¹⁵ [ICC-01/14-191-Conf-Anx4](#) (DI27), paras. 13-18 (notably, the SCC Prosecutor *Demande de suspension* asserts in the heading to this section that « *[l]a CPS a l’obligation de se dessaisir au profit de la CPI en cas de conflit potentiel de compétence* », emphasis added).

¹⁶ See [V. Nerlich and S. Waespi, Ein Glücksfall – Die Cour Pénale Spéciale in der Zentralafrikanischen Republik Aufbau, Arbeit und Kontext eines hybriden Strafgerichts \(Dec. 2022\)](#), p. 678 (“Sollte die CPS feststellen, dass ein von ihr behandelter Fall auch vom IStGH untersucht wird, so hat die CPS das Verfahren zugunsten des IStGH

IV. CONCLUSION

7. Subject to the observations above, the Prosecution defers to the Chamber's discretion in the determination of the Challenge.



Karim A. A. Khan KC, Prosecutor

Dated this 7th day of May 2025

At The Hague, the Netherlands

einzustellen. Ermessen besteht in dieser Hinsicht nicht.”). By an informal machine translation, the Prosecution understands this to read: “If the SCC finds that a case it handles is also being *investigated* by the ICC, the SCC *must discontinue* the proceedings in favour of the ICC. *There is no discretion* in this regard” (emphasis added).