

**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 Godínez
Judge Haykel Ben Mahfoudh

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

Public

**Public redacted version of ICC-01/14-211-Conf
“Observations on behalf of Victims
on the Central African Republic’s challenge
to the admissibility of the case against Edmond Beina”**

Source: Office of Public Counsel for Victims

Decision 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

Registrar

Mr Osvaldo Zavala Giler

☐ **Counsel Support Section**

☐ **Victims and Witnesses Unit**

☐ **Detention Section**

☐ **Victims Participation and
Reparations Section**

☐ **Other**

I. INTRODUCTION

1. The Principal Counsel of the Office of Public Counsel for Victims (the “OPCV” or the “Office”) submits observations on behalf of Victims on the challenge to the admissibility of the case against Mr Edmond Beina (the “Admissibility Challenge”) filed by the authorities of the Central African Republic (the “CAR”) on 30 October 2024.¹

2. In accordance with the principle of complementarity, the Court shall refrain from proceeding with an investigation or prosecution if a State which has jurisdiction over a case is investigating or prosecuting the same matter. In this regard, the Principal Counsel notes the willingness of the CAR authorities to investigate and prosecute the crimes allegedly committed by Mr Beina, as well as the actions already taken by the Special Criminal Court (the “SCC”) in Bangui to implement this intention.

3. Having reviewed the documents provided by the CAR, the Principal Counsel submits that it can be concluded that the SCC is prosecuting Mr Beina for the same crimes for which the Court issued a warrant of arrest. Moreover, the national authorities seem committed to genuinely investigating and prosecuting the crimes allegedly committed by Mr Beina and appear to have the capacity to do so.

4. Victims who had previously communicated with the Court in relation to the case have expressed their trust in the SCC. They wish for the proceedings against Mr Beina to be conducted in the CAR, as this would allow them to better follow the process and eventually travel to Bangui if required. However, the Principal Counsel also informs the Pre-Trial Chamber II (the “Chamber”) that Victims have raised concern about the lack of information on the current proceeding before the SCC.

¹ See the “Transmission of Public Redacted Version of the Admissibility Challenge Received from the Central African Republic”, [No. ICC-01/14-194](#), and Annex I: [No-ICC-01/14-194-Anx1](#), 15 November 2024 (the “Admissibility Challenge”).

Some Victims also indicated their willingness to participate in these proceedings but have reported that they were neither informed nor contacted for this purpose.

II. PROCEDURAL BACKGROUND

5. On 30 May 2014, the Government of the CAR referred to the Court the situation in the Country since 1 August 2012.²

6. On 7 December 2018, the Pre-Trial Chamber in its previous composition issued a warrant of arrest for Mr Edmond Beina (the “ICC Warrant of Arrest”).³

7. On 1 February 2019, the Registry transmitted a request for the arrest and surrender of Mr Beina to the CAR authorities.⁴

8. On 30 June 2020, [REDACTED].⁵

9. On 15 June 2023, [REDACTED].⁶

10. On 3 October 2023, [REDACTED].⁷

11. On 16 June 2024, [REDACTED].⁸ [REDACTED].⁹

² See the “Decision Assigning the Situation in the Central African Republic II to Pre-Trial Chamber II” (Presidency), [No. ICC-01/14-1](#), 18 June 2014.

³ See the “Warrant of Arrest for Edmond Beina” (Pre-Trial Chamber II), [No. ICC-01/14-32-US-Exp](#), 7 December 2018. The warrant was unsealed on 7 November 2024 upon order of the Chamber (the “ICC Warrant of Arrest”).

⁴ See the “Order on the conduct of the proceedings following the Central African Republic’s challenge to the admissibility of the case against Edmond Beina” (Pre-Trial Chamber II), [No. ICC-01/14-203](#), 4 February 2025, para. 2, footnote 5 (the “Order”).

⁵ REDACTED.

⁶ REDACTED.

⁷ REDACTED.

⁸ REDACTED.

⁹ REDACTED.

12. On 17 June 2024, [REDACTED].¹⁰
13. On 18 June 2024, [REDACTED]¹¹ and that it [REDACTED].¹²
14. On 19 June 2024, [REDACTED]¹³. [REDACTED].¹⁴
15. On 30 September 2024, [REDACTED],¹⁵ [REDACTED].¹⁶
16. On 22 October 2024, [REDACTED].¹⁷
17. On 30 October 2024, the Registry transmitted to the Chamber the CAR's Admissibility Challenge,¹⁸ including 232 under seal *ex parte* annexes¹⁹, subsequently reclassified as "confidential".²⁰
18. On 6 December 2024 [REDACTED].²¹
19. On 7 January 2025, the ICC Registry appointed Counsel for Mr Beina for the purposes of the article 19 proceedings.²²

¹⁰ REDACTED.

¹¹ REDACTED.

¹² REDACTED.

¹³ REDACTED.

¹⁴ REDACTED.

¹⁵ REDACTED.

¹⁶ REDACTED.

¹⁷ REDACTED.

¹⁸ See the Order, *supra* note 4, para. 3, footnote 6. A public redacted version of the Admissibility Challenge was transmitted by the Registry on 15 November 2024. See the "Transmission of Public Redacted Version of the Admissibility Challenge Received from the Central African Republic", [No. ICC-01/14-194](#), 15 November 2024.

¹⁹ *Idem*.

²⁰ See the Communication from the Registry dated 24 February 2025 at 18:43 pursuant to the instruction of the Chamber dated 20 February 2025.

²¹ REDACTED.

²² See the "Notification of the appointment of Mr Philippe Larochelle as Counsel for Mr Edmond Beina for the limited purposes of the current article 19 proceedings", [No. ICC-01/14-200](#), 7 January 2025.

20. On 4 February 2025, the Chamber issued an Order on the conduct of the proceedings, inviting, *inter alia*, the Prosecution, Mr Beina, and the OPCV to submit observations on the Admissibility Challenge by no later than 28 February 2025.²³

21. On 19 February 2025, the OPCV requested an extension of time until 17 March 2025 to file the observations on behalf of Victims (the “OPCV Request”).²⁴

22. On 19 February 2025, the CAR transmitted supplementary submissions on the Admissibility Challenge.²⁵

23. On 21 February 2025, the Chamber granted the OPCV Request, also extending the deadline for the Prosecution and Mr Beina until 17 March 2025 to file their observations.²⁶

24. On 4 March 2025, following an email request from the Prosecution, the Chamber instructed the Registry to provide - by 10 March 2025 - further information on the circumstances and status of the delivery and execution of the ICC Warrant of Arrest, as well as additional information on [REDACTED].²⁷

25. On 10 March 2025, the Registry filed the [REDACTED],²⁸ according to which the [REDACTED].²⁹ [REDACTED].³⁰

²³ See the Order, *supra*, note 4, para. 10.

²⁴ See the “Request for an extension of time to file observations on behalf of Victims on the central African Republic’s challenge to the admissibility of the case against Edmond Beina”, No. ICC-01/14-207-Conf-Exp, 19 February 2025. A public redacted version of the request was filed on the same day as [No. ICC-01/14-207-Red](#).

²⁵ REDACTED.

²⁶ See the Email correspondence from the Chamber to the participants on 21 February 2025 at 11:54.

²⁷ See the Email correspondence from the Chamber to the participants on 4 March 2025 at 9:53.

²⁸ REDACTED.

²⁹ REDACTED.

³⁰ REDACTED.

III. CLASSIFICATION

26. Pursuant to regulation 23*bis* (1) and (2) of the Regulations of the Court, the present submissions are classified as confidential, as they contain references to documents with the same classification. A public redacted version will be filed in due course.

IV. SUBMISSIONS

A. Applicable law

27. Article 17(1) of the Rome Statute (the “Statute”) provides that:

The Court shall determine that a case is inadmissible where: (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution.

28. Article 19(2) of the Statute further clarifies that:

Challenges to the admissibility of a case on the grounds referred to in article 17 or challenges to the jurisdiction of the Court may be made by: [...] b) A State which has jurisdiction over a case, on the ground that it is investigating or prosecuting the case or has investigated or prosecuted.

27. The precondition for the application of articles 17(1) and 19(2) of the Statute is the existence of “ongoing investigations or prosecutions” at the national level.³¹ The terms “under investigation” have been interpreted by the Court as meaning “the taking of steps directed at ascertaining whether [an] individual is responsible for [a specific] conduct, for instance by interviewing witnesses or suspects, collecting documentary evidence, or carrying out forensic analyses”.³² The Appeals Chamber clarified that the investigations

³¹ See the “Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case” (Appeals Chamber), [No. ICC-01/04-01/07-1497 OA 8](#), 25 September 2009 (the “Katanga Admissibility Judgment”).

³² See the “Judgment on the appeal of the Republic of the Philippines against Pre-Trial Chamber I’s ‘Authorization pursuant to article 18(2) of the Statute to resume the investigation’” (Appeals Chamber), [No. ICC-01/21-77 OA](#), 18 July 2023, para. 102 (the “Philippines Admissibility Judgment”), referring to the “Judgment on the appeal of the Bolivarian Republic of Venezuela against Pre-Trial Chamber I’s ‘Decision authorising the resumption of the investigation pursuant to article 18(2) of the Statute’”

conducted at national level must cover “*the same case*”, in particular the same person and essentially the same conduct that is the subject of the proceedings before the Court.³³ Accordingly, a State challenging the admissibility of a case must submit to the Court “*evidence with a sufficient degree of specificity and probative value that demonstrates that it is indeed investigating the case*” in respect of which proceedings have been brought before the Court.³⁴

28. In this context, the Appeals Chamber has ruled on several occasions that, “*in considering whether a case is admissible under article 17 (1) (a) and (b) of the Statute, the initial questions to ask are (1) whether there are ongoing investigations or prosecutions, or (2) whether there have been investigations in the past, and the State having jurisdiction has decided not to prosecute the person concerned. It is only when the answers to these questions are in the affirmative that one has to look to the second halves of sub-paragraphs (a) and (b) and to examine the question of unwillingness and inability*”.³⁵

29. The admissibility test is therefore twofold: first, the existence of proceedings at national level relating to the ‘same case’ as that pending before the Court must be demonstrated. Second, there must be an assessment of the willingness and ability of the State claiming jurisdiction over the case to genuinely investigate or prosecute the person concerned. A State that challenges the admissibility of a case bears the burden

(Appeals Chamber), [No. ICC-02/18-89 OA](#), 1 March 2024, para. 364 (the “*Venezuela I* Admissibility Judgment”). See also, the “Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled ‘Decision on the Application by the Government of Kenya challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute’” (Appeals Chamber), [No. ICC-01/09-01/11-307 OA](#), 30 August 2011, para. 1 (the “*Ruto et al.* Admissibility Judgment”); and the “Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled ‘Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case pursuant to Article 19(2)(b) of the Statute’” (Appeals Chamber), [No. ICC-01/09-02/11-274 OA](#), 30 August 2011, para. 1 (the “*Muthaura* Admissibility Judgment”).

³³ See the *Ruto et al.* Admissibility Judgment, *supra* note 32, para. 37 *et seq.*

³⁴ *Ibid.*, para. 2.

³⁵ See the *Katanga* Admissibility Judgment, *supra* note 31, para. 80.

of proof to show that the case is inadmissible before the Court,³⁶ proving that it is conducting a genuine investigation or prosecution.³⁷

30. These observations will first deal with the initial aspect of the admissibility test, namely the legal criteria for assessing the existence of domestic proceedings covering the “*same case*” before the Court and their application to the evidence submitted by the CAR in that regard. Next, the second part of the admissibility test will be the subject of a legal and factual analysis in light of the ability and willingness of the CAR to genuinely carry out investigations or prosecutions against Mr Beina. Lastly, the views and concerns of the Victims on the issue will be presented.

B The domestic proceedings against Mr Beina cover the “same case” as the one before the Court

a. The definition of “case” and the “same person/same conduct” test

31. When the Court issues a warrant of arrest or a summons to appear, a case can only be considered inadmissible if the investigation or prosecution conducted at the national level pertain to the ‘same case’.³⁸ Therefore, it is necessary to correctly interpret the term ‘case’ within the meaning of article 17(1)(a) of the Statute based on the criteria established by the Chambers. This includes assessing the degree of similarity between the case before the Court and the case under the national investigation or prosecution to determine whether the latter is sufficient to render the case inadmissible before the Court.

32. The Court pronounced itself on these criteria in its first case *Lubanga*. Pre-Trial Chamber I stated that “*it is a sine qua non condition for a case arising from an investigation*

³⁶ See the “Judgment on the appeal of Côte d’Ivoire against the decision of Pre-Trial Chamber I of 11 December 2014 entitled ‘Decision on Côte d’Ivoire’s challenge to the admissibility of the case against Simone Gbagbo’” (Appeals Chamber), [No. ICC-02/11-01/12 OA](#), 27 March 2015, para. 29 (the “*Simone Gbagbo* Admissibility Judgment”).

³⁷ *Idem*.

³⁸ See the “*Katanga* Admissibility Judgment”, *supra* note 31, para. 78.

*into a situation to be inadmissible that the national proceedings encompass both the person and the conduct that are the subject of the case before the Court”.*³⁹

33. Following the *Lubanga* case, the question of what constitutes a *case* has arisen repeatedly in different procedural contexts, exceeding beyond the issue of admissibility of a specific case before the Court. Chambers have consistently considered that the term ‘case’ refers to specific allegations and factual circumstances. A thorough analysis of the Court’s case law shows that Chambers have adopted a consistent approach in defining this notion. Since a ‘case’ is not a relative concept, its interpretation cannot depend on the nature of the proceedings, or the status of the parties and participants involved.

34. Thus, the Pre-Trial Chambers have made it clear on several occasions that a case must include *“specific incidents during which one or more crimes within the jurisdiction of the Court seem to have been committed by one or more identified suspects”*.⁴⁰ In other words, the parameters of a case have been identified as consisting of specific factual allegations that support each legal element of the alleged crimes. The Appeals Chamber reaffirmed this approach, noting that *“‘article 19 of the Statute relates to the admissibility of concrete cases’ and that ‘the defining elements of a concrete case before the Court are the individual and the alleged conduct’ test”*.⁴¹ The Appeals Chamber confirmed the validity of the ‘same person/same conduct’ test, specifying that the investigation

³⁹ See the “Decision on the Prosecutor’s Application for a warrant of arrest, Article 58” (Pre-Trial Chamber I), [No. ICC-01/04-01/06-1-Corr, 10 February 2006](#), 17 March 2006, para. 31. See also, the “Decision on the admissibility of the case against Saif Al-Islam Gaddafi” (Pre-Trial Chamber I), [No. ICC-01/11-01/11-344-Red](#), 31 May 2013, para. 74 (the “*Saif Al-Islam Gaddafi* Admissibility Decision”).

⁴⁰ See the *Saif Al-Islam Gaddafi* Admissibility Decision, *supra* note 39, para. 75. See also, the “Decision on the Prosecutor’s Application Pursuant to Article 58 for a warrant of arrest against Laurent Koudou Gbagbo” (Pre-Trial Chamber III), [No. ICC-02/11-01/11-9-Red](#), 20 December 2012, para. 10; the “Decision on the Prosecutor’s Application for a warrant of arrest, Article 58” (Pre-Trial Chamber I), [No. ICC-01/04-01/06-1-Corr](#), 10 February 2006, para. 3; and the “Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6” (Pre-Trial Chamber I), [No. 01/04-101-tENG-Corr](#), 17 January 2006, para. 65.

⁴¹ See the *Saif Al-Islam Gaddafi* Admissibility Decision, *supra* note 39, para. 76. See also, the *Ruto et al.* Admissibility Judgment, *supra* note 32, para. 40 and the *Muthaura* Admissibility Judgment, *supra* note 32, para. 39.

or prosecution must cover ‘essentially’ the same conduct as that targeted by the proceedings brought against the suspect/accused before the Court. Thus, “*for such a case to be inadmissible under article 17 (1) (a) of the Statute, the national investigation must cover the same individual and substantially the same conduct as alleged in the proceedings before the Court*”.⁴²

35. The Appeals Chamber further clarified that a “concrete case” is defined “*by a warrant of arrest or a summons to appear issued under article 58, or the charges presented by the Prosecutor and confirmed by the Pre-Trial Chamber under article 61. [...] Similarly, in under regulation 52 of the Regulations of the Court, the document setting out the charges must identify the person against whom confirmation of the charges is sought and the allegations against him or her*”.⁴³ The contours of the case being investigated or prosecuted domestically must be clear, irrespective of the stage of the investigation or prosecution.⁴⁴

36. This interpretation of the term ‘same conduct’ is supported by the parameters set out in article 20 of the Statute. As several commentators have noted,⁴⁵ article 17 serves as a corollary to the *ne bis in idem* principle. Consequently, national investigations or prosecutions concerning an individual’s conduct in relation to specific events do not preclude the Court from investigating or prosecuting the same individual for conduct related to different events.

37. Accordingly, a State challenging the admissibility of a case before the Court must provide sufficient evidence that the national investigation or prosecution cover

⁴² See the *Ruto et al.* Admissibility Judgment, *supra* note 32, para. 40 and the *Muthaura* Admissibility Judgment, *supra* note 32, para. 39.

⁴³ *Idem*.

⁴⁴ See the *Simone Gbagbo* Admissibility Judgment, *supra* note 36, para. 88.

⁴⁵ See HOLMES (J. T.), “The Principle of Complementarity” in Lee (R. L.) (Ed.), *The International Criminal Court: The Making of the Rome Statute*, Kluwer, 1999, p. 57. See also RASTAN (R.), “Situation and case: defining the parameters”, in STAHN (C.) & EL ZEIDY (M.M.) (Eds.), *The International Criminal Court and Complementarity: From Theory to Practice*, Cambridge University Press, 2011, p. 441.

essentially the same conduct as that referred to in the warrant of arrest or summons to appear issued by the Court.

(i) The Central African Republic is investigating and prosecuting the conduct that forms the basis of the ICC Warrant of Arrest against Mr Beina

38. In the *Gaddafi* case, Pre-Trial Chamber I considered that the determination of the notion of ‘essentially the same conduct as the proceedings before the Court’ varies according to the concrete facts and circumstances of a case and the manner in which it is charged before the Court.⁴⁶

39. Applying this approach to the present case, the conduct being investigated or prosecuted by the CAR must be compared with the conduct attributed to Mr Beina in the ICC Warrant of Arrest.

40. The Chamber considered that the conditions of article 58(1) of the Statute had been met for the purpose of issuing a warrant of arrest for Mr Beina. It determined that he had **individually, jointly with or through others or otherwise ordered, solicited, induced and facilitated the commission** - pursuant to **articles 25(3)(a), 25(3)(b), and 25(3)(c) of the Statute** - ⁴⁷ of the **crimes against humanity** of (i) murder and attempted murder; (ii) extermination; (iii) deportation and forcible transfer; (iv) persecution, (v) imprisonment or other severe deprivation of physical liberty; (vi) rape and attempted rape; as well as the **war crimes** of (i) murder and attempted murder; (ii) intentionally directing an attack against the civilian population; (iii) displacement; (iv) pillage; (v) rape and attempted rape; and (vi) destruction of adversary property.⁴⁸

⁴⁶ See the *Saif Al-Islam Gaddafi* Admissibility Decision, *supra* note 39, paras. 80-84.

⁴⁷ See the ICC Warrant of Arrest, *supra* note 3, paras. 17-18.

⁴⁸ *Ibid.*, para. 16.

41. In this regard, from the documents submitted by the CAR authorities,⁴⁹ it transpires that [REDACTED],⁵⁰ of the following⁵¹ In addition, the SCC [REDACTED].⁵²

42. The ICC Warrant of Arrest concerns crimes committed in Guén between at least 1 February and early April 2014 as part of a larger Anti-Balaka attack against the Muslim civilian population conducted from at least September 2013 until at least December 2014,⁵³ when Mr Beina was allegedly in command of one Anti-Balaka group⁵⁴ of 100-400 members.⁵⁵

43. The documents submitted by the CAR authorities indicate that [REDACTED]. [REDACTED].⁵⁶

44. Concerning the events specifically mentioned, the ICC Warrant of Arrest refers to Mr Beina and his subordinates, destroying and looting Muslim property in Guén.⁵⁷ It further alleges (i) the killing of 22 men and the wounding of others, as well forcing hundreds of Muslims to flee on 1 February 2014;⁵⁸ (ii) the killing of at least 42 men and boys at Ali Garba's compound and causing other Muslim's to flee to Mamadou Bandjoukou's compound;⁵⁹ (iii) transferring at least 163 Muslim civilians to the Djomo Catholic Church and forcing others to flee;⁶⁰ (iv) the killing of the Muslim counsellor

⁴⁹ REDACTED.

⁵⁰ See the Statute of the SCC, "Loi organique No. 15/003 Portant creation, organisation et fonctionnement de la Cour Pénale Speciale" available at [Bibliothèque de la CPS - Documents judiciaires - Documents judiciaires: CPS-RCA](#); available in English on the official website of the International Committee of the Red Cross at [National Practice - Organic law No. 15-003 on the creation, organisation and functioning of the Special Criminal Court, 2015](#) (the "SCC Statute").

⁵¹ REDACTED.

⁵² REDACTED.

⁵³ See the ICC Warrant of Arrest, *supra* note 3, para. 12.

⁵⁴ *Ibid.*, paras. 13, 14.

⁵⁵ *Ibid.*, para. 16.

⁵⁶ REDACTED.

⁵⁷ See the ICC Warrant of Arrest, *supra* note 3, para. 16e.

⁵⁸ *Ibid.*, para. 16a.

⁵⁹ *Ibid.*, para. 16b.

⁶⁰ *Ibid.*, para. 16c.

Mamadou Bandjoukou and the rape of at least two women at the ‘Sodium’ compound.⁶¹

45. The SCC has retained [REDACTED].⁶² [REDACTED],⁶³ [REDACTED],⁶⁴ [REDACTED],⁶⁵ [REDACTED],⁶⁶ [REDACTED],⁶⁷ and [REDACTED].⁶⁸

46. A comparative review of the charges against Mr Beina before the SCC and the ICC demonstrate a substantial overlap of incidents and crimes. The charges before the SCC [REDACTED]. [REDACTED],⁶⁹ [REDACTED],⁷⁰ [REDACTED].⁷¹ As such, it appears that the domestic prosecution concerns “*substantially the same conduct*”⁷² as that at the core of the case against Mr Beina before the ICC.

(ii) The CAR willingness and ability to genuinely carry out the investigation and prosecution against Mr Beina

47. On the basis of the material provided by the CAR authorities, the Principal Counsel sees no indication to conclude that the State is either unwilling or unable to prosecute Mr Beina for substantially the same conduct as outlined in the ICC Warrant of Arrest. The question of unwillingness does not *prima facie* arise, given that the CAR authorities fervently advocate for trying Mr Beina in Bangui.

48. However, the assessment of a State’s willingness to investigate or prosecute cannot be determined on such expression of intent alone. In this regard, the Principal

⁶¹ *Ibid.*, para. 16d.

⁶² REDACTED.

⁶³ REDACTED.

⁶⁴ REDACTED.

⁶⁵ REDACTED.

⁶⁶ REDACTED.

⁶⁷ REDACTED.

⁶⁸ REDACTED.

⁶⁹ REDACTED.

⁷⁰ REDACTED.

⁷¹ REDACTED.

⁷² Cf. *Simone Gbagbo* Admissibility Judgment, *supra* note 36, para. 98.

Counsel also notes articles 36 and 37 of the Law establishing the SCC, which - while commendable in demonstrating the CAR's willingness to recognize the ICC's authority by giving primacy over *the same case* to the Court - are equally not determinative in assessing the admissibility of a case. The ICC operates within its own legal framework and applies its own criteria in determining admissibility. Accordingly, the willingness of a State to investigate or prosecute must be assessed based on concrete actions rather than formal expressions of intent.

49. As the Appeals Chamber recently recalled in the *Venezuela I* Situation, other factors may be considered on a case-by-case basis. For instance, an unjustified delay is explicitly listed under article 17(2) of the Statute as a factor which may indicate the "*unwillingness of a State genuinely to prosecute.*"⁷³

50. In the case at hand, the CAR authorities have submitted information that demonstrates that the State has taken "*tangible, concrete and progressive investigative steps [...] with a view to conducting criminal proceedings, in a way that would sufficiently mirror the Court's investigation.*"⁷⁴

51. As regards the question of the State's 'ability' to investigate and prosecute, the Pre-Trial Chamber considered that "*the ability of a State genuinely to carry out an investigation or prosecution must be assessed in the context of the relevant national system and procedures.*"⁷⁵ The Pre-Trial Chamber further explained that 'inability' within the meaning of article 17(3) of the Statute, primarily concerns a situation of "*a total or substantial collapse*" or unavailability of the domestic judicial system and inability of a state to obtain the accused, the necessary evidence and testimony.⁷⁶

⁷³ See the *Venezuela I* Admissibility Judgment, *supra* note 32, para. 364.

⁷⁴ See the *Philippines* Admissibility Judgment, *supra* note 32, para. 205.

⁷⁵ See the *Saif Al-Islam Gaddafi* Admissibility Decision, *supra* note 39, para. 200.

⁷⁶ *Ibid.*, para. 199 referring to article 17(3) of the Statute.

52. The documents submitted by the CAR show that the SCC has been a functioning judicial institution dedicated to prosecuting serious crimes, including war crimes and crimes against humanity committed since 1 January 2003.⁷⁷ With substantial international support from the United Nations - ranging from judicial assistance⁷⁸ and investigative capacity building, to financial aid,⁷⁹ and cooperation, there is no apparent reason to doubt the SCC's capacity to prosecute the case against Mr Beina. The SCC is fully operational since 2018 and it has already conducted and successfully completed its first case in 2022.

53. In fact, the establishment of the SCC *de jure* guarantees that the CAR can fulfil its obligations to ensure *“‘effective prosecution’ of ‘the most serious crimes of concern to the international community as a whole’”*.⁸⁰ The only remaining question for this Chamber to determine is whether the State is genuinely willing to exercise its criminal jurisdiction in the specific case of Mr Beina.

54. Concerning more specifically [REDACTED], the documentation provided by the CAR does not indicate any undue delay in the investigative phase. Furthermore, the material further indicates [REDACTED].

55. As for the Victims, it is noteworthy that the SCC has dedicated a specialized section, the SAVD, providing various forms of assistance, including psychological support.⁸¹ Victims have the right to participate in the proceedings as civil parties and may obtain reparations in the event of a conviction pursuant to rules 74, 75, 76, and 129 of the *Loi organique 18.001* of 2 July 2018 adopting the Rules of Procedure and Evidence of the SCC.

⁷⁷ See article 3 of the SCC Statute, *supra* note 50.

⁷⁸ See articles 7, 8, 9 of the SCC Statute, *supra* note 50.

⁷⁹ See article 53 of the SCC, *supra* note 50.

⁸⁰ See the *Venezuela I* Admissibility Judgment, *supra* note 32, para. 283.

⁸¹ See rule 46 of the [Loi organique 18.001](#) of 2 July 2018.

V. SPECIFIC VIEWS AND CONCERNS OF VICTIMS

56. At the beginning of March 2025, the Principal Counsel,⁸² along with two members of her team, met with the majority of the Victims who had previously communicated with the Court in relation to the case. Victims expressed their trust in the SCC and their preference for the proceedings against Mr Beina to take place in the CAR. They explained that the proximity of the proceedings is the main reason they favour a domestic trial. Holding the proceedings in the country would allow them to more easily follow the case and, if necessary, travel to Bangui.

57. However, the Principal Counsel informs the Chamber that Victims have also raised concerns about the lack of available information about the procedure currently ongoing before the SCC. They wish for improved outreach in this regard. In light of the Victims' general preference for justice that is more localized in terms of proximity, the Principal Counsel further informs the Chamber that not all affected persons were aware of or had the opportunity to [REDACTED] and thus participate in the proceedings before the SCC. During the meeting, Victims clearly indicated their desire to participate in the proceedings before the SCC.

58. From the available documentation, it appears that only a small number of direct and directly identifiable Victims have been approached [REDACTED]. At this stage this leaves a significant number of indirect victims [REDACTED] excluded from the current procedure. In contrast, the ICC framework offers a broader and more inclusive approach in terms of participation. The Principal Counsel thus respectfully requests the Chamber to invite the CAR authorities to explore enhanced methods of outreach to ensure greater inclusion of the affected population.

59. Following the consultations with Victims, the Principal Counsel and a member of her team also held informal discussions with [REDACTED]. [REDACTED].

⁸² See the Order, *supra* note 4, para. 8.

Respectfully submitted.

A handwritten signature in black ink, appearing to read 'Paolina Massidda', with a horizontal line underneath the name.

Paolina Massidda
Principal Counsel

Dated this 7th day of May 2025

Done at The Hague, The Netherlands