

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/14**
Date: **12 September 2025**

PRE-TRIAL CHAMBER II

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

Public Redacted Version

Decision on the Central African Republic's challenge to the admissibility of the case
against Edmond Beina

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
Section**

PRE-TRIAL CHAMBER II (the ‘Chamber’) of the International Criminal Court (the ‘Court’ or the ‘ICC’) issues the following decision on the Central African Republic’s (the ‘CAR’) challenge to the admissibility of the case against Edmond Beina (‘Mr Beina’) under article 19(2)(b) of the Rome Statute (the ‘Statute’) (the ‘Admissibility Challenge’).¹

I. PROCEDURAL HISTORY AND OVERVIEW OF SUBMISSIONS

1. On 30 May 2014, the Government of the CAR referred the situation in the CAR since 1 August 2012 to the Court.²
2. On 7 December 2018, the Chamber issued a warrant of arrest against Mr Beina for crimes against humanity and war crimes allegedly committed in Guen between at least 1 February to early April 2014 (the ‘Warrant of Arrest’ or ‘ICC Arrest Warrant’).³
3. On 28 August 2019, the Registry notified to the CAR authorities the Warrant of Arrest and a request to cooperate in the arrest and surrender of Mr Beina.⁴
4. On 28 October 2024, the Registry transmitted to the Chamber the Admissibility Challenge submitted by the CAR on 22 October 2024,⁵ and on 30 and 31 October 2024, the material submitted in support thereof.⁶ The CAR challenges the admissibility of the

¹ ICC-01/14-189-US-Exp-AnxII (English translation, ICC-01/14-189-US-Exp-AnxII-tENG), with confidential annexes 1 to 232 transmitted on 30 October 2024. The public redacted version of the CAR’s admissibility challenge was filed in French on 15 November 2024, see [ICC-01/14-194-AnxI](#) (‘Admissibility Challenge’).

² Presidency, [Annex I to the Decision Assigning the Situation in the Central African Republic II to Pre-Trial Chamber II](#), 18 June 2014, ICC-01/14-1-Anx1.

³ [Warrant of Arrest for Edmond Beina](#), ICC-01/14-32 (the warrant of arrest was reclassified as public on 7 November 2024). 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 (the ‘Reclassification Order’).

⁴ ICC-01/14-98-SECRET-Exp and ICC-01/14-98-SECRET-Exp-Anx. See also ICC-01/14-57-US-Exp. See also Prosecution response to ‘Request of the Central African Republic challenging the admissibility of the case against Mr Edmond Beina’ (ICC-01/14-194-AnxI), 7 May 2025, ICC-01/14-212-Conf (public redacted version notified on the same date, [ICC-01/14-212-Red](#)) (‘Prosecution’s Observations’) para. 5.

⁵ ICC-01/14-189-US-Exp.

⁶ Addendum to ICC-01/14-189-US-Exp, ICC-01/14-190-Conf (together with under seal, *ex parte*, annex I; reclassified as confidential on 10 March 2025); Second Addendum to ICC-01/14-189-US-Exp, ICC-01/14-191-Conf (together with 1-232 under seal, *ex parte*, annexes; reclassified as confidential on 10 March 2025). Pursuant to the Chamber’s order of 20 February 2025, annex I to ICC-01/14-190-Conf and annexes 1 to 232 to ICC-01/14-191-Conf were reclassified as confidential (Email from the Chamber, at 16:27). See also order from the Chamber extending the time limit for the CAR to indicate whether they agreed to reclassify the annexes to their Admissibility Challenge (annexes to ICC-01/14-191-US-Exp) as confidential or, alternatively, file confidential redacted versions thereof (Email from the Chamber of 14 February 2025, at 16:52); [Transmission of Communication from the Central African Republic pursuant to Order ICC-01/14-203](#), 18 February 2025, ICC-01/14-205 (together with confidential Annex, ICC-01/14-205-Conf-Anx).

case against Mr Beina before the Court pursuant to article 19(2)(b) of the Statute, on the grounds that the same case is being investigated or prosecuted by the *Cour Pénale Spéciale* (the ‘CPS’) in CAR (the ‘CAR proceedings’).⁷ It submits that the CPS has taken concrete and progressive investigative steps that show the CAR’s willingness and ability within the meaning of article 17 of the Statute.⁸ It requests the Chamber to (i) declare the case against Mr Beina as inadmissible before the Court; and (ii) vacate the Warrant of Arrest issued by the Court against him.⁹ The CAR further indicates that, pursuant to article 95 of the Statute, it exercises its right to postpone the execution of the Warrant of Arrest until a decision on the Admissibility Challenge is rendered.¹⁰

5. On 7 November 2024, the Chamber ordered the reclassification of the Warrant of Arrest as public and further instructed the Registry to assist Mr Beina in choosing counsel to represent him before the Court in the context of the adjudication of the Admissibility Challenge and to report back to the Chamber accordingly.¹¹

6. On 7 January 2025, the Registry appointed Mr Philippe Larochelle as Counsel for Mr Beina for the purposes of the current proceedings under article 19 of the Statute.¹²

7. On 4 February 2025, the Chamber issued an order on the conduct of the proceedings, *inter alia*, inviting the Prosecution, Counsel for Mr Beina, and the Office of Public Counsel for Victims (the ‘OPCV’) to submit observations on the Admissibility Challenge by no later than 28 February 2025.¹³

8. On 19 February 2025, the OPCV requested an extension of the time limit to file observations on the Admissibility Challenge until 17 March 2025.¹⁴

⁷ [Admissibility Challenge](#), paras 21-23.

⁸ [Admissibility Challenge](#), para. 156.

⁹ [Admissibility Challenge](#), para. 157.

¹⁰ [Admissibility Challenge](#), para. 157.

¹¹ [Reclassification Order](#).

¹² [Notification of the appointment of Mr Philippe Larochelle as Counsel for Mr Edmond Beina for the limited purposes of the current article 19 proceedings](#), ICC-01/14-200.

¹³ [Order on the conduct of the proceedings following the Central African Republic’s challenge to the admissibility of the case against Edmond Beina](#), ICC-01/14-203.

¹⁴ 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, ICC-01/14-207-Conf-Exp (public redacted version filed on the same date, [ICC-01/14-207-Red](#)).

9. On the same date, the Registry transmitted to the Chamber supplementary submissions filed by the CAR in support of the Admissibility Challenge.¹⁵ The CAR reiterates the arguments made in the Admissibility Challenge, submits that the relevant proceedings before the CPS are in their closing phase, and asserts that this demonstrates its willingness and ability to carry out proceedings against Mr Beina.¹⁶ Annexed to the Admissibility Challenge is also the ‘*Ordonnance de non-lieu et de renvoi devant la Chambre d’assises de la Cour Pénal Spéciale*’ issued by the CPS on 6 December 2024 (the ‘*Ordonnance de non-lieu et de renvoi*’).¹⁷

10. On 21 February 2025, the Chamber extended the time limit to file observations on the Admissibility Challenge to 17 March 2025.¹⁸

11. On 10 March 2025, the Registry filed a report in relation to a number of issues raised concerning the Warrant of Arrest and other matters relevant to the current article 19 proceedings,¹⁹ following a request made by way of email by the Prosecution on 28 February 2025²⁰ and the subsequent order of the Chamber issued by way of email on 4 March 2025.²¹

12. On 17 March 2025, Counsel for Mr Beina filed written observations on the Admissibility Challenge,²² requesting the Chamber to dismiss the Admissibility Challenge *in limine* on the ground that it was filed in an untimely manner pursuant to article 19(5) of the Statute.²³ Alternatively, Counsel for Mr Beina requests the Chamber to reject the Admissibility Challenge in its entirety and to declare the case against Mr Beina admissible, arguing in this regard that the CAR proceedings (i) are not being

¹⁵ [Transmission of Supplementary Submissions from the Central African Republic](#), ICC-01/14-208, together with two annexes (ICC-01/14-208-AnxI and ICC-01/14-208-Conf-AnxII).

¹⁶ [ICC-01/14-208-AnxI](#).

¹⁷ ICC-01/14-208-Conf-AnxII.

¹⁸ Email from the Chamber, at 11:54.

¹⁹ Report of the Registry on the Proceedings related to Mr Beina in the Central African Republic, ICC-01/14-210-Conf, together with under seal, *ex parte* Annex I (ICC-01/14-210-US-Exp-AnxI) and confidential Annex II (ICC-01/14-210-Conf-AnxII). *See also* email from the Prosecution of 28 February 2025, at 11:33 and email order from the Chamber of 4 March 2025, at 09:53.

²⁰ Email from the Prosecution to Pre-Trial Chamber II, at 11:33.

²¹ Email from the Chamber to Registry, at 09:53.

²² Written Observation of Mr Edmond Beina on the Central African Republic’s Admissibility Challenge, 17 March 2025, ICC-01/14-213-Conf (public version notified on 17 March 2025, [ICC-01/14-213-Red](#)) (‘Mr Beina’s Observations’), with confidential Annex 1 (ICC-01/14-213-Conf-Anx1) and Annex 2 (ICC-01/14-213-Conf-Anx2). On 27 May 2025, ICC-01/14-213-Conf, ICC-01/14-213-Conf-Anx1 and ICC-01/14-213-Conf-Anx2 were reclassified as confidential *ex parte*.

²³ [Mr Beina’s Observations](#), paras 11-29.

conducted independently or impartially within the meaning of article 17(2)(c) of the Statute, and (ii) fail to guarantee Mr Beina’s fair trial rights.²⁴

13. On the same date, the Prosecution and the OPCV filed their respective written observations on the Admissibility Challenge.²⁵ The Prosecution submits that the CAR proceedings involve substantially the same conduct as alleged in the case pending against Mr Beina at the Court,²⁶ and that further clarification from the CAR may be warranted on the issue of the timing of the Admissibility Challenge and the impact of article 37 of the CAR’s Organic Law 15/003²⁷ on the domestic proceedings against Mr Beina.²⁸ The OPCV submits that the CAR proceedings concern the same crimes as in the Warrant of Arrest and that the CAR authorities appear committed to, and able to, investigate and prosecute genuinely the crimes allegedly committed by Mr Beina.²⁹ Further, it indicates that the victims wish for the proceedings to be conducted in the CAR to better follow the process, and raises concerns about the lack of information regarding the CAR proceedings. The OPCV requests the Chamber to invite the CAR authorities ‘to explore enhanced methods of outreach’.³⁰

14. On 20 March 2025, Counsel for Mr Beina filed supplementary observations on the Admissibility Challenge (‘Mr Beina’s Supplementary Observations’), annexing a declaration signed by Mr Beina on 19 March 2025 (the ‘Declaration’).³¹ Counsel for Mr Beina submits that the Chamber should consider in its assessment under article 17 of the Statute, the alleged breach of Mr Beina’s right to counsel in the CAR proceedings.³²

²⁴ [Mr Beina’s Observations](#), paras 30-61.

²⁵ [Prosecution’s Observations](#); Observations on behalf of Victims on the Central African Republic’s challenge to the admissibility of the case against Edmond Beina, 17 May 2025, ICC-01/14-211-Conf (public redacted version filed on the same date, [ICC-01/14-211-Red](#)) (‘OPCV Observations’); *See* Email order from the Chamber of 22 May 2025, at 16:54. *See also* Email from Court Management Section of 27 May 2025, at 17:03.

²⁶ [Prosecution’s Observations](#), para. 2.

²⁷ This provision confers primacy upon the Court in cases of concurrent jurisdiction.

²⁸ [Prosecution’s Observations](#), paras 4-6.

²⁹ [OPCV Observations](#), para. 3.

³⁰ [OPCV Observations](#), paras 4, 57-58.

³¹ Public Redacted Version of “Supplementary Observations of Mr Edmond Beina on the Central African Republic’s Admissibility Challenge”, 20 March 2025, ICC-01/14-214-Conf (public redacted version filed on 7 May 2025, [ICC-01/14-214-Red](#)), together with confidential Annex A (ICC-01/14-214-Conf-AnxA) (‘Mr Beina’s Supplementary Observations’).

³² [Mr Beina’s Supplementary Observations](#), para. 16.

15. On 1 May 2025, the Chamber ordered the CAR to provide observations on the timing of the filing of the Admissibility Challenge according to article 19(5) of the Statute.³³

16. On 19 May 2025, the Registry transmitted to the Chamber the observations filed by the CAR on the timing of the filing of the Admissibility Challenge.³⁴

17. On 23 May 2025, further to an order issued by the Chamber by way of email, the Registry reported on the notification of documents to the CAR authorities, informing that, with the exception of two documents, the CAR had been notified of all relevant submissions in the record.³⁵

II. PRELIMINARY ISSUES

18. The Chamber will first address two preliminary issues, as follows: (i) whether Mr Beina's Supplementary Observations were filed in observance of regulation 35(2) of the Regulations of the Court (the 'Regulations'); and (ii) whether the Admissibility Challenge was filed in observance of article 19(5) of the Statute.

A. Whether Mr Beina's Supplementary Observations were Filed in Observance of Regulation 35(2) of the Regulations

19. The Chamber notes that Mr Beina's Supplementary Observations were filed on 20 March 2025, three days after the time limit set by the Chamber.³⁶ These submissions concern information that was transmitted to Counsel for Mr Beina on 19 March 2025.³⁷ In addressing the timing of its filing, Counsel submits that 'in light of the pertinence of the information contained in the present submission to the proceedings concerning the

³³ Email from the Chamber, at 16:44.

³⁴ [ICC-01/14-215-Anx](#) ('CAR Observations on the Timing of the Admissibility Challenge'). *See also* [Transmission of Observations from the Central African Republic regarding the Timing of the Admissibility Challenge](#), ICC-01/14-215. The aforementioned documents were originally filed as confidential on 19 May 2025 and reclassified as public by the Chamber on 21 May 2025 (Email order from the Chamber, at 09:34).

³⁵ Email from the Division of Judicial Services, at 16:30. *See also* Email order from the Chamber of 21 May 2025, at 09:34.

³⁶ See Email from the Chamber of 21 February 2025, at 11:54, whereby the Chamber sets the time limit for observations to 17 March 2025.

³⁷ [Mr Beina's Supplementary Observations](#), para. 4.

Admissibility Challenge’, ‘it is in the interests of justice for the Chamber to consider the present submission validly filed’.³⁸

20. Regulation 35(2) of the Regulations reads as follows

The Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard. After the lapse of a time limit, an extension of time may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control.

21. The Chamber finds that Counsel for Mr Beina has successfully demonstrated that he was unable to file the supplementary observations within the time limit stipulated by the Chamber for reasons outside his control. In these circumstances, the Chamber will consider the supplementary observations in the determination of the merits.

B. Whether the Admissibility Challenge was Filed in Observance of Article 19(5) of the Statute

1. Submissions

22. Counsel for Mr Beina submits that the Admissibility Challenge should be dismissed *in limine* as it was not filed ‘at the earliest opportunity’, as required under article 19(5) of the Statute.³⁹ He argues that article 19(5) of the Statute requires that ‘a State submits an admissibility challenge as soon as the contours or parameters of the case in question are sufficiently clear as to indicate a conflict of jurisdiction exists’.⁴⁰

23. Counsel for Mr Beina refers to three ‘key dates’ to allege that the CAR has failed to challenge the admissibility of the case against Mr Beina in a timely manner despite being aware of a jurisdictional conflict between the Court and the CPS for many years:⁴¹

(i) following notification by the Office of the Prosecutor of the Court (‘OTP’) to the CPS that it was investigating similar crimes, in November 2019, the ‘CAR authorities knew [...] that an overlap concerning the scope of investigations pose[d] a potential jurisdictional conflict between the ICC and CPS’;⁴² (ii) by 12 December 2019, the CAR authorities could have known that a jurisdictional conflict existed since the CPS Special

³⁸ [Mr Beina’s Supplementary Observations](#), para. 5.

³⁹ [Mr Beina’s Observations](#), paras 11-12.

⁴⁰ [Mr Beina’s Observations](#), paras 14, 16.

⁴¹ [Mr Beina’s Observations](#), para. 12.

⁴² [Mr Beina’s Observations](#), para. 21.

Prosecutor had requested to suspend the Guen preliminary investigation in light of ongoing ICC investigations, and the CPS had rejected said request;⁴³ and (iii) on 3 May 2022, following the issuance of the CPS Arrest Warrant which ‘substantially mirrors’ the ICC Arrest Warrant, the CAR authorities ‘could have been definitively sure that a jurisdictional conflict existed between the two proceedings’.⁴⁴

24. Moreover, Counsel for Mr Beina argues that the submission of the Admissibility Challenge was delayed by the CAR authorities in a manner that ‘is patently incompatible with the requirement under article 19(5) of the Statute that admissibility challenges be submitted at the “earliest possible opportunity”’.⁴⁵ In his view, such a considerable delay warrants a dismissal of the Admissibility Challenge *in limine* as it amounts to ‘an abuse of a State Party’s right to challenge the admissibility of cases before the Court’.⁴⁶

25. The Prosecution asserts that article 19(5) requires States to challenge the admissibility of a case ‘at the earliest opportunity’ after a ‘conflict of jurisdictions has actually arisen’.⁴⁷ It further contends that both the Admissibility Challenge and the following submissions filed by the CAR fail to mention the formal notification to the CAR authorities of the Warrant of Arrest that occurred on 28 August 2019.⁴⁸

26. The CAR submits that the earliest opportunity for them to assert a conflict of jurisdiction between the Court and the CPS was August 2024.⁴⁹ Prior to this date, the relevant proceedings before the CPS, including the issuance of the CPS Arrest Warrant, were conducted by the Special Prosecutor in a confidential manner, and the CAR authorities had not informed the CPS of the content of the ICC Warrant of Arrest.⁵⁰

2. Determination

27. Article 19(5) of the Statute provides that ‘[a] state [...] shall make a challenge [on admissibility] at the earliest opportunity’. According to article 19(4) of the Statute ‘[...] [t]he challenge shall take place prior to or at the commencement of the trial’. The

⁴³ [Mr Beina’s Observations](#), para. 22.

⁴⁴ [Mr Beina’s Observations](#), para. 23.

⁴⁵ [Mr Beina’s Observations](#), para. 24.

⁴⁶ [Mr Beina’s Observations](#), para. 11.

⁴⁷ [Prosecution’s Observations](#), para. 5.

⁴⁸ [Prosecution’s Observations](#), para. 5.

⁴⁹ [CAR Observations on the Timing of the Admissibility Challenge](#), para. 10.

⁵⁰ [CAR Observations on the Timing of the Admissibility Challenge](#), para. 10.

Rules of Procedure and Evidence do not elaborate further on this specific aspect of article 19(4) and (5) of the Statute.

28. The Court has previously addressed the issue of the timing for an admissibility challenge. The Appeals Chamber found that ‘[a]rticle 19 (5) of the Statute requires a State to challenge admissibility as soon as possible once it is in a position to actually assert a conflict of jurisdictions’.⁵¹ States are not therefore ‘allowed to amend an admissibility challenge or to submit additional supporting evidence just because the State made the challenge prematurely’.⁵² It also noted that ‘admissibility proceedings should not be used as a mechanism or process through which a State may gradually inform the Court [...] as to the steps it is taking to investigate a case. Admissibility proceedings should rather only be triggered when a State is ready and able, *in its view*, to fully demonstrate a conflict of jurisdiction on the basis that the requirements set out in article 17 are met’.⁵³ To this end, the challenge must clearly show what is being investigated by the State – i.e. the contours or parameters of the case – for the Court to be ‘able to compare this against what is being investigated by the Prosecutor’.⁵⁴

29. In line with past decisions of the Court,⁵⁵ the Chamber considers that the ‘earliest opportunity’ for a State to file an admissibility challenge within the meaning of article

⁵¹ *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, [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”](#), 30 August 2011, ICC-01/09-01/11-307 (the ‘*Ruto et al.* Admissibility Judgment’), para. 46; *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, [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”](#), 30 August 2011, ICC-01/09-02/11-274 (the ‘*Muthaura et al.* Admissibility Judgment’) para. 45; see also *The Prosecutor v. Simone Gbagbo*, [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”](#), 27 May 2015, ICC-02/11-01/12-75-Red, para. 35 (the ‘*Gbagbo Appeals Judgment*’).

⁵² *Ruto et al. Admissibility Judgment*, para. 100; *Muthaura et al. Admissibility Judgment*, para. 98, see also *Gbagbo Appeals Judgment*, para. 35.

⁵³ *The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, [Judgment on the appeal of Libya against the decision of Pre-Trial Chamber I of 31 May 2013 entitled “Decision on the admissibility of the case against Saif Al-Islam Gaddafi”](#), 21 May 2014, ICC-01/11-01/11-547-Red, para. 164 (emphasis added) (the ‘*Gaddafi Appeals Judgment*’); see also *Gbagbo Appeals Judgment*, para. 35.

⁵⁴ *Gaddafi Appeals Judgment*, para. 84; see also *Gbagbo Appeals Judgment*, para.35.

⁵⁵ See Trial Chamber II, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, [Reasons for the Oral Decision on the Motion Challenging the Admissibility of the Case \(Article 19 of the Statute\)](#), 16 June 2009, ICC-01/04-01/07-1213-tENG (the ‘*Katanga Admissibility Decision*’), paras 44, 45; Pre-Trial Chamber I, *The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, [Decision on Libya’s](#)

19(5) of the Statute is construed around several factors: (i) the rationale behind article 19(5), namely that admissibility challenges should not be used by States as mechanisms to unduly delay or hinder the Court's proceedings; (ii) a challenge should be submitted as soon as a State considers itself in a position to assert a conflict of jurisdiction and demonstrate the inadmissibility of a case before the Court; (iii) bar exceptional circumstances, the State has only one chance to challenge the admissibility of a case, and thus should refrain from premature challenges; and (iv) the circumstances of the individual case must be taken into account with a view to determining whether the challenge was filed in an untimely manner.

30. In order to assess whether the CAR filed the Admissibility Challenge at the earliest opportunity within the meaning of article 19(5) of the Statute, the Chamber deems it appropriate to recall the timeline of events relevant to the issue at hand.

31. The Court issued the Warrant of Arrest against Mr Beina on 7 December 2018.⁵⁶ The following year, on 21 May 2019, the Special Prosecutor of the CPS opened a preliminary investigation (*enquête préliminaire*), in relation to alleged criminal incidents that occurred on 1 February, 5 February, and 6 March 2014 in Guen (the 'Guen case').⁵⁷ On 28 August 2019, the Registry formally notified the CAR authorities of the Warrant of Arrest.⁵⁸

32. On 6 November 2019, following a request for information sent by the CPS Special Prosecutor to the OTP,⁵⁹ the OTP confirmed that the crimes committed in Guen between 1 February and early April 2014 formed part of the charges against Mr Patrice-Edouard Ngaïssona and that the OTP was also considering prosecuting other direct perpetrators of the same atrocities.⁶⁰ The following month, on 12 December 2019, the CPS rejected a request by the Special Prosecutor⁶¹ for a suspension of the Guen

postponement of the execution of the request for arrest and surrender of Abdullah Al-Senussi pursuant to article 95 of the Rome Statute and related Defence request to refer Libya to the UN Security Council, 14 June 2013, ICC-01/11-01/11-354, paras 30-31.

⁵⁶ Warrant of Arrest for Edmond Beina, ICC-01/14-32 (the warrant of arrest was reclassified as public on 7 November 2024). See Reclassification Order.

⁵⁷ Admissibility Challenge, para. 61. See also ICC-01/14-191-Conf-Anx1.

⁵⁸ ICC-01/14-98-SECRET-Exp and ICC-01/14-98-SECRET-Exp-Anx. See also Prosecution's Observations, para. 5.

⁵⁹ ICC-01/14-191-Conf-Anx2. [REDACTED]. See also Admissibility Challenge, para. 6; Ordonnance de non-lieu et de renvoi, para. 3.

⁶⁰ See also Admissibility Challenge, para. 7; Ordonnance de non-lieu et de renvoi, para. 4.

⁶¹ ICC-01/14-191-Conf-Anx4. See also Admissibility Challenge, para. 9.

preliminary investigation before the CPS in light of the ongoing ICC investigation into similar facts.⁶² Thereafter, on 30 January 2020, the Special Prosecutor brought a formal application to open an investigation regarding offences committed in Guen, Gadzi, and Djomo on 1, 5 and 6 February, and 6 March 2014, explicitly mentioning Mr Beina.⁶³ On 3 May 2022, the CPS Arrest Warrant was issued, and rectified on 15 June 2023 to further specify the name of the suspect.⁶⁴

33. The following year, in March 2024, the CPS Special Prosecutor was informed of the existence of the ICC Arrest Warrant against Mr Beina, but not of the content.⁶⁵ Thereafter, on 16 June 2024, Mr Beina was arrested in the CAR,⁶⁶ with the [REDACTED] support of the Court.⁶⁷ The following day, on 17 June 2024, Mr Beina made his first appearance before the CPS and was charged with crimes against humanity and war crimes allegedly committed on 1, 5 and 6 February 2014 and 6 March 2014 in Guen, Gadzi and Djomo.⁶⁸

34. Following communication of the content of the ICC Arrest Warrant on 8 August 2024, the CPS Special Prosecutor notified the competent Ministry of the CAR of the existence of both the ICC Arrest Warrant and the CPS Arrest Warrant issued against Mr Beina for similar conduct.⁶⁹

35. At the outset, the Chamber recalls that States Parties must operate in all circumstances in good faith.⁷⁰ This requirement is particularly relevant in the context of the discharge of a State's obligation to arrest and surrender suspects while present in

⁶² ICC-01/14-191-Conf-Anx5. *See also* [Admissibility Challenge](#), paras 8-9; Ordonnance de non-lieu et de renvoi, paras 5-6.

⁶³ ICC-01/14-191-Conf-Anx6. *See also* [Admissibility Challenge](#), para. 10; Ordonnance de non-lieu et de renvoi, paras 8-9.

⁶⁴ ICC-01/14-191-Conf-Anx15 and ICC-01/14-191-Conf-Anx16. *See also* [Admissibility Challenge](#), para. 13; Ordonnance de non-lieu et de renvoi, paras 61-62.

⁶⁵ [CAR Observations on the Timing of the Admissibility Challenge](#), para. 8.

⁶⁶ [Admissibility Challenge](#), para. 15; ICC-01/14-191-Conf-Anx8, ICC-01/14-191-Conf-Anx9, ICC-01/14-191-Conf-Anx10. *See also* Ordonnance de non-lieu et de renvoi, para. 63.

⁶⁷ ICC-01/14-191-Conf-Anx9. *See also* [Admissibility Challenge](#), para. 15.

⁶⁸ ICC-01/14-191-Conf-Anx11. *See also* [Admissibility Challenge](#), para. 16; Ordonnance de non-lieu et de renvoi, para. 64.

⁶⁹ [CAR Observations on the Timing of the Admissibility Challenge](#), para. 9.

⁷⁰ Pre-Trial Chamber II, *Situation in Ukraine*, [Finding under article 87\(7\) of the Rome Statute on the non-compliance by Mongolia with the request by the Court to cooperate in the arrest and surrender of Vladimir Vladimirovich Putin and referral to the Assembly of States Parties](#), 24 October 2024, ICC-01/22-90, para. 14.

their territory. In such scenarios, it becomes of utmost importance for States to act in a transparent and cooperative manner.

36. It follows from the above that between November and December 2019, the CPS considered a potential jurisdictional conflict between the proceedings before the Court and those before the CPS. [REDACTED].⁷¹ [REDACTED].⁷² Rather than seeking clarification or further information, the CPS ordered the continuation of proceedings that culminated with the arrest of Mr Beina.

37. Moreover, it transpires from the above that in March 2024, the CPS knew of the concurrent existence of both warrants of arrest issued against Mr Beina as at that time it had been informed of the ICC Arrest Warrant, albeit not of its content. Thus, the CPS had a renewed opportunity to seek clarification or further information to verify whether both warrants of arrests concerned similar facts and conduct and/or communicate to the CAR authorities the existence of the CPS Arrest Warrant.

38. However, it is evident from the CAR submissions that it was only in August 2024, after the arrest of Mr Beina, that the Special Prosecutor of the CPS informed the competent State authorities of the concurrent existence of the ICC Arrest Warrant and the CPS Arrest Warrant, the latter having been issued confidentially. In these circumstances, the Chamber is of the view that, prior to August 2024, the competent CAR authorities were not in a position to determine that there was a jurisdictional conflict between the Court and the CPS, nor could they seek to demonstrate the inadmissibility of the case before the Court at an earlier juncture. This was because, while the CPS should have informed the competent authorities in CAR that a jurisdictional conflict had arisen in March 2024, given that it was then in possession of the relevant information to make that determination, it only did this in August 2024. The Chamber observes that it was only upon receiving notification of the CPS Arrest Warrant in August 2024 that the contours of the cases against Mr Beina before the Court and the CPS became sufficiently clear to such authorities so as to enable them to submit an admissibility challenge in accordance with article 19(5) of the Statute. The Admissibility Challenge was then filed within a reasonably short timeframe thereafter.

⁷¹ ICC-01/14-191-Conf-Anx4, para. 16.

⁷² ICC-01/14-191-Conf-Anx5, paras 105-107.

39. Considering the above, the Chamber finds that it has not been demonstrated that the Admissibility Challenge was not submitted at the earliest opportunity by the competent authorities of CAR within the meaning of article 19(5) of the Statute.

III. DETERMINATION ON THE MERITS

40. The Admissibility Challenge is brought by the CAR as a State having jurisdiction over the case against Mr Beina, in accordance with article 19(2)(b) of the Statute, and based on the ground of inadmissibility under article 17(1)(a) of the Statute.

41. At the outset, the Chamber notes the Prosecution's submissions that there is a need for clarity from the CAR authorities on the impact of ICC proceedings against Mr Beina on the legality of the CAR proceedings in light of article 37 of the Organic Law 15/003. The Chamber notes that the Organic Law confers primacy to the Court over the CPS in cases of concurrent jurisdiction.⁷³ Notwithstanding this, the legal framework of the Court, in particular articles 17 and 19 of the Rome Statute, provides that in situations where a State is investigating or prosecuting a case that is concurrently being investigated or prosecuted before the Court, the Court has to assess the question of admissibility in light of the principle of complementarity. This principle is a fundamental element of the system established by the Rome Statute by virtue of which the Court, as a court of last resort, was not created to compete with domestic jurisdictions,⁷⁴ and is only meant to complement them and act when these are either not investigating or prosecuting or they are unwilling or unable to genuinely do so. The primary responsibility to investigate and prosecute crimes therefore remains with the States.

42. In this case, where the national law grants primary jurisdiction to the Court, it is for the national jurisdiction, and not for the Court, to interpret and apply that law. Whether the CPS considers that it retains jurisdiction in a case where the national applicable law may indicate otherwise, is immaterial for the Court. The Court may only determine whether it retains jurisdiction on the basis of its own legal framework, not on the basis of the domestic law of the concerned State.

⁷³ [Prosecution's Observations](#), paras 4, 6.

⁷⁴ See e.g. [Katanga Admissibility Decision](#), para. 45.

43. For the reasons fully set out below, in the present case the Chamber considers that the material before it establishes to the required standard that the case against Mr Beina is genuinely being prosecuted at the domestic level and, therefore, the case must be declared inadmissible before this Court.

44. The Chamber observes that the Appeals Chamber has held that in considering an admissibility challenge brought under article 17(1)(a) of the Statute two questions shall be addressed: (i) whether, at the time of the proceedings in respect of an admissibility challenge, there is an ongoing investigation or prosecution of the case at the national level; and, in case the answer to the first question is in the affirmative, (ii) whether the State is ‘unwilling’ or ‘unable’ to genuinely carry out such investigation or prosecution within the terms further elaborated in articles 17(2) and 17(3) of the Statute.⁷⁵ The Chamber will now address these questions in turn.

A. Whether There is an Ongoing Investigation or Prosecution of the Case Against Mr Beina at the National Level

1. Submissions

45. The CAR authorities submit that ‘concrete and progressive investigative steps’ have been taken by the CPS in the case against Mr Beina.⁷⁶ In this regard, the CAR refers to (i) prosecutorial investigation proceedings carried out before the CPS, from the opening of the preliminary investigation in the *Guen* case on 21 May 2019 to the first appearance hearing of Mr Beina on 17 June 2024;⁷⁷ (ii) other steps ‘necessary for

⁷⁵ *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, [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](#), 25 September 2009, ICC-01/04-01/07-1497, paras 1, 75-79. See also Pre-Trial Chamber I, *The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, [Decision requesting further submissions on issues related to the admissibility of the case against Saif Al-Islam Gaddafi](#), 7 December 2012, ICC-01/11-01/11- 239, para. 6 (the ‘Gaddafi Decision Requesting Further Submissions on Admissibility’); Pre-Trial Chamber I, *The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, [Decision on the admissibility of the case against Abdullah Al-Senussi](#), 11 October 2013, ICC-01/11-01/11-466-Red, para. 26 (the ‘Al-Senussi Admissibility Decision’); Pre-Trial Chamber I, *The Prosecutor v. Simone Gbagbo*, [Decision on Côte d’Ivoire’s challenge to the admissibility of the case against Simone Gbagbo](#), 11 December 2014, ICC-02/11-01/12-47-Red, para. 27; Pre-Trial Chamber I, *Situation in the Republic of the Philippines*, [Public Redacted Version of “Authorisation pursuant to article 18\(2\) of the Statute to resume the investigation”](#), 26 January 2023, ICC-01/21-56-Red, para. 11; Pre-Trial Chamber I, *Situation in the Bolivarian Republic of Venezuela I*, [Decision authorising the resumption of the investigation pursuant to article 18\(2\) of the Statute](#), 27 June 2023, ICC-02/18-45, para. 95 (the ‘Venezuela Decision Pursuant to Article 18(2)’).

⁷⁶ [Admissibility Challenge](#), para. 113.

⁷⁷ See above paras 31-33. [Admissibility Challenge](#), paras 60-76.

the determination of truth’ in the proceedings taken thereafter;⁷⁸ and (iii) hearings and/or questioning⁷⁹ before the investigating judge as well as orders issued by the latter.⁸⁰ It also refers to the investigating judges’ *Ordonnance de non-lieu et de renvoi* issued on 6 December 2024, [REDACTED].⁸¹

46. Moreover, the CAR authorities indicate that, as a result of the CPS proceedings, and up to the filing of the Admissibility Challenge, several documents were collected and produced, including witness statements and transcripts of interviews, statements of persons charged, seizure reports, several analysis documents of the *Unité Spéciale de Police Judiciaire* and United Nations consultants, and other documents of the Prosecutor of the ICC.⁸² The CAR also submits that the CPS and ICC investigations concern ‘substantially the same case’ because the conduct allegedly committed by Mr Beina as specified in the ICC Arrest Warrant is substantially similar to that alleged by the Special Prosecutor.⁸³ In particular, it submits that the facts alleged and the crimes charged in both proceedings are almost identical, with some minor differences in the geographical and temporal scope of the conduct.⁸⁴

47. Counsel for Mr Beina submits that the CAR ‘bears the burden of proof to show that the case is inadmissible’,⁸⁵ and by 3 May 2022, it had become clear that the ICC investigations and those carried out before the CPS concerned the same person, and the charges concerned essentially identical patterns of alleged criminal conduct.⁸⁶

48. Further, the Prosecution submits that the proceedings against Mr Beina before the CPS and the Court substantially involve the same conduct,⁸⁷ and the OPCV submits

⁷⁸ [Admissibility Challenge](#), paras 60, 73-74.

⁷⁹ [Admissibility Challenge](#), paras 75-76; *Ordonnance de non-lieu et de renvoi*, paras 65, 80-83. *See also* ICC-01/14-191-Conf-Anx30, ICC-01/14-191-Conf-Anx32, ICC-01/14-191-Conf-Anx33, ICC-01/14-191-Conf-Anx34 and ICC-01/14-191-Conf-Anx35.

⁸⁰ [Admissibility Challenge](#), paras 18, 75. *See also* *Ordonnance de non-lieu et de renvoi*, paras 65-67. *See also* ICC-01/14-191-Conf-Anx12 and ICC-01/14-191-Conf-Anx31. Notably, on 19 June 2024, a hearing with Mr Beina, [REDACTED] was held before the investigating judge, at the end of which an order of provisional detention and a warrant committing Mr Beina to custody for a period of one year was issued by the investigating judge.

⁸¹ *Ordonnance de non-lieu et de renvoi*, pp. 184-185, paras 1150-1151.

⁸² [Admissibility Challenge](#), paras 110-111.

⁸³ [Admissibility Challenge](#), paras 52-59.

⁸⁴ [Admissibility Challenge](#), paras 54-58.

⁸⁵ [Mr Beina’s Observations](#), para. 10.

⁸⁶ [Mr Beina’s Observations](#), para. 23.

⁸⁷ [Prosecution’s Observations](#), para. 2, comparing the [Warrant of Arrest](#), para. 16, p. 22, with [ICC-01/14-208-AnxI](#), para. 8 and *Ordonnance de non-lieu et de renvoi*, pp. 184-185, para. 1150.

that they concern substantially the same incidents and crimes.⁸⁸ In addition, the OPCV submits that the territorial and temporal scope of the crimes attributed to Mr Beina in the Warrant of Arrest overlaps with that of the crimes imputed to him before the CPS.⁸⁹

2. Determination

49. The Chamber notes that article 17(1)(a) of the Statute, in the relevant part, states that ‘the Court shall determine that a case is inadmissible where [t]he case is being investigated or prosecuted by a State which has jurisdiction over it’.

50. With respect to the meaning of the term ‘the case is being investigated’ in article 17(1)(a) of the Statute, the Appeals Chamber has held that this must be understood in the context to which this is applied.⁹⁰ Article 19 of the Statute relates to the admissibility of ‘concrete cases’ which are *inter alia* defined by ‘the warrant of arrest or summons to appear issued under article 58’,⁹¹ and the defining elements of such cases are the individual and the alleged conduct.⁹² The term ‘the case is being investigated’ also refers to the taking by the State of ‘concrete and progressive steps’ to ascertain whether the suspect is responsible for the alleged conduct.⁹³ These steps include interviewing witnesses or suspects, collecting documentary evidence, or carrying out forensic analyses.⁹⁴ The burden of proof lies with the State challenging the admissibility of a case and the evidence presented must be of a ‘sufficient degree of specificity and probative value that demonstrates that it is indeed investigating the case’, while ‘it is not sufficient merely to assert that investigations are ongoing’.⁹⁵

⁸⁸ [OPCV Observations](#), paras 3, 39-41, 44-46.

⁸⁹ [OPCV Observations](#), paras 42-43.

⁹⁰ [Ruto et al. Admissibility Judgment](#), para. 39; [Muthaura et al. Admissibility Judgment](#), para. 38. See also Pre-Trial Chamber I, *Situation in the Bolivarian Republic of Venezuela I*, [Decision authorising the resumption of the investigation pursuant to article 18\(2\) of the Statute](#), 27 June 2023, ICC-02/18-45, para. 64.

⁹¹ [Ruto et al. Admissibility Judgment](#), para. 40; [Muthaura et al. Admissibility Judgment](#), para. 39.

⁹² [Ruto et al. Admissibility Judgment](#), para. 40; [Muthaura et al. Admissibility Judgment](#), para. 39. See also [Al-Senussi Admissibility Decision](#), para. 66(i).

⁹³ [Al-Senussi Admissibility Decision](#), para. 66(ii); See also, *The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, [Decision requesting further submissions on issues related to the admissibility of the case against Saif Al-Islam Gaddafi](#), 7 December 2012, ICC-01/11-01/11-239, para. 11; *The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, [Decision on the admissibility of the case against Saif Al-Islam Gaddafi](#), 31 May 2013, ICC-01/11-01/11-344-Red, paras 54, 73 (hereinafter ‘*Gaddafi Admissibility Decision*’).

⁹⁴ [Ruto et al. Admissibility Judgment](#), para. 41; [Muthaura et al. Admissibility Judgment](#), para. 40. See also [Gaddafi Admissibility Decision](#), para. 55.

⁹⁵ [Ruto et al. Admissibility Judgment](#), para. 2; [Muthaura et al. Admissibility Judgment](#), para. 2; [Gaddafi Admissibility Decision](#), para. 52; [Gbagbo Appeals Judgment](#), paras 29, 128.

51. It follows from the above that, under article 17(1)(a) of Statute, the CAR must demonstrate that relevant national proceedings cover (i) the same individual; and (ii) substantially the same conduct as alleged in the proceedings before the Court.⁹⁶ It must also show that it has taken ‘concrete and progressive steps’ to ascertain whether Mr Beina is responsible for the alleged conduct. In this respect, the Chamber notes that the assessment of the national proceedings must focus on the alleged conduct rather than on its legal characterisation.⁹⁷ Although it is not required that these proceedings concern each incident mentioned in a warrant of arrest issued by the Court, this may constitute a relevant indicator.⁹⁸

52. With respect to the individual investigated and the alleged conduct, the Chamber notes that Mr Beina is clearly identified as a suspect in both the ICC Arrest Warrant and the CPS Arrest Warrant.⁹⁹ Moreover, the Chamber is of the view that the CPS proceedings concern ‘substantially the same conduct’ as the ICC proceedings. [REDACTED].¹⁰⁰ Moreover, the territorial and temporal scope of the crimes alleged in the ICC Arrest Warrant and the CPS Arrest Warrant overlaps. The ICC Arrest Warrant refers to crimes allegedly committed from 1 February until early April 2014 in Guen¹⁰¹, and the CPS Arrest Warrant [REDACTED].¹⁰²

53. Further, some incidents referred to in the ICC Arrest Warrant are included in the proceedings before the CPS. This constitutes a relevant indicator that the cases currently before both jurisdictions cover substantially the same conduct. [REDACTED].¹⁰³ [REDACTED],¹⁰⁴ [REDACTED].¹⁰⁵

54. As to whether the CAR authorities have demonstrated that ‘concrete and progressive steps’ have been taken, the Chamber recalls that since 2019 the CPS has

⁹⁶ *Ruto et al. Admissibility Judgment*, para. 40; *Muthaura et al. Admissibility Judgment*, para. 39. See also *Al-Senussi Admissibility Decision*, para. 66(i);

⁹⁷ *Al-Senussi Admissibility Decision*, para. 66 (iv).

⁹⁸ *Al-Senussi Admissibility Decision*, paras 77-79.

⁹⁹ *Warrant of Arrest*, p. 1 and para. 2; ICC-01/14-191-Conf-Anx15, p. 2; ICC-01/14-191-Conf-Anx16, p. 2.

¹⁰⁰ [REDACTED], see *Warrant of Arrest*, para. 2 and ICC-01/14-191-Conf-Anx15, p. 1.

¹⁰¹ *Warrant of Arrest*, para. 16.

¹⁰² ICC-01/14-191-Conf-Anx15, pp. 3-4.

¹⁰³ [REDACTED], see *Warrant of Arrest*, para. 16(a) and ICC-01/14-191-Conf-Anx15, p. 2; [REDACTED], see *Warrant of Arrest*, para. 16(b) and ICC-01/14-191-Conf-Anx15, p. 2.

¹⁰⁴ *Warrant of Arrest*, para. 16(a) and ICC-01/14-191-Conf-Anx15, p. 2.

¹⁰⁵ *Warrant of Arrest*, para. 16(b) and ICC-01/14-191-Conf-Anx15, p. 2.

taken various investigative steps.¹⁰⁶ These resulted in the issuance of the CPS Arrest Warrant in 2022, and the subsequent arrest and first appearance of Mr Beina before the CPS in June 2024, at which time he was charged with crimes against humanity and war crimes allegedly committed on 1, 5 and 6 February 2014 and 6 March 2014 in Guen, Gadzi and Djomo.¹⁰⁷ In addition, in the context of the CPS proceedings, several documents were collected and produced, including witness statements and transcripts of interviews, statements of persons charged, seizure reports, and several analysis documents.¹⁰⁸

55. In light of the above, the Chamber is satisfied that the material placed before it demonstrates that the CAR authorities have taken concrete and progressive steps to ascertain the criminal responsibility of Mr Beina for substantially the same conduct as alleged in the proceedings before the Court. Accordingly, the Chamber finds that the case against Mr Beina is currently being prosecuted by a State which has jurisdiction over it within the meaning of article 17(1)(a) of the Statute.

B. Whether the CAR is ‘Unwilling’ or ‘Unable’ to Genuinely Carry Out Such Investigation or Prosecution Within the Meaning of Articles 17(2) and 17(3) of the Statute

1. Submissions

56. The CAR submits that the circumstances that led it to make a referral to the Court in 2014 have changed significantly and that the investigative steps undertaken by the CPS show its willingness and ability to carry out the investigation and prosecution of Mr Beina.¹⁰⁹ It states that it is willing to do so, (i) since there has been no attempt to shield Mr Beina from criminal responsibility and no unjustified delay in the national proceedings;¹¹⁰ and (ii) considering that the proceedings before the CPS have been conducted independently and impartially, in a manner that is not inconsistent with an intent to bring the person charged to justice.¹¹¹

¹⁰⁶ See above paras 31-32.

¹⁰⁷ See above para. 33.

¹⁰⁸ [Admissibility Challenge](#), paras 110-111, and references therein. See also *Ordonnance de non-lieu et de renvoi*, paras 4-8; 14-23.

¹⁰⁹ [Admissibility Challenge](#), paras 114.

¹¹⁰ [Admissibility Challenge](#), paras 133-35.

¹¹¹ [Admissibility Challenge](#), para. 136.

57. The CAR further submits that it is able to carry out the investigation and prosecution of Mr Beina, within the meaning of article 17(3) of the Statute, on the ground that Mr Beina, who was arrested on 16 June 2024 by the CAR authorities with the support of the Court, made his first appearance the following day and has remained in custody in the CAR since then.¹¹² It also submits that the CPS has conducted numerous investigative acts and collected evidence with the cooperation of the OTP.¹¹³ It further indicates that the CPS has prepared protection plans for witnesses,¹¹⁴ and that despite numerous security and logistical difficulties, the CPS can rely on the cooperation and support of the Court, United Nation Development Programme, United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic and other partners.¹¹⁵

58. Counsel for Mr Beina submits that the proceedings in the CAR (i) are not being conducted in an independent and impartial manner within the meaning of article 17(2)(c) of the Statute; and (ii) fall short of ensuring Mr Beina's fair trial rights, specifically the right to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him, and the right to counsel.¹¹⁶

59. While the OTP does not advance any submissions on these points,¹¹⁷ the OPCV contends that the documents provided by the CAR authorities do not indicate that it is either unwilling or unable to carry out investigations and prosecutions against Mr Beina.¹¹⁸

2. Determination

60. Article 17(1)(a) of the Statute states in relevant part that a case is inadmissible where it 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'.

¹¹² [Admissibility Challenge](#), para. 138.

¹¹³ [Admissibility Challenge](#), paras 82-102, 139. *See also* Ordonnance de non-lieu et de renvoi, paras 14-15, 17-19, 23.

¹¹⁴ [Admissibility Challenge](#), para. 141.

¹¹⁵ [Admissibility Challenge](#), para. 142.

¹¹⁶ [Mr Beina's Observations](#), para. 30; [Mr Beina's Supplementary Observations](#), para. 2.

¹¹⁷ [Prosecution's Observations](#), para. 7.

¹¹⁸ [OPCV Observations](#), para. 47.

61. With regard to unwillingness, article 17(2) of the Statute states:

In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:

- (a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;
- (b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;
- (c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.

62. The Chamber recalls that this provision defines the circumstances in which a State is unwilling genuinely to carry out the investigation or prosecution. It provides an exception to the rule that a case is inadmissible before the Court if, as in the current case, it is being investigated or prosecuted by a State which has jurisdiction over it.¹¹⁹ The purpose of this exception is to ensure that the principle of complementarity 'is not abused, so that it would be contrary to the overall purpose of the Statute, which is to put an end to impunity for the perpetrators of the most serious crimes of concern to the international community as a whole'.¹²⁰

63. In particular, with regard to the circumstances described in article 17(2)(c), the Chamber recalls at the outset that it is not for this Court to determine whether the judicial system of a particular State is generally affected by a lack of independence and impartiality.¹²¹ This provision is primarily concerned with whether the national

¹¹⁹ *The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah 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 ('*Al-Senussi Appeals Judgment*') para. 216.

¹²⁰ *Al-Senussi Appeals Judgment*, para. 217.

¹²¹ [Venezuela Decision Pursuant to Article 18\(2\)](#), para.128. See also *Al-Senussi Appeals Judgment*, para. 219 where the Appeals Chamber has noted that 'the Court was not established to be an international court of human rights, sitting in judgment over domestic legal systems to ensure that they are compliant with international standards of human rights' and that the intention behind article 17 of the Statute is not for the Court to be 'passing judgment generally on the internal functioning of the domestic legal systems of States in relation to individual guarantees of due process'. See further paras 225-226.

proceedings are being conducted in a manner that would enable the suspect to evade justice, and the notions of independence and impartiality included therein must be seen in that light. In other words, the provision is not primarily concerned with whether the rights of the suspect are being violated.¹²²

64. In addition to demonstrating a lack of independence and impartiality under article 17(2)(c), it must be shown that the proceedings are or have been ‘conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice’.¹²³ In this respect, the Appeals Chamber has stated that the determination that must be made does ‘not involve an assessment of whether the due process rights of a suspect have been breached per se’.¹²⁴ The notion of proceedings ‘being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice’ generally refers ‘to proceedings which will lead to a [sic] suspect evading justice, in the sense of not appropriately being tried genuinely to establish his or her criminal responsibility’.¹²⁵ However, ‘there may be circumstances [...] whereby violations of the rights of the suspect are so egregious that the proceedings can no longer be regarded as being capable of providing any genuine form of justice to the suspect so that they should be deemed, in those circumstances, to be “inconsistent with an intent to bring that person to justice”’.¹²⁶

65. With regard to the inability of a State to genuinely investigate or prosecute, article 17(3) states:

In order to determine inability in a particular case, the Court must consider whether due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.

66. It is recalled that under this provision, the Chamber must be satisfied that there is both a ‘total or substantial collapse or unavailability’ of the national judicial system and that, as a result, ‘the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings’.¹²⁷

¹²² [Al-Senussi Appeals Judgment](#), para. 221.

¹²³ [Al-Senussi Appeals Judgment](#), para. 221.

¹²⁴ [Al-Senussi Appeals Judgment](#), para. 230(2).

¹²⁵ [Al-Senussi Appeals Judgment](#), para. 230(2).

¹²⁶ [Al-Senussi Appeals Judgment](#), para. 230(3).

¹²⁷ [Al-Senussi Appeals Judgment](#), para. 265.

a) *Whether the CAR is ‘unwilling’ to genuinely investigate or prosecute the case*

67. As set out above, the CAR has demonstrated to a sufficient degree that the case against Mr Beina is currently being prosecuted by a State which has jurisdiction over it within the meaning of article 17(1)(a) of the Statute. There is no information placed before the Chamber to suggest that such proceedings aim at shielding Mr Beina from criminal responsibility, within the meaning of article 17(2)(a) of the Statute. Moreover, from the material available before the Court, there does not appear to have been any unjustified delay in the proceedings, within the meaning of article 17(2)(b) of the Statute. The CAR itself refers to judicial orders issued by the CPS seeking to extend the proceedings due to the complexity of the investigation,¹²⁸ which would indeed appear to justify any possible delays in the proceedings.

68. In relation to article 17(2)(c) of the Statute, Counsel for Mr Beina submits that the CAR’s judicial system, including the CPS, ‘fundamentally lacks independence’ as it is ‘controlled and significantly influenced by the executive branch’.¹²⁹ In the alternative, Counsel contends that the CAR’s judicial system lacks the appearance of independence.¹³⁰ In support of his submissions, he refers to an ‘Expert Report’. Considering that this ‘Expert Report’ lacks concrete information specific to the proceedings against Mr Beina, as well as the fact that the CAR has not been privy to it, the Chamber does not deem it relevant nor appropriate to rely on the Expert Report for its determination.

69. The Chamber notes that the submissions advanced by Counsel for Mr Beina focus solely on the CAR’s judicial system as a whole and fail to substantiate how the specific proceedings against Mr Beina would be affected by the alleged lack of independence and impartiality of the CAR’s judicial system.¹³¹ Moreover, the manner in which *other* criminal proceedings are conducted in the CAR is, in itself, irrelevant for the purpose of establishing the first criterion under article 17(2)(c) of the Statute. Given that it has not been established that the proceedings against Mr Beina before the CPS are not being

¹²⁸ [Admissibility Challenge](#), paras 67, 135.

¹²⁹ [Mr Beina’s Observations](#), para. 34-35. *See also* [Mr Beina’s Observations](#), paras 38, 44, 47-48.

¹³⁰ [Mr Beina’s Observations](#), para. 50.

¹³¹ [Mr Beina’s Observations](#), paras 34-50. To substantiate his submissions, Counsel for Mr Beina refers to an Expert Report, *see* [Mr Beina’s Observations](#), para 10. *See also* ICC-01/14-213-Conf-Exp-Anx1.

conducted independently or impartially (first criterion in article 17(2)(c) of the Statute), it is not necessary to assess whether such proceedings are or have been conducted in a manner which is inconsistent with an intent to bring the person to justice, as required by the second criterion espoused in article 17(2)(c) of the Statute.

70. Counsel for Mr Beina also argues that ‘there is ample evidence that [Mr Beina’s] right to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him [...] cannot be guaranteed in the CAR’ due to witnesses’ legitimate fears of reprisals from the CAR Government or its supporters’.¹³² He submits that egregious violations of the rights of the suspect are a relevant factor to be taken into account when assessing the genuineness of the State’s ability and willingness to provide justice.¹³³ The Chamber recalls that pursuant to article 17(2)(c) of the Statute, it must determine whether the alleged violations of the suspect’s rights are so egregious that the proceedings can no longer be regarded as being capable of providing any genuine form of justice to the suspect so that they should be deemed, in those circumstances, to be ‘inconsistent with an intent to bring that person to justice’.¹³⁴

71. The Chamber considers that, at most, the submissions advanced by Counsel in this regard are speculative since they refer to alleged instances whereby individuals or witnesses who were associated with or provided information to defence teams representing ‘political opponents’ of the CAR government, would have been the subject of reprisals or expressed fears of retaliation.¹³⁵ From the material available, none of these alleged instances concern proceedings involving Mr Beina.

72. Moreover, the Chamber notes that the CPS has a witness protection mechanism.¹³⁶ Although Counsel for Mr Beina refers to reports from international non-governmental organisations on the inadequacy of such mechanism,¹³⁷ there is currently no information before the Chamber suggesting that witnesses in the proceedings against Mr Beina would be deliberately exposed to, or intentionally left unprotected from

¹³² [Mr Beina’s Observations](#), paras 52, 54. See also [Mr Beina’s Observations](#), paras 56-59.

¹³³ [Mr Beina’s Observations](#), para. 51 referring to the [Al-Senussi Appeals Judgment](#), para. 230(3).

¹³⁴ [Al-Senussi Appeals Judgment](#), para. 230(3).

¹³⁵ [Mr Beina’s Observations](#), paras 56-60.

¹³⁶ [Admissibility Challenge](#), paras 48 and 141.

¹³⁷ [Mr Beina’s Observations](#), para. 60.

reprisals. It follows that it has not been demonstrated that Mr Beina's right to obtain the attendance and examination of witnesses is being violated, let alone established that such an alleged violation would be so egregious so as to render the proceedings incapable of providing any genuine form of justice so that they should be deemed to be 'inconsistent with an intent to bring the person concerned to justice'.

73. Counsel for Mr Beina also contends that 'Mr Beina's fair trial rights are being further violated through the denial of his right to counsel' in national proceedings before the CPS.¹³⁸ In support of this argument, Counsel submits Mr Beina's Declaration, whereby the latter states that 'at one time, he had been represented by [counsel] in proceedings before [the CPS]' but since the appointment of his counsel to represent him before the Court, he has had no communication with his CPS duty counsel.¹³⁹ Mr Beina states that, at the time of the Declaration, he was not represented by a lawyer before the CPS and had not received information regarding the status of the CAR proceedings.¹⁴⁰

74. The Chamber notes that the CPS' legal framework guarantees Mr Beina's right to be represented by counsel.¹⁴¹ The material before the Chamber indicates that Mr Beina has been represented by counsel in proceedings before the CPS. Indeed, at the time of his arrest, Mr Beina was assisted by duty counsel, 'who was also present during his first appearance [...] and with whom he was able to confer in advance'.¹⁴² [REDACTED].¹⁴³ Also, in recent submissions before the Chamber, Counsel of Mr Beina specifies that Mr Beina's CPS Counsel has recently filed submissions on his behalf before the CPS,¹⁴⁴ and transmits a copy of these submissions undersigned by said counsel.¹⁴⁵

¹³⁸ [Mr Beina's Supplementary Observations](#), para. 2.

¹³⁹ [Mr Beina's Supplementary Observations](#), para. 11.

¹⁴⁰ [Mr Beina's Supplementary Observations](#), paras 12-13.

¹⁴¹ Article 5D(d) of Law no. 18-010 of the CAR on the establishment of the CPS Rule of Procedure and Evidence. *See also* [Mr Beina's Supplementary Observations](#), para. 7.

¹⁴² [Admissibility Challenge](#), para. 73. *See also* ICC-01/14-191-Conf-Anx11.

¹⁴³ Ordonnance de non-lieu et de renvoi, paras 65 and 67. *See also* ICC-01/14-191-Conf-Anx12, ICC-01/14-191-Conf-Anx30, ICC-01/14-191-Conf-Anx32, ICC-01/14-191-Conf-Anx33, ICC-01/14-191-Conf-Anx34, ICC-01/14-191-Conf-Anx35.

¹⁴⁴ *See* Defence Request for State Party Cooperation, 22 August 2025, ICC-01/14-216 (these submissions were filed on 22 August 2025 but notified on 25 August 2025; the French version was notified on 10 September 2025, ICC-01/14-216-tFRA), with two annexes (ICC-01/14-216-Anx1 and ICC-01/14-216-Anx2).

¹⁴⁵ *See* ICC-01/14-216-Anx2.

75. While Mr Beina indicates that, at the time of the Declaration, he did not have any legal representation in the proceedings before the CPS, the above shows that he was represented by duty counsels at different stages of the proceedings, including recently. Counsel for Mr Beina is also not indicating whether the issue of an alleged lack of legal representation has been raised before the CPS and, if so, how it was addressed by said jurisdiction. In these circumstances, the Chamber considers it has not been demonstrated that the right of Mr Beina to counsel is being violated, let alone established that such an alleged violation would be so egregious so as to render the proceedings incapable of providing any genuine form of justice to the suspect so that they should be deemed to be ‘inconsistent with an intent to bring the person concerned to justice’ within the meaning of article 17(2)(b) of the Statute.

76. In light of the above findings, the Chamber does not deem it necessary to address other arguments advanced by the CAR regarding, for instance, judicial economy.¹⁴⁶

b) Whether the CAR is ‘unable’ to genuinely investigate or prosecute the case

77. The Chamber notes that the material before it does not demonstrate that the CAR’s judicial system have, totally or substantially, collapsed or become unavailable. To the contrary, the material submitted demonstrates that the CAR has been able to obtain both the suspect and the necessary evidence to carry out proceedings against Mr Beina.¹⁴⁷

c) Conclusion

78. The Chamber therefore concludes that the CAR is willing and able to genuinely investigate and prosecute the case against Mr Beina within the meaning of article 17(2) and (3) of the Rome Statute. While the Chamber notes the alleged victims’ wish that proceedings take place in the CAR, it emphasises that such views although relevant to the broader interest of justice and victims’ participation under article 68 of the Statute, the Chamber refers to them in order to support the appropriateness of the domestic forum in this case.¹⁴⁸ Indeed, the proximity of the proceedings is the main reason upon

¹⁴⁶ [Admissibility Challenge](#), paras 143-155.

¹⁴⁷ [Admissibility Challenge](#), paras 82-102, 138-139, 141. *See also* Ordonnance de non-lieu et de renvoi, paras 14-15, 17-19, 23.

¹⁴⁸ [OPCV Observations](#), paras 4, 56-57.

which alleged victims favour a domestic trial.¹⁴⁹ The Chamber emphasises that the determination that is being made is only applicable to the case of Mr Beina, based on the material before it, and is without prejudice to any potential future determination concerning other matters within the broader CAR situation.

79. For the above mentioned reasons, the Chamber determines that the case against Mr Beina before the Court is inadmissible under article 17(1)(a) of the Statute.

¹⁴⁹ [OPCV Observations](#), para. 56.

FOR THESE REASONS, THE CHAMBER HEREBY

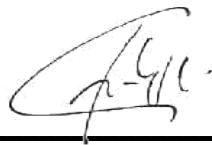
REJECTS the request by Counsel for Mr Beina to dismiss the Admissibility Challenge *in limine*;

DETERMINES that the case against Mr Beina is inadmissible under article 17(1)(a) of the Statute.

Done in English. A French translation will follow. The English version remains authoritative.



Judge Rosario Salvatore Aitala
Presiding



Judge Sergio Gerardo Ugalde
Godínez



Judge Haykel Ben Mahfoudh

Dated this Friday, 12th of September 2025

At The Hague, The Netherlands