

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/14**
Date: **19 September 2025**

THE APPEALS CHAMBER

Before:
Judge Tomoko Akane
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze
Judge Erdenebalsuren Damdin

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

Public

Public Redacted Version of “Defence Notice of Appeal against the ‘Decision on the Central African Republic’s challenge to the admissibility of the case against Edmond Beina’”

Source: **Counsel for Mr Beina**

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

☒ **The Office of the Prosecutor**

☒ **Counsel for the Defence**
Counsel for Mr Beina

☐ **Legal Representatives of the Victims**

☐ **Legal Representatives of the Applicants**

☐ **Unrepresented Victims**

☐ **Unrepresented Applicants
(Participation/Reparation)**

☒ **The Office of Public Counsel for
Victims**

☐ **The Office of Public Counsel for the
Defence**

☒ **States' Representatives**
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 Defence of Mr Edmond Beina (the ‘Defence’ and ‘Mr Beina’, respectively) hereby provides notice of appeal against the decision of Pre-Trial Chamber II (the ‘Pre-Trial Chamber’) of the International Criminal Court (the ‘Court’ or ‘ICC’) entitled ‘Decision on the Central African Republic’s challenge to the admissibility of the case against Edmond Beina’ dated 12 September 2025 (‘Impugned Decision’).¹
2. The Defence appeals the whole of the Impugned Decision insofar as the five (5) errors of law committed by the Pre-Trial Chamber, outlined in summary below, warrant the reversal of the Impugned Decision as a whole, pursuant to Rule 158(1) of the Rules of Procedure and Evidence (‘Rules’).
3. This appeal is brought pursuant to Articles 82(1)(a) and 19(6) of the Rome Statute (‘Statute’), Rule 154(1) of the Rules, and Regulation 64(1) of the Regulations of the Court (‘Regulations’).

II. PROCEDURAL HISTORY

4. The Central African Republic (‘CAR’) ratified the Statute on 3 October 2001.
5. On 30 May 2014, the CAR referred the situation in the CAR since 1 August 2012 to the Office of the Prosecutor of the Court (‘Prosecution’ or ‘OTP’).²
6. On 7 December 2018, following an under seal and *ex parte* application under Article 58(1) of the Statute by the Prosecution, the Pre-Trial Chamber, in a prior composition, issued, under seal and *ex parte*, a warrant of arrest for Mr Beina for alleged crimes under the jurisdiction of the Court (‘ICC Arrest Warrant’).³
7. On 3 May 2022, *Chambre d’instruction N°3* of the CPS issued a warrant for the arrest of Mr Beina for alleged crimes within the jurisdiction of the CPS (‘CPS Arrest Warrant’).⁴

¹ Decision on the Central African Republic’s challenge to the admissibility of the case against Edmond Beina, ICC-01/14-217-Conf, 12 September 2025 (public redacted version notified the same day: [ICC-01/14-217-Red](#)) (‘Impugned Decision’).

² Letter from the Minister of Justice of the Central African Republic to the Prosecutor of the International Criminal Court, 30 May 2014, in Preseidency, [Annex 1 to Decision Assigning the Situation in the Central African Republic II to PTC II](#), ICC-01/14-1-Anx1, 18 May 2014.

³ Warrant of Arrest for Edmond Beina, ICC-01/14-32-US-Exp, 7 December 2018 (under seal and *ex parte*, only available to the Prosecution; re-classified as public 7 November 2024, [ICC-01/14-32](#)).

⁴ Requête de la République Centrafricaine en irrecevabilité de l’affaire contre M. Emond BEINA, ICC-01/14-189-US-Exp-AnxII, 22 October 2024 (under seal and *ex parte*, only available to the Prosecution and Registry; public

8. On 16 June 2024, Mr Beina was arrested in the CAR with the assistance of *inter alia* personnel from the OTP.⁵

9. On 22 October 2024, the CAR filed, under seal and *ex parte*, a challenge under Article 19(2)(b) of the Statute to the admissibility of the case against Mr Beina before the ICC ('Admissibility Challenge').⁶

10. On 4 February 2025, the Pre-Trial Chamber *inter alia* invited the Prosecution, the Defence, and the Office of Public Counsel for Victims ('OPCV') to submit observations on the Admissibility Challenge.⁷

11. On 17 March 2025, the Prosecution,⁸ the Defence,⁹ and the OPCV¹⁰ submitted their respective observations on the Admissibility Challenge.

12. On 20 March 2024, Mr Beina submitted supplemental observations on the Admissibility Challenge.¹¹

13. On 28 August 2025, the Defence requested the Pre-Trial Chamber direct a request for cooperation to the CAR for the purpose of ordering the immediate suspension or stay of the ongoing domestic criminal proceedings against Mr Beina before the CPS until proceedings before the Court concerning the Admissibility Challenge have been finalised, including any potential appeals ('Defence Request for Cooperation').¹²

14. On 12 September 2025, the Pre-Trial Chamber issued the Impugned Decision.¹³

redacted version filed 14 November 2024, [ICC-01/14-194-AnxI](#); 232 confidential annexes transmitted on 1 November 2024: ICC-01/14-191-Conf) ('Admissibility Challenge'), Annex 15.

⁵ Admissibility Challenge, para. 16, Annexes 8, 9, 10.

⁶ Admissibility Challenge.

⁷ [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, 4 February 2025, para. 10.

⁸ Prosecution response to "Request of the Central African Republic challenging the admissibility of the case against Mr Edmond Beina" (ICC-01/14-194-AnxI), ICC-01/14-212-Conf, 17 March 2025 (public redacted version filed 7 May 2025, [ICC-01/14-212-Red](#)).

⁹ Written Observations of Mr Edmond Beina on the Central African Republic's Admissibility Challenge, 17 March 2025, ICC-01/14-213-Conf (public redacted version filed the same day, [ICC-01/14-213-Red](#)) ('Defence Observations').

¹⁰ Observations on behalf of Victims on the Central African Republic's challenge to the admissibility of the case against Edmund Beina, ICC-01/14-211-Conf, 17 March 2025 (public redacted version filed 7 May 2025, [ICC-01/14-211-Red](#)).

¹¹ Supplementary Observations of Mr Edmond Beina on the Central African Republic's Admissibility Challenge, ICC-01/14-214-Conf, 20 March 2025 (public redacted version filed 7 May 2025, [ICC-01/14-214-Red](#)).

¹² [Defence Request for State Party Cooperation](#), ICC-01/14-216, 25 August 2025.

¹³ Impugned Decision.

15. On the same day, the Pre-Trial Chamber rejected the Defence Request for Cooperation as moot in light of the Impugned Decision.¹⁴

III. GROUNDS OF APPEAL

A. Ground 1: The Pre-Trial Chamber Erred in Law in Finding That the Admissibility Challenge Was Filed in Compliance with Article 19(5) of the Statute

16. The Defence submitted that the Admissibility Challenge was not filed ‘at the earliest opportunity’, as required by Article 19(5) of the Statute.¹⁵ On this basis, it requested that the Pre-Trial Chamber dismiss the Admissibility Challenge *in limine*.¹⁶

17. The Pre-Trial Chamber found that, while the Registry formally notified the CAR authorities of the ICC Arrest Warrant on 28 August 2019¹⁷ and the CPS Arrest Warrant was issued on 3 May 2022,¹⁸ it was only on 8 August 2024 that ‘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’.¹⁹

18. Moreover, the Pre-Trial Chamber considered that ‘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’.²⁰ It further found that ‘[f]ollowing 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’.²¹

19. On the basis of these findings of fact, the Pre-Trial Chamber found as follows:

[P]rior 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

¹⁴ [Decision rejecting the ‘Defence Request for State Party Cooperation’](#), ICC-01/14-218, 12 September 2025, paras. 14-15.

¹⁵ Defence Observations, paras. 12, 19-28.

¹⁶ Defence Observations, paras. 11, 17-18, 29, 63.

¹⁷ Impugned Decision, para. 31.

¹⁸ Impugned Decision, para. 32 (rectified to name Mr Beina as a suspect on 15 June 2023).

¹⁹ Impugned Decision, para. 34.

²⁰ Impugned Decision, para. 33.

²¹ Impugned Decision, para. 34.

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.²²

20. Consequently, the PTC determined 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.’²³

21. The Defence submits that the Pre-Trial Chamber erred in law by finding that the earliest opportunity for the CAR to challenge the admissibility of the case against Mr Beina was August 2024. Accordingly, the Pre-Trial Chamber consequently erred in law by finding that the Admissibility Challenge was filed in compliance with Article 19(5) of the Statute.

22. The Pre-Trial Chamber erroneously distinguished between different organs of the CAR as a State in reaching its conclusion on when the ‘earliest opportunity’ arose within the meaning of Article 19(5) of the Statute. Admissibility challenges under Article 19(2)(b) of the Statute are brought by *States*, not specific organs thereof. The dispositive matter is thus when ‘the earliest point in time after the conflict of jurisdictions has actually arisen’ was with respect to the CAR as a ‘State’,²⁴ within the latter’s ordinary meaning under public international law. Matters of the international organization of State organs are immaterial to when the ‘State’, as a distinct international legal personality, was in the ‘position to actually assert a conflict of jurisdictions’.²⁵ The Pre-Trial Chamber’s basing of its assessment on the divisions between internal entities of the CAR State is, furthermore, in contravention of the fundamental principle of public international law that a State may not invoke its internal law as justification for its

²² Impugned Decision, para. 38.

²³ Impugned Decision, para. 39.

²⁴ *Prosecutor v. Muthaura et al.*, Appeals Chamber, [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”](#), ICC-01/09-02/11-274, 30 August 2011 (‘*Muthaura et al.* Admissibility Appeal Judgment’), paras. 45, 100; *Prosecutor v. Ruto et al.*, Appeals Chamber, [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”](#), ICC-01/09-01/11-307, 30 August 2011 (‘*Ruto et al.* Admissibility Appeal Judgment’), paras. 46, 98.

²⁵ *Muthaura et al. Admissibility Appeal Judgment*, paras. 45, 100; *Ruto et al. Admissibility Appeal Judgment*, paras. 46, 98.

failure to perform treaty obligations.²⁶ Consequently, in basing its assessment of the ‘earliest opportunity’ on considerations of the internal organization of and horizontal relationships between different State organs of the CAR and their communication (or lack thereof) with one another, the Pre-Trial Chamber committed an error of law.

B. Ground 2: The Pre-Trial Chamber Erred in Law in Reversing the CAR’s Burden of Proving the Inadmissibility of the Case

23. The Defence submitted that the CAR ‘bears the burden of proof to show that the case is inadmissible’.²⁷ Recalling the well-established jurisprudence of the Appeals Chamber, the Pre-Trial Chamber correctly observed that ‘[t]he 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”’.²⁸

24. While the Pre-Trial Chamber appears to have applied this burden of proof to the first limb of the complementarity assessment under Article 19(1)(a) of the Statute (whether there is an ongoing investigation or prosecution against Mr Beina at the domestic level in the CAR),²⁹ it inverted it with respect to the second limb of the assessment (whether the CAR is unwilling or unable to genuinely carry out this investigation or prosecution).

25. The Pre-Trial Chamber dismissed several Defence arguments on the basis of an inversion of the burden of proof that would require a party other than the one bearing the burden of establishing the inadmissibility of a case to prove elements of the admissibility of the same. The Pre-Trial Chamber relies on this inverted burden to dismiss Defence arguments (i) on the lack of independence and impartiality of the CAR judicial system with respect to Mr Beina’s case;³⁰ and (ii) risks of egregious violations of Mr Beina’s right to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.³¹ On the basis of this legally erroneous allocation of the burden of proof on the Defence, the Pre-Trial Chamber incorrectly examined whether the Defence had sufficiently proven the above concerns, not whether the CAR had discharged its burden of proof with respect to the second

²⁶ [Vienna Convention on the Law of Treaties](#), 23 May 1969, 1155 UNTS 331, Art. 27. See also International Law Commission, [Draft Articles on the Responsibility of States for Internationally Wrongful Acts](#), in *Yearbook of the International Law Commission* (2001), Vol. II, Part 2, p. 94, Art. 32.

²⁷ Defence Observations, para. 10.

²⁸ Impugned Decision, para. 50, citing, *inter alia*, [Muthaura et al. Admissibility Appeal Judgment](#), para. 2; [Ruto et al. Admissibility Appeal Judgment](#), para. 2.

²⁹ Impugned Decision, paras. 51-55.

³⁰ Impugned Decision, para. 69.

³¹ Impugned Decision, paras. 70-72.

limb of the complementarity assessment. In reversing the CAR's burden in this manner, the Pre-Trial Chamber committed an error of law.

C. Ground 3: The Pre-Trial Chamber Erred in Law in Refusing to Consider the Expert Report

26. In opposition to the Admissibility Challenge, the Defence submitted to the Pre-Trial Chamber an Expert Report,³² which it referred to in substantiation of, at least in part, numerous submissions on the CAR judicial system's lack of independence and impartiality.³³

27. The Pre-Trial Chamber refused to consider the Expert Report in its determination of the merits of the Admissibility Challenge and the submissions of the Defence in opposition thereto. Rather, it considered that the Expert Report 'lacks concrete information specific to the proceedings against Mr Beina' and 'that the CAR has not been privy to it', accordingly deeming it not 'relevant nor appropriate to rely on the Expert Report for its determination'.³⁴

28. The Pre-Trial Chamber erred in law by refusing to consider the Expert Report in its determination. The Expert Report discussed *inter alia* a lack of independence and impartiality of the CAR judicial system with respect to cases against political opponents of the CAR Government, such as Mr Beina, the high degree of executive control over the judiciary in the CAR, and lack of independence and impartiality in other cases before the CPS. The Defence avers that the Expert Report constituted relevant evidence to the matter before the Pre-Trial Chamber and, thus, that the Pre-Trial Chamber's refusal to consider it on the basis of relevance constitutes an error of law.

29. In addition, the Pre-Trial Chamber's refusal to consider the Expert Report on the basis of the CAR having 'not been privy to it'³⁵ was also legally erroneous and inconsistent with its own prior decision on the issue. There exists no blanket prohibition on the consideration of *ex parte* material, and other Chambers of the Court have, in other cases, relied on such material in reaching decisions on a variety of issues. In any case [REDACTED].³⁶ The permissibility of the *ex parte* classification of the Expert Report is thus a matter of *res judicata* in the present proceedings and the Pre-Trial Chamber's refusal to consider the Expert Report in the Impugned

³² ICC-01/14-213-Conf-Exp-Anx1. See Defence Observations, para. 10.

³³ Defence Observations, paras. 35-36, 40-41, 42-43, 47.

³⁴ Impugned Decision, para. 68.

³⁵ Impugned Decision, para. 68.

³⁶ [REDACTED].

Decision at least in part due to its non-disclosure to the CAR was in violation of Mr Beina's right to legal certainty and an error of law.

D. Ground 4: The Pre-Trial Chamber Erred in Law by Considering that Information Concerning the Independence and Impartiality of the CAR's Judicial System as a Whole is Irrelevant to the Admissibility Assessment

30. In opposition to the Admissibility Challenge, the Defence submitted that the CAR judicial system as a whole and the CPS lack independence and impartiality on the basis of (i) direct executive control and influence over the CAR judiciary³⁷ and (ii) high-profile proceedings in the CAR, including before the CPS, being tainted by political influence.³⁸ In the alternative, the Defence submitted that 'there exists, at the very least, an objectively justifiable perception that the CAR judicial system and the [CPS] lack independence and impartiality'.³⁹

31. The Pre-Trial Chamber considered that the Defence submissions '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', adding that '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'.⁴⁰

32. The Pre-Trial Chamber erred in law in considering that a lack of independence and impartiality of the CAR's judicial system as a whole and/or a lack of independence and impartiality with respect to other high-profile cases are not relevant to the assessment of the admissibility of the case against Mr Beina. The Pre-Trial Chamber offers no authority in support of its position, ignores authorities referred by the Defence that indicate the contrary,⁴¹ and represents a legally incorrect approach to the admissibility assessment under Article 17(2)(c) of the Statute. In considering the information submitted by the Defence irrelevant and accordingly refusing to consider it in its assessment, the Pre-Trial Chamber committed an error of law.

E. Ground 5: The Pre-Trial Chamber Erred in Law in Disregarding Defence Submissions Regarding Witness Availability and Protection

³⁷ Defence Observations, paras. 34-43.

³⁸ Defence Observations, paras. 44-49.

³⁹ Defence Observations, para. 50 (emphasis omitted).

⁴⁰ Impugned Decision, para. 69 (emphasis in original).

⁴¹ Defence Observations, para. 31.

33. The Defence had submitted that ‘Mr Beina can be reasonably expected not to be able to obtain the attendance of Defence witnesses under the same conditions as Prosecution witnesses in the CAR due to such witnesses’ legitimate fears of reprisals from the CAR Government or its supporters’.⁴² In substantiation of this submission, the Defence referred to evidence from two other cases before the Court involving similarly situated suspects or accused and reports from civil society organizations regarding the insufficiency of witness protection mechanisms of the CPS and the CAR judicial system as a whole.⁴³

34. The Pre-Trial Chamber held as follows regarding the concerns raised by the Defence regarding witness availability:

[A]t 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. From the material available, none of these alleged instances concern proceedings involving Mr Beina.⁴⁴

35. Moreover, with regard to the witness protection mechanisms of the CPS and the CAR judicial system as a whole, the Pre-Trial Chamber held as follows:

[T]he Chamber notes that the CPS has a witness protection mechanism. Although Counsel for Mr Beina refers to reports from international nongovernmental organisations on the inadequacy of such mechanism, 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 reprisals.⁴⁵

36. The Defence submits that the Pre-Trial Chamber committed an error of law in focusing squarely on whether the Defence submissions concern the case of Mr Beina specifically. The circumstances of witnesses in comparable cases to Mr Beina’s involving suspects or accused situated similarly to Mr Beina and the operation of witness protection mechanisms in such comparable cases and circumstances are relevant to the assessment of whether Mr Beina would enjoy the right to obtain the attendance of Defence witnesses under the same conditions as Prosecution witnesses in the CAR. The Pre-Trial Chamber’s dismissal of such information as irrelevant to the admissibility assessment constitutes an error of law.

⁴² Defence Observations, para. 54.

⁴³ Defence Observations, paras. 56-61.

⁴⁴ Impuged Decision, para. 71.

⁴⁵ Impuged Decision, para. 72.

IV. CLASSIFICATION

37. This filing is classified as confidential pursuant to Regulation 23 *bis* (2) of the Regulations as it refers to a decision of the Pre-Trial Chamber bearing this classification. A public redacted version will be filed concurrently.

V. CONCLUSION

38. The Defence will file its appeal brief on or before 6 October 2025, in accordance with Regulation 64(2) of the Regulations.

39. For reasons that it will further set out in its brief in support of this appeal, the Defence respectfully requests that the Appeals Chamber:

REVERSE the Impugned Decision;

REJECT the Admissibility Challenge; and

FIND the case against Mr Beina before the Court to be admissible;

Or, in the alternative:

REVERSE the Impugned Decision; and

REMAND the matter back to the Pre-Trial Chamber for a new decision on the Admissibility Challenge, following the Appeals Chamber's instructions.

Respectfully submitted,



Mr Philippe Larochelle
Counsel for Mr Edmond Beina

Dated this 19 September 2025

At Montreal, Canada