

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/14**
Date: **6 October 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 Appeal brief against the ‘Decision on the Central African Republic’s challenge to the admissibility of the case against Edmond Beina’”

Source: **Counsel for Mr Beina**

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I. INTRODUCTION

1. The Defence of Mr Edmond Beina (the ‘Defence’ and ‘Mr Beina’, respectively) hereby submits its Appeal Brief in support of its appeal against the the decision of Pre-Trial Chamber II (the ‘PTC’) 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 pursuant to Articles 82(1)(a) and 19(6) of the Rome Statute (‘Statute’).

2. The Defence submits that the Pre-Trial Chamber committed five (5) distinct errors of law that individually and collectively materially effect the Impugned Decision. These errors concern the PTC’s: (i) determination that the challenge to the admissibility of the case against Mr Beina filed by the Central African Republic (‘CAR’) under Article 19(2)(b) of the Statute (‘Admissibility Challenge’)² was brought in conformity with Article 19(5) of the Statute; (ii) reversal of the burden of proof with respect to the second limb of the admissibility assessment under Article 19(1)(a) of the Statute; (iii) refusal to consider an Expert Report submitted by the Defence; (iv) refusal to consider Defence submissions concerning the independence and impartiality of the CAR’s judicial system; and (v) refusal to consider Defence submissions regarding the availability of prospective Defence witnesses and their protection.

3. On the basis of these errors, the Defence requests the Appeals Chamber reverse the Impugned Decision, reject the Admissibility Challenge, and find the case against Mr Beina to be admissible. In the alternative, the Defence requests that the Appeals Chamber reverse the Impugned Decision and remand the matter back to the PTC for a new decision on the Admissibility Challenge, following the Appeals Chamber’s instructions.

II. PROCEDURAL HISTORY

4. The Central African Republic (‘CAR’) ratified the Statute on 3 October 2001.

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 See 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 *ex parte*, only available to the Prosecution and Registry; public 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’).

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').³
6. On 7 December 2018, following an under seal and *ex parte* application under Article 58(1) of the Statute by the Prosecution, the PTC, 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').⁴
7. On 3 May 2022, *Chambre d'instruction N°3* of the *Cour pénale spéciale* ('CPS') issued a warrant for the arrest of Mr Beina for alleged crimes within the jurisdiction of the CPS ('CPS Arrest Warrant').⁵
8. On 16 June 2024, Mr Beina was arrested in the CAR with the assistance of *inter alia* personnel from the OTP.⁶
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').⁷
10. On 4 February 2025, the PTC *inter alia* invited the Prosecution, the Defence, and the Office of Public Counsel for Victims ('OPCV') to submit observations on the Admissibility Challenge.⁸

³ 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.

⁴ 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](#)).

⁵ 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 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.

⁶ Admissibility Challenge, para. 16, Annexes 8, 9, 10.

⁷ Admissibility Challenge.

⁸ [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.

11. On 17 March 2025, the Prosecution,⁹ the Defence,¹⁰ and the OPCV¹¹ submitted their respective observations on the Admissibility Challenge.

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

13. On 28 August 2025, the Defence requested the PTC 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').¹³

14. On 12 September 2025, the PTC issued the Impugned Decision.¹⁴

15. On the same day, the PTC rejected the Defence Request for Cooperation as moot in light of the Impugned Decision.¹⁵

16. On 19 September 2025, the Defence filed its Notice of Appeal against the Impugned Decision.¹⁶

III. STANDARD OF REVIEW

17. The present appeal concerns only errors of law. With respect to errors of law, the Appeals Chamber has consistently held that it:

⁹ 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](#)).

¹⁰ Written Observations of Mr Edmond Beina on the Central African Republic's Admissibility Challenge, 17 March 2025, ICC-01/14-213-Conf-Exp (confidential *ex parte*, excluding the CAR; public redacted version filed the same day, [ICC-01/14-213-Red](#)) ('Defence Observations').

¹¹ 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](#)).

¹² 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](#)).

¹³ [Defence Request for State Party Cooperation](#), ICC-01/14-216, 25 August 2025.

¹⁴ Impugned Decision.

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

¹⁶ Defence Notice of Appeal against the 'Decision on the Central African Republic's challenge to the admissibility of the case against Edmund Beina', ICC-01/14-219-Conf, 19 September 2025 (public redacted version filed the same day, [ICC-01/14-219-Red](#)).

will not defer to the relevant Chamber's interpretation of the law, but will arrive at its own conclusions as to the appropriate law and determine whether or not the first instance Chamber misinterpreted the law.¹⁷

18. If the relevant chamber committed such an error, the Appeals Chamber will only intervene if the error materially affected the decision impugned on appeal.¹⁸ A decision is 'materially affected by an error of law' if the chamber 'would have rendered a [decision] that is substantially different from the decision that was affected by the error, if it had not made the error'.¹⁹

IV. 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

i. Relevant Parts of the Impugned Decision

19. The Defence submitted that the Admissibility Challenge was not filed 'at the earliest opportunity', as required by Article 19(5) of the Statute.²⁰ On this basis, it requested that the PTC dismiss the Admissibility Challenge *in limine*.²¹

20. The PTC found that, while the Registry formally notified the CAR authorities of the ICC Arrest Warrant on 28 August 2019²² and the CPS Arrest Warrant was issued on 3 May 2022,²³ 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'.²⁴

21. Moreover, the PTC 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'.²⁵ It further found that '[f]ollowing communication of the content of the ICC Arrest Warrant on 8

¹⁷ Appeals Chamber, *Prosecutor v. Mokom*, [Judgment on the appeal of Mr Maxime Jeoffroy Eli Mokom Gawaka against the "Decision on Mr Mokom's request for compensation"](#), ICC-01/14-01/22-366-Red, 2 September 2025 ('Mokom OA5 Judgment'), para. 57; Appeals Chamber, *Situation in the State of Palestine*, [Judgment on the appeal of the State of Israel against Pre-Trial Chamber I's "Decision on Israel's challenge to the jurisdiction of the Court pursuant to article 19\(2\) of the Rome Statute"](#), ICC-01/18-422, 24 April 2025 ('Palestine OA2 Judgment'), para. 41, and references cited therein.

¹⁸ [Mokom OA5 Judgment](#), para. 49; [Palestine OA2 Judgment](#), para. 42, and references cited therein.

¹⁹ [Mokom OA5 Judgment](#), para. 49; [Palestine OA2 Judgment](#), para. 42, and references cited therein.

²⁰ Defence Observations, paras. 12, 19-28.

²¹ Defence Observations, paras. 11, 17-18, 29, 63.

²² Impugned Decision, para. 31.

²³ Impugned Decision, para. 32 (rectified to name Mr Beina as a suspect on 15 June 2023).

²⁴ Impugned Decision, para. 34.

²⁵ Impugned Decision, para. 33.

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’.²⁶

22. On the basis of these findings of fact, the PTC 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 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.²⁷

23. 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.’²⁸

24. 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 PTC consequently erred in law by finding that the Admissibility Challenge was filed in compliance with Article 19(5) of the Statute.

ii. The PTC’s Error of Law

25. The PTC 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. Specifically, it assessed when the ‘earliest opportunity’ arose with reference to when the ‘competent Ministry of the CAR’ became aware of the jurisdictional conflict occasioned by the concurrent ICC Arrest Warrant and CPS Arrest Warrant, rather than when the ‘State’ became aware of this conflict.²⁹

²⁶ Impugned Decision, para. 34.

²⁷ Impugned Decision, para. 38.

²⁸ Impugned Decision, para. 39.

²⁹ Impugned Decision, para. 34.

26. Admissibility challenges under Article 19(2)(b) of the Statute are brought by *States*, not specific organs thereof. The term ‘State’ as used in Article 19(2)(b) and (5) of Statute, while not defined in the Statute, the Rules, or the Regulations,³⁰ must be afforded its ordinary meaning,³¹ that is ‘[a] community of people living in a defined territory and organized under its own government; a commonwealth, a nation’³² or ‘[a] sovereign and independent entity capable of entering into relations with other states [...] and enjoying international legal personality.’³³ In international contexts, the meaning of the term ‘State’ is also commonly understood³⁴ with reference to the Article 1 of the Montevideo Convention on the Rights and Duties of States,³⁵ the criteria within which operate on the presumption of a ‘State’ being a *collective* legal entity with international legal personality distinct from the mere sum of its constituent organs.

27. 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’,³⁶ within the latter’s ordinary meaning as above. 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’.³⁷ While, in practice, it is organs of a State that act on its behalf, public international law is clear that acts of any organ of a State is attributable to that State as a whole³⁸ and that a State may not invoke its internal law—which certainly consists of how a State’s domestic legislation regulates the respective competencies of different departments, ministries, and agencies—as a justification for its failure to perform its treaty

³⁰ Pre-Trial Chamber I, *Situation in the State of Palestine*, [Decision on the ‘Prosecution request pursuant to article 19\(3\) for a ruling on the Court’s territorial jurisdiction in Palestine’](#), ICC-01/18-143, 5 February 2021, para. 92.

³¹ [Vienna Convention on the Law of Treaties](#), 23 May 1969, 1155 UNTS 331 (‘VCLT’), Art. 27. *See also* Appeals Chamber, *Prosecutor v. Kony*, [Judgment on the appeal of Mr Joseph Kony against the decision of Pre-Trial Chamber III of 29 October 2024 entitled “Decision on the criteria for holding confirmation of charges proceedings in absentia”](#), ICC-02/04-01/05-610, 3 June 2025, para. 36, and references cited therein.

³² [Oxford English Dictionary](#) (Oxford University Press, last accessed 24 September 2025) (sense III.25).

³³ J. Laws (ed.), [A Dictionary of Law](#) (8th ed., Oxford University Press, 2022).

³⁴ *See, for example*, J.P. Grant and C.J. Barker (eds), [Pary & Grant: Encyclopedic Dictionary of International Law](#) (3rd ed., Oxford University Press, 2009).

³⁵ [Montevideo Convention on the Rights and Duties of States](#), 26 December 1933, 165 LNTS 19, Art. 1.

³⁶ Appeals Chamber, *Prosecutor v. Muthaura et al.*, [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; Appeals Chamber, *Prosecutor v. Ruto et al.*, [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.

³⁷ [Muthaura et al. Admissibility Appeal Judgment](#), paras. 45, 100; [Ruto et al. Admissibility Appeal Judgment](#), paras. 46, 98.

³⁸ 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. 31 (‘ILC ARSIWA’), Art. 4(1); ICJ, *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, [Advisory Opinion](#), ICJ Reports (1999), p. 87, para. 62.

obligations.³⁹ This is reflective the ‘principle of the unity of the State’ which ‘entails that the acts or omissions of all its organs should be regarded as acts or omissions of the State for the purposes of international responsibility’.⁴⁰ This unity is all the more important to stress in light of domestic legislation in the CAR granting primacy to the ICC in cases of jurisdictional conflict between the ICC and CPS.⁴¹ In light of this obligation, the non-communication of domestic organs of the CAR with one another cannot be excused by the failure of the CAR’s internal agencies to responsibly and prudently cooperate with one another.

28. In basing of its assessment on the divisions between internal organization of and horizontal relationships between different State organs of the CAR and their communication (or lack thereof) with one another, the PTC thus committed an error of law.

iii. Material Effect

29. The PTC’s error of law materially effected the Impugned Decision as, if the PTC had determined when the ‘earliest opportunity’ for the CAR to submit its admissibility challenge with reference to the awareness of the CAR as a *State* of the jurisdictional conflict between the ICC and CPS rather than the respective awarenesses of different internal organs of the CAR, it would have found this opportunity to have been on or about May 2022, when the CPS Arrest Warrant was issued, at the latest.⁴² If the PTC had found at such, it would have found cause to dismiss the Admissibility Challenge in limine as filed in non-compliance with Article 19(5) of the Statute.⁴³

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

i. Relevant Parts of the Impugned Decision

30. The Defence submitted that the CAR ‘bears the burden of proof to show that the case is inadmissible’.⁴⁴ Recalling the well-established jurisprudence of the Appeals Chamber, the PTC 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

³⁹ [VCLT](#), Art. 27; [ILC ARSIWA](#), Art. 32. *See also* [ILC ARSIWA](#), p. 94, commentary on Art. 32, para. 3 (‘In short, international law does not recognize that the obligations of a responsible State [...] are subject to the State’s internal legal system’).

⁴⁰ [ILC ARSIWA](#), p. 40, commentary on Art. 4, para. 5.

⁴¹ Defence Observations, para. 25, referring to [Loi organique No. 15-003 portant création, organisation et fonctionnement de la Cour Pénale Spéciale](#), 3 June 2015, Art. 37.

⁴² Defence Observations, para. 23.

⁴³ Defence Observations, para. 29.

⁴⁴ Defence Observations, para. 10.

value that demonstrates that it is indeed investigating the case”, while “it is not sufficient merely to assert that investigations are ongoing”⁴⁵.

31. The PTC 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 PTC 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;⁴⁶ 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.⁴⁷ On the basis of this legally erroneous allocation of the burden of proof on the Defence, the PTC 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 limb of the complementarity assessment. In reversing the CAR’s burden in this manner, the PTC committed an error of law.

ii. The PTC’s Error of Law

32. The admissibility assessment under Article 17(1)(a) of the Statute is comprised of two well-established limbs: (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 (‘First Limb’); and, in case of an affirmative finding on the First Limb, (ii) whether the State is ‘unwilling’ or ‘unable’ to genuinely carry out such investigation or prosecution within the meaning of Articles 17(2) and (3) of the Statute, respectively (‘Second Limb’).⁴⁸

33. It is well-established in the jurisprudence of the Appeals Chamber that a State challenging the admissibility of a case under Article 19(2)(b) of the Statute ‘bears the burden of proof to show that the case is inadmissible’.⁴⁹ Moreover, the Appeals Chamber has explicitly held that

⁴⁵ Impugned Decision, para. 50, referring to, *inter alia*, [Muthaura et al. Admissibility Appeal Judgment](#), para. 2; [Ruto et al. Admissibility Appeal Judgment](#), para. 2.

⁴⁶ Impugned Decision, para. 69.

⁴⁷ Impugned Decision, paras. 70-72.

⁴⁸ Appeals Chamber, *Prosecutor v. Katanga and Ngudjolo*, [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](#), ICC-01/04-01/07-1497, 25 September 2009, paras. 75-79; Appeals Chamber, *Situation in the Bolivarian Republic of Venezuela I*, [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”](#), ICC-02/18-89, 1 March 2024, para. 364.

⁴⁹ [Muthaura et al. Admissibility Appeal Judgment](#), para. 61; [Ruto et al. Admissibility Appeal Judgment](#), para. 62; Appeals Chamber, *Prosecutor v. S. 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”](#), ICC-02/11-01/12-75-Red, 27 May 2015 (‘S. Gbagbo Admissibility Appeal Judgment’), para. 29. See also Appeals Chamber, *Prosecutor v. Gaddafi and 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](#)

‘what a State challenging admissibility needs to prove is that it is conducting a genuine investigation or prosecution – *which requires proof of both limbs of the provision.*’⁵⁰

34. While the PTC appears to have applied the relevant burden of proof with respect to the First Limb,⁵¹ it inverted this burden with respect to the Second Limb. Notwithstanding the limited evidential burden born by the Defence to ‘sufficiently [...] substantiate the factual allegations’ it makes,⁵² the PTC’s approach went beyond this and constituted an inversion of the CAR’s burden. Unlike in *Al-Senussi*, where the Appeals Chamber found that the suspect had failed to sufficiently substantiate certain factual allegations regarding his own detention,⁵³ the Defence’s submissions regarding a lack of independence and impartiality of the CAR judiciary with respect to Mr Beina’s case and an absence of effective witness protection mechanisms were not ‘generic assertions without any tangible proof’. Instead, they were substantiated by references and argumentation concerning specific provisions of CAR domestic law,⁵⁴ reports and assessment of reputable international civil society organisations,⁵⁵ the Expert Report,⁵⁶ and reports of United Nations bodies and experts.⁵⁷ Moreover, the Defence presented detailed examples of other comparable and relevant cases.⁵⁸

35. The PTC’s refusal to consider the Defence submissions substantiated as such was tantamount to a reversal of the CAR’s burden of proof and thus constituted an error of law.

iii. Material Effect

36. The PTC’s error of law materially effected the Impugned Decision as, if the PTC had correctly applied the burden of proof to the CAR, it would have found that the CAR has failed to meet its burden with respect to the Second Limb. Accordingly, it would have held that the CAR failed to meet its burden of proving the inadmissibility of the case.

[case against SaifAl-Islam Gaddafi](#)”, ICC-01/11-01/11-547-Red, 21 May 2014 (‘*Gaddafi* OA4 Judgment’), para. 178.

⁵⁰ Appeals Chamber, *Prosecutor v. Gaddafi and Al-Senussi*, [Judgment on the appeal of Mr Abdullah Al-Senussi against the decision of Pre-Trial Chamber I of 11 October 2013 entitled “Decision on the admissibility of the case against Abdullah Al-Senussi”](#), ICC-01/11-01/11-565, 24 July 2014 (‘*Al-Senussi* OA6 Judgment’), para. 166.

⁵¹ Impugned Decision, paras. 51-55.

⁵² [Al-Senussi OA6 Judgment](#), para. 167.

⁵³ [Al-Senussi OA6 Judgment](#), para. 168.

⁵⁴ Defence Observations, paras. 35-37.

⁵⁵ Defence Observations, paras. 38, 41, 43, 46, 60.

⁵⁶ Defence Observations, paras. 35-36, 40-41, 42-43, 47. See ICC-01/14-213-Conf-Exp-Anx1. See also *infra* Section IV(C)(ii).

⁵⁷ Defence Observations, paras. 36, 41, 43, 47, 49.

⁵⁸ Defence Observations, paras. 39-42, 45-48, 57-59, 61.

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

i. Relevant Parts of the Impugned Decision

37. In opposition to the Admissibility Challenge, the Defence submitted to the Pre-Trial Chamber an Expert Report,⁵⁹ which it referred to in substantiation of, at least in part, numerous submissions on the CAR judicial system's lack of independence and impartiality.⁶⁰

38. 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'.⁶¹

ii. The PTC's Error of Law Regarding the Relevance of the Expert Report

39. The PTC's refusal to consider the Expert Report on grounds of relevance is fundamentally linked with Ground 4 of the present appeal detailed below as the contents of the Expert Report are principally concerned with issues of the independence and impartiality of the CAR's judicial system. The submissions concerning Ground 4 are thereby incorporated by reference.

iii. The PTC's Error of Law Regarding the Non-Disclosure of the Expert Report to the CAR

40. The PTC abused its discretion in refusing to consider the Expert Report on the basis of the CAR having 'not been privy to it'.⁶² Pursuant to Rule 58(2) of the Rules, chambers generally enjoy discretion in whether or not they consider *ex parte* material in the assessment of an admissibility challenge.⁶³ However, as (i) the PTC already rendered a decision on the permissibility of considering the Expert Report in its assessment in light of its *ex parte* classification and (ii) this decision rendered the matter *res judicata* with respect to the present participants, the PTC's refusal in the Impugned Decision to consider the Expert Report on the

⁵⁹ ICC-01/14-213-Conf-Exp-Anx1. See Defence Observations, para. 10.

⁶⁰ Defence Observations, paras. 35-36, 40-41, 42-43, 47.

⁶¹ Impugned Decision, para. 68.

⁶² Impugned Decision, para. 68.

⁶³ [Al-Senussi OA6 Judgment](#), para. 79.

basis of its *ex parte* classification was ‘so unfair and unreasonable as to constitute an abuse of discretion’.⁶⁴

41. On 22 May 2025, the PTC issued an email order instructing the Registry to notify *inter alia* the confidential version of the Defence Observations, the Expert Report annexed thereto, and Annex 2 to the Defence Observations to the CAR (collectively the ‘Three Confidential Defence Documents’).⁶⁵ In response, the Defence requested that the Registry refrain from transmitting to the CAR the confidential version of the Three Confidential Defence Documents in light of the request contained in Annex 2 to the Defence Observations by the author of the Expert Report (‘Expert’) for the non-disclosure of the Expert Report to the CAR.⁶⁶ The PTC considered the Defence’s request for the non-disclosure of the Three Confidential Defence Documents as a request for the reclassification of these documents as confidential *ex parte*. The PTC granted this request on 28 May 2025, instructing the Defence to submit confidential redacted versions of the two annexes to the Defence Observations.⁶⁷

42. On 28 May 2025, the Defence informed the PTC as follows regarding observations from the Expert concerning the PTC’s order for confidential redacted versions of the Three Confidential Defence Documents:

[REDACTED].

[REDACTED].⁶⁸

43. Accordingly, the Defence requested ‘[REDACTED].’⁶⁹

44. On 2 June 2025, the PTC issued the following decision via email regarding [REDACTED] (‘Email Decision’):

[REDACTED].⁷⁰

⁶⁴ Appeals Chamber, *Prosecutor v. Kony et al.*, [Judgment on the appeal of the Defence against the “Decision on the admissibility of the case under article 19 \(1\) of the Statute” of 10 March 2009](#), ICC-02/04-01/05-408, 16 September 2009, para. 80; [Ruto et al. Admissibility Appeal Judgment](#), para. 89; Appeals Chamber, *Prosecutor v. Ruto and Sang*, [Judgment on the appeal of the Prosecutor against the decision of Trial Chamber V\(a\) of 18 June 2013 entitled “Decision on Mr Ruto’s Request for Excusal from Continuous Presence at Trial”](#), ICC-01/09-01/11-1066, 25 October 2013, para. 60; [Gaddafi OA4 Judgment](#), para. 146; [Al-Semussi OA6 Judgment](#), para. 79.

⁶⁵ Email from Pre-Trial Chamber II to Participants, 22 May 2025.

⁶⁶ Email from the Defence to Pre-Trial Chamber II, 22 May 2025.

⁶⁷ Email from Pre-Trial Chamber II to Participants: Second order on reclassification and other procedural matters, 22 May 2025, at 16:54.

⁶⁸ Email from Defence to Pre-Trial Chamber II, 28 May 2025, at 15:16.

⁶⁹ *Ibid.*

⁷⁰ Email from Pre-Trial Chamber II to Participants: Decision in relation to ICC-01/14-213-Conf-Exp and ICC-01/14-213-Conf-Exp-Anx1, 28 May 2025, at 15:16 (‘Email Decision’).

45. In the Email Decision, the PTC definitively determined the issues of (i) the propriety of the non-disclosure of the [REDACTED]; (ii) the absence of any prejudice to the CAR resulting from [REDACTED]; and (iii) the sufficiency of the public redacted version of the Defence Observations to properly inform the CAR of the Defence's submissions ('Email Decision Issues'). The Email Decision has *res judicata* effect with respect to these findings.

46. The principle of *res judicata* provides that once a specific issue has been subject to a final judicial determination, it may not be subsequently called into question.⁷¹ It is applicable where there are an identity of parties, an identity of issues, and a final judicial determination of these issues by a competent court.⁷² The Appeals Chamber has recognized that *res judicata* applies before the Court.⁷³ It applies not only to issues decided in a final judgment, but also to specific issues determined in interlocutory decisions that have become final.⁷⁴ Crucially, the application of *res judicata* is more than a mere procedural rule, but a key guarantee attaching to the right to

⁷¹ Appeals Chamber, *Prosecutor v. Ngudjolo*, [Judgment on the Prosecutor's appeal against the decision of Trial Chamber II entitled "Judgment pursuant to article 74 of the Statute"](#), ICC-01/04-02/12-271-Corr, 7 April 2015 ('*Ngudjolo* Appeal Judgment'), para. 246; ICTY, Trial Chamber, *Prosecutor v. Delalić et al.*, Case No. IT-96-21-T, [Judgement](#), 16 November 1998 ('*Čelebići* Trial Judgment'), para. 228.

⁷² IRMCT, Appeals Chamber, *Prosecutor v. Uwinkindi*, Case No. MICT-12-25-AR14.1, [Decision on an Appeal Concerning a Request for Revocation of a Referral](#), 4 October 2016, para. 29. See also [Čelebići Trial Judgment](#), para. 228; ECCC, Supreme Court Chamber, *Co-Prosecutors v. Khieu Samphân*, Case No. 002/19-09-2007-ECCC/SC, F76, [Appeal Judgment](#), 23 December 2022, para. 634.

⁷³ [Ngudjolo Appeal Judgment](#), para. 246; Appeals Chamber, *Situation in the Islamic Republic of Afghanistan, Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber II entitled "Decision pursuant to article 18(2) of the Statute authorising the Prosecution to resume investigation"*, ICC-02/17-218, 4 April 2023 ('*Afghanistan* OA5 Judgment'), para. 59. See also Appeals Chamber, *Situation in the State of Palestine, Judgment on the appeal of the State of Israel against Pre-Trial Chamber I's "Decision on Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute"*, ICC-01/18-422, 24 April 2024, para. 59.

⁷⁴ See, for example, [Afghanistan OA5 Judgment](#), para. 54; Pre-Trial Chamber II, *Prosecutor v. Ruto et al.*, [Decision on the "Request by the Government of Kenya in respect of the Confirmation of Charges Proceedings"](#), ICC-01/09-01/11-313, 1 September 2011, para. 8; Pre-Trial Chamber II, *Prosecutor v. Abd-Al-Rahman*, [Decision on the Defence Request to provide written reasoning for two oral decisions](#), ICC-02/05-01/20-118, 18 August 2020 ('*Abd-Al-Rahman* Decision on Written Reasoning for Oral Decisions'), para. 8; Pre-Trial Chamber I, *Situation in the State of Palestine, Decision on Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute*, ICC-01/18-374, 21 November 2024, para. 15; ICTY, Trial Chamber III, *Prosecutor v. Simić et al.*, Case No. IT-95-9, [Decision on \(1\) Application by S. Todorović to Re-open the Decision of 27 July 1999, \(2\) Motion by ICRC to Re-Open Scheduling Order of 18 November 1999, and \(3\) Conditions for Access to Material](#), 28 February 2000, para. 9; ICTY, Trial Chamber III, *Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, [Decision on Prlić Defence Request for Certification to Appeal](#), 7 December 2009, p. 3; ICTR, Trial Chamber II, *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-97-21-T, [Decision on Defence Motion for Certification to Appeal the Decision on Defence Motion for a Stay of Proceedings and Abuse of Process](#), 19 March 2004, para. 28; ICTR, Trial Chamber II, *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-97-21-T, [Decision on Nyiramasuhuko's Oral Motion Regarding Prosecution's Use of Material Under Seal](#), 27 April 2004, para. 29; ICTR, Trial Chamber III, *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-PT, [Decision on Motion to Vacate Sanctions](#), 23 February 2005, para. 10; ICTR, Trial Chamber III, *Prosecutor v. Bikindi*, Case No. ICTR-2001-72-PT, [Decision on the Amended Indictment and the Taking of a Plea Based on the Said Indictment](#), 11 May 2005, para. 3; ICTR, Trial Chamber II, *Prosecutor v. Bizimungu et al.*, Case No. ICTR-99-50-T, [Decision on Prosper Mugiraneza's Second Motion to Dismiss for Deprivation of His Right to Trial Without Undue Delay](#), 29 May 2007, paras. 5-6.

legal certainty under international human rights law,⁷⁵ safeguarded before the Court by Article 67 of the Statute.

47. The Email Decision's determination of the Email Decision Issues constitutes *res judicata* with respect to the present proceedings. Firstly, there is an identity of parties as the Defence, Prosecution, and OPCV were all copied on the Email Decision and the correspondence leading up to it; the Email Decision was also notified to the CAR, which had the opportunity to seek leave to appeal it pursuant to Article 82(1)(d) of the Statute, but did not avail itself of this right.

48. Secondly, there is an identity of issues as the propriety of the non-disclosure of the Expert Report and whether this non-disclosure prejudices the CAR in the adjudication of the Admissibility Challenge are the issues lying at the heart of both the Email Decision Issues and the PTC's decision not to consider the Expert Report in part due to its non-disclosure to the CAR.

49. Thirdly, the Email Decision constitutes a final decision on the matter. It is beyond dispute that decisions of chambers notified by email are of equal authority those notified through formal filings on the record,⁷⁶ with chambers frequently recognizing decisions issued by way of email as authoritative determinations of matters respectively determined therein.⁷⁷ Moreover, for the sake of the completeness of the record, chambers have often instructed the Registry to file email decisions on the record as to ensure their decisions respect the principle of publicity.⁷⁸ Moreover, as neither the CAR, nor any other party, for that matter, availed itself of its right to seek leave to appeal the Email Decision under Article 82(1)(d) of the Statute within the deadline prescribed by Rule 155(1) of the Rules, it became final.⁷⁹ The Email Decision, therefore, constituted *res judicata* as to the Email Decision Issues.

⁷⁵ See ECtHR, Grand Chamber, *Brumărescu v. Romania*, App. No. 28342/95, [Judgment](#), 28 October 1999, paras. 61-62; ECtHR, *Ryabykh v. Russia*, App. No. 52854/99, [Judgment](#), 24 July 2003, para. 52; ECtHR, *Ponomaryov v. Ukraine*, App. No. 3236/03, [Judgment](#), 3 April 2008, para. 40; ECtHR, *Trapeznikov and Others v. Russia*, App. No. 5623/09, 12460/09, 33656/09 and 20758/10, [Judgment](#), 5 April 2016, para. 23; ECtHR, *Şamat v. Turkey*, App. No. 29115/07, [Judgment](#), 21 January 2020, para. 54.

⁷⁶ See [Chambers Practice Manual](#) (8th ed., 2024), para. 17.

⁷⁷ See, for example, Trial Chamber IX, *Prosecutor v. Ongwen*, [Trial Judgment](#), ICC-02/04-01/15-1762-Red, 4 February 2021, para. 104; Trial Chamber X, *Prosecutor v. Al Hassan*, [Trial Judgment](#), ICC-01/12-01/18-2594-Red, 26 June 2024, para. 1743, fn. 5239.

⁷⁸ See, for example, Trial Chamber IX, *Prosecutor v. Ongwen*, [Decision on Publicity of Case Record](#), ICC-02/04-01/15-700, 7 February 2017, paras. 3-4; Pre-Trial Chamber II, *Prosecutor v. Yekatom and Ngaïssona*, [Order placing on the record the email decision of 24 September 2019](#), ICC-01/14-01/18-425, 4 February 2020, para. 3; Trial Chamber VII, *Prosecutor v. Gbagbo and Blé Goudé*, [Decision on the Defence for Mr Gbagbo's Requests for the Record of the Case to be Made Public, the Creation of a Public Database and for Email Decisions to be Placed on the Record of the Case](#), ICC-02/11-01/15-1430, 13 April 2022, para. 20.

⁷⁹ See [Abd-Al-Rahman Decision on Written Reasoning for Oral Decisions](#), para. 8.

50. Consequently, as, in the Impugned Decision, the PTC's refusal to consider the Expert Report is directly contradictory to the Email Decision, the PTC has infringed on Mr Beina's right to legal certainty by failing to afford binding character to a previous determination of the same underlying issues in a decision constituting *res judicata* on the same issues.

iv. Material Effect on the Impugned Decision

51. The PTC's error materially effected the Impugned Decision as, in dismissing the Expert Report, the PTC dismissed material crucial to its accurate assessment of the Second Limb. If the PTC had considered the Defence arguments which were substantiated by the Expert Report, it would have found that the CAR has failed to meet its burden of proving the inadmissibility of the case with respect to the Second Limb.

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

52. 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 judiciary⁸⁰ and (ii) high-profile proceedings in the CAR, including before the CPS, being tainted by political influence.⁸¹ 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'.⁸²

i. Relevant Parts of the Impugned Decision

53. PTC 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'.⁸³

ii. The PTC's Error of Law

⁸⁰ Defence Observations, paras. 34-43.

⁸¹ Defence Observations, paras. 44-49.

⁸² Defence Observations, para. 50 (emphasis omitted).

⁸³ Impugned Decision, para. 69 (emphasis in original).

54. The PTC 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 PTC offers no authority in support of its position, ignores authorities referred by the Defence that indicate the contrary,⁸⁴ and represents a legally incorrect approach to the admissibility assessment under Article 17(2)(c) of the Statute. The Defence recalls that in *Al-Senussi*, PTC I considered that a 'a systemic lack of independence and impartiality of the judiciary such that would demonstrate, alone or in combination with other relevant circumstances, that the proceedings against [the suspect]' may demonstrate that the Second Limb is not met.⁸⁵ The Appeals Chamber endorsed this approach.⁸⁶ The PTC's dismissal of the Defence arguments regarding 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 runs counter to this jurisprudence whereby such considerations are relevant to the assesmenr of the Second Limb.

55. Accordingly, in considering the information submitted by the Defence irrelevant and accordingly refusing to consider it in its assessment, the PTC committed an error of law.

iii. Material Effect

56. The PTC's error materially effected the Impuged Decision as, in dismissing the Defence's arguments regarding 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, the PTC dismissed material crucial to its accurate assessment of the Second Limb. If the PTC had considered these arguments, it would have found that the CAR has failed to meet its burden of proving the inadmissibility of the case with respect to the Second Limb.

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

57. 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

⁸⁴ Defence Observations, para. 31.

⁸⁵ Pre-Trial Chamber I, *Prosecutor v. Gaddafi and Al-Senussi*, [Decision on the admissibility of the case against Abdullah Al-Senussi](#), ICC-01/11-01/11-466-Red, 11 October 2013, para. 258.

⁸⁶ [Al-Senussi OA6 Judgment](#), para. 256.

its supporters'.⁸⁷ 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.⁸⁸

i. Relevant Parts of the Impugned Decision

58. The PTC 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.⁸⁹

59. Moreover, with regard to the witness protection mechanisms of the CPS and the CAR judicial system as a whole, the PTC 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.⁹⁰

ii. The PTC's Error of Law

60. The PTC 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. As Mr Beina's trial is yet to begin, the consideration of such evidence is the most appropriate method to assess whether Mr Beina will enjoy the relevant fair trial rights in question. The Defence also incorporates by reference its above submissions in connection with

⁸⁷ Defence Observations, para. 54.

⁸⁸ Defence Observations, paras. 56-61.

⁸⁹ Impugned Decision, para. 71.

⁹⁰ Impugned Decision, para. 72.

Ground 4 concerning the relevance of evidence concerning the CAR judicial system as a whole and/or comparable cases, rather than solely Mr Beina's specifically. In this sense, the PTC's error as laid out in Ground 4 is closely related to its error with respect to Ground 5.

61. The PTC's dismissal of information concerning witness protection and security in comparable cases as irrelevant to the admissibility assessment constitutes an error of law.

iii. Material Effect

62. The PTC's error materially effected the Impugned Decision as, in dismissing the Defence's submissions regarding witness protection and security, the PTC dismissed material crucial to its accurate assessment of Mr Beina's fair trial rights and thus, of the Second Limb. If the PTC had considered these arguments, it would have found that the CAR has failed to meet its burden of proving the inadmissibility of the case with respect to the Second Limb.

V. CLASSIFICATION

63. This filing is classified as confidential *ex parte*, excluding the CAR, pursuant to Regulation 23 *bis* (2) of the Regulations as it refers to material classified as confidential *ex parte*, excluding the CAR. It also refers to material classified as confidential. Confidential and public redacted versions will be filed in concurrently.

VI. REQUEST FOR RELIEF

64. 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 PTC 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 6 October 2025

At Montreal, Canada