

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: *English*

No.: ICC-01/14

Date: 28 October 2025

THE APPEALS CHAMBER

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

Confidential

**Victims' Response to "Defence Appeal brief against
the 'Decision on the Central African Republic's challenge
to the admissibility of the case against Edmond Beina'"**

Source: Office of Public Counsel for Victims

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

- | | |
|---|---|
| ☒ The Office of the Prosecutor | ☒ Counsel for the Defence
Counsel for Mr Beina |
| ☐ Legal Representatives of the Victims | ☐ Legal Representatives of the Applicants |
| ☐ Unrepresented Victims | ☐ Unrepresented Applicants
(Participation/Reparation) |
| ☒ The Office of Public Counsel for Victims | ☐ The Office of Public Counsel for the Defence |
| ☒ States’ Representatives
Central African Republic | ☐ Amicus Curiae |

REGISTRY

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- | | |
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| Registrar
Mr Osvaldo Zavala Giler | ☐ Counsel Support Section |
| ☐ Victims and Witnesses Unit | ☐ Detention Section |
| ☐ Victims Participation and Reparations Section | ☐ Other |

I. INTRODUCTION

1. The Principal Counsel of the Office of Public Counsel for Victims (the "OPCV" or the "Office") hereby files her response on behalf of Victims to the Defence Appeal Brief (the "Appeal" or the "Appeal Brief")¹ against the "Decision on the Central African Republic's challenge to the admissibility of the case against Edmond Beina" (the "Impugned Decision").²

2. Victims oppose the Appeal in its entirety and ask the Appeals Chamber to reject it. The five Grounds raised in the Appeal should be dismissed as the Defence fails to show any error in the reasoning of Pre-Trial Chamber II (the "Chamber") which could materially affect the Impugned Decision. In fact, the Defence merely disagrees with, misunderstands the Impugned Decision, and reiterates the same arguments that were previously considered and rejected. The Chamber correctly interpreted the law and reasonably assessed the specific circumstances of the case when it found that the case against Mr Edmond Beina is inadmissible before the Court under article 17(1)(a) of the Rome Statute (the "Statute").

3. In accordance with the principle of complementarity, the Court shall refrain from proceeding with an investigation or prosecution if a State which has jurisdiction over a case is investigating or prosecuting the same matter. The Chamber committed no error in finding that (i) the Special Criminal Court (the "SCC") in Central African Republic (the "CAR") is prosecuting Mr Beina for the same crimes for which the Court issued a warrant of arrest; and that (ii) the national authorities have demonstrated their committed to genuinely investigating and prosecuting these crimes; and (iii) appear to have the capacity to do so.

¹ See the "Defence Appeal brief against the 'Decision on the Central African Republic's challenge to the admissibility of the case against Edmond Beina'", [No. ICC-01/14-220-Conf](#), 6 October 2025. A public redacted version [No. ICC-01/14-220-Red](#) was filed on the same date (the "Defence Appeal" or the "Appeal").

² See "Decision on the Central African Republic's challenge to the admissibility of the case against Edmond Beina", [No. ICC-01/14-217-Conf](#), 12 September 2025. A public redacted version [No. ICC-01/14-217-Red](#) was filed on the same date (the "Impugned Decision").

II. PROCEDURAL BACKGROUND

4. On 30 May 2014, the Government of the CAR referred to the Court the situation in the Country since 1 August 2012.³

5. On 7 December 2018, the Pre-Trial Chamber in its previous composition issued a warrant of arrest for Mr Edmond Beina (the "ICC Warrant of Arrest").⁴

6. On 30 June 2020, the Prosecutor of the SCC seized the Pre-Trial Judge with a request for the issuance of a warrant of arrest for Mr Beina for the alleged commission of war crimes and crimes against humanity in Guén, Gadzi, and Djomo on 1, 5 and 6 February 2014 and 6 March 2014.⁵ The warrant of arrest was issued on 15 June 2023.⁶

7. On 16 June 2024, the arrest warrant of the SCC was served on Mr Beina in the CAR.⁷ Mr Beina indicated his indigence and requested to be represented by duty counsel.⁸

8. On 17 June 2024, Mr Beina appeared before the Pre-Trial Judge of the SCC in Bangui.⁹

³ See the "Decision Assigning the Situation in the Central African Republic II to Pre-Trial Chamber II" (Presidency), [No. ICC-01/14-1](#), 18 June 2014.

⁴ See the "Warrant of Arrest for Edmond Beina" (Pre-Trial Chamber II), [No. ICC-01/14-32-US-Exp](#), 7 December 2018. The warrant was unsealed on 7 November 2024 upon order of the Chamber (the "ICC Warrant of Arrest").

⁵ See Annex I to the "ADDENDUM to 'Registry transmission of communication received from the authorities of the Central African Republic in relation to the Warrant of Arrest for Edmond Beina, ICC-01/14-32-US-Exp'", [No. ICC-01/14-190-US-Exp](#), 21 February 2025, reclassified confidential pursuant to the instruction of the Chamber dated 20 February 2025, p. 60 (the "Annex I").

⁶ *Idem*, p. 63.

⁷ *Idem*, pp. 63, 170.

⁸ *Idem*, pp. 64, 170.

⁹ *Idem*, pp. 65, 170.

9. On 18 June 2024, the SCC informed the ICC Prosecutor that Mr Beina was arrested as a fifth suspect in the *Guén* case¹⁰ and that it considered that the case under its investigation concerned the 'same facts' as that investigated by the ICC.¹¹

10. On 19 June 2024, the Pre-Trial Judges of the SCC ordered that Mr Beina be placed in pre-trial detention¹² for one year.¹³

11. On 22 October 2024, following an instruction by the Pre-Trial Division, a duty counsel was appointed to represent the interests of Victims in the *Guén* case.¹⁴

12. On 30 October 2024, the Registry transmitted to the Chamber the CAR's Admissibility Challenge,¹⁵ including 232 under seal *ex parte* annexes¹⁶, subsequently reclassified as "confidential".¹⁷

13. On 6 December 2024, the Pre-Trial Judges of the SCC confirmed the charges against Mr Beina and others, dismissing the charges against two other suspects in the *Guén* case.¹⁸

14. On 7 January 2025, the ICC Registry appointed Counsel for Mr Beina for the purposes of the article 19 proceedings.¹⁹

¹⁰ *Idem*, p. 66.

¹¹ *Idem*, p. 67.

¹² *Idem*, pp. 91, 171.

¹³ See the Annex II of the "Transmission of Supplementary Submissions from the Central African Republic", [No. ICC-01/14-208-Conf](#), 19 February 2025 (the "Annex II").

¹⁴ *Idem*, p. 22, para. 86.

¹⁵ See No. 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 [No. ICC-01/14-194-AnxI](#). A public redacted version of the Admissibility Challenge was transmitted by the Registry on 15 November 2024. See the "Transmission of Public Redacted Version of the Admissibility Challenge Received from the Central African Republic", [No. ICC-01/14-194](#), 15 November 2024 (the "Admissibility Challenge").

¹⁶ *Ibid.*

¹⁷ See the Communication from the Registry dated 24 February 2025 at 18:43 pursuant to the instruction of the Chamber dated 20 February 2025.

¹⁸ See Annex II, *supra* note 13, p. 20, para. 66.

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

15. On 4 February 2025, the Chamber issued an Order on the conduct of the proceedings, inviting, *inter alia*, the Prosecution, Mr Beina, and the OPCV to submit observations on the Admissibility Challenge by no later than 28 February 2025.²⁰

16. On 19 February 2025, the OPCV requested an extension of time until 17 March 2025 to file the observations on behalf of Victims.²¹

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

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

19. On 4 March 2025, following an email request from the Prosecution, the Chamber instructed the Registry to provide - by 10 March 2025 - further information on the circumstances and status of the delivery and execution of the ICC Warrant of Arrest, as well as additional information on the status of the Defendant's appeal against the confirmation of charges before the SCC.²⁴

20. On 10 March 2025, the Registry filed the "Report of the Registry on the Proceedings related to Mr Beina in the Central African Republic",²⁵ according to which the Defendant appears to have been notified of the ICC Warrant of Arrest on

²⁰ See the "Order on the conduct of the proceedings following the Central African Republic's challenge to the admissibility of the case against Edmond Beina" (Pre-Trial Chamber II), [No. ICC-01/14-203](#), 4 February 2025 (the "Order").

²¹ See the "Request for an extension of time to file observations on behalf of Victims on the central African Republic's challenge to the admissibility of the case against Edmond Beina", [No. ICC-01/14-207-Conf-Exp](#), 19 February 2025. A public redacted version [No. ICC-01/14-207-Red](#) was filed on the same day.

²² See the "Transmission of Supplementary Submissions from the Central African Republic", [No. ICC-01/14-208-Conf](#), 19 February 2025.

²³ See the Email correspondence from the Chamber to the participants on 21 February 2025 at 11:54.

²⁴ See the Email correspondence from the Chamber to the participants on 4 March 2025 at 9:53.

²⁵ See the "Report of the Registry on the Proceedings related to Mr Beina in the Central African Republic", [No. ICC-01/14-Conf-Anx](#), 10 March 2025, p. 3.

10 February 2025.²⁶ The Report further indicated that Mr Beina's appeal proceedings before the SCC seemed to be ongoing.²⁷

21. On 17 March 2025, Counsel for Mr Beina filed written observations on the Admissibility Challenge,²⁸ requesting the Chamber to dismiss it *in limine* on the ground that it was filed in an untimely manner pursuant to article 19(5) of the Statute.²⁹ Alternatively, Counsel requested the rejection of the Challenge in its entirety and to declare the case against Mr Beina admissible, arguing that the CAR proceedings (i) are not being conducted independently or impartially within the meaning of article 17(2)(c) of the Statute; and (ii) fail to guarantee his fair trial rights.³⁰

22. On the same date, the OPCV and the Prosecution filed their respective written observations on the Admissibility Challenge.³¹

23. On 20 March 2024, the Defence submitted supplemental observations on the Admissibility Challenge.³²

24. On 12 September 2025, the Chamber issued the Impugned Decision.³³

²⁶ See the "Annex II to the Report of the Registry on the Proceedings related to Mr Beina in the Central African Republic", [No. ICC-01/14-Conf-AnxII](#), 10 March 2025.

²⁷ See the "Report of the Registry on the Proceedings related to Mr Beina in the Central African Republic", [No. ICC-01/14-Conf-Anx](#), 10 March 2025.

²⁸ See the "Written Observation of Mr Edmond Beina on the Central African Republic's Admissibility Challenge", [No. ICC-01/14-213-Conf-Exp](#) (confidential *ex parte*, excluding the CAR), 17 March 2025, (the "Defence Observations"), with confidential Annex 1 (ICC-01/14-213-Conf-Anx1) and Annex 2 (ICC-01/14-213-Conf-Anx2). A public redacted version [No. ICC-01/14-213-Red](#) was filed on the same date. 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*.

²⁹ *Idem*, paras. 11-29.

³⁰ *Idem*, paras. 30-61.

³¹ See the "Observations on behalf of Victims on the Central African Republic's challenge to the admissibility of the case against Edmond Beina", No. ICC-01/14-211-Conf, 17 March 2025, (the "OPCV Observations"). A public redacted version [No. ICC-01/14-211-Red](#) was filed on 7 May 2025. See also, the "Prosecution response to 'Request of the Central African Republic challenging the admissibility of the case against Mr Edmond Beina' (ICC-01/14-194-AnxI)", [No. ICC-01/14-212-Conf](#), 17 March 2025. A public redacted version [No. ICC-01/14-212-Red](#) was filed on 7 May 2025.

³² See the "Supplementary Observations of Mr Edmond Beina on the Central African Republic's Admissibility Challenge", [No. ICC-01/14-214-Conf](#), 20 March 2025. A public redacted version [No. ICC-01/14-214-Red](#) was filed on 7 May 2025.

³³ See the Impugned Decision, *supra* note 2.

25. On 19 September 2025, the Defence filed its Notice of Appeal against the Impugned Decision.³⁴

26. On 6 October 2025, the Defence filed the Appeal.³⁵

III. CLASSIFICATION

27. Pursuant to regulation 23bis (1) and (2) of the Regulations of the Court (the "Regulations"), the present submission is classified as confidential following the classification chosen by the Defence. However, it does not contain confidential information and can be reclassified as "Public".

IV. SUBMISSIONS

A. Applicable legal standards

28. In exercising its powers under rule 158 of the Rules of Procedure and Evidence (the "Rules"), the Appeals Chamber will only consider specific grounds of appeal alleging legal, factual or procedural errors that materially affect an impugned decision.³⁶ The Appeals Chamber will intervene only where "*clear errors of law, fact or procedure are shown to exist and vitiate the Impugned Decision*",³⁷ or if the findings of the

³⁴ See the "Defence Notice of Appeal against the 'Decision on the Central African Republic's challenge to the admissibility of the case against Edmond Beina'", [No. ICC-01/14-219-Conf](#), 19 September 2025. A public redacted version [No. ICC-01/14-219-Red](#) was filed the same day.

³⁵ See the Appeal, *supra* note 1.

³⁶ See the Public redacted version of the "Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 6 January 2012 entitled 'Decision on the defence's 28 December 2011 'Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo'" (Appeals Chamber), No. [ICC-01/05-01/08-2151-Red OA10](#), 5 March 2012, para. 29.

³⁷ See the "Judgment on the appeal of Mr Callixte Mbarushimana against the decision of Pre-Trial Chamber I of 19 May 2011 entitled 'Decision on the 'Defence Request for Interim Release'" (Appeals Chamber), No. [ICC-01/04-01/10-283 OA](#), 14 July 2011, para. 15. See also, the Public Redacted Version of the "Judgment on the appeal of the Prosecutor against Pre-Trial Chamber II's 'Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa'" (Appeals Chamber), No. [ICC-01/05-01/08-631-Red OA2](#), 2 December 2009, para. 62.

Chamber “are flawed on account of a misdirection on a question of law, a misappreciation of the facts founding its decision, a disregard of relevant facts, or taking into account facts extraneous to the sub judice issues”.³⁸

29. Regarding questions of law, the Appeals Chamber “[w]ill 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. If the relevant chamber committed such an error, the Appeals Chamber will only intervene if the error materially affected the decision impugned on appeal”.³⁹ In this regard, “[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’”.⁴⁰

30. In respect to the exercise of discretion, the Appeals Chamber “will not interfere with [a lower] Chamber’s exercise of discretion [...] merely because the Appeals Chamber, if it had the power, might have made a different ruling. [...] The function of the Appeals Chamber [is to review] the exercise of discretion by [a lower] Chamber to ensure that the Chamber properly exercised its discretion. However, the Appeals Chamber will not interfere with [a lower] Chamber’s exercise of discretion [...], save where it is shown that that determination was vitiated by an error of law, an error of fact, or a procedural error, and then, only if the error materially affected the determination. This means in effect that the Appeals Chamber will interfere with a discretionary decision only under limited conditions [including]: (i) where the exercise of discretion is based on an erroneous interpretation of the law; (ii) where it is exercised

³⁸ See the “Judgment In the Appeal by Mathieu Ngudjolo Chui of 27 March 2008 against the Decision of Pre-Trial Chamber I on the Application of the Appellant for Interim Release” (Appeals Chamber), No. [ICC-01/04-01/07-572 OA4](#), 9 June 2008, para. 25. See also, the “Judgment on the appeal of the Prosecutor against Pre-Trial Chamber II’s ‘Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa’”, *supra* note 37, para. 61.

³⁹ See the “Judgment on the appeal of the Republic of the Philippines against Pre-Trial Chamber I’s ‘Authorisation pursuant to article 18(2) of the Statute to resume the investigation’” (Appeals Chamber), No. [ICC-01/21-77 OA](#), 18 July 2023, paras. 35-36, and references contained therein.

⁴⁰ *Idem*, para. 36.

on patently incorrect conclusion of fact; or (iii) where the decision is so unfair and unreasonable as to constitute an abuse of discretion".⁴¹

B Merits of the Appeal

a. Ground 1

31. The Defence contends that the Chamber erred in law in finding that the Admissibility Challenge was filed in compliance with article 19(5) of the Statute. In particular, the Defence argues that the Chamber improperly distinguished between different organs of the CAR, assessing the "*earliest opportunity*" by reference to when the "*competent Ministry*" became aware of the jurisdictional conflict, rather than when the "*State*" as a whole had such knowledge.⁴²

32. The Defence merely repeats arguments already submitted before⁴³ and dismissed by the Chamber. In this regard, the Defence's interpretation is overly rigid, contrary to the purpose of article 19(5) and inconsistent with the Court's jurisprudence on complementarity. The Chamber's determination was legally sound and it appropriately exercised its discretion.

33. Article 19(5) requires that an admissibility challenge be made "*at the earliest opportunity*". The Appeals Chamber has clarified that this standard requires a State to act "*as soon as it is in a position to actually assert a conflict of jurisdictions*", not at the first abstract moment of awareness.⁴⁴ Moreover, admissibility challenges must be assessed

⁴¹ See the "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" (Appeals Chamber), [No. ICC-02/04-01/05-408 OA3](#) 16 September 2009, paras. 79-80 (pursuant to Decision ICC-02/04-01/05-424, dated 06-02-2015, this document is copied and transferred in the case ICC-02/04-01/15: *The Prosecutor vs. Dominic Ongwen*). See also, the "Judgment on the appeals of the Prosecutor and Mr Thomas Lubanga Dyilo against the 'Decision on Sentence pursuant to Article 76 of the Statute'" (Appeals Chamber), [No. ICC-01/04-01/06-3122 A4 A6](#), 1 December 2014, paras. 41-42.

⁴² See the Appeal, *supra* note 1, para. 25 and the Impugned Decision, *supra* note 2, para. 34.

⁴³ See the Defence Observations, *supra* note 28, paras. 11-29.

⁴⁴ See the "Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled 'Decision on the Application by the Government of Kenya challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute'" (Appeals Chamber), [No. ICC-01/09-01/11-307 OA](#), 30 August 2011, (the "*Ruto et al.* Admissibility Judgment"), para. 98. See also, the "Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of

against the broader framework of article 17, which requires that the State demonstrates it is investigating or prosecuting "*the same case*".⁴⁵ A State challenging the admissibility of a case before the Court must provide sufficient evidence that the national investigation or prosecution cover essentially the same conduct as that referred to in the warrant of arrest or summons to appear issued by the Court. This necessitates clarity on the contours of the ICC case before a meaningful challenge can be advanced.⁴⁶

34. Contrary to the Defence's claim, the Chamber did not err in focusing on when the "*competent Ministry*" became aware of the jurisdictional conflict. International law recognises that while the acts of all State organs are attributable to the State,⁴⁷ only certain organs are empowered to represent the State externally.⁴⁸ It would be artificial and impractical to calculate the "*earliest opportunity*" from the moment any State organ, such as the SCC Prosecutor, acquired partial knowledge. Only the competent authorities empowered to represent the CAR in international proceedings could validly submit an admissibility challenge before the Court.

30 May 2011 entitled 'Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case pursuant to Article 19(2)(b) of the Statute'" (Appeals Chamber), [No. ICC-01/09-02/11-274 OA](#), 30 August 2011, paras. 1 and 100.

⁴⁵ See the "Decision on the Prosecutor's Application for a warrant of arrest, Article 58" (Pre-Trial Chamber I), [No. ICC-01/04-01/06-8-Corr](#), 10 February 2006, para. 31. See also, the "Decision on the admissibility of the case against Saif Al-Islam Gaddafi" (Pre-Trial Chamber I), [No. ICC-01/11-01/11-344-Red](#), 31 May 2013, para. 74.

⁴⁶ See the Impugned Decision, *supra* note 2, para. 28. See also, the "Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case" (Appeals Chamber), [No. ICC-01/04-01/07-1497 OA 8](#), 25 September 2009, para. 80 (the "*Katanga* Admissibility Judgment").

⁴⁷ See e.g., the Responsibility of States for Internationally Wrongful Acts, Text adopted by the Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission's report covering the work of that session. The report, which also contains commentaries on the draft articles, appears in Yearbook of the International Law Commission, 2001, vol. II (Part Two). Text reproduced as it appears in the annex to General Assembly resolution 56/83 of 12 December 2001, and corrected by document A/56/49(Vol. I)/Corr.4. Art. 4.

⁴⁸ See e.g., the Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969. Entered into force on 27 January 1980. United Nations, Treaty Series, vol. 1155, p. 331, Art. 7(2). See also *inter alia*, ICJ, Armed Activities on the Territory of the Congo (New Application: 2002) (*Democratic Republic of the Congo v. Rwanda*), Jurisdiction and Admissibility, ICJ Reports 2006, p. 6, at paras. 46–50: the Court stressed that only certain high-ranking officials (Head of State, Head of Government, Minister for Foreign Affairs) are empowered by their functions to bind the State in its international relations.

35. The Appeals Chamber has warned against premature challenges, emphasising that admissibility proceedings should not serve as a mechanism through which a State may gradually inform the Court of domestic steps.⁴⁹ Instead, as rightly noted in the Impugned Decision, a challenge must be brought when the State is able to “*fully demonstrate*” a conflict of jurisdiction.⁵⁰ The contours of the case being investigated or prosecuted domestically must be clear, irrespective of the stage of the investigation or prosecution.⁵¹ Until August 2024, the CAR authorities lacked knowledge of the content of the ICC Arrest Warrant and thus could not establish the overlap between the ICC and SCC cases. The Chamber rightly concluded that it was only at that point that the CAR was in a position to act, and that the challenge was filed within a reasonable timeframe thereafter.

36. Counsel recalls that Victims expressed their preference for proceedings in the CAR to allow them to better follow the process and participate meaningfully.⁵² An unduly formalistic reading of article 19(5), as advanced by the Defence, would risk excluding genuine domestic efforts on purely procedural grounds, thereby frustrating Victims’ access to justice.

37. In light of the above, the Defence first ground of appeal should be dismissed.

⁴⁹ See the “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’” (Appeals Chamber), [No. ICC-01/11-01/11-547-Red](#), 21 May 2014, para. 164.

⁵⁰ See the Impugned Decision, *supra* note 2, para. 28.

⁵¹ See the “Judgment on the appeal of Côte d’Ivoire against the decision of Pre-Trial Chamber I of 11 December 2014 entitled ‘Decision on Côte d’Ivoire’s challenge to the admissibility of the case against Simone Gbagbo’” (Appeals Chamber), [No. ICC-02/11-01/12 OA](#), 27 March 2015, para. 88 (the “*Simone Gbagbo* Admissibility Judgment”).

⁵² See the OPCV Observations, *supra* note 31, paras. 3-4.

b. Ground 2

38. In Ground 2, the Defence submits that the Chamber erred in law by allegedly reversing the CAR's burden of proving the inadmissibility of the case.⁵³ Counsel considers that no such error occurred. The Chamber properly applied the Statute and relevant jurisprudence, considered the evidence submitted by the CAR, and reasonably dismissed the Defence's unsubstantiated allegations.

39. Pursuant to article 19(2)(b) of the Statute, a State has the right to challenge the admissibility of a case on the ground that it is investigating or prosecuting the same matter. Article 19(5) and consistent case law establish that the burden lies with the State to provide evidence demonstrating inadmissibility. In this regard, the Appeals Chamber has held that the State must submit "*evidence with a sufficient degree of specificity and probative value*" to show that it is genuinely investigating or prosecuting the case.⁵⁴ The Court then assesses whether this evidence meets the criteria of article 17, including willingness and ability.⁵⁵

40. The Chamber correctly required the CAR to substantiate its admissibility challenge. It examined the materials submitted, including the SCC arrest warrant, investigative steps, and judicial decisions, and found that these demonstrated ongoing domestic proceedings concerning the same case.⁵⁶ The Chamber's reliance on the CAR's submissions was not a reversal of the burden, but the ordinary process of evaluating whether the State had discharged its responsibility under article 19(2)(b) of the Statute.

⁵³ See the Appeal, *supra* note 1, paras. 40-42

⁵⁴ See *Ruto et al.* Admissibility Judgment, *supra* note 44, para. 2.

⁵⁵ See the *Simone Gbagbo* Admissibility Judgment, *supra* note 51, para. 29.

⁵⁶ See the Impugned Decision, *supra* note 2, paras. 30-38.

41. The Defence's claim amounts to mere disagreement with how the Chamber weighed the evidence; such disagreement is insufficient to establish an error of law.⁵⁷ The Chamber expressly considered the Defence's submissions, including those alleging lack of impartiality in the CAR's judiciary, but found that they were unsubstantiated and not linked to the specific case against Mr Beina.⁵⁸ This careful assessment underscores that no burden-shifting occurred.

42. The Chamber committed no error of law. It applied the correct standard, held the CAR to its evidentiary burden, and reasonably rejected the Defence's unsupported claims. Ground 2 of the Appeal should therefore be equally dismissed.

c. Ground 3 to 5

43. Through Ground 3 to 5, the Defence raises three distinct but closely related alleged errors of law. First, it challenges the Chamber's refusal to consider an Expert Report tendered by the Defence.⁵⁹ Second, it objects to the Chamber's treatment of submissions concerning the independence and impartiality of the CAR judiciary.⁶⁰ Third, it contests the Chamber's refusal to consider Defence arguments regarding the availability and protection of prospective Defence witnesses.⁶¹

44. All three Grounds are premised on the same underlying contention: that the Chamber failed to give sufficient weight to Defence materials and arguments suggesting that proceedings in the CAR would not be impartial or would otherwise prejudice Mr Beina's fair trial rights. In essence, the Defence attempts to reframe its dissatisfaction with the Chamber's evidentiary assessment as separate "errors of law."

⁵⁷ See the *Katanga* Admissibility Judgment, *supra* note 46, para. 37.

⁵⁸ See the Impugned Decision, *supra* note 2, paras. 56-60.

⁵⁹ See the Appeal, *supra* note 1, paras. 43-48.

⁶⁰ *Idem*, paras. 49-56.

⁶¹ *Idem*, paras. 57-62.

45. Because these grounds share a common factual and legal foundation - namely the alleged inability or unwillingness of the CAR judiciary to conduct genuine proceedings - they are addressed together *infra*.

46. Counsel submits that the Chamber committed no error. Its treatment of the Defence's submissions reflects a proper exercise of judicial discretion and does not disclose any misapplication of law or misappreciation of fact capable of materially affecting the Impugned Decision.

47. Under article 17(2) of the Statute, unwillingness of a State must be shown through indicators such as proceedings conducted "*for the purpose of shielding the person concerned*", or in a manner that is not "*independent or impartial*", or that is inconsistent with an intent to bring the person to justice. The Appeals Chamber has clarified that the Court is not a general human rights review body. It stressed that only "*egregious violations*" of the rights of the defendant may be relevant to admissibility.⁶² The ICC is thus not mandated to review whether national authorities apply domestic law consistently with local practice, or whether domestic standards are ideal.

48. The Defence relies on three strands of argument - an Expert Report, allegations of judicial partiality, and concerns about witness availability - all aimed at demonstrating that the CAR proceedings are not impartial or genuine. The Chamber considered these submissions and was correct in finding them irrelevant, speculative, or unsubstantiated. With respect to the Expert Report, the Chamber noted that it consisted of general observations about the CAR judiciary and political environment, without any direct nexus to the proceedings against Mr Beina, and in any event had not been disclosed to the CAR authorities.⁶³ The Chamber properly concluded that it lacked probative value.

⁶² See the "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'" (Appeals Chamber), [No. ICC-01/11-01/11-565 OA6](#), 24 July 2014, paras. 226–230.

⁶³ See the Impugned Decision, *supra* note 2, para. 55.

49. Similarly, the Defence's allegations of systemic bias and political interference in the CAR judiciary were considered but rejected as unsubstantiated and insufficiently case-specific.⁶⁴ The Appeals Chamber has made clear that generic allegations about systemic weaknesses do not suffice; unwillingness under article 17(2)(c) must be shown by concrete evidence that the defendant's own case is being conducted in a manner inconsistent with the intent to bring them to justice.⁶⁵

50. Finally, the Chamber addressed the Defence's concerns regarding the availability and protection of witnesses. It found these submissions to be speculative and not supported by evidence of actual risks or interference in Mr Beina's proceedings.⁶⁶ It recalled that only egregious and case-specific violations of fair trial rights may affect admissibility.⁶⁷ No such showing was made.

51. From the perspective of Victims, the Defence's arguments are also particularly unconvincing. Victims consistently expressed their confidence in the SCC and their strong interest in proceedings being conducted in the CAR.⁶⁸ Accepting the Defence's claims would unjustifiably undermine domestic accountability efforts and frustrate Victims' right to justice. By contrast, the record demonstrates that the CAR has taken concrete investigative and prosecutorial steps - including issuing arrest warrants, conducting investigations, and preparing for trial - which indicate a genuine intent to bring Mr Beina to justice.

52. Accordingly, the Defence has not identified any error of law, fact, or procedure that materially affected the Impugned Decision. Nor has it shown that the Chamber abused its discretion in evaluating the probative value of the Expert Report, or in

⁶⁴ *Idem*, paras. 56-60.

⁶⁵ See the "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'", *supra* note 62, paras. 169-170.

⁶⁶ See the Impugned Decision, *supra* note 2, para. 61.

⁶⁷ *Idem*, para. 70. See also, the "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'", *supra* note 62, para. 227.

⁶⁸ See the OPCV Observations, *supra* note 31, paras. 3-4.

dismissing generalised and speculative allegations of judicial bias and witness intimidation.

53. Grounds 3 to 5 of the Appeal should therefore be dismissed in their entirety.

V. CONCLUSION

54. For the foregoing reasons, Counsel respectfully requests the Appeals Chamber to dismiss the Appeal and confirm the Impugned Decision.



Paolina Massidda
Principal Counsel

Dated this 28th day of October 2025

Done at The Hague, The Netherlands