

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-01/14**  
Date: **17 March 2025**

**PRE-TRIAL CHAMBER II**

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

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II**

**Public**

**With Confidential Annexes 1 and 2**

**Public Redacted Version of ‘Written Observations of Mr Edmond Beina on the Central African Republic’s Admissibility Challenge’**

**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**

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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 Defence of Mr Edmond Beina ('the Defence' and 'Mr Beina', respectively) files the present observations pursuant to the Order of Pre-Trial Chamber II ('the Chamber') dated 4 February 2025 on the conduct of the admissibility proceedings ('Order of 4 February 2025').<sup>1</sup>

## II. RELEVANT PROCEDURAL BACKGROUND

2. On 30 May 2014, the Government of the Central African Republic ('CAR') referred the situation in the CAR since 1 August 2012 to the Office of the Prosecutor of the International Criminal Court ('Prosecution' or 'ICC OTP' and 'ICC' or 'the Court', respectively).<sup>2</sup>

3. On 7 December 2018, following an under seal and *ex parte* application under Article 58(1) of the Rome Statute ('the Statute') by the Prosecution, the 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 allegedly committed in Guen, a village in Mambere-Kadei Prefecture of the CAR, between at least 1 February to early April 2014 ('ICC Arrest Warrant').<sup>3</sup>

4. On 3 May 2022, *Chambre d'Instruction N°3* of the *Cour Pénal Speciale*, or Special Criminal Court, of the CAR ('SCC' or 'Special Court') issued a warrant for the arrest of Mr Beina for alleged crimes within the jurisdiction of the SCC ('SCC Arrest Warrant').<sup>4</sup>

5. On 16 June 2024, Mr Beina was arrested in the CAR with the assistance of *inter alia* personnel from the ICC OTP.<sup>5</sup>

6. On 22 October 2024, the Government of 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').<sup>6</sup>

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<sup>1</sup> Order on the conduct of the proceedings following the Central African Republic's challenge to the admissibility of the case against Edmond Beina, 4 February 2025, [ICC-01/14-203](#) ('Order of 4 February 2025'), p. 6.

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

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

<sup>4</sup> Admissibility Challenge, Annex 15 ('SCC Arrest Warrant').

<sup>5</sup> Admissibility Challenge, para. 16, Annexes 8, 9, 10.

<sup>6</sup> Requête de la République Centrafricaine en irrecevabilité de l'affaire contre M. Edmond BEINA, 22 October 2024, ICC-01/14-189-US-Exp-AnxII (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').

7. In its Order of 4 February 2025, the Chamber *inter alia* requested the CAR Government to indicate whether they agree to reclassify the annexes to the Admissibility Challenge as confidential or to otherwise file confidential redacted versions and invited the Defence to submit observations on the Admissibility Challenge.<sup>7</sup>

8. By an Order dated 21 February 2025, the Chamber *inter alia* extended the time limit applicable to the filing of the Defence observations on the Admissibility Challenge to 17 March 2025.<sup>8</sup>

### III. OVERVIEW OF SUBMISSIONS

9. The Defence respectfully submits that the Chamber should dismiss the Admissibility Challenge *in limine* as being filed in an untimely manner, rendering it inadmissible under Article 19(5) of the Statute. Alternatively, if the Chamber finds the Admissibility Challenge to be admissible, the Defence submits that it should dismiss the Admissibility Challenge in its entirety and declare the case against Mr Beina admissible as the domestic proceedings against him in CAR (i) are not being conducted independently or impartially within the meaning of Article 17(2)(c) of the Statute; and (ii) fail to guarantee Mr Beina's fair trial rights.

### IV. THE EXPERT REPORT

10. The Defence recalls that the CAR 'bears the burden of proof to show that the case is inadmissible'.<sup>9</sup> However, cognizant of the Appeals Chamber's observation that the Defence does bear an evidential burden to sufficiently substantiate the factual allegations it puts forward,<sup>10</sup> in support of its submissions, the Defence presents *inter alia* an Expert Report authored by [REDACTED] ('Expert Report').<sup>11</sup> [REDACTED].<sup>12</sup>

### V. THE ADMISSIBILITY CHALLENGE SHOULD BE DISMISSED *IN LIMINE* PURSUANT TO ARTICLE 19(5) OF THE STATUTE

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<sup>7</sup> Order of 4 February 2025, p. 6.

<sup>8</sup> Email from Pre-Trial Chamber II, 21 February 2025, 11:54.

<sup>9</sup> *Prosecutor v. Simone Gbagbo*, Judgment on the appeal of Côte d'Ivoire against the decision of Pre-Trial Chamber I of 11 December 2014 entitled "Decision on Côte d'Ivoire's challenge to the admissibility of the case against Simone Gbagbo", 27 May 2015, [ICC-02/11-01/12-75-Red](#) ('S. Gbagbo Admissibility Judgment'), para. 166.

<sup>10</sup> *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", 24 July 2014, [ICC-01/11-01/11-565](#) ('Al-Senussi Admissibility Judgment'), para. 167.

<sup>11</sup> Annex 1, [REDACTED], 3 March 2025 ('Expert Report') (Annex 1 consists of [REDACTED]).

<sup>12</sup> [REDACTED].

11. Mr Beina submits that the Chamber should dismiss the Admissibility Challenge *in limine* as it has been filed outside the time period envisioned by the Statute in a manner that constitutes an abuse of a State Party's right to challenge the admissibility of cases before the Court.

12. The CAR has been aware of a jurisdictional conflict between the ICC and SCC with respect to proceedings against Mr Beina for many years but has not availed itself of its right to file an admissibility challenge until recently. The Defence submits that, upon an examination of the chronology of the cases against Mr Beina in both jurisdictions, the Admissibility Challenge does not conform to Article 19(5) of the Statute and thus should be declared inadmissible.

#### ***A. The Requirements of Article 19(5) of the Statute***

13. The Admissibility Challenge has been brought by the CAR under Article 19(2)(b) of the Statute.<sup>13</sup> Challenges lodged by States under this provision are subject to Article 19(5) of the Statute, which provides that '[a] State referred to in paragraph 2 (b) and (c) shall make a challenge *at the earliest opportunity*.'<sup>14</sup> This requirement serves 'to avoid obstructing or delaying the proceedings' through admissibility proceedings.<sup>15</sup>

14. The Appeals Chamber has observed that 'expeditiousness is a recurrent theme in the Court's legal instruments', placing an onus on all participants in its proceedings 'to act in a diligent and expeditious manner'.<sup>16</sup> Article 19(5) extends this obligation to States when raising admissibility challenges under Article 19(2)(b) or (c). However, the Appeals Chamber has held that Article 19(5) 'does not require a State to challenge admissibility just because the Court has issued a summons to appear [or warrant of arrest]'.<sup>17</sup> The indicators of when the 'earliest opportunity' arises do not strictly relate to the procedural stage at which a given investigation or prosecution may have reached before the ICC,<sup>18</sup> but rather whether the contours or

<sup>13</sup> Admissibility Challenge, para. 21.

<sup>14</sup> Emphasis added.

<sup>15</sup> *Prosecutor v. Katanga and Ngudjolo Chui*, Public redacted version of the "Decision on the Motion of the Defence for Germain Katanga for a Declaration on Unlawful Detention and Stay of Proceedings" of 20 November 2009 (ICC-01/04-01/07-1666-Conf-Exp), 3 December 2009, [ICC-01/04-01/07-1666-Red-tENG](#) ('*Katanga and Ngudjolo Chui* Decision on Unlawful Detention'), para. 41.

<sup>16</sup> *Prosecutor v. Katanga*, Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 20 November 2009 Entitled "Decision on the Motion of the Defence for Germain Katanga for a Declaration on Unlawful Detention and Stay of Proceedings", 12 July 2010, [ICC-01/04-01/07-2259](#), para. 43.

<sup>17</sup> *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", 30 August 2011, [ICC-01/09-02/11-274](#) ('*Muthaura et al.* Admissibility Judgment'), para. 45; *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", 30 August 2011, [ICC-01/09-01/11-307](#) ('*Ruto et al.* Admissibility Judgment'), para. 46.

<sup>18</sup> *Cf. 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, 21 November 2024, [ICC-01/18-374](#) ('*Palestine* Decision on Jurisdictional

parameters of the allegedly conflicting domestic investigation or prosecution by the State are sufficiently clear as to indicate a jurisdictional conflict between the State and the Court. Thus, while the ICC's issuance of an arrest warrant does not *ipso facto* represent a 'critical moment' in terms of Article 19(5), it may do so when a State has also issued such a warrant for the same person and a comparison of the two documents and the charges within them clearly evinces a jurisdictional conflict.

15. The Appeals Chamber has found that Article 19(5) 'requires a State to challenge admissibility as soon as possible once it is in a position to actually assert a conflict of jurisdictions', that is, 'the earliest point in time after the conflict of jurisdictions has actually arisen'.<sup>19</sup> It has elaborated that 'as soon as a State can present its challenge in such a way that it can show a conflict of jurisdictions, it must be submitted'.<sup>20</sup> This observation on Article 19(5) should be understood in the context of the Appeals Chamber's jurisprudence that a 'challenge must be able to show what is being investigated by the State (the contours or parameters of the case) such that the Court is able to compare this against what is being investigated by the Prosecutor' and that if 'a State is unable to present such parameters to the Court, no assessment of whether the same case is being investigated can be meaningfully made'.<sup>21</sup>

16. Accordingly, the jurisprudence of the Appeals Chamber provides that Article 19(5) requires that a State submit an admissibility challenge as soon as the contours or parameters of the case in question are sufficiently clear as to indicate a conflict of jurisdiction exists. This certainly does not require that the relevant investigation has reached its conclusion, as it is not 'inherent in an ongoing investigation that its contours are unclear.'<sup>22</sup>

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Challenge'), para. 18 (on public statements of the Prosecutor and Requests for Assistance received from the Court not estopping a State under Article 19(5) from raising an admissibility challenge).

<sup>19</sup> *Muthaura et al.* Admissibility Judgment, paras 45, 100; *Ruto et al.* Admissibility Judgment, paras 46, 98. See also *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 case against Saif Al-Islam Gaddafi", 21 May 2014, [ICC-01/11-01/11-547-Red](#) ('Gaddafi Admissibility Judgment'), para. 164; *S. Gbagbo* Admissibility Judgment, para. 35.

<sup>20</sup> *Gaddafi* Admissibility Judgment, para. 84. See also *Prosecutor v. Gaddafi and Al-Senussi*, Decision on Libya's Postponement of the Execution of the Request for Arrest and Surrender of Abdullah Al-Senussi Pursuant to Article 95 of the Rome Statute and related Defence Request to Refer Libya to the UN Security Council, 14 June 2013, [ICC-01/11-01/11-354](#) ('Al-Senussi Decision on Execution of Request for Arrest and Surrender'), para. 31.

<sup>21</sup> *Gaddafi* Admissibility Judgment, para. 84. See also *S. Gbagbo* Admissibility Judgment, para. 88.

<sup>22</sup> *Gaddafi* Admissibility Judgment, para. 83. See also *Muthaura et al.* Admissibility Judgment, Dissenting Opinion of Judge Anita Ušacka, para. 21; *Ruto et al.* Admissibility Judgment, Dissenting Opinion of Judge Anita Ušacka, para. 21 ('a State, acting in good faith, may use the mechanism of a State challenge as early as possible, even though the State has not yet reached the stage of fully investigating or prosecuting a given case and intends to start to do so in the course of the proceedings on the admissibility challenge').

17. While neither Article 19(5) nor its *travaux préparatoires* indicate the consequences following from an admissibility challenge's untimely filing,<sup>23</sup> the Court's jurisprudence clearly indicates that where a submission that is required to be made at an early stage of proceedings is filed late, it will be considered inadmissible and, where it is a motion or request, dismissed.<sup>24</sup>

18. Furthermore, in the *Al-Senussi* case, Pre-Trial Chamber I concluded that Libya's admissibility challenge had 'been properly made within the terms of article 19(2) and (5) of the Statute and rule 58(1) of the Rules' after finding *inter alia* that Libya had not unduly failed to file the challenge in a timely manner in violation of Article 19(5).<sup>25</sup> It is implicit in this determination that Pre-Trial Chamber I was prepared to consider itself improperly seized of the challenge and to dismiss it should it have found a violation of Article 19(5).

### ***B. Timeline of Proceedings against Mr Beina***

19. The Admissibility Challenge itself sets out a detailed timeline of the domestic proceedings against Mr Beina in the CAR.<sup>26</sup> However, it is necessary to briefly recall several key dates within the development of these proceedings, alongside those in the case before the ICC, for the purpose of determining when the contours of Mr Beina's case before the SCC were sufficient clear as to indicate a conflict of jurisdiction between the CAR and the ICC.

20. On 7 December 2018, the Chamber, in a prior composition, issued the ICC Arrest Warrant.<sup>27</sup> In issuing the ICC Arrest Warrant, the Chamber also ordered the Registry to 'as soon as practicable', prepare a request for cooperation regarding *inter alia* the search for, arrest, and transfer of Mr Beina directed to the authorities of the CAR.<sup>28</sup> Under the assumption that the Registry complied with the order of the Chamber, it can be inferred that the authorities of the CAR were made aware of the ICC Arrest Warrant and, consequently, the detailed contours of the case against Mr Beina before the ICC, either in late 2018 or early 2019. This Pre-Trial Chamber is respectfully invited to request information from the Registry and the Prosecutor on the transmission, if any, of the above-mentioned request for cooperation and any subsequent response and/or follow-up from the CAR authorities.

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<sup>23</sup> D.N. Nsereko and M.J. Ventura, 'Article 19', in K. Ambos (ed.), *Rome Statute of the International Criminal Court: A Commentary*, 4<sup>th</sup> ed., 2022, p. 1073, mn. 70.

<sup>24</sup> See, e.g., *Katanga and Ngudjolo Chui* Decision on Unlawful Detention, paras 39, 66 (finding a motion filed during the trial phase that was required to be filed, if at all, in the initial phase of the proceedings, inadmissible and therefore dismissed the motion).

<sup>25</sup> *Al-Senussi* Decision on Execution of Request for Arrest and Surrender, paras 32, 33.

<sup>26</sup> Admissibility Challenge, paras 3–20.

<sup>27</sup> ICC Arrest Warrant.

<sup>28</sup> ICC Arrest Warrant, pp. 22–23.

21. The SCC case file concerning alleged international crimes in Guen was opened in May 2019.<sup>29</sup> In October 2019, the SCC Special Prosecutor asked the ICC OTP whether it was investigating any alleged crimes in Guen between 1 February and April 2014,<sup>30</sup> with the latter replying on 6 November of the same year that such crimes formed part of the charges against Patrice-Edouard Ngaissona and were also subject to ongoing investigations by the ICC OTP.<sup>31</sup> At this point, the CAR authorities knew, at the very least, that an overlap concerning the scope of investigations poses a potential jurisdictional conflict between the ICC and SCC.

22. Crucially, on 15 November 2019, the SCC Special Prosecutor filed a request before the SCC *Chambre d'accusation spéciale* for a suspension of the Guen preliminary investigation before the Special Court in light of the ongoing investigations of the ICC OTP ('SCC Prosecutor's Request for Suspension').<sup>32</sup> On 12 December 2019, the *Chambre d'accusation spéciale* rejected this request.<sup>33</sup> It was at this point that the CAR authorities could properly be said to have known that a jurisdictional conflict existed between the SCC and ICC with respect to the case against Mr Beina regarding alleged events in Guen. The contours of the SCC investigation were, at this point, sufficiently clear as to indicate a conflict of jurisdiction exists, as evidenced by the fact that such a conflict was, in fact, identified by the SCC Special Prosecutor.<sup>34</sup> The Defence submits that, pursuant to Article 19(5) of the Statute, the CAR was required to submit any challenge to the admissibility of the case against Mr Beina before the ICC at or around this juncture in the proceedings. The CAR did not do so.

23. *Chambre d'Instruction N°3* issued the SCC Arrest Warrant on 3 May 2022.<sup>35</sup> Should the CAR have filed its Admissibility Challenge at this stage, it may still have been vulnerable to objections on the basis of Article 19(5) of the Statute. However, at this stage, one could have argued that it was only with the issuance of the SCC Arrest Warrant—which substantially mirrors the ICC Arrest Warrant—that the CAR authorities could have been definitively sure that a jurisdictional conflict existed between the two proceedings. With the issuance of the SCC Arrest Warrant, it became clear that Mr Beina was wanted by both the ICC and the SCC on charges concerning essentially identical patterns of alleged criminal conduct, reflected by the fact that both alleged his responsibility for nearly identical offences and under modes of liability

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<sup>29</sup> Admissibility Challenge, para. 5.

<sup>30</sup> Admissibility Challenge, Annex 2.

<sup>31</sup> Admissibility Challenge, Annex 3.

<sup>32</sup> Admissibility Challenge, Annex 4.

<sup>33</sup> Admissibility Challenge, Annex 5.

<sup>34</sup> See Admissibility Challenge, Annex 4, paras 16–17.

<sup>35</sup> SCC Arrest Warrant.



that capture the same pattern and acts of perpetration.<sup>36</sup> In the view of the Defence, if it had submitted the Admissibility Challenge at this point, this was the last reasonable opportunity at which the CAR could have claimed it had raised its challenge in compliance with Article 19(5) of the Statute.

24. However, the CAR waited *just under five years* after the SCC Prosecutor’s Request for Suspension (15 November 2019) and *just over two years* after the issuance of the SCC Arrest Warrant (3 May 2022) to file the Admissibility Challenge (22 October 2024). Such a considerable delay is patently incompatible with the requirement under Article 19(5) of the Statute that admissibility challenges be submitted at the ‘earliest possible opportunity’.

25. Furthermore, it should be noted that Article 37 of Organic Law No. 15/003 establishing the SCC (‘the Organic Law’) provides for the primacy of the ICC’s jurisdiction in situations of a jurisdictional conflict between the ICC and the SCC.<sup>37</sup> The Appeals Chamber’s *obiter dictum* in that this provision ‘cannot trump the principle of complementarity’<sup>38</sup> was made in the context of an argument concerning the obligation of Chambers to seek Submissions from States that have jurisdiction over a case rather than on the substantive impact of this provision on a determination of admissibility. The case can also be distinguished on the basis that there were no proceedings before the SCC against Alfred Yekatom,<sup>39</sup> which renders the discussion of the application of the provision academic.

26. However, in the circumstances of the present case, Article 37 of the Organic Law is a crucial feature of the complementarity assessment that must be made by the Chamber. The CAR has decided to externalize portions of its criminal justice to a specialized hybrid court, the SCC. Within the Organic Law, the CAR authorities have decreed that a specific class of cases, namely those ‘seized’—a literal translation of ‘*s’est saisi*’ in Article 37 of the Organic Law—by the ICC Prosecutor, which would certainly encompass cases where a request for an arrest warrant under Article 58 of the Statute has been granted by an ICC Pre-Trial Chamber,<sup>40</sup> would be deferred to the ICC. While this provision of the Organic Law does not indeed ‘trump’ complementarity, it is the sovereign expression by the CAR that it intends to defer specific

<sup>36</sup> Compare ICC Arrest Warrant, paras 16–18, with SCC Arrest Warrant, pp. 3–4.

<sup>37</sup> [Loi organique No. 15-003 portant création, organisation et fonctionnement de de la Cour Pénale Spéciale](#), 3 June 2015, Art. 37.

<sup>38</sup> *Prosecutor v. Yekatom and Ngaiissona*, Public redacted version of ‘Judgment on Mr Yekatom’s appeal against Trial Chamber V’s “Decision on the Yekatom Defence’s Admissibility Challenge”’, 9 October 2020, ICC-01/14-01/18-678-Conf, 11 February 2021, [ICC-01/14-01/18-678-Red](#) (‘Yekatom Admissibility Judgment’), para. 48.

<sup>39</sup> *Yekatom* Admissibility Judgment, para. 24.

<sup>40</sup> Cf. *Palestine* Decision on Jurisdictional Challenge, para. 17; *Situation in the Democratic Republic of the Congo*, Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6, 19 January 2006, [ICC-01/04-101-tEN-Corr](#), para. 65

category of cases—which that against Mr Beina falls under—to the ICC. This is a voluntary and sovereign declaration by the CAR, through the medium of domestically binding legislation, of its own unwillingness to prosecute a certain type of cases. It is not the role of this Chamber or this Court to call into doubt this advanced expression of the CAR’s position but simply to take stock of this expressed unwillingness as a matter of fact in its determination.

27. In the present circumstances, the fact that the CAR Government mounted the present Admissibility Challenge regarding a case with respect to which its own domestic laws grant the ICC primacy is further evidence that the laws of the CAR are arbitrarily enforced at the political convenience of the executive. As yet another indicator of the deep decay of the rule of law in the CAR, this evinces the fact that Mr Beina cannot expect to receive a fair trial in the CAR.

28. Lastly, Trial Chamber V has also held that the CAR’s omission to raise any challenge to the case against Alfred Yekatom before the ICC evidenced its voluntary inactivity, rendering the case admissible.<sup>41</sup> This decision essentially endorses the notion that a State’s omission in raising an admissibility challenge with respect to an investigation or prosecution that it is aware of constitutes implicit consent for the ICC to proceed with any investigation or prosecution of crimes that may fall under that State’s jurisdiction. The CAR’s omission to challenge the admissibility of the case against Mr Beina, despite being aware of the contours of the case against Mr Beina before the SCC being sufficiently defined to evince a jurisdictional conflict for many years, reflects the CAR’s informed and voluntary inactivity with respect to Mr Beina’s case prior to the filing of its Admissibility Challenge.

29. Accordingly, the Defence submits that the Chamber must find the Admissibility Challenge inadmissible for its failure to comply with Article 19(5) of the Statute and dismiss it *in limine*.

## **VI. THE CASE AGAINST MR BEINA BEFORE THE ICC IS ADMISSIBLE**

30. In the alternative, the Defence submits that the Chamber should reject the Admissibility Challenge as the requirements for inadmissibility under Article 17(1)(a) of the Statute are not met in the present case. Specifically, the Defence submits that the domestic proceedings against Mr Beina in the CAR (i) are not being conducted independently or impartially within the meaning of Article 17(2)(c) of the Statute; and (ii) fail to afford Mr Beina fair trial guarantees that he is entitled to under international human rights law, specifically his right to obtain the

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<sup>41</sup> *Prosecutor v. Yekatom and Ngaißsona*, Decision on the Yekatom Defence’s Admissibility Challenge, 28 April 2020, [ICC-01/14-01/18-493](#), paras 20–21.

attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

### ***A. The CAR Judiciary Systematically Lacks Independence and Impartiality***

31. Pursuant to Article 17(2)(c) of the Statute, a State is ‘unwilling’ in a given case *inter alia* where ‘the proceedings were not or are not being conducted independently or impartially’. In *Al-Senussi*, Pre-Trial Chamber I considered that in order for lack of independence or impartiality on the scale of a domestic legal system itself to be sufficient to qualify under Article 17(2)(c) of the Statute, what must be demonstrated is ‘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]’ are not being conducted independently or impartially.<sup>42</sup> The *Al-Senussi* Pre-Trial Chamber’s consideration of allegations of the systemic lack of independence and impartiality of the Libyan judicial system was approved of by the Appeals Chamber, which described it as ‘careful and considered’.<sup>43</sup>

32. Moreover, the independence and impartiality of proceedings may be examined by reference to the independence and impartiality of the tribunal before which such proceedings are being conducted.<sup>44</sup> The Appeals Chamber of the Special Court for Sierra Leone has accordingly observed that ‘an objection that the Court lacks judicial independence is basically, and in substance, an objection to the fairness of the trial and an allegation that the right of the accused to a fair hearing is likely to be infringed by the trial’.<sup>45</sup>

33. As established in international human rights jurisprudence, the notion of a tribunal’s independence refers to its establishment by law and its independence from the executive.<sup>46</sup> The

<sup>42</sup> *Prosecutor v. Gaddafi and Al-Senussi*, Decision on the admissibility of the case against Abdullah Al-Senussi, 11 October 2013, [ICC-01/11-01/11-466-Red](#) (*‘Al-Senussi Admissibility Decision’*), para. 258.

<sup>43</sup> *Al-Senussi Admissibility Judgment*, para. 256.

<sup>44</sup> W.A. Schabas and M. El Zeidy, ‘Article 17’, in K. Ambos (ed.), *Rome Statute of the International Criminal Court: A Commentary*, 4<sup>th</sup> ed., 2022, p. 1002, mn. 84. See [Universal Declaration of Human Rights](#), 10 December 1948, UN Doc. A/RES/217(III)A, Art. 10; [International Covenant on Civil and Political Rights](#), 16 December 1966, 999 UNTS 171 (*‘ICCPR’*), Art. 14(1); [European Convention on Human Rights](#), 4 November 1950, 213 UNTS 221 (*‘ECHR’*), Art. 6(1); [American Convention on Human Rights](#), 21 November 1969, 1144 UNTS 123 (*‘ACHR’*), Art. 8(1). See also [African Charter on Human and Peoples’ Rights](#), 27 June 1981, 1520 UNTS 271 (*‘AfrCHPR’*), Art. 26.

<sup>45</sup> *Prosecutor v. Norman*, Case No. SCSL-2004-14-AR72 (E), [Decision on Preliminary Motion Based on Lack of Jurisdiction \(Judicial Independence\)](#), 13 March 2004, para. 4.

<sup>46</sup> See, e.g., UN-HRC, *General Comment No. 32: Article 14: Right to Equality before Courts and Tribunals and to a Fair Trial*, 23 August 2007, UN Doc. [CCPR/C/GC/32](#) (*‘UN-HRC, General Comment No. 32’*), para. 19; *Ringelsen v. Austria*, App. No. 2614/65, [Judgment \(Merits\)](#), ECtHR, 16 July 1971, para. 95; *Crociani and Others v. Italy*, App. Nos. 8603/79, 8722/79, 8723/79 & 8729/79, [Decision on Admissibility](#), European Commission on Human Rights (*‘ECmHR’*), 18 December 1980, 22 *ECmHR Decisions and Reports* (1980), p. 220; *Bahamonde v. Equatorial Guinea*, Comm. No. 468/1991, Views, UN Human Rights Committee (*‘UN-HRC’*), 20 October 1993, UN Doc. [CCPR/C/49/D/468/1991](#) (*‘Bahamonde v. Equatorial Guinea Views’*), para. 9.4; *Mika Miha v. Equatorial Guinea*, Comm. No. 414/1990, Views, UN-HRC, 8 July 1994, UN Doc. [CCPR/C/51/D/414/1990](#) (*‘Mika Miha v.*

UN Basic Principles on the Independence of the Judiciary, moreover, refer to the ability of judges to ‘decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason’.<sup>47</sup> The factor most directly relevant to the independence of a tribunal is its exposure to executive interference and intervention, namely in the appointment, termination, and disciplining of members of the judiciary.<sup>48</sup> A tribunal’s lack of independence will be most evident in situations where the executive exercises direct control over the judiciary.<sup>49</sup> A tribunal also lacks independence where its judges may be removed at will by the executive without any predefined procedure and where judges who do not follow instructions from the executive are subject to reprisals.<sup>50</sup>

(i) Direct Executive Control and Influence over the CAR Judiciary

34. The CAR’s judicial system, including the SCC, fundamentally lacks independence, being controlled and significantly influenced by the executive branch, headed by President Faustin-Archange Touadéra (‘President Touadéra’), for the benefit of President Touadéra and his political allies and to the detriment of his actual and perceived political opponents. President Touadéra wields this control over the CAR judiciary both *de jure*, with the CAR’s constitutional structure affording the President essentially unchecked authority over the judiciary, including the national judges of the SCC, and *de facto*, with President Touadéra, his supporters, and elements of Russian Wager Group mercenaries influencing the judicial system, up to the very highest levels, through threats, intimidation, and abuses of power.

35. While Article 124(1) of the 2023 Constitution of the CAR (‘the Constitution’) declares that the judiciary is independent of the executive,<sup>51</sup> the reality, in both law and practice, paints a

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*Equatorial Guinea Views*’), para. 6.7. See also *Prosecutor v. Tadić*, Case No. IT-94-1-AR72, [Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction](#), 2 October 1995, para. 43.

<sup>47</sup> [UN Basic Principles on the Independence of the Judiciary](#), 16 September 1985, UN Doc. ST/HR/1/Rev.6(Vol.I/Part1), p. 410, para. 2. See also [Bangalore Principles on Judicial Conduct](#), 27 July 2006, UN Doc. E/2006/INF/2/Add.1, para. 1.1; *Parlov-Tkalčić v. Croatia*, App. No. 24810/06, [Judgment](#), ECtHR, 22 December 2009, para. 86; *Chocrón Chocrón v. Venezuela*, [Judgment](#), Inter-American Court of Human Rights, Serries C, No. 227, 1 July 2011, para. 100.

<sup>48</sup> See, e.g., *Findlay v. United Kingdom*, App. No. 22107/93, [Judgment](#), ECtHR, 25 February 1997, para. 73; UN-HRC, *Concluding Observations: Azerbaijan*, 16 November 2016, UN Doc. [CCPR/C/AZE/CO/4](#), para. 26; UN-HRC, *Concluding Observations: Rwanda*, 30 November 2016, UN Doc. [CCPR/C/RWA/CO/4](#), para. 33; UN-HRC, *Concluding Observations: Dominican Republic*, 12 December 2017, UN Doc. [CCPR/C/DOM/CO/6](#), para. 27; UN-HRC, *Concluding Observations: Hungary*, 9 May 2018, UN Doc. [CCPR/C/HUN/CO/6](#), para. 11; UN-HRC, *Concluding Observations: Lebanon*, 9 May 2018, UN Doc. [CCPR/C/LBN/CO/3](#), para. 41.

<sup>49</sup> See, e.g., *Bahamonde v. Equatorial Guinea Views*, para. 9.4; *Mika Miha v. Equatorial Guinea Views*, para. 6.7. <sup>50</sup> *Cedeño v. Venezuela*, Comm. No. 1940/2010, Views, UN-HRC, 29 October 2012, UN Doc. [CCPR/C/106/D/1940/2010](#), paras 7.2–7.3.

<sup>51</sup> Constitution of the Central African Republic, approved 15 December 2015, entry into force 27 March 2016, as last amended 31 August 2023 (‘CAR Constitution’), Art. 124(1).

starkly different picture. The Superior Council of Magistrature, the Consultative Commission of the Council of State, and the Conference of Presidents and of the Procurator General of the Court of Accounts (collectively, ‘the Judicial Councils’), which ‘see to the administration of the career of the Magistrates and to the independence of the Magistrature’,<sup>52</sup> are all presided over and headed by the President.<sup>53</sup> This amounts to direct executive control over the judiciary by the executive, providing ‘for constant interference by the President of the Republic through the Ministry of Justice in judicial affairs, including with magistrates’.<sup>54</sup>

36. Through directing the Judicial Councils, President Touadéra is able to directly influence all members of the CAR judiciary, retaining the ability to dismiss judges with effectively no due process. Such *de jure* power of interference extends to the national judges of the SCC, who comprise the majority of the judges of the Special Court and remain liable to be dismissed through the mechanisms of the Judicial Councils under the direct control of President Touadéra. At the very minimum, President Touadéra can utilize his powers as President of the Judicial Councils to control the trajectory of the careers of members of the judiciary.<sup>55</sup> In 2020, the UN Human Rights Committee (‘UN-HRC’) expressed concern regarding this constitutional arrangement, recommending reform of ‘the Supreme Council of the Judiciary to make it independent of the executive’ and the implementation of ‘procedures for shielding judges and prosecutors from any form of interference or corruption’.<sup>56</sup> No such reforms have been considered by the CAR.

37. In considering allegations of the systemic lack of independence and impartiality of the Libyan judicial system, the *Al-Senussi* Pre-Trial Chamber noted that Libya’s Supreme Judicial Council was now composed only of members of the judiciary and was no longer under the control of the executive, now being chaired by the President of the Supreme Court instead of the Minister of Justice.<sup>57</sup> The present situation in the CAR is precisely the opposite, with the executive directly controlling the Judicial Councils. The supposed independence of the judiciary from the executive is further undermined by Article 65 of the Constitution, which provides that the ‘President of the Republic is the guarantor of the independence of the Judicial

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<sup>52</sup> CAR Constitution, Art. 126(2).

<sup>53</sup> CAR Constitution, Art. 65(16); Expert Report, para. 12.

<sup>54</sup> Expert Report, para. 16. See also International Center for Transitional Justice (‘ICTJ’), [‘A Drop of Water on a Hot Stone’: Justice for Victims in the Central African Republic](#), March 2021 (‘ICTJ Report 2021’), p. 24.

<sup>55</sup> Expert Report, para. 16.

<sup>56</sup> UN-HRC, *Concluding Observations: Central African Republic*, 30 April 2020, UN Doc. [CCPR/C/CAF/CO/3](#) (‘UN-HRC, CAR Concluding Observations 2020’), paras 27–28.

<sup>57</sup> *Al-Senussi* Admissibility Decision, para. 250.

Power'.<sup>58</sup> Such a relationship between the executive and the judiciary is incompatible with the independence of the latter.<sup>59</sup>

38. International civil society and human rights groups, including the International Federation for Human Rights ('FIDH'), Amnesty International, and the International Center for Transitional Justice ('ICTJ'), have widely condemned the lack of independence of the CAR judiciary and the influence that President Touadéra and his political alliances exert upon it.<sup>60</sup>

39. President Touadéra has, moreover, demonstrated that he is willing to use his direct control over the judiciary to interfere with the independence of the judiciary for political ends and that his ability to interfere with the judiciary is exercisable even at its highest levels.

40. In May 2022, President Touadéra proposed the adoption of a number of major amendments to the Constitution aimed at consolidating and solidifying his power, most notably through the abolition of term limits for the Presidency.<sup>61</sup> To this end, by presidential decree, President Touadéra established a commission to draft such amendments.<sup>62</sup> However, in September 2022, the Constitutional Court of the CAR ('Constitutional Court'), under the Presidency of Judge Danièle Darlan, unanimously declared this commission unconstitutional.<sup>63</sup>

41. Shortly after the Constitutional Court's decision, the Minister for the Civil Service issued a decree dismissing Judge Darlan as a professor at the Faculty of Law of the University of Bangui ('Faculty of Law').<sup>64</sup> In the CAR, membership in the Faculty of Law is a requirement for serving as President of the Constitutional Court.<sup>65</sup> In October 2022, President Touadéra issued a presidential decree removing Judge Darlan from the Constitutional Court.<sup>66</sup> It is widely understood that this constituted a reprisal against Judge Darlan for the Constitutional Court's

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<sup>58</sup> CAR Constitution, Art. 65(15).

<sup>59</sup> ICTJ Report 2021, p. 24.

<sup>60</sup> See, e.g., International Federation for Human Rights, [What Prospects for Justice in the Central African Republic? Complementarity between National and International Mechanisms: Status and Challenges](#), October 2022 ('FIDH Report 2022'), pp. 22–23; Amnesty International, ["On Trial. These Warlords Lowered Their Eyes": The Central African Republic's Challenging Pursuit of Justice](#), 22 October 2020 ('Amnesty Report 2020'), p. 35; ICTJ Report 2021, p. 24.

<sup>61</sup> ["Allies of Central African Republic President Propose Removing Term Limits"](#), *Reuters*, 27 May 2022.

<sup>62</sup> Expert Report, para. 20.

<sup>63</sup> Expert Report, para. 25; ["Central African Republic's Top Court Annuls Charter Reform Body"](#), *Reuters*, 23 September 2023.

<sup>64</sup> Expert Report, paras 26–27; ICTJ, ["Central African Republic's Top Court Head Refuses to Retire"](#), 21 October 2022.

<sup>65</sup> CAR Constitution, Art. 99.

<sup>66</sup> Expert Report, para. 28; *Report of the Independent Expert on the Situation of Human Rights in the Central African Republic*, 11 September 2023, UN Doc. [A/HRC/54/77](#) ('UN Independent Expert Report 2023'), para. 5.

decision to strike down President Touadéra's constitutional reform commission.<sup>67</sup> Following Judge Darlan's ouster, the amendments championed by President Touadéra and his allies were approved by way of a referendum in August 2023.<sup>68</sup>

42. [REDACTED].<sup>69</sup> [REDACTED].<sup>70</sup> [REDACTED].<sup>71</sup>

43. Beyond President Touadéra's direct control of the CAR judiciary, he and his allies also exercise broad influence over the entire CAR legal system through the use of force and intimidation through armed groups, including the *Requins* and Russian Wagner Group mercenaries.<sup>72</sup> Numerous reputable international bodies have documented widespread serious violations of international human rights law and international humanitarian law by Wagner Group mercenaries, often in collaboration with the CAR Armed Forces, including those likely amounting to international crimes.<sup>73</sup> As the well-documented close links between the Wagner Group, the *Requins*, and the Government of President Touadéra illustrate, the CAR regime is able to muster the assistance of unscrupulous armed groups with a documented history of atrocity crimes to enforce its political will. This not only allows President Touadéra and his allies to pressure those perceived as opponents through force but also produces a chilling effect that unquestionably applies to the judiciary.

(ii) *High-Profile Proceedings Are Irreparably Tainted by Political Influence*

44. The CAR judiciary's lack of independence and impartiality is further demonstrated by the evident influence of the executive in high-profile criminal proceedings involving both political allies and opponents of President Touadéra.

45. Of such cases, few have garnered such infamy as that of Mr Hassan Bouba Ali, former special counselor to President Touadéra, incumbent Minister of Livestock and Animal Health

<sup>67</sup> See, e.g., Human Rights Watch ('HRW'), ['Well Deserved Recognition for Central African Judge'](#), 13 March 2023; Freedom House, ['Central African Republic: Freedom in the World 2023'](#), 2024 ('Freedom House CAR Report 2023').

<sup>68</sup> ['Central African Republic President Touadéra Wins Referendum with Wagner Help'](#), *BBC News*, 7 August 2023; C. Valade, ['Central African Republic's New Constitution Makes Permanent Touadéra Presidency Possible'](#), *Le Monde*, 9 August 2023.

<sup>69</sup> [REDACTED].

<sup>70</sup> [REDACTED].

<sup>71</sup> [REDACTED].

<sup>72</sup> Expert Report, paras 23–24, 33–34.

<sup>73</sup> See, e.g., The Sentry, [Architects of Terror: The Wagner Group's Blueprint for State Capture in the Central African Republic](#), June 2023, pp. 16–19; UN Independent Expert Report 2023, para. 40; *Final Report of the Panel of Experts on the Central African Republic Extended pursuant to Security Council Resolution 2536 (2020)*, 25 June 2021, UN Doc. [S/2021/569](#), paras 83–94; Office of the UN High Commissioner for Human Rights ('OHCHR'), [Rapport d'enquête sur l'attaque de Boyo, prefecture de la Ouaka](#), August 2021; OHCHR, ['CAR: Experts Alarmed by Government's use of "Russian Trainers", Close Contacts with UN Peacekeepers'](#), 31 March 2021; HRW, ['Central African Republic: Abuses by Russia-Linked Forces'](#), 3 May 2022.

of the CAR under the Government of President Touadéra, and former political coordinator of the *Unité pour la Paix en Centrafrique* militia group. In 2020, the UN-HRC expressed concern over the fact that President Touadéra's Government has 'decided to appoint a number of persons suspected of serious human rights violations as members of the inclusive government since this could have the effect of blocking legal proceedings against them'.<sup>74</sup> Mr Bouba is such a person.

46. Mr Bouba was arrested on 19 November 2021 on a warrant of arrest issued by the SCC, charging him with war crimes and crimes against humanity.<sup>75</sup> However, just days later, on 26 November 2021, Mr Bouba was escorted from *Camp de Roux*, where he was being held, back to his home by units of the national *gendarmerie* despite being scheduled to appear before a chamber of the SCC.<sup>76</sup> Furthermore, following his release from detention, President Touadéra honoured Mr Bouba with the National Order of Merit, the highest civilian decoration of the CAR.<sup>77</sup> Since his arrest and release, Mr Bouba 'has only progressed in his functions' and remains Minister of Livestock and Animal Health.<sup>78</sup>

47. Mr Bouba's release was decried internationally by *inter alia* the UN Multidimensional Integrated Stabilization Mission in the CAR ('MINUSCA'), the United States, France, the European Union, the Economic Community of Central African States, the African Union, the UN Independent Expert on the Human Rights Situation in the CAR, and international human rights groups.<sup>79</sup> The *Bouba* case has significantly impacted the legitimacy of the SCC, both within the CAR and internationally.<sup>80</sup> As stated by [REDACTED] in the Expert Report, the *Bouba* case demonstrates that 'any court decision rendered by the SCC can be vitiated by an intervention of the executive power'.<sup>81</sup>

<sup>74</sup> UN-HRC, CAR Concluding Observations 2020, para. 9.

<sup>75</sup> SCC, 'Communiqué de presse relatif à l'audience de débat contradictoire du 26/11/2021', 26 November 2021 (broken link); C. Valade, '[Hassan Bouba: A Rebel Minister before the Special Court](#)', *Justice Info*, 23 November 2021; HRW, '[Central African Republic: Minister Faces Atrocity Charges](#)', 24 November 2021.

<sup>76</sup> SCC, 'Communiqué de presse relatif à l'évasion du suspect Ali Bouba Hassan', 26 November 2021 (broken link); FIDH Report 2022, p. 22.

<sup>77</sup> FIDH Report 2022, p. 23; '[La cour pénale spéciale peine à appliquer ses mandats d'arrêt](#)', *Corbeau News*, 27 December 2021.

<sup>78</sup> Expert Report, para. 8.

<sup>79</sup> See '[G5+ Joint Press Release](#)', 10 December 2021; OHCHR, '[Central African Authorities Must Return Ex Rebel Leader to Custody, and under Jurisdiction of Special Criminal Court, UN Expert Says](#)', 9 December 2021; HRW, '[Central African Republic: Detain War Crimes Suspect Now](#)', 28 November 2021; Amnesty International, '[One Step Forward, Two Steps Backwards: Justice in the Central African Republic](#)', 8 December 2021 ('Amnesty Report 2021'), p. 7; HRW, '[The Epitome of Impunity in Central African Republic](#)', 31 January 2022; ICTJ, '[Victims' Hope for Justice Postponed in the Central African Republic](#)', 5 February 2022; FIDH Report 2022, p. 23.

<sup>80</sup> Expert Report, paras 7–8, 10; FIDH Report 2022, p. 23.

<sup>81</sup> Expert Report, para. 10. See also Amnesty Report 2021, p. 7 ('CAR authorities acted in violation of a judicial decision, violating the law and their commitments to the fight against impunity and disregarding the victims and survivors' rights and demands for justice').



48. It is not only in proceedings against political allies where President Touadéra exercises direct control and interference with the CAR judiciary. The treatment of political opponents of President Touadéra by the CAR judicial system stands in stark contrast to that of his allies such as Mr Bouba. On 21 September 2023, less than a month after a hearing on the confirmation of charges against Mr Maxim Mokom at the ICC,<sup>82</sup> a Bangui court issued a sudden verdict in an *in absentia* criminal case convicting Mr Mokom, President François Bozizé, and other political opponents of President Touadéra of the vague charges of ‘*atteinte à la sureté intérieure de l’Etat, d’association de malfaiteurs, d’assassinat, de rébellion, de complot, d’atteinte contre les personnes jouissant d’une protection internationale, de vol aggravé et de destruction volontaire de biens publics et privés*’, sentencing all defendants to life imprisonment with hard labour.<sup>83</sup> These charges were plainly unsubstantiated, with the court’s judgment not referring to any purported factual basis for them, or even the time period during which they were purportedly committed.<sup>84</sup> Furthermore, the CAR authorities failed to answer multiple requests for assistance concerning this *in absentia* judgment,<sup>85</sup> further demonstrating the CAR Government’s selective commitment to its international legal obligations.

49. Lastly, law reform relating to the independence and impartiality of the judiciary has trended in a negative direction.<sup>86</sup> Such reforms have consolidated power in the hands of the President Touadéra, and with the experiences of the *Bouba* case and the dismissal of Judge Darlan, he has demonstrated his emboldened willingness to manipulate the judiciary for political ends.

(iii) *The CAR Judicial System Lacks the Appearance of Independence*

50. In the alternative, the Defence submits that, on the basis of the information discussed in the preceding subsections, there exists, at the very least, an *objectively justifiable* perception that the CAR judicial system and the SCC lack independence and impartiality.<sup>87</sup> It is submitted that an objective observer familiar with the above-described events and the general context of the CAR legal system would have reasonable and serious doubts as to the independence of the CAR

<sup>82</sup> Less than a month after this verdict, all charges against Mr Mokom before the ICC were withdrawn. See *Prosecutor v. Mokom*, Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka, 16 October 2023, [ICC-01/14-01/22-275](#), para. 10.

<sup>83</sup> *Prosecutor v. Mokom*, Annex N to the Mokom Defence Submissions pursuant to Rule 185(1), 8 December 2023, [ICC-01/14-01/22-307-AnxN-Red](#) (‘Annex N to Mokom Rule 185(1) Submissions’), pp. 6–7.

<sup>84</sup> *Ibid.*

<sup>85</sup> *Prosecutor v. Mokom*, Public Redacted Version of Mokom Defence Submissions pursuant to Rule 185(1), 8 December 2023, [ICC-01/14-01/22-307-Red](#), para. 30.

<sup>86</sup> See *Report of the Independent Expert on the Situation of Human Rights in the Central African Republic*, 22 August 2022, UN Doc. [A/HRC/51/59](#), para. 78.

<sup>87</sup> See, e.g., *Incal v. Turkey*, App. No. 22678/93, [Judgment](#), ECtHR (Grand Chamber), 9 June 1998, para. 71; *Larrañaga v. Philippines*, Communication No. 1421/2005, Views, UN-HRC, 24 July 2006, UN Doc. [CCPR/C/87/D/1421/2005](#), para. 7.9.

judiciary from the control and influence of the executive. Furthermore, the significant integration of the Wagner Group into the CAR Government further substantiates objectively justifiable fears that justice is not being carried out independently or impartially in the CAR, particularly in high-profile cases involving allies or opponents of President Touadéra.

### ***B. Mr Beina's Fair Trial Rights Will Be Violated***

51. While the ICC is not a 'human rights court' and admissibility proceedings do not position the Court to sit in judgment of a State's compliance with international human rights law, that is not to say that a suspect's fundamental rights are irrelevant in admissibility proceedings. Article 17(1)(a) of the Statute makes clear that a State must not only be able and willing to conduct an investigation or prosecution but must do so 'genuinely'. Furthermore, proceedings may fail to respect the fair trial rights to such a degree as to be 'inconsistent with an intent to bring the person concerned to justice' within the meaning of Article 17(2)(b) of the Statute. While a lack of full compliance with all human rights standards does not automatically deprive national proceedings of their genuine character, the Appeals Chamber has held that there 'may be circumstances ... whereby violations of the rights of the suspect are so egregious that the proceedings can no longer be regarded as being capable of providing any genuine form of justice to the suspect'.<sup>88</sup>

52. The Defence thereby submits that the proceedings against Mr Beina before the SCC cannot be regarded as 'genuine' within the meaning of Article 17(1)(a) of the Statute, nor can they be considered consistent with an intention to serve justice within the meaning of Article 17(2)(b) of the Statute due to the fact that they fail to safeguard the fundamental and immutable fair trial rights he enjoys under human rights law. Specifically, the Defence submits that there is ample evidence that his right to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him, in particular, cannot be guaranteed in the CAR and would be egregiously violated should he be tried before the SCC.

53. Under international human rights law, Mr Beina enjoys the right to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.<sup>89</sup> This fair trial right is also enshrined before the ICC under Article 67(1)(e) of the Statute. A feature of the principle of equality of arms, 'this guarantee is important for ensuring an

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<sup>88</sup> *Al-Senussi* Admissibility Judgment, para. 230(3). See also A. Cassese et al., [Informal Expert Paper: The Principle of Complementarity in Practice](#), 2003, para. 23.

<sup>89</sup> ICCPR, Art. 14(3)(e); ECHR, Art. 6(3)(d); ACHR, Art. 8(2)(e). See also *Umuhoza v. Rwanda*, App. No. 003/2014, [Judgment](#), African Court of Human and Peoples' Rights, 24 November 2017, para. 94 (on the right under the AfrCHPR).

effective defence by the accused and their counsel and thus guarantees the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution'.<sup>90</sup>

54. Due to Mr Beina's nature as an opponent of President Touadéra and given the political context of the CAR, 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.

55. The International Criminal Tribunal for Rwanda ('ICTR') has recognized that the potential unavailability of Defence witnesses, or substantial inequity between the ability of the Defence to call its witnesses relative to the Prosecution, may render domestic criminal proceedings incompatible with an individual's right to obtain and question witnesses. In particular, several benches of the ICTR Appeals Chamber repeatedly denied the transfer of cases to the Republic of Rwanda on this basis.<sup>91</sup> In particular, the ICTR Appeals Chambers found that potential Defence witnesses residing both within and outside Rwanda risk extrajudicial killing, arrest, and prosecution in retribution for their testimony on behalf of accused persons and, at the time, did not enjoy access to a witness protection service that was independent of the Office of the Prosecutor General of Rwanda.<sup>92</sup> The ICTR Appeals Chamber, moreover, found that video-link facilities could not ameliorate the prejudicial impact of these findings as the examination of the majority of Defence witnesses through video link while the majority of Prosecution witnesses are examined in person would undermine the parties' right to examine witnesses under the same conditions.<sup>93</sup> Finally, the ICTR Appeals Chamber also concluded that international monitoring could not remedy the risks of fair trial violations relating to witness unavailability.<sup>94</sup>

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<sup>90</sup> UN-HRC, *General Comment No. 32*, para. 39.

<sup>91</sup> See *Prosecutor v. Munyakazi*, Case No. ICTR-97-36-R11bis, [Decision on the Prosecution's Appeal Against Decision on Referral Under Rule 11bis](#), 8 October 2008 ('*Munyakazi* Appeal Decision'), para. 50; *Prosecutor v. Kanyarukiga*, Case No. ICTR-2002-78-R11bis, [Decision on the Prosecution's Appeal against Decision on Referral under Rule 11bis](#), 30 October 2008 ('*Kanyarukiga* Appeal Decision'), para. 35; *Prosecutor v. Hategekimana*, Case No. ICTR-00-55B-R11bis, [Decision on the Prosecution's Appeal against Decision on Referral under Rule 11bis](#), 4 December 2008 ('*Hategekimana* Appeal Decision'), para. 40. See also *Prosecutor v. Gatete*, Case No. ICTR-2000-61-R11bis, [Decision on Prosecutor's Request for Referral to the Republic of Rwanda](#), 17 November 2008 ('*Gatete* Referral Decision'), para. 95; *Prosecutor v. Kayishema*, Case No. ICTR-01-67-R11bis, [Decision on the Prosecutor's Request for Referral of Case to the Republic of Rwanda](#), 16 December 2008 ('*Kayishema* Referral Decision'), para. 56.

<sup>92</sup> *Munyakazi* Appeal Decision, paras 37–38, 40; *Kanyarukiga* Appeal Decision, paras 26–27, 31; *Hategekimana* Appeal Decision, paras 21–22, 24. See also *Gatete* Referral Decision, paras 61–64, 66–67; *Kayishema* Referral Decision, paras 40–42, 44.

<sup>93</sup> *Munyakazi* Appeal Decision, para. 42; *Kanyarukiga* Appeal Decision, para. 33; *Hategekimana* Appeal Decision, para. 26. See also *Gatete* Referral Decision, paras 70–71; *Kayishema* Referral Decision, para. 45.

<sup>94</sup> *Munyakazi* Appeal Decision, paras 44–45, 50; *Kanyarukiga* Appeal Decision, paras 37–38; *Hategekimana* Appeal Decision, para. 29. See also *Gatete* Referral Decision, para. 94; *Kayishema* Referral Decision, para. 55.

56. The records of other CAR cases before the ICC disclose the legitimate and reasonable fears of retaliation possessed by witnesses testifying on behalf of political opponents of President Touadéra that would prevent testifying on behalf of accused persons without the indication of protective measures.

57. In the *Mokom* case,<sup>95</sup> Witness P-0405, Mr Olivier Feissona, was arbitrarily arrested by members of the *Requins* militia.<sup>96</sup> While originally a witness for the Prosecution, Mr Feissona had provided information to the Defence of Mr Mokom and had expressed fear for his life arising out of his association with and provision of information to the Mokom Defence.<sup>97</sup> While originally questioned as a political opponent of President Touadéra, he was subject to enforced disappearance following the discovery that he had been cooperating with the Defence team of Mr Mokom in proceedings before the ICC.<sup>98</sup> Mr Feissona was detained in a military facility, *Camp de Roux*, where he was subject to repeated torture and cruel, inhuman, and degrading treatment by his captors.<sup>99</sup> The Defence of Mr Mokom made a complaint regarding the arbitrary detention and ill-treatment of Mr Feissona to the UN Special Rapporteur on Torture.<sup>100</sup> To the knowledge of the Defence of Mr Beina, Mr Feissona remains arbitrarily detained at *Camp de Roux* as of the time of this filing.

58. The incident concerning Mr Feissona demonstrates not only the reasonable fears of retaliation held by witnesses who cooperate with Defence teams representing President Touadéra's political opponents—as Mr Feissona had expressed fears of such retaliation to the Mokom Defence—but also the fact that such fears are, in fact, well-founded and have materialized with respect to witnesses such as Mr Feissona who have indeed given evidence to such Defence teams.

59. Furthermore, in the *Yekatom and Ngaissona* case, numerous Defence witnesses expressed their grave fears that they would be exposed to retaliation from the CAR Government and its supporters if they were to testify on behalf of the accused before the ICC with some stating that

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<sup>95</sup> *Prosecutor v. Mokom*, Public Redacted Version of ‘Decision on “Defence Urgent Request for an Order Concerning the Arrest of P-0405”’, 10 November 2023, [ICC-01/14-01/22-290-Red](#), para. 2.

<sup>96</sup> Rapport sur un entretien avec Feissona, 28 November 2023 (‘Report on Mr Feissona’), p. 1, contained in Annex N to Mokom Rule 185(1) Submissions, pp. 12–14 (this report was prepared by a Bangui-based legal assistant for the Defence of Mr Mokom on the basis of a meeting with Mr Feissona on 28 November 2023); Questionnaire – Entretien avec Olivier Feissona, 7 December 2023 (‘Feissona Questionnaire’), Response to Question 1, contained in *Prosecutor v. Mokom*, Annex I to the Mokom Defence Submissions pursuant to Rule 185(1), 8 December 2023, [ICC-01/14-01/22-307-AnxI-Red](#), pp. 5–8.

<sup>97</sup> *Prosecutor v. Mokom*, Public Redacted Version of ‘Decision on “Defence Urgent Request for an Order Concerning the Arrest of P-0405”’, 10 November 2023, [ICC-01/14-01/22-290-Red](#), para. 2.

<sup>98</sup> Report on Mr Feissona, p. 1; Feissona Questionnaire, Responses to Questions 4, 10, 11, 13, and 14.

<sup>99</sup> Report on Mr Feissona, p. 2; Feissona Questionnaire, Responses to Questions 3, 6, 7, 8, and 16.

<sup>100</sup> Letter from Counsel for Mr Maxim Mokom addressed to the UN Special Rapporteur on Torture, 29 November 2023, contained in Annex N to Mokom Rule 185(1) Submissions, pp. 9–10.

they would withdraw from testifying if forced to testify in public, necessitating the seeking of protective measures to ensure such witnesses could safely testify for the Defence.<sup>101</sup> It is reasonable to believe that such witnesses would not be willing to testify on behalf of political opponents of President Touadéra in CAR domestic proceedings out of fear of retaliation.

60. Moreover, the witness protection mechanisms of the SCC and the CAR judicial system as a whole, are woefully impotent in alleviating the above concerns of witnesses. Amnesty International has reported that civil society actors, local lawyers, and UN staff in the CAR have collectively said of the CAR legal system that ‘[t]here was a complete absence, in law and in practice, of any protection for victims and witnesses’.<sup>102</sup> The FIDH decried ‘the lack of protection for victims and witnesses, some of whom did not testify for fear of reprisals’ in the trial of alleged Anti-Balaka leader Rodrigue Ngaïbona,<sup>103</sup> and deplored ‘inadequate protection for victims and witnesses’ in the *Bangassou* case before the Bangui Criminal Court.<sup>104</sup>

61. As Mr Beina is similarly situated as the suspect and accused, respectively, in *Mokom* and *Yekatom and Ngaïssona*—that is, he is a political opponent of President Touadéra as an Anti-Balaka member—his right to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him cannot be guaranteed in the CAR due to witnesses’ fears of intimidation, threats, and risk of arrest at the hands of the CAR Government and its supporters should they cooperate with, provide evidence to, or testify on behalf of Mr Beina’s Defence. As the violation of his rights in this regard would have severely detrimental consequences on his overall ability to enjoy a fair trial in the CAR, the proceedings against Mr Beina before the SCC cannot be regarded as ‘genuine’ nor can they be considered consistent with an intention to serve justice.

## VII. CLASSIFICATION

62. The present filing and Annexes 1 and 2 are classified as confidential, pursuant to Regulation 23 *bis* (1) of the Regulations of the Court, in order to protect the identity of the

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<sup>101</sup> See *Prosecutor v. Yekatom and Ngaïssona*, Public Redacted Version of “Ngaïssona Defence Request for In-Court Protective Measures for Witnesses D30-P-4720”, ICC-01/14-01/18-2388-Conf, 25 April 2024, [ICC-01/14-01/18-2388-Red](#), paras 16, 19, 20–22; *Prosecutor v. Yekatom and Ngaïssona*, Public Redacted Version of ‘Ngaïssona Defence Consolidated Request for In-Court Protective Measures for Witnesses D30-P-4914, D30-P-4197, D30-P-4504 and D30-P-4608’, ICC-01/14-01/18-2395-Conf, 27 August 2024, [ICC-01/14-01/18-2395-Red](#), paras 14–15, 20–22, 27–28, 33.

<sup>102</sup> Amnesty Report 2020, p. 35.

<sup>103</sup> FIDH Report 2022, p. 13.

<sup>104</sup> FIDH Report 2022, p. 14.

author of the Expert Report, who has specifically requested their Expert Report be submitted confidentially.<sup>105</sup> A public redacted version of the present filing will be filed concurrently.

### VIII. CONCLUSION

63. In accordance with the foregoing observations, the Defence respectfully requests that the Chamber dismiss the Admissibility Challenge *in limine* or, alternatively, dismiss the Admissibility Challenge in its entirety and declare the case against Mr Beina before the ICC admissible under Article 17 of the Statute. In either case, the Defence requests the Chamber order the CAR to immediately surrender Mr Beina to the custody of the Court in accordance with the ICC Arrest Warrant.

Respectfully submitted,



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Mr Philippe Larochelle  
Counsel for Mr Edmond Beina

Dated this 17 March 2025

At Montreal, Canada

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<sup>105</sup> Annex 2.