

ANNEX
Public



**EMBASSY OF MONGOLIA
BRUSSELS**

No A/24-103

The Embassy of Mongolia in Brussels presents its compliments to the Registry of the International Criminal Court and has the honour to convey a Note Verbal No A/24-1660 dated 11 November 2024 from the Ministry of Foreign Affairs of Mongolia on requesting the Registry to transmit Mongolia's "Request for Leave to Reply" to Pre-Trial Chamber II, the "Second Urgent Request for Suspensive Effect" to the Appeals Chamber and "Additional Submission in Support of the Application for Disqualification of Judges" to the Judge Reine Alapini-Gansou, Acting President, for due consideration by the Plenary of Judges.

The Embassy of Mongolia in Brussels avails itself of this opportunity to renew to the Registry of the International Criminal Court the assurances of its highest consideration.

Enclosed: 16 pages

Brussels, 12 November 2024



THE REGISTRY OF THE INTERNATIONAL CRIMINAL COURT
The Hague

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MONGOLIA
MINISTRY OF FOREIGN AFFAIRS

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The Ministry of Foreign Affairs of Mongolia presents its compliments to the Registry of International Criminal Court and has the honor to request the Registry to deliver Mongolia's "Request for Leave to Reply" to Pre-Trial Chamber II, as well as the "Second Urgent Request for Suspensive Effect" to the Appeals Chamber.

Furthermore, the Ministry request the Registry's assistance in delivering Mongolia's "Additional Submission in Support of the Application for Disqualification of Judges" to the Judge Reine Alapini-Gansou, Acting President, for due consideration by the Plenary of Judges attached herein.

The Ministry of Foreign Affairs of Mongolia avails itself of this opportunity to renew to the Registry of the International Criminal Court the assurances of its highest consideration and appreciation for its valued cooperation in this matter.



THE REGISTRY OF
INTERNATIONAL CRIMINAL COURT

The Hague

SECOND URGENT REQUEST FOR SUSPENSIVE EFFECT

I. Introduction and Procedural History

1. Mongolia respectfully submits second submission to “Urgent Request for Suspensive Effect,” submitted on 1 November 2024. Due to evolving developments—including the recent Bureau meeting of the Assembly of States Parties (“Bureau”) held on 6 November 2024—Mongolia provides this second submission to underscore the urgency and necessity of immediate suspensive effect on the Pre-Trial Chamber II’s decision dated 24 October 2024 (“Impugned Decision”).
2. The Impugned Decision found Mongolia in non-compliance under Article 87(7) of the Rome Statute for not arresting and surrendering President Vladimir Vladimirovich Putin during his visit to Mongolia. It directed referral of this matter to the Assembly of States Parties.
3. On 29 October 2024, Mongolia submitted a “Request for Leave to Appeal” to the Pre-Trial Chamber II and subsequently filed an “Urgent Request for Suspensive Effect” to the Appeals Chamber, on 1 November 2024, aiming to prevent irreversible harm prior to the Assembly of States Parties forthcoming session scheduled for 2 to 7 December 2024.
4. On 6 November 2024, the Bureau of the Assembly of States Parties convened to discuss the implications of the Impugned Decision. Mongolia’s position, presented during this meeting, reiterated the risks of proceeding with Assembly of States Parties-related actions that could irreversibly damage Mongolia’s rights and standing, rendering the appeal process moot.
5. Given the Bureau’s discussions, it is evident that Assembly of States Parties-related **actions has been initiated**. Mongolia submits this supplemental submission to prevent further steps in the Bureau and Assembly of States Parties concerning non-cooperation procedures, which, if allowed to advance, would preclude meaningful appellate review and render the Appeals Chamber’s eventual decision inconsequential.
6. On 11 November 2024, Mongolia submitted “Request to Leave to Reply” to the Prosecution response to Mongolia’s request for leave to appeal before the Pre-Trial Chamber II.

II. Grounds for Immediate Suspensive Effect

7. Since the 6 November 2024 Bureau meeting, Mongolia faces an increasing likelihood of prejudicial actions being taken by the Assembly of States Parties. These developments underscore the immediate need for suspensive effect to maintain the integrity and purpose of Mongolia’s appeal process, ensuring that irreversible harm is not inflicted before appellate review.

8. ICC's jurisprudence affirms that suspensive effect is warranted when the enforcement of a decision would lead to irreversible consequences that cannot be rectified upon appeal.¹ Mongolia respectfully submits that the situation at hand squarely meets this criterion: proceeding with Assembly of States Parties measures based on the Impugned Decision before the appeal's resolution would defeat the appeal's purpose and infringe upon Mongolia's rights under the Rome Statute.
9. Given the Bureau's recent engagement with the matter and the impending Assembly of States Parties session in December, there is a credible and immediate risk of the Assembly of States Parties advancing non-cooperation measures against Mongolia. Such actions would undermine Mongolia's right to fair and impartial appeal proceedings and create irreversible reputational, procedural, and diplomatic consequences.
10. The Appeals Chamber's inherent mandate to ensure procedural fairness and uphold justice necessitates granting suspensive effect in cases where inaction could irreparably impact an appellant's position. The Appeals Chamber practice and jurisprudence highlights the Chamber's authority to prevent interim actions that could irreversibly prejudice an appellant's rights pending appeal.²
11. Mongolia's request aligns with its right to have a meaningful opportunity to appeal without preemptive actions that would render the appeal moot. This request emphasizes the need to prevent Assembly-led measures that would prejudge Mongolia's appeal and impair its rights within the ICC framework.
12. Mongolia underscores that, given the ongoing proceedings in both the Plenary of Judges and Pre-Trial Chamber II regarding its application and requests, it is neither practical nor feasible to await a ruling from Pre-Trial Chamber II on Mongolia's "Request for Leave to Appeal." Should leave be granted, submitting a "request to suspend the effect of the Impugned Decision" within the subsequent appeal brief to the Appeals Chamber would impose an *unrealistic* and *unachievable* timeline. Attempting to meet such a timeline would compromise the fairness and integrity of the procedure, resulting in a decision that undermines the equitable process and renders the pending decision of Pre-Trial Chamber II unfair and unjust.

¹ Prosecutor v. Jean-Pierre Bemba Gombo, "Decision on the Request of Mr Bemba to Give Suspensive Effect to the Appeal Against the 'Decision on the Admissibility and Abuse of Process Challenges'", 9 July 2010, ICC-01/05-01/08-817 (OA 3), para. 11; Prosecutor v. Jean Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean Jacques Magenda Kabongo, Fidèle Babala Wandu and Narcisse Arido, "Decision on the Prosecutor's urgent request for suspensive effect of the 'Decision ordering the release of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido' of 21 October 2014", 22 October 2014, ICC- 01/05-01/13-718 (OA 9), para. 5; Appeals Chamber, Situation on Registered Vessels of the Union of the Comoros, the Hellenic Republic, and the Kingdom of Cambodia, Decision on suspensive effect, 6 August 2015, ICC-01/13 (OA).

² Ibid.

13. The timeline does not permit such delays; if Mongolia were to wait for a decision from Pre-Trial Chamber II, any subsequent submission for suspensive effect would likely come too late to prevent the Assembly of States Parties from proceeding with actions that would make the appeal process moot. Given these constraints, any delay would lead to irreversible consequences and harm, rendering the appellate process ineffective and leaving Mongolia with no viable means of amends. Therefore, Mongolia respectfully submits that the Appeals Chamber must act without delay to ensure suspensive effect is granted now, preserving the meaningfulness of the appeal and protecting Mongolia's rights.

III. Relief Sought

14. Mongolia respectfully reiterates its urgent request for the Appeals Chamber to grant suspensive effect to the Impugned Decision, highlighting the specific circumstances and the imminent risk of actions by the Assembly of States Parties that could undermine the purpose of Mongolia's appeal. Mongolia underscores that granting suspensive effect is essential to uphold procedural fairness and justice in accordance with the core principles of the Rome Statute.
15. Accordingly, Mongolia respectfully requests the Appeals Chamber to:
 - (i) Grant immediate suspensive effect on the Pre-Trial Chamber II's decision dated 24 October 2024, ICC-01/22, suspending its effect until the Pre-Trial Chamber II issues a ruling on the request for leave to appeal, and, if leave to appeal is granted, Appeals Chamber has rendered a final decision on Mongolia's appeal; and
 - (ii) Expedite consideration of this request, in view of the ongoing Bureau of the Assembly meetings, recent procedural developments, and the Assembly of States Parties session scheduled from 2 to 7 December 2024.
16. Mongolia underscores the importance of this request as essential to uphold the Appeals Chamber's role in ensuring that its final determinations retain substantive impact, free from irreversible external pressures or premature actions.

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