

ANNEX
Public



**EMBASSY OF MONGOLIA
BRUSSELS**

№ A/24-108

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 № A/24-1724 dated 25 November 2024 from the Ministry of Foreign Affairs of Mongolia on requesting the Registry to transmit the attached Request for Oral Hearing to Pre-Trial Chamber II, which would enable Mongolia to clarify its position comprehensively.

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: 11 pages



THE REGISTRY OF THE INTERNATIONAL CRIMINAL COURT
The Hague

3 2 4 0 3 2 4 1 8 5



MONGOLIA
MINISTRY OF FOREIGN AFFAIRS

A/24-1724

The Ministry of Foreign Affairs of Mongolia presents its compliments to the Registry of the International Criminal Court and with reference to the latter's communication dated 20 November 2024 (REG-JCSS-2024-141) regarding the Decision of the Pre-Trial Chamber II (ICC-01/22-103), considering that the written submissions by Mongolia were constrained by time and page limitations, has the honour to request the Registry to transmit the attached Request for Oral Hearing to Pre-Trial Chamber II, which would enable Mongolia to clarify its position comprehensively.

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.



THE REGISTRY
INTERNATIONAL CRIMINAL COURT
The Hague

REQUEST FOR ORAL HEARING IN LIEU OF WRITTEN REPLY

I. Introduction

1. On 14 November 2024, the Pre-Trial Chamber II (“Chamber”) partially granted Mongolia’s request, permitting a reply to the Prosecution’s Response to Mongolia’s Request for Leave to Appeal (“Prosecution’s Response”) on two discrete issues, limited to ten pages, to be filed by 25 November 2024.
2. Subsequently, on 18 November 2024, Mongolia requested an extension of time and page limits for its reply, citing the complexity of the issues and practical challenges. On 20 November 2024, the Chamber granted a limited extension, setting the deadline of 25 November 2024 and increasing the page limit to ten pages.
3. Despite Mongolia’s best efforts and good faith in complying with the Chamber’s orders, it continues to face substantial constraints in fully presenting its position due to the limitations previously highlighted in its request for extension of time and page limit for the written reply. The complexity and breadth of the legal and factual issues raised, coupled with the introduction of new arguments by the Prosecution, render it impractical for Mongolia to provide a comprehensive and thorough response within the prescribed timeframe and format.
4. As such, an oral hearing at this stage of the proceedings would provide Mongolia with a fair opportunity to elaborate on its legal arguments, clarify any misunderstandings, and reply effectively to the Prosecution’s new arguments, ensuring that the Chamber is fully informed before making determinations that have far-reaching consequences. Such a hearing would facilitate a comprehensive and efficient presentation of these issues.
5. Consequently, Mongolia respectfully submits this motion requesting the Chamber to grant and schedule an oral hearing in place of submitting a written reply to the Prosecution’s Response.
6. As such, Mongolia seeks the Chamber’s leave to present oral submissions to:
 - (i) Address and reply to the new arguments and assertions raised in the Prosecution’s Response, including specific complex arguments that necessitate oral elaboration within the scope granted by the Chamber in its “Decision on Mongolia’s request for leave to reply”;
 - (ii) Elaborate on the reasoning behind its initial “Request for Leave to Appeal” dated 29 October 2024, including clarifying and expanding upon the issues listed therein;
 - (iii) Present submissions that involve national security information in a closed session, pursuant to Article 72 of the Rome Statute.

7. In addition, to ensure equality of arms and comprehensive deliberations, Mongolia requests the Chamber, pursuant to Rule 103 of Rules of Procedure and Evidence (“Rules”), to allow and invite *amicus curiae* submissions prior to the oral hearing, with an appropriate timeline for review and responses by the parties. This approach will foster fairness, efficiency, and transparency in these proceedings.
8. Mongolia notes that the Chamber and Appeals Chamber has previously demonstrated the utility of oral hearings and Rule 103 of the Rules submissions in cases of non-compliance. Notably, in the South Africa proceeding the Chamber convened a public hearing and in the Jordan appeal proceedings the Appeals Chamber invited submissions under Rule 103 to address complex legal and factual questions. Mongolia submits that similar steps are warranted in the present case.
9. Mongolia’s position raises critical questions including, but not limited to, about the obligations of States Parties under the Rome Statute, interplay of Article 27 and 98, the role of customary obligations and bilateral agreements, and the compatibility of these obligations with broader principles of international law. These issues are of systemic importance not only for Mongolia but for the functioning of the ICC and its relationship with States Parties and non-States Parties alike.
10. As emphasized below, these steps are necessary to ensure that the Chamber, before any decision on the merits of the Request Leave to Appeal is rendered, provides Mongolia with fair opportunity to directly to address any concerns and questions that the Chamber may have and that it has the benefit of all relevant legal and factual perspectives, including the full position of Mongolia, which should fairly be taken into account by the Chamber in its deliberations.
11. Lastly, Mongolia affirms its good faith intention to respond to the Prosecution’s Response. Mongolia contends that oral hearing would be more effective medium for addressing the issues raised, as opposed to a written submission.

II. Procedural History

12. On 24 October 2024, the Chamber issued the finding that Mongolia failed to comply with its obligations under the Rome Statute by not arresting and surrendering President Vladimir Vladimirovich Putin during his visit to Mongolia and referred the matter to the Assembly of States Parties (“Impugned Decision”).
13. On 29 October 2024, Mongolia filed a “Request for Leave to Appeal” the Impugned Decision under Article 82(1)(d) of the Rome Statute, identifying sixteen issues for appeal and requesting an oral hearing and the invitation of *amicus curiae* submissions pursuant to Rule 103 of the Rules.

14. On 4 November 2024, the Prosecution filed its Response opposing Mongolia's Request for Leave to Appeal, raising new arguments and interpretations that Mongolia could not have reasonably anticipated.
15. On 11 November 2024, Mongolia sought leave to reply to the Prosecution's Response under Regulation 24(5) of the Court, highlighting the necessity to address new issues and mischaracterizations.
16. On 14 November 2024, the Chamber partially granted Mongolia's request, permitting a reply on two discrete issues, limited to five pages, to be filed by 20 November 2024.
17. On 18 November 2024, Mongolia requested an extension of time and page limits for its reply, citing the complexity of the issues and practical challenges.
18. On 20 November 2024, Mongolia got notified by the Registry that the Chamber granted a limited extension to 25 November 2024 and increased the page limit to ten pages.¹

III. Legal Basis for the Request

19. Mongolia respectfully draws the Chamber's attention to the precedent set in the case of the Prosecutor v. Omar Hassan Ahmad Al Bashir, where Pre-Trial Chamber II convened a public hearing to discuss issues relevant to a determination under Article 87(7) of the Rome Statute with respect to the Republic of South Africa.² In that instance, the Chamber recognized the importance of allowing the concerned State an opportunity to fully present its views in a public hearing before making a determination on non-compliance.
20. The case law of the ICC supports convening oral hearings to receive the submissions of States Parties and State representatives. The Pre-Trial Chamber has held that it was appropriate to schedule a hearing where the State will be given the opportunity to complement its previous submission and evidence relevant to its application.³ States Parties in the legal proceedings before the Court have also had the opportunity to address the Chamber in-person in oral hearings.⁴
21. Mongolia submits that an oral hearing is essential to ensure procedural fairness, due process and to assist the Chamber in fully understanding and

¹ ICC Registry's communication, 20 November 2024, REG-JCSS-2024-141.

² Pre-Trial Chamber, Decision No. ICC-02/05-01/09, dated 8 December 2016.

³ Prosecutor v. Gaddafi et al., Order convening a hearing on Libya's challenge to the admissibility of the case against Saif Al-Islam Gaddafi, ICC-01/11-01/11-207, 14 September 2012, paras. 12, 13.

⁴ Prosecutor v. Kenyatta, Order scheduling a status conference on 13 February 2014, ICC-01/09-02/11-897, 6 February 2014, para. 5.; Prosecutor v. Kenyatta, Order vacating trial date of 7 October 2014, convening two status conferences, and addressing other procedural matters, ICC-01/09-02/11-954, 19 September 2014, paras. 11-13.; Prosecutor v. Kenyatta, Scheduling order and agenda for status conference on 9 July 2014, ICC-01/09-02/11-929, 4 July 2014, paras. 4-5; Prosecutor v. Ruto et al., Decision on status conference and additional submissions related to 'Prosecution's request under article 64(6)(b) and article 93 to summon witnesses', ICC-01/09-01/11-1165, 29 January 2014, para. 5.

adjudicating the complex legal issues arising from the Impugned Decision, the Prosecution's Response, and Mongolia's Request for Leave to Appeal.

IV. Grounds for an Oral Hearing

A. The Significance of the Leave to Appeal Process

22. Mongolia submits that the leave to appeal process under Article 82(1)(d) of the Rome Statute is a substantive and significant procedural mechanism that cannot be treated as a mere formality or a process of minor consequence.
23. Mongolia emphasizes that the issues it has raised are of such complexity and importance that a perfunctory or expedited approach to the leave to appeal process would be inconsistent with the principles of fairness, justice, and procedural integrity that underpin the Rome Statute framework.
24. The issues identified by Mongolia are not procedural trivialities but instead involve complex and systemic legal questions with far-reaching implications for the ICC's jurisprudence and its relationship with States Parties and non-States Parties alike. These include, *inter alia*, matters of interpretation of Articles 27(2) and 98; the application of customary international law on Head of State immunity; the conflict between Rome Statute obligations and bilateral obligations arising from customary international law and treaties; and broader principles of international law. Given the substantive nature of these issues, the leave to appeal process must allow for a thorough and deliberate evaluation to ensure that justice is not compromised by an overly restrictive or cursory approach.
25. The suggestion that the process is distinct from the merits of an appeal does not diminish its significance. The determination of whether an issue significantly affects the fairness or expeditiousness of proceedings or the outcome of the trial, and whether its immediate resolution would materially advance the proceedings, requires careful analysis of both the procedural and substantive implications of the identified issues. To reduce this process to a swift or routine certification risks overlooking critical considerations and undermining the credibility of the Court's decision-making processes.
26. *Arguendo*, if the Chamber deems that the plain meaning of the requirement that the issues affect the fair and expeditious conduct of the proceedings or the outcome of the trial does not appear to encompass the matter at hand, Mongolia seeks to submit at the oral hearing that it is appropriate in the present circumstances to interpret this requirement extensively, guided by its object and purpose. This allows for the conclusion that the requirement is met in the current case, where the issues significantly affect the Court's ability to obtain custody of a person and to commence criminal proceedings *stricto sensu*. These considerations align with ICC precedent, where broader interpretations were applied to ensure that critical systemic and procedural matters were

resolved in a manner consistent with the ICC's mandate to promote justice and fairness.⁵

27. Finally, Mongolia seeks to contend at the oral hearing that the authoritative resolution by the Appeals Chamber with respect to the issues raised in its request to leave to appeal would provide clarity and finality on these matters. Immediate appellate review would eliminate ambiguity in the interpretation and application of key legal principles, foster legal certainty for States Parties and the Court, and enhance the legitimacy of the judicial process in this case. By addressing these issues at the appellate level, the Chamber ensures that its rulings are robust, equitable, and consistent with the fundamental principles of the Rome Statute.
28. Accordingly, the Leave to Appeal Process warrants an oral hearing.

B. Procedural Fairness, Due Process and the Right to Be Heard

29. Mongolia emphasizes the importance of procedural fairness and the right to be heard, which are fundamental principles under the Rome Statute and international law.
30. Mongolia respectfully submits that the prior proceedings before the Chamber did not afford it the opportunity to present a full and comprehensive submission in person at oral hearing, thereby violating its fundamental rights to due process and fair treatment. The limited scope and constrained timelines imposed on Mongolia restricted its ability to adequately address critical legal and factual issues central to the ongoing proceedings.
31. Mongolia notes that, despite its communication on 3 October 2024 requesting an oral hearing, this request was not addressed by the Chamber. Mongolia seeks fair treatment consistent with the Court's practices and without double standards. For instance, broader timelines and more comprehensive opportunities were afforded in cases such as the South Africa and Jordan's non-compliance proceedings, highlighting an inconsistency that undermines the principles of equality and fairness. Granting an oral hearing would ensure that Mongolia is afforded the same opportunity as other States Parties to present its case fully and effectively.
32. Therefore, Mongolia respectfully requests the Chamber to grant an oral hearing to provide Mongolia the opportunity to reply to the Prosecution's arguments, further elaborate on its request for leave to appeal, and detail each issue identified therein.
33. Mongolia seeks to clarify how these issues arise directly from the Impugned Decision and demonstrate that they are identifiable subjects or topics requiring

⁵ Pre-Trial Chamber II, Decision on Jordan's request for leave to appeal, 21 February 2018, ICC-02/05-01/09-319.

resolution for the proper determination of the judicial cause under examination, rather than mere disagreements or conflicting opinions. Mongolia emphasizes that an issue is constituted by a subject the resolution of which is essential to the determination of the matters arising in the judicial cause. Correcting these issues would significantly affect the outcome of the Impugned Decision. Mongolia contends that a failure to correct these issues would result in a decision fraught with error, thereby clouding or unraveling the judicial process.

34. An oral hearing is necessary to clarify that, even if the plain meaning of the requirement that the issues affect the fair and expeditious conduct of the proceedings or the outcome of the trial does not appear to encompass the matter at hand, Mongolia insists that this requirement must be given an extensive interpretation in the present circumstances. This interpretation should be guided by the object and purpose of ensuring fairness and justice and align with the precedent set in the *Jordan leave to appeal* case.

C. Reply to the Prosecution's Response

35. The Prosecution's Response introduces several novel arguments that Mongolia could not have reasonably anticipated. These complex arguments involve nuanced legal analysis that cannot be adequately addressed within the constraints of the permitted written reply. An oral hearing would provide the opportunity for Mongolia to fully respond and ensure the Chamber is properly informed before making determinations with far-reaching consequences.

D. Legal Significance

36. The proceedings involve fundamental questions about the relationship between the ICC and its States Parties, the application of customary international law on Head of State immunity, and the role of customary rule and bilateral agreements in the cooperation framework.
37. These matters have profound implications not only for Mongolia but also for the international community and the functioning of the ICC. The resolution of these issues may set significant precedents affecting the obligations of States Parties, non-State parties and the Court's mandate.

E. Opportunity for Clarification

38. As first indicated in its request to Leave to Appeal Mongolia expressed its intent to elaborate and clarify the issues and reasoning thereof. Mongolia recognizes that its Request for Leave to Appeal, due to time constraints and procedural limitations, may not have fully elaborated on the reasoning behind each of the sixteen issues identified. An oral hearing would provide Mongolia with the opportunity to clarify and expand upon these issues and illustrate how

these issues meet the criteria under 82(1)(d), ensuring that the Chamber is fully apprised of the legal arguments and their significance.

39. As such, Mongolia seeks oral hearing to elaborate on the reasoning underlying its initial request for leave to appeal, particularly regarding the systemic implications of the Chamber's interpretation of Articles 27(2) and 98.
40. Oral proceedings would facilitate direct engagement between the Chamber and the parties, allowing for real-time clarification of legal points, answering of questions, and a more dynamic exploration of the issues than is possible through written submissions alone.
41. This interactive process would enhance the Chamber's understanding of the nuances of Mongolia's position and contribute to a more thorough and balanced assessment of the legal and factual matters.
42. Mongolia notes that ensuring that the Chamber, as well as the parties and participants, have access to relevant legal and factual perspectives before the oral hearing is essential for promoting equality of arms. Addressing Rule 103 submissions during the oral hearing will allow both Mongolia and the Prosecutor to respond effectively.

V. Request for Closed Session under Article 72

43. Mongolia informs the Chamber that certain statements and submissions it intends to present at the oral hearing involve information which, in the opinion of Mongolia, would, if disclosed publicly, prejudice its national security interests.
44. Pursuant to Article 72 of the Rome Statute, which provides for the protection of national security information, Mongolia requests that portions of the oral hearing be conducted in closed session to address matters involving national security information.

VI. Judicial Economy and Efficiency

45. While written submissions are essential, an oral hearing can streamline the proceedings by addressing multiple issues comprehensively in a single forum, potentially reducing the need for further written exchanges and expediting the Chamber's decision-making process.
46. As such, Mongolia respectfully submits that granting an oral hearing is fully consistent with the principle of judicial expediency. Far from causing unnecessary delays, an oral hearing would streamline the process by providing an efficient forum for the clarification and resolution of complex legal and factual issues central to the proceedings. Such a hearing would allow the Chamber to directly engage with Mongolia's arguments, address any mischaracterizations, and obtain a more nuanced understanding of the issues,

thereby reducing the likelihood of protracted written exchanges or subsequent procedural challenges.

47. By facilitating an oral hearing, the Chamber will advance the proceedings in a fair, comprehensive, and timely manner. This approach would ensure that the Chamber is equipped with all relevant perspectives, promoting informed and authoritative decision-making that ultimately serves the interests of judicial economy and the expeditious resolution of the case.

VII. The Necessity of Amicus Curiae Submissions Under Rule 103

48. Mongolia renews its request for the Chamber to invite *amicus curiae* submissions under Rule 103 of the Rules. The involvement of independent experts and stakeholders can provide valuable perspectives on the complex legal issues, particularly concerning international law and State/Head of State immunity.
49. Allowing for amicus curiae participation would enrich the proceedings and assist the Chamber in its deliberations by providing insights beyond those of the immediate parties.
50. Mongolia respectfully submits that inviting *amicus curiae* submissions under Rule 103 of the Rules of Procedure and Evidence is essential during the leave to appeal process in these proceedings. The issues raised by Mongolia involve complex and systemic legal questions that extend beyond the immediate interests of the parties and have profound implications for the interpretation and application of the Rome Statute, the interplay with customary international law, and the ICC's relationship with States Parties and non-States Parties.
51. *Amici curiae* can provide the Chamber with diverse perspectives and specialized expertise on the multifaceted legal issues at stake. For instance, the interpretation of Articles 27(2) and 98, the conflict of ICC obligations with customary rule and bilateral agreements, and the role of customary international law on Head of State immunity are matters of broad systemic importance that benefit from thorough legal and academic scrutiny. Contributions from legal scholars, States Parties, and practitioners experienced in international law would enrich the Chamber's understanding and deliberation on these points, ensuring that the proceedings are informed by a comprehensive range of viewpoints.
52. Moreover, *amicus curiae* submissions during the leave to appeal process would enhance procedural fairness by providing the Chamber with a balanced and robust legal framework within which to assess whether the criteria under Article 82(1)(d) are met. These submissions would also promote transparency and bolster the legitimacy of the process by demonstrating the ICC's commitment to open and inclusive deliberation on issues of global significance.

53. The involvement of *amicus curiae* is consistent with ICC precedent in cases where systemic and precedent-setting issues are at stake, such as the Jordan non-compliance proceedings. Mongolia submits that a consistent approach is warranted here, particularly given the unique and complex nature of the issues presented. By inviting *amicus curiae* during the leave to appeal process, the Chamber ensures that its decision is well-reasoned, equitable, and reflective of the broader legal principles and interests that underline the Rome Statute framework.
54. To ensure procedural fairness, Rule 103 of the Rules submissions should be triggered sufficiently in advance of the oral hearing. This will allow the parties, including Mongolia, to review and respond to these submissions during the hearing, ensuring equality of arms and a focused discussion.

VIII. Relief sought

55. In light of the exceptional circumstances, the significant legal issues involved, and the interest in ensuring procedural fairness and equal treatment, Mongolia respectfully submits that an oral hearing is warranted to ensure the fair and expeditious conduct of the proceedings.
56. Granting this request would uphold the principles of justice and due process, allowing the Chamber to reach a fully informed and just decision on matters that have substantial implications for international law and the Court's operations.
57. For the foregoing reasons, Mongolia respectfully requests the Chamber to:
 - (i) Provide Mongolia with the same procedural opportunities equivalent to those afforded to other States Parties in similar circumstances, in accordance with the principles of fairness and equality before the Court;
 - (ii) Allow Mongolia to reply to the Prosecution's Response through an in-person oral hearing, addressing new arguments raised and rectifying mischaracterizations;
 - (iii) Permit Mongolia deliver oral submissions elaborating on the reasoning behind its Request for Leave to Appeal, including clarifying and expanding upon the issues listed therein and further demonstrating how these issues meet the criteria under Article 82(1)(d) of the Rome Statute;
 - (iv) Suspend the deadline for filing the written reply to Prosecution's Response pending the Chamber's decision on this Request, or, in the alternative, grant any further relief the Chamber deems appropriate to ensure the fairness and integrity of the proceedings;
 - (v) Invite *amicus curiae* submissions under Rule 103 of the Rules to provide additional perspectives on the complex legal issues involved;
 - (vi) If oral hearing is to be convened, accommodate Mongolia's request to conduct portions of the hearing in closed session, as necessary, to safeguard national security information, in compliance with Article 72 of the Rome Statute;

(vii) Convene a status conference with parties to address the procedural matters, including scheduling calendar and organizational aspects of the oral hearing, ensuring adequate time is allocated for oral submissions.

---oOo---