

ANNEX

Public



To the Honourable Judges of the Appeals Chamber of the International Criminal Court

Urgent Motion to Address Procedural Irregularities

Washington, DC – January 3, 2025

To the Honourable Judges of the Appeals Chamber of the International Criminal Court

Introduction

1. With the utmost respect, on behalf of the Arcadia Foundation and myself, Robert Carmona-Borjas, we bring before this Honourable Chamber an urgent motion addressing procedural irregularities that have materially compromised the fairness, transparency, and integrity of these proceedings. Specifically, we seek to address the lack of timely notification regarding the Prosecutor's submission dated 30 December 2024. This failure by the Office of the Registry constitutes a breach of procedural obligations and due process under the Rome Statute and the Rules of Procedure and Evidence.

2. Timely notification is an indispensable aspect of procedural fairness, as it ensures that all parties have an equal opportunity to respond to developments in a case. The failure to notify us of the Prosecutor's submission has not only impeded our ability to respond effectively but also undermines the credibility of these proceedings and public confidence in the impartiality of the Court.

I. Procedural Irregularities and Their Impact on Due Process

1. Lack of Notification by the Office of the Registry

3. We note with deep concern and disappointment that, as of 2 January 2025, we had not received formal notification of the Prosecutor's request for leave to file a sur-reply, as required under the procedural framework of this Court.

4. The Court Management Section (CMS) has explicitly admitted this failure in its correspondence dated 3 January 2025, stating, *"indeed you were not notified... Our apologies for this oversight."* While this admission is appreciated, the implications of such an oversight cannot be understated. The violation of our due process rights under Article 67 of the Rome Statute is now an established fact, confirmed by the CMS itself.

5. In a matter of such gravity, particularly involving crimes of significant international concern, procedural lapses cannot simply be resolved with an apology. The principle of *confessio est probatio* (confession is evidence) applies here: the violation of procedural obligations by the CMS is not merely alleged—it is a fact confirmed by the Registry's own admission. This failure has directly impeded our ability to respond effectively and in a timely manner to the Prosecutor's submission, thereby

undermining the fairness and transparency of these proceedings.

II. Legal Basis for the Motion

1. Article 67 of the Rome Statute

6. Article 67 guarantees the right of all parties to a fair trial, including timely notification of filings and procedural developments. The Registry's failure to notify us of the Prosecutor's submission constitutes a clear breach of this fundamental right. This provision explicitly protects the procedural rights of participants in the Court, ensuring that they have adequate time and information to prepare a meaningful response.

2. Rule 15 of the Rules of Procedure and Evidence (RPE)

7. Rule 15 places a duty on the Registrar to ensure the proper management of filings and the notification of all parties involved in the case. This includes maintaining procedural fairness and transparency through accurate and timely communication. The Registrar's failure in this instance violates these obligations, jeopardizing the procedural integrity of the proceedings. By failing to meet its responsibilities, the Registry has undermined the principle of equality of arms and the broader commitment to procedural fairness.

III. Procedural Implications and the Right to Respond

8. As recognized by this Honourable Chamber, the right to timely notification is a cornerstone of procedural fairness under Article 67 of the Rome Statute. The failure to notify us of the Prosecutor's submission has materially impacted our ability to exercise this right.

9. The CMS's admission, while commendable for its candor, highlights the seriousness of the procedural lapse and underscores the need for immediate corrective action. The failure to notify us not only undermines our right to a fair hearing but also jeopardizes public confidence in the integrity and impartiality of the Court's processes.

10. It is particularly concerning that this oversight occurred in a case involving allegations of bias and conflict of interest. The issues raised in the Prosecutor's submission are directly relevant to the impartiality of these proceedings, making it all the more critical that all parties receive timely and adequate notification of procedural developments.

IV. Broader Implications for the Court's Credibility

11. This Honourable Chamber must recognize the broader implications of this procedural irregularity. Public confidence in the International Criminal Court relies heavily on its adherence to principles of transparency, fairness, and accountability. The CMS's failure to notify us of a critical filing undermines these principles and risks eroding trust in the Court's ability to administer justice impartially.

12. As the CMS has already admitted its failure, the question is not whether a violation occurred, but how this Honourable Chamber will address it. Allowing such lapses to go uncorrected would set a troubling precedent, signaling that procedural irregularities can be excused with a mere apology. This would undermine the credibility of the Court and compromise its mission to deliver justice for the most egregious crimes under

international law.

V. Relief Requested

13. In light of the above, we respectfully request that this Honourable Chamber:

- (a) Direct the Office of the Registry to immediately clarify the reasons for the failure in notifying us of the Prosecutor's submission dated 30 December 2024.
- (b) Ensure that any decision made by this Honourable Chamber does not rely on submissions that were not properly notified to all relevant parties.
- (c) Require the Registry to provide assurances that all future filings will be promptly communicated to all parties to prevent similar lapses from occurring.
- (d) Acknowledge the CMS's admission of its failure to notify the Applicants of the Prosecutor's submission and confirm that this constitutes a procedural irregularity under the Rome Statute and the Rules of Procedure and Evidence.
- (e) Ensure that any resolution of this matter reaffirms the Court's commitment to upholding procedural fairness, transparency, and the rights of all parties involved.

Conclusion

14. This Honourable Chamber stands as the pinnacle of international justice, entrusted with the solemn mandate to uphold the principles of fairness, impartiality, and transparency in the pursuit of accountability for the gravest crimes under international law. Procedural lapses, such as the one admitted by the CMS in this case, have no place in an institution whose legitimacy and credibility depend on strict adherence to due process and procedural integrity. The Registry's failure to notify the Applicants of a critical filing undermines these principles and contravenes the expectations set forth in Regulation 31(1) of the Regulations of the Court, which imposes an obligation on the Registry to notify parties promptly and transparently regarding filings relevant to the case.

15. While the CMS has acknowledged its failure, this Honourable Chamber must recognize that apologies alone are insufficient to rectify a lapse that materially impacts the integrity of these proceedings. The principle of *confessio est probatio* reinforces that this procedural irregularity is not a matter of dispute but an established fact. The task before this Chamber is not merely to acknowledge this failure but to take decisive action to prevent its recurrence and restore confidence in the Court's ability to deliver impartial justice.

16. The systemic implications of this oversight cannot be ignored. This is not an isolated error; it forms part of a troubling pattern that raises serious questions about the operational and ethical integrity of the Registry and the Prosecutor's Office. Procedural lapses, such as the failure to notify the Applicants of critical procedural developments, demonstrate a troubling pattern of oversight and inaction that undermines the ICC's credibility and ability to maintain public trust. When such failures persist without corrective measures, they erode the foundational principles of impartiality, transparency, and accountability that are vital to the Court's

mandate.

17. We urge this Honourable Chamber to take decisive action not only to rectify the immediate oversight but also to address the systemic issues that have allowed such lapses to occur. By doing so, this Chamber can reaffirm its commitment to the principles of justice and procedural integrity that define the ICC.

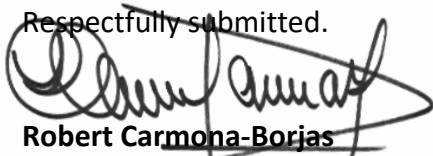
18. The failure of the Prosecutor's Office to redirect the recusal request received on 8 September 2024 via its official portal to the appropriate adjudicative body undermines the principles of procedural fairness and transparency enshrined in the Rome Statute and the ICC's regulatory framework. Although there is no explicit procedural rule mandating such an action, the overarching principles of procedural integrity and the ethical duties under Article 7 of the ICC Code of Conduct for Prosecutors require the Prosecutor to act with independence and transparency. This omission, compounded by the failure to disclose the familial relationship between Mr. Khan and Ms. Alagendra when it became public knowledge in The Washington Post on 6 September 2024, has exacerbated the perception of partiality. Such cascading omissions and delays damage the credibility of the Court and foster the appearance of systemic bias in favor of the Prosecutor.

19. These repeated lapses are not merely technical oversights; they strike at the heart of the Court's credibility as the apex institution for international criminal justice. Every unaddressed complaint, delayed notification, or undisclosed conflict of interest weakens the trust placed in this institution by victims, accused persons, and the international community. The perception of impartiality is not a mere formality—it is the foundation of the ICC's legitimacy and must be safeguarded against any encroachments.

20. To uphold the principles of justice and procedural fairness that define the International Criminal Court, this Honourable Chamber must take decisive action. Oversights such as the failure to notify the Applicants of critical procedural developments, compounded by unresolved ethical concerns, undermine the integrity of these proceedings. This Chamber must reaffirm its unwavering commitment to transparency, impartiality, and accountability to ensure that the trust placed in this Court by victims and the international community remains unshaken.

21. We remain at the disposal of this Honourable Chamber for any further clarification or information that may assist in resolving these critical matters.

Respectfully submitted.



Robert Carmona-Borjas

On behalf of **Arcadia Foundation**

and in my capacity as a recognized victim

(Victim Reference: **r/21840/23, VPRS-A-2023-092**)

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