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**International
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Court**



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No.: **ICC-01/21-01/25**

Date: **17 December 2025**

PRE-TRIAL CHAMBER I

Before: Judge Iulia Antoanella Motoc, Presiding Judge
Judge Reine Adélaïde Sophie Alapini-Gansou
Judge María del Socorro Flores Liera

SITUATION IN THE REPUBLIC OF THE PHILIPPINES

IN THE CASE OF THE PROSECUTOR v. RODRIGO ROA DUTERTE

CONFIDENTIAL

Request for Leave to Appeal Decision ICC-01/21-01/25-336-Conf

Source: Defence for Mr Rodrigo Roa Duterte

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I. INTRODUCTION

1. The Defence for Mr Rodrigo Roa Duterte hereby requests leave to appeal the decision rendered by Pre-Trial Chamber I denying its request for disclosure (“Disclosure Request”)¹ of all information and instructions transmitted by the Registry to the panel of experts (“Panel”) constituted to assess Mr Duterte’s fitness to stand trial (“Impugned Decision”).² The Defence first approached the Registry and, subsequently, sought an order from Pre-Trial Chamber I. In both cases, the Disclosure Request was denied.
2. The Impugned Decision gives rise to a single appealable issue: namely, that the Pre-Trial Chamber failed to give appropriate weight to the materiality of the information requested to the preparation of the defence. This issue directly affects the fairness of the present proceedings and their expeditious conduct, which would be advanced by prompt appellate intervention.

II. APPLICABLE LAW

3. A party may seek appellate review of a decision under Article 82(1)(d) of the Rome Statute where the decision gives rise to an appealable issue³ that is capable of significantly affecting either the fair and expeditious conduct of the proceedings or the outcome of the trial, and where immediate resolution by the

¹ Urgent Request for Disclosure of Communications between the Registry and the Independent Panel of Experts, [ICC-01/21-01/25-334-Conf](#), 10 December 2025. The Defence requested disclosure taking the form of emails, letters, and/or notes taken during telephone conversations as well as specific documents furnished to the Panel for the purposes of experts’ evaluations on Mr Duterte’s fitness to stand trial, such as ICC filings and Mr Duterte’s medical records.

All references to “Article” and to “Rule” in this submission are to the Rome Statute and the ICC Rules of Procedure and Evidence, respectively, unless otherwise indicated. This submission is filed **confidentially** pursuant to [Regulation 23bis\(2\)](#) of the Regulations of the Court as it addresses a decision of the same classification.

² Decision on the ‘Urgent Request for Disclosure of Communications between the Registry and the Independent Panel of Experts’, [ICC-01/21-01/25-336-Conf](#), 11 December 2025.

³ *Bemba*, Decision on the Prosecutor’s Application for Leave to Appeal the “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo”, [ICC-01/05-01/08-532](#), 18 September 2009, para. 17. *See also Said*, Decision on the admissibility of the appeal, [ICC-01/14-01/21-514](#), 25 October 2022, para. 14.

Appeals Chamber may materially advance the proceedings by eliminating potential judicial error at an early stage.⁴

III. SUBMISSIONS

- i) *Appealable Issue: The Pre-Trial Chamber erred by failing to assess the materiality of the requested information to the preparation of the defence or the risks, if any, posed to the investigation or witnesses*
- 4. In the absence of any indication that the Registry had not complied with its instructions, the Pre-Trial Chamber was of the view that the Defence was “fully aware” of the information communicated to the Panel.⁵ As such, the Pre-Trial Chamber declined to engage any further with the Disclosure Request and dismissed it outright.
- 5. The Defence submits, however, that the Pre-Trial Chamber’s instructions to the Registry lacked clarity. At the relevant part, the decision transmitting these instructions reads as follows:

The Registry, in consultation with the Medical Officer of the Detention Centre and in accordance with the applicable legal framework, shall provide the Panel with all **relevant documents and materials, including:** (i) Mr Duterte’s medical record, including any new materials added to it following the issuance of the present decision; and (ii) all **relevant** filings on the case record.⁶

The language employed by the Pre-Trial Chamber referred to “all relevant documents and materials”, followed by a non-exhaustive list of examples. This ambiguity, in effect, afforded the Registry an excessively wide margin of

⁴ *Situation in the State of Palestine*, Decision on Israel’s request for leave to appeal the ‘Decision on the State of Israel’s request to have arrest warrants withdrawn, vacated or declared of no force or effect and to suspend the Prosecutor’s investigation’, [ICC-01/18-468](#), 17 October 2025, paras 17-19. *See also Mbarushimana*, Decision on the “Prosecution’s Application for Leave to Appeal the ‘Decision on the confirmation of charges’”, [ICC-01/04-01/10-487](#), 1 March 2012, para. 4. *Situation in Democratic Republic of the Congo*, Judgment on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal, [ICC-01/04-168](#), 13 July 2006 (“[DRC Decision](#)”), para. 19.

⁵ [Impugned Decision](#), para. 8.

⁶ Decision on the appointment of experts for the purpose of a medical examination pursuant to rules 113 and 135 of the Rules of Procedure and Evidence and related matters, [ICC-01/21-01/25-279-Conf](#), 24 September 2025, para. 20 (emphasis added).

discretion as to which additional documents, if any, it felt were relevant to the Panel's assessment and should be transmitted. The Pre-Trial Chamber's assumption that the Defence was aware of the entirety of the transmitted materials was therefore incorrect and led directly to its erroneous finding that "there is no reason that would warrant granting the Request based on articles 57(3)(b), 64(2) or 64(6)(f) of the Statute".⁷ This is not a matter of disagreement with the Pre-Trial Chamber's findings and, clearly, the Defence has not "mischaracterised" the Pre-Trial Chamber's reasoning.

6. The precise instructions and documents provided by the Registry to the Panel are not known and should be disclosable. At present, the Defence is only able to discern the information that was transmitted to the Panel by relying on the content of the individual expert reports.⁸ The information sought was directly relevant to the Defence's observations on the Panel's report⁹ and remains essential for assessing – and, if appropriate, challenging – the basis and methodology underlying the Panel's conclusions.¹⁰
7. Under the statutory framework of the Court, full disclosure is the rule and non-disclosure the exception.¹¹ Where the information sought is *prima facie* material to the Defence's preparation,¹² and has a direct connection to a live issue in the

⁷ [Impugned Decision](#), para. 9. *See also* [Impugned Decision](#), para. 7 ("the Chamber considers that [...] the disclosure of 'all communications between the Registry and the three experts' is not warranted").

⁸ [Impugned Decision](#), para. 7.

⁹ Defence Observations on the Reports of the Panel of Experts (ICC-01/21-01/25-327-Conf), [ICC-01/21-01/25-339-Conf](#), 12 December 2025.

¹⁰ *Katanga and Ngudjolo*, Decision on the disclosure of evidentiary material relating to the Prosecutor's site visit to Bogoro on 28, 29 and 31 March 2009, [ICC-01/04-01/07-1515](#), 7 October 2009, para. 68. *See also* *Ongwen*, Decision on the 'Prosecution Request for Disclosure of Material Underlying the Defence Psychiatric Expert Report', [ICC-02/04-01/15-709](#), 21 February 2017, para. 12.

¹¹ *Katanga*, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled "First Decision on the Prosecution Request for Authorisation to Redact Witness Statements", [ICC-01/04-01/07-475](#), 13 May 2008, para. 70.

¹² *Yekatom and Ngaïssona*, Decision on the Ngaïssona Defence Request for Disclosure of Reports related to Seizure of Digital Materials from P-0889, 30 September 2022 ("[Yekatom and Ngaïssona Second Decision on Disclosure](#)"), [ICC-01/14-01/18-1438-Red](#), para. 9 ("[t]he Chamber further notes that the right to disclosure is not unlimited. The determination of which objects are 'material to the preparation of the

case,¹³ disclosure should be ordered. The Defence must be provided with all material that is relevant to the preparation of its defence.¹⁴ Rule 77, for example, which applies to the Prosecution's disclosure obligations, makes clear that the Defence must be able to inspect and access all items relevant to the case. Though certain safeguards apply to ensure the protection of confidential information and the integrity of the investigations, this must always be balanced against the suspect's fundamental right to a fair trial.¹⁵

8. Although Rule 77 is not applicable to the Registry, the same principles of fairness and transparency that underpin that rule should apply. The Registrar is not, so it is submitted, a neutral party in this matter. By this, the Defence means no disrespect; rather, one of the experts whose report was before the Panel was appointed by the Medical Officer at the request of the Registrar himself. Nonetheless, even if the Registry be deemed a neutral party to the current proceedings, in so far as the Defence has identified material that it considers necessary for the proper conduct of its work, and where its

defence' depends upon the specific circumstances of the case, and such **an assessment must be made on a *prima facie* basis, placing a low burden on the accused**") (emphasis added).

¹³ *Al Hassan*, Decision on Defence request for disclosure of material related to Mr Al Hassan's arrest and detention in Mali, [ICC-01/12-01/18-859-Red](#), 5 January 2021, para. 10 ("[p]articularly, the Single Judge will determine whether the Request: (a) is specific, (b) demonstrates the materiality of the information sought pursuant to Article 67(2) of the Statute or Rule 77 of the Rules; and (c) **relates to information that has a direct connection to the charges or a live issue in the case**") (emphasis added).

¹⁴ Rules of Procedure and Evidence, [Rule 77](#).

¹⁵ Rules of Procedure and Evidence, [Rule 81](#). See also *Yekatom and Ngaïssona*, Decision on the 'Prosecution's Request to Vary the Decision on Disclosure and Related Matters (ICC-01/14-01/18-64-Red)', [ICC-01/14-01/18-169](#), 10 April 2019 ("*Yekatom and Ngaïssona First Decision on Disclosure*"), para. 16 ("[t]he Chamber wishes to recall in this regard the overriding principle that **full disclosure should be made and that non-disclosure is the exception to the rule** [...] information cannot be withheld from the Defence unless the Prosecutor has a pertinent justification demonstrating that disclosure of the information will 'pose a risk to the ongoing investigation' or is 'necessary to protect the safety' of witnesses, victims, members of their families or other persons put at risk on account of the activities of the Court") (internal citations omitted) (emphasis added). See also *Lubanga*, Redacted Decision on the variation of protective measures under Regulation 42 on referral from Trial Chamber II on 22 July 2009, [ICC-01/04-01/06-2209-Red](#), 16 March 2010, para. 36 ("if information is relevant to the issues in the case and falls within the scope of the prosecution's disclosure obligations [...] non-disclosure can only be authorized if a danger or risk to the witness has been established **and non-disclosure is necessary and will not cause prejudice to the rights of the accused**") (emphasis added).

transmission would not raise any objective concerns or risks, disclosure should be effected. Indeed, it is not clear why the Registry declined to disclose the information sought¹⁶ and why the Pre-Trial Chamber endorsed the Registry's purposeful reliance on the absence of a statutory obligation.¹⁷ The fear that floodgates could be opened could easily be addressed by limiting the disclosure to instances similar to the one at hand.

9. The Appeals Chamber has held that information requested by a suspect or an accused person must be disclosed where, on a *prima facie* assessment alone, it is deemed material to the preparation of his defence.¹⁸ The practice of this Court – and, indeed, throughout the international criminal tribunals – has been to interpret disclosure obligations broadly.¹⁹ Thus, any party in possession of information material to the preparation of the defence should, similarly, be obliged to provide such information for the sake of transparency and the fairness of the proceedings.

¹⁶ Email from Division of Judicial Services to Defence, "FW: Reports Panel Of Experts", 9 December 2025, 13:42 ("[t]he Registry is under no obligation to provide the requested information (directly to the Defence) in the absence of an order by the Chamber to this effect").

¹⁷ [Impugned Decision](#), para. 7.

¹⁸ *Banda and Jerbo*, "Judgment on the appeal of Mr Abdallah Banda Abakaer Nourain and Mr Saleh Mohammed Jerbo Jamus against the decision of Trial Chamber IV of 23 January 2013 entitled "Decision on the Defence's Request for Disclosure of Documents in the Possession of the Office of the Prosecutor"", [ICC-02/05-03/09-501](#), 28 August 2013 ("*Banda and Jerbo Decision*"), para. 42 ("[i]t is emphasised that rule 77 concerns material that the defence is entitled to have disclosed to it in order to prepare its defence. It may be that information that is material to the preparation of the defence is **ultimately not used as evidence at the trial or may not turn out to be relevant for it. Yet, the defence is still entitled to this information on the basis of *prima facie* assessment**") (emphasis added).

¹⁹ *Ruto and Sang*, "Public Redacted Version of "Ruto Defence Request for the Appointment of a Disclosure Officer and/or the Imposition of Other Remedies for Disclosure Breaches", 13 October 2014, [ICC-01/09-01/11-1602-Red2](#), 15 January 2015 ("*Ruto and Sang Decision*"), para. 5 ("[w]hen assessing materiality, "the term 'material to the preparation of the defence' **must be interpreted broadly**". Thus, information which is disclosable under Rule 77 need not be "directly linked to exonerating or incriminating evidence"" (internal citations omitted) (emphasis added). *See also* *Lubanga*, Decision on Mr Thomas Lubanga's request for disclosure, [ICC-01/04-01/06-3017](#), 11 April 2013, para. 10 ("the Appeals Chamber recalls that the applicable jurisprudence regarding rule 77 of the Rules of Procedure and Evidence requires that the term 'material to the preparation of the defence' be construed broadly, **referring to all objects relevant for the preparation of the defence**") (internal citation omitted) (emphasis added); *Lubanga*, Judgment on the appeal of Mr. Lubanga Dyilo against the Oral Decision of Trial Chamber I of 18 January 2008, [ICC-01/04-01/06-1433](#), 11 July 2008, para. 78.

10. Just as information that is relied upon in an expert report may be useful for understanding and effectively assessing it, information transmitted, but *not* necessarily relied upon by that expert, may also be instructive.²⁰ Similarly, even if it should turn out that the information requested is, in due course, inapt to the Defence, it is nevertheless entitled to the information on the basis of a *prima facie* assessment.²¹
11. The Appeals Chamber has held that a Chamber must consider “whether any restrictions on the right of disclosure should be imposed pursuant to the Statute and rules 81 and 82”.²² With this in mind, a refusal to provide the requested information must be reasonable and reasoned.²³ Only where there exist objective and identifiable risks that disclosure would prejudice the integrity of the proceedings or ongoing investigations, or endanger the security of witnesses or victims, may disclosure be withheld.²⁴

²⁰ *Ongwen*, Decision on the ‘Prosecution Request for Disclosure of Material Underlying the Defence Psychiatric Expert Report’, [ICC-02/04-01/15-709](#), 21 February 2017, para. 12. *See also* *Ongwen*, Decision on Prosecution Request for Disclosure of Material Provided to Defence Expert, [ICC-02/04-01/15-1443](#), 11 February 2019, para. 9 (“[i]n order to be able to meaningfully assess the report and question the expert about it, the non-calling party must be aware of the entirety of such materials, irrespective of whether the expert ultimately used the information or material in the production of the report. The fact that the expert chose not to rely upon certain material which was specifically provided to him or her by the hiring party might also be important for understanding the report”). *See also* *Abd-Al-Rahman*, Decision on Defence’s Request Pursuant to Article 64(6)(d) of the Rome Statute, [ICC-02/05-01/20-884](#), 27 February 2023, para. 19 (“the non-calling party is also entitled to access to material or information the expert chose not to rely upon in the production of the report as this could be important for understanding and effectively assessing an expert report”).

²¹ *Yekatom and Ngaïssona Second Decision on Disclosure*, para. 9. *See also* *Banda and Jerbo Decision*, para. 42.

²² *Ruto and Sang Decision*, para. 7.

²³ *See e.g.* *Gbagbo*, First decision on the Prosecutor’s requests for redactions and other protective measures, [ICC-02/11-01/11-74-Red](#), 27 March 2012, paras 78 (“[a]ccordingly, non-disclosure of information related to third persons at risk on account of the activities of the Court is also subjected to the demonstration that the disclosure of the information would expose them to an objectively justifiable risk and that redaction is a necessary and proportionate measure to reduce or overcome this risk”); 80 (“[t]he Single Judge also balanced the rights of the Suspect, in particular the prejudice that might be caused by the non-disclosure of the information, with the duty to protect these third persons”).

²⁴ *Yekatom and Ngaïssona First Decision on Disclosure*, para. 16.

12. That is not the case here. The Pre-Trial Chamber erred in law by dismissing the request when it found “no reason that would warrant granting the Request”,²⁵ without engaging in any meaningful analysis on the substance. In so doing, the Pre-Trial Chamber failed to conduct the necessary balancing exercise between competing interests; that is, the Defence’s right to access information against any potential risks or confidentiality concerns. The information sought, however, is not merely ancillary; it is essential to ensure fairness and the transparency of the proceedings.
13. Firstly, the information is necessary to determine how the Registry assessed ‘relevance’ when interpreting and implementing the Chamber’s instructions and what it felt was critical to the experts’ evaluation of Mr Duterte. Secondly, the Defence is entitled to know the precise information and instructions that were transmitted to the experts, especially if the instructions included or lacked pertinent information or provided extraneous directions or emphasis on issues which ran counter to the Defence expertise. In particular, the Defence is entitled to know if the experts were asked to focus on any aspect of Mr Duterte’s behaviour or memory or to find support, merely by way of example, for the finding of the expert appointed by the Medical Officer at the request of the Registrar. All of this information is directly relevant and material to Mr Duterte’s defence, especially since the expert reports cannot be viewed as dispositive prior to a ruling on the matter, and are, at present, intended to guide the Pre-Trial Chamber in its ultimate assessment as to whether Mr Duterte is fit to stand trial.
- ii) *Fair and expeditious conduct of the proceedings or outcome of the trial*
14. Proceedings are fair only in so far as they are transparent and fully respect the rights of the person brought before the Court.²⁶ A failure to respect these rights

²⁵ [Impugned Decision](#), paras 8, 9.

²⁶ Rome Statute, [Article 64\(2\)](#).

during the pre-trial stage may have significant consequences on the outcome of the proceedings.²⁷ Mr Duterte's fitness to stand trial is a key issue, and one that is likely to be revisited as his condition deteriorates. The absence of clarity as to the information and instructions that have been transmitted to the Panel and that has resulted in the present leave to appeal would, if allowed to recur at a later stage, likely engender a similar request for appellate intervention. A definitive ruling by the Appeals Chamber on the issues identified herein would ensure the expeditious conduct of the proceedings by preventing the need for further litigation on the very same issue.²⁸

iii) Immediate Resolution

15. An immediate resolution of this matter by the Appeals Chamber is necessary. Any delay in addressing the issue at hand risks prejudicing the rights of the suspect and impeding the fair and expeditious conduct of the proceedings. Prompt appellate resolution will ensure that the pre-trial proceedings proceed on a sound basis, will avoid any future litigation on the matter, and will remove doubts as to the correctness of the Impugned Decision.²⁹

²⁷ [DRC Decision](#), para. 11.

²⁸ See *Gbagbo*, Decision on the fitness of Laurent Gbagbo to stand trial, [ICC-02/11-01/15-349](#), 27 November 2015, para. 3. See also IRMCT, *Kabuga*, MICT-13-38-AR80.3, [Decision on appeals of further decision on Félicien Kabuga's fitness to stand trial](#), 7 August 2023, para. 5.

²⁹ [DRC Decision](#), paras 15 ("[a] crucial word in the second leg of article 82 (1) (d) is 'advance' [...] The meaning conveyed by 'advance' in the latter part of sub-paragraph (d) is 'move forward'; by ensuring that the proceedings follow the right course. Removing doubts about the correctness of a decision or mapping a course of action along the right lines provides a safety net for the integrity of the proceedings"); 16 ("[a] wrong decision on an issue in the context of article 82 (1) (d) of the Statute unless soon remedied on appeal will be a setback to the proceedings in that it will leave a decision fraught with error to cloud or unravel the judicial process. In those circumstances the proceedings will not be advanced but on the contrary they will be set back") (internal citation omitted).

IV. CONCLUSION AND RELIEF SOUGHT

16. As argued above, non-disclosure of the information requested will have a detrimental effect on Mr Duterte's rights. For this reason, the Defence respectfully requests that Pre-Trial Chamber I certify the issue identified above for appeal.



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Dated this 17th day of December 2025
At the Hague, the Netherlands