

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-01/21-01/25**
Date: **19 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

Prosecution's response to the Defence "Request for Leave to Appeal Decision ICC-01/21-01/25-336-Conf" (ICC-01/21-01/25-341)

Source: Office of the Prosecutor

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I. INTRODUCTION

1. The Chamber should reject, *in limine*, the Defence's request for leave to appeal (the "Request")¹ the "Decision on the 'Urgent Request for Disclosure of Communications between the Registry and the Independent Panel of Experts'" (the "Decision").² The Defence merely disagrees with the Decision. As such, the Request does not identify any appealable issue and, ultimately, does not meet the cumulative criteria for leave to appeal under article 82(1)(d) of the Statute.

II. CONFIDENTIALITY

2. Pursuant to regulation 23bis(2) of the Regulations of the Court, this submission is filed as "Confidential", because it responds to submissions with the same classification.

III. SUBMISSIONS

3. The Defence submits that the Decision rejecting its request for disclosure of "all information and instructions transmitted by the Registry to the panel of experts ("Panel") [...] 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".³ As elaborated below, the identified Issue is a mere disagreement with the Decision and is therefore not appealable.

4. The Chamber already found that "the Defence has before it all the necessary information regarding the Registry's interactions with the Experts and the instructions on the basis of which they prepared their reports".⁴ The Chamber further clarified that the information in question is "contained in the Registry's transmission as well as the annexed Panel's Reports", adding that "in the Panel's Reports, the Experts consistently refer to the Chamber's instructions and relevant materials that have guided them in the preparation of their reports".⁵

¹ Request for Leave to Appeal Decision ICC-01/21-01/25-336-Conf, ICC-01/21-01/25-341-Conf ("Request for Leave to Appeal").

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 ("Impugned Decision").

³ Request for Leave to Appeal, ICC-01/21-01/25-341-Conf, paras 1-2.

⁴ Impugned Decision, ICC-01/21-01/25-336-Conf, para. 7.

⁵ Impugned Decision, ICC-01/21-01/25-336-Conf, para. 7.

5. These reports, indeed, provide a comprehensive overview of both the instructions and the material, as transmitted to the Panel. In this regard, the instructions, as framed by the Chamber,⁶ are mirrored in each of the Panel's reports.⁷ Likewise, any potential ambiguity in the scope of material provided to the Panel is resolved by the information contained in the reports themselves. In this regard, Annex II to the Experts' Reports provides a particularly comprehensive overview of disclosed material that the expert read in preparing his report.⁸

6. Thus, the Defence's submission that "[t]he precise instructions and documents provided by the Registry to the Panel are not known"⁹ is misconstrued. Incidentally, even the Defence acknowledges that it is "only *able to discern the information that was transmitted to the Panel* by relying on the content of the individual expert reports".¹⁰ Consequently, the identified Issue arises out of a mere disagreement with the Decision and is therefore not appealable.

7. Even if the Chamber were to determine that the Issue is appealable, it does not satisfy the other cumulative criteria under article 82(1)(d) of the Statute. *First*, Defence's claim that the "fair and expeditious conduct of the proceedings" or the "outcome of the trial" would be affected is based on the erroneous claim alleging the "absence of clarity as to the information and instructions that have been transmitted to the Panel".¹¹ As described at paragraphs 4-5 above, the Defence is already in possession of this information. *Second*, the Defence also fails to demonstrate that the immediate resolution of the Issue will materially advance the proceedings. To the contrary, given that the Defence is already in possession of the relevant information, an appellate intervention at this stage will only unnecessarily prolong ongoing litigation on the matter.

IV. CONCLUSION

8. For the above reasons, the Defence's Request should be rejected *in limine*.

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, paras 16-18.

⁷ Annex I to the Registry Transmission of the Panel of Experts' Joint and Individual Reports ("Experts' Reports"), ICC-01/21-01/25-327-Conf-AnxI, p. 3, sections 5.1-5.3, 5.8, and 5.18; Annex II to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxII, p. 2, sections 1.2-1.4; Annex III to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxIII, p. 2-3, and; Annex IV to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxIV, p. 4.

⁸ Annex II to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxII, p. 3, section 1.7.

⁹ Request for Leave to Appeal, ICC-01/21-01/25-341-Conf, para. 6.

¹⁰ Request for Leave to Appeal, ICC-01/21-01/25-341-Conf, para. 6 [emphasis added].

¹¹ Request for Leave to Appeal, ICC-01/21-01/25-341-Conf, para. 14.

A handwritten signature in black ink, appearing to read 'Mandiaye Niang', written over a horizontal line.

Mame Mandiaye Niang, Deputy Prosecutor

Dated this 19th day of December 2025

At The Hague, the Netherlands