



Original: English

No. ICC-01/21-01/25

Date: 9 January 2026

PRE-TRIAL CHAMBER I

Before:

**Judge Iulia Antoanella Motoc, Presiding
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*

Public

Decision on the ‘Request for Leave to Appeal Decision ICC-01/21-01/25-336-Conf’

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

☒ **The Office of the Prosecutor**

☒ **Counsel for the Defence**

☐ **Legal Representatives of the Victims**

☐ **Legal Representatives of the Applicants**

☐ **Unrepresented Victims**

☐ **Unrepresented Applicants
(Participation/Reparation)**

☒ **The Office of Public Counsel for
Victims**

☐ **The Office of Public Counsel for the
Defence**

☐ **States' Representatives**

☐ **Amicus Curiae**

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

☐ **Counsel Support Section**

☐ **Victims and Witnesses Unit**

☐ **Detention Section**

☐ **Victims Participation and Reparations
Section**

☐ **Other**

PRE-TRIAL CHAMBER I of the International Criminal Court issues the present decision on the 17 December 2025 ‘Request for Leave to Appeal Decision ICC-01/21-01/25-336-Conf’.¹

1. On 11 December 2025, the Chamber issued a decision rejecting a Defence’s request for disclosure of all communications between the Registry and the panel of three experts (the ‘Experts’ and the ‘Panel’) appointed to undertake a medical examination of Mr Duterte pursuant to rules 113 and 135 of the Rules of Procedure and Evidence.²

2. On 17 December 2025, the Defence filed the Request, seeking leave to appeal the Decision on Disclosure of Communications in respect of the following 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’ (the ‘Proposed Issue’).

3. On 19 December 2025, the Prosecution requested that the Chamber dismiss the Request *in limine*.³ The Office of Public Counsel for the Victims did not respond to the Request.

4. Based on the Court’s long-established jurisprudence, the Chamber recalls the exceptional character of the remedy of interlocutory appeals under article 82(1)(d) of the Rome Statute (the ‘Statute’), and that the following requirements must be met in order for leave to appeal to be granted: (a) a decision must involve an issue that would significantly affect (i) both the ‘fair’ and ‘expeditious’ conduct of the proceedings; or (ii) the outcome of the trial; and (b) in the view of the Pre-Trial Chamber, an immediate resolution of the issue by the Appeals Chamber is warranted as it may materially advance the proceedings.⁴ An appealable ‘issue’ is an identifiable subject or topic requiring a decision for its resolution, not merely a question over

¹ [ICC-01/21-01/25-341](#) (the ‘Request’).

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 (public redacted version notified on 23 December 2025, [ICC-01/21-01/25-336-Red](#)) (the ‘Decision on Disclosure of Communications’) – for a complete procedural background, the Chamber refers to the procedural history section therein. See also Urgent Request for Disclosure of Communications between the Registry and the Independent Panel of Experts, 10 December 2025, ICC-01/21-01/25-334-Conf (public redacted version notified on 18 December 2025, [ICC-01/21-01/25-334-Red](#)) (the ‘Request for Disclosure of Communications’).

³ 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), [ICC-01/21-01/25-343](#).

⁴ See Appeals Chamber, *Situation in the Democratic Republic of the Congo, Judgement on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal*, 13 July 2006, ICC-01/04-168, (the ‘DRC Leave to Appeal Judgment’), paras 7-8; Pre-Trial Chamber III, *The Prosecutor v. Joseph Kony, Decision on the ‘Kony Defence request for leave to appeal [the] “Decision on the criteria for holding confirmation of charges proceedings in absentia”*’, 28 January 2025, ICC-02/04-01/05-551 (‘Kony Leave to Appeal Decision’), para. 26.

which there is disagreement or conflicting opinion; it must emanate from the relevant decision itself and cannot represent a hypothetical concern or abstract legal question.⁵

5. The Defence submits that, in light of the lack of clarity of the Chamber's instructions to the Registry on the documents to be transmitted to the Panel, the Chamber's 'assumption that the Defence was aware of the entirety of the transmitted materials was [...] incorrect and led directly to its erroneous finding' that 'there is no reason that would warrant granting the Request [for Disclosure of Communications]'. The Defence argues that the 'absence of clarity as to the information and instructions that have been transmitted to the Panel [...] would, if allowed to recur at a later stage, likely engender a similar request for appellate intervention', and that a 'definitive ruling by the Appeals Chamber on the [Proposed Issue] would ensure the expeditious conduct of the proceedings by preventing the need for further litigation on the very same issue'. The Prosecution responds that 'the [Proposed] Issue arises out of a mere disagreement with the Decision [on Disclosure of Communications] and is therefore not appealable', and that, '[e]ven if the Chamber were to determine that the [Proposed] Issue is appealable, it does not satisfy the other cumulative criteria under article 82(1)(d) of the Statute'.

6. At the outset, the Chamber notes that, in the Request, to a large extent the Defence only repeats or develops arguments in an attempt to relitigate issues that have been addressed in the Decision on Disclosure of Communications, including whether granting the Defence's access to the information sought in the Request for Disclosure of Communications is warranted.

7. In addition, the Defence further misrepresents the Decision on Disclosure of Communications as the argument that the Chamber assumed the Defence's awareness 'of the entirety of the transmitted materials' to the Panel is solely premised on the assertion that the Chamber's relevant instructions to the Registry would have lacked clarity. However, the Chamber recalls that its conclusion that 'the Defence has before it all the necessary information regarding the Registry's interactions with the Experts' was not only based on the fact that, in their reports, 'the Experts consistently refer to the Chamber's instructions', but also to the

⁵ [DRC Leave to Appeal Judgment](#), para. 9; [Kony Leave to Appeal Decision](#), para. 26. See also Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, [Decision on the 'Ngaïssona Defence Request for Leave to Appeal the Second Decision on Disclosure and Related Matters'](#), 24 May 2019, ICC-01/14-01/18-206, para. 12; Pre-Trial Chamber I, *The Prosecutor v. Laurent Gbagbo*, [Decision on the Prosecutor's and Defence requests for leave to appeal the decision adjourning the hearing on the confirmation of charges](#), 31 July 2013, ICC-02/11-01/11-464, para. 8; Pre-Trial Chamber II, *The Prosecutor v. Bosco Ntaganda*, [Decision on the "Requête de la Défense sollicitant l'autorisation d'interjeter appel de la Décision sur la confirmation des charges datée du 9 juin 2014"](#), 4 July 2014, ICC-01/04-02/06-322, para. 10.

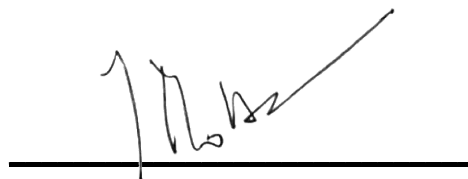
‘relevant materials that have guided them in the preparation of their reports’.⁶ As acknowledged in the Request, the Defence can ‘discern the information that was transmitted to the Panel by relying on the content of the individual expert reports’,⁷ which the Chamber found in the Decision on Disclosure of Communications to be sufficient ‘for the purposes of its observations due on 12 December 2025’.

8. In light of the above, the Chamber considers that the Request misconstrues the Decision on Disclosure of Communications and that the Proposed Issue does not arise out of that decision. Therefore, the Proposed Issue does not constitute an appealable issue within the meaning of article 82(1)(d) of the Statute. It is thus not necessary for the Chamber to address the remainder of the cumulative criteria of article 82(1)(d) of the Statute.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request.

Done in English. A French translation will follow. The English version remains authoritative.



Judge Iulia Antoanella Motoc, Presiding



**Judge Reine Adélaïde Sophie Alapini-
Gansou**



Judge María del Socorro Flores Liera

Dated this Friday, 9 January 2026

At The Hague, The Netherlands

⁶ [Decision on Disclosure of Communications](#), para. 7.

⁷ [Request](#), para. 6.