

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-01/21-01/25**
Date: **12 February 2026**

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*

Public

**Public redacted version of “Prosecution’s response to the Defence ‘Request for Leave to Appeal Decision ICC-01/21-01/25-356-Conf’ (ICC-01/21-01/25-363)”, 9 February 2026,
ICC-01/21-01/25-369-Conf**

Source: Office of the Prosecutor

Document 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

☐ **Counsel Support Section**

M. Osvaldo Zavala Giler

☐ **Victims and Witnesses Unit**

☐ **Detention Section**

☐ **Victims Participation and Reparations
Section**

☐ **Other**

I. INTRODUCTION

1. The Chamber should reject the Defence's request for leave to appeal (the "Request")¹ the "Decision on the 'Defence Request for an Indefinite Adjournment' and Mr Duterte's fitness to take part in the pre-trial proceedings".² The Defence merely disagrees with the Decision and appears to misunderstand the process envisaged in rule 135 of the Rules of Procedure and Evidence. 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 Rome 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 Impugned Decision rejecting its request for an indefinite adjournment of proceedings and for a hearing, gives rise to four appealable issues, namely that the Chamber: (i) "erred in fact and in law when it ignored relevant clinical evidence on Mr Duterte's cognitive condition, including that provided by the Defence experts"; (ii) "erred in law by rejecting the Defence request to question the members of the panel by way of an evidentiary hearing"; (iii) "erred in law by failing to articulate coherently its reasoning as to why it believed Mr Duterte fit to proceed to the confirmation proceedings", and; (iv) "erred in law by confining its assessment of Mr Duterte's fitness to the pre-trial phase and in failing to consider the impact of its finding on Mr Duterte's ability to stand trial".³ As elaborated below, the identified Issues are mere disagreements with the Decision, or based on a misunderstanding of the process envisaged under rule 135, and therefore not appealable. Nor in any event do they meet the cumulative criteria for leave to appeal under article 82(1)(d).

A. The Issues are not appealable issues

1. *The first Issue raised is not appealable under article 82(1)(d)*

4. The first identified Issue, which claims that the Chamber "erred in fact and in law when it ignored relevant clinical evidence on Mr Duterte's cognitive condition, including that

¹ Request for Leave to Appeal Decision ICC-01/21-01/25-356-Conf, ICC-01/21-01/25-363-Conf ("Request for Leave to Appeal").

² Decision on the 'Defence Request for an Indefinite Adjournment' and Mr Duterte's fitness to take part in the pre-trial proceedings, ICC-01/21-01/25-356-Conf ("Impugned Decision").

³ Request for Leave to Appeal, ICC-01/21-01/25-363-Conf, para. 7.

provided by the Defence experts”⁴ is a mere disagreement with the Decision and appears to misunderstand the process envisaged in rule 135 of the Rules. It is therefore not appealable.

5. As previously held, “for the Chamber to resort to an assessment of fitness to stand trial, there must be indications suggesting the existence of medical conditions which may impact on the accused’s ability to meaningfully exercise his fair trial rights which the Chamber is unable to resolve without the assistance of one or more medical experts”.⁵ When such indications exist, the Chamber may turn to rule 135 of the Rules, which provides the statutory framework meant to assist it in making its determination, as the rule’s primary purpose is “to enable the Chamber to “discharg[e] its obligations” in relation to ensuring that the accused understands the charges and ultimately that proceedings are fair”.⁶

6. Thus, the Chamber did not simply ignore reports provided by the Defence experts. Rather, indications suggesting the existence of medical conditions presented in the Defence experts’ reports served as the very basis for the Chamber’s decision to request further medical examination of Mr Duterte by independent experts in accordance with rules 113 and 135.⁷ To proceed in this manner is in line with this Court’s statutory provisions and appropriately falls within the Chamber’s discretion.

7. This approach is also in line with the court’s prior jurisprudence, which emphasises that rule 135 is “intended to ensure that the determination of the fitness of the person to participate in proceedings is made following an impartial procedure resorting to approved experts and with proper oversight by the Chamber and the parties” and that “[a]n expert solely chosen by the Defence, notwithstanding whether this expert has been accepted to the List of Experts, does not fulfil these requirements”.⁸ In this regard, in order to ensure a fair and impartial evaluation of Mr Duterte’s fitness, the Chamber took great care when appointing a multidisciplinary Panel of Experts (“Panel”) consisting of qualified and experienced professionals, and took into account the views of the parties, including the Defence.⁹

⁴ Request for Leave to Appeal, ICC-01/21-01/25-363-Conf, para. 7.

⁵ *Ongwen* Decision Ordering a Medical Examination, ICC-02/04-01/15-637-Red, para. 12.

⁶ Decision on the fitness of Laurent Gbagbo to take part in the proceedings before this Court, ICC-02/11-01/11-286-Red, para. 56, citing rule 135(1) of the Rules and article 64(8)(a) of the Statute.

⁷ See Order pursuant to rules 113 and 135 of the Rules of Procedure and Evidence, ICC-01/21-01/25-268, para. 23; Impugned Decision, ICC-01/21-01/25-356-Conf, paras 21, 38.

⁸ Decision on the Defence Request to Grant Privileged Status to Medical Expert and to Allow In-Person Visits, ICC-01/14-01/18-567-Red, para. 17.

⁹ Impugned Decision, ICC-01/21-01/25-356-Conf, paras 22, 24; *see also* Decision on the ‘Urgent Defence Request to Disqualify Dr [REDACTED]’ and related matters, ICC-01/21-01/25-316-Conf, p. 7; Urgent Defence Request

8. Moreover, aside from serving as the trigger for the initiation of a rule 135 procedure, the Defence experts' reports, as well as the Registry Report containing the assessment of the Medical Officer of the Detention Centre, were also provided to the appointed members of the Panel.¹⁰ These reports were reviewed by the Panel during their assessment, as is evident from the references in their respective reports.¹¹ Thus, as emphasised by the Chamber, the Panel was "able to undertake its medical assessment of Mr Duterte in full knowledge of the previous medical reports and opinions that had been provided prior to its own examination".¹²

9. As such, the first identified Issue amounts to a mere disagreement with the Decision and appears to misunderstand the process envisaged in rule 135. It is therefore not an appealable Issue.

2. *The second Issue raised is not appealable under article 82(1)(d)*

10. The second identified Issue, which alleges that the Chamber "erred in law by rejecting the Defence request to question the members of the panel by way of an evidentiary hearing",¹³ is equally a disagreement with the Decision and therefore also not appealable.

11. *First*, there is no statutory requirement to hold a hearing on fitness to stand trial in the Court's regulatory framework, nor is one envisioned within the rule 135 process. Thus, a decision to hold such a hearing is a discretionary one to be made on a case-by-case basis.

12. *Second*, the Defence's claim that "[t]o date, the ICC [...] has adopted the adversarial procedure in matters of fitness and accepted it as the norm"¹⁴ is an overstatement. Rather, a hearing on fitness to stand trial, including at pre-confirmation stage, was only held in one prior case at this Court – the *Gbagbo* case.¹⁵ No such hearing was held in the *Ongwen*, the *Al Hassan*, or the *Said* cases, where the accused's fitness was also litigated. While the Defence claims that

to Disqualify Dr [REDACTED], ICC-01/21-01/25-304-Conf-Red, para. 2; Defence Response to Registry Submission ICC-01/21-01/25-294-Conf, ICC-01/21-01/25-299-Conf, para. 3.

¹⁰ Impugned Decision, ICC-01/21-01/25-356-Conf, para. 27; 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-Red, para. 20, fn. 13.

¹¹ See Annex I to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxI, p.2, section 3.2; Annex II to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxII, p.2, section 1.7; Annex III to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxIII, p. 9; Annex IV to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxIV, p.10-13, para. 36; Impugned Decision, ICC-01/21-01/25-356-Conf, para. 28.

¹² Impugned Decision, ICC-01/21-01/25-356-Conf, para. 27.

¹³ Request for Leave to Appeal, ICC-01/21-01/25-363-Conf, para. 7.

¹⁴ Request for Leave to Appeal, ICC-01/21-01/25-363-Conf, para. 21.

¹⁵ Order scheduling a hearing in relation to Mr Gbagbo's fitness to take part in the proceedings against him, ICC-02/11-01/11-241; Decision on the fitness of Laurent Gbagbo to stand trial, ICC-02/11-01/15-349, para. 18.

a hearing on fitness to stand trial was not conducted in these cases “because it was not requested”,¹⁶ one can only speculate whether such a hearing would have been held in those three cases had it, in fact, been requested. Thus, this argument is unpersuasive.

13. *Finally*, the *Gbagbo* case, where a hearing on fitness to stand trial was indeed held, is distinguishable from the present scenario because in *Gbagbo* the appointed experts disagreed on the fundamental question of whether the accused was fit to stand trial.¹⁷ No such disagreement exists here. Instead, as noted by the Chamber in rejecting the Defence’s request to hold a hearing, “the expert opinions of the members of the Panel are clear and unanimous in concluding that Mr Duterte possesses the capacities which are necessary for the meaningful exercise of his procedural and fair trial rights.”¹⁸

14. Thus, the second identified Issue amounts to a mere disagreement with the Decision and is therefore also not an appealable issue.

3. *The third Issue raised is not appealable under article 82(1)(d)*

15. The third identified Issue, which claims that the Chamber “erred in law by failing to articulate coherently its reasoning as to why it believed Mr Duterte fit to proceed to the confirmation proceedings”,¹⁹ is another disagreement and misrepresents the Decision. It is therefore also not an appealable issue.

16. Contrary to the Defence contention that “the Panel, effectively, replaced the Pre-Trial Chamber in determining what is strictly a question of law”,²⁰ the Chamber was, in fact, clear in explaining how it came to its legal determination regarding Mr Duterte’s fitness to participate in the pre-trial proceedings and provided sufficient reasoning for its conclusion in the Impugned Decision.²¹ This is evident from the Impugned Decision’s detailed analysis not only of the Panel’s joint and individual reports, but also of the specific arguments raised by the Defence,²² including those related to how Mr Duterte’s “[REDACTED] might impair the legal

¹⁶ Annex A to the Request for Leave to Appeal, ICC-01/21-01/25-363-AnxA, p. 2-3.

¹⁷ Decision on the fitness of Laurent Gbagbo to take part in the proceedings before this Court, ICC-02/11-01/11-286-Red, para. 67.

¹⁸ Impugned Decision, ICC-01/21-01/25-356-Conf, para. 48; *see also* Annex II to the Experts’ Reports, ICC-01/21-01/25-327-Conf-AnxII, p. 52-53, sections 4.7 and 4.8-4.10; Annex III to the Experts’ Reports, ICC-01/21-01/25-327-Conf-AnxIII, p. 12-13; Annex IV to the Experts’ Reports, ICC-01/21-01/25-327-Conf-AnxIV, p. 33, paras. 124-127.

¹⁹ Request for Leave to Appeal, ICC-01/21-01/25-363-Conf, para. 7.

²⁰ Request for Leave to Appeal, ICC-01/21-01/25-363-Conf, para. 25.

²¹ *See, in particular*, Impugned Decision, ICC-01/21-01/25-356-Conf, paras 25, 43, 45.

²² *See, in particular*, Impugned Decision, ICC-01/21-01/25-356-Conf, paras 28-45.

proceedings”.²³ With regard to this last point, the Impugned Decision specifically notes that “in making submissions relating to Mr Duterte’s memory, the Defence takes individual findings of members of the Panel out of context”.²⁴ The Impugned Decision proceeds to analyse the Panel’s findings related to the reliability of “Mr Duterte’s complaints of memory difficulties”²⁵ and further assesses the findings of the Panel in relation to this specific point.²⁶

17. As such, the Defence’s claim that “the Pre-Trial Chamber failed to consider how Mr Duterte’s cognitive issues, whatever their degree, impacted on his ability to retain information for the purpose of exercising his procedural rights”,²⁷ misrepresents the Impugned Decision. The third identified Issue is therefore also not appealable.

4. The fourth Issue raised is not appealable under article 82(1)(d)

18. Lastly, the fourth identified Issue, which claims that the Chamber “erred in law by confining its assessment of Mr Duterte’s fitness to the pre-trial phase and in failing to consider the impact of its finding on Mr Duterte’s ability to stand trial”,²⁸ is a further disagreement and thus also not appealable.

19. Limiting its request for the assessment of Mr Duterte’s fitness to the “ongoing pre-trial proceedings, including the confirmation of charges hearing”²⁹ does not “pollut[e] the fairness of the present proceedings”,³⁰ but instead appropriately falls within the Pre-Trial Chamber’s competence and discretion and is in line with its limited role of presiding over the pre-trial stage of the proceedings. Should the charges be confirmed, nothing prevents the Defence from raising, should there be a factual basis to do so, a challenge to the fitness of Mr Duterte before a Trial Chamber, as was previously done in, for example, the *Gbagbo* or the *Kabuga* cases.³¹ Moreover, extending conclusions about Mr Duterte’s current state of fitness to trial proceedings

²³ Impugned Decision, ICC-01/21-01/25-356-Conf, paras 35, 38, 41.

²⁴ Impugned Decision, ICC-01/21-01/25-356-Conf, para. 41.

²⁵ Impugned Decision, ICC-01/21-01/25-356-Conf, para. 41.

²⁶ See, in particular, Impugned Decision, ICC-01/21-01/25-356-Conf, para. 35 (commenting upon Dr [REDACTED] opinion that Mr Duterte has the cognitive abilities to instruct counsel), para. 38 (emphasising that the Panel was informed of medical concerns raised by the Defence, including in relation to memory, when carrying out its own assessments), and paras 41-42 (specifically addressing reliability of Mr Duterte’s memory complaints and relevant performance validity tests applied by the Panel).

²⁷ Request for Leave to Appeal, ICC-01/21-01/25-363-Conf, para. 32.

²⁸ Request for Leave to Appeal, ICC-01/21-01/25-363-Conf, para. 7.

²⁹ 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-Red, para. 17; Impugned Decision, ICC-01/21-01/25-356-Conf, p. 25.

³⁰ Request for Leave to Appeal, ICC-01/21-01/25-363-Conf, para. 37.

³¹ See Decision on the fitness of Laurent Gbagbo to stand trial, ICC-02/11-01/15-349; MICT-13-38-T, Further Decision on Felicien Kabuga’s Fitness to Stand Trial.

would necessarily require speculation,³² regarding the possible evolution (whether deterioration or improvement) of his current condition.

20. Thus, the fourth identified Issue is also a mere disagreement and not appealable.

B. The Issues do not satisfy the cumulative criteria under article 82(1)(d)

21. Even if the Chamber were to determine that the Issues are appealable, they do not satisfy the other cumulative criteria under article 82(1)(d). *First*, the Issues would not significantly affect the fair and expeditious conduct of the proceedings, or the outcome of trial.

22. Contrary to the Defence’s assertion of “extraordinary injustice caused to Mr Duterte at every stage of the procedure”,³³ and as expressly noted by the Chamber, the procedure adopted in order to resolve the issue of Mr Duterte’s fitness “has been abundantly fair” with full recognition of the “need to proceed as expeditiously as the demands of fairness require and allow”.³⁴ Further, the postponement of the confirmation hearing, originally scheduled to commence on 23 September 2025,³⁵ was “limited to the time strictly necessary to determine whether Mr Duterte is fit to follow and participate in pre-trial proceedings”, specifically with the Chamber’s duty to ensure the fair and expeditious conduct of the proceedings in mind.³⁶

23. In addition, as described above, the conclusions regarding Mr Duterte’s fitness are limited to the pre-trial stage of the proceedings, limiting any potential impact they may have on the outcome of trial. In fact, the Defence already notes the potential of Mr Duterte’s fitness to stand trial being revisited again at trial.³⁷

24. *Second*, the immediate resolution of the Issues by the Appeals Chamber would also not materially advance the proceedings. Should concerns about Mr Duterte’s fitness to stand trial arise again, they can be addressed at trial in accordance with the process envisaged in rule 135 of the Rules. As such, appellate involvement at this stage would only further delay ongoing proceedings, which have already been postponed by five months in order to conduct the assessment of Mr Duterte’s fitness.

³² See Request for Leave to Appeal, ICC-01/21-01/25-341-Conf, para. 37.

³³ Request for Leave to Appeal, ICC-01/21-01/25-341-Conf, para. 5, *see also* paras. 38-39.

³⁴ Impugned Decision, ICC-01/21-01/25-356-Conf, para. 48.

³⁵ Transcript of hearing, ICC-01/21-01/25-T-002-ENG, p. 10, lines 8-11.

³⁶ Impugned Decision, ICC-01/21-01/25-356-Conf, para. 48, fn. 121.

³⁷ Request for Leave to Appeal, ICC-01/21-01/25-341-Conf, para. 39.

IV. CONCLUSION

25. For the above reasons, the Defence's Request should be rejected.

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

Mame Mandiaye Niang, Deputy Prosecutor

Dated this 12th day of February 2026

At The Hague, the Netherlands