



Original: English

**No. ICC-01/21-01/25
Date: 13 February 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-01/21-01/25-356-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 2 February 2026 ‘Request for Leave to Appeal Decision ICC-01/21-01/25-356-Conf’.¹

I. PROCEDURAL HISTORY

1. On 26 January 2026, following the submission of reports by the panel of three experts (the ‘Reports’, ‘Panel’ and ‘Experts’) appointed to undertake a medical examination of Mr Duterte pursuant to rules 113 and 135 of the Rules of Procedure and Evidence (the ‘Rules’), the Chamber issued a decision finding that Mr Duterte is fit to take part in the pre-trial proceedings and, thus, rejecting the Defence’s request for an indefinite adjournment of the proceedings.²

2. On 2 February 2026, the Defence filed the Request, seeking leave to appeal the 26 January 2026 Decision in respect of the four following issues:

‘The Pre-Trial Chamber erred in fact and in law by ignoring relevant clinical evidence on Mr Duterte’s lack of fitness to stand trial’ (the ‘First Proposed Issue’);

‘The Pre-Trial Chamber erred in law by rejecting the Defence request to hold a hearing on Mr Duterte’s purported fitness’ (the ‘Second Proposed Issue’);

‘The Pre-Trial 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’ (the ‘Third Proposed Issue’); and

‘The Pre-Trial Chamber erred in law in 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’ (the ‘Fourth Proposed Issue’).

3. On 9 February 2026, the Prosecution and the Common Legal Representatives of Victims (‘CLRV’) requested that the Chamber reject the Request.³

¹ ICC-01/21-01/25-363-Conf (public redacted version notified on the same day, [ICC-01/21-01/25-363-Red](#)) (the ‘Request’).

² Decision on the ‘Defence Request for an Indefinite Adjournment’ and Mr Duterte’s fitness to take part in the pre-trial proceedings, 26 January 2026, ICC-01/21-01/25-356-Conf (public redacted version notified on the same day, [ICC-01/21-01/25-356-Red](#)) (the ‘26 January 2026 Decision’); for a complete procedural background, the Chamber refers to the procedural history section therein. *See also* Defence Request for an Indefinite Adjournment, 18 August 2025, ICC-01/21-01/25-230-Conf (public redacted version notified on 11 September 2025, [ICC-01/21-01/25-230-Red](#)) (the ‘Adjournment Request’), with confidential annexes A and B.

³ 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), ICC-01/21-01/25-369-Conf (public redacted version notified on 12 February 2026, ICC-01/21-01/25-369-Red) (the ‘Prosecution’s Response’); Victims’ Response to the Defence Request for Leave to Appeal Decision ICC-01/21-01/25-356-Conf, ICC-01/21-01/25-368-Conf (the ‘CLRV’s Response’).

II. DETERMINATION

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 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

A. First Proposed Issue

5. The Defence submits that, firstly, the Chamber erred in fact by ruling on Mr Duterte's fitness without holistically taking into account all the relevant circumstances of the case. Secondly, the Defence submits that the Chamber erred in law 'when it premised its decision [...] exclusively on the Panel's reports, instead of also considering the clinical evidence proffered by the Defence experts', thereby 'ignor[ing] the Defence expertise without articulating any reason'. In this regard, the Defence further argues that it was erroneous for the Chamber '[t]o have dismissed the Defence reports out of hand merely because they were submitted by a party to the proceedings' since the 'parties play a critical role in assisting ICC Chambers in their judicial determinations on fitness'.

6. The Chamber notes that the First Proposed Issue is premised on the statement that the Chamber '*ignored the Defence expertise without articulating any reasons*'.⁶ However, as

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.

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.

⁶ *Request*, para. 11 (emphasis added).

rightly noted by the Prosecution and the CLRV,⁷ the medical reports provided by the Defence were not ignored by the Chamber but rather served as the basis for its decision to initiate proceedings under rules 113 and 135 of the Rules, leading to the 26 January 2026 Decision.⁸ The Chamber also notes that the reports provided by the Defence were provided to the Experts and referenced in the Panel's Reports, where the Experts indicated having taken them into consideration when assessing Mr Duterte's health condition. In addition, at paragraph 38 of the 26 January 2026 Decision, the Chamber addressed the Defence's arguments in relation to Mr Duterte's memory impairment, which referred to the Defence's own medical reports.

7. Regarding the reasons not to rely on the Defence's medical reports for the purpose of determining whether Mr Duterte is fit to take part in the pre-trial proceedings, as indicated at length at paragraphs 21 and 22 of the 26 January 2026 Decision, all steps to constitute an independent panel of three medical experts, pursuant to rules 113 and 135 of the Rules, were taken 'to ensure the impartiality and neutrality of the experts from whom [the Chamber] was to hear'. For that purpose, the Chamber 'instructed the Registry not to include individuals who had already been engaged on behalf of a party in the present case on the shortlist of qualified experts with relevant expertise that the Registry was ordered to prepare'. Therefore, and without prejudice to the qualifications and professionalism of the medical professionals selected by the Defence, from the 26 January 2026 Decision it is clear that the Chamber's reason not to rely on the Defence's medical reports was to ensure that only information emanating from impartial and neutral sources was taken into consideration in order to ultimately ensure the fairness of the proceedings.

8. For these reasons, the Chamber considers that the First Proposed Issue misrepresents the relevant findings made in the 26 January 2026 Decision and, as such, does not arise out of the 26 January 2026 Decision. Accordingly, the Chamber finds that the First Proposed Issue does not constitute an appealable issue within the meaning of article 82(1)(d) of the Statute. Having found that the first criterion for granting leave to appeal in respect of the First Proposed Issue has not been fulfilled, there is no need for the Chamber to address the remainder of the applicable criteria.

⁷ See Prosecution's Response, para. 6; CLRV's Response para. 13.

⁸ See [26 January 2026 Decision](#), para. 38.

B. Second Proposed Issue

9. The Defence submits that the Chamber erred in law by rejecting twice the Defence's request to hold a hearing to examine the members of the Panel, despite the 'Defence explain[ing] that such a hearing was necessary both as a matter of fairness and to expedite the proceedings'. The Defence argues that Mr Duterte 'was entitled to a forensic hearing on the issue of his fitness' considering that '[f]orensic examination in fitness litigation is the absolute norm at first instance before the international courts and tribunals'. The Defence asserts that such hearing was all the more necessary given the 'radically differing individual opinions [of the Experts] as to the aetiology and degree of Mr Duterte's cognitive depreciation' and that, by its 'disregard of the divergent clinical opinions [...] without seeking to explain the underlying inconsistencies, the Chamber failed to assess the resulting effect on the overall reliability and probative value of the Panel's joint report'. The Defence argues that the Chamber committed 'further legal error by premising its decision to deny a forensic hearing by reference to its rejection of the Defence's request for disclosure of communications' between the Panel and the Registry, which allegedly is a 'thoroughly distinct' matter.

10. The Chamber notes that the arguments raised by the Defence in connection with the Second Proposed Issue were addressed in the 26 January 2026 Decision. Firstly, the Defence's argument that the Chamber disregarded the divergent clinical opinions, and that it did not provide any reasoning as to the necessity to further probe the Panel's understanding of the proceedings, relies on a selective choice of excerpts from the 26 January 2026 Decision and does not faithfully represent the Chamber's findings therein. Indeed, the Chamber addressed the issues regarding contradictions between the Reports raised by the Defence at paragraphs 39 to 44 of the 26 January 2026 Decision, rejected them and explicitly found 'the conclusions of the Panel to be reliable'. It is by reference to this detailed determination that the Chamber found that 'the Defence has failed to substantiate that there is any "strident conflict" or significant inconsistency which is capable of undermining "the overall weight of the general joint conclusion on fitness"'. The Chamber then went on to explain why contradictions can be expected. However, contrary to the Defence's assertion,⁹ this part did not constitute the Chamber's main reasoning with regard to the purported inconsistencies in the Reports as raised by the Defence.

⁹ [Request](#), para. 18.

11. Similarly, the Chamber explained specifically at paragraphs 24 and 35 of the 26 January 2026 Decision that the Experts had been chosen because of, *inter alia*, their knowledge of the legal proceedings and experience in dealing with fitness issues before international tribunals, and thus found that ‘there is nothing to substantiate that the Panel did not have sufficient experience or understanding to arrive at its conclusions in the present case’. It is by reference to these findings, and its overall determination on the Defence’s substantive submissions, that the Chamber found that ‘the Defence has not substantiated that it is necessary further to probe what the experts know about confirmation proceedings at this Court’.

12. Finally, the Chamber notes that the Defence assumes that the Chamber premised its decision denying a hearing on its rejection of a Defence’s prior request to disclose all communications between the Panel and the Registry. The Chamber notes that its rejection of the request to disclose such communications was not dispositive in its decision to reject the request for a hearing, but was rather referenced as confirmation of the absence of an issue necessitating additional proceedings and litigation, contrary to what the Defence then argued. As such, rather than identifying a legal error, the Defence’s submissions misrepresent the Chamber’s determination.

13. Accordingly, the Chamber finds that the Second Proposed Issue does not constitute an appealable issue within the meaning of article 82(1)(d) of the Statute. Having found that the first criterion for granting leave to appeal in respect of the Second Proposed Issue has not been fulfilled, there is no need for the Chamber to address the remainder of the applicable criteria.

C. Third Proposed Issue

14. The Defence submits that the Chamber erred in law by failing to articulate coherently its reasoning as to why it believed Mr Duterte fit to participate in the confirmation proceedings. In particular, the Defence argues that the Chamber ‘failed to demonstrate how, or why, the Panel’s findings displaced those proffered by the Defence’ and that, by adopting the Panel’s findings ‘wholesale and without reasoned analysis’, the Chamber allowed the Panel to replace it in determining the issue of fitness. Furthermore, the Defence asserts that the 26 January 2026 Decision did not provide any indication ‘as to what is required, practically speaking, for a suspect to be deemed fit for the purpose of the confirmation proceedings’, and did not ‘examine – as is the practice at the international tribunals – whether or how, in light of the various expert reports, Mr Duterte can meaningfully exercise his procedural and fair trial rights’. In this regard, the Defence argues that ‘lack of clarity as to the methodology’ to assess Mr Duterte’s purported

fitness is ‘fatal’ to the finding as to his fitness, and that the Chamber failed to assess (i) that a ‘broad understanding of the nature of the charges’ implies some degree of understanding as to the specific, factual allegations, including regarding the modes of liability; and (ii) whether or how Mr Duterte is able to communicate with his Counsel, by not addressing ‘the Panel’s silence on the Defence argument that Mr Duterte is incapable of retaining information for the purpose of delivering effective instructions’.

15. The Chamber notes that, once again, the Defence misrepresents the 26 January 2026 Decision. As developed above,¹⁰ the Chamber decided to consider solely the Panel’s conclusions to ensure the fairness of the proceedings, which integrated the Defence’s medical reports in their assessment. In that context, and contrary to the Defence’s assertion, it was not necessary for the Chamber to explain ‘how, or why, the Panel’s findings displaced those proffered by the Defence’. Moreover, in the 26 January 2026 Decision, the Chamber clearly set out the applicable legal standard and assessed the totality of the Panel’s information before it. The Chamber also extensively examined the Panel’s findings in light of the Defence’s submissions. Concluding its assessment, the Chamber stated that:

[h]aving regard to the relevant legal principles, and to the medical assessment of the independent experts in light of all of the factors set out above, the Chamber is satisfied, in law, that Mr Duterte is able effectively to exercise his procedural rights and is therefore fit to take part in the pre-trial proceedings’.¹¹

16. Accordingly, the Defence’s assertion that the Chamber accepted the Panel’s conclusion ‘wholesale and without reasoned analysis’, which would equate to a delegation of the Chamber’s judicial function, amounts to a clear misrepresentation of the 26 January 2026 Decision.

17. Regarding the purported lack of clarity in the Chamber’s methodology to assess Mr Duterte’s fitness, the Chamber recalls that, as detailed at paragraph 25 of the 26 January 2026 Decision, the Chamber gave clear and exhaustive instructions to the Experts as to the factual assessment they were required to carry out in order for the Chamber to proceed to its legal determination on Mr Duterte’s fitness to participate in the proceedings. These instructions also reflect the elements, including the relevant rights of the suspect, on which the Panel had to focus to provide its conclusions. The Panel’s Reports specifically addressed these points, and the Chamber made findings based on the Panel’s conclusions. Therefore, the Chamber

¹⁰ See paragraph 7 above.

¹¹ [26 January 2026 Decision](#), para. 45.

considers that, since as early as the Chamber's instructions to the Panel as to how to assess Mr Duterte's fitness, the practical requirements for a suspect to be deemed fit for the purpose of the confirmation proceedings were clearly available to the parties and participants. In this regard, the Chamber recalls that the Defence had several opportunities to raise issues regarding the instructions to the Panel, including through observations on the Registry's shortlists of experts and observations on the Reports, but opted not to do so.

18. Considering these clear instructions and the unanimous conclusions of the Panel, the Chamber drew its own legal determination on Mr Duterte's fitness, extensively addressing the concerns raised by the Defence. The Chamber, therefore, considers that the Defence's arguments in relation to the Third Proposed Issue misrepresent the 26 January 2026 Decision and, as such, does not arise out of said Decision.

19. Accordingly, the Chamber finds that the Third Proposed Issue does not constitute an appealable issue within the meaning of article 82(1)(d) of the Statute. Having found that the first criterion for granting leave to appeal in respect of the Third Proposed Issue has not been fulfilled, there is no need for the Chamber to address the remainder of the applicable criteria.

D. Fourth Proposed Issue

20. The Defence submits that the Chamber erred in law in confining its assessment of Mr Duterte's fitness to the pre-trial phase and in failing to consider the impact of its findings on Mr Duterte's ability to stand trial. The Defence argues that the Chamber failed 'to address how Mr Duterte is expected, in practical terms, to exercise his procedural rights in future proceedings in light of a memory impairment recognised by all the experts'. Moreover, the Defence asserts that the Chamber left the core legal issue unresolved – namely, whether Mr Duterte will, ultimately, be fit to stand trial, although, according to the Defence, 'there is little point in holding a confirmation hearing when there is a strong likelihood that the suspect, even if charges were to be confirmed, would be unfit to stand trial'. Finally, the Defence avers that the Chamber failed to consider that 'Mr Duterte's memory will continue to depreciate just as the need for recollection and mental acuity sharply increases', thereby affecting the fairness of the present proceedings and resulting in an 'injudicious use of resources should Mr Duterte prove, as the Defence anticipates, unable to participate in his own trial'.

21. The Chamber notes that the Fourth Proposed Issue concerns the Chamber's application, at the pre-trial stage, of the law relating to fitness to stand trial, which was fundamental in shaping its instructions to the Panel and its assessment of Mr Duterte's fitness. Therefore, the

Chamber is of the view that the Fourth Proposed Issue directly emanates from the Decision and that it amounts to an ‘issue’ within the meaning afforded to it by the Appeals Chamber.

22. Regarding the alleged impact of the Fourth Proposed Issue on the fairness and expeditiousness of the proceedings, the Chamber notes that the Defence contends that the Chamber failed to consider the impact of Mr Duterte’s health situation on a possible future trial¹² and argues, without further substantiation, that this omission affects the fairness of the current proceedings. In this regard, the Chamber recalls that the litigation regarding Mr Duterte’s fitness originates from a Defence request¹³ submitted in the context of and in connection with the confirmation proceedings, a stage at which the holding of a trial remains hypothetical, as it is not yet known whether the charges will be confirmed or not.

23. In light of the above, the Chamber considers that the Fourth Proposed Issue, insofar as it relies on a hypothetical scenario of Mr Duterte’s health condition deteriorating during trial – which was also not mentioned in the Panel’s Reports – is speculative in nature. Moreover, the Chamber emphasises that the 26 January 2026 Decision does not prejudice Mr Duterte’s fitness to stand trial and that it does not preclude any competent chamber of the Court to revisit the issue should the need arise. Accordingly, the Chamber is of the view that the Fourth Proposed Issue is not able to significantly affect the fairness of the proceedings.

24. By the same token, the Chamber is not convinced that the Fourth Proposed Issue is susceptible to significantly affect the expeditiousness of the proceedings because, given the very nature of the matter, an appeal would not advance the proceedings nor avoid any further litigation. As argued by the Defence,¹⁴ and properly noted by the Prosecution,¹⁵ Mr Duterte’s fitness to stand trial is an issue that is likely to be revisited at trial, should all or some of the charges be confirmed.

25. Therefore, the Chamber considers that the Fourth 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.

¹² [Request](#), para. 34.

¹³ See [Adjournment Request](#).

¹⁴ See [Request](#), para. 39.

¹⁵ See Prosecution’s Response, para. 19.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request; and

ORDERS the CLRV to file a public redacted version of filing ICC-01/21-01/25-368-Conf, or request its reclassification as public, by no later than 17 February 2026.

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, 13 February 2026

At The Hague, The Netherlands