

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/21-01/25
Date: 13 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 Document

**Public Redacted Version of
“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)**

Source: Common Legal Representatives of Victims

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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☒ Counsel for the Defence
D36

☒ Legal Representatives of the Victims
V50

☐ 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

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I. INTRODUCTION

1. The Common Legal Representatives herewith file their response to the Defence “Request for Leave to Appeal Decision ICC-01/21-01/25-356-Conf” filed on 2 February 2026 (the “Request”),¹ which was notified to them on 3 February 2026.²

2. The Victims oppose the Request in its entirety and firmly reject the exaggerated and unfounded claim of “*extraordinary injustice*”³ having been caused in these proceedings “*at every stage of the process*”⁴ as propagated by the Defence.

3. The Request is not only unmeritorious in substance as it fails to substantiate that any matter raised constitutes an appealable issue, but it is also duplicative of arguments raised in the appeal against the Pre-Trial Chamber’s (the “Chamber”) decision on the review of Mr Duterte’s pre-trial detention pending before the Appeals Chamber.⁵

4. The Request must further be rejected on the ground that it is an impermissible attempt to relitigate several interim rulings preceding the Chamber’s decision on Mr Duterte’s fitness motivated by the Defence’s general disagreement and dissatisfaction with the findings and the former’s alternative interpretation of the medical expertise by the Panel of Experts.

¹ See the “Request for Leave to Appeal Decision ICC-01/21-01/25-356-Conf”, [No. ICC-01/21-01/25-363-Conf](#), 26 February 2026 (the “Request”). A public redacted version [No. ICC-01/21-01/25-363-Red](#) was filed on the same day.

² The Common Legal Representatives were initially only notified of the public redacted version of the Request.

³ See the Request, *supra* note 1, para. 5.

⁴ *Ibid.*

⁵ On 28 January 2026, the Defence filed its Notice of Appeal against the Chamber’s 26 January 2026 decision remanding Mr Duterte in pre-trial detention, largely based on the argument that the Chamber purportedly failed to consider the medical reports commissioned by the Defence: See the “Notice of Appeal against Decision ICC-01/21-01/25-357-Conf”, [No. ICC-01/21-01/25-360](#), 28 January 2026 and the “Appeal Brief on the First Review of the Detention of Mr Rodrigo Roa Duterte”, [No. ICC-01/21-01/25-366](#), 5 February 2026.

II. PROCEDURAL BACKGROUND

5. On 26 January 2026, the Chamber rendered the “Decision on the ‘Defence Request for an Indefinite Adjournment’ and Mr Duterte’s fitness to take part in the pre-trial proceedings” (the “Decision”).⁶

6. On 2 February 2026, the Defence filed the Request.⁷

7. On 3 February 2026, the Chamber by e-mail ordered that Responses to the Request should be filed no later than 9 February 2026.⁸

III. CLASSIFICATION

8. Pursuant to regulation 23*bis* (1) and (2) of the Regulations of the Court, the present submission is classified as confidential because it refers to the content of documents which bear the same classification. A public redacted version will be filed in due course.

IV. SUBMISSIONS

A. Applicable law

9. Article 82(l)(d) of the Statute sets out the criteria for granting a request for leave to appeal as follows: (a) the decision shall involve an issue that would significantly affect: (i) the fair and expeditious conduct of the proceedings; or (ii) the outcome of the trial; and (b) for which, in the opinion of the relevant Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings. For the purposes of the first prong of this test, the Appeals Chamber defined an “*issue*” as “*an identifiable subject or topic requiring a decision for its resolution, not merely a question over*

⁶ See the “Decision on the ‘Defence Request for an Indefinite Adjournment’ and Mr Duterte’s fitness to take part in the pre-trial proceedings” (Pre-Trial Chamber I), [No. ICC-01/21-01/25-356-Conf](#), 26 January 2026 (the “Decision”).

⁷ See the Request, *supra* note 1.

⁸ See the Email Decision of the Chamber dated 3 February at 10:47.

*which there is disagreement or conflicting opinion”.*⁹ Moreover, the Appeals Chamber ruled that *“the Pre-Trial or Trial Chamber is vested with power to state, or more accurately still, to certify the existence of an appealable issue”*.¹⁰

10. Consequently, it must first be determined whether the purported *“issue”* identified in the Request is an *“appealable issue”* within the meaning of article 82(l)(d) of the Statute, as interpreted by the jurisprudence of the Court. Indeed, *“while an application for leave to appeal should not contain in detail the arguments which the party intends to raise before the Appeals Chamber, it must still identify clearly the appealable issue, including by way of indicating a specific factual and/or legal error. Only in this case can the Chamber assess whether the issue, provided it was wrongly decided, may have implications on the fairness and expeditiousness of the proceedings or outcome of the trial”*.¹¹

11. The Defence seeks leave to appeal the following four issues: (i) **First Issue:** *Whether 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;*¹² (ii) **Second Issue:** *Whether the Pre-Trial Chamber erred in law by rejecting the Defence request to hold a hearing on Mr Duterte’s purported fitness;*¹³ (iii) **Third Issue:** *Whether 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;*¹⁴ **Fourth Issue:** *Whether 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.*¹⁵

⁹ See the “Judgement on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal” (Appeals Chamber), No. [ICC-01/04-168 OA3](#), 13 July 2006, para. 9.

¹⁰ *Idem*, para. 20.

¹¹ See the “Decision on three applications for leave to appeal” (Pre-Trial Chamber I), No. [ICC-02/11-01/11-307](#), 30 November 2012, para. 70.

¹² See the Request, *supra* note 1, p. 7.

¹³ *Idem*, p. 9.

¹⁴ *Idem*, p. 13.

¹⁵ *Idem*, p. 16.

B. Merits of the Request

First Issue

12. The Defence argues that the Chamber “*erred in law when it premised its decision on Mr Duterte’s fitness to participate in the proceedings exclusively on the Panel’s reports, instead of also considering the clinical evidence proffered by the Defence experts*”.¹⁶ Contrary to the Defence’s representations, the Chamber did not exclusively base its findings on the Panel Report. The Defence fails to acknowledge the various procedural steps pre-dating the commissioning of the Panel Report. Crucially, the very reason for appointing a Panel in the first place were the findings of the Defence Experts that were inconclusive and unnuanced.

13. In fact, the instruction of an independent Panel of Experts was prompted by the Defence’s submission of two reports in support of its request for a permanent stay of the proceedings. The Prosecution and the OPCV had had no input in relation to the instruction of said Defence expertise. Rather, the Defence unilaterally instructed [REDACTED] to “*assess whether Mr D. [REDACTED] that may affect his ability to stand trial*”.¹⁷ [REDACTED] proffered a report that was irreconcilable with the one of [REDACTED] (whom he instructed) [REDACTED], and ultimately categorically opined that “*Mr. D. is currently unable to meaningfully participate in the legal proceedings against him*”.¹⁸ This state of affairs naturally required that the Chamber further investigate the health condition of Mr Duterte, which it did. At the time, the Chamber found, by Majority, that “*based on the information currently available regarding Mr Duterte’s medical situation, it does not have sufficient information to determine whether Mr Duterte is fit to take part in the pre-trial proceedings*”.¹⁹ Thus, it was on this factual

¹⁶ See the Request, *supra* note 1, para. 11.

¹⁷ See the [Annex A](#) to the “Defence Request for an Indefinite Adjournment”, [No. ICC-01/21-01/25-230-Conf](#), 18 August 2025 (the “[REDACTED] Report”), p. 2. A public version [No. ICC-01/21-01/25-230-Red](#) of the “Defence Request for an indefinite Adjournment” was filed on 11 September 2025.

¹⁸ *Idem*, pp. 14, 18 referring to the prior report of [REDACTED] following clinical assessments on [REDACTED]. [REDACTED] was submitted to the Chamber as [Annex B](#) to the Defence Request for an Indefinite Adjournment. It is also of note that the assessment was conducted “*at the request of [REDACTED]*”, the Defence instructed Expert. See Annex B, p. 2.

¹⁹ See the “Order pursuant to rules 113 and 135 of the Rules of Procedure and Evidence”, [No. ICC-01/21-01/25-268](#), 8 September 2025, para. 23 (the “Decision to Constitute Panel of Experts”). Emphasis added.

foundation that it instructed further expertise; in other words, it had already considered and acted upon the Defence expertise rather than rejected it, as alleged in the Request. This reasonable and cautious approach, taken in order to supplement the Defence Experts' divergent reports and clarify the clinical information, can in no way be interpreted as 'disregarding' the opinions of the Defence Experts. At no point has the Chamber single-handedly dismissed the Defence Experts' Reports or given reason to believe that it *only* relied on the Panel Report and dismissed the Defence Experts, as the Defence suggests. It is also important to recall at this stage that one of the Defence Experts unconditionally stated that Mr Duterte was unfit to stand trial.²⁰ While this conclusion was convenient to the Defence, no reasonable Chamber could have relied on the untested opinion of a party-instructed expert without ensuring further, independent assessment of Mr Duterte that allowed it to answer the *legal* question of his fitness to partake in the confirmation of charges proceedings.

14. As such, the *First Issue* does not arise from the Decision. It is exclusively based on an erroneous interpretation of the Chamber's reasoning and ultimately constitutes nothing but a disagreement with the finding that Mr Duterte is fit to participate in the confirmation proceedings.

Second Issue

15. The Defence argues that over the course of the past six months the Chamber dismissed and "*twice denied*"²¹ its requests to hold status conferences "*to litigate Mr Duterte's fitness*",²² including examining the members of the Panel.²³ Not only did the Defence fail to seek leave to appeal these prior decisions, but in its present Request, it simply rehashes its earlier arguments as to why the hearings should have been held, faulting the Chamber for not having acceded to its continued demands, and insisting that the hearings would have "*assist[ed] the Pre-Trial Chamber in its argumentation*."²⁴

²⁰ See the [REDACTED] Report, *supra* note 17, pp. 16-18.

²¹ See the Request, *supra* note 1, para. 15. Emphasis omitted.

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

16. The Defence goes on to complain that the Chamber rejected its submissions with “[n]o further reasoning”²⁵ and posits that the latter committed an error of law when it denied a further Defence request to hold a hearing to determine the Panel of Experts’ understanding of the confirmation proceedings at the Court.²⁶ The Common Legal Representatives submit that the Chamber was obviously satisfied that all five medical practitioners – thus including the Defence Experts – possessed sufficient understanding of the confirmation proceedings and that it did not require questioning them on said understanding in court.

17. The Pre-Trial Chamber is under no statutory obligation to hold hearings or status conferences and to do so falls squarely within its discretionary powers in managing the proceedings. Thus, the Defence’s challenge of having rejected requests for oral hearings – despite the fact that the Defence did not seek to appeal them in a timely manner – merely demonstrates a general dissatisfaction with the Chamber’s case management. The Defence’s insistence on a body of practice developed before this Court, namely its references to the pre-trial litigation surrounding questions of fitness in the *Gbagbo* case,²⁷ are incapable of demonstrating that the Chamber was obliged to accede to its requests for hearings on the matter of the Suspect’s fitness to participate in the pre-trial proceedings.

18. Reliance on the practice of other international Tribunals²⁸ that have proceeded in the way desired by the Defence are also inapposite as they concern trial proceedings and in any event are incapable of demonstrating that there is an “*issue*” arising from the Decision that *would require resolution*. Specifically, there was no comparable ‘pre-trial phase’ with any kind of participation of suspects at the *ad hoc* Tribunals, where indictments were issued without any role for the Defence in that procedure.

²⁵ *Idem*, para. 16.

²⁶ *Ibid.*

²⁷ See the Request, *supra*, note 1, para. 22.

²⁸ *Idem*, para. 20.

19. It is further unclear how the intervention of the Appeals Chamber would be required to ensure the fair and expeditious course of the proceedings at this point. To the contrary, if, *arguendo*, the Chamber were to certify the *Second Issue*, matters resolved in respect of the pre-trial proceedings, namely the Suspect's fitness to participate in the confirmation of charges hearing, would be re-opened, causing further delay. This would negatively affect the fair and expeditious conduct of the proceedings and unnecessarily add to the Victims' waiting time to see the case proceed, as well as the Suspect's time spent in pre-trial detention. Crimes falling within the ambit of this case have been committed against the Victims a decade ago and Mr Duterte has been surrendered to the Court almost one year ago. Causing further delay in the pre-trial procedure would border excessive postponement and negatively impact the Victims' right to justice and truth.

Third Issue

20. The Defence mischaracterises the Pre-Trial Chamber's appreciation of the Defence expertise regarding Mr Duterte's health concerns. At no point did the Chamber speak of "*insufficiency of the Defence expertise*"²⁹ as advanced in the Request. Rather, and quite naturally, seeing that the expertise was both commissioned and guided by way of the terms of reference³⁰ issued unilaterally by a party, it would have been unsound for the Chamber to effectively terminate proceedings against the Suspect without requiring a second, independent medical expertise from unaffiliated experts. This included a second opinion on [REDACTED], as well as clarifications on the inconclusive findings between the two Defence Experts.³¹

21. The Defence further mischaracterises the Chamber's findings alleging it "*failed to demonstrate how, or why, the Panel's findings displaced those proffered by the Defence*".³² First, the Chamber never found that the findings of the Panel 'displaced' the earlier

²⁹ *Idem*, para. 24.

³⁰ See the [REDACTED], *supra* note 17, p. 2.

³¹ See *supra* para. 13 in relation to the *First Issue*.

³² See the Request, *supra* note 1, para. 24.

findings of the Defence Experts. Second, the important nuance in this matter is what actually constitutes the “*findings*” of the Defence Experts. The Defence, seeking to have Mr Duterte declared unfit, relies on [REDACTED] ‘*conclusion*’³³ on whether the Suspect was fit to follow the proceedings – a legal question solely reserved for the Judges to determine. As regards the clinical assessments performed by [REDACTED] and [REDACTED], these have been taken into account in the evaluation of the legal question in a staggered approach, not previously challenged by the Defence. Indeed, the Defence Experts’ clinical assessments prompted the Chamber to seek further, independent expertise to “*ensure the impartiality and neutrality*”.³⁴ To claim that the Defence expertise has been disregarded by the Chamber is simply incorrect.

22. In this regard, the Common Legal Representatives further recall the Victims’ earlier submissions underlining the inconclusive medical findings that appeared at odds with [REDACTED] ‘*conclusion*’.³⁵ As set out already in relation to the overlapping *First Issue*,³⁶ it was incumbent on the Chamber to ensure the independence of medical expertise on a matter with potentially far-reaching consequences; it was also its duty to obtain sufficiently conclusive information to enable it to come to a well-supported decision in respect of the Suspect’s fitness to partake in the pre-trial proceedings. The Chamber did no less.

23. With respect to the Defence’s central contention under this heading, namely that the Chamber failed to “*articulate coherent reasoning as to why it believed Mr Duterte fit to proceed to the confirmation proceedings*”, the Common Legal Representatives again

³³ See the [REDACTED] Report, *supra* note 17, p. 17.

³⁴ See the Decision, *supra* note 6, para 22, referring to the earlier “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” (Pre-Trial Chamber I), 24 September 2025, [No. ICC-01/21-01/25-279-Conf](#), 24 September 2025. A public redacted version [No. ICC-01/21-01/25-279-Red](#) was notified on 16 October 2025.

³⁵ See the “Victims’ Response to the ‘Defence Request for an Indefinite Adjournment’”, No. ICC-01/21-01/25-257-Conf-Exp, 29 August 2025, paras 23-25. referring to the [REDACTED] Report, *supra* note 17, pp. 13, 16 and [Annex B](#) to the Defence Request for an Indefinite Adjournment, *supra* note 18, p. 6. A public redacted version No. ICC-01/21-01/25-257-Red was filed on 2 September 2025. A lesser redacted version [No. ICC-01/21-01/25-257-Red2](#) was filed on 8 October 2025.

³⁶ See *supra* paras. 12-13.

recall that, in order to constitute an appealable issue, a matter must be an *identifiable subject or topic requiring a decision for its resolution*. The Defence's critique of the manner in which the Chamber delivered its assessment of the five medical opinions before it does not rise to this standard. The Chamber set out sufficient reasoning in explaining that it accepted the most recent assessments of Mr Duterte's state of health and general faculties required to participate in the pre-trial proceedings. In order to accommodate [REDACTED], it ordered a number of measures to be implemented [REDACTED] and aligned the sitting schedule with medical recommendations, which demonstrates that it has profoundly engaged with the material before it. These accommodations include [REDACTED] by the independent Panel of Experts, not previously communicated in a constructive manner by the Defence Experts, such as [REDACTED].

24. Accordingly, the *Third Issue* raised by the Defence does not arise from the Decision but stems from a disagreement with the Chamber's findings.

Fourth Issue

25. The *Fourth Issue* as identified by the Defence is no more than speculative conjecture. It is again premised on the Defence's unilateral reading of a partial medical record and 'conclusions' drawn by its own Expert. None of the aforementioned would appropriately have been the concern of the Chamber at the time it decided on Mr Duterte's fitness in relation to the present stage of the proceedings. The Pre-Trial Chamber's ambit of competence ends with a decision on the confirmation of charges, following the statutorily prescribed procedure. Its only task in adjudicating Defence's requests relating to the alleged unfitness of Mr Duterte was to ascertain whether he possesses the requisite faculties to adequately follow and participate in the proceedings at the pre-trial stage. It was not its task to entertain a speculative forecast beyond the confirmation of charges procedure, nor would it have been legal for it to do so, not yet knowing whether the case presented would meet the evidentiary threshold to commit Mr Duterte to trial.

26. Although the Common Legal Representatives strongly believe that the evidence against Mr Duterte is indeed sufficient to meet the requisite standard; however, whether he is fit to stand trial will be a question to be determined by the Trial Chamber seized with this case if and when charges are confirmed.

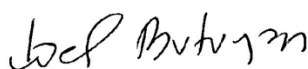
27. Since the Pre-Trial Chamber had no competence and would, indeed, have acted *ultra vires* had it made predictions beyond the pre-trial stage, the *Fourth Issue* can, as a matter of course, not arise from the Decision.

V. CONCLUSION

28. For all the foregoing reasons, the Common Legal Representatives respectfully request the Pre-Trial Chamber to reject the Defence Request.



Gilbert Andres



Joel Butuyan



Paolina Massidda

Dated this 13th day of February 2026

At The Hague (The Netherlands) and Manila (The Philippines)